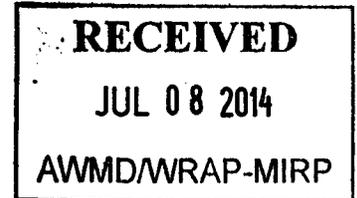


July 1, 2014

Rachel L. Moore, Plant Manager  
Koch Nitrogen Company  
11559 US Highway 50  
P. O. Box 1337  
Dodge City, KS 67801-1337



**RE: RCRA Post-Closure Permit Renewal Application  
Koch Nitrogen Company, Dodge City  
EPA ID# KSD044625010**

Dear Ms. Moore:

The Kansas Department of Health and Environment (KDHE) is preparing a draft Resource Conservation and Recovery Act (RCRA) permit for the Koch Nitrogen Company, LLC (KNC) facility in Dodge City. While preparing the draft permit, KDHE identified several items that need to be addressed in the Part A and Part B of the RCRA Post-Closure Permit application. These items are described in the comments listed below. In addition, enclosed with this letter are comments KDHE received from the United States Environmental Protection Agency (EPA) on June 11, 2013 concerning Section E of the Part B Permit Application. When addressing EPA's comments, please be aware that KDHE will use the Risk-Based Standards for Kansas (RSK) values instead of EPA's Regional Screening Levels (RSL). EPA's comments are provided as an enclosure while KDHE's comments are as follows:

1. Section A, Part A: The contact person for the facility has changed since the permit application was submitted for review. Please update the contact information in applicable sections of the Part A and Part B Permit Application.
2. Section I, Appendix I-4: The Supplement to the Part B Permit Application specifies the addition of groundwater recovery wells and groundwater monitoring wells. Incorporation of these wells into the groundwater recovery and treatment system and the groundwater monitoring system will increase the operating costs for the groundwater corrective action program. Use the enclosed form to update the cost estimate to reflect these additional costs. Corresponding text in Section I-8 will also require revision.
3. Section J: The Solid Waste Management Units (SWMUs) at the facility are identified in this section. However, the information specified in 40 CFR 270.14(d) is not provided. Instead, reference is made to descriptions in other documents. Revise this section to include descriptions for each SWMU. Also, please provide descriptions for each Areas of Concern (AOC).
4. Figure A-1 and Figure J-1: The location identified on these figures for SWMU 8, the Former Chromium Destruct Unit, is not accurate. The location depicted on the map is the cooling tower. Please correct this error. In addition, identify the boundaries of each SWMU and AOC at the facility on these figures. If the boundary of each unit is uncertain, identify the anticipated boundary.

RCRA



5. Section G, Contingency Plan: This section is not necessary because the facility does not manage hazardous waste. Therefore, remove this section from the Part B Permit Application.
6. Supplement to the Part B Permit Application: During our December 2013 meeting, KNC presented a figure depicting proposed locations for new recovery wells and monitoring wells. Update Figure 18 to show the proposed locations of these new wells. In addition, add three new wells labeled as MW-33, MW-34, and MW-35 to monitor the limit of contamination southeast, southwest, and west of the facility. Once the wells are installed, the information in Table 1 of the SAP will need to be updated.
7. Environmental Restrictive Covenant: In accordance with K.A.R. 28-31-264(a)(c), KDHE will require KNC to submit an environmental restrictive covenant and easement. Please use the enclosed template as a guide to create an environmental restrictive covenant for the facility.

Please submit all revisions to the Part A and Part B Permit Application by July 30, 2014. If you have any questions regarding this letter, you may contact me via e-mail at [espellman@kdheks.gov](mailto:espellman@kdheks.gov) or by phone at (785) 296-1616.

Sincerely,



Everett Spellman  
Professional Geologist  
Hazardous Waste Permits Section

Encl: EPA Comments  
Cost Estimate Form  
Environmental Restrictive Covenant Template

cc: Andrea Stone - EPA Region 7/RCAP Branch – w/o encl.  
Erich Glave - KDHE/DEA/SWDO/Waste Programs – w/o encl.  
Bill Bider - KDHE/BWM – w/o encl.

## EPA COMMENTS

### Section E: Groundwater Monitoring of the Part B Permit Application

#### Project Manager Specific Comments:

1. Section E-2 Groundwater Monitoring, First Paragraph, Page E-8 of E-15: There is a sentence in this paragraph that states, "This schedule will be followed until the concentration of constituents of concern at the compliance point wells have been reduced to levels at or below the groundwater protection standard for a period of 3 years. The groundwater protection standard for all constituents of concern has to be at or below for a period of three (3) consecutive years and approved by KDHE and EPA.

In addition, there is no mention of where the compliance wells are located. In the Groundwater Sampling and Analysis Plan on Figure 2, it shows all of the compliance wells as proposed to being plugged and abandoned.

Based on the conversation with the EPA and KDHE June 5, 2013, the compliance point wells are not going to be replaced, because Koch will be required to maintain and operate the groundwater recovery system until the levels throughout the entire plume(s) of contamination (Chromium, Nitrite, Nitrate and VOCs) have been reduced to levels at or below the groundwater protection standards for a period of three (3) consecutive years for all of the constituents of concern. Please revise the third sentence in this section to read, "This schedule will be followed until the concentrations for all of the constituents of concern (Chromium, Nitrite, Nitrate, and VOCs) throughout the entire plume(s) have been reduced to levels at or below the groundwater protection standards for a period of three (3) consecutive years, and approval has been granted by KDHE and EPA. In the last sentence of the first paragraph in this section, please delete out, "...at the compliance point ..." so the sentence reads, "Since the timeframe for achieving this reduction cannot be predicted, the monitoring and recovery program will continue for such time as is necessary to achieve the groundwater protection standards throughout the plume(s) of contamination for all constituents of concern (Chromium, Nitrite, Nitrate, and VOCs) for a period of three (3) consecutive years, and approval from KDHE and EPA has been granted."

Second Paragraph of the same section: The last section states, "The groundwater analyses results are provided to the KDHE in Corrective Action Reports on an annual basis." Add "and EPA" after "KDHE" in that sentence.

2. Table E-1: Protection Standards for Groundwater Constituents of Concern, Page E-9 of E-15: Add Hexavalent Chromium to this table and its current Regional Screening Level.

Footnote #2 for Table E-1 states, "Groundwater protection standards are from the EPA Regional Screening Level (RSL) Summary Table (April 2012). The RSL tables are periodically updated. The current RSLs are dated November 2012. Please change the Footnote #2 to read, "Groundwater protection standards are from the most recent EPA Regional Screening Level (RSL) Summary Table. The current update is November 2012; however when the RSLs are updated the most current version will be used."

Geologist Comment:

1. Section E-5 Site Hydrogeologic Setting, Page E-12, Second Paragraph, and Page E-13, First Paragraph:

The accuracy of the data resulting from a rising head slug test in which a submersible pump was used to "instantaneously" remove a volume of water over a 10-20 second period of time is very questionable. Additionally, in the discussion regarding the averaging of results from the wells tested there is no indication that consideration was given to the interval of the unconsolidated aquifer that was tested, since hydraulic conductivity can vary with depth. The screened interval of the well being tested should be matched up with its drilling log, and only wells that are screened across approximately the same zones should be averaged together. This process of ensuring that similarly screened wells are grouped together for averaging may be useful in locating zones of higher permeability, if present, in the unconsolidated aquifer.



## RCRA Post Closure Cost Estimate Form for Hazardous Waste Facilities

Facility Information	
Facility Name:	EPA ID No.:
Address:	
City:	Zip Code:
Contact Name:	Phone No.:

PC_02 Post-Closure Care Removal of Leachate		
1	Volume of leachate to be removed per removal event	gallons/event
2	Number of leachate removal events per year	events/year
3	Volume of leachate to be removed per year	gallons/year
4	Cost to treat leachate per gallon	\$ per gallon
5	Cost per year for removal of leachate	\$ per year
6	Number of years in post-closure (PC) care period	years
7	<b>TOTAL COST OF REMOVAL OF LEACHATE</b>	<b>\$</b>

