

DECLARATION OF ENVIRONMENTAL COVENANT

This ENVIRONMENTAL COVENANT is hereby declared and granted as of this 17th day of September, 2013, by **AUBINE W. DINGWELL** a **resident of 975 Burns Street, Orlando, Orange County, Florida** ("Grantor" or "Declarant"), to the **MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION** ("Holder" or "DEP") on property located in Gray, Maine, which is more fully described below.

WHEREAS, Grantor is the owner in fee simple of a certain property approximately seven acres in size located at 25 Mayall Road in **Gray, Cumberland County**, Maine, and described in a deed recorded in the Cumberland County Registry of Deeds at Book **9415**, Page **0003** and generally depicted in Town of Gray tax records as Lot 38-20 on GIS Grid Map 45, formerly identified as Lot 20 on Tax Map 38, and generally depicted in figure attached as Figure A, ("Property");

WHEREAS, Aubine W. Dingwell obtained title to the Property from the Estate of Richard A. Dingwell by a deed dated December 3, 1990, and recorded in the Cumberland County Registry of Deeds at Book 9415, Page 0003;

WHEREAS, Richard A. Dingwell d/b/a the McKin Company operated a tank cleaning and waste removal business located at the Property from approximately 1965 to 1978;

WHEREAS, the Property, which was contaminated by the McKin Company operation, is now the location of the McKin Company Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("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 September 8, 1983 (48 Fed. Reg. 40658);

WHEREAS, the Site is an Uncontrolled Hazardous Substance Site designated by the Commissioner of DEP on November 8, 1985 pursuant to 38 M.R.S.A. §§ 1361 and 1365;

WHEREAS, between 1979 and 1983 DEP conducted removal actions that included, among other things, removal of liquid oil and chemical wastes from tanks and drums; rinsing, crushing and disposal of barrels and containers; installing monitoring wells, sampling and analyzing groundwater, soil and tank residuals; and funding a hydrogeologic study;

WHEREAS, EPA prepared a Remedial Action Master Plan in April 1983 and implemented certain Initial Remedial Measures to remedy potential hazards;

WHEREAS, in a Record of Decision dated July 22, 1985 and amended March 30, 2001, the EPA Region 1, with concurrence of the DEP, selected the remedial action;

WHEREAS, EPA issued a Determinations and Administrative Order on August 23, 1985, with two (2) potentially responsible parties to conduct remedial actions and a pilot soil aeration study;

WHEREAS, EPA and DEP issued a Determinations and Administrative Order in July 1986, with fourteen (14) potentially responsible parties to undertake the completion of on-site aeration of contaminated soils portion of the remedial action;

WHEREAS, on November 21, 1988, a Consent Decree was entered by the U.S. District Court for the District of Maine (Civil Action No. 00-0101 B) among EPA, DEP and approximately 190 settling parties ("McKin Settling Parties"), wherein selected remedial actions at the Site were required;

WHEREAS, an "Abstract of Consent Decree Easement and Restrictive Covenant" dated February 1, 1991, was recorded at the Cumberland County Registry of Deeds in Book 9467, Page 344, that describes certain easements, restrictions, and obligations that attach to and run with the Property that the owner of the Property agreed to impose pursuant to the Consent Decree referenced immediately above;

WHEREAS, on December 7, 2001, an Amended Consent Decree was entered by the U.S. District Court for the District of Maine (Civil Action No. 00-0101 B) wherein amendments were made to the selected remedial actions at the Site;

WHEREAS, the removal actions and remedial actions taken at this Site shall collectively be referred to as the "environmental response project" for this Site;

WHEREAS, the parties have agreed that it is appropriate and necessary (1) to impose on the Property use restrictions as covenants that run with the land for the purpose of maintaining or enhancing the soil, air, and water quality of the Property, protecting human health and the environment, and protecting the environmental response project at the Site; and (2) to grant a permanent right of access over the Property to the Holder, to EPA and to the McKin Settling Parties for purposes of implementing and monitoring the removal and remedial actions and for monitoring and enforcing that Environmental Covenant;

WHEREAS, the EPA has determined and approved the environmental response project and is therefore an agency pursuant to the UECA, and DEP also is an agency under the UECA;

WHEREAS, EPA has the right of the agency to enforce this environmental covenant pursuant to the UECA, but this right is not an interest in real property;

