

MAY 07 2009

OHIO EPA NEDC

Appendix E/Environmental Covenant
Hybud Equipment Corporation Property
Page 1

Instr: 200905050017747 05/05/2009
P: 1 of 11 F: \$100.00 3:27PM MISC
Rick Campbell T20090013660
Stark County Recorder

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Hybud Equipment Corporation ("Owner"), the Ohio Environmental Protection Agency ("Ohio EPA"), and the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, in a Record of Decision Amendment dated September 27, 2002 (the "ROD"), the EPA Region 5 Superfund Division Director selected a "remedial action" for the Site, which provides, in part, for the following actions: augmentation of existing vegetative cover; natural attenuation of groundwater contaminants and gas monitoring; and deed restrictions prohibiting residential use and drinking water wells.

Whereas, the parties hereto have agreed to 1) grant a permanent right of access over the Property to the United States, Ohio EPA, and the defendants performing work under a partial consent decree in United States and the State of Ohio, v. Industrial Excess Landfill, Inc. (N.D. Ohio), Case No. 5:89 CV 1988 and 5:91 CV 2559 ("Work Defendants"), and 2) to impose upon the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment.

Now therefore, the Owner, the United States and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns the Industrial Excess Landfill, which is part of the Industrial Excess Landfill, Inc. Site (the "IEL Site" or the "Site"), that the U.S. EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054, 21064. Hybud Equipment Corporation owns a parcel of property located at Cleveland

Avenue, in Uniontown, Stark County, Ohio Stark County Parcel Number 2204130, which is deemed to be part of the IEL Site (the "Property"). The Property is more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. Hybud Equipment Corporation ("Owner") is the owner of the Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations/Rights of Access. It is the purpose of this Environmental Covenant to convey property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. Owner hereby imposes and agrees to comply with the following activity and use limitations, and agrees to provide Ohio EPA, the United States, and the Work Defendants, subject to Paragraph 22, with an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of:
 - a) Implementing the response actions in the ROD, including but not limited to operation and maintenance of the vegetative cover, groundwater monitoring wells, and gas venting system.
 - b) Verifying any data or information submitted by the Work Defendants;
 - c) Verifying that no action is being taken on the property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;


Instr: 200905050017747 05/05/2009
P: 2 of 11 F: \$100.00
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013660

- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations;
 - f) Implementing additional or new response actions if U.S. EPA, in its sole discretion, after review and comment by Ohio EPA, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.
6. Use Restrictions. Owner shall refrain from using the property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site, including (i) extracting, consuming, exposing, or using in any way the ground water underlying the Site without the prior written approval of U.S. EPA; (ii) undertaking any type of excavation on the Site without the prior written approval of U.S. EPA; (iii) allowing or conducting any residential use of the Site; or (iv) other restrictions that U.S. EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Site.
7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination or expiration as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
8. Reserved Rights of Owner. The Owner hereby reserves unto itself, its


Instr: 2009050017747
P: 3 of 11 F: \$100.00 05/05/2009
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013550

successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and covenants granted herein.

9. Nothing in this document shall limit or otherwise affect U.S. EPA's or Ohio EPA's right to take response actions under CERCLA, the NCP, or other federal or state law.
10. Administrative jurisdiction. The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is U.S. EPA.
11. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 by the United States and Ohio EPA. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA or the United States from exercising any authority under applicable law.
12. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and U.S. EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.
13. Notice upon conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN


Instr: 200905050017747 05/05/2009
P: 4 of 11 F: \$100.00
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013660

ENVIRONMENTAL COVENANT, DATED _____, 200__, RECORDED
IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY
RECORDER ON _____, 200__, IN [DOCUMENT _____, or
BOOK____, PAGE _____]. THE ENVIRONMENTAL COVENANT
CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
*[Insert the language that describes the activity and use limitations exactly
as it appears in the Environmental Covenant.]*

Owner shall notify Ohio EPA and the United States within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

14. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:
- a) that the Owner is the sole owner of the Property;
 - b) that the Owner holds fee simple title to the Property which is free, clear and unencumbered;
 - c) that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
 - d) that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
 - e) that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
15. Termination Rights. A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer, unless otherwise provided in the Consent Decree.



