AFTER RECORDING, RETURN TO:

Sandra Treccani, Site Manager Toxics Cleanup Program, Eastern Regional Office Washington Department of Ecology 4601 N. Monroe Street Spokane, Washington 99205 AFN #20120313924 12/31/2012 at 09:13 AM DOCTYPE: COVENANT # PAGES: 18 MARIANNE NICHOLS, AUDITOR, PEND OREILLE COUNTY, W/ FILED BY: TONKON TORP LLP

Indexing information required by the Washington State Auditor's/Recorder's Office (RCW 36.18 and RCW 65.04) 1/97:

(please print last name first)

Reference # (If applicable): N/A Grantor: Stimson Washington, Inc., a Washington Corporation, 520 SW Yamhill #700, Portland, Oregon 97204 Grantee/Holder: State of Washington, Department of Ecology, 4601 N. Monroe St., Spokane, WA 99205 Legal Description (abbreviated): SW 1/2, Section 16, Township 39 North, Range 43 E.W.M. Additional legal description is in Attachment A Assessor's Parcel No.: 433916 46 0002

ENVIRONMENTAL COVENANT

I. Purpose and Background

Grantor, Stimson Washington, Inc. ("Stimson Washington"), a Washington corporation, hereby binds Grantor and its successors and assigns to the activity and use limitations, restrictions, and obligations identified herein and grants such other rights as specified under this Environmental Covenant made this <u>29</u> day of <u>November</u>, 2012. This instrument grants a valid and enforceable Environmental Covenant as servitude pursuant to the Washington State Uniform Environmental Covenants Act ("UECA"), RCW Chapter 64.70, to the Washington State Department of Ecology and its successors and assigns (hereinafter "Ecology" or "Holder").

The activity and use limitations, restrictions, and obligations identified herein are conditions of: (i) an Administrative Settlement Agreement and Order on Consent ("ASAOC"), in Docket No. CERCLA-10-2010-0180, entered into by and between Stimson Lumber Company ("Stimson Lumber"), an Oregon corporation, and the United States Environmental Protection Agency ("EPA"), and effective as of September 3, 2010; and (ii) an Action Memorandum issued by EPA on August 26, 2010 ("Action Memorandum"). The ASAOC was entered into and issued pursuant to Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622.

Grantor, a wholly owned subsidiary of Stimson Lumber, is the owner of the surface rights to real property commonly known as the former Josephine Mill No. 1, which is comprised of approximately 5.3 acres located about 1.5 miles northwest of the city of Metaline Falls in Pend Oreille County, Washington and described as SW 1/2, Section 16, Township 39 North, Range 43 E.W.M. ("Property"). Stimson Lumber is the operator of the Property. A legal description of the Property is attached and incorporated by reference herein as **Exhibit A**.

Stimson Lumber acquired the Property in 2000 by deed recorded in Pend Oreille County, Washington, and transferred the Property to Grantor in 2001 by deed also recorded in Pend Oreille County, Washington. The Property was historically used for the milling and processing of ore obtained from the Josephine Mine from approximately 1909 to 1955. The operations consisted of the extraction of metals, including lead, silver, zinc and cadmium. Tailings from ore milling operations and waste rock from ore extraction operations were left behind at the Property.

In 2010, the Property became subject to a removal action pursuant to CERCLA. The removal action was an "environmental response project" within the meaning of UECA.

The environmental response project as set out in the Action Memorandum included the following components: (i) excavation of mining waste and associated materials contaminated by hazardous substances; (ii) placement of this waste and these materials into an on-site repository; (iii) placement of a protective barrier over the repository consisting of an impermeable geomembrane liner and clean rock and soil; and (iv) installation of warning signs and placement of woody debris on and around the repository for limited public access to the repository and protective barrier. A drawing and survey description of the repository is attached and incorporated by reference herein as **Exhibit B**.

To address the contaminants remaining at the Property, the ASAOC and the Action Memorandum provided for this Environmental Covenant as an institutional control to protect human health and the environment, and to ensure the integrity of the removal action by (i) preventing intrusive activities into the repository or barrier; (ii) prohibiting the installation and use of groundwater wells on the Property; and (iii) maintaining the limits on public access.

II. Representations and Warranties

Grantor represents and warrants to Holder that Grantor (i) is the sole fee title owner of the Property and (ii) holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal or equitable claims or encumbrances.

