

# STATE OF COLORADO

Bill Owens, Governor  
Douglas H. Benevento, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

March 18, 2005

Attention: David B. Nielsen, Director of Landfill Compliance  
Clean Harbors Deer Trail, LLC  
2500 West Lokern Road  
PO Box 787  
Buttonwillow, CA 93206

Re: Request for License-Concerns Regarding Financial Assurance and Land Ownership

This letter is to request additional documentation to resolve issues and deficiencies identified with your January 31, 2005 license application to operate a low-level waste disposal facility in Colorado. The review of your application is ongoing and this list of issues/deficiencies is not comprehensive. The Department will provide additional requests for information as needed during the review process. Please provide appropriate documentation and warranties to resolve each of the following items.

1. The financial assurance section of the application (Volume 1, Section 10) does not address how the financial assurance required for your RCRA permit meets the requirements for financial assurance outlined in RH 3.9.5 and RH 3.9.6 of the Colorado Rules and Regulations. These sections outline the requirements for decommissioning warranties, long-term care warranties and decommissioning funding plans. All three of these forms of financial assurance are required for radioactive waste disposal licensees and will need to be established prior to the license being issued.
2. The Colorado Radiation Control Act specifies in 25-11-103(7) that the state is required to assume ownership of lands used for the disposal of radioactive wastes and RH 14.28.1 repeats this requirement. However, Clean Harbors does not intend to deed the Deer Trail facility to the state.

Part 11 of the Colorado Rules and Regulations authorizes the Department to exempt an application from the requirements of 25-11-103 (7) if the applicant demonstrates a degree of control of the site equivalent to that which would be achieved by government ownership of the site. Prior to the issuance of the license, Clean Harbors must demonstrate this degree of control.

To demonstrate this equivalent degree of control, RH 11.3 requires at a minimum, that the applicant meet each of the following requirements:

- a. Financial Assurance - The licensee shall provide a long-term care warranty pursuant to the requirements of Part 3 of the Regulations. The currently accepted value for a long-term care warranty is seven hundred thousand US dollars (\$700,000).
- b. Trust Agreement - The licensee shall enter into a trust agreement with the Department giving the Department exclusive control over the licensee's long-term care funds to enable the Department to conduct long-term care and maintenance of the site in the event the owner of the site is unable or unwilling to do so.
- c. Institutional Control Program-The licensee shall establish a Department-approved institutional control program including aspects outlined in RH 11.3.3.
- d. Restrictive Covenants-The licensee shall record with the county clerk and recorder in the county where the site is located Department-approved restrictive covenants including aspects outlined in RH 11.3.4.
- e. Deed Annotations-The licensee shall record with the county clerk and recorder an annotation to its deed as outlined in RH 11.3.5.
- f. Easements-The licensee shall grant to the Department and the United States Nuclear Regulatory Commission and their successor agencies an easement giving them and their designees the unlimited right to access the property for purposes of inspecting the property; determining compliance with restrictive covenants and applicable laws, regulations, permits, and licenses; taking samples and measurements; and for any other purpose reasonably within the power and authority of the Department and the United States Nuclear Regulatory Commission.

Pursuant to RH 12.2.1 of the Regulations, the Department will consider an application abandoned if it does not receive a reply within forty-five (45) days to its most recent request for additional information. In your response to this request, please reference docket number 5873.

If you have any questions regarding your license or this letter, please contact Jennifer Opila of this Division at (303) 692-3403.

