

After Recording Return to:

FILED



✓ Georgia Environmental Protection Division
✓ Response and Remediation Program
2 Martin Luther King, Jr. Drive, SE
Suite 1462 East
Atlanta, Georgia 30334

12 JUN 27 PM 1:39
SUPERIOR COURT
DOUGLAS COUNTY, GA
RHONDA G PAYNE CLERK

Doc ID: 003984900010 Type: GLR
Filed: 06/27/2012 at 01:39:00 PM
Fee Amt: \$32.00 Page 1 of 10
Douglas County Georgia
RHONDA G PAYNE Clerk Superior Court
BK 3029 PG 695-704

Environmental Covenant

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, OCGA § 44-16-1, *et seq.* This Environmental Covenant subjects the Property identified below to the activity and/or use limitations specified in this document. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded in accordance with OCGA § 44-16-8(a).

Fee Owner of Property/Grantor: The Estate of Harriett Foster
Lauren F. Cleaton, Executor
2704 Bonaire Terrace
Marietta, Georgia 30066-4769

Grantee/Holder: Chemical Waste Management Inc. (CWM) ✓
Director of Closed Sites
1000 Parkwood Circle
Suite 700
Atlanta, GA 30339

Grantee/Entity with express power to enforce: State of Georgia
Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Drive, SE
Suite 1152 East Tower
Atlanta, GA 30334

See BK 524, Pg 352 ✓
See BK 506, Pg 336

Parties with interest in the Property: None.

Property:

The property subject to this Environmental Covenant is 10.82 acres (hereinafter "the Property"), located on 7840 Basket Creek Road in Douglasville, Douglas County, Georgia. The Property is comprised of two tracts of land combined to form a single tract and is located in Land Lot 48 of the 3rd District, 5th Section of Douglas County, Georgia. The rectangular-like area is located east of Basket Creek Road approximately 0.4 miles from the intersection of Capps Ferry Road and Basket Creek Road and is bordered to the north, east and south by undeveloped land. A complete legal description of the area is attached as Exhibit A and a map of the area is attached as Exhibit B.

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Tax Parcel Number(s):

00480350027 of Douglas County, Georgia.

Name and Location of Administrative Records:

The corrective action at the Property that is the subject of this Environmental Covenant is described in the following document[s]:

- United States Environmental Protection Agency ("USEPA") Administrative Order No. 91-23-C dated April 11, 1991.
- Removal Action Plan dated May 16, 1991.
- Project Closeout Report dated August 3, 1992.
- USEPA Follow-up Evaluation dated May 1994.
- Petitioned Public Health Assessment dated May 28, 1995.
- Agency for Toxic Substances and Disease Registry Assessment ("ATSDR") dated 1996.

These documents are available at the following locations:

Georgia Environmental Protection Division
 Response and Remediation Program
 2 MLK Jr. Drive, SE, Suite 1462 East Tower
 Atlanta, GA 30334
 M-F 8:00 AM to 4:30 PM excluding state holidays

Description of Contamination and Corrective Action:

This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

This Declaration of Covenant is made pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.* by the Estate of Harriett Foster its heirs successors and assigns, Chemical Waste Management, Inc. (CWM) as Holder, and the State of Georgia, Department of Natural Resources, Environmental Protection Division (hereinafter "EPD"), its successors and assigns. This Environmental Covenant is required because a release of Arsenic and Aroclor-1248 which are "regulated substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder (hereinafter "HSRA" and "Rules", respectively). Therefore, the Corrective Action consists of the following institutional controls to protect human health and the environment: (1) the installation of a fence around the Property to restrict access to the Property by the general public, (2) annual inspection of the fence following its installation by visual survey around the perimeter of the fenced area. Damage to, or breaches in, the fence will be noted and promptly repaired by a qualified contractor, as needed. An annual fence inspection/repair report will be prepared and submitted to GAEPD within thirty (30) days of each inspection; and (3) the Property will be inspected to determine that the soil in the drum disposal area is stable to ensure that harmful runoff does not occur.

Grantor, the Estate of Harriett Foster, hereby binds Grantor, its heirs, successors and assigns to the activity and use restriction(s) for the Property identified herein and grants such other rights under this Environmental Covenant in favor of CWM as Holder, and EPD. EPD shall have full right of enforcement of the rights conveyed under this Environmental Covenant pursuant to HSR, O.C.G.A. § 12-8-90 *et seq.*, and the rules promulgated thereunder. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict EPD from exercising any authority under applicable law.