Instr: 200905050017747
P: 5 of 11 F: \$100.00 05/05/2009
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013660

16. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
17. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
18. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Stark County Recorder's Office.
19. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Stark County Recorder.
20. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: the United States, Ohio EPA, Stark County, and each person holding a recorded interest in the Property, if any; and any other person designated by Ohio EPA; see ORC § 5301.83.
21. Notice. Unless otherwise notified in writing by or on behalf of the current owner, the United States, or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Enforcement Coordinator
Division of Emergency & Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049


Instr: 200905050017747 05/05/2009
P: 6 of 11 F: \$100.00
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013660

Larry Antonelli
Site Coordinator
Division of Emergency & Remedial Response
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

Hyman Budoff, President
Hybud Equipment Corporation
374 Pershing Ave.
Akron, Ohio 44309

U.S. Environmental Protection Agency
Superfund Division
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

22. Expiration. This Environmental Covenant shall terminate and be of no further force or effect if the Consent Decree is entered by the Court but reversed on appeal after entry.

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.



Instr: 200905050017747 05/05/2009
P: 7 of 11 F: \$100.00
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013650

IT IS SO AGREED:

Hybud Equipment Corporation

Hyman Budoff
Signature of Owner(s)

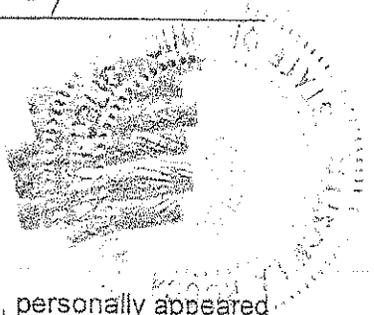
Hyman Budoff, President
Printed name and Title

2-20-09
Date

State of Ohio)
County of Summit)

ss:

Allison La Rocca, Notary Public
State of Ohio, My Commission
Expires Oct. 19th, 2013



Before me, a notary public, in and for said county and state, personally appeared Hyman Budoff, a duly authorized representative of Hybud Equipment Corporation, who acknowledged to me that ~~he~~ she did execute the foregoing instrument on behalf of Hybud Equipment Corporation.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 20th day of February 2009

Allison La Rocca
Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski
Chris Korleski, Director

Date 3/31/09

State of Ohio)
County of Franklin)

ss:

Before me, a notary public, in and for said county and state, personally appeared Chris ~~Korleski~~ Kovlaski, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

Instr: 2009050017747
P.B of 11 F: \$100.00 05/05/2009
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013560

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 31st day of MARCH 2009



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2009

U.S ENVIRONMENTAL PROTECTION AGENCY

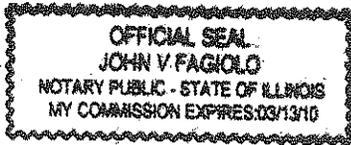
Rick C Karl
[insert] Director, Superfund Division Date 4-14-09

State of Illinois)
County of COOK)

ss:

R. KARL Before me, a notary public, in and for said county and state, personally appeared [insert] the SFP DIV. DIRECTOR of Region 5 of the U.S. Environmental Protection Agency, who acknowledged to me that he did execute the foregoing instrument on behalf of the U.S. Environmental Protection Agency.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 14th day of APRIL, 2009



John V Fagiolo
Notary Public

PREPARED BY:

Matthew Yackshaw, Esq.
Day Ketterer Ltd.
Millennium Centre - Suite 300
200 Market Ave. N.
P.O. Box 24213
Canton, Ohio 44701-4213

Instr: 200905050017747
P: 9 of 11 F: \$100.00 05/05/2009
Rick Campbell 3:27PM MISC
Stark County Recorder T20090013660

Exhibit "A"