WHEREAS, DEP is the only holder of this Environmental Covenant, as that term is defined in the UECA, and DEP is entitled to exercise the rights of a holder including enforcing this environmental covenant, pursuant to the UECA;

WHEREAS, a title search of the 25 Mayall Road property was performed by Douglas Title Company in August 2011 and a subsequent legal review of that title search was performed by Sam Kilbourn Law Office, which together show that Aubine W. Dingwell has unencumbered right and title to the property;

WHEREAS, Grantor wishes to cooperate fully with the DEP and the EPA in the implementation and monitoring of the environmental response project; and

WHEREAS, Grantor intends to create and grant an Environmental Covenant pursuant to the Uniform Environmental Covenants Act (UECA), 38 M.R.S.A. §§ 3001 et seq.;

NOW, THEREFORE, Grantor, AUBINE W. DINGWELL, for and in consideration of the facts above recited and the covenants herein contained, and intending to create and be legally bound by a perpetual covenant running with the land, subject to the terms hereof, hereby declares, covenants and agrees as follows:

1. Declaration of Covenant. This instrument is an Environmental Covenant executed pursuant to the UECA.
2. Property. This Environmental Covenant concerns a property of approximately seven acres in size, owned in fee simple by Grantor, and located at 25 Mayall Road, in Gray, Cumberland, Maine and described in a deed recorded in the Cumberland County Registry of Deeds in Book **9415**, Page **0003** ("Property") and generally depicted in Town of Gray tax records as Lot 38-20 on GIS Grid Map 45, formerly identified as Lot 20 on Tax Map 38 and generally depicted in the figure attached as Figure A.
3. Activity and Use Limitations. The following covenants, conditions, and restrictions apply to the use of the Property, shall run with the land, and shall be binding on the Grantor, its successors and assigns, during their respective periods of ownership, in perpetuity:
 - a. Groundwater under the Property shall not be extracted or used for any purpose except for monitoring related to the environmental response project.
 - b. There shall be no digging or disturbing of soil on the Property without prior written permission from the DEP, which permission shall not be unreasonably withheld, after EPA has had at least 14 days to comment upon such permission.
 - c. Any drainage system, including but not limited to a commercial or domestic septic system, to be installed on the Property or any other release of surface or groundwater shall be designed to discharge downgradient of the infiltration systems shown on Figure A.
 - d. Any building constructed on the Property shall be equipped with a sub-slab vapor system or its equivalent designed to prevent migration of soil vapors into the interior of the building.
 - e. Monitoring wells within the Property shall not be destroyed, obstructed, tampered with or otherwise disturbed (including wells currently installed at the Property and depicted on Figure A and any future wells deemed necessary for the environmental response project).
 - f. The buried components from the environmental response project shall not be disturbed without written permission from DEP, which permission shall not be unreasonably withheld, after EPA has had at least 14 days to comment upon such permission (buried components are depicted on Figure A).
4. Agency and Holder. DEP is an environmental agency with enforcement authority pursuant to the UECA and is the only Holder of the Environmental Covenant granted in this Declaration. EPA is also an environmental agency with enforcement authority pursuant to the UECA.

5. Perpetuity of Covenant. This Environmental Covenant and each and every covenant herein shall be a covenant running with the land in perpetuity and shall bind the Property, Grantor, all persons or entities having any right, title, or interest in and to the Property or any portion thereof, and their respective heirs, personal representatives, successors, and assigns, during their respective periods of ownership, and all those acting by and through, or under any of them forever. Any owner of the Property or any interest therein, by the acceptance of a deed of conveyance of all or any part of the Property or any interest therein, whether or not the deed shall so express, shall be deemed to have accepted the Property subject to the restrictions contained herein and shall be deemed bound by, obligated to comply with, and otherwise subject to the restrictions herein and this Environmental Covenant.
6. Representation of Ownership and Encumbrances. By its execution hereof, Grantor hereby represents that it is the sole owner of the Property and that there are no mortgages, easements or other encumbrances on the Property that would materially adversely affect the effectiveness or enforceability of this Environmental Covenant.
7. Access. In addition to any rights already possessed by DEP and EPA, this Environmental Covenant grants to DEP and EPA, including their authorized employees, agents, representatives and independent contractors and subcontractors, a right of access to the Property, without cost and upon presentation of credentials, for the purposes of implementing, facilitating and monitoring the removal and remedial actions and for monitoring and enforcing this Environmental Covenant. This Environmental Covenant also grants to the McKin Settling Parties and their authorized employees, agents, representatives and independent contractors and subcontractors, a right of access to the Property, without cost and upon presentation of credentials, for the purposes of implementing, facilitating and monitoring the removal and remedial actions and for monitoring this Environmental Covenant.
8. Notice to Tenants and Others. The current owner of the Property (including Grantor if Grantor is the current owner of the property) shall provide notice of this Environmental Covenant to any tenants or lessees and to any other person conducting any activity on the Property that would be prohibited by this Environmental Covenant.
9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to deeds, leases and mortgages, shall contain a notice that is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF ENVIRONMENTAL COVENANT, RECORDED IN THE _____ COUNTY REGISTRY OF DEEDS ON _____, 20___, IN BOOK _____, PAGE _____, IN FAVOR OF AND ENFORCEABLE BY THE STATE OF MAINE AND THE UNITED STATES OF AMERICA.