The Estate of Harriett Foster 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, pursuant to O.C.G.A. § 44-16-5(a); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to O.C.G.A. § 44-16-9; 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"). Should a transfer or sale of the Property occur before such time as this Environmental Covenant has been amended or revoked then said Environmental Covenant shall be binding on the transferee(s) or purchaser(s).

The Environmental Covenant shall inure to the benefit of CWM as Holder, EPD, the Estate of Harriett Foster and their respective successors and assigns and shall be enforceable by the Director or his agents or assigns, CWM as Holder or its successors and assigns, the Estate of Harriett Foster or its successors and assigns, and other party(ies) as provided for in O.C.G.A. § 44-16-11 in a court of competent jurisdiction.

Activity and/or Use Limitation(s)

1. **Registry.** Pursuant to O.C.G.A. § 44-16-12, this Environmental Covenant and any amendment or termination thereof, may be contained in EPD's registry for environmental covenants.
2. **Notice.** The Owner of the Property must give thirty (30) day advance written notice to EPD 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 Corrective Action. The Owner of the Property must also give thirty (30) day advance written notice to EPD of the Owner's intent to change the use of the Property, apply for building permit(s), or propose any site work that would affect the Property.
3. **Notice of Limitation in Future Conveyances.** Each instrument hereafter conveying an interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of the Environmental Covenant.

4. Periodic Reporting. Annually, by no later than April 30 following the effective date of this Environmental Covenant, the Owner and/or Holder shall submit to EPD an Annual Report as specified in the February 28, 2012 Letter to Jim Ussery from Lee DeHihns, III, Esq. re: Basket Creek Drum Disposal Site, Douglasville, Douglas County, Georgia, HIS Site No. 10693 including, but not limited to: maintenance and inspection activities, certification of non-residential use of the Property, and documentation stating whether or not the activity and use limitations in this Environmental Covenant are being abided by. The Holder will be responsible for maintaining and inspecting the fenced area.
5. Activity and Use Limitation(s). The Property shall be used only for non-residential uses, as defined in Section 391-3-19-.02 of the Rules and defined in and allowed under the Douglas County zoning regulations as of the date of this Environmental Covenant. Any residential use on the Property shall be prohibited. Any activity on the Property that may result in the release or exposure to the regulated substances that were contained as part of the Corrective Action, or create a new exposure pathway, is prohibited.
6. Groundwater Limitation. The use or extraction of groundwater beneath the Property for drinking water or for any other non-remedial purposes shall be prohibited.
7. Permanent Markers. Permanent markers on each side of the Property shall be installed and maintained that delineate the restricted area as specified in Section 391-3-19-.07(10) of the Rules. Disturbance or removal of such markers is prohibited.
8. Right of Access. In addition to any rights already possessed by EPD and/or CWM as Holder, the Owner shall allow authorized representatives of EPD and/or CWM as Holder the right to enter the Property at reasonable times for the purpose of evaluating the Corrective Action; to take samples, to inspect the Corrective Action conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Corrective Action.
9. Recording of Environmental Covenant and Proof of Notification. Within thirty (30) days after the date of the Director's signature, the Owner shall file this Environmental Covenant with the Recorders of Deeds for each County in which the Property is located, and send a file stamped copy of this Environmental Covenant to EPD within thirty (30) days of recording. Within that time period, the Owner shall also send a file-stamped copy to each of the following: (1) CWM as Holder, (2) each person holding a recorded interest in the Property subject to the covenant, (3) each person in possession of the real property subject to the covenant, (4) each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located, and (5) each owner in fee simple whose property abuts the property subject to the Environmental Covenant.
10. Termination or Modification. The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. § 44-5-60, unless and until the Director determines that the Property is in compliance with the Type 1, 2, 3, or 4 Risk Reduction Standards, as defined in Georgia Rules of Hazardous Site Response (Rules) Section 391-3-19-.07 and removes the Property from the Hazardous Site Inventory, whereupon the Environmental Covenant may be amended or revoked in accordance with Section 391-3-19-08(7) of the Rules and O.C.G.A. § 44-16-1 *et seq.*
11. 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.

12. No Property Interest Created in EPD. This Environmental Covenant does not in any way create any interest by EPD in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by EPD in the Property in accordance with O.C.G.A. § 44-16-3(b).

Representations and Warranties.