III. Covenants

This instrument is an Environmental Covenant executed pursuant to UECA concerning the Property. With this Environmental Covenant Grantor hereby binds Grantor and its successors and assigns to the restrictions and conditions set forth herein, and conveys to Holder such restricted property interests. EPA and Ecology have the full rights to enforce the restrictions, conditions or other rights set forth herein as provided by law including, but not limited to, CERCLA, the Model Toxics Control Act ("MTCA"), RCW Chapter 70.105D, and UECA.

Grantor covenants that the Property is free and clear of encumbrances that could impact any component of the environmental response project. Further, Grantor makes the following covenants as to limitations, restrictions, and uses to which the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall inure to the benefit of Holder, 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 (hereinafter "Owner"):

1. Any activity that damages or disturbs the integrity of the repository or protective barrier or otherwise results in the release or exposure to the environment of any hazardous substances beneath the protective barrier is hereby prohibited. Some examples of activities that are prohibited in the protective barrier areas include the following: drilling, digging, excavating, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capacity, piercing the surface with a rod, spike or similar item, bulldozing, or earthwork.

2. Any activity on the Property that may interfere with the integrity or operation or maintenance of the repository, or protective barrier, or the erosion and drainage controls, or any other component of the environmental response project, or the continued protection of human health and the environment, or that may result in a release to the environment of hazardous substances that were contained as part of the environmental response project, is prohibited without prior written approval from Ecology.

3. There shall be no use of the Property for construction and occupancy of residential structures.

4. There shall be no groundwater wells installed or groundwater used at the Property, unless such installation and/or use have/has prior written approval from Ecology.

5. Owner shall inspect, maintain and repair the protective barrier, erosion and drainage controls, warning signs and woody debris placed on the surface of the repository at the Property. This work shall conform to the Post-Removal Site Control Plan produced by Stimson Lumber in accordance with the ASAOC. A copy of this plan is attached and incorporated by reference herein as **Exhibit C**.

6. Owner shall provide thirty (30) days advanced written notice to Ecology of Owner's intent to convey or transfer, in whole or in part, any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by Owner without adequate and complete provision for continued inspection, maintenance and repair of the protective barrier, warning signs and woody debris placed on the surface of the repository at the Property.

7. Owner shall restrict all permits, licenses and leases at or on any portion of the Property to uses and activities consistent with this Environmental Covenant, and shall notify all permittees, licensees and lessees of the restrictions and limitations placed on the Property by this Environmental Covenant.

8. Owner shall allow authorized representatives of EPA and Ecology the right to enter the Property at reasonable times to evaluate the environmental response project and the repository and protective barrier, to take samples, to inspect any other response actions conducted at the Property, to perform maintenance and repair activities, and to conduct any other action deemed necessary to ensure that the environmental response project continues to protect public health and the environment. Further, no conveyance or transfer, in whole or in part, of an

interest in the Property shall be consummated by Owner without provision for such continued access by EPA and Ecology.

9. Owner shall notify and obtain written approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Environmental Covenant. Ecology may approve any such inconsistent use only after public notice and comment.

10. Owner of the Property reserves the right under Washington Administrative Code ("WAC") 173-340-440 to record an instrument that provides that this Environmental 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.

IV. Reservation of Rights

Grantor hereby reserves on behalf of itself, its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted, or prohibited by this Environmental Covenant.

V. Public Record

The administrative record for the environmental response project at the Property is available to the public and on file with EPA's Region 10 Office, located at EPA Superfund Records Center, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101; telephone 206-553-4494.

VI. Enforcement

Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including, but not limited to, CERCLA, UECA and MTCA. EPA and Ecology shall have full enforcement rights. An action for equitable or injunctive relief for violation of this Environmental Covenant may also be maintained by the other persons and entities set forth in Section 64.70.110 of UECA. Failure by any party or person to enforce compliance with this Environmental Covenant in a timely manner shall not be deemed a waiver of the right to take subsequent enforcement actions.

VII. Recordation

Grantor shall record this instrument in the official records of Pend Oreille County, Washington, and shall pay the costs associated with recording.

VIII. General Provisions

1. **Agency's Interest**. Pursuant to Section 64.70.030(2) of UECA, the rights granted to EPA by this Environmental Covenant are not interests in real property.

2. **Construction**. This Environmental Covenant shall be construed in favour of effectuating the purpose of this Environmental Covenant. If any provision of this

Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IX. Termination and Modification

This Environmental Covenant may only be amended or terminated in accordance with the procedures and process contained in the amendment and termination provisions of Sections 64.70.090 and 64.70.100 of UECA, and with the provisions of WAC 173-340-440. Ecology may approve inconsistent uses (as described in Section III, paragraph 9 above), and/or termination only after public notice and opportunity for comment.

X. Signatures and Acknowledgements

Grantor covenants that it is authorized to grant this Environmental Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Environmental Covenant.

SIGNATURE PAGES FOLLOW

DATED this 29th day of November, 2012.

Stimson Washington, Inc., a Washington corporation

hew W. Maller. By

Andrew Miller Its: President

STATE OF OREGON) ss. County of Multnomah

On this <u>29</u> day of <u>Mutendur</u>, 2012, before me personally appeared Andrew Miller to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by official seal the day and year first above written.



Marganet E. Kodgen Notary Public in and for the State of Oregon Residing at <u>Partland</u>, OR My commission expires <u>7-12-2015</u> My commission expires

Stimson Lumber Company, an Oregon corporation

hen W. Tuller. Bv

Andrew Miller Its: President

STATE OF OREGON)) ss. County of Multnomah)

On this $\underline{\mathcal{A}9}$ day of $\underline{\mathcal{M}}$ day of $\underline{\mathcal{M}}$ and $\underline{\mathcal{A}9}$ day of $\underline{\mathcal{M}}$ day of $\underline{\mathcal{M}}$ and $\underline{\mathcal{A}9}$ day of $\underline{\mathcal{M}}$ and $\underline{\mathcal{A}9}$ day of the executed the vision of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporations, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by official seal the day and year first above written.



Margaret E. Rody	Jehl .
Notary Public in and for the	State of Oregon
Residing at	, OF
My commission expires	7-12-2015

The foregoing Environmental Covenant is hereby approved and certified.

By:

Richard Albright, Director Office of Environmental Cleanup U.S. EPA Region 10

Bv

Michael A. Hibbler Eastern Section Manager Toxic Cleanup Program Washington State Department of Ecology

Exhibit A

Environmental Covenant Stimson Washington Inc. / State of Washington, Department of Ecology

Parcel #34 433916 46 0002 - Surface rights only to the following:

The Josephine, Hortense, Hidden Falls, Annex, <u>Homestake</u>, Fraction and Mystery Lode mining claims, designated by the Surveyor General as Survey No. 971 in Section 16, Township 39 North, Range 43 E.W.M. EXCEPT THEREFROM all that land embraced in Survey No. 809 (The Sullivan lode mining claim) ALSO EXCEPT therefrom any portion lying within the West half of the Southwest quarter of Section 16, Township 29 North, Range 43 E.W.M. ALSO EXCEPT THEREFROM that portion of the Mystery and Homestake Fraction lode claims, Survey 971, in conflict with the W 1/2 of Section 16, Township 39 North, Range 43 E.W.M. Patent Book 4 Page 84, records of the Auditor.



RECLAMATION DESCRIPTION

A CERTAIN PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 43 EAST, W.M., PEND OREILLE COUNTY, WASHINGTON BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 16; THENCE ON A WASHINGTON STATE PLANE NORTH ZONE GRID BEARING AND ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER

NORTH 87°50'36" EAST, 2045.16 FEET; THENCE NORTH 24°19'35" EAST, 554.90 FEET TO THE NORTHEAST CORNER OF THE MYSTERY LODE ACCORDING TO RECORD OF SURVEY BOOK 5, PAGES 138-144;

THENCE SOUTH 85°27'50" WEST, 412.02 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE THE FOLLOWING 22 COURSES AND DISTANCES;

SOUTH 41°35'21" EAST, 17.11 FEET;

SOUTH 10°57'07" EAST, 17.26 FEET; SOUTH 23°20'00" EAST, 35.14 FEET; SOUTH 17°13'59" EAST, 33.32 FEET; SOUTH 16°30'44" EAST, 15.55 FEET; SOUTH 59°01'59" WEST, 29.66 FEET; SOUTH 51°07'47" WEST, 31.46 FEET; SOUTH 37°28'02" WEST, 16.88 FEET; SOUTH 59°31'18" WEST, 45.54 FEET; SOUTH 40°13'46" WEST, 38.60 FEET; SOUTH 86°15'24" WEST, 23.13 FEET NORTH 69°54'01" WEST, 18.07 FEET; NORTH 52°05'14" WEST, 19.89 FEET; NORTH 42°48'14" WEST, 21.96 FEET; NORTH 54°00'00" WEST, 29.38 FEET; NORTH 39°03'47" EAST, 16.20 FEET; NORTH 33°36'44" EAST, 26.54 FEET; NORTH 35°14'26" EAST, 35.87 FEET NORTH 24°25'49" EAST, 75.51 FEET; NORTH 77°32'28" EAST, 47.93 FEET; NORTH 65°09'14" EAST, 28.18 FEET; NORTH 80°25'48" EAST, 27.13 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit C Environmental Covenant Stimson Washington Inc. / State of Washington, Department of Ecology



