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BINGHAM COUNTY


2008-02-15

02:38:59 No. of Pages: 7

Recorded for : #19703 SIMPSON & GAUCHAY

SARA J. STAUB

Fee: 21.00

Ex-Officio Recorder Deputy 

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SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

### **DECLARATION OF ENVIRONMENTAL COVENANT**

This Declaration of Environmental Covenant (Declaration) made by Wright Oil and Tire Co. an Idaho Corporation (hereinafter referred to as WRIGHT) its successors and assigns, and the Idaho Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Restrictions") designed to protect natural resources, human health and the environment, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, used, occupied, leased, encumbered and/or conveyed.

Each and all of the Restrictions are imposed pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015, and the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130. For purposes of this Declaration, the Department shall be a "holder" as defined in Idaho Code § 55-3002(6). WRIGHT and the Department agree that each and all of the Restrictions are enforceable by the Department, against WRIGHT or successors in interest.

Ownership. WRIGHT is the fee simple owner of certain real property in the City of Blackfoot, County of Bingham, State of Idaho, described as:

Parcel 1: A portion of the NE1/4NE1/4 of Section 3, Township 3 South, range 35 E.B.M., Bingham County, Idaho described as: Commencing at a point S. 38° 18' W. 291 feet from a point 336 feet S. of the NW corner of Section 2, Township 3 South, Range 35 E.B.M., thence S. 38° 18' W. 125 feet, thence at a right angle in a southerly direction 60 feet to the W. Line of the East Main Street, thence N. 38° 18' E 125 feet, thence in a Northwesterly direction 60 feet to the place of beginning, being within the corporation limits of the City of Blackfoot, Idaho.

Parcel 2: Commencing at a point South 38° 18' W. 41 feet from a point 336 feet South of the NW corner of Section 2, in Township 3 South, of Range 35 East B.M., thence S. 38° 18' W.

250 feet, thence at right angle in a southerly direction 60 feet, to East Main Street, thence N. 38° 18' E. 250 feet, thence in a Northwesterly direction 60 feet to the place of beginning.

Provisions to Run With the Land. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Restrictions as herein established must be adhered to and that their interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration and any amendment or termination of the Declaration shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Declaration is located. The Declaration shall be recorded by WRIGHT within five (5) days of receipt of this Declaration signed by the Department. Within five (5) days of the recording of this Declaration WRIGHT shall provide to the Department a copy of this recorded Declaration evidencing compliance with this provision. In addition, a copy of the recorded Declaration shall be provided by WRIGHT to the following persons: (a) each person that signed the Declaration; (b) each person holding a recorded interest in the Property subject to the Declaration; (c) each person in possession of the Property subject to the Declaration; (d) each municipality or other local government in which the Property subject to the Declaration is located; and (e) any other person the Department requires. The validity of the Declaration is not affected by failure to provide a copy of the Declaration as required under this section. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Reason for Restrictions. The Property described above was previously used to operate petroleum storage facility, becoming contaminated with benzene, toluene, xylenes, and petroleum hydrocarbons. On March 13, 2006 the Department issued a Schedule and Criteria for further site investigation and remediation of the property. WRIGHT implemented a remediation plan on the Property. This Declaration is required because the analysis of soil revealed residual concentrations of chemicals of concern in soil and groundwater underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Property shall be limited to protect human health and the environment. A copy of the Site Closure report may be found at the Idaho Department of Environmental Quality, Office in Pocatello, Idaho.

Restrictions on Use. By acceptance and recordation of this Declaration,

WRIGHT, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as set forth below. WRIGHT and respective successors in interest shall be solely responsible for demonstrating that use in the Property is in conformity with the following:

1. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
2. There shall be no extraction of groundwater under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

The foregoing restrictions on use are herein referred to as the "Restricted Uses."

The Restricted Uses are imposed due to conditions resulting from former uses of the Property, specifically the presence of chemicals of concern in groundwater and soil which may present a risk to natural resources, human health and the environment at the Property.

