Sand Creek Industrial Environmental Covenant Summary

Covenant ID: HMCOV00015

Covenant Information:

Covenant Date: July 27, 2004
Self Reporting: No
Media of Concern:
- Surface Water: No
- Groundwater: Yes
- Air: No
- Soil: No
- Other: No

Contaminants of Concern: PCE (tetrachloroethylene), TCE (trichloroethylene), benzene, cis-1,2 DCE (cis-1,2 dichloroethylene)

Property Restrictions:
1. Residential development prohibited
2. Development or business which primarily care for or entertain children are prohibited
3. Groundwater wells or any other exposure to groundwater prohibited

Site Information:

ID: COD980717953
Name: Sand Creek Industrial
Address: Northwest of 52nd and Dahlia, along RR Row
City: Commerce City
State: CO
Zip Code: 80022
Legal Description:
County: Adams

Site Contact Information:

NDSC Industrial Park, LLC
Name: William A. Farley
Address: 12471 Tower Road
City: Commerce City
State: CO Zip Code: 80022

SAND CREEK INDUSTRIAL COVENANT

HMCOV00015

Colorado Department of Public Health and Environment

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Carol SnYder,Clerk $46.00

ENVIRONMENTAL COVENANT

NDSC Industrial Park, LLC ("NDSC") grants an Environmental Covenant ("Covenant") this 21st day of April, 2004 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, et seq., Colorado Revised Statutes. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, NDSC is the owner of certain parcels of what is commonly referred to as the Sand Creek Superfund Site, located at 53rd and Dahlia, Commerce City, CO, more particularly described in Exhibit A attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as the "Property"); and,

WHEREAS, pursuant to a consent decree entered on October 16 1998 with the Colorado Organic Chemical Company and a consent decree entered on September 9, 1999 with the Colorado and Eastern Railroad Company, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U S.C. § 9601- 9647 (1992)("CERCLA"); and,

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by implementing institutional controls pursuant to the Records of Decision ("RODs") for Operable Units 1,4, & 5 of the Sand Creek Industrial Superfund Site, and,

WHEREAS, NDSC 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 NDSC, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department;

NOW, THEREFORE, NDSC hereby grants this Environmental 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 requirements set forth in paragraphs 1 through 11, below, which shall run with the Property in perpetuity and be binding on NDSC 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. NDSC declares that the United States Environmental Protection Agency ("USEPA") shall be a third party beneficiary of this Environmental Covenant. NDSC and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns shall hereinafter be referred to in this covenant as Owner,

1. Use Restrictions.

a. Residential development of the property is prohibited.

b. Schools or other developments or businesses which primarily care for or entertain children, including but not limited to day care, kindergarten or pre-schools, are prohibited.

c. Groundwater wells or any other method of bringing groundwater to the surface and any exposure of groundwater through excavation or any other method are prohibited, except for monitoring or remedial wells installed or to be installed, by the Department or the USEPA.

2. Purpose Of This Covenant. The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains on the Property. The Covenant will accomplish this by minimizing those activities that result in disturbing the ground surface and by creating a review and approval process to ensure that any such intrusive activities are conducted with appropriate precautions to avoid or eliminate any hazards.

3. Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. Owner or its successors and assigns may request that the Department approve a modification or termination of the Covenant. The request shall contain infonnation 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. 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 the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and,

e. Other appropriate supporting information.

4. Conveyances. 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.

5. Incorporation. 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.

6. Notification For Proposed Construction And Land Use. Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

7. Inspection. The Department and the USEP A 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 or the USEP A may otherwise have to enter and inspect the Property.

8. 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.

9. Enforcement. The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.RS. NDSC and any named beneficiaries of this Covenant may file suit in district court to enjoin actual or threatened violations of thin Covenant.

10. Owner's Compliance Certification. Owner shall submit an annual form to the Department detailing Owner's compliance and any lack of compliance with the terms of this Covenant. Such form will be due to the Department 45 days after Owners receipt of such form from the Department.

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

Remediation Program Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530; and,

William A. Farley
NDSC Industrial Park, LLC
12471 Tower Road
Commerce City, CO 80022

IN WITNESS WHEREOF NDSC Industrial Park, LLC has caused this instrument to be executed this 2ih day of July, 2004.