PC_03 Post-Closure Care Site Security		
<i>FENCING</i>		
8	Length of fencing	feet
9	Labor, materials, and equipment cost per foot	\$ per foot
10	Cost to fence site	\$
<i>CORNER POSTS</i>		
11	Number of corner posts required	posts
12	Cost per corner post	\$ per post
13	Cost to erect corner posts	\$
<i>GATES</i>		
14	Number of gates required	gates
15	Labor, materials, and equipment cost per gate	\$ per gate
16	Cost to install gates	\$

PC_03 Post-Closure Care Site Security (cont.)		
<i>REFLECTOR SIGNS</i>		
17	Number of signs required	signs
18	Labor, materials, and equipment cost per sign	\$ per sign
19	Cost to install signs	\$
20	<b>TOTAL COST OF SITE SECURITY</b>	<b>\$</b>

PC_04 Post-Closure Care Maintenance of Vegetative Cover		
<i>MOWING</i>		
21	Area of cover to be mowed	ft <sup>2</sup>
22	Convert area in ft to area in MSF (thousand square feet)	MSF
23	Labor and equipment cost per MSF	per MSF
24	Cost of one mowing event	\$ per event
25	Number of mowing events per year	events per yr
26	Number of years in PC care period	years
27	Number of mowing events during the PC care period	events
28	Cost to mow for PC care period	\$
<i>FERTILIZING</i>		
29	Area of cover to be fertilized	MSF
30	Labor, materials, and equipment cost per MSF	\$ per MSF
31	Cost of one fertilizing event	\$ per event
32	Number of fertilizing events per year	events/yr
33	Number of years in the PC care period	years
34	Number of fertilizing events during the PC care period	events
35	Cost to fertilize for the PC care period	\$
<i>WATERING</i>		
36	Area of cover to be watered	MSF
37	Labor and material cost per MSF	\$ per MSF
38	Cost of one watering event	\$ per event
39	Number of watering events per year	events/yr
40	Number of years in the PC care period	years
41	Number of watering events during the PC care period	events
42	Cost to water for the PC care period	\$
43	<b>TOTAL COST OF MAINTENANCE OF VEGETATIVE COVER</b>	<b>\$</b>

PC_05 Post-Closure Care Repair and Inspection of Final Cover		
MAINTENANCE AND REPAIR OF FINAL COVER		
44	Cost of installing undifferentiated fill	\$
45	Cost of installing clay liner	\$
46	Cost of installing geomembrane	\$
47	Cost of installing drainage layer	\$
48	Cost of installing earthen layer	\$
49	Cost of installing topsoil	\$
50	Cost of installing colloid clay layer	\$
51	Total cost of installing final cover	\$
52	Maintenance and repair factor	%
53	Cost to maintain and repair final cover	\$
POST-CLOSURE CARE INSPECTION		
54	Cost of conducting one inspection	\$ per inspection
55	Number of inspections per year	inspections
56	Cost of conducting post-closure care inspections per year	\$ per year
57	Number of years in PC care period	years
58	Cost to conduct inspections over the PC care period	\$
59	<b>TOTAL COST OF REPAIR AND INSPECTION</b>	\$

PC_06 Post-Closure Care Groundwater Monitoring					
COLLECTION OF GROUNDWATER SAMPLES					
60	Number of sampling locations			samples	
61	Choose the appropriate level of PPE	Level D <input type="checkbox"/>	Level C <input type="checkbox"/>	Level B <input type="checkbox"/>	
62	Labor and equipment costs per work hour	\$		per work hr	
63	Work rate to collect samples from one sampling location			work hr per	
64	Number of hours required to collect all samples			work hours	
65	Cost to collect groundwater samples per event	\$		per event	
ANALYSIS OF GROUNDWATER SAMPLES					
66	DESCRIPTION/METHOD	LIQUID/SOLID	COST	QTY	TOTAL
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$

