

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the CITY OF COLUMBUS, OHIO, “Owner”, a municipal corporation, having offices at 90 West Broad Street Columbus, Ohio 43215, the SOLID WASTE AUTHORITY OF CENTRAL OHIO, “Holder”, having offices at 6220 Young Road, Grove City, Ohio 43123, 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 described real property to the activity and use limitations set forth herein.

Whereas, Owner is the owner of, and Holder is the operator of, certain real property consisting of a parcel of land, located at 2500 Jackson Pike, Columbus, Franklin County, Ohio, and legally described herein below (“Property”):

Whereas, the Administrative Record of the hazardous waste closure is maintained as the file titled “SWACO/City of Columbus Waste-to-Energy Facility,” which is known by the EPA ID number OHD 986 971 968, in the Ohio EPA Central District Office, 3232 Alum Creek Drive, Columbus, Ohio 43207; and

Whereas, Holder, pursuant to a Closure Plan approved by the Director of Ohio EPA on July 13, 2000, and amended on June 20, 2001, October 15, 2001, October 24, 2001 and April 2, 2002, was required to implement the approved plan, and excavate and remove all materials/wastes in order to properly close the hazardous waste unit; and

Whereas, the implementation of appropriate use restrictions that restrict land use on the Property, and specifically the area where the hazardous waste surface impoundment and associated appurtenances is required to protect human health and the environment, based upon a human health risk assessment and an ecological risk assessment performed for the hazardous waste management units addressed in the closure plan were the subjects of this closure;

Now therefore, Owner 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 a 1.643-acre tract located at 2500 Jackson Pike, in Columbus, Franklin County, Ohio, and more particularly described as follows (“Property”):

Situate in the State of Ohio, County of Franklin, Township of Jackson, and being located in Virginia Military Survey number 4312, and being a part of a 52.087 acre tract as described in a deed to the City of Columbus of record Deed Book 3738 Page 791, all records on file at the Recorder’s Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Commencing for reference at an iron pin set at a southerly corner of the said 52.087 acre tract, being also in the northeasterly line of a 185.198 acre tract as

described in a Special Warranty Deed to Columbus Limestone, Inc. of record Instrument Number 200206250156219;

Thence N 56°25'30" W, along a southwesterly line of the said 52.087 acre tract, and along a northeasterly line of the said 185.198 acre tract, a distance of 226.83 feet;

Thence N 33°34'30" E, into the said 52.087 acre tract, a distance of 24.70 feet to the True Place Of Beginning of the herein described tract;

Thence crossing the said 52.087 acre tract by the following eleven (11) described course:

1. N 33°34'30" E, a distance of 125.00 feet to an angle point;
2. S 71°58'58" E, a distance of 70.00 feet to an angle point;
3. N 61°07'45" E, a distance of 70.00 feet to an angle point;
4. S 55°38'41" E, a distance of 20.00 feet to an angle point;
5. N 34°21'19" E, a distance of 180.00 feet to an angle point;
6. N 56°34'35" W, a distance of 200.00 feet to an angle point;
7. N 33°25'25" E, a distance of 95.00 feet to an angle point;
8. S 56°34'35" E, a distance of 164.34 feet to a point of curvature;
9. Along the arc of a curve to the right with a radius of 135.00 feet, a central angle of 90°55'54", an arc length of 214.25 feet to a point of tangency, said arc being subtended by a chord bearing S 11°06'38" E, a chord length of 192.46;
10. S 34°21'19" W, a distance of 126.62 feet to a point of curvature;
11. Along the arc of a curve to the right with a radius of 220.00 feet, a central angle of 89°13'11", an arc length of 342.58 feet to the True Place Of Beginning containing 1.643 acres, said arc being subtended by a chord bearing S 78°57'54" W a chord length of 309.00 feet;

The bearings described herein are based on the bearing of N 33°34'30" E along the centerline of State Route 104 (Jackson Pike), as delineated on the centerline plat for FRA-104-(2.73-7.64).

The foregoing description has been prepared by ms consultants, inc. and is based on a field survey performed under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159, as well as previous private surveys.

John L. Price, R.S. No. 7159, 6/29/05.

3. Owner. City of Columbus, Ohio, ("Owner"), a municipal corporation, having offices at 90 West Broad Street, Columbus, Ohio 43215, is the owner of the Property.