Steve Tarlton, Unit Leader  
Radiation Management Unit  
Hazardous Materials and Waste Management Division



Clean Harbors Deer Trail, LLC  
108555 East Highway 36  
Deer Trail, CO 80105  
Telephone: (970) 386-2293  
Facsimile: (970) 386-2262

May 2, 2005

Mr. Steve Tarlton, Unit Leader  
Radiation Management Unit  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

**RE: Response to Concerns Regarding Financial Assurance and Land Ownership,  
Clean Harbors Deer Trail, LLC, Docket Number 5873**

Dear Mr. Tarlton:

This letter constitutes Clean Harbors' response to your March 18, 2005 request for additional information regarding financial assurance and institutional control requirements of Part 3 and 11 of Colorado's radiation control regulations. At the outset, it is important for us to again emphasize that the very narrow subset of the NORM/TENORM wastes that Clean Harbors seeks to accept at the Deer Trail facility, pursuant to this license, do not fall within the Colorado statutory definition of "radioactive." C.R.S. §25-11-201(2). Therefore, these NORM/TENORM wastes do not present the level of risk exhibited by radioactive wastes commonly associated with NRC "disposal licensing" around the country, and, thus, the risks CDPHE's radiation regulations were intended to address. Indeed, as you are aware, wastes physically identical to this subset of licensable material are being processed by CDPHE in a permitting proceeding as non-hazardous waste in this facility's Colorado RCRA Part B permit renewal.

The Deer Trail RCRA Part B renewal application prescribes financial assurances addressing closure and post-closure requirements which more than adequately ensure the protection of human health and the environment for these wastes because RCRA hazardous wastes present demonstrably higher risks to human health and the environment than the NORM/TENORM wastes at issue here. Therefore, pursuant to the authority cited below, we are requesting that these like NORM/TENORM wastes, whether they be regulated pursuant to the RCRA permit or this license, all be covered by the financial assurance mechanisms established pursuant to Colorado's RCRA Part B Permit. In addition, we propose that an environmental covenant be developed to address institutional control and access issues related to these wastes, as well as to ensure long-term CDPHE control over the types of

wastes to be accepted at Deer Trail. Most importantly, this combination of closure/post-closure mechanisms will provide protective financial assurance using tried and true mechanisms with which CDPHE has nearly 20 years of experience, including nearly 15 years at this site. Moreover, such a system avoids unnecessary and duplicative financial assurance mechanisms, which could be administratively confusing to CDPHE, the facility owner and the sureties involved, in the unlikely event they should ever be accessed. Indeed, the Department LLRW land disposal regulations explicitly authorize this approval for precisely these reasons:

In order to avoid unnecessary duplication and expense, the Department will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of federal or other state agencies for such decontamination, closure and stabilization.

6 C.C.R. 1007-1, RH 14.31.2. See also 6 C.C.R. 1007-1, RH 14.31.7.

With this framework in mind, we submit the following supplementary representations. In reviewing these responses, we request that you assess their sufficiency as to substance and purpose and not as to form. As you know, this Department is authorized to grant exemptions or exceptions from the radiation control regulations “as it determines are authorized by law and will not result in undue hazard to public health and safety or property.” 6 C.C.R. 1007-1, RH 1.5.1. Given the nature of these wastes, the financial assurances already obtained by Clean Harbors under RCRA and the environmental covenant most certainly satisfy the purpose of these requirements and adequately ensure that no “undue hazard” will result. Indeed, any differences are wholly a matter of form reflecting CDPHE’s relative surfeit of experience, and the positive evolution in the forms of financial assurance available, resulting from CDPHE’s extensive experience with the RCRA financial assurance mechanisms.

1. The financial assurances required under RH 3.9.5 and 3.9.6 are met by the financial assurances already required of Clean Harbors under RCRA.

Decommissioning Warranty. RH 3.9.5.2 requires an applicant for a radioactive materials license to provide a decommissioning warranty sufficient “to ensure corrective action during operation, to ensure decontamination and decommissioning of a facility and disposal of radioactive materials in the event of abandonment, default or inability of the licensee to meet the requirements of the Act, these regulations, or the license.” 6 C.C.R. 1007-1, RH 3.9.5.2. Clean Harbors proposes to satisfy this requirement through the financial assurances required under RCRA for closure and post-closure activities, which are set forth in Attachment F to the radioactive materials license application, as modified by this submittal. Clean Harbors previously obtained a certificate of insurance to meet the RCRA

financial assurances, with the Department as the certificate holder.<sup>1</sup> Given the fact that the facility's RCRA permit and license will address what are physically the same types of NORM/TENORM, and that the required decommissioning tasks are nearly identical with those already included within the tasks necessary for closure and post-closure under Clean Harbors' RCRA Part B permit renewal.<sup>2</sup> The insurance certificate, as revised pursuant to this submittal, will provide sufficient funding to achieve the decommissioning tasks listed in RH 3.9.5.5 in the highly unlikely event that the State of Colorado will be required to step in to do this work. See Attachment 6 and 7 to RCRA Part B permit renewal application; see also Attachment F to the license application.

