

US EPA ARCHIVE DOCUMENT

(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: ENVIRONMENTAL COVENANT
Document Date: _____, 2014
Grantor: Rotary Drilling Supply, Inc.
1150 Truman Boulevard
P.O. Box 302
Crystal City, Missouri 63028
Grantee: Rotary Drilling Supply, Inc.
1150 Truman Boulevard
P.O. Box 302
Crystal City, Missouri 63028
Legal Description: see Attachment A, General Warranty Deed

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between Rotary Drilling Supply, Inc. (“Rotary Drilling”), as Grantor and “Holder,” and the United States Environmental Protection Agency (“EPA”) as “Department,” as provided for in the Missouri Environmental Covenants Act (“MoECA”), Sections 260.1000 through 260.1039, RSMo.

RECITALS

WHEREAS, Rotary Drilling is the owner in fee simple of certain real property commonly known and numbered as Rotary Drilling Supply, Inc., 1150 Truman Boulevard, P.O. Box 302, Crystal City, Missouri 63208 and legally described in the attached General Warranty Deed (Attachment A, hereinafter, the “Property”);

WHEREAS, Owner desires to grant to itself as a Holder this Environmental Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in MoECA;

WHEREAS, EPA enters into this Environmental Covenant as a “Department” pursuant to MoECA, with all the attendant rights of a “Department” under MoECA, which include, but are not limited to, the right to enforce this Covenant;

WHEREAS, in addition to being the Owner and Grantor, Rotary Drilling enters into this Environmental Covenant as a “Holder” pursuant to MoECA, with all the attendant rights of a “Holder” under MoECA, which include, but are not limited to, acquiring an interest in the Property, and a right to enforce this Environmental Covenant;

WHEREAS, between October 2004 and September 2009, Rotary Drilling contracted with various entities to dispose of approximately 140,000 tons of coal combustion residue (CCR) on the Property, including a portion of an unnamed tributary to Plattin Creek, adjacent wetlands to the tributary, and a southeast portion of Willers Lake;

WHEREAS, on February 14 and 15, 2011, EPA sampled the unnamed tributary to Plattin Creek and the CCR piles located on the Property. Sample results indicated that elevated levels of CCR constituents had migrated, and continue to migrate, from the CCR piles into the unnamed tributary to Plattin Creek and adjacent wetlands;

WHEREAS, on March 27, 2012, EPA conducted an ecological-risk screening of the Property assessing the direct impacts caused by the CCR. In this screening, EPA concluded that the ongoing migration of CCR constituents presented an “imminent and substantial endangerment” to the environment, within the meaning of Section 7003(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973(a);

WHEREAS, on March 29, 2013, Rotary Drilling entered into an Administrative Order on Consent (AOC) with EPA (EPA-Docket No. RCRA-07-2012-0028), pursuant to

which Rotary Drilling agreed, among other things, to submit to EPA for approval a Long-Term Work Plan (the "Work Plan"), which addressed capping the CCR to eliminate stormwater contact and prevent further migration of CCR constituents into surface waters, including the unnamed tributary to Plattin Creek and Willers Lake. Rotary Drilling also agreed to re-route or pipe the unnamed tributary to Plattin Creek on the Property to eliminate any further contact with CCR. Finally, Rotary Drilling agreed to maintain the cap and to provide to EPA periodic monitoring reports evaluating whether the cap and other injunctive relief remain adequate to prevent off-site migration of CCR constituents; and

WHEREAS, Owner desires to grant to itself as Holder, this Environmental Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in MoECA; and grants to EPA certain rights and powers as herein provided and as provided to a "Department" in MoECA.

NOW THEREFORE, the parties hereto agree as to follows:

1. Definitions. Whenever the terms listed below are used in this Environmental Covenant the following definitions shall apply:
 - a) "Residential land use" refers to property whose use is unrestricted as determined by EPA and that is either being used for residential use, or is zoned for residential use, or access to the Property is not restricted and children under 18 years of age are on the Property more than 250 days per year.
 - b) "Non-residential land use" refers to property not included in "residential land use" which is publicly accessible with public access limited to non-routine visits, and where visitors are not supervised while on the property, commonly referred to as "commercial use," and to property that is not publicly accessible, and where visitors are supervised while on the property, commonly referred to as "industrial use."
 - c) "Owner" means as of any particular date, any then current 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.
 - d) "Transferee" means 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.
2. Activity and Use Limitations. As part of the environmental response project implemented at the Property, Owner, for itself and its successors in title, agrees to prohibit any uses of the Property which would be inconsistent or interfere with the work conducted pursuant to the Work Plan, and also agrees to subject the Property to, and comply with, the follow activity and use limitations:

Owner and Transferees shall comply with the following:

- a) The Property shall not be used, or allowed to be used, for residential land uses. The Property shall be used only for non-residential land uses as long as the CCR cap is required by Department to be maintained on the Property. If any person desires in the future to use the Property for residential land use, Department must approve such use, in writing, in advance. Department may require further analysis and response actions prior to such use;
- b) There shall be no excavations or penetrations of the cap without the prior written approval of Department. Based on the potential hazards associated with excavations, Department may require that Owner or Transferee conduct additional surface water sampling and reporting to determine if CCR constituents are migrating from the Property, or may deny a request to conduct an excavation, or may require other protective actions before allowing excavation to occur;
- c) For all excavations, worker safety precautions shall be implemented prior to such work; and
- d) Owner or Transferee will maintain in good condition and repair the engineered cap in perpetuity to ensure its long-term stability and ability to prevent CCR constituent migration. The cap shall be maintained in accordance with EPA's Administrative Order on Consent, Docket Number RCRA-07-2012-0028.

3. Compliance Reporting. If Owner/Transferee becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Environmental Covenant in writing as soon as possible, but no later than ten (10) days thereafter.

4. Running with the Land. The declarations as set forth herein shall be binding upon Rotary Drilling and its successors, assigns, and Transferees in interest, including Owners, and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein.

5. Enforcement. Compliance with this Environmental Covenant may be enforced as provided in Section 260.1030, RSMo. The Missouri Department of Natural Resources (MDNR) (and any successor agency), is expressly granted the power to enforce this Covenant. 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 any person from exercising any authority under any other applicable law.

6. 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 recording reference for this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2014, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, JEFFERSON COUNTY, MISSOURI, ON _____, 2014, AS DOCUMENT ____, BOOK ____, PAGE ____.

Owner shall notify Holder, Department, and MDNR within ten (10) days following each conveyance of the Property, or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

7. Notification Requirement. Grantor/Owner shall notify Holder and Departments of any proposed changes in the use of the Property, of any applications for building permits for work affecting the Property, and of any proposals for site work affecting the contamination on the Property.

8. Right of Access. Grantor hereby grants to Holder, Department, and MDNR, and their respective agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation, monitoring or enforcing this Environmental Covenant. Nothing herein shall be deemed to limit or otherwise affect Holder or Department's right of access and entry under federal or state law.

10. Representations and Warranties. Grantor hereby represents and warrants to Holder and Department that:

- a) Grantor is the sole owner of the Property and holds fee simple title;
- b) Grantor 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 required of Grantor hereunder;
- c) Grantor has identified all other parties who hold any interest in the Property, exercise of which could extinguish this Environmental Covenant, and notified such parties of Grantor's intent to enter into this Environmental Covenant; and

- d) this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party or by which Grantor may be bound or affected.

11. Amendment or Termination. This Covenant may be amended or terminated by consent of Holder, Department, and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to section 260.1027 RSMo. Any other Party to this Covenant hereby waives the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by Department in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to Department to temporarily deviate from specified requirements described herein for a specific purpose and timeframe. Any such request shall be transmitted to Holder and Department as described below. The request shall reference this paragraph of this Covenant, fully explain the basis for the proposed temporary deviation, and demonstrate that protection of human health and the environment will be maintained. Department will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. 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.

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

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Grantor shall record this Environmental Covenant with the Recorder's office, or other appropriate land records office, of the County where the Property is located.

15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded with the Recorder's office, or other appropriate land records office, of the County where the Property is located.

16. Distribution of Environmental Covenant. Within thirty (30) days following the recording of this Environmental Covenant, or any amendment or termination of this Environmental Covenant, Grantor/Owner shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the recorded Environmental Covenant to: (a) each signatory hereto; (b) each person holding a

recorded interest in the Property; (c) each person in possession of the Property; (d) MDNR; and (d) each municipality or other unit of local government in which the Property is located.

17. Notice. Any document or other item required by this Environmental Covenant to be given to another party hereto shall be delivered as follows, unless such individual or their successors provide proper written notice of another individual designated to receive such communication:

If to Grantor:

Rotary Drilling Supply, Inc.
1150 Truman Boulevard
P.O. Box 302
Crystal City, Missouri 63028

If to Grantee/Holder:

Rotary Drilling Supply, Inc.
1150 Truman Boulevard
P.O. Box 302
Crystal City, Missouri 63028

If to MDNR:

Chris Nagel, Director, Solid Waste Management Program
Missouri Department of Natural Resources
P.O. Box 176
1730 East Elm Street
Jefferson City, Missouri 65101

If to EPA:

Director, Air and Waste Management Division
United States Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

FOR THE DEPARTMENT:

THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 7

By: _____

Date: _____

Name: Rebecca Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

On this ___ day of _____, 20__, before me a Notary Public in and for said state, personally appeared _____, Director of the U.S. Environmental Protection Agency's AWMD Division, known to me to be the person who executed the within Covenant on behalf of said agency and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public