PC_06 Post-Closure Care Groundwater Monitoring (cont.)				
ANALYSIS OF GROUNDWATER SAMPLES (CONT.)				
DESCRIPTION/METHOD	LIQUID/SOLID	COST	QTY	TOTAL
		\$		\$
		\$		\$
		\$		\$
		\$		\$
67	Cost to analyze groundwater samples per event	\$		per event
<i>TOTAL GROUNDWATER MONITORING FOR POST-CLOSURE CARE PERIOD</i>				
68	Cost of sampling and analysis of groundwater for post-closure	\$		per event
69	Number of sampling events per year			events per yr
70	Number of years of groundwater monitoring during PC care period			years
71	<b>TOTAL COST OF GROUNDWATER MONITORING</b>	\$		

PC_07 Post Closure Care Deed Notation	
72	Attorney fees \$
73	Clerical and deed filing fees \$
74	<b>TOTAL COST OF DEED NOTATION</b> \$

PC_08 Maintenance and Inspection of Asphalt Cover	
MAINTENANCE OF ASPHALT COVER	
75	Area of asphalt cover yd <sup>2</sup>
76	Cost of seal coating asphalt per square yard \$ per yd <sup>2</sup>
77	Cost of one seal coating event \$ per event
78	Number of seal coating events during PC period events
79	Cost to maintain asphalt cover \$
<i>POST-CLOSURE INSPECTION</i>	
80	Cost of conducting one inspection \$ per inspection
81	Number of inspections per year inspections
82	Cost of conducting PC care inspections per year \$ per year
83	Number of years in PC care period years
84	Cost to conduct inspections over PC care period \$
85	<b>TOTAL COST OF MAINTENANCE AND INSPECTION</b> \$

PC_09 Post-Closure Care Surface Emission		
<i>SURFACE EMISSION MONITORING</i>		
86	Area of landfill requiring surface emission monitoring	acres
87	Labor and equipment cost per work hour	\$ per work
88	Work rate required to monitor one acre	work hrs per
89	Number of hours required to monitor entire area	work hrs per
90	Cost of monitoring per event	\$ per event
<i>MONITORING EVENTS</i>		
91	Number of monitoring events per year	events per year
92	Number of years during the PC care period	years
93	<b>TOTAL COST OF SURFACE EMISSION MONITORING</b>	<b>\$</b>

PC_10 Gas Extraction and Perimeter Probe Monitoring		
<i>GAS EXTRACTION AND PERIMETER PROBE MONITORING</i>		
94	Number of monitoring points	points
95	Labor and equipment cost per work hour	\$ per work
96	Work rate required to monitor one point	work hrs per
97	Number of hours required to monitor all points	work hrs per
98	Cost of monitoring per event	\$ per event
99	Number of monitoring events per year	events per year
100	Number of years during the PC care period	years
101	<b>TOTAL COST OF GAS EXT. AND PERIMETER PROBE MON.</b>	<b>\$</b>

PC_11 Certification of Completion of Post-Closure		
102	Number of units requiring cert. of completion of PC care	units
103	Cost of certification of completion of PC care per unit	\$ per unit
104	<b>TOTAL COST OF CERTIFICATION OF PC CARE</b>	<b>\$</b>

UD-01 User Defined Activity - Corrective Action		
<i>SOIL VAPOR EXTRACTION</i>		
105	Annual utility costs (e.g. electricity, natural gas, water)	\$
106	Annual cost of scrubber chemicals	\$
107	Annual testing and monitoring costs	\$
108	Annual labor costs	\$
109	Annual reporting costs	\$
110	Number of years during the PC care period	years
111	Annual cost of soil vapor extraction O&M	\$
112	Decommissioning costs	\$
113	TOTAL COST OF SOIL VAPOR EXTRACTION	\$
<i>AIR SPARGE</i>		
114	Annual utility costs (e.g. electricity, natural gas, water)	\$
115	Annual contaminant monitoring costs	\$
116	Annual performance monitoring costs	\$
117	Annual off-gas treatment costs	\$
118	Annual equipment rental and maintenance costs	\$
119	Number of years during the PC care period	years
120	Annual cost of air sparge O&M	\$
121	Decommissioning costs	\$
122	TOTAL COST OF AIR SPARGE	\$
<i>PUMP AND TREAT</i>		
123	Annual utility costs (e.g. electricity, natural gas, water)	\$
124	Annual contaminant monitoring costs	\$
125	Annual performance monitoring costs	\$
126	Annual equipment rental and maintenance costs	\$
127	Number of years during the PC care period	years
128	Annual cost of pump and treat	\$
129	Decommissioning costs	\$
130	TOTAL COST OF PUMP AND TREAT	\$
<i>MONITORED NATURAL ATTENUATION</i>		
131	Annual MNA parameter monitoring costs	\$
132	Annual performance monitoring and reporting costs	\$
133	Number of years during the PC care period	years
134	Annual cost of monitored natural attenuation	\$
135	Decommissioning costs	\$
136	TOTAL COST OF MONITORED NATURAL ATTENUATION	\$
137	TOTAL COST OF CORRECTIVE ACTION	\$