Within thirty (30) days of the date any such instrument of conveyance is executed, such instrument shall be recorded in the Cumberland County Registry of Deeds, and Grantor or current owner of the Property shall notify DEP and EPA of the book and page at which it is recorded, and submit to DEP and EPA a copy of the recorded instrument date-stamped by the Register of Deeds.

10. Notice of Noncompliance. The current owner of the Property (including Grantor if Grantor is the current owner of the property) shall provide written notice to DEP and EPA within ten (10) working days of discovery of any noncompliance with the terms of this Environmental Covenant.
11. Notice Pursuant to Covenant. Any notice or other communication required pursuant to this instrument shall be in writing and shall be sent by certified mail, return receipt requested, or by any commercial carrier that provides proof of delivery, addressed as follows, or to such other address as each entity may designate from time to time by written notice to the other entities:

To Grantor:

Aubine W. Dingwell
975 Burns Street
Orlando, FL 32803

To DEP:

Superfund Program Manager
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, Maine 04333

To EPA:

Remedial Project Manager
McKin Superfund Site
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OSRR07-1)
Boston, MA 02109-3912

To the McKin Settling Parties:

John Sevee, P.E., C.G.
Project Coordinator
Sevee & Maher Engineers, Inc.
4 Blanchard Road, P.O. Box 85A
Cumberland Center, ME 04021

12. Inspection and Reporting. The current owner of the Property (including Grantor if Grantor is the current owner of the property) shall conduct inspections of the Property annually for compliance with the terms of this Environmental Covenant, and shall report the results to DEP and EPA in writing by June 30 of each year. If the property has been vacant for the past year and the property secured, then the annual inspection shall be waived and the current owner shall report that the property has been vacant and secured since the previous year's reporting.
13. Enforcement. This Environmental Covenant shall be enforceable as authorized by the UECA. Any forbearance as to enforcement of any of the terms hereof shall not be deemed a waiver of the right to seek and obtain enforcement at any time thereafter as to the same violation or as to any other violations.

14. Amendment or Termination by Consent. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed by Grantor, the current owner of the Property at the time of the amendment or termination, and DEP and EPA or their successors in legal function, which instrument is duly recorded in the Cumberland County Registry of Deeds. The Grantor waives its right to consent in the event the Grantor no longer owns the property.
15. Petition to Modify. Grantor or current owner of the Property may petition the DEP and EPA to modify or remove some or all of the covenants, restrictions, agreements and obligations herein. The burden is upon the party seeking DEP and EPA approval of the modification or removal of a restriction to show that the restriction is no longer necessary to protect the public health and safety and the environment. The DEP and EPA may agree to remove or modify restrictions that in the exercise of their sole discretion, the DEP and EPA determine to be no longer necessary to protect the public health and safety and the environment. Any such amendment or termination of the Environmental Covenant must comply with the UECA and the provisions of this Environmental Covenant.
16. Administrative Record. The environmental response project described in this Declaration of Environmental Covenants is based on the McKin Company Superfund Site Administrative Record, which has been developed in accordance with Section 113(k) of CERCLA, and which is available for review at the Gray Public Library, Gray, Maine, and at the United States Environmental Protection Agency, Region 1, OSRR Records Center, 5 Post Office Square, Boston, Massachusetts. The State administrative record for the environmental response project is located at the main office of DEP, whose mailing address is 17 State House Station, Augusta ME 04333-0017, with a street address of Ray Building, 28 Tyson Drive, Augusta, Maine.
17. Governing Law. This Environmental Covenant shall be governed and interpreted in accordance with the laws of the State of Maine.
18. Liberal Construction. It is intended that this Environmental Covenant be construed liberally to protect the health and welfare of the public and the quality of the environment from the risk of adverse effects of exposure to hazardous substances.
19. Invalidity. If any part of this Environmental Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
20. Recording. The McKin Settling Parties or their agents/representatives shall cause this Declaration to be duly recorded in the Cumberland County Registry of Deeds within thirty (30) days of the execution of this Declaration by the last signatory, and shall, within thirty (30) days of the recording of the Declaration, notify DEP and EPA of the book and page at which it is recorded, and submit to DEP and EPA a copy of the signed Declaration date-stamped by the Register of Deeds.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized representative as of the day and year first above written.

