

200900002454
Filed for Record in
COSHOCTON COUNTY, OHIO
DAVID H DILLY
06-30-2009 At 10:23 am.
AGREE/MISC 108.00
OR Book 496 Page 320 - 331

OHIO E.P.A.

JUN 26 2009

Environmental Covenant
McWane, Inc. Property
Page 1

200900002454
VORYS SATER SEYMOUR & PEASE LLP
PO BOX 1008
COLUMBUS OH 43216-1008

ENTERED DIRECTOR'S JOURNAL

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by McWane, Inc. (d.b.a. Clow Water Systems Company), having offices at 2266 South Sixth Street, Coshocton, Ohio 43812 ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting its property to the activity and use limitations set forth herein.

Whereas, pursuant to Order number 3 of Director's Final Findings and Orders dated December 6, 2004 ("DFFO"), Owner is required to implement the selected corrective measure of ground water pump and discharge in accordance with Appendix C of the Corrective Measures Plan Supplement dated September 29, 2004 (the "CMPS"); and

Whereas, section 4.1.3 of the CMPS provides for implementation of institutional controls for groundwater use restrictions and includes in Appendix B of the CMPS proposed use restriction language stating "the ground water underlying the Subject Property or any portion of the Subject Property shall not be extracted for any potable use"; and

Whereas, the Subject Property is the property currently owned by Owner and consists of real property situated in Coshocton County, Ohio, and legally described in Exhibit A hereto (the "Subject Property"); and

Whereas, the CMPS prohibits the ground water underlying the Subject Property or any portion of the Subject Property from being extracted for potable use; and

Now therefore, Owner and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns the Subject Property, which is approximately 85 acres of real property located in Coshocton County, Ohio, and is more particularly described in Exhibit A attached hereto and hereby incorporated herein by reference.

3. Owner. McWane, Inc. (d.b.a. Clow Water Systems Company), having offices at 2266 South Sixth Street, Coshocton, Ohio 43812 ("Owner"), is the owner of

WHEN RECORDED, RETURN TO: Jane B. Gaines, Paralegal,
VORYS, SATER, SEYMOUR AND PEASE LLP, 52 East Gay
Street, P.O. Box 1008, Columbus, OH 43216-1008
(ENVELOPE PROVIDED)

Environmental Covenant
McWane, Inc. Property
Page 2

the Subject Property.

4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant. In the event of a future transfer of the Subject Property such that the Owner would no longer own the Subject Property, McWane, Inc. (d.b.a. Clow Water Systems Company) shall remain a Holder.

5. Activity and Use Limitations. As part of the CMPS and DFFO, Owner hereby imposes and agrees to comply with the following activity and use limitations:

A. The ground water underlying the Subject Property or any portion of the Subject Property shall not be extracted for any potable use.

B. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Subject Property, identified in paragraph 10 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Subject Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and to Holders, the right of access to the Subject Property for implementation or enforcement of this Environmental Covenant.

Environmental Covenant
 McWane, Inc. Property
 Page 3

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Subject Property or any portion of the Subject Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

A. The ground water underlying the Subject Property or any portion of the Subject Property shall not be extracted for any potable use.

B. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Subject Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Subject Property so long as Owner owns same. Thereafter, Transferee must provide such notice. Notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

A. that the Owner is the sole owner of the Subject Property;

B. that the Owner holds fee simple title to the Subject Property which is

subject to the encumbrances listed and described in Exhibit B attached hereto and incorporated by reference herein;

- C. that the Owner 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;
- D. that the Owners has identified all other parties, identified in Exhibit B, described above, that own an interest in or hold an encumbrance on the Subject Property and has made reasonable efforts to notify those parties most likely to be affected by the Owner's intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owners is a party or by which Owners may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owners or a Transferee, the Holder, and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owners or Transferee and the Holder of the Subject Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owners or Transferee shall file such instrument for recording with the Coshocton County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

13. 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.

14. Governing Law. This Environmental Covenant shall be governed by and

Environmental Covenant
McWane, Inc. Property
Page 5

interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owners shall file this Environmental Covenant for recording, in the same manner as a deed to the Subject Property, with the Coshocton County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Subject Property with the Coshocton County Recorder.

17. Distribution of Environmental Covenant. The Owners shall distribute copies of the recorded Environmental Covenant to: Ohio EPA; any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Subject Property and most likely to be affected Environmental Covenant; and any other person designated by Ohio EPA.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049

And

Ohio Environmental Protection Agency
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: DHWM Manager

The undersigned representative of Owner represents and certifies that he/she is authorized to execute this Environmental Covenant.

Environmental Covenant
McWane, Inc. Property
Page 6

IT IS SO AGREED:

MCWANE, INC., D.B.A. CLOW WATER SYSTEMS COMPANY

[Handwritten Signature]

Signature of Owner and Holder

JEFF OTTERSTEDT, VICE-PRESIDENT/GEN. MGR
Printed Name and Title

10-24-09

Date

State of Ohio)

County of Coshocton)

ss:

Before me, a notary public, in and for said county and state, personally appeared JEFF OTTERSTEDT of McWane, Inc. dba Clow Water Systems Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 24th day of JUNE, 2009.

Helene Alverson
Notary Public



HELENE ALVERSON
Notary Public, State of Ohio
My Commission Expires 6/21/2011

Environmental Covenant
McWane, Inc. Property
Page 7

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski

Chris Korleski, Director

6/26/09
Date

State of Ohio)
)
County of Franklin) ss:

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26th day of JUNE, 2009.



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014

This instrument prepared by:

Kristin L. Watt
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008

EXHIBIT "A"

Situated in the State of Ohio, County of Coshocton and in the Township of Tuscarawas and being the following parcels of real property:

PARCEL NUMBER	DESCRIPTION
035-00000314-00	Lot 725, Board of Trade 5 th Addition
035-00000315-00	Lot 726, Board of Trade 5 th Addition
035-00000316-00	Lot 724, Board of Trade 5 th Addition
035-00000047-00	Tuscarawas Township, 4 th Quarter, 6.750 +/- acres
035-00000048-00	Tuscarawas Township 4 th Quarter, 2.02 +/- acres
035-00000049-00	Tuscarawas Township 4 th Quarter, 5.920 +/- acres
035-00000050-00	Tuscarawas Township 4 th Quarter, 4.264 +/- acres
035-00000051-00	Tuscarawas Township, 4 th Quