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Squire, Sanders & Dempsey LLP
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Phoenix, AZ 85004-4498

ROBERT C. "BOB" BALINK El Paso County, CO
06/07/2006 12:39:45
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This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

Eagle-Picher Technologies, LLC ("Eagle-Picher") grants an Environmental Covenant ("Covenant") this 28th day of April, 2006 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq*. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

RECITALS

WHEREAS, Eagle-Picher is the owner of certain property commonly referred to as the former Eagle-Picher facility, located at 3820 South Hancock Expressway, Colorado Springs, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to Compliance Order on Consent number 99-01-26-01 ("Compliance Order"), the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, et. seq. ("CHWA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by limiting dermal contact with and/or ingestion of impacted shallow groundwater; and

WHEREAS, the Property contains residual groundwater contamination at levels that have been determined to be safe for one or more specific uses, but not all uses, and the remedial decision embodied in the Compliance Order contains engineered features in the form of a groundwater pump and treat system at the Property that require monitoring, maintenance, and operation ("Corrective Measures") and that will not function as intended if such features are disturbed; and

WHEREAS, Eagle-Picher desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Eagle-Picher and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

66.00 FAHTC 712H0104880

NOW, THEREFORE, Eagle-Picher hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 3, below, which shall run with the Property in perpetuity and be binding on Eagle-Picher and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

ENVIRONMENTAL USE RESTRICTIONS

Unless modified or eliminated in conformance with Paragraphs 5 through 9 below, the following Environmental Use Restrictions are hereby imposed upon, shall burden and run with the Property.

1. Restriction on Use of Groundwater. Groundwater beneath the Property shall not be used for any purpose except as provided for in *Revision 1 - Final Groundwater Corrective Measures Workplan*, dated July 18, 2002 as modified in the past by the Department in correspondence dated September 26, 2002, and October 31, 2002, and as may be modified in the future by the Department (collectively the "Corrective Measures Workplan"), in which case any future amendments shall be kept in the site-file at the Department. The Corrective Measures Workplan documents are attached hereto as Appendices B, C, and D, and are incorporated herein as if set forth in full.

2. Prohibition on Well Construction. No groundwater wells shall be constructed on the property for any purpose, except as provided for in the Corrective Measures Workplan.

3. Operation of Water Treatment and Prohibition of Removal or Alteration of Corrective Measures. Owner shall operate the groundwater pump and treat system in accordance with the Corrective Measures Workplan and shall not use the Property in any way that interferes, diminishes, or adversely impacts the operation and/or maintenance of the Corrective Measures, including, but not limited to, removal or alteration of the physical structures required by the Corrective Measures Workplan, the groundwater monitoring wells, any equipment or infrastructure constructed or operated for the Corrective Measures that are necessary for the Owner to comply with all requirements of the Corrective Measures Workplan.

ACCESS AND INSPECTION

4. The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

MODIFICATION OF ENVIRONMENTAL COVENANT

5. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. Owner may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. A request for modification or termination that is in accordance with a Department approved modification to, or completion or satisfaction of, the Corrective Measures Workplan shall be presumed to ensure protection of human health and the environment. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

a) a proposal to perform additional remedial work;
b) new information regarding the risks posed by the residual contamination;
c) information demonstrating that residual contamination has diminished;
d) information demonstrating that an engineered feature or structure is no longer necessary;
e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
f) other appropriate supporting information.

6. Required Approvals. The Department shall review all applications for modifying or terminating this Environmental Covenant and make a determination within 60 days after receipt of an application. Any proposed modifications must be approved in writing executed by: (a) CDPHE; and (b) the Owner of the parcel burdened by the proposed modification to this Environmental Covenant.

7. Appeals. Any determination by the Department shall be subject to appeal in accordance with Section 25-15-305, C.R.S. (2001).

