



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

Umetco Minerals Corporation, a Delaware corporation with an office address at 2745 Compass Drive, Suite 280, Grand Junction, Colorado 81506 (the "Grantor") hereby grants an Environmental Covenant (the "Covenant") dated this 3rd day of April, 2009 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 office address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, as of the date hereof, Grantor is the current record owner of certain property commonly referred to as the New Rifle Site, located approximately two (2) miles southwest of the City of Rifle, State of Colorado, more particularly described by metes and bounds 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 that certain U.S. Department of Energy Site Observational Work Plan for the UMTRA Project New Rifle Site, (the "Work Plan"), the Property is the subject of remedial action pursuant to the Uranium Mill Tailings Radiation Control Act, P.L. 95-604 ("UMTRCA") and UMTRCA regulations, 40 C.F.R. § 192 Subpart B, and;

WHEREAS, the purpose of this Covenant is to enhance protection of human health and the environment by minimizing opportunity for potential exposure to residual radioactive materials through restrictions on penetration of the ground surface, and to minimize opportunity for potential exposure to contaminated groundwater, and

WHEREAS, Grantor and the Department mutually desire to subject the Property to those certain covenants and restrictions set forth herein below as provided in Article 15 of Title 25, Colorado Revised Statutes, which said covenants and restrictions shall burden the Property and bind Grantor in its capacity as current record owner, all subsequent owners, 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 Grantor, subsequent record owners of the Property, the Department, and the U.S. Department of Energy.

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the Department, with the U.S. Department of Energy as a third party beneficiary, 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 the paragraphs below, which shall run with the Property in perpetuity and be binding on Grantor in its capacity as current record owner, all subsequent owners, 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 then current

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.

1) Use restrictions.

- A. No wells or drilling or pumping whatsoever shall be permitted or allowed on the Property that would impact the alluvial aquifer underlying the Property without modification of this Covenant pursuant to paragraph 2 herein below. The only exception to the foregoing is for monitoring and remedial wells installed by Grantor, OWNER, the Department, or the Department of Energy, in connection with the on-going, approved remedial activities at the Property pursuant to the Work Plan, as the same may be amended from time to time.
- B. No stock watering or grazing utilizing the alluvial aquifer or the Wasatch formation, including use of the former Roaring Fork Gravel Pit, shall be allowed. Appropriate measures such as fencing shall be used as necessary to restrict grazing and access of cattle or other stock to the former Roaring Fork Gravel Pit.
- C. No activities that will interfere with any existing or future monitoring or remedial wells installed by Grantor, OWNER, the Department, or the Department of Energy, in connection with the on-going, approved remedial activities at the Property pursuant to the Work Plan, as the same may be amended from time to time, or interfere with the maintenance, operation, or monitoring of said wells is permitted or allowed, without modification of this Covenant pursuant to paragraph 2 herein below.
- D. OWNER shall grant access to the Department and the U.S. Department of Energy to perform any and all activities pursuant to the Work Plan, as the same may be amended from time to time, required to monitor or implement the remedy for the Property pursuant to the Work Plan, as the same may be amended from time to time.

2) Modifications.

A. This Covenant, and the restrictions and requirements contained herein, runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph in accordance with then current statutory requirements. OWNER may request that the Department approve a modification or termination of the Covenant in accordance with then current statutory requirements. As of the date hereof, the current statutory requirements for modification or termination of this Covenant are set forth in § 25-15-319, C.R.S. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing in accordance with statutory requirements.

B. Upon receipt of any request of any OWNER to modify or terminate this Covenant, the Department shall give notice thereof to Grantor, or to its direct parent

corporation Union Carbide Corporation, or to its indirect parent corporation The Dow Chemical Company, affording reasonable advance opportunity to comment to the Department on the advisability of granting any such request.

- 3) Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any sale or other conveyance of title to any or all of the Property.
- 4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other written instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use. OWNER shall notify the Department contemporaneously when OWNER submits any application to a local government entity either (i) for a building permit on the Property and/or (ii) for a change in land use on the Property.
- 6) Inspections. 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.
- 7) No Liability. The Department does not acquire any liability under State law by virtue of accepting this Covenant, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.
- 8) Enforcement. The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. Grantor and the U.S. Department of Energy may file suit in district court to enjoin actual or threatened violations of this Covenant.
- 9) Non- Compliance Report. In the event that OWNER becomes aware to its actual knowledge of an incident on the Property that is not in compliance with the requirements of this Covenant, OWNER shall execute and file an Incident Report thereof with the Department. Not more than once annually, the Department may request OWNER to certify to its actual knowledge as to whether any such incident of non-compliance has occurred on the Property.
- 10) Recordation. Contemporaneously with the full mutual execution hereof, the Department shall file this Covenant on the public land records of the County in which the Property is located.
- 11) Notices. Any notices, documents, or communications required to be given under this Covenant shall be effective one (1) day after being placed in the hands of a reputable national overnight delivery service, and (3) days after being placed in the hands of the US Postal Service, certified mail, return receipt requested, and, in each case, addressed respectively as follows:

If to the Department:

Hazardous Materials and Waste Management Division
Attention: UMTRA Project Manager
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

If to the US Department of Energy:

U.S. Department of Energy
Attention: Remedial Programs Director
Grand Junction Office
2597 B3/4 Road
Grand Junction, CO 81503

If to the Grantor:

Umetco Minerals Corporation
Attention: Remediation Leader
2745 Compass Drive
Grand Junction, Colorado 81506

Cc: Stephen J. Murray, Esq.
Of Counsel, Mahoney & Keane, LLP
14 Pilgrim Lane
Weston, CT 06883

If to Union Carbide Corporation and/or The Dow Chemical Company

Union Carbide Corporation
c/o The Dow Chemical Company
Attn: Global Real Estate Director
2030 Dow Center
Midland, MI 48674

Cc: Umetco Minerals Corporation
Attention: Remediation Leader
2745 Compass Drive
Grand Junction, Colorado 81506

Cc: Stephen J. Murray, Esq.
Of Counsel, Mahoney & Keane, LLP
14 Pilgrim Lane
Weston, CT 06883

ATTACHMENT A

METES AND BOUNDS DESCRIPTION

NEW RIFLE SITE

UMETCO PROPERTY IN WEST RIFLE, CO

PROPERTY DESCRIPTION

That certain tract of land in the west one-half of Section 18, Township 6 South, Range 93 West, and in the east one-half of Section 13, Township 6 South, Range 94 West of the 6th Principal Meridian, Garfield County, Colorado, the perimeter of which is described as follows:

Commencing at a Garfield County Survey Marker for the Meander Corner on the westerly line of said Section 18, whence an original stone monument for the northwest corner of said Section 18 bears N00°25'50"W for a distance of 2567.10 feet; thence S00°02'10"E for a distance of 1908.21 feet to the northerly right-of-way line of Interstate 70 and the point of beginning; thence, continuing on said right-of-way line, N89°22'30"W for a distance of 1712.17 feet; thence N80°07'30"W for a distance of 304.10 feet; thence N89°35'00"W for a distance of 487.81 feet to the intersection with the southerly right-of-way line of the Union Pacific Railroad; thence, leaving said highway right-of-way line, Northeasterly, on and along the southerly right-of-way line of said railroad to the northwest corner of the lands belonging to the State of Colorado; thence, leaving said southerly right-of-way, S00°43'47"E for a distance of 2424.60 feet to the southwest corner of said State lands and the northerly right-of-way line of said Interstate 70; thence, on said northerly right-of-way line, N89°35'00"W for a distance of 1350.82 feet; thence N83°52'30"W for a distance 201.00 feet; thence N89°22'30"W for a distance of 1087.83 feet to the point of beginning. to the point of beginning.

Containing 196.70 acres, more or less.

This description was derived from a survey done by Rolland Engineering, dated 4/14/1999, which can be found in the Deposit of Survey Records of Garfield County, Colorado, and was prepared by Richard Mason for Rolland Engineering, 405 Ridges Blvd., Grand Junction, CO.

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Dept of Law | NRE

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