UD-02 User Defined Activity - Reporting		
138	Annual cost of semi-annual/quarterly GW monitoring reports	\$
139	Annual cost of annual GW monitoring reports	\$
140	Annual reporting costs	\$
141	Number of years during the PC care period	years
142	<b>TOTAL COST OF REPORTING</b>	\$

UD-03 User Defined Activity - Additional Maintenance Costs		
143	Annual costs for maintenance of monitoring wells	\$
144	Annual costs for maintenance of site security features	\$
145	Annual costs for maintenance of _____	\$
146	Annual costs for maintenance of _____	\$
147	Annual costs for maintenance of _____	\$
148	Total annual cost of additional maintenance	\$
149	Number of years during the PC care period	years
150	<b>TOTAL COST OF ADDITIONAL MAINTENANCE</b>	\$

Post-Closure Care Summary		
151	Removal of leachate (PC-02)	\$
152	Site security (PC-03)	\$
153	Maintenance of vegetative cover (PC-04)	\$
154	Maintenance and inspection (PC-05)	\$
155	Groundwater monitoring (PC-06)	\$
156	Deed notation (PC-07)	\$
157	Maintenance and inspection of asphalt cover (PC-08)	\$
158	Surface emission monitoring (PC-09)	\$
159	Gas extraction system and perimeter probe monitoring (PC-10)	\$
160	User defined cost (UD-01) - Corrective Action	\$
161	User defined cost (UD-02) - Reporting	\$
162	User defined cost (UD-03) - Additional Maintenance Costs	\$
163	Subtotal of post-closure costs	\$
164	Percentage of engineering expenses	%
165	Engineering expenses	\$
166	Certification of post-closure (PC-11)	\$
167	Subtotal	\$
168	Percentage of contingency allowance	%
169	Contingency allowance	\$
170	<b>TOTAL COST OF POST-CLOSURE CARE</b>	\$

## ENVIRONMENTAL RESTRICTIVE COVENANT AND EASEMENT

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (“Covenant”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by *[insert name and address of property owner]* (together with all successors and assigns, collectively “Owner”).

WHEREAS: Owner is the fee owner of certain Real Property (“Property”) in the County of \_\_\_\_\_, Kansas, which is located at *[insert address of property]*. This Property was acquired by deed on \_\_\_\_\_, and recorded on \_\_\_\_\_, as Deed Record \_\_\_\_\_, in the Register of Deeds of \_\_\_\_\_ County, Kansas. The Property consists of approximately \_\_\_\_\_ acres. The Property, to which the restrictions in this Covenant apply, as shown on the map attached hereto and incorporated herein as Exhibit A, are more particularly described by the following legal description:

*[Insert the legal description of the property.]*

WHEREAS: K.A.R. 28-31-264a states the Secretary of the Kansas Department of Health and Environment (“KDHE”) may require any owner of property on which a hazardous waste treatment, storage, or disposal facility is or has been located to execute a restrictive covenant or easement, or both, and the Secretary is hereby requiring the Owner to execute this Covenant.

WHEREAS: RCRA *[insert closure or corrective action]* activities were conducted in accordance with K.S.A. 65-3430 *et seq.* and regulations promulgated there under and other applicable Kansas law as a result of a release of hazardous waste and/or hazardous constituents relating to the *[insert common name of the current or former facility]* (EPA ID No. KSD \_\_\_\_\_).

