

(11)

WHEN RECORDED RETURN TO:

Raman Iyer Section Manager
Hazardous Waste & Toxics Reduction
Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, WA 98008-5452



20171227001453

COVENANT Rec: \$84.00
12/27/2017 3:53 PM
KING COUNTY, WA

THIS DOUCMENT IS BEING RE-RECORDED TO REMOVE REFERENCE TO EXHIBIT B.

DOCUMENT TITLE(S)

Environmental Restrictive Covenant

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

20151006000860, 2015006000864, 20150006000867, 20171215000164

GRANTOR(S):

Western Tank Properties, Inc., a Washington corporation

GRANTEE(S):

Washington State Department of Ecology and its successors and assigns

ABBREVIATED LEGAL DESCRIPTION:

Parcel B, City of Seattle LBA No. 3024821, Recording No. 20161110900001, King County, Washington.

Additional legal is on Exhibit A of document.

TAX PARCEL NUMBER(S):

766620-2860-01, 766620-2861-00, 377030-0160-02

Instrument Number: 20171215000164 Document:COV Rec: \$83.00 Page-1 of 10

Record Date:12/15/2017 9:02 AM

Electronically Recorded King County, WA

Return Address:

Raman Iyer Section Manager
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, Washington 98008-5452
Stewart Title Guaranty Co.

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transactions contained therein):
Environmental Restrictive Covenant
Reference Number(s) of Documents assigned or released:
20151006000860, 20151006000864, 20151006000867
Grantor(s) Exactly as name(s) appear on document:
Western Tank Properties, Inc., a Washington corporation
Grantee(s) Exactly as name(s) appear on document:
Washington State Department of Ecology and its successors and assigns
Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
Parcel B, City of Seattle LBA No. 3024821, Recording No. 20161110900001, King County, Washington. Additional legal is on <u>Exhibit A</u> of document.
Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned
766620-2860-01, 766620-2861-00, 377030-0160-02

****THIS DOCUMENT IS BEING RE-RECORDED TO REMOVE REFERENCE TO
EXHIBIT B****

After Recording Return to:

Raman Iyer
Section Manager
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office
Washington Department of Ecology
3190 160 Avenue SE
Bellevue, Washington 98008-5452

Environmental Restrictive Covenant

THIS INSTRUMENT SUPERSEDES AND REPLACES THE ENVIRONMENTAL RESTRICTIVE COVENANTS RECORDED AS INSTRUMENT NOS. 20151006000860, 20151006000864, AND 20151006000867, IN THE OFFICIAL RECORDS OF KING COUNTY, WASHINGTON.

Grantor: Western Tank Properties, Inc.

Grantee: State of Washington, Department of Ecology

Legal: See Exhibit A

Tax Parcel No.: 766620-2860-01, 766620-2861-00, 377030-0160-02

Grantor, **Western Tank Properties, Inc., a Washington corporation**, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants and conveys such other rights under this environmental restrictive covenant (hereafter "Environmental Covenant") as of the 7th day of December, 2016. This instrument grants a valid and enforceable Environmental Covenant pursuant to the Washington State Uniform Environmental Covenants Act ("UECA"), Revised Code of Washington ("RCW") Chapter 64.70, to the Washington State Department of Ecology and its successors and assigns (hereafter "Ecology" or "Holder").

Grantor covenants to and with the Holder and its successors and assigns that Grantor owns the Property (as hereinafter defined) in fee simple and has the exclusive right to convey the Property or any interest therein, and that the Property is free and clear of encumbrances. Grantor will warrant and defend the title and quiet possession of the Property. The Environmental Protection Agency (hereafter "EPA") on behalf of Ecology, as the Agency, has consulted pursuant to RCW 64.70.040(5) with local land use planning authorities in the development of the land use or activity restrictions in this Environmental Covenant.

Northwest EnviroService Inc. ("NWES") operated a commercial hazardous waste management facility between 1979 and 1995 at 1500 Airport Way South in Seattle, Washington (the "NWES Facility"). NWES provided storage and treatment services to companies that generated hazardous waste. Since 1995, Emerald Recycling, Inc. has been recycling non-hazardous waste and used oil and treating industrial wastewater at the NWES Facility. A variety of contaminants remain in the soil and groundwater at the north end of the 1.25 acre site. In February 1994, NWES and the EPA entered into an Order pursuant to Section 3008(h) of RCRA. The Order requires NWES to:

- Complete a RCRA Facility Investigation ("RFI") to identify and characterize any releases of hazardous constituents from Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs") at the NWES Facility, characterize the concentration and extent of contamination released at and from the NWES Facility, support the development of alternatives from which a corrective measure will be selected, and identify any additional SWMUs or AOCs. The April 2004 Revised Final RFI Report was approved with modifications by the EPA on June 16, 2004.
- Complete a Corrective Measures Study ("CMS") to develop and evaluate potential corrective measures to remedy any contamination at and or released from the NWES Facility which exceeds the media-specific target cleanup standards established by the EPA. The Order required NWES to identify the potential corrective measures for the containment, treatment, and/or disposal of contamination and include in the CMS the corrective measure recommended by NWES. The revised CMS is dated April 2011.
- Implement the corrective measure selected by the EPA, or exercise its right to withdraw its consent to implement the corrective measure selected by the EPA. Exercising this option would require the EPA to negotiate a new Order for remedy implementation.

