

After Recording Return to:  
Greg Caron  
Washington Department of Ecology  
15 W. Yakima Ave #200  
Yakima, WA 98902-3452



### Environmental Covenant

**Grantor(s):** 1. BAY ZINC COMPANY, INC.  
2. KATHRYN M. SWINEHART

**Grantee(s):** State of Washington, Department of Ecology

**Brief Legal Description:** That portion of the West half of the Northwest quarter of Section 1, Township 12 North, Range 19 East, W.M.

**Full Legal Description:** See Attachment A

**Tax Parcel Number(s):** 191201-23019

Grantors, Bay Zinc Company, Inc. and Kathryn M. Swinehart, hereby binds Grantors, their successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant ( hereafter Covenant ) made this 15<sup>th</sup> day of June, 2007 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(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Bay Zinc Company, Inc., its successors and assigns, and Ecology, its successors and assigns.

Remedial action under Chapter 70.105D RCW (Remedial Action) occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted on the property is described in Agreed Order No. DE 02HWTRCR 4661, in attachments to the Agreed Order, and in documents referenced in the Agreed Order. The documents are on file at Ecology's Central Regional Office. This Restrictive Covenant is required by Ecology under Ecology's rule WAC 173-340-440 because the Cleanup Action on the Site will result in residual concentrations of lead, cadmium and/or zinc which exceeds the Model Toxics Control Act Method A or



Method B cleanup levels for soil and groundwater established under WAC 173-340-740. The undersigned, Kathryn M. Swinehart is the fee owner of real property (hereafter Property) in Yakima County, State of Washington, that is subject to this Restrictive Covenant. Bay Zinc Company, Inc., is the tenant of the Property under a written Lease dated August 29, 2002. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

GRANTORS make 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. SOIL: As part of remedial action, contaminated soil remains in certain areas of the Property. Attachment B and C show the impacted soil areas and these areas will be referred to as the Impacted Soil Areas. In the Impacted Soil Areas, the Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology. Additionally, any activity on the Property in the Impacted Soil Areas that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, bulldozing or earthwork.

Section 2. GROUNDWATER: As part of the remedial action, groundwater containing hazardous substance also remains on the Property. Groundwater may be encountered as shallow as 5 feet below ground surface, depending on seasonal variation. Because contaminated groundwater remains on the Property, groundwater may not be taken from the property for residential (domestic) purposes. In addition, no activity on the Property that will expose contaminated groundwater or change the hydrogeologic conditions that would cause migration of contaminated groundwater will be allowed. This means that digging and/or drilling below 5 feet anywhere on the Property is not allowed without prior written approval from Ecology.

Section 3. 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 4. Any activity that may result in the release or exposure to the environment of a hazardous substance that remains on the Property or creates a new exposure pathway, is prohibited without prior written approval from Ecology.



Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 6. 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 7. 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. 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 Cleanup Action on the Property.

Section 8. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action, to take samples, to inspect Cleanup Actions conducted at the Property, to inspect records that are related to the Cleanup Action, to determine compliance with this Covenant, and allow authorized persons to conduct ground water monitoring as required in the Cleanup Action.

Section 9. 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 or a successor agency, after public notice and comment, consents in writing.

DATED this 15<sup>th</sup> of June, 2007.

BAY ZINC COMPANY, INC.

By: Richard J. Camp  
Its: \_\_\_\_\_

Kathryn M. Swinehart  
KATHRYN M. SWINEHART

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

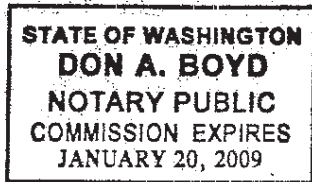
Greg Caron  
Greg Caron  
Site Manager/Hydrogeologist



STATE OF WASHINGTON )  
 ) ss:  
County of Yakima )

I certify that Richard J. Camp personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the President of BAY ZINC COMPANY, INC., a Washington corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

DATED this 15<sup>th</sup> day of June, 2007.

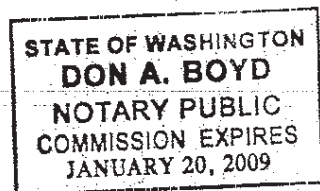


Donald A. Boyd  
NOTARY PUBLIC in and for the  
State of WA  
Residing at Yakima  
My commission expires: 1/20/2009

STATE OF WASHINGTON )  
 ) ss:  
County of Yakima )

On this day personally appeared before me KATHRYN M. SWINEHART to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 15<sup>th</sup> day of June, 2007.



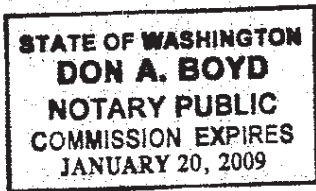
Donald A. Boyd  
NOTARY PUBLIC in and for the  
State of Washington  
Residing at Yakima  
My Commission Expires: 1/20/2009



STATE OF WASHINGTON )  
 ) ss:  
County of Yakima )

I certify that Greg Caron personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as Site Manager/Hydrogeologist for STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 15<sup>th</sup> day of June, 2007.