WHEREAS: The RCRA *[insert closure or corrective action]* activities conducted, as approved by KDHE, provided that contaminants of concern (“COCs”) will remain in the *[select appropriate media: soil, groundwater, surface water, and/or sediment]* of the Property. KDHE has determined that the COCs will not pose an unacceptable risk to human health or the environment at the remaining concentrations, provided that the land use restrictions contained herein are implemented *[if applicable, insert and engineering controls maintained]*. These COCs are *[insert a list of the COCs remaining above residential land use criteria, the maximum detected residual contamination level and corresponding threshold level; if there is a large amount of COCs, consider the following language instead: The known COCs remaining on the Property along with corresponding maximum detected residual contamination and threshold levels for soil, sediment, surface water, groundwater, and/or other environmental media are listed in Exhibit \_\_\_\_\_, which is attached hereto and incorporated herein]*.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the office of KDHE, which is located in the Curtis State Office Building at 1000 SW Jackson Street, Topeka, Kansas.

NOW THEREFORE, *[insert name of Owner]* subjects the Property to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

### RESTRICTIONS

*[Select from the list below those restrictions that are applicable to the facility. Delete those that are not applicable and renumber the list. Additional site specific restrictions may be appropriate based on site conditions, and are to be determined by KDHE in consultation with the property owner. Items 1a through 1d are based on Kansas regulations and must be included in the restrictive covenant.]*

1. Restrictions. The Owner and all subsequent Owners:
  - (a) Shall conduct future use of the Property after closure in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the post-closure maintenance period [if applying to a post-closure facility insert the following language: per K.A.R. 28-31-264a(c)(1)(A)],
  - (b) Shall preserve and protect all permanent survey markers and benchmarks installed on the property [if applying to a post-closure facility insert the following language: per K.A.R. 28-31-264a(c)(1)(B)],
  - (c) Shall preserve and protect all environmental monitoring stations installed on the property [if applying to a post-closure facility insert the following language: per K.A.R. 28-31-264a(c)(1)(C)],
  - (d) Shall provide written notice to the Secretary during the planning of any improvement to the Property and, [if applying to a post-closure facility insert the following language: per K.A.R. 28-31-264a(c)(1)(D),] shall commence any of the following activities only after receiving approval from the Secretary:
    - (i) Excavating or constructing any permanent structures or drainage ditches;
    - (ii) Altering the contours;
    - (iii) Removing any waste materials stored on the Property that is subject to this Restrictive Covenant;
    - (iv) Changing the vegetation grown on areas used for waste disposal;
    - (v) Growing food chain crops on land used for waste disposal; or
    - (vi) Removing any security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.
  - (e) Shall not use or allow the use of the Property 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.
  - (f) Shall not use or allow the use of the Property for any agricultural purpose of any

type including, but not limited to, growing dry-land crops or irrigated crops, livestock grazing, pasturing, haying, ranching, or any other activities which may disturb the underlying residual contamination remaining on the Property.

- (g) Shall not use or allow the use or extraction of groundwater at the Property for any purpose unless otherwise approved by KDHE. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated groundwater recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- (h) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment.
- (i) Shall conduct excavation activities such that any contaminated soil/waste is appropriately characterized, managed, and disposed in accordance with all applicable federal and state laws. In addition, all soil disturbance activities must comply with applicable federal and state requirements related to storm water pollution prevention.”
- (j) Shall prohibit any activity at the Property that may interfere with any groundwater monitoring well network, or any active or standby remedial system.
- (k) Shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- (l) Shall allow no operations or uses on the Property that will or likely will penetrate the surface cover or jeopardize the protective structure's functional integrity, including without limitation, excavation, drilling, scraping, or erosion.
- (m) Shall inform contractors, lessees, easement holders, 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/waste or other material from the Property. Contractors, lessees, easement holders, and/or other workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- (n) Shall provide written notice to the Secretary a minimum of thirty (30) days prior to any improvement to the Property and must receive approval from the Secretary prior to: performing work on any monitoring devices or systems on the Property except for routine maintenance and emergency maintenance, in which case KDHE shall be notified of such maintenance as soon as is practicable; and constructing buildings or other permanent structures on the Property.
- (o) Shall acknowledge that existing structural impediments (e.g., buildings) may preclude assessment or cleanup of potential contamination on this Property impracticable. If the structural impediments on this Property are removed or

modified in such a manner as to provide for exposure to any remaining contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal or modification of such structural impediments. KDHE may require soils underlying the structural impediments be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.