However, the current amount of this insurance is \$3,619,006 for closure costs and \$2,700,537 for post-closure costs, totaling \$6,319,543. Based on the attached calculations, the receipt of estimated volumes of both licensed and unlicensed NORM/TENORM at Deer Trail would cause Deer Trail's closure/post-closure cost estimates pursuant to 6 C.C.R. 1007.3 §§ 266.12 and 266.13 to increase by \$922,561. See Attachment A to this letter. Therefore, pursuant to sections 266.12(c) and 266.13(c), Clean Harbors will establish required certificates of insurance reflecting these increased closure/post-closure costs within 30 days of receipt of the approval from CDPHE of the RCRA permit renewal or the effective date of the license, whichever occurs sooner.

Long-term Care Warranty. RH 3.9.5.10 requires long-term care warranties for radioactive waste disposal licensees. The purpose of this warranty is to ensure funding for long-term monitoring and maintenance of the site. These requirements are met by the closure and post-closure insurance held by Clean Harbors, as discussed above. Under CDPHE's hazardous waste regulations, the post-closure care period is 30 years unless extended by the Department. 6 C.C.R. 1007-3, § 264.117. Specifically, Section 264.117 allows CDPHE to extend the 30-year post-closure care permit indefinitely if "the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous waste at levels which may be harmful to human health and the environment)." 6 C.C.R. 1007-3, § 264.117(a)(2)(ii). For clarity, Clean Harbors proposes that language be added to both the license and the RCRA permit renewal that for purposes of the implementation of Section 264.117(a)(2)(ii), the term "hazardous wastes" shall be read broadly to include NORM/TENORM disposal pursuant to either the Deer Trail RCRA permit or the license.

Decommissioning Funding Plan. RH 3.9.6 requires a decommissioning funding plan "to assure the availability of funds for decommissioning activities conducted over the life of

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<sup>1</sup> Although certificates of insurance are not expressly listed as an acceptable form of financial assurance, they are also not expressly excluded. Given the nature of these wastes and the fact that certificates of insurance are acceptable under RCRA for NORM/TENORM, the Department should accept these certificates of insurance as sufficient to satisfy the requirements pursuant to RH 3.9.5.4(5). Moreover, RH 14.31.7 explicitly authorizes the use of "other types of arrangements as may be approved by the Department." 6 C.C.R. 1007-1, RH 14.31.7.

<sup>2</sup> These tasks include but are not limited to the decontamination of equipment and structures, some disposal, final cover, and various monitoring, maintenance and administrative costs.

the licensed facility.” 6 C.C.R. 1007-1, RH 3.9.6. This provision requires this plan for certain types of facilities. As a result, it is unclear whether this requirement even applies to Deer Trail given that uranium, thorium, and radium are not listed in Schedule B (RH 3.9.6.1, .2) nor would it appear that Deer Trail qualifies as a waste collector or processor (RH 3.9.6.3). Assuming *arguendo* that it does, no funding plan should be required. The wastes that are the subject of this radioactive materials license are physically the same wastes for which Clean Harbors is seeking a modification in its RCRA Part B renewal application, currently under review. The RCRA closure and post-closure requirements will satisfy all the decommissioning requirements under this license. Thus, any funding for the Deer Trail facility’s closure and post-closure under RCRA is sufficient to meet this requirement as it already provides for the closure and post-closure activities for the site for up to 30 years or more. Moreover, the financial assurances obtained by Clean Harbors under RCRA for closure and post-closure provide long-term assurance of adequate funding. Indeed, the 30-year period established by RCRA exceeds by a multiple of six, the 5-year period established at RH 14.15.

