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Recorded: 12/31/2012 at 09:42:18 AM
Fee Amt: \$100.00 Page 1 of 11
Columbiana County, Ohio
CRAIG BROWN County Recorder
File# 2012-00019842

BK **1932** PG **76**

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Browning-Ferris Industries of Ohio, Inc. ("Holder") and the Ohio Environmental Protection Agency ("Ohio 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, Holder is the holder of certain real property located at 6201 South Pleasant Drive, East Palestine, Ohio and legally described in Exhibit A attached hereto (collectively referred to herein as the "Property"); and

Whereas, the Owner of the property is deceased, and Holder has been paying the property taxes, which has prevented the Property from going into foreclosure. Ohio Revised Code § 5301.82(A)(7) provides that an environmental covenant shall contain the signatures of the applicable agency, every holder, and unless waived by the agency, every owner of the fee simple title of the real property that is subject to the environmental covenant; and

Whereas, Ohio EPA hereby waives the requirement for the signature of the Owner, and Browning-Ferris Industries of Ohio, Inc. is authorized to enforce the environmental covenant as a holder; and

Whereas, the Property was previously owned by Ecological Services, Inc. The site occupies approximately 290 acres of which approximately 30 acres were used for waste management operations. From 1973 to 1979, the facility was utilized for lime neutralization treatment of spent pickle liquor and the management of other aqueous organic and inorganic liquid and semisolid wastes. Three cells (Cells 1, 2, and 3) of the landfill were used for the disposal of neutralized wastes. Cell 3 was a treatment, storage, and disposal unit for disposal of hazardous waste, and therefore, Corrective Action requirements are applicable. Cell 3 underwent Closure with approval from Ohio EPA; and

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Whereas, additional historic contamination issues at the Property remained subject to Corrective Action. Holder conducted extensive site investigation as part of Corrective Action. Surface soil and sub-surface soil sampling in Cells 1 and 2 revealed elevated concentrations of antimony, arsenic, chromium, iron, and lead. Groundwater monitoring revealed elevated concentrations of arsenic, barium, and benzene; and

Whereas, Holder submitted corrective action documentation for Cells 1 and 2 to Ohio EPA and Ohio EPA finalized a Decision Document on November 20, 2006; and

Whereas, Holder is implementing the approved Decision Document on the Property in accordance with Ohio EPA's hazardous waste requirements contained in ORC Chapter 3734. As part of the corrective action, Holder has agreed to place certain restrictions on the future use of portions of the Property, as described herein; and

Whereas, the Administrative Record of the corrective action is maintained as the file titled "BFI East Palestine" in the Northeast District Office, located at 2110 East Aurora Road in Twinsburg, Ohio; and

Whereas, the implementation of appropriate use restrictions that restrict land use on the portion of the Property where Cells 1 and 2 are located and ground water use on the entire Property are required to protect human health and the environment.

Now therefore, Holder 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 Property described in Exhibit A attached hereto and hereby incorporated by reference herein.
3. Holder. Browning-Ferris Industries of Ohio, Inc. ("Holder") is the Holder of the Property.
4. Activity and Use Limitations. As part of the Corrective Action on the Property, Holder hereby imposes and agrees to comply with the following activity and use limitations:



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- A. The portion of the Property where Cells 1 and 2 are located shall only be used for operation, inspection, and maintenance for the purpose of waste containment.
- B. Use of ground water on the entire Property is prohibited from potable use.
- C. In the event that any activity by the holder of an encumbrance on the Property, identified in paragraph 12 below, constitutes a violation of these activity and use restrictions, Holder or Future Owner shall notify Ohio EPA within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event, or such other time frame as may be agreed to by the Holder or Future Owner and Ohio EPA.

5. Running with the Land. This Environmental Covenant shall be binding upon the Holder and all assigns and successors in interest, including any Future Owner, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Future Owner," 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.

6. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. 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 compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

7. Rights of Access. Holder hereby grants to Ohio EPA, its agents, contractors, and employees and to any additional Holder(s), the right of access to the Property for implementation or enforcement of this Environmental Covenant.

8. Compliance Reporting. Holder and any transferee shall submit to Ohio EPA on an annual basis a written certification which complies with the requirements of Ohio Administrative Code rule 3745-50-42(B), (C), and (D) that the activity and use limitations remain in place and are being complied with.



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9. Recordation of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Holder shall record, in the office of the Columbiana County Recorder, this Environmental Covenant in the same manner as a deed to the Property, pursuant to ORC § 5301.88. Holder shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.

