



After Recording Return  
Original Signed Covenant to:



Kim Wigfield  
Waste 2 Resources Program  
Department of Ecology  
300 Desmond Drive  
Lacey, WA 98504

### Environmental Covenant

**Grantor:** Mead SPL Site Custodial Trust  
**Grantee:** State of Washington, Department of Ecology  
**Brief Legal Description:** Portion of the N 1/2 of Section 16, Township 26 North, Range 43 East, W.M., Spokane County, Washington  
**Tax Parcel Nos.:** 36165.9013  
**Cross Reference:** None

#### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as CDC Mead LLC (Facility Site ID #3). The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA and under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.* This Covenant is required because residual contamination remains on the Property after completion of certain remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Fluoride, Cyanide
Groundwater	Fluoride, Cyanide

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology.
- e. This Covenant grants the State of Washington, Department of Ecology ("Ecology") certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant

under UECA, Ecology has an interest in real property. However, this is not an ownership interest which equates to liability under MTCA or CERCLA. The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

## COVENANT

Mead SPL Site Custodial Trust (“Trust”), as Grantor and fee simple owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

### Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

- a. **Land use.** The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public

or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

**b. Containment of soil/waste materials.** The remedial action for soil on the Property is based on containing contaminated soil and waste materials under a cap consisting of a foundation layer, geosynthetic clay liner, geomembrane liner, drainage layer, geotextile and an armor layer of rock riprap and located as illustrated in Exhibit B. The primary purpose of this cap is to minimize movement of contaminants through the soil into the groundwater and minimize movement of contaminants from the groundwater beneath the Property to downgradient groundwater and ultimately the Little Spokane River. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report any damage to the cap to Ecology, and shall propose corrective action to repair the damage. After Ecology approves the work, Grantor will repair the damage and submit a report documenting this work to Ecology in accordance with the timelines in the Scope of Work (July 28, 2004) ("Scope of Work") attached to the Consent Decree Relating to Mead Aluminum Reduction Works filed in *In re Kaiser Aluminum Corporation*, Case No. 02-10429 (JKF) (Bankr. D. Del.) ("Consent Decree").

The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the cap and report the condition of the cap, and any changes to the cap that would impair its performance, to Ecology within 45 days of the inspection. If the Grantor detects any changes in the cap that would impair its performance, it will propose corrective action to Ecology. After Ecology approves the work, Grantor will undertake the corrective action in accordance with the timelines in the Scope of Work attached to the Consent Decree Relating to Mead Aluminum Reduction Works filed in *In re Kaiser Aluminum Corporation*, Case No. 02-10429 (JKF) (Bankr. D. Del.) ("Consent Decree").

**c. Stormwater facilities.** To minimize the potential for mobilization of contaminants remaining in the soil/waste materials/groundwater on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property illustrated in Exhibit B. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction. However, nothing in this Covenant prohibits construction of any created wetlands or ponds that are needed to implement a remedial action selected by Ecology.

**d. Groundwater use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

**e. Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-

eight (48) hours of the discovery of any damage to any monitoring device. The Grantor shall promptly repair the damage after Ecology approves the proposed repair, and shall submit a report to Ecology documenting the repair within forty-five (45) days of completing the repairs.

**Section 3. Access.**

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:

- i. Obtain approval from Ecology and the Environmental Protection Agency, as provided in Section 2.8 of the Custodial Trust Agreement for the Mead SPL Site Custodial Trust.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON \_\_\_\_\_ AND RECORDED WITH THE SPOKANE COUNTY AUDITOR UNDER RECORDING NUMBER \_\_\_\_\_. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

**d. Notification procedure.** Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

<p>Mr. Dan Silver, Custodial Trustee          606 Columbia Street NW          Suite 212          Olympia, WA 98501          360-754-9343  <a href="mailto:danieljsilver@msn.com">danieljsilver@msn.com</a></p>	<p>Mr. James DeMay          Industrial Section Manager          Washington State Department of Ecology          Waste 2 Resources Program          P.O. Box 47600          Olympia, WA 98504 – 7600          (360) 407-6000  <a href="mailto:Waste2ResourcesProgramHQ@ecy.wa.gov">Waste2ResourcesProgramHQ@ecy.wa.gov</a></p>
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**Section 5. Modification or Termination.**

**a.** Grantor must provide written notice and obtain 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 this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the Property:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

**b.** If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

**c.** By signing this Covenant, per RCW 64.70.100, the original signatories to this Covenant, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

**Section 6. Enforcement and Construction.**

**a.** This Covenant is being freely and voluntarily granted by the Grantor.

**b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.


- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

[SIGNATURE PAGE FOLLOWS]

The undersigned Grantor warrants that the Trust holds the title to the Property and that he has authority to execute this Covenant.

EXECUTED this 14<sup>th</sup> day of February, 2018.

**MEAD SPL SITE CUSTODIAL TRUST**

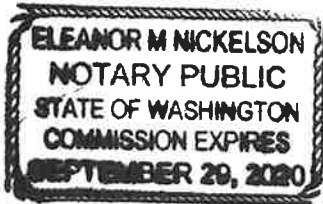
By   
Name: Daniel J. Silver, solely in his capacity as Trustee  
and not individually  
Title: Trustee of the Mead SPL Site Custodial Trust

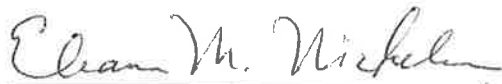
**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF WASHINGTON }  
COUNTY OF THURSTON } ss.