NDSC INDUSTRIAL PARK, LLC

By: _____
Dennis M. Franck, Manager

R. GREGORY STUTZ
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 01/07/2008

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument duly acknowledged before me, a Notary Public, on July 26, 2004 by Dennis M. Franck as Manager of NDSC Industrial Park, LLC.

Witness my hand and official seal.

[SEAL]

_____
NOTARY PUBLIC

ACCEPTED by the Colorado Department of Public Health and Environment this 30th day of September, 2004.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By: _____
Name Printed: Gary W. Baughman
Title: Director, HMWMD

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument duly acknowledged before me, a Notary Public, on SEPTEMBER 30, 2004 by GARY BAUGHMAN as DIRECTOR, HAZARDS of the Colorado Department of Public Health And Environment.

Witness my hand and official seal.

My commission expires: October 21, 2007.

[SEAL]

Claudette M. Ferris
NOTARY PUBLIC

EXHIBIT A
Legal Description Of Property

Northerly Portion

Seven (7) acres, more or less, of real property known as Tracts # 31a, 31b, 43, and Part of Tracts #31 and # 43 located at the Northwest corner of the Chicago Rock Island & Pacific Railroad R.O.W., and Dahlia Street, in Commerce City, Colorado.

1. Legal Description Tract #31a

All that part of the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven West, Adams County, Colorado, lying Southerly and Easterly of State Highway No. 6 and Northerly of a line drawn parallel with and 75.00 feet Southerly from the center-line of the main track of Chicago, Rock Island and Pacific Railroad Company as the said center-line is now surveyed, staked, and located, over and across said tract of land, **said center-line being more particularly described as follows**:

Beginning at a point in the East line of the Northwest Quarter (NW1/4) of said Section Eighteen (18), which is 688.35 feet North of the Southeast corner of said Northwest Quarter (NW1/4) and extending thence Northwesterly along a 1° 15= 00@ curve concave to the Southwest a distance of 206.10 feet to a point on the Easterly line of said old U.S. Highway No. 6 containing one (1) acre, more or less.

2. Legal Description Tract #31b

A parcel of land located in the Northwest Quarter (NW3) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven (67) West of the Sixth Principal Meridian (P.M.), Adams County, Colorado being more particularly described as follows, to wit:

All that portion of vacated State Highway No. 81 (Old Highway No. 6), which is the tract of land conveyed by Walter S. Cheesman Realty Company to the County of Adams, Colorado, by quit claim deed recorded in Book 210 at Page 132 of the records of Adams County, Colorado, as corrected by quit claim deed recorded in Book 332 at Page 473 of the records of said Adams County, Colorado, which said portion is lying Northerly, of a line drawn parallel with and 75.00 feet Southerly from the center-line of the main track of Chicago, Rock Island and Pacific Railroad Company as the said center-line is now surveyed, staked, and located, over and across said tract of land, **said center-line being more particularly described as follows**:

Beginning at a point in the East line of the Northwest Quarter (NW1/4) of said Section Eighteen (18), which is 688.35 feet North of the Southeast corner of said Northwest (NW1/4); thence Northwesterly along a 01° 15= curve concave to the Southwest a distance of 406.10 feet to a point on the Westerly line of said old U.S. Highway No. 6, except that portion of said tract, if any conveyed by said Railroad Company to the Globe Chemical Company by deed dated November 13, 1953.

3. Legal Description Tract #43

That part of the Northwest Quarter (NW3) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven (67) West of the Sixth Principal Meridian (P.M.), Adams County, Colorado being more particularly described as follows, to wit:

Commencing at the West Quarter (W1/4) corner of said Section Eighteen (18);
Thence South 89° 28= East, along the South line of said Northwest Quarter (NW1/4) a distance of 818.60 feet;
Thence North 00° 32= East, a distance of 30.00 feet to a point on the North line of 52nd Avenue;
Thence North 32 ° 47= East a distance of 1,431.80 feet (Line A), more or less, to a point 75.00 feet Northerly of the center-line of the main track of the Chicago, Rock Island and Pacific Railroad Company; **the point of**

beginning:
Thence Southeasterly along a line drawn 75.00 feet Northerly of said main track center-line a distance of 750.00 feet, more or less, to a point on the West line of vacated State Highway No. 81 (Old Highway No. 6);
Thence Southerly and Westerly along the Southerly and Westerly lines of vacated State Highway No. 81 (Old Highway No. 6) to a point on the Northerly line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on November 13, 1953, and recorded in Book 482 at Page 355, said point being on a line, drawn parallel with and 75.00 feet Southerly from the center-line of the said main track center-line;
Thence Northwesterly along the Northerly sale line, said sale line being on a line drawn parallel with and 75.00 feet, more or less, Southerly from the said main track center-line a distance of 135.50 feet, to a point on a line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on December 8, 1964;
Thence Northwesterly along the Northerly sale line, a distance of 100 feet;
Thence Southerly along the Westerly sale line to a point on a line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on October 12, 1967;
Thence Northwesterly along the Northerly sale line, said sale line being on a line drawn parallel with and 75.00 feet Southerly from the said main track center-line, to its intersection with Line A;
Thence along the Northerly and Westerly lines of a sale by J.B. Angell to Martinson Construction on March 7, 1952;
Thence along the Southerly line of a sale by Martinson Construction Company to R.A. Husted on June 28, 1949, recorded in Book 384, at Page 414 on November 21, 1949;
Thence Northeasterly along the Easterly right-of-way line of U.S. Highway No. 6 to a point on the Southerly line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Union Supply Company on June 11, 1954;
Thence along the Southeasterly sale line to the point of beginning.

4. Legal Description Part of Tracts # 31 and # 43

An irregularly shaped parcel of land located in the Northwest quarter of Section 18, Township 3 south, range 67 west, county of Adams, State of Colorado, more particularly described as follows:

Commencing at the Center of said Section 18;

Thence North along the North/South centerline of said Section 730 feet to a point of intersection with a line 50 feet Northeasterly of and parallel to the centerline of the main track of the Colorado and Eastern Railroad, **the point of beginning**;
Thence Northwesterly along said line 50 feet Northeasterly of and parallel to said main track centerline 1020 feet to a point;
Thence North 32 degrees 56 minutes East, 180 feet to a point;
Thence South 51 degrees 20 minutes East, 251 feet;
Thence North 38 degrees 40 minutes East, 125 feet;
Thence South 50 degrees 20 minutes East, 600 feet to a point 50 feet West of the East line of said Northwest quarter;
Thence North 1 degree 30 minutes East, 450 feet to a point;
Thence East, at right angle to the last-described course, 50 feet to a point of intersection with the East line of said Northwest quarter;
Thence South to the point of beginning

Southerly Portion

Four (4) acres, more or less, of real property known as Tracts # 16, 18, and 29, also known as 5321 Dahlia St., on the South side of the Chicago Rock Island & Pacific Railroad R.O.W., just West of Dahlia Street, and North of East 52nd Ave in Commerce City, Colorado.

1. Legal Description Tracts #16, #18, and #29, a.k.a. 5321 Dahlia Street

All that part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more fully described as follows, to-wit:

Commencing at the West 1/4 corner of said Section 18;
Thence South 89 degrees 28 minutes East along the South line of said Northwest 1/4 a distance of 818.6 feet;
Thence North 00 degrees 32 minutes East, a distance of 30 feet to a point on the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes East, a distance of 1121.5 feet;
Thence South 57 degrees 13 minutes East, a distance of 576.7 feet to **the true point of beginning**.
From true point of beginning thence North 32 degrees 47 minutes East, a distance of 238.8 feet;
Thence South 59 degrees 52 minutes East, a distance of 235.5 feet to a point in the centerline of the abandoned road;
Thence on a curve to.the right, having a radius of 1432.6 feet, a distance of 250 feet to a point on curve, the long chord of which bears South 40 degrees 29 minutes West, a distance of 249.7 feet;
Thence North 57 degrees 13 minutes West, a distance of 200 feet to the point of beginning.

And also

That part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more fully described as follows, to wit:

Commencing at the West 1/4 corner of said section 18;
Thence East along the South line of said Northwest 1/4, a distance of 813.6 feet;
Thence North 00 degrees 32 minutes East, a distance of 30 feet to a point on the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes East, a distance of 1,121.5 feet;
Thence South 57 degrees 13 minutes East, a distance of 576.7 feet to **the true point of beginning**.

From true point of beginning, thence North 32 degrees 47 minutes East, a distance of 238.8 feet;
Thence North 59 degrees 52 minutes West, a distance of 100 feet;
Thence South 32 degrees 47 minutes West, a distance of 234.18 feet;
Thence South 57 degrees 13 minutes East, a distance of 99.89 feet to point of beginning.

