



Mark Parkinson, Governor
John W. Mitchell, Acting Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Division of Environment

December 8, 2010

CERTIFIED MAIL
Return Receipt Requested

BER SCANNED

DEC 08 2010

Terrance Gileo Faye, Esq.
Babst Calland, Clements and Zomnir P.C.
1 North Maple Avenue
Greensburg, Pennsylvania 15601

**RE: Environmental Use Control and Long-Term Care Agreements for the
Owens Zinc Co. Site, Montgomery County, Kansas
KDHE Project #C3-063-00193 Consent Order Case #03-E-0022**

Dear Ms. Faye:

Enclosed with this letter you will find the original and executed Environmental Use Control (EUCA) and Long-Term Care (LTCA) Agreements for the referenced Site. The original EUCA and LTCA must be recorded in the office of the Register of Deeds for **Montgomery County, Kansas**. Lastly, to document the recording, a copy of the EUCA and LTCA bearing the stamp of the Register of Deeds must be returned to KDHE/BER within ninety (90) days of certified receipt of this letter.

Thank you for your cooperation in this matter. Please contact me by telephone at 785-291-3807 or by e-mail at SAller@kdheks.gov if you have questions concerning this letter.

Sincerely,

Stuart Aller, Environmental Scientist
Restoration & Long-Term Stewardship Unit

Enclosures

c: Deanna Ross>Stuart Aller>EUC Tracking File>Owens Zinc Co. file>C3-063-00193-2
(08-EUC-0001)
Dr. Robert Moore, landowner (w/out enclosures)

**DOCUMENT
NUMBER: 08-EUC-0001**

**PROJECT
NUMBER: C3-063-00193**

**PROPERTY
CATEGORY: 3**

ENVIRONMENTAL USE CONTROL AGREEMENT

Robert Foster Moore, M.D. and Betty Louise Moore, having a mailing address of RR1 Box 319 Caney, KS 67333, hereinafter referred to as “the Owner”, is the owner of real property known as the Owens Zinc Co. Site, in the County of Montgomery, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as “the Property”, and more particularly described by the following legal description:

A portion of the South Half of Section 1, Township 35 South, Range 13 East of the Sixth Principal Meridian, Montgomery County, Kansas, more particularly described as follows:

Commencing at the Southeast Corner of Section 1, Township 35 South, Range 13 East of the Sixth Principal Meridian; thence N 89° 22' 59" W along the South Line of said Section 1 a distance of 2003.55 feet; thence N 00° 37' 01" E a distance of 30.45 feet to the Point Of Beginning; thence N 88° 25' 50" W a distance of 635.68 feet; thence N 44° 39' 05" W a distance of 41.83 feet; thence N 00° 33' 15" W a distance of 556.09 feet; thence N 89° 23' 22" E a distance of 489.61 feet; thence S 19° 54' 02" E a distance of 105.48 feet; thence S 23° 47' 33" E a distance of 389.18 feet; thence S 04° 35' 20" E a distance of 104.75 feet; thence S 22° 57' 10" W a distance of 52.95 feet to the Point Of Beginning.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as “KDHE”, to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner’s application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE’s approval of the application are as follows:

Smelter wastes and soil containing lead, cadmium, zinc and arsenic exceeding the corresponding Risk-based Standards for Kansas (RSK) levels for residential land use settings were identified both on- and off-property. Corrective action conducted in 2004 included excavation of these off-property soils and consolidation of on-property waste. Excavated soil and waste were consolidated into a waste cell and capped with an engineering cover consisting of two feet of clay and top soil (Exhibit A). Clean soil was brought in to fill excavated areas. Excavated areas and the cap were properly

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vegetated and a fence was constructed around the capped area. The capped area and adjacent on-property soils were remediated to non-residential RSK values. Off-property soils were remediated to residential RSK values. Groundwater was not considered as a significant pathway of concern due to limited yield and poor quality.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 3 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Montgomery County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, containing product or contamination, contaminated ground water recovery, monitoring, other remediation activities, or other means, which use involves or may involve human consumption and/or other possible human contact uses unless prior authorization is granted in writing by KDHE.
- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.

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- D. The Owner shall allow no operations or uses on the Property that will or likely will penetrate the Consolidation Cell or jeopardize the Consolidation Cell's functional integrity, including without limitation, excavation, drilling, scraping, or erosion.
- E. Any soils excavated from the Property must be tested prior to removal following a KDHE-approved scope of work to determine the proper method of disposal. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks that may be installed on the Property.
- H. The Owner shall consult with KDHE and obtain prior written authorization from KDHE before undertaking any of the following at the Property:
1. Undertaking any excavation or construction of drainage ditches on the Property;
 2. Changing the surface contour of the Property or performing dirt work thereon;
 3. Altering the vegetation grown on the Consolidation Cell in a manner inconsistent with routine management practices;
 4. Producing food chain crops on the Property; or
 5. Removing any security fencing, signs or devices installed to limit access to the Consolidation Cell.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned A-1 Agricultural by Montgomery County, Kansas.

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ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

FUNDING:

This Agreement is funded through a 2010 Long-Term Care Agreement, entered into by Blue Tee Corp. and KDHE, which is incorporated herein by reference, to compensate KDHE for costs incurred to perform inspections, and tracking of the terms and requirements of this Agreement.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

INSPECTION REQUIREMENTS:

The Property shall be inspected in accordance with the attached 2010 Long-Term Care Agreement entered into by Blue Tee Corp. and KDHE, which is incorporated herein by reference.

MAINTENANCE REQUIREMENTS:

The remedial structures (i.e. protective structure, perimeter split rail fence, geo-membrane and rip-rap lined drainage ditch) shall be maintained in accordance with the terms of the attached 2010 Long-Term Care Agreement entered into by Blue Tee Corp. and KDHE, which is incorporated

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OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

Within fifteen (15) days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Montgomery County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup

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Owner: **Betty Louise Moore**

By: Betty L. Moore

Date: 3 Nov 2010

Print Name: BETTY L. MOORE

Title: _____

ACKNOWLEDGMENT:

STATE OF Kansas)

COUNTY OF Montgomery)ss:

BE IT REMEMBERED, on this 3 day of Nov, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Betty Louise Moore, who is personally known to be such person who executed the above document, and such person duly acknowledges the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Montgomery County, Kansas, the day and year last written above.

Melinda L. Bennett
Notary Public in and for said County and State

My Term Expires:

