

After Recording Return to:  
Ha Tran  
Department of Ecology  
Industrial Section  
Solid Waste & Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98504-7600

3363502  
04/03/2008 10:23:02 AM Pages: 8  
Covenants EMERALD KALAMA CHEMICAL 49.00  
Cowlitz County Washington

Facility: Emerald	
Year: 08	Left Right
As:	Corr
Water	Reports
NPDES	Permit
WET-Tox	Enf
DW/RCRA	Eng
Clean Up	Sub
SW	
HWP2	

RECEIVED

APR 08 2008

EXHIBIT D

Ecology - SWFA - Ind

**RESTRICTIVE (ENVIRONMENTAL) COVENANT  
EMERALD KALAMA CHEMICAL LLC**

**Grantor:** Emerald Kalama Chemical LLC  
**Grantee:** State of Washington, Department of Ecology  
**Legal:** See Exhibit A to Consent Decree for full legal description  
**Tax Parcel Nos.:** 61335, 62816002

Grantor, Emerald Kalama Chemical LLC (hereafter "Emerald Kalama Chemical"), hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant" or "Restrictive Covenant") made this 2<sup>ND</sup> day of APRIL, 2008, in favor of the State of Washington, Department of Ecology (hereafter "Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(g), and the Uniform Environmental Covenants Act, Chapter 64.70 RCW.

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Emerald Kalama Chemical LLC (hereafter "Emerald Kalama Chemical"), its successors and assigns, and Ecology, its successors and assigns.

A remedial action (hereafter "Remedial Action") is occurring at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following documents, among others:

- 1) Consent Decree, dated March 17, 2008.
- 2) Cleanup Action Plan (CAP), dated June 2004.

These documents are on file at Ecology's Industrial Section Central Files.

EXHIBIT D  
Restrictive Covenant

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This Restrictive Covenant is required because the Remedial Action will result in residual concentrations of contaminants of concern (COCs) identified in the CAP (including toluene, benzene, and diphenyl oxide) that exceed the Model Toxics Control Act (MTCA) cleanup levels for groundwater specified in the CAP.

This Restrictive Covenant is required as long as hazardous substances remain at the site in concentrations that exceed MTCA cleanup levels specified in the CAP. Upon demonstration that residual concentrations of the COCs do not persist on the Property after completion of the Remedial Action specified in the Consent Decree and CAP, the owner of the Property may proceed under Section 7 of this covenant, pending Ecology's written concurrence.

The undersigned, Emerald Kalama Chemical, is the fee owner of real property in the County of Cowlitz, State of Washington, a portion of which is subject to this Restrictive Covenant (hereafter "Property"). The legal description of the Property subject to this Restrictive Covenant is contained in Exhibit A to the Consent Decree.

Emerald Kalama Chemical (hereafter "Owner") 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.

Section 1. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 2. Unless authorized by the CAP or this Restrictive Covenant, 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 Remedial Action, or create a new exposure pathway for a hazardous substance that remains on the Property as part of the Remedial Action, is prohibited without prior written approval from Ecology in accordance with Section 5 of this Restrictive Covenant, which approval shall not be unreasonably withheld. Such activities include, but are not limited to, the withdrawal of groundwater for domestic uses. Activities performed in accordance with Section 8 herein shall be deemed to be authorized by this Restrictive Covenant and, therefore, shall not require notification to or approval from Ecology and shall not be subject to public notice and comment under Section 5 herein.

Section 3. Except as otherwise specified herein, the Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. Where it is not possible for the Owner to notify Ecology of such transfer at least thirty (30) days in advance due to the timing of the transfer, the Owner must provide written notice to Ecology as soon as it becomes aware of the impending transfer. 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 Remedial Action. This Section 3 shall not be construed as granting any exemption from,

or any waiver of, any other requirements that may require notice of such conveyance of interest under applicable laws, rules and regulations.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain written approval from Ecology prior to conducting any activity on the Property that is not authorized by the CAP or by this Restrictive Covenant that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway for a hazardous substance that remains on the Property as part of the Remedial Action. Ecology may approve any such use only after public notice and comment. Approval by Ecology pursuant to Section 5 shall not be unreasonably withheld. Activities performed in accordance with Section 8 herein shall be deemed to be authorized by this Restrictive Covenant and, therefore, shall not require notification to or approval from Ecology and shall not require public notice and comment under this Section.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times and in compliance with applicable health and safety plans for the purpose of evaluating the Remedial Action; to take samples, to inspect Remedial Actions conducted at the Property, and to inspect records that are related to the Remedial Action.

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs, which concurrence shall not be unreasonably withheld.