On this day personally appeared before me Daniel J. Silver, solely in his capacity as Trustee and not individually, to me known to be the Trustee of the Mead SPL Site Custodial Trust, the corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 14<sup>th</sup> day of February, 2018.



  
Printed Name Eleanor M. Nickelson  
NOTARY PUBLIC in and for the State of Washington,  
residing at Lacey, WA  
My Commission Expires 9/29/2020





## Exhibit A

### LEGAL DESCRIPTION

That portion of the N1/2 of Section 16, Township 26 North, Range 43 East, W.M., Spokane County, Washington, described as follows:

Beginning at the northwest corner of the NE1/4 of said Section 16; thence S89°43'12"E, along the north line of said NE1/4, 1434.06 feet; thence S00°16'48"W 282.18 feet; thence N89°33'44"W 113.58 feet; thence S77°05'46"W 36.12 feet; thence S52°17'25"W 39.40 feet; thence S14°29'52"W 38.03 feet; thence S01°12'06"W 94.75 feet; thence S07°38'50"W 51.71 feet; thence S15°55'21"W 17.49 feet; thence S38°09'37"W 17.43 feet; thence S50°42'00"W 20.27 feet; thence S59°31'40"W 20.34 feet; thence N88°42'33"W 726.66 feet; thence N01°17'27"E 11.00 feet; thence N88°42'33"W 15.00 feet; thence S01°17'27"W 11.00 feet; thence N88°42'33"W 94.37 feet; thence N87°44'02"W 47.70 feet; thence S82°38'28"W 36.46 feet; thence N05°56'23"W 17.41 feet; thence N52°01'54"W 93.74 feet; thence N16°26'32"W 92.27 feet; thence S88°30'33"E 16.98 feet; thence N01°56'24"W 184.84 feet; thence S83°47'26"W 52.25 feet; thence N11°03'37"W 52.72 feet; thence S81°14'41"W 87.18 feet; thence S18°34'20"W 131.33 feet; thence S00°00'00"W 87.95 feet; thence S88°30'33"E 158.37 feet; thence S16°26'32"E 103.88 feet; thence S45°16'16"E 96.10 feet; thence S82°40'40"W 172.41 feet; thence S54°17'07"W 100.89 feet; thence N88°56'22"W 632.94 feet; thence S83°26'27"W 48.69 feet; thence S88°47'23"W 68.36 feet; thence N88°34'23"W 743.22 feet; thence N03°09'30"W 463.21 feet; thence S89°16'07"E 215.19 feet; thence N38°52'22"E 194.44 feet to a point on the north line of the NW1/4 of said Section 16; thence S89°33'04"E, along said north line, 1193.06 feet to the Point of Beginning.

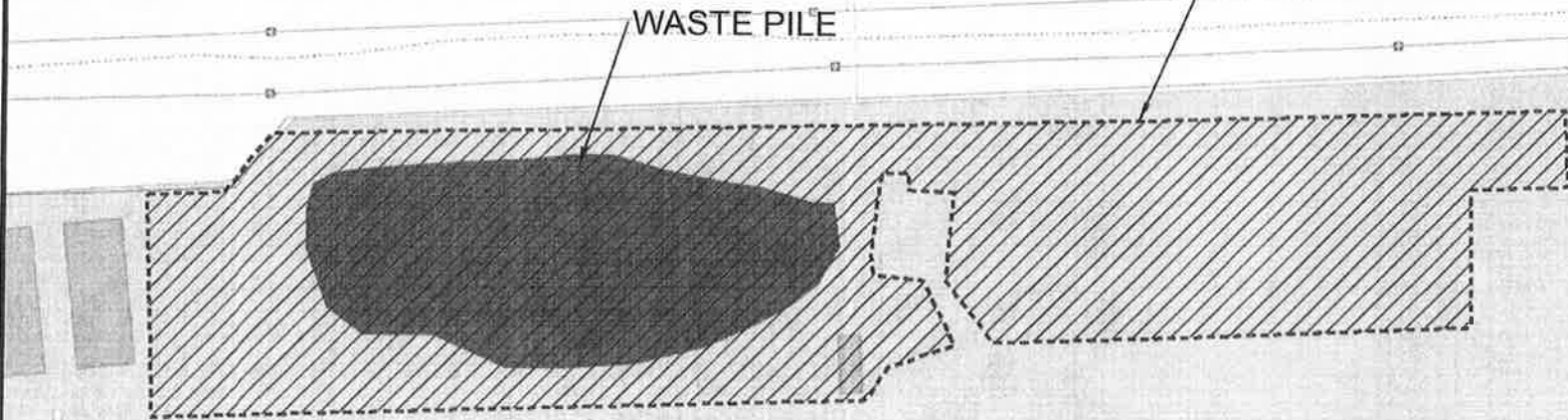
**Exhibit B**  
**PROPERTY MAP**

400 200 0 400 Feet



MEAD CUSTODIAL TRUST  
PROPERTY 36165.9013

WASTE PILE



Kaiser Aluminum  
Mead  
Works

**LEGEND**

-  PARCEL C MEAD CUSTODIAL TRUST PROPERTY
-  WASTE PILE

**SITE LOCATION MAP**