And also

A portion of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, described as follows:

Beginning at the West 1/4 corner of said section 18;
Thence South 89 degrees 28 minutes East, along the South line of said Northwest 1/4 818.6 feet;
Thence North 00 degrees 32 minutes East, 30 feet to the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes East 1047 feet to the true point of beginning;
Thence South 57 degrees 13 minutes East, 752 feet to the centerline of vacated State Highway no. 81 (old U.S. Highway no. 6);
Thence Northeasterly on a curve to the left along said centerline to the Southeast corner of the property described in deed dated November 13, 1953, from Chicago Rock Island and Pacific Railroad Company to Globe Chemical Company, Inc., and recorded in book 482 at page 355;
Thence on a line bearing North 57 degrees 13 minutes West, a distance of 299.89 feet; Thence North 32 degrees 47 minutes East, a distance of 234.18 feet to a point 75 feet Southerly from the centerline of the Chicago, Rock Island and Pacific Railroad Company's main tract, As measured at right angles thereto;
Thence Northwesterly along a line 75 feet distant from and parallel with said Chicago, Rock Island and Pacific Railroad. Company's main track centerline to the intersection with a line bearing North 32 degrees 47 minutes East from the true point of beginning;
Thence South 32 degrees 47 minutes West along said last described line to the true point of beginning.

Excepting therefrom:

That part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more particularly described as follows;

Commencing at the West 1/4 corner of said Section 18;
Thence East along the South line of said Northwest 1/4, a distance of 818.6 feet;
Thence North 00 degrees 32 minutes 00 seconds East, a distance of 30.00 feet to a point on the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes 00 seconds East, a distance of 1121.5 feet;
Thence South 57 degrees 13 minutes 00 seconds East, a distance of 576.7 feet;
Thence North 32 degrees 47 minutes 00 seconds East, a distance of 106.45 feet to the true point of beginning;
from said true point of beginning;
Thence North 32 degrees 47 minutes 00 seconds East, a distance of 132.35 feet;
Thence North 59 degrees 52 minutes 00 seconds West, a distance of 100.00 feet;
Thence South 32 degrees 47 minutes 00 seconds West, a distance of 132.37 feet;
Thence South 59 degrees 52 minutes 46 seconds East, a distance of 100.00 feet to the true point of beginning.

Also except:

A parcel of land located in the Southeast 1/4 of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more particularly described as follows:

Commencing at the West 1/4 corner of said Section 18;
Thence South 89 degrees 28 minutes 00 seconds East along the South line of said Northwest 1/4, a distance of 818.60 feet;
Thence North 00 degrees 32 minutes 00 seconds East, a distance of 30 feet to a point on the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes 00 seconds East, a distance of 1121.50 feet;
Thence South 57 degrees 13 minutes 00 seconds East, a distance of 576.70 feet;
Thence North 32 degrees 47 minutes 00 seconds East, a distance of 106.45 feet to the true point of beginning;
from said true point of beginning thence North 32 degrees 47 minutes 00 seconds East a distance of 132.35 feet;
Thence South 59 degrees 52 minutes 00 seconds East, a distance of 235.50 feet to a point in the centerline of abandoned road;
Thence Southwesterly on a curve to the right having a radius of 1432.60 feet along the centerline of abandoned road a distance of 134.42 feet, the long chord of which bears South 40 degrees 32 minutes 41 seconds West, a distance of 134.37 feet;
Thence North 59 degrees 52 minutes 46 seconds West, a distance of 217.34 feet, more or less, to the true point of beginning.

And also except:

A portion of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, described as follows:

Beginning at the West 1/4 corner of said Section 18;
Thence South 89 degrees 28 minutes east along the South line of said Northwest 1/4, 818.6 feet;
Thence North 00 degrees 32 minutes East 30 feet to the North line of 52nd Avenue;
Thence North 32 degrees 47 minutes East 1047 feet to the true point of beginning;
Thence continuing along the aforesaid course 236.11 feet to a point 75.00 feet Southerly from the centerline of the Chicago Rock Island and Pacific Railroad mainline, as measured at right angles thereto;
Thence Southeasterly along a line 75.00 feet distance from and parallel with said Chicago, Rock Island and Pacific Railroad centerline, a distance of 70.00 feet;
Thence South 44 degrees 05 minutes 44 seconds West, a distance of 251.13 feet;
Thence North 57 degrees 13 minutes West, a distance of 20.00 feet to the true point of beginning.