10. 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 ENVIRONMENTAL COVENANT, DATED _____, 20__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COLUMBIANA COUNTY RECORDER ON _____, 20__, IN [DOCUMENT _____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

The portion of the Property where Cells 1 and 2 are located shall only be used for operation, inspection, and maintenance for the purpose of waste containment.

Use of ground water on the entire Property is prohibited from potable use.

Holder shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Holder's notice shall include the name, address, and telephone number of the Future Owner, a copy of the deed or other documentation evidencing the conveyance, a legal description of the Property being transferred, a survey map of the Property being transferred, and the closing date of the transfer of ownership of the Property.

11. Waiver and Agreement. Ohio EPA hereby waives the requirement for the signature of the owner of the fee simple title of the real property that is subject to this environmental covenant in accordance with ORC § 5301.82(A)(7). Holder consents and agrees to enforce and comply with this environmental covenant as a Holder.



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12. Representations and Warranties. Holder hereby represents and warrants to the other signatories hereto:

- A. that the Holder 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 in accordance with Ohio Administrative Code paragraph 5301.82(A)(7);
- B. that the Holder has identified all other persons, identified in Exhibit B, that hold any interest (e.g. encumbrance) in the Property and has made reasonable efforts to notify such persons of the Holder's intention to enter into this Environmental Covenant; and
- C. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Holder is a party or by which Holder may be bound or affected.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Holder or a Future Owner, and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. Amendment means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Holder or Future Owner of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Holder or Future Owner shall file such instrument for recording with the Columbiana County Recorder's Office, and shall provide a true file and date-stamped copy of the recorded instrument to Ohio EPA.

14. 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.



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15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. 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 Columbiana County Recorder.

17. Distribution of Environmental Covenant. The Holder shall distribute copies of the recorded Environmental Covenant to: Ohio EPA, any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, each unit of local government in which the Property is located, and any other person designated by Ohio EPA.

18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049

and

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Environmental Response and Revitalization
P.O. Box 1049
Columbus, Ohio 43216-1049

and

Ohio Environmental Protection Agency
Northeast District Office
Division of Environmental Response and Revitalization
2110 East Aurora Rd.
Twinsburg, Ohio 44087



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

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

Tim O'Donnell
Signature of Owner

TIM O'DONNELL Area President
Printed Name and Title

11/20/12
Date

State of ~~Ohio~~ PENNSYLVANIA)
County of ALLEGHENY)

ss:

Before me, a notary public, in and for said county and state, personally appeared, a duly authorized representative of Browning-Ferris Industries of Ohio, Inc., who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of the corporation.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 20 day of November, 2012

John J. McGoran
Notary Public

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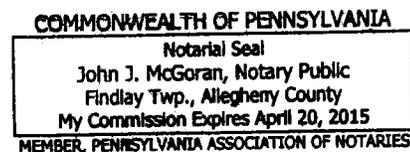




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OHIO ENVIRONMENTAL PROTECTION AGENCY



Scott J. Nally, Director

12/7/12

Date

State of Ohio)
) ss:
County of Franklin)

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 7th day of DEC., 2012.
DECEMBER





Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2014

This instrument prepared by:

Todd Anderson
Attorney
Ohio Environmental Protection Agency
50 W. Town Street
Columbus, Ohio 43215

 ENV- Beicker & Eckler
100 South Third St.
Columbus, OH 43215



EXHIBIT "A"

Situated in the Township of Middleton, County of Columbiana, and State of Ohio:

Parcel 1:

Tract of land situated in the Township of Middleton, County of Columbiana and State of Ohio, and known as and being a part of the East one-half of Section 1, Township 7, and Range 1, and bounded and described as follows:

Starting at an iron stake on the line between Ohio and Pennsylvania and in the Northeast corner of the East half of Section 1; thence along said State line South 1643.35 feet to an iron stake for the place of beginning; thence along said State line South 1629.15 feet to an iron stake at the Northeast corner of the lands of Daniel M. Ulbrich; thence by the land of said Daniel M. Ulbrich, S 89 degrees 46' W 434.30 feet to an iron stake; thence by the land of said Daniel Ulbrich, S 1 degrees 03' E 671.2 feet to a point on the North line of the land of the Illinois Pipe Line Company from which said point and iron stake bears N 1 deg. 03' W 26.80 feet; thence by land of said Illinois Pipe Line Company S 89 deg. 52' W 523.20 feet to an iron stake; thence by land of the Illinois Pipe Line Company S 0 deg. 59' W 636.00 feet to an iron stake at the base of a dogwood tree; thence by land of the Illinois Pipe Line Company N 88 deg. 07' W. 258.90 feet to an iron stake on the East line of the land of Leeman Ward; thence along the land of Leeman Ward N. 15 deg. 42' W 668.75 feet to an iron stake; thence along the center line of a public road the following courses and distances: N 59 deg. 07' W 504.10 feet; N 49 deg. 50' W 387.10 feet; N 40 deg. 00' W 137.80 feet; N 33 deg. 28' W 410.95 feet; N 80 deg. 43' W 193.20 feet to an iron stake in the center of public road and on the west line of said East one-half of Section 1; thence along the West line of said one-half Section N 0 deg. 13' W 1305.50 feet to a point; thence S 89 deg. 51' E 2635.05 feet to the place of beginning; containing 123.98 acres, be the same more or less, but subject to all legal highways.

