



Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Environment

July 29, 2010

**CERTIFIED MAIL**  
**Return Receipt Requested**

Joe E. Jenkins, PG, CHMM  
Black Hills Corp., Environmental Services  
7060 Alegre Street  
Fountain, CO 80817

**RE: Executed Environmental Use Control Agreement**  
**PNG Trenton Compressor Station Site, Kingman County, Kansas**  
**KDHE Project #C2-048-70018 EUCA #07-EUC-0004**

Dear Mr. Jenkins:

The Kansas Department of Health and Environment/Bureau of Environmental Remediation (KDHE/BER) is in receipt of executed Environmental Use Control Agreement (EUCA) No. 07-EUC-0004. However, proper recording of the EUCA at the Register of Deeds in Kingman County and submission of the required funding, as yet unfinished, are conditions precedent to the effectiveness of the EUCA.

Enclosed you will find the executed EUCA. On behalf of the landowner, please record the EUCA at the appropriate Register of Deeds and then submit a copy of the EUCA bearing the stamp of the Register of Deeds and requisite funding to KDHE/BER within thirty (30) days of certified receipt of this letter.

Thank you for your cooperation in this matter. Please feel free to contact me by telephone at 785-291-3807 or by e-mail at [SAller@kdheks.gov](mailto:SAller@kdheks.gov) if you have any questions concerning this letter.

Sincerely,

Stuart M. Aller, Environmental Scientist  
Restoration & Long-Term Stewardship Unit  
Bureau of Environmental Remediation

Enclosure

c: Deanna Ross>Stuart Aller>EUC Tracking File>PNG Trenton Compressor Station Site File>C2-  
048-70018-2 (07-EUC-0004)  
Jim and Peggy Graber, landowner

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DOCUMENT NUMBER: 07-EUC-0004  
PROJECT NUMBER: C2-048-70018  
PROPERTY CATEGORY: 2

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## **ENVIRONMENTAL USE CONTROL AGREEMENT**

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**Jimmie D. and Peggy A. Graber**, individuals, having a mailing address of 1603 North Walnut Street, Kingman, Kansas 67068, hereinafter referred to as “the Owner,” are the owners of real property in the County of Kingman, Kansas, as shown on the map attached hereto as Exhibit A, known as the PNG Trenton Compressor Station, hereinafter referred to as “the Property,” and more particularly described by the following legal description:

**That part of the N.W. Quarter of Section 35, Township 29 South, Range 7 West of the 6<sup>th</sup> P.M., Kingman County, Kansas, described as Commencing at the NW Corner of said NW1/4; thence N90°00'00"E, along the North line of said NW1/4, 460 feet to the point of Beginning; thence continuing N90°00'00"E, along the North line of said NW1/4, 217 feet; thence S00°00'00"W, 147.5 feet; thence N90°00'00"W, 217 feet; thence N00°00'00"E, 147.5 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.) 2007 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:

**The Property, previously used for agricultural purposes, now serves as a compressor station site for transferring natural gas from the surrounding gas field into the distribution system. Elevated levels of petroleum hydrocarbons in soil were identified, excavated and landfarmed in 2004. However, excavation of all soils above regulatory standards was not feasible due to the intermittent, but widespread nature of the contamination and the presence of aboveground equipment and subsurface high-pressure gas piping. These areas were backfilled, re-contoured to create positive drainage and then covered with four inches of gravel to preserve the underlying soil contour.**

**Based on the results of sampling and analysis conducted, KDHE determined that subsurface soils at the Property remain with residual contamination of total petroleum hydrocarbons-gasoline range organics (TPH-GRO) at concentrations exceeding the**

**corresponding KDHE Tier 2 RSK values established in the *Risk-Based Standards for Kansas RSK Manual – 4<sup>th</sup> Version* for the non-residential soil pathway or the non-residential soil to groundwater protection pathway, respectively. Shallow groundwater was not encountered above boring refusals at the Property due to the presence of shale bedrock 4.5-6 feet below the surface.**

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. 2007 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 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. 2007 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2007 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 Kingman 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. Any soils excavated from the Property from depths greater than two (2) feet below ground surface must be tested prior to disposal 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.
- C. 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

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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.

- D. The Owner shall obtain prior written approval from KDHE before drilling any deep-water wells. Well construction must be engineered to prevent contamination of any underlying deep aquifer.
- E. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.

#### **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 currently zoned A-1, Agricultural by Kingman County, Kansas.**

#### **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.

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**FUNDING:**

On behalf of the Owner, Black Hills/Kansas Gas Utility Company, LLC (Black Hills Energy) has agreed to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, frequency of KDHE's anticipated inspections and anticipated inspection costs.