In assessing Clean Harbors fulfillment of the above financial assurance requirements, we request that you consider that the regulations allow “[f]inancial assurance warranties previously provided to any State, Federal and/or local governing bodies concerning activities subject to license under the regulations, where the amount, terms, and conditions of such financial assurance warranties have been established to the satisfaction of the Department” as acceptable financial assurance warranties. 6 C.C.R. 1007-1, RH 3.9.5.4(5). Similarly, the Part 14 LLRW land disposal regulatory program quoted above clearly authorizes the use of these mechanisms. See 6 C.C.R. 1007-1, RH 14.31.2 and 14.31.7. Given the nature of these wastes and the nature of the necessary decommissioning activities in relationship to Deer Trail’s RCRA permit, the form and substance of Clean Harbors’ closure and post-closure financial assurances are adequate under CDPHE’s RCRA regulations and thus most certainly have been determined to be adequate to ensure protection of human health and the environment.

2. Your letter correctly states that Clean Harbors does not intend to deed the Deer Trail facility to the State of Colorado. Rather, we qualify for exemption from this requirement under Part 11 of the radiation control regulations. Clean Harbors can demonstrate control over the Deer Trail facility equivalent to that which would be achieved by government ownership of the facility. Your letter provided the following list of Part 11 criteria to be addressed.<sup>3</sup> These requirements are satisfied with Clean Harbors’ proposal to enter into an environmental covenant under section 25-15-321 of the Colorado Revised Statutes to be held

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<sup>3</sup> Two additional requirements under Part 11 were not addressed in your letter, namely the requirement for submission of as-built drawings and for submission of all facility records to various governmental entities. Clean Harbors will submit as-built drawings as described in RH 11.3.7. However, Clean Harbors believes the requirements of RH 11.3.8 concerning submission of records to be extremely excessive, especially given the nature of the waste at issue and Clean Harbors’ private ownership. As a result, Clean Harbors will transfer these records to any agency designated by CDPHE on the license with the relevant time period specified and will provide records to other governmental entities on as needed basis at the request of such an entity.

and enforceable by CDPHE and Adams County, and by the financial assurance provided as discussed above. See draft at Attachment B to this letter.

Financial Assurance. RH 11.3.1 requires a long-term care warranty. As discussed above, Clean Harbors fulfills the requirements of a long-term care warranty through its financial assurances as required under RCRA.

Trust Agreement. RH 11.3.2 requires that the Department be given exclusive control over long-term care funds to ensure long-term care of the site in the event the owner/operator is unable or unwilling to complete those tasks. Clean Harbors satisfies its financial assurance requirements through a certificate of liability insurance of which CDPHE is a certificate holder. Section 266.14(h)(4) of 6 C.C.R. 1007-3 requires that these funds are paid out at the direction of the Department to parties as the Department specifies.

Institutional Control Program. The post-closure monitoring and surveillance detailed in the Deer Trail facility's RCRA Part B permit renewal, outlined in Attachment 7 to the permit renewal application, satisfy the requirements of RH 11.3.3. The Post Closure Plan details a program for monitoring groundwater, leachate, and for potential leaks; and periodic site inspections and maintenance. This program will be administered with the funds for post-closure provided by Clean Harbors, and assured by the financial assurance mechanisms described above. Moreover, the environmental covenant proposed by Clean Harbors has been identified by the Colorado Legislature as the primary institutional control program established in Colorado for maintaining long-term monitoring and surveillance at sites where residual contamination is left in place. As a general matter, the Colorado Legislature found "that in such cases, it is necessary to provide an effective and enforceable means of ensuring the conduct of any required maintenance, monitoring, or operation, and of restricting future uses of the land, including placing restrictions on drilling for or pumping groundwater for as long as any residual contamination remains hazardous. The general assembly, therefore, declares that it is in the public interest to create environmental covenants because such covenants are necessary for the protection of human health and the environment." C.R.S. §25-15-317. Further, the General Assembly designated an appropriate use of this environmental covenant to include "decommissioning of sites licensed" under Colorado's Radiation Control Act. C.R.S. § 25-15-101(4.5)(e).