Donald A. Boyd  
NOTARY PUBLIC in and for the  
State of Washington  
Residing at Yakima, WA  
My Commission Expires: 1/20/2009



**ATTACHMENT "A" TO  
DECLARATION OF RESTRICTIVE COVENANT**

**LEGAL DESCRIPTION FOR ENVIRONMENTAL COVENANT**

That portion of the West half of the Northwest quarter of Section 1, Township 12 North, Range 19 East, W.M. described as follows:

**Parcel A:**

That portion of the West half of the Northwest quarter of Section 1, Township 12 North, Range 19 East, W.M. described as follows:

Beginning at the intersection of the East line of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, Township 12 North, Range 19 East, W.M., and the North right of way line of the Northern Pacific Railway Company right of way; thence West at right angles to a point a distance of 60 feet; thence North parallel to the East line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, Township 12 North, Range 19 East, W.M., to a point 60 feet Northerly from and measured at right angles from the Northerly right of way line of said Railway being the true point of beginning; thence North parallel with the East line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, Township 12 North, Range 19 East, W.M., a distance of 950 feet; thence West at right angles a distance 480 feet; thence South 680.3 feet, more less, parallel with the East line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, Township 12 North, Range 19 East, W.M., to a point 60 feet Northerly from and measured at right angles from the Northerly right of way line of said Northern Pacific Railway Company; thence Southeasterly parallel with and 60 feet distant from the Northerly right of way line of said Northern Pacific Railway Company to the true point of beginning.

**PARCEL B:**

Easement for ingress and egress and spur track over and across a strip of land 60 feet in width, the Southerly line of which is the Northerly line of said Northern Pacific Railway Company right of way; the Westerly line of which is the Westerly line of said Parcel A, extended Southerly to said Railway right of way and the Easterly line of which is parallel with the East line of Parcel A extended South  $60^{\circ} 50'$  East 260 feet therefrom.

**PARCEL C:**

Beginning at the intersection of the East line of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, Township 12 North, Range 19 East, W.M., and the North right of way line of the Northern Pacific Railway Company right of way; thence West at right angles to a point a distance of 60 feet and the true point of beginning; thence North parallel to the East line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, to a point 1010 feet Northerly from and measured at right angles from the Northerly right of way line of said Railway; thence West at right angles a distance of 540 feet; thence South 740.3 feet, more of less, parallel with the East line of said Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 1, to the Northerly right of way line of said Northern Pacific Railway Company; thence Southeasterly along said Northerly right of way line of said Northern Pacific Railway Company and the true point of beginning.



**ATTACHMENT "B" TO  
DECLARATION OF RESTRICTIVE COVENANT**

**LEGAL DESCRIPTION FOR IMPACTED SOIL AREAS**

That portion of the West half of the Northwest quarter of Section 1, Township 12 North, Range 19 East, W.M. described as follows:

Beginning at the Southwest corner of said Northwest quarter of Section 1; thence North 89°50'00" East along the South line thereof 1316.86 feet to the Southeast corner of the West half thereof; thence North 0°12'15" East along the East line of the West half of the said Northwest quarter 950.39 feet to a point hereinafter called Point "A"; thence South 89°43' West 249.43 feet to the True Point of Beginning and a point hereinafter called Point "B"; thence South 0°17'27" East 125.00 feet; thence South 89°42'33" West 10.00 feet; thence North 0°17'27" West 44.90 feet; thence South 89°51'50" West 222.81 feet; thence South 0°08'10" East 40.00 feet; thence South 89°56'40" West 28.00 feet; thence North 0°08'10" West 75.00 feet; thence North 89°56'40" East 18.00 feet; thence North 0°17' West 243.00 feet; thence North 89°43' East 13.21 feet; thence South 0°17' East 185.49 feet; thence North 89°43' East 100.00 feet; thence North 0°17' West 200.00 feet; thence South 88°20' East 77.21 feet; thence South 0°51'20" East 19.00 feet; thence North 89°18' East 40.00 feet; thence South 0°17' East 24.21 feet; thence South 89°43' West 3.61 feet; thence South 0°17' East 6.00 feet; thence South 89°43' West 106.88 feet; thence South 0°17' East 161.48 feet; thence North 89°43' East 122.43 feet to the Point of Beginning.

**AND**

Beginning at the above described Point "B"; thence South 0°17'27" East 200.00 feet to the True Point of Beginning; thence continuing South 0°17'27" East 81.00 feet; thence South 89°42'33" West 10.00 feet; thence North 0°17'27" West 81.00 feet; thence North 89°42'33" East 10.00 feet to the Point of Beginning.

**AND**

Beginning at the above described Point "A"; thence continuing North 0°12'15" East along the East line of the West half of said Northwest quarter 5.61 feet; thence South 88°27' West 60.03 feet to the True Point of Beginning; thence continuing South 88°27' West 117.75 feet; thence North 14°57' West 12.00 feet; thence North 28°57' West 33.70 feet; thence South 89°47'45" East 17.25 feet; thence North 0°12'15" East 120.00 feet; thence South 89°47'45" East 40.00 feet; thence South 0°12'15" West 40.00 feet; thence South 89°47'45" East 80.00 feet; thence South 0°12'15" West 40.00 feet; thence North 89°47'45" West 40.00 feet; thence South 0°12'15" West 40.00 feet; thence South 89°47'45" East 40.00 feet; thence South 0°12'15" West 37.41 feet to the True Point of Beginning.

Situated in Yakima County, Washington



ATTACHMENT "C" TO  
DECLARATION OF RESTRICTIVE COVENANT

MAP OF IMPACTED SOIL AREAS