Imagine the result

Stimson Lumber Company

Post-Removal Site Control Plan Josephine Mill No. 1

CERCLIS ID No. WAN001002401 Pend Oreille County, Washington

February 23, 2012

Trent A. Weise, P.E. Principal Engineer



Post Removal Site Control Plan

Josephine Mill No. 1 Pend Oreille County, Washington

Prepared for: Stimson Lumber Company

Prepared by:

ARCADIS U.S., Inc. 2310 North Molter Road Suite 101 Liberty Lake Washington 99019 Tel 509.535.7225 Fax 509.535.7361

Our Ref.: SK030179.0002

Date: February 23, 2012

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Post-Removal Site Control Plan Former Josephine Mill No. 1

1. Introduction

On behalf of Stimson Lumber Company (Stimson), ARCADIS U.S. Inc. (ARCADIS) has prepared this "Post Removal Site Control Plan" to outline the requirements of long- term maintenance and monitoring necessary to ensure the protection and long- term stability of the mine waste repository constructed at the former Josephine Mill No. 1 in Pend Oreille County, Washington (the "Site"). The repository was constructed as part of the Administrative Settlement Agreement and Order on Consent Docket No. CERCLA-10-2010-0180 (ASAOC) between the United States Environmental Protection Agency (EPA) and Stimson for the former Josephine Mill No. 1 and in accordance with the EPA-approved "Removal Action Work Plan" (RAWP). This document is submitted as an Appendix E to the Removal Action Report. Record drawings of the completed mine waste repository can be found in Appendix A of the Removal Action Report.

1.1 Site Location

The former Josephine Mill No. 1 is located in northeast Washington, approximately 1.5 miles northwest of the city of Metaline Falls in the southwest half (SW½) of Section 16, Township 39N, Range 43 W, Willamette Meridian, Pend Oreille County, Washington. The Site's approximate geographic coordinates are Latitude 48°52' 29.99" North, Longitude 117°22' 50.77" West. The Site is accessed by Pend Oreille County Highway 2975 (also referred to as the Boundary Dam Road) and the unpaved Old Pend Oreille Mine Road. Site access to the public is limited by a locked gate. The Site is bounded to the southeast by Flurne Creek, which flows to the north-northeast and discharges into the Pend Oreille River.

2. Mine Waste Repository

On September 13, 2012, construction of the mine waste repository was completed. The mine waste repository consists of consolidated mine tailings from across the site. The consolidated mine waste was compacted, graded and capped with a low-permeability cover system. The cover system consists of a 16ounce non-woven geotextile placed on the mine waste followed by a layer of 40-mil low-density polyethylene liner (LLDPE) that is protected by a geocomposite drainage layer and 18 inches of soil cover. Figure A presents a cross section of the cover system.





Post-Removal Site Control Plan

Former Josephine Mill No. 1

Perimeter under-drains were installed to route groundwater around the repository to help maintain stability of the mine waste. The surface of the repository is graded to shed stormwater towards the stormwater collection ditch located on the eastern side of the repository.

3. Protection of the Repository

The mine waste repository was constructed at the Site to limit exposure of the mine waste to humans and the environment. The primary risk to the repository is willing or unwilling vandalism by unauthorized trespassers that may damage the integrity of the cover system. There is a lesser risk of damage to the cover system by animals. Large woody debris and large boulders were placed to discourage human use and potential for damage of Site structures.

"No Trespassing" signage is posted at the locked gate to the access road and at the eastern property boundary to warn and discourage trespassers from entering onto the property.

3.1 Long Term Maintenance and Monitoring

The long- term protection of the mine waste repository will be ensured by the periodic inspection of the repository to ensure that the required control measures are in-place and that the repository has not been damaged. This section describes the inspection protocol and schedule.

3.1.1 Periodic Monitoring Protocol

Site inspections will be performed at the monitoring schedule discussed under Section 3.3.2. Each Site inspection will include the following:

- Confirm presence and condition of warning signage
- Confirm presence and operation of site controls including access gates
- Observe the condition of the repository cover and identifying areas of movement, erosion or exposed liner
- Observe operation of the underdrain system and cleanout as necessary
- Observe the condition of stormwater management structures
- Visual evidence or indications of mine waste release

Any sign or potential sign of damage will be photo-documented and marked as appropriate.