Restrictive Covenants. Please see attached Covenant, Sections 1.D.i.(no construction), ii.(no use that impairs control), iii. (no change without prior approval), iv. (markers and monuments); 4 (conveyances); 8 (covenant enforceable by CDPHE, Adams County and NRC); and Preamble (covenant runs with the land and is binding on all future owners). Also, please note Part 11 prescribes a requirement for the covenants to be enforceable by the U.S. Nuclear Regulatory Commission ("NRC"). Clean Harbors does not believe such a requirement is necessary given the nature of the materials Clean Harbors will be allowed to receive under the license. As discussed in previous meetings and correspondence with your Department, the waste material that the Deer Trail facility

proposes to accept for disposal is below the state “radioactive” threshold of 2000 pCi/g and, is not otherwise subject to the authority of the NRC. However, that being said, Clean Harbors is willing to make the environmental covenant enforceable by the NRC if CDPHE deems it necessary, thereby satisfying the easement requirement of RH 11.3.6.

Deed Annotations. The requirement that Clean Harbors record an annotation to the deed to the Deer Trail facility is met through both the proposed environmental covenant and the notice to deed required under 6 C.C.R. 1007-3 §264.119, listed in Section I.C. of the Post Closure Plan, Attachment 7 to the Deer Trail facility’s RCRA Part B permit renewal application, as both will be recorded with the deed. Section 264.119 requires Clean Harbors to record a notation on the deed within 60 days after completion of closure, that includes notice of the survey plat required to be filed with the local zoning authority under §264.116 that describes the type, location, and quantity of waste disposed. This deed annotation will provide sufficient notice to potential purchasers of the disposal of NORM/TENORM waste at the facility. And, again redundantly, the recording of the environmental covenant will also provide notice of the disposal of NORM/TENORM at this site.

Easements. The proposed environmental covenant grants access to CDPHE and the NRC for purposes of determining compliance with the covenant. See Covenant, Section 6. Again, the NRC does not have authority over this waste but Clean Harbors will grant access in order to facilitate the permitting process.

In conclusion, the financial assurances in the RCRA permit renewal application and the environmental covenant are most certainly sufficient to protect against any “undue hazard to public health and safety or property.” 6 C.C.R. 1007-1, RH 1.5.1. While the form of the assurances may vary slightly from those established in the Department’s radiation control regulations, these variations are due to the development of new mechanisms (e.g., the environmental covenant either not available at the time those regulations were drafted, or have been found by CDPHE to be protective based on 20 years of actually experience (e.g., insurance certificate) with the RCRA program. Therefore, Clean Harbors believes that we have met all of the above requirements in substance and ask only for very minor exceptions to form.

If you have any questions, please feel free to contact me.

Sincerely,

David Nielsen, PE  
Director of Landfill Compliance  
Clean Harbors Environmental Services, Inc.

Mr. Steve Tarlton  
Response to Financial Assurance & Landownership Comments  
Radioactive Materials License Application

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Enclosures: Attachment A: Increase Closure Plan Cost Due to Rad License  
Attachment B: Draft Environmental Covenant