Grantor hereby represents and warrants to the other signatories hereto:

- a) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- b) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
- c) That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- d) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- e) That the Grantor has served each of the people or entities referenced in Activity 10 above with an identical copy of this Environmental Covenant in accordance with O.C.G.A. § 44-16-4(d).
- f) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property; and
- g) That this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

Notices.

Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

Georgia Environmental Protection Division
Branch Chief
Land Protection Branch
2 Martin Luther King Jr. Drive SE
Suite 1154 East Tower
Atlanta, GA 30334

The Estate of Harriett Foster
Lauren F. Cleaton, Executor
2704 Bonaire Terrace
Marietta, Georgia 30066-4769

Steve Morgan
VP & Assistant General Counsel, Regulatory/HSE Waste Management
1001 Fannin Street
Suite 4000
Houston, Texas 77002

(continued next page)

Grantor has caused this Environmental Covenant to be executed pursuant to The Georgia Uniform Environmental Covenants Act, on the 5th day of June, 2012.

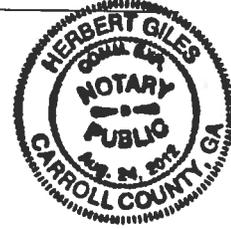
THE ESTATE OF HARRIETT FOSTER

Lauren F. Cleaton
Lauren F. Cleaton
Executor, The Estate of Harriett Foster

The signature of Lauren F. Cleaton is subscribed and sworn to by me this 5 day of June, 2012.

Herbert Giles
Notary Public

Dated: 6/5/2012



CHEMICAL WASTE MANAGEMENT INC.

March Smith
March Smith
Group Director
Closed Sites Group

Dated: 6-4-12

**STATE OF GEORGIA
ENVIRONMENTAL PROTECTION DIVISION**

Jud Turner
Jud Turner
Director, Georgia Environmental Protection Division

Dated: 6/22/12

Witnessed by Trudy Caraballo

REPRESENTATIVE ACKNOWLEDGEMENT

Lauren F. Cleaton, Executor *L.F.C.*
The Estate of Harriett Foster

STATE OF GEORGIA _____
COUNTY OF DOUGLAS _____

On this 5 day of June, 2012, I certify that Lauren F. Cleaton personally appeared before me, acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument, and acknowledged it as the Executor of the Estate of Harriett Foster to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Herbert Giles

Notary Public in and for the State of
Georgia, residing at Carroll County
My appointment expires ~~My Comm Expires~~ August 24, 2012



Exhibit A
Legal Description

This property is comprised of two tracts combined to form a single tract as more particularly described in deeds located as follows:

- (1) 1.28 acres conveyed from Michael A. Wallace and Deanna L. Wallace to Harriett Foster by Warranty Deed recorded August 22, 1986 at Deed Book 524, Page 352.

All that tract or parcel of land lying and being located in Land Lot 48 of the 3rd land District and 5th Section of Douglas County, Georgia, containing 1 acre as shown on survey for Michael A. Wallace as surveyed by Kenneth L. Nutt R.L.S. #2104 dated February 28, 1985, said plat being incorporated herein and made a part hereof for the reference.

- (2) 9.54 acres conveyed from Ethel O. Wallace to Harriet Virginia Foster by Warranty Deed recorded April 9, 1986 at Deed Book 506, Page 336.

All that tract or parcel of land lying and being in Land Lot 48 of the 3rd District, 5th Section, Douglas County, Georgia, being more particularly described as follows:

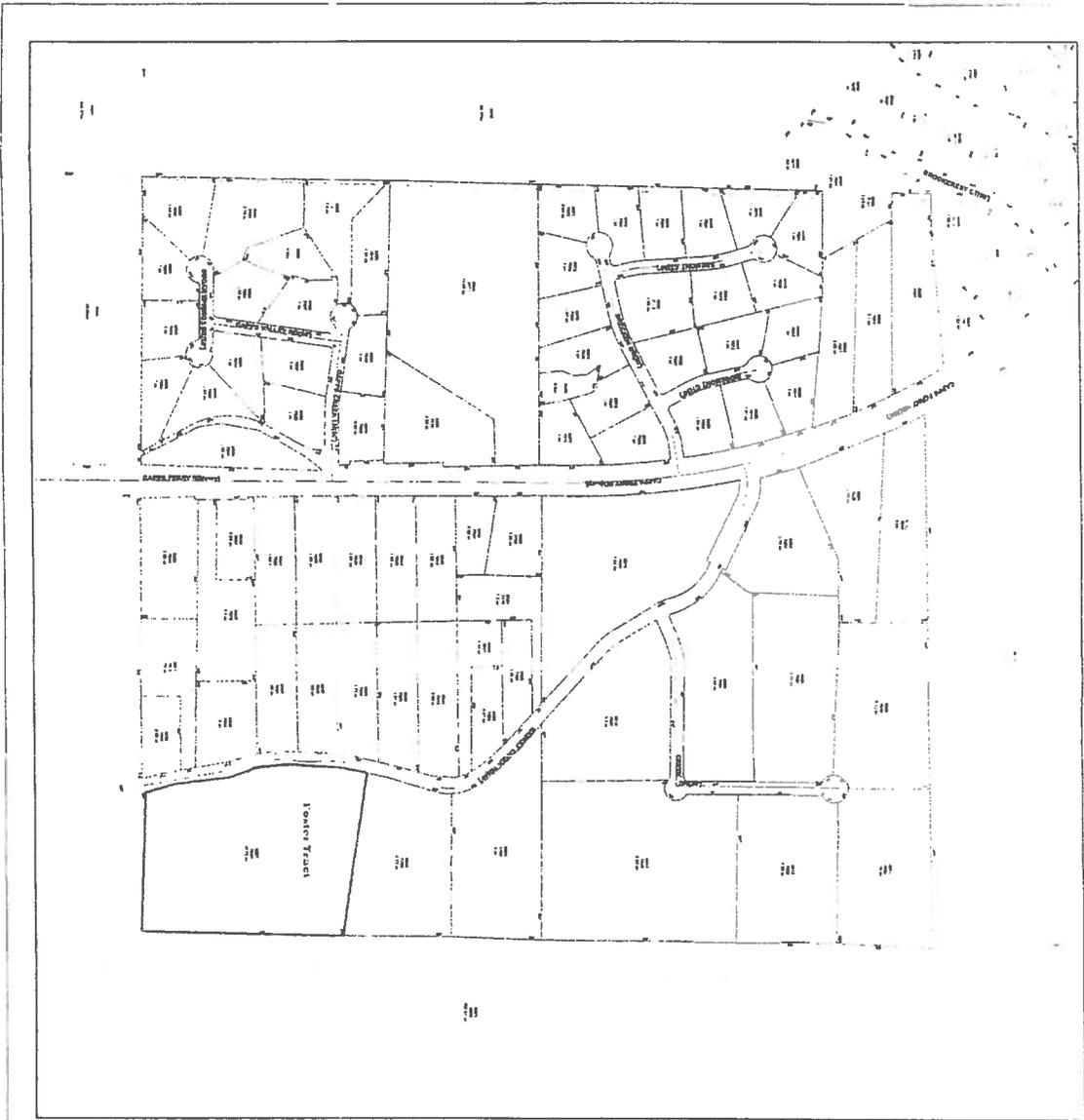
Beginning at the southeast corner of said Land Lot 48, and run thence north along the original east land lot line a distance of 750 feet to an iron pin corner; running thence west a distance of 574 feet to an iron pin on the eastern side of the right of way of Basket Creek Road, running thence southwestwardly, southerly and southeasterly along the eastern side of the right of way of Basket Creek Road following the curvature thereof a distance of 770 feet, more or less, to the point of intersection of the eastern side of the right of way of Basket Creek Road and the original south land lot line of Land Lot 48; running thence east along said original south land lot line a distance of 520 feet to the point of beginning.

Exhibit B
Map of Area

BK 3029 P60703



LEGA102/3373740v1

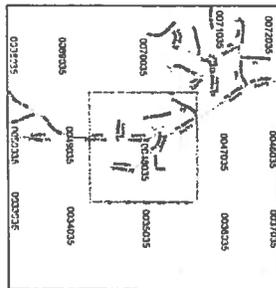


LANDLOT MAP
0048035

Legend

- LANDLOT
- PARCELS IN LANDLOT
- PARCELS
- COUNTY BOUNDARY
- INCORPORATED
- STREET
- INTERSTATE
- STATELUS
- LOCAL
- RAILROAD

Parcel #
 Street #
 Acres (> 20)



Douglas County, Georgia, hereby certifies that the information and data shown on this map were obtained from the State of Georgia and other sources and that the information is true and correct to the best of our knowledge and belief. This information is provided for informational purposes only and does not constitute a warranty of any kind. The user of this information assumes all liability for any use of the information. Printed on 06/20/11. PWD Date: June 20, 2011

RECORDED

JUL 10 2012

Rhonda G. Potts
 Clerk Superior Court
 Douglas County, GA