- (p) Shall restrict public access to the Property through posting of signs, fences, or by other physical structures or notices.
- (q) Shall not allow the reconstruction, remodeling and/or modification of existing buildings on the Property to include any subsurface structures such as basements, crawl spaces, and cellars.
- (r) Shall not allow the (construction of any new buildings) (or use of existing buildings) on the Property for residential purposes or inhabitation.
- (s) Shall conduct a vapor intrusion monitoring program approved by KDHE and, if necessary, implement corrective action to prevent the intrusion of contaminant vapors into commercial or industrial buildings.
- (t) *[Insert other property specific restriction(s) here.]*

#### EASEMENT

2. Easement for KDHE. The Owner shall grant to KDHE, its duly authorized agents, or contractors employed by or on behalf of KDHE the right to enter or come upon the Property to complete items of work specified in the facility closure plan; perform any item of work necessary to maintain or monitor the area during the post-closure period; or sample, repair, or reconstruct environmental monitoring stations constructed as part of the facility operating or post-closure requirements. This right includes the right to take samples and inspect records; inspect protective structures and any other remedial systems to ensure their designed operation, performance, and structural integrity; document environmental conditions of and at the Property; ensure implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Covenant; and/or performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

#### GENERAL PROVISIONS

3. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Property and the Owner's successors, assigns, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees,

invitees, guests, or persons acting under their direction or control (hereinafter “Related Parties”) and to the benefit of KDHE, as set out in paragraph 9, below, and shall continue as a servitude running in perpetuity with the Property. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Property by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

4. Binding upon Future Owners. By taking title to an interest in or occupancy of the Property, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
5. Access for KDHE. The Owner shall grant to KDHE, its duly authorized agents, or contractors employed by or on behalf of KDHE the right to enter or come upon the Property to inspect the Property and to perform any required action KDHE deems necessary for any one or more of the following purposes: ensuring that use, occupancy, and activities of and at the Property are consistent with this Covenant; inspecting protective structures and any other remedial systems to ensure their designed operation, performance, and structural integrity; documenting environmental conditions of and at the Property; ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Covenant; and/or, performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.
6. Written Notice of the Presence of Contamination. The Owner shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by K.A.R. 28-31-264a(c) or, if applicable, the facility permit authorized and issued under K.S.A. 65-3431, and amendments thereto. Conveyance of title, easement, contracts, or other interest in the Property shall contain provisions for the continued maintenance of waste containment and monitoring systems. Owner agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), and contracts, shall include the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED \_\_\_\_\_ 20\_\_, RECORDED IN THE OFFICE OF THE RECORDER OF \_\_\_\_\_ COUNTY ON \_\_\_\_\_, 20\_\_, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT.**

The failure to include such a provision shall not affect the validity or applicability to the Property of this Covenant.

7. Notice to KDHE of the Conveyance of Property. Owner agrees to provide written notification to KDHE of any sale, lease, conveyance (voluntary or involuntary), or contract, of any ownership interest in the Property (excluding mortgages, liens, similar

financing interests, and other non-possessory encumbrances). Owner must provide KDHE with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Property, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.

8. Kansas Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Kansas.

#### ENFORCEMENT

9. Enforcement. KDHE may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate KDHE if any owner of the Property or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Property, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, KDHE shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable by KDHE and agrees not to challenge the provisions, KDHE's authority to enforce the Covenant, or the appropriate court's jurisdiction.

Each of the restrictions herein set forth shall run with the land and bind the present owner, its successors and assigns, or any party-in-possession of the Property. In addition, KDHE shall be deemed beneficiary of the Covenants a procedure necessary to protect the public health and environment pursuant to K.S.A. 65-3431(a). KDHE shall have the right to sue for and obtain injunction, prohibitive or mandatory or any other legal or equitable relief to prevent the breach of, or enforce the restrictions set forth herein, and/or recover damages for such violation.

#### TERM, MODIFICATION AND TERMINATION

10. Term. All covenants, easements, and other documents pursuant to K.A.R. 28-31-264a(c) shall extend in perpetuity, unless extinguished by agreement between the Owner and the Secretary. The restrictions shall apply until KDHE determines that the residual contamination no longer presents an unacceptable risk to the public health, safety, or welfare, or to the environment, and KDHE issues a no further action (NFA) determination to the Owner.
11. Modification and Termination. This Covenant shall not be amended, modified, or terminated without KDHE's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the \_\_\_\_\_ *[insert the county where the property is located]* County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a true copy of the recorded amendment, modification, or termination and corresponding survey map to the KDHE that bears the seal and/or notarized signature of the Register of Deeds. The Owner of the Property shall pay all recording fees.

The Owner acknowledges that the requirements in this Covenant may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles.

MISCELLANEOUS

12. Waiver. The failure of KDHE to enforce any of the restrictions herein set forth at the time of violation shall in no event be deemed to be a waiver of the right to do so. No failure on the part of KDHE at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect KDHE's right to enforce such term, and no waiver on the part of KDHE of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other restrictions which shall remain in full force and effect.
13. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
14. Change in Law, Policy, or Regulation. In no event shall this Covenant be rendered unenforceable if Kansas' laws, regulations, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
15. Written Notifications. 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.
16. Land Use Changes. 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.
17. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner: *[insert owner's name and address]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To KDHE:

KDHE, Bureau of Waste Management  
1000 SW Jackson Street, Suite 320  
Topeka, KS 66612-1366

Attn: Chief, Hazardous Waste Permits Section

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail to KDHE.

- 18. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
- 19. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Property or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.
- 20. 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 Covenant shall be used in addition to the restrictions, prohibitions and limitations set forth in this Covenant.

The Property is zoned *[insert zoning classification]* by *[insert zoning authority]*.

EFFECTIVE DATE OF COVENANT

The Owner shall provide to KDHE a copy of this Covenant bearing the seal or notarization of the Register of Deeds in *[insert the county where the property is located]* County within thirty (30) days from the date of recording of this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, *[insert name of Owner]*, the said Owner of the Property described above has caused this Environmental Restrictive Covenant to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*[Insert Owner's Name]*

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, authorized representative of \_\_\_\_\_ company, who is personally known to be such person who executed the above document on

behalf of said entity, and such person duly acknowledged 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 the day and year written above.

---

Notary Public

My term expires:

This instrument prepared by:  
*[insert name and address]*

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

## **EXHIBIT** \_\_\_\_\_

**Instructions:** *Attach separate sheets as necessary, labeled as ‘Exhibit B’, ‘Exhibit C’, etc. The following are some examples of additional Exhibits.*

- 1. A scaled map of the facility.*
- 2. List, description, or table of COCs (optional for non-CERCLIS and non-hazardous waste facilities).*
- 3. Scaled map(s) showing the location of engineered barriers or other engineering controls subject to operation and maintenance provisions (required if there are engineered barriers / controls on the facility).*
- 4. Scaled map(s) showing the location of contamination above construction worker levels, identifying the area as the “Construction Worker Restriction Area” (required if concentrations remain above that level).*
- 5. Scaled map(s) showing the legal boundary (survey, GPS coordinates, etc.) of areas within a property (i.e. “carve outs”) subject to specific restrictions or obligations (required if such areas exist).*
- 6. Scaled map(s) identifying the location of contamination exceeding land use criteria for each contaminant of concern. For clarity purposes, it is recommended that analytical information (identification and quantity of hazardous substances) be showed separately in a table.*
- 7. A narrative summary of the identity, quantity, and location of hazardous substances remaining on the property.*