Parcel 2:

Tracts of land situated in the Township of Middleton, County of Columbiana and State of Ohio:

Tract 2A: Known as and being a part of the N. W. one-quarter (1/4) of Section 1, Township 7, Range 1, bounded and described as follows:

Starting at a stone in the Northeast corner of said N. W. quarter section; thence along the East line of said quarter Section S 0 deg. 13' E 472.55 feet to a point in a public road for the place of beginning, from which point an iron stake bears N 0 deg. 13' W 36.14 feet; thence along the centerline of the public road the following courses and distances; S 22 deg. 14' W 523.30 feet; S 20 deg. 31' W 399.50 feet; S 31 deg. 31' W 101.70 feet; S 1 deg. 43' E 178.30 feet; thence S 1 deg. 30' W 202.80 feet to a point in the public road on the North line of the land of John Ulbrich, from which point an iron stake bears N. 89



deg. 09' E 16.82 feet; thence by the land of John Ulbrich N 89 deg. 09' E 396.20 feet to an iron stake on the East line of said Quarter Section; thence along the East line of said Quarter Section N 0 deg. 13' W 1320.05 feet to the place of beginning; containing 7.46 acres, be the same more or less, but subject to all legal highways.

Tract 2B: Known as and being a part of the N. E. one-quarter (1/4) of Section 1, Township 7, and Range 1, bounded and described as follows: Beginning at an iron pin stake on the line between Ohio and Pennsylvania and in the N. E. corner of said N.E. one-quarter Section; thence along the North line of said Quarter Section S 89 deg. 55' W. 1324.95 feet to an iron stake; thence by land of L.M. Keyes S 00 deg. 05' E 165.00 feet to an iron stake; thence by land of L.M. Keyes N 72 deg. 35' W 548.70 feet to an iron stake on the North line of said Quarter Section; thence along the line of said Quarter Section S 89 deg. 55' W 793.35 feet to a stone in the N.W. corner of said Quarter Section; thence along the west line of said Quarter Section S 0 deg. 13' E 1633.45 feet to a post; thence S 89 deg. 51 E 2635.05 feet to an iron stake on the line between Ohio and Pennsylvania; thence along said State line North 1643.35 feet to the place of beginning; containing 98.24 acres, be the same more or less but subject to all legal highways.

Subject to an excepting the rights or ownership which any person, firm or corporation not in privity with the Grantor, if any, may have with respect to the coal in, on or underlying said premises.



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EXHIBIT "B"

1. Easement from Ecological Services, Inc. to Ohio Edison Company as set forth in Volume 1424, Page 18, Recorder's Office, Columbiana County, Ohio.
2. Easement Agreement between National Fire Proofing Co. and C. C. Herriott, Thomas Stackhouse, Martha Stackhouse, Lafayette M. Kyes, Myra E. Kyes, and The Herriott Coal Company, as set forth in Volume 36, Page 1, Recorder's Office, Columbiana County, Ohio.
3. Deed for coal and clay, between Mary L. Henry, Esq. and National Fire Proofing Co., as set forth in Volume 433, Page 428, Recorder's Office, Columbiana County, Ohio.
4. Reservation of Coal Vein No. 6 and 7, between William J. Spaite and Clara Spaite, and National Fire Proofing Co., as set forth in Volume 545, Page 70, Recorder's Office, Columbiana County, Ohio.
5. Coal Deed between M. Mark Burt, Jessica E. Burt, Jesse W. Moore, and Malvina L. Moore, and The State Line Coal Company, as set forth in Volume 242, Page 518, Recorder's Office, Columbiana County, Ohio.
6. Deed Notice between Glen-Gery Corporation and Ecological Services, Inc., as set forth in Volume 803, Page 38, Recorder's Office, Columbiana County, Ohio.

MICROFILMED