

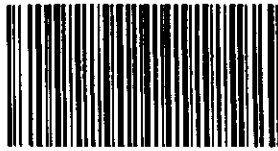
Recording Requested By:

Wilbur-Ellis Company

When Recorded, Mail To:

Roger W. Briggs, Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

DOCUMENT: **2004133664**



Titles: 1/ Pages: 9

Fees.....
Taxes....
Other....
AMT PAID _____

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

20750 SPENCE ROAD, SALINAS, CA 93908

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 16th day of December, 2004 by Wilbur-Ellis Company ("Covenantor") who is the Owner of record of that certain property situated at 20750 Spence Road (Monterey County Assessors Parcel No. (APN: 137-021-031-000) County of Monterey State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the Central Coast Region (the "Board"), with reference to the following facts:

A. The Burdened Property contains hazardous materials at concentrations that exceed the 2002 Preliminary Remediation Goals (PRG's) for unrestricted land use. The EPA established these "risk based tools for evaluating and cleaning up contaminated sites" The Board utilized the EPA's PRG for industrial land use as the remediation goal for Toxaphene found in the soil on the Burdened Property, provided future use of the property is limited to industrial, light industrial, commercial or office space land use.

B. Contamination of the Burdened Property. The Burdened Property was used as an agricultural chemical dealership from 1976 to 2000. The Covenantor operated an agricultural chemical dealership at this location from 1984 until 2000. As a result of the land use, and historical handling practices soil at the Burdened Property contains various agricultural chemicals, including Toxaphene, some of which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. The nature and extent of the agricultural chemicals in the soil has been defined, and a Board-approved Corrective Action Plan has been implemented. The Corrective Action Plan consisted of excavating the Toxaphene affected soil and disposing of it offsite, and collecting verification samples from the excavation areas to show the remediation goal (PRG for Toxaphene in industrial soil) has been met, and filing this Covenant and Environmental Restriction with the County of Monterey to ensure the future use of

the property is limited to industrial, light industrial, commercial or office space land use. The details of the Corrective Action have been documented in the final Corrective Action Implementation Report (Geomatrix, June 2004), which was approved by the Board.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via physical contact with the soil or wind dispersal of the soil. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls referenced herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for industrial land use and adjacent property is used for industrial and agricultural land uses.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted. The Covenantor is unaware of the presence of hazardous materials on the Property other than the hazardous materials that have been disclosed to the Board in the Corrective Action Implementation Report.

F. Notice: Covenantor desires to provide notice of certain matters respecting the Burdened Property and to impose certain covenants, conditions and environmental restrictions on the Burdened Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be

adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the Central Coast Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial, light industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;

- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. Owners or Occupants of the Property or any portion thereof that conduct any excavation work including but not limited to grading, excavation, trenching or backfilling on the Property, shall manage any contaminated soils brought to the surface by these activities in accordance with all applicable provisions of local, state and federal law;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Closure Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any remedial measures taken on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.
- h. The Burdened Property is served by a private water system (El Camino Water Company, Incorporated). No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.
- i. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument, which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of Dec 14, 2004 and recorded on Dec. 16, 2004 in the

Official Records of Monterey County, California, as Document No. 0004133664, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

Robert L. Schmalz
Vice President
Wilbur-Ellis Company
345 California Street – 27th Floor
San Francisco, CA 94104-2621

If To: "Board"

Regional Water Quality Control Board
Central Coast Region
Attention: Executive Officer
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

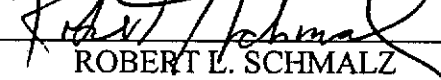
5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of _____ Monterey _____ within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: WILBUR-ELLIS COMPANY

By: 
ROBERT L. SCHMALZ

Title: Vice President

Date: December 13, 2004

Agency: State of California
Regional Water Quality Board,
Central Coast Region

By: 

Title: Executive Officer

Date: 12-16-04

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

Said land is situated in the County of Monterey, State of California, and is described as follows:

PARCEL 1:

Parcel 2 in the County of Monterey, State of California, according to the map filed in Volume 10, Page 171, of Parcel Maps, in the office of the County Recorder of said County.

PARCEL 2:

A non-exclusive right of way for road and utility purposes and drainage over that "60^a Ft. Road and Utility R/W", shown on the map filed in Volume 10, Page 171 of Parcel Maps in the office of the County Recorder, Monterey County, California.

EXCEPT THAT PORTION lying within Parcel 1 above.

PARCEL 3:

A non-exclusive right of way for drainage purposes over the following:

A strip of land 20 feet wide, the center line of which begins at the interior angle corner of the Northerly line of PARCEL "B", as said parcel is shown on the Parcel Map recorded February 28, 1975 in Volume 8 of Parcel Maps, at page 62, Monterey County Records, and extends N. 66° 57' 35" W., along a Northeasterly line of said PARCEL "B", 621.71 feet to a point.

PARCEL 4:

A non-exclusive right of way 20 feet wide for drainage purposes along the Southeasterly line of PARCEL "D", extending from the most Westerly corner of PARCEL "C", Southwesterly 490.90 feet, to the most Southerly corner of said PARCEL "D", as said parcel and right of way are shown on the Parcel Map recorded February 28, 1975 in Volume 8 of Parcel Maps, at page 62, Monterey County Records.

END OF DOCUMENT

State of California)
) ss.
County of San Francisco)

On this 13th day of December, 2004, before me, JAYE G. STEDMAN, Notary Public in and for the State of California, County of San Francisco, personally appeared **ROBERT L. SCHMALZ**, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Jaye G. Stedman
NOTARY PUBLIC IN AND FOR
THE STATE OF CALIFORNIA
My Commission expires: February 8, 2008
My Commission No.: 1468987

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

See Attached

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)
COUNTY OF San Luis Obispo)

On Dec 16, 2004 before me, the undersigned a Notary Public in and for said state, personally appeared [~~EXECUTIVE OFFICER~~], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.
Roder W. Briggs

WITNESS my hand and official seal.

Dana Marie Morris

Notary Public in and for said
County and State