Pursuant to Administrative Order on Consent U.S. EPA Docket No. 1093-02-09-3008(h) (February 8, 1994), Grantor conducted the requirements of the Order (the "Remedial Action"). The Remedial Action required removal of soil contaminated above industrial use cleanup levels, and an environmental covenant for soil contaminated above residential use cleanup levels. The EPA's remedy removed soils significantly contaminated with vanadium above the proposed industrial use cleanup standard. Cleanup of the contaminated, shallow, perched aquifer was not required by the EPA Remedial Action. This Environmental Covenant is required because the Remedial Action resulted in residual concentrations of contaminants including but not limited to total arsenic, total vanadium, and benzo(a)pyrene in soil and total arsenic, benzene, vinyl chloride, and total petroleum hydrocarbons ("TPH") in groundwater which exceed the Model Toxics Control Act ("MTCA") Method B Cleanup Level (MTCA Method A for TPH) established under WAC 173-340-705. With the exception of TPH in groundwater, Figures 2-2 and 3-1 of the CMS show contaminants detected above MTCA Method B Cleanup Levels. EPA has determined this Environmental Covenant, as an institutional control, is necessary to protect human health and the environment and to ensure the integrity of the Remedial Action. The proposed restrictive covenant will limit land use to industrial purposes, prohibit the use of groundwater, and prohibit activities that could create a new exposure pathway. Upon completion of the Remedial Action, EPA will determine that corrective action is complete with controls.

A copy of the administrative record supporting the Remedial Action is on file with EPA Region 10 or its successor agency and is available for public review. In order to make arrangements for such review, a person may contact the EPA Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

The undersigned, Western Tank Properties, Inc. is the fee owner of real property (the "Property") in the County of King, State of Washington, that is subject to this Environmental Covenant. The Property is legally described in Exhibit A of this Environmental Covenant and made a part hereof by reference.

With this Environmental Covenant, Western Tank Properties, Inc. as Grantor 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. Specific Restrictions and Requirements.

1. The Property shall be used only for traditional industrial use, as described in RCW 70.105D.020(17).

2. No groundwater may be taken for domestic, agricultural, industrial or any other use from the Property without prior written approval from Ecology.

3. a. The Property contains total arsenic, total vanadium, and benzo(a)pyrene contaminated soil across the majority of Property which is contained under existing structures. The Owner shall not alter, modify, or remove the existing structures 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.

b. Any activity on the Property 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 without prior written approval from Ecology, including but not limited to: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. General Restrictions and Requirements. 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. 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, is prohibited without prior written approval from Ecology. For example, construction of enclosed structures or modification of existing open structures to make them enclosed, must be mitigated by engineering measures to prevent vapor intrusion and must be authorized by Ecology.

Section 3. Conveyance of interest. 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. Such notice shall include the name and address of the proposed transferee. 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.

Section 4. Lease restrictions and notification. The Owner must restrict leases to uses and activities consistent with this Environmental Covenant. Further, the Owner must notify all purchasers, lessees and easement holders of the restrictions set forth in this Environmental Covenant, and make compliance with this Environmental Covenant a condition of any conveyance of title, easement, lease or other interest in the Property.

Section 5. Notification to Ecology. Owner shall notify and obtain written approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with the terms of this Environmental Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, this Environmental Covenant will be amended to reflect the change.

Section 6. Access. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Remedial Action. When practicable, Ecology or EPA will endeavor to provide Owner at least forty-eight (48) hours notice prior to entering the Property.

Section 7. Agency's Interest. Pursuant to RCW 64.70.030, the rights granted to Ecology by this Environmental Covenant are not interests in real property.

Section 8. Liberal Construction. This Environmental Covenant shall be construed in favor of effectuating the purpose of this Environmental Covenant. If any provision is found to be ambiguous, an interpretation consistent with the purposes of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

Section 9. Severability. 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.

Section 10. Recordation. Grantor shall record this instrument in the official records of King County, Washington and shall pay the costs associated with recording.

Section 11. Costs. Owner, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Environmental Covenant and any approval required by this Environmental Covenant.

Section 12. 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 UECA, RCW 64.70.090 and 64.70.100, and with the provisions of WAC 173-340-440. Ecology may approve inconsistent uses (as described in Section 6), and/or termination only after public notice and opportunity for comment. The Grantor reserves the right under WAC 173-340-440, if conditions at the Property requiring an

institutional control no longer exist, 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.

By signing this Environmental Covenant, as per UECA, RCW 64.70.100, Grantor agrees to waive all rights to sign amendments to, and termination of, this Environmental Covenant.

Section 13. Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to CERCLA, UECA, and MTCA. 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 RCW 64.70.110. 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.

Section 14. Signature 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 page to follow]

Grantor:

WESTERN TANK PROPERTIES, INC.,
a Washington corporation

By: [Signature]

Name: JOHN STEPHAN BANCHER JR.