8. Implementation of Modification(s). Any modification of this Environmental Covenant must be (a) in writing; (b) dated after the date of this Environmental Covenant; and (c) duly recorded in the real property records of the county in which the Property is located.

9. Any modification which complies with the foregoing requirements shall be deemed duly created and enforceable from and after the effective date thereof. For purposes of this Environmental Covenant, a modification may include (a) the imposition of new environmental use restrictions, (b) amendment or modification of an existing environmental use restriction, or (c) the termination of all or part of an existing environmental use restriction or all of the existing environmental use restrictions.

CONVEYANCES

10. Owner shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.

11. Notice to Lessees. Owner agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

NOTIFICATION FOR PROPOSED CONSTRUCTION AND LAND USE

12. Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit that may impact groundwater on site or change in land use from an industrial use.

NO LIABILITY

13. The Department does not acquire any liability under State law by virtue of accepting this Covenant.

ENFORCEMENT RIGHTS

14. The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. Eagle-Picher may file suit in district court to enjoin actual or threatened violations of this Covenant.

OWNER'S COMPLIANCE CERTIFICATION

15. Owner shall execute and return a certification form provided by the Department, on an annual basis, detailing Owner's compliance, and any lack of compliance, with the terms of this Covenant.

NOTICES

16. Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Eagle-Picher, has caused this instrument to be executed this 28 day of April, 2006.

Eagle-Picher Technologies, LLC

By: _____
Steven E. Westfall
Title: President

STATE OF Missouri)
) ss:
COUNTY OF Newton)

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Steven E. Westfall on behalf of Eagle-Picher

Kimberly Buerge - Notary Public
Notary Seal for State of
Missouri - Newton County
My Commission Expires 6/14/2008

Kimberly Buerge
Notary Public

2748 Jaguar Rd
Address

Joplin, MO 64804

My commission expires: 6/14/08

Accepted by the Colorado Department of Public Health and Environment this 4th day of May, 2006.

By: _____
Title: Division Director, HMWMD

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 4th day of May, 2006 by [illegible] on behalf of the Colorado Department of Public Health and Environment.

[illegible]
Notary Public

4300 Cherry Creek Drive South
Address

Denver Co 80246

My commission expires 2-29-2008

ATTACHMENT A
PROPERTY DESCRIPTION

FIRST PARCEL:

A tract of land in Section 2, Township 15 South, Range 66 West of the 6th P.M., described as follows: Commencing at the East quarter corner of said Section 2; thence North along the East line of said Section 2 a distance of 525.0 feet, (the East line of Section 2 is the Control Bearing Line of this description having a bearing of due North); thence West a distance of 50.0 feet to the Westerly right of way line of Hancock Expressway and the true point of beginning; thence West 871.0 feet; thence North 500.0 feet; thence East 871.0 feet to the Westerly right of way line of Hancock Expressway; thence South along said right of way line 500.0 feet to the true point of beginning. Except any portion thereof contained within Clear View Drive as recorded in Plat Book N-2 at Page 19, County of El Paso, State of Colorado.

SECOND PARCEL

A tract of land located in the North One-Half (N.1/2) of Section 2, T15S, R56W of the 6th P.M., County of El Paso, State of Colorado, being more particularly described as follows:

Beginning at the Northwest corner of a tract of land recorded in Book 2255 at Page 369 of the records of said County; Thence S00'00'00"W, a distance of 450.02 feet to a point on the northerly right-of-way line of Clear view Drive as recorded in Plot Book N-2 at Page 19 of said records;

Thence along the arc of a non-tangent curve to the right having a central angle of 11'00'17", a radius of 206.87 feet, an arc length of 39.73 feet, whose chord bears N61'19'49"W; Thence N56'29'43'W, a distance of 568.65 feet; Thence N00'02'30"E, a distance of 117.09 feet; Thence N90' 00'00"E, a distance 508.88 feet to the Point of Beginning.

Said tract contains 145.289 square feet, (3.336 acres) more or less.