Amendment by Consent. The Declaration may be amended by consent pursuant to Idaho Code § 55-3010. The Declaration may also be amended pursuant to Idaho Code § 55-3009.

Termination by Consent. The Restricted Uses set forth above shall apply to the Property, or any subdivided portion thereof, unless WRIGHT, or its successors in interest, applies to the Department to have this Declaration terminated with respect to all or part of the Property and:

1. the Property or any subdivided portion thereof is shown in a Department-approved document not to contain contaminated soils or groundwater; or
2. contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Thereafter, the Declaration shall then be terminated pursuant to Idaho Code § 55-3010(1). The Declaration may also be terminated as provided in Idaho Code § 55-3009.

Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyer of the Property, shall provide written notice to the Department and each municipality or other local government in which the Property is located, the name and address of all the then Owners and/or Occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Declaration, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Enforcement. Failure of WRIGHT, or its successor in interest, to comply with any of the Restrictions set forth herein shall be grounds for the Department, or its successor, to require that the Owner modify or remove any groundwater wells constructed in violation of this Declaration. Violation of this Declaration shall be grounds for the Department, or its successor, to file civil actions against the Owner as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Property Access. The Department shall have a right of access to the Property for the purposes of ensuring compliance with the Declaration and the Restricted Uses. Notice of intent to access the property shall be given to Wright to entry onto the property.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as either WRIGHT or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

Wright Oil and Tire Co.:      Hal Wright, President  
WRIGHT OIL AND TIRE CO.  
P.O. Box 1683  
Idaho Falls, ID 83403

THE DEPARTMENT:            Idaho Department of Environmental Quality  
**ATTN:** Joe Nagel  
1410 N. Hilton  
Boise, ID 83706

Costs and Expenses. All costs of terminating this Declaration, including the cost of any remediation or abatement of any environmental condition related to restrictive uses of or pertaining to the Property, shall be borne by the party seeking such termination. Provided that if an action is commenced under Idaho Code § 55-3009 the court shall have discretion pursuant to Idaho law and court rule to award costs and fees.

Partial Invalidity. If any portion of the Declaration or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Declaration are solely for the convenience of the parties and are not a part of the Declaration.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Declaration, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Declaration shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and\_WRIGHT and any other responsible party. Nothing in this Declaration shall affect the obligations of\_WRIGHT or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this Declaration shall be the date of signature by the Department.

Accepted:

Idaho Department of Environmental Quality - Holder

Signature: \_\_\_\_\_

Printed Name: Toni Hardesty \_\_\_\_\_

Title: Director, Idaho Department of Environmental Quality \_\_\_\_\_

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

State of Idaho )

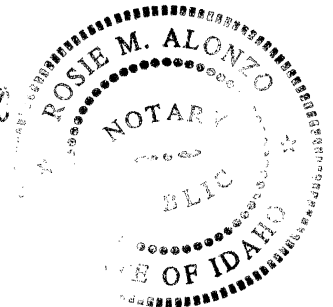
: ss

County of Ada )

On this 8 day of February, in the year 2008, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Declaration of Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho: Rosie M. Alonzo  
Residing at: Davenport, Idaho  
Commission Expires: 1-30-09



Property Owner: Wright Oil and Tire Co.

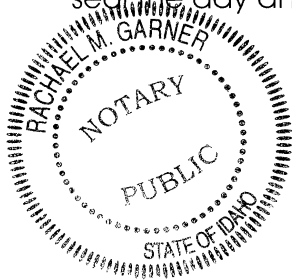
By: [Signature]  
Printed: Hal Wright  
Its: President  
Date: 1/30/08

State of Idaho )

County of Bonneville : ss.)

On this 30<sup>th</sup> day of January, 2008, before me, the undersigned, Notary Public in and for the State of Idaho, personally appeared HAL WRIGHT, known to me to be the President of the corporation that executed the instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first written.



Notary Public for Idaho: Rachael M. Garner  
Residing at: Idaho Falls  
Commission Expires: December 13, 2013