***Attachment A: Increased Closure Plan Cost Due to Rad License\****

	<u>RCRA Cost**</u>	<u>Additional RAD Lic Cost</u>
<b><u>Closure Plan Cost</u></b>		
<b>3) f) Equipment and Structures Decontamination</b>	<b>\$75,000</b>	<b>\$78,675</b>
A total of 50 rinse samples will be analyzed during the decontamination of equipment and structures.		
<b>3) i) Groundwater Monitoring</b>	<b>\$58,650</b>	<b>\$33,558</b>
Seventeen groundwater monitoring wells will contain enough water to be sampled and analyzed during the closure period. Two analyses for each monitoring well will be performed during the closure period, one per quarter.		
<b>3) j) Leachate Collection/Leak Detection/Permanent Sump Monitoring</b>	<b>\$29,325</b>	<b>\$16,779</b>
For Secure Disposal Cells 1 through 6, six samples will be collected from each of the leachate collection systems, two samples will be collected from one of the leak detection systems, and 1 sample will be collected from 1 of the permanent sumps. For Secure Disposal Cell 7, three samples will be collected from the leachate collection system, 1 sample will be collected from the leak detection system, and no samples will be collected from the permanent sump.		
<b><u>Post-Closure Plan Cost (30 Years)</u></b>		
<b>3) a) Groundwater Monitoring</b>	<b>\$879,750</b>	<b>\$503,370</b>
A total of 17 groundwater-monitoring wells and one permanent sump are assumed to produce sufficient water for sampling and analysis during the post-closure monitoring program.		
<b>3) b) Leachate Collection/Leak Detection</b>		
The Leachate Collection Systems will be inspected for fluids on a semi-annual basis. If present, samples will be collected and analyzed on a semi-annual basis for the parameters listed Tables VII-3 and VII-4. Assume each of the 7 collection systems will have fluids present once per year.		
	<b>\$465,750</b>	<b>\$266,490</b>
The seven Leak Detection Systems will be inspected as described in the Post-Closure Plan. Fluids are not expected to be present in these systems throughout the post-closure care period. However, for the purposes of this estimate, assume two samples will be collected and analyzed per year.		
<b><i>Re-evaluate Baseline Soil Data</i></b>	<b>na</b>	<b>\$23,689</b>
Additional funding required by Rad License		<b>\$922,561</b>

\* These are the only items that will increase due to the addition of the proposed NORM/TENORM wastes.

\*\* These numbers are based on the lab analysis required under each line item.

***Attachment B***

**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**

By this deed, Clean Harbors Deer Trail, Inc. (“CHDT”) grants an Environmental Covenant (“Covenant”) this \_\_\_ day of \_\_\_\_\_, 2005 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment (“CDPHE” or the “Department”) pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-11-101, *et seq.* The Department’s address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, CHDT is the owner of a hazardous waste disposal facility located in **Adams County**, Colorado, approximately 70 miles east of Denver and 7 miles west of Last Chance, Colorado on the north side of US Highway 36, and a legal description of which is attached hereto as Exhibit A (the “Property”).

WHEREAS, CHDT is in the process of renewing and amending its treatment, storage and disposal permit, issued under the Resource Conservation and Recovery Act (“RCRA”), to accept for disposal certain naturally occurring radioactive material (“NORM”) and technically-enhanced naturally occurring radioactive material (“TENORM”).

WHEREAS, CHDT has also submitted an application to receive a license to accept said NORM and TENORM materials under the State’s Radiation Control Act, C.R.S. § 25-11-201, and this covenant will help satisfy the requirements under 6 C.C.R. 1007-1, Part 11.

WHEREAS, the purpose of this Covenant is to ensure the protection of human health and the environment by restricting the concentration of the NORM/TENORM materials that CHDT may receive at the facility to those with a concentration below the State’s statutory definition of “radioactive” as set forth in C.R.S. § 25-11-201.

WHEREAS, CHDT desires to subject the Property to certain covenants and restrictions as provided in Article 15, Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind CDHT, its heirs, successors, assigns and grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department.

WHEREAS, **Adams County** has the right to enforce this Covenant pursuant to Section 25-15-322(5), C.R.S.

WHEREAS, the United States Nuclear Regulatory Commission (NRC) also has the right to enforce this Covenant, in compliance with 6 C.C.R. 1007-1, 11.3.4.7 and 11.3.6.

NOW, THEREFORE, CHDT hereby grants this Covenant to the Department and declares that the Property, as described in Exhibit A shall hereinafter be bound by, held, sold, and conveyed subject to the following environmental use restriction which shall run with the Property and be binding on CHDT 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.