AUBINE W. DINGWELL

By: Aubine W. Dingwell
Name: Aubine W. Dingwell
Title: Owner

STATE OF MAINE
CUMBERLAND COUNTY, ss.

The above-named Aubine W. Dingwell personally appeared before me this 17th day of September, 2013 in her capacity as owner and acknowledged the foregoing to be her free act and deed.

[Signature]
Notary Public ~~Attorney~~
Karen J M Mitchell
Printed Name Bar No. 7824
My Commission Expires: _____

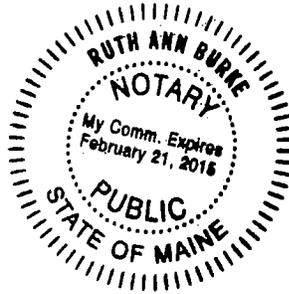
ACKNOWLEDGED AND AGREED TO BY:
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Melanie Loyzim
Name: ~~Melaine~~ Loyzim Melanie Loyzim
Title: Director, Bureau of Remediation and Waste Management

STATE OF MAINE
KENNEBEC COUNTY, ss.

The above-named Melanie Loyzim personally appeared before me this 24th day of September, 2013 in her capacity as Director of the Bureau of Remediation and Waste Management and acknowledged the foregoing to be her free act and deed in her said capacity and the free act and deed of the Maine Department of Environmental Protection.

Ruth Ann Burke
Notary Public
Ruth Ann Burke
Printed Name
My Commission Expires: Feb. 21, 2015



SEAL

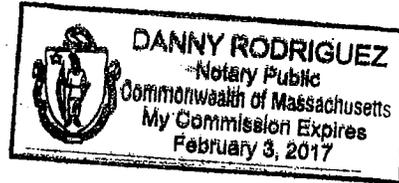
ACKNOWLEDGED AND AGREED TO BY:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Nancy Barmakian for
Name: James T. Owens, III NANCY BARMAKIAN
Title: Director, Office of Site Remediation and Restoration, U.S. EPA, Region 1

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY, ss.

On this 26th day of September, 2013, before me, the undersigned notary public, personally appeared James T. Owens, III, proven to me through satisfactory evidence of identification, which was, government ID, to be the person whose name is signed on the this document, and acknowledged to me that he signed it voluntarily for its stated purpose.