Section 8. Notwithstanding any other provision in this Restrictive Covenant, construction and maintenance and related excavation activities shall be deemed consistent with and authorized by the terms of this Restrictive Covenant, and may occur on the Property without notice to or approval from Ecology, and without public notice and comment, provided that such construction and maintenance and related excavation activities shall not involve any excavation of soil at depths greater than six feet below the existing ground surface, and provided further that following such activities, physical barriers required by the CAP or by this Restrictive Covenant shall be restored or created to prevent the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or to prevent a new exposure pathway for a hazardous substance that remains on the Property as part of the Remedial Action. Notification will be made to Ecology for approval, without the public notice and comment, if the disturbed barriers are not restored or created within 30 days after the completion of such activities. Any construction and maintenance and related excavation activities at depths greater than six feet below the existing ground surface shall not occur on the Property without prior written approval from Ecology in accordance with Section 5, which approval shall not be unreasonably withheld. This Section 8 shall not be construed as granting any exemption from, or any waiver of, any permitting or other requirements that may apply to such uses and activities



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**EXHIBIT A**  
**Site Diagram and Legal Description**



LIMITED LIABILITY CERTIFICATE

DATE: August 25, 1994 at 8:00 a.m.

Order No.	:102712
Charge	:\$250.00
Tax	: <u>18.75</u>
Total	:\$268.75

This is a report as of August 8, 1994, covering the property hereinafter described. The information contained herein is made solely for the purpose of determining the status of the property described herein, is restricted to the use of the addressee, and is not to be used as a basis for closing any transaction affecting title to said property. Liability is limited to the charge made for this certificate.

**LEGAL DESCRIPTION:**

A PARCEL OF LAND IN SECTIONS 1 AND 12, TOWNSHIP 6 NORTH, RANGE 2 WEST OF THE W.M., AND SECTIONS 6 AND 7, TOWNSHIP 8 NORTH, RANGE 1 WEST OF THE W.M., COWLITZ COUNTY, WASHINGTON;

BEGINNING AT A POINT 916.0 FEET NORTH AND 610.9 FEET WEST OF THE SOUTHWEST CORNER OF SMITH M. HENSIL D.L.C. NO. 39, COWLITZ COUNTY, WASHINGTON;  
 THENCE RUNNING DUE WEST 479.63 FEET TO THE INTERSECTION OF THE GOVERNMENT MEANDER LINE ON THE EAST BANK OF THE COLUMBIA RIVER;  
 THENCE NORTHERLY ALONG SAID MEANDER LINE NORTH 52° 38' WEST 187.52 FEET, NORTH 38° 52' WEST 708.1 FEET, NORTH 49° 07' WEST 781.7 FEET, NORTH 4° 38' WEST 76.2 FEET, NORTH 22° 22' WEST 123.8 FEET, NORTH 71° 08' WEST 121.8 FEET, NORTH 45° 07' WEST 58.6 FEET, NORTH 31° 08' WEST 260.6 FEET, NORTH 22° 53' WEST 43.0 FEET;  
 THENCE RUNNING NORTH 57° 30' 00" EAST 2597.14 FEET TO A POINT ON THE WEST LINE OF SAID JAMES ROCKEY D.L.C. NO. 38;  
 THENCE SOUTH 34° 44' 50" EAST 1763.67 FEET TO THE INTERSECTION OF THE WEST LINE OF SAID JAMES ROCKEY D.L.C. WITH A LINE 60 FEET WEST AND PARALLEL TO THE WEST RIGHT OF WAY LINE OF THE GREAT NORTHERN, NORTHERN PACIFIC AND UNION PACIFIC RAILROADS;  
 THENCE SOUTH 17° 37' EAST 1738.32 FEET;  
 THENCE DUE WEST 1696.08 FEET TO THE POINT OF BEGINNING.

**ALSO:**

A PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 6 NORTH, RANGE 1 WEST OF THE W.M., BEING A PORTION OF THE JAMES ROCKEY D.L.C. NO. 38, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE INTERSECTION OF THE WEST LINE OF THE JAMES ROCKEY D.L.C. NO. 38 AND A LINE 60 FEET WEST OF AND PARALLEL WITH THE GREAT NORTHERN, NORTHERN PACIFIC AND UNION PACIFIC RAILROADS WEST RIGHT OF WAY LINE;  
 THENCE NORTH 34° 44' 30" WEST 1763.67 FEET ALONG THE WEST LINE OF SAID D.L.C.;  
 THENCE NORTH 57° 30' EAST 537.55 FEET TO A POINT 60 FEET WEST OF THE WEST RIGHT OF WAY OF THE GREAT NORTHERN, NORTHERN PACIFIC AND UNION PACIFIC RAILROADS;  
 THENCE SOUTH 17° 37' EAST 1823.49 FEET TO THE POINT OF BEGINNING.