4. Holder. Owner, whose address is listed above, and the Solid Waste Authority of Central Ohio, having offices at 6220 Young Road, Grove City, Ohio 43123, ("Holder"), are the holders of this Environmental Covenant.

5. Activity and Use Limitations. As part of the closure of a hazardous waste management unit, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- A. The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities, but may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:
- (i) Single and multi-family dwelling and rental units;
  - (ii) Day care centers and preschools;
  - (iii) Hotels and motels;
  - (iv) Educational (except as a part of industrial activities within the Subject Property) and religious facilities;
  - (v) Restaurants and other food and beverage services (except as a part of industrial activities within the Subject Property);
  - (vi) Entertainment and recreational facilities (except as a part of industrial activities within the Subject Property);
  - (vii) Hospitals and other extended care medical facilities; and
  - (viii) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

*B. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11.D. below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.*

6. Running with the Land. This Environmental Covenant shall be binding upon the Owners 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 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.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. 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 from exercising any authority under applicable law.

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

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

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 \_\_\_\_\_, 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:

The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities, but may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (a) Single and multi-family dwelling and rental units;
- (b) Day care centers and preschools;
- (c) Hotels and motels;
- (d) Educational (except as a part of industrial activities within the Subject Property) and religious facilities;
- (e) Restaurants and other food and beverage services (except as a part of industrial activities within the Subject Property);
- (f) Entertainment and recreational facilities (except as a part of industrial activities within the Subject Property);
- (g) Hospitals and other extended care medical facilities; and
- (h) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

Owner shall notify Ohio EPA 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.

11. Representations. Owner hereby represents 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; [or] subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;*
  - 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; *and*
  - F. *to the extent that any other interests in or encumbrances on the Property conflict with the activity and use limitations set forth in this Environmental Covenant, the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the Environmental Covenant, pursuant to ORC § 5301.86, and the subordination agreement(s) (attached hereto as Exhibit C; [or] recorded at \_\_\_\_\_).*]

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, the Holder(s), and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean 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. The term, "Termination," as used in this Environmental Covenant, shall mean 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 Owner or Transferee and the Holder(s) 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 Owner or Transferee shall file such instrument for recording with Franklin County Recorder's Office, and shall provide a file-and date-stamped copy of the recorded instrument to Ohio EPA.

13. 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.

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

15. 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 Franklin County Recorder's Office.

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 Franklin County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute copies of the recorded Environmental Covenant to: Ohio EPA; the Holder(s), 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 real property is located, and any other person designated by Ohio EPA.

18. Notice. Unless otherwise notified in writing by Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Ohio Environmental Protection Agency  
Central District Office  
Division of Hazardous Waste Management  
Attn: DHWM Manager  
3232 Alum Creek Drive  
Columbus, Ohio 43207

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

**IT IS SO AGREED:**

The Owner, City of Columbus, Ohio, by Cheryl Roberto, Director, Department of Public Utilities, as authorized by Columbus City Council Ordinance No. \_\_\_\_\_ passed on the \_\_\_\_\_ day of \_\_\_\_\_ 2005, has hereunto caused this instrument to be subscribed this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

**CITY OF COLUMBUS, OHIO**  
a municipal corporation

\_\_\_\_\_  
Cheryl Roberto, Director  
Department of Public Utilities

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2005 the foregoing instrument was acknowledged before me by Cheryl Roberto, Director, Department of Public Utilities, on behalf of the City of Columbus, Ohio, a municipal corporation.

(seal)

\_\_\_\_\_  
Notary Public

**THE SOLID WASTE AUTHORITY**  
**OF CENTRAL OHIO**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2005 the foregoing instrument was acknowledged before me by \_\_\_\_\_, \_\_\_\_\_, on behalf of The Solid Waste Authority of Central Ohio.

(seal)

\_\_\_\_\_  
Notary Public

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_  
Joseph P. Koncelik, Director

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

Before me, a notary public, in and for said county and state, personally appeared Joseph P. Koncelik, 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 \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
Notary Public

**This instrument prepared by:  
Frances M. Kovac, Esq.  
Ohio Environmental Protection Agency  
122 South Front Street  
Columbus, OH 43215**