116 BARNHARTY BEER, BROWLA CORP TO A CORP.

836

PAULS LAW PRINT COMPANY, CLEVELAND, OHIO

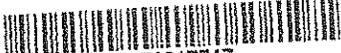
Know all Men by these Presents

100-1212-10-229

That INDUSTRIAL EXCESS LANDFILL, INC., a Corporation, the Grantor,
 for the consideration of Ten Dollars (\$ 10.00)
 received to its full satisfaction of HYBUD EQUIPMENT CORPORATION
556 Beacon Street, Akron, Ohio
 a Corporation, the Grantee, does give, grant, bargain, sell and convey unto the said Grantor, its
 successors and assigns, the following described premises, situated in the Township of
Lake County of Stark and State of Ohio:

And known as and being a part of the southeast and southwest quarter of Section #7,
 Township #12, (Lake) Range #8, Stark County, Ohio, beginning at the northwest
 corner of the southeast quarter Section #7, thence south along the west line of
 the southeast quarter 865.85 feet to a point; thence north 86 degrees 10 minutes
 west 65.8 feet to the center of the Canton-Akron road; thence south 10 degrees 00
 minutes west along the center of said road 379.02 feet to a point and the place of
 beginning for the tract herein described; thence south 85 degrees 44 minutes east
 435.00 feet to a stake; thence south 10 degrees 00 minutes west 150.00 feet to
 a stake; thence north 85 degrees 44 minutes west 435.00 feet to a point in the
 center of the Canton-Akron road; thence north 10 degrees 00 minutes east along the
 center of said road 150.00 feet to a point and the place of beginning, containing
 1.497 acres more or less, but subject to all legal highways.

ad ed



Instr: 200905050017747 05/05/2009
 P: 10 of 11 P: 5100.00 3:27PM MISC
 Rick Campbell
 Stark County Recorder T20090013660

TRANSFERRED
 358
 JAN 10 1980
 WILLIAM D. BOWMAN
 STARK COUNTY AUDITOR
 DEPUTY *[Signature]*

IN COMPLIANCE
 WITH ORC 319.202
 JAN 10 1980
 WILLIAM D. BOWMAN
 STARK COUNTY AUDITOR
 \$2.00 FEE RB DEPUTY

be the same more or less but subject to all legal highways.

00290

REV. 4-2-12 USE 530

Do Give and to Hold the above granted and bargained premises, with the appurtenances thereunto belonging, unto the said Grantee, its successors and assigns forever. And

INDUSTRIAL EXCESS LANDFILL, INC. the said Grantee does for itself and its successors and assigns covenant with the said Grantee, its successors and assigns, that at and until the cessing of these presents, it is well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and has good right to bargain and sell the same in manner and form as above written, that the same are free and clear from all incumbrances whatsoever except easements of record, and real estate taxes and first mortgage to Firestone Bank which grantee assumes and agrees to pay.

and that it will WARRANT AND DEFEND said premises, with the appurtenances thereunto belonging, to the said Grantee, its successors and assigns forever, against all lawful claims and demands whatsoever except those stated above.

In Witness Whereof said Corporation hereunto sets its hand and corporate seal, by Hyman Budoff its President and Joseph H. Cromleigh, Jr. its Secretary this 17th day of December in the year of our Lord One Thousand Nine Hundred and Seventy-Nine.

Signed and acknowledged in presence of Hyman Budoff, President and Joseph H. Cromleigh, Jr., Secretary of INDUSTRIAL EXCESS LANDFILL, INC. before me, a Notary Public in and for said County and State personally appeared the above named

State of Ohio, County, ss. Before me, a Notary Public in and for said County and State personally appeared the above named INDUSTRIAL EXCESS LANDFILL, INC. by Hyman Budoff its President and Joseph H. Cromleigh, Jr. its Secretary who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Corporation, and the free act and deed of each of them personally and as such officers.

In Testimony Whereof, I have hereunto set my hand and official seal, at Akron, Ohio this 17th day of December, D. 1979

This instrument prepared by Joseph E. Oddeum Notary Public

STATE OF OHIO
COUNTY OF STARK
Received for Record on the day of JAN 11 1980 at 2:52 P.M.
and Recorded JAN 11 1980 in Book 121 p. Page 522
Recorder's Fee \$ 57.00

INSTRUMENT RECORDING
Instr. 200905050017747
P: 11 of 11 F: \$100.00
Rick Campbell 05/05/2009 4:27 PM MISC
Stark County Recorder T20090013360