1. Use Restrictions

A. No NORM or TENORM waste may be disposed of at the Property that comprise a total activity equal to or greater than 2,000 picocuries per gram (pCi/g) (natural uranium and thorium decay chain products only), or with a maximum <sup>226</sup>Ra concentration equal to or greater than 400 pCi/g. NORM/TENORM waste at or below these concentrations which may be accepted at the Property may include, but is not limited to, the following: drinking water purification waste; pipe containing scale, or sludge from oil or gas production; selected mining waste for operations not involving uranium extraction; contaminated soils and street demolition debris associated with the Colorado FastTracks light-rail expansion program; and Denver Radium Street demolition debris and contaminated soils associated with the Denver Radium Street wastes project.

B. No licensed forms of manmade radioactive materials may be disposed of at the Property.

C. The Property is subject to the closure and post-closure requirements contained in Sections **[input relevant sections of RCRA permit and license]**.

D. Pursuant to Section 11.3.4 of the 6 CCR 1007-1, the following restrictions also apply:

- i. Except as necessary to maintain or repair the site, no construction or excavation of any kind shall be allowed on top of the former cells.
- ii. No use shall be made of the property which may impair the site's ability to contain or control the waste.
- iii. Any change in the use of the property shall require the prior written approval of the Department.
- iv. The owners shall erect and continuously maintain on the property at locations approved by the Department markers and monuments, approved by the Department, warning of the presence of radioactive materials.

2. Purpose of this Covenant. The purpose of this Covenant is to ensure the protection of human health and the environment by minimizing the potential for exposure

to materials which exhibit high levels of radioactivity. The Covenant will accomplish this by limiting the type and concentration of radioactive material that may be received at the Property and ensuring compliance with the control requirements contained in 6 C.C.R. 1007-1, Part 11.

3. Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. CHDT or its successors and assigns 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 the protection of human health and the environment. The Department shall review any submitted information and may request from CHDT additional information regarding the proposed modification or termination. 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. No modification or termination of any provision 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) new information regarding the risks posed by the materials prohibited from disposal on the Property;
- b) information demonstrating that the proposed modification is protective of human health and environment;
- c) new information about operational and post-closure controls that would affect the risks posed by the materials prohibited from disposal on the Property;
- d) other appropriate supporting information.

4. Conveyances. This Covenant runs with the land and shall be binding upon all subsequent owners of all or any part of the Property. CHDT shall notify the Department at least thirty (30) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property. No ownership of the property, or any interest in the property shall be conveyed without the prior written approval of the Department and any such conveyance shall have adequate and complete provision for the continued maintenance of the property and financial assurance warranties applicable to the Property. CHDT 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.

5. Binding Effect. Notwithstanding the foregoing, pursuant to 25-15-318(2), any person or entity who acquires any right, title or interest in all or any part of the Property shall be conclusively deemed to have consented and agreed to the provisions of this Covenant, whether or not any reference to this Covenant or its provisions is contained in the deed or other conveyance instruments by which such person or entity acquires interest in the Property.

6. Inspections. The Department, Adams County, and the NRC 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.

8. Enforcement. The Department may enforce the terms of this Covenant pursuant to Section 25-15-321, C.R.S. **Adams County** may enforce this Covenant pursuant to Section 25-15-322(5), C.R.S. **CHDT and Adams County may file suit in District Court to enjoin actual or threatened violations of this Covenant.**

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

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



## Exhibit A

## Legal Description of the Property

*All of Sections 25 and 36, Township 3 South, Range 57 West of the sixth prime meridian, **Adams County**, Colorado; except an apparent utility easement across Sections 25 and 36 and except an easement and right-of-way for the purpose of constructing, reconstructing, operating, and maintaining a 6 inch oil pipeline, granted to Arapahoe Pipeline Company by the State of Colorado, acting by and through the State Board of Land Commissioners, affecting Sections 25 and 36, excepting right-of-way for ditches or canals, reserved in United States patents recorded in Book 106, page 201, affecting the north half of Section 25; also Book 99, page 201, affecting the south half of Section 25; and excepting the east 30.00 feet of Section 25; also excepting the east 30.00 feet of Section 36 to be dedicated to **Adams County**, and except the south 100.00 feet of Section 36.*