Title: PRESIDENT

Dated: 11/17/17

STATE OF WASHINGTON
COUNTY OF KING

On this 17th day of November, 2017, I certify that [Signature] John Stephan Bancher Jr. personally appeared before me, acknowledged that he/she is the PRESIDENT 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.

[Signature]
Notary Public in and for the State of
Washington, residing at

Everett, WA
My appointment expires 10-03-18

Approved as to form:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]

Raman Iyer
Section Manager

Dated: 4/08/17

MEGAN A. COOPER
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
10-03-18

Exhibit A

LEGAL DESCRIPTION

PARCEL 1:

PARCEL B, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NUMBER 3024821, RECORDED UNDER KING COUNTY RECORDING NUMBER 20161110900001, RECORDS OF KING COUNTY, WASHINGTON

PARCEL 2:

THAT PORTION OF LOTS 1 AND 2, BLOCK 4, JUDKIN'S ADDITION TO SEATTLE, ACCORDING TO THE PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 45, IN KING COUNTY, WASHINGTON, LYING WESTERLY OF THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY;

TOGETHER WITH THAT PORTION OF VACATED SEATTLE STREET ADJOINING SAID LOT 1, AS ATTACHED THERETO BY OPERATION OF LAW.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 3:

LOTS 1 AND 2, BLOCK 219, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING SAID LOT 2, AS ATTACHED THERETO BY OPERATION OF LAW; AND

TOGETHER WITH THAT PORTION OF VACATED SEATTLE STREET ADJOINING SAID LOT 1, AS ATTACHED THERETO BY OPERATION OF LAW.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 4:

THAT PORTION OF THE SOUTH 30 FEET OF LOT 3, BLOCK 4, JUDKIN'S ADDITION TO SEATTLE, ACCORDING TO THE PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 45, IN KING COUNTY, WASHINGTON, LYING WESTERLY OF THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY; AND

THAT PORTION OF LOTS 3 AND 6, BLOCK 219, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, LYING SOUTH OF THE WESTERLY PRODUCTION OF THE EAST-WEST CENTERLINE OF SAID LOT 3, BLOCK 4, JUDKIN'S ADDITION TO SEATTLE;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING, AS ATTACHED THERETO BY OPERATION OF LAW.

PARCEL 5:

LOT 6, MCNAUGHT'S EXTENSION TO JUDKIN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 85, IN KING COUNTY, WASHINGTON, LYING WESTERLY OF THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY.

PARCEL 6:

LOTS 6 AND 7, BLOCK 9, MCNAUGHT'S THIRD ADDITION TO SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 91, IN KING COUNTY, WASHINGTON, LYING WESTERLY OF THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 7:

LOTS 1, 2 AND 3, BLOCK 220, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED SEATTLE STREET, AS VACATED BY CITY OF SEATTLE ORDINANCE NO. 86392, AS ATTACHED THERETO BY OPERATION OF LAW.

PARCEL 8:

ALL THAT PORTION OF BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 30.0 FOOT WIDE SHORELINE SPUR BRANCH LINE RIGHT OF WAY, NOW DISCONTINUED, BEING 15.0 FEET WIDE ON EACH SIDE OF SAID RAILROAD COMPANY'S SPUR TRACK CENTERLINE AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS LOTS 1, 2, 3 AND 4 OF BLOCK 4, JUDKIN'S ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 45, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 9:

ALL THAT PORTION OF BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 30.0 FOOT WIDE SHORELINE SPUR BRANCH LINE RIGHT OF WAY, NOW DISCONTINUED, BEING 15.0 FEET WIDE ON EACH SIDE OF SAID RAILROAD COMPANY'S SPUR TRACK CENTERLINE AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS LOT 6 OF MCNAUGHT'S EXTENSION TO JUDKIN'S ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 85, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 10:

ALL THAT PORTION OF BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 30.0 FOOT WIDE SHORELINE SPUR BRANCH LINE RIGHT OF WAY, NOW DISCONTINUED, BEING 15.0 FEET WIDE ON EACH SIDE OF SAID RAILROAD COMPANY'S SPUR TRACK CENTERLINE AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS LOT 1, BLOCK 4, MCNAUGHT'S 3RD ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 91, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.

PARCEL 11:

ALL THAT PORTION OF BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 30.0 FOOT WIDE SHORELINE SPUR BRANCH LINE RIGHT OF WAY, NOW DISCONTINUED, BEING 15.0 FEET WIDE ON EACH SIDE OF SAID RAILROAD COMPANY'S SPUR TRACK CENTERLINE AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS LOT 6 BLOCK 9, ALL IN MCNAUGHT'S 3RD ADDITION TO THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 91, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THOSE PORTIONS, IF ANY, OF VACATED SOUTH MASSACHUSETTS STREET, SOUTH SEATTLE STREET AND 9TH AVENUE, WHICH ATTACHED BY OPERATION OF LAW PURSUANT TO CITY OF SEATTLE ORDINANCE 120053.