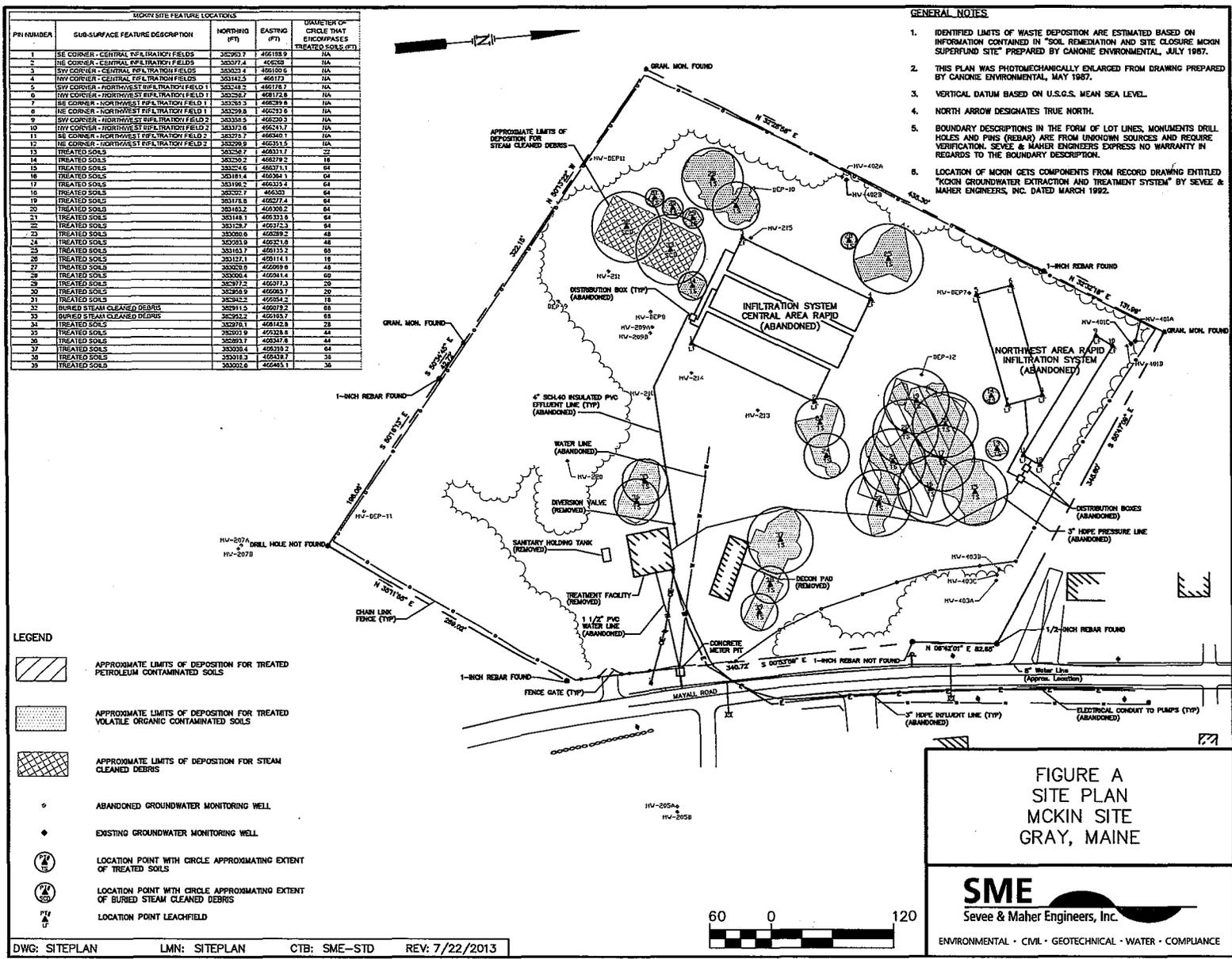
Danny Rodriguez
Notary Public
Danny Rodriguez
Printed Name
My Commission Expires: February 3, 2017.



SEAL

FIGURE A

Plan of Property, 25 Mayall Road, Gray, Maine



CUMBERLAND COUNTY
A TRUE COPY OF RECORD
Attest Pamela E. Lovley
Register

Received
Recorded Register of Deeds
Sep 27, 2013 11:40:44A
Cumberland County
Pamela E. Lovley

\\sme\server\cis\GIS\SITEPLAN\MCKIN\LAN\DWG\FIG A.DWG 01-10-10 AM

- LEGEND**
- APPROXIMATE LIMITS OF DEPOSITION FOR TREATED PETROLEUM CONTAMINATED SOILS
 - APPROXIMATE LIMITS OF DEPOSITION FOR TREATED VOLATILE ORGANIC CONTAMINATED SOILS
 - APPROXIMATE LIMITS OF DEPOSITION FOR STEAM CLEANED DEBRIS
 - ABANDONED GROUNDWATER MONITORING WELL
 - EXISTING GROUNDWATER MONITORING WELL
 - LOCATION POINT WITH CIRCLE APPROXIMATING EXTENT OF TREATED SOILS
 - LOCATION POINT WITH CIRCLE APPROXIMATING EXTENT OF BURIED STEAM CLEANED DEBRIS
 - LOCATION POINT LEACHFIELD

DWG: SITEPLAN LMN: SITEPLAN CTB: SME-STD REV: 7/22/2013



FIGURE A
SITE PLAN
MCKIN SITE
GRAY, MAINE

SME
Sevee & Maher Engineers, Inc.

ENVIRONMENTAL • CIVIL • GEOTECHNICAL • WATER • COMPLIANCE

Doc# 60314 BK-31052 Pa# 210