Following each site inspection the observations will be documented, areas requiring repair will be photographed and repairs recommended. Minor repairs that can be performed immediately will be

Post-Removal Site Control Plan

Former Josephine Mill No. 1

completed. If significant damage is observed requiring repair, the inspection report will recommend repair plan. Completed inspection reports will be submitted to the EPA 45 days following each inspection.

3.1.2 Monitoring Schedule

Mine waste repository inspections will be performed under the following schedule:

 annually, once in the Spring following peak runoff and/or within 5 days of a 100-year storm event the first two years;

Annually thereafter

After the first five years of monitoring it is appropriate to assess the monitoring schedule based upon the results of the periodic inspections and effectiveness of the protective measures.

4. Potential Singularly Damaging Events

This section describes potential events that may damage the cap structure and risk endangering the public health or environment. The appropriate responses to assess the damage and associated risks are further described in Section 5.

4.1 Earthquake

The project site is located in a seismically active area and there is the potential for significant seismic events. Seismic events were considered in the design of the repository; however it is possible that a seismic event could exceed the design assumptions or cause land movement around the repository.

4.2 Extreme Weather Event

The Site grading, cover system, and stormwater management structures were sized for the 100-year 24hour storm event. It is not inconceivable that a higher storm event can occur, causing higher runoff volumes (e.g. rapid spring runoff from snow melt coinciding with a heavy precipitation event). Other extreme weather events include extreme wind, extreme heat, etc.

Runoff in excess of the design runoff volumes can cause 1) damage to the stormwater conveyance system such as the stormwater collection ditch,2) excessive erosion of the cover soils, 3) regional flooding raising groundwater elevations and the elevation of Flume Creek that may cause erosion, and/or 4) other issues not conceived here.

3

4.3 Forest Fire

The former Josephine Mill No. 1 and the mine waste repository is located with a heavily forested area; therefore it is conceivable that a forest fire could occur in the immediate vicinity of the repository. Significant fire damage is mitigated by the 18-inch soil layer protecting the LLDPE liner. However, a fire can cause significant damage, or even total destruction of the above-described structures.

5. Potential Significant Post-Events Responses

This section describes post-event inspections and schedule to develop and implement appropriate repairs.

5.1 Post-Event Inspection

Following a significant event such as an earthquake, extreme rain event, or forest fire a post-event inspection is required. Stimson personnel (or their contractor) with appropriate knowledge and experience will conduct inspection of the mine waste repository. The inspection will focus on the following main items:

- Signs of waste release
- Damage to soil cover
- Damage to rip-rap in the stormwater management area
- Damage to liners
- Damage to access roads
- Damage to stormwater management structures

Any sign or potential sign of damage will be photo-documented and marked as appropriate.

The inspection will be repeated periodically to ascertain whether additional signs of damage develop over time at the discretion of the inspector. This could indicate ongoing deformation, leading to larger cumulative failure.

A list of the inspected areas will be compiled for future evaluation.

5.2 Post-Event Damage Assessment and Repair Planning

During the initial inspection Stimson personnel (or contractor) will render an immediate opinion, if a sign of damage would require immediate attention. Immediate attention is required if release of contaminated soil, sediment or water is suspected. In case of such an occurrence, the immediate action needs to be taken that may include the following:

R ARCADIS

Post-Removal Site Control Plan Former Josephine Mill No. 1

- Use of absorbent materials to capture liquid waste
- Use of clean soil to cover any crack, fissure that have showed release
- Additional BMP and/or stormwater controls to prevent or mitigate a potential release to Flume Creek;

Irrespective of the immediate repair of areas exhibiting potential release, all inspected items/areas (compiled as discussed above) will require a detailed assessment of the damage and recommended repairs.

The damage assessment will include the following main elements:

- Exact location of the damage
- Damage description
- Extent, area, volume of the damage
- Number and pieces of equipment, appurtenance, structure, fixture damaged
- Proposed repair action with appropriate sketches
- Recommended timeframe of repair

5.3 Post-Event Reporting

Stimson will submit an initial inspection report to the EPA 72 hours after the inspection is completed. Based on the damage assessment a Repair Plan will be prepared and will be submitted to the EPA as soon as practicable. Upon EPA's review and approval of the Repair Plan, a timeframe for the implementation of the repair actions will be established.