

**APPENDIX H**  
**ENVIRONMENTAL COVENANTS**



## BOILERPLATE ENVIRONMENTAL COVENANT

After Recording Return to:

\_\_\_\_ [ *insert responsible party name* ] \_\_\_\_

State of Nevada

Department of Environmental Protection

**Grantor: Tronox LLC**

**Grantee:** State of Nevada,

Department of Conservation and Natural Resources

Division of Environmental Protection

**Legal:** [ *insert brief legal description* ]

**Tax Parcel Nos.:** [ *insert parcel numbers* ]

Grantor, **Tronox LLC**, hereby binds Grantor, its successors and assigns, to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereinafter "Covenant" ) made this \_\_\_\_\_ day of \_\_\_\_\_, **2010** in favor of the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP). NDEP shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Uniform Environmental Covenants Act, NRS 445D.010 through NRS445D.220

This Declaration of Covenant is made pursuant to Chapter 445D of Nevada Revised Statutes by Tronox LLC, its successors and assigns, and the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, its successors and assigns (hereafter "NDEP").

The undersigned, Tronox LLC, is the fee owner of real property (hereafter "Property") in Clark County, Nevada that is subject to this Covenant. The Property is legally described: [ *insert legal description language* ].

An environmental response project (hereafter "Project") occurred at the Property that is the subject of this Covenant. The Project conducted at the Property is described in the following document[s]:



- 1 Administrative Order on Consent issued on September 9, 1986 to Kerr McGee Chemical Corporation ("Kerr McGee")
- 2 Administrative Order on Consent issued on April 25, 1991 to Kerr McGee and others
- 3 Administrative Order on Consent issued on August 1, 1996 to Kerr McGee
- 4 Administrative Order on Consent issued on July 26, 1999 to Kerr McGee
- 5 Administrative Order on Consent issued on October 8, 2001 to Kerr McGee
- 6 Administrative Order on Consent issued on April 12, 2005 to Kerr McGee
- 7 Capture Zone Analysis Workplan dated November 29, 2009
- 8 Removal Action Work Plan (draft)
- 9 Other?

These documents are on file at NDEP's Las Vegas Office.

This Covenant is required because residual concentrations of [ specify constituents ], which exceed the NDEP Basic Comparison Levels (BCLs) or other approved Cleanup Levels in [ specify impacted media ] are present at the Property.

Tronox LLC makes the following declaration as to limitations, restrictions, and uses to which the Property may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

#### Section 1

- 1 Groundwater  
[ See Attachment A for insert language ]
- 2 Soils  
[ See Attachment A for insert language ]

#### Section 2

Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Project, or create a new exposure pathway, is prohibited without prior written approval from NDEP.



Section 3

The Owner of the property must give a thirty (30) day advance written notice to NDEP of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Project.

Section 4

The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5

The Owner shall allow authorized representatives of NDEP the right to enter the Property at reasonable times for the purpose of evaluating the Project; to take samples, to inspect Project-related actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Project.

**Tronox LLC**

\_\_\_\_\_  
[Name of Signatory]  
[Title]

Dated: \_\_\_\_\_

State of Nevada, Department of Conservation and Natural Resources  
Division of Environmental Protection

\_\_\_\_\_  
[Name of Person Acknowledging Receipt]  
[Title]

Dated: \_\_\_\_\_



**[INDIVIDUAL ACKNOWLEDGMENT]**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this . day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of Nevada, residing at \_\_\_\_\_.  
My appointment expires\_\_\_\_\_.

**[CORPORATE ACKNOWLEDGMENT]**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this . day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of \_\_\_\_\_ the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of Nevada, residing at \_\_\_\_\_.  
My appointment expires\_\_\_\_\_.

**[REPRESENTATIVE ACKNOWLEDGEMENT]**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this . day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_ [type of authority] of \_\_\_\_\_ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
Notary Public in and for the State of Nevada, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.



## **ATTACHMENT A**

### **Environmental Covenants Inserts**

- 1 All parcels:
  - a. Residential development for human habitation shall not be permitted on the Property, except for the development of townhouses, multifamily residences and hotels. Any townhouse or multifamily residence developments shall be constructed so that areas for human habitation are located at least one floor above the ground floor of the building in which they are located and such developments shall not have ground level outdoor play areas except for areas covered with asphalt, concrete or other surfacing that prevents contact with soils containing chemicals of concern.
  - b. All uses and development of the Property shall be consistent with the Risk Management Plan, which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measure taken and remedial equipment installed, and any groundwater monitoring system installed on the Property, unless otherwise expressly permitted in writing by NDEP, which writing must reference this document.
  - c. The owner shall notify NDEP of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of any groundwater monitoring system installed on the Property pursuant to the requirements of NDEP, which could affect the ability of such cap or remedial measures, equipment or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notice to NDEP pursuant to the “Notices” section herein shall be made within ten (10) working days of both the discovery of such disturbance and the completion of repairs.
  - d. No hospitals shall be permitted on the Property.
  - e. No schools for persons under 21 years of age, nor any day care centers for children or Senior Citizens, shall be permitted on the Property.
  - f. No owner or occupant of the Property or any portion thereof shall drill, bore, otherwise construct or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by NDEP.
  - g. The owner agrees to allow reasonable access by NDEP and others to complete the work outlined in the “Environmental Response” paragraph above, including but not limited to physical access, installation, maintenance and sampling of monitoring wells and piezometers, taking of soil samples, and taking of vapor samples (including in and under structures).



- 2 Parcels where active GW operations are taking place:
  - a. Owner agrees to allow continued operation of the GW extraction and treatment system outlined in the “Environmental Response” paragraph above, including operation and maintenance of extraction wells, licenses or other agreements to allow the transportation of water from the wells to the treatment facility, reasonable access to existing utilities on the parcel to allow the economical operation of the system; and periodic replacement of existing wells and/or installation of new wells as required by NDEP.
  - b. For parcels where reinjection occurs, a further covenant to allow continued operation of that system, including necessary easements
- 3 Parcels where short-term soil flushing operations may take place:
  - a. Owner agrees to allow access to conduct operations and maintenance which may include installation of injection wells and/or trenches, water supply pipelines and hoses, installation of monitoring wells and/or piezometers, periodic groundwater sampling, periodic soil sampling. Owner agrees to allow reasonable access to existing utilities.
- 4 Parcels with (irremediable)shallow soil contamination:
  - a. No owner or occupant of the Property or any portion thereof shall construct any excavation work on impacted soils on the Property, except as specified in the Risk Management Plan or Operation, Maintenance and Monitoring Plan approved by NDEP. Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of local state and federal law.
  - b. The owner agrees to maintain the integrity of the Engineered Cap (Cap) which overlays some areas of the parcel. The purpose of the Cap is to isolate areas of soil impacted with chemicals of concern from human contact. In asphalt or concrete covered areas, the Cap consists of the asphalt or concrete paving, building foundations, and any underlying aggregate base. In unpaved landscape areas, the Cap consists of a minimum of 1-foot of “clean” soil, i.e. soil not impacted with any chemical of concern.

The following sections are optional, depending on the results of the ongoing soil testing and excavation, and the selection of remedies

- 5 Parcels with deep soil contamination
  - a. Soil Vapor Extraction, installation, o+m, easement/license inc. utilities



- b. Depending upon the depth, restrictions on type and depth of construction activities
  - c. Sampling/monitoring during construction activities
- 6 Parcels with potential vapor intrusion issues
- a. Restrictions on type of building/occupancy, monitoring in basements or other confined areas
  - b. Restrictions on design of foundation, vapor barrier, HVAC refinements
  - c. Access to conduct monitoring