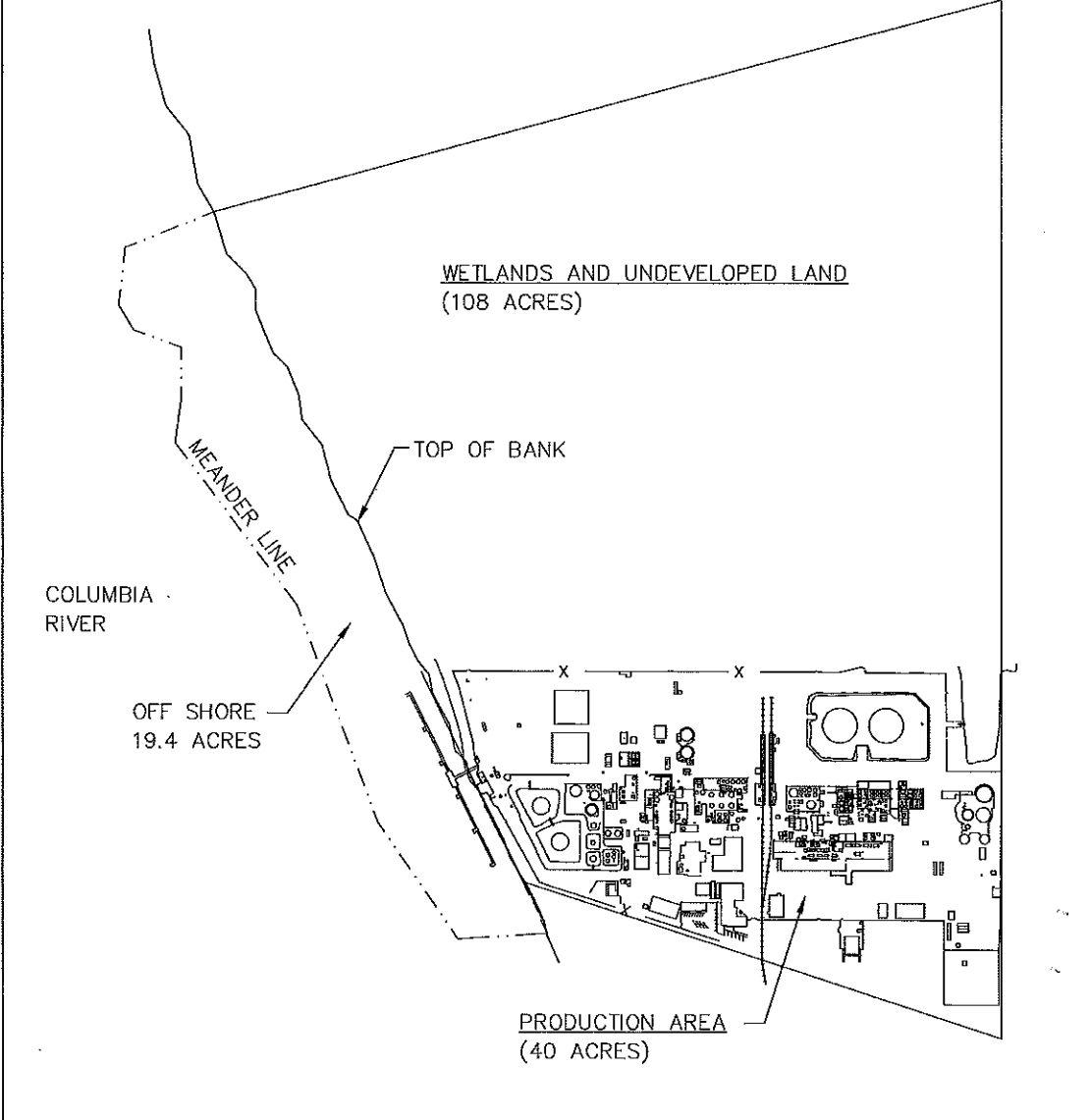
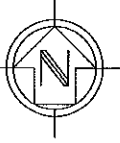
SITUATE IN COWLITZ COUNTY, STATE OF WASHINGTON  
 1145 14th Avenue ■ Longview, Washington 98632

Phone: (206) 423-5330

Fax: (206) 423-5832

Night Owl Line: (206) 423-9916

*"Service is the Difference"*



				DESIGNED			<b>BF Goodrich Kalama, Inc.</b> Kalama, Washington KALAMA PLANT PROPERTY BOUNDRIES
				DRAWN	LAG	7/27/00	
				CHECKED			
				APPROVED			
				NOTES			
REV	DATE	JOB	REVISION	BY	DATE	APP	JOB NUMBER SCALE 1"=500' 1-001-000-PROP