**DURATION:**

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until rescinded by KDHE.

**INSPECTION REQUIREMENTS:**

KDHE shall visually inspect the Property once every five (5) years documenting the condition and current uses of the Property to verify the Property is being used as indicated herein. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

**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 to Owner's successor in interest, the Owner hereby agrees to provide KDHE a copy of the 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. 2007 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.

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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 Kingman 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. 2007 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 standard, which will allow for unrestricted use of the Property.

#### EFFECTIVE DATE OF AGREEMENT

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Kingman County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

On behalf of the Owner, Black Hills Energy shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2007 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

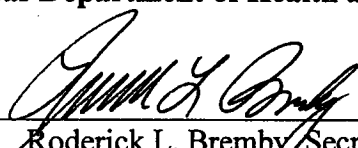
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IN WITNESS WHEREOF, the Department and Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 14<sup>th</sup> day of December, 2009.

**Kansas Department of Health and Environment**

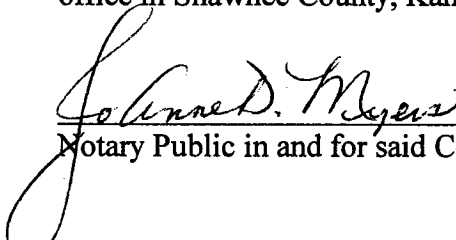
By:   
Roderick L. Bremby, Secretary

**ACKNOWLEDGMENT:**

STATE OF KANSAS            )  
  )ss:  
COUNTY OF SHAWNEE    )

BE IT REMEMBERED, on this 14<sup>th</sup> day of December, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of said Agency, and such person duly acknowledges the execution of the same to be his/her act and deed.

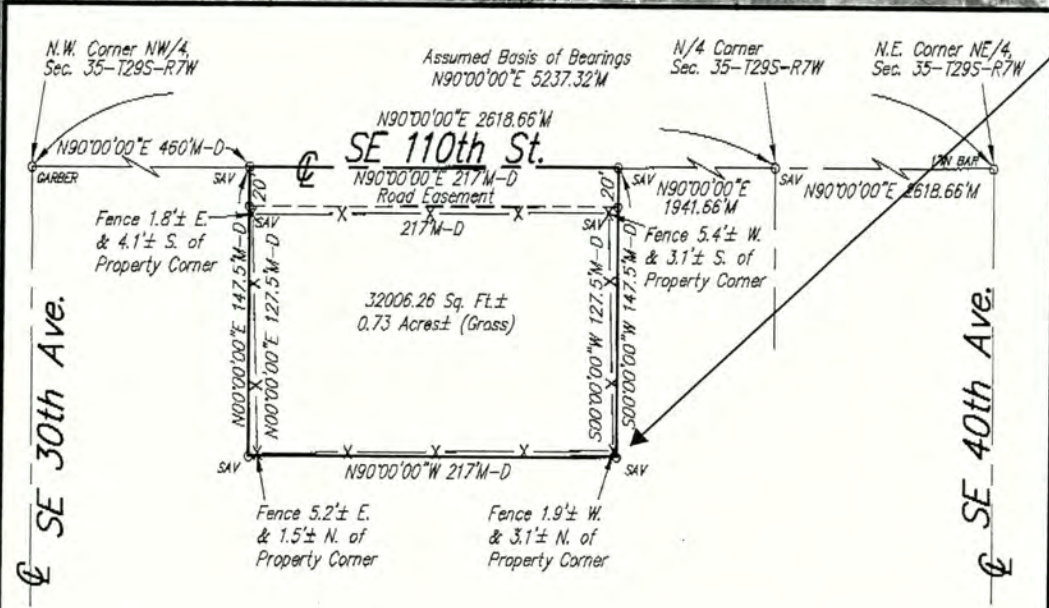
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

  
Notary Public in and for said County and State

My Term Expires: 12-18-2013





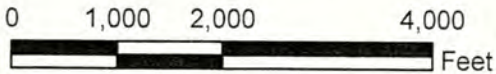


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LENNY D. WOOD  
REGISTERED  
S-1055  
SURVEYOR  
KANSAS  
LAND SURVEYOR

KS Hwy 42

Rago



LEGEND

- Local Roads
- EUC Area Boundary (approximate)

EXHIBIT A

07-EUC-004  
Trenton Compressor Station Site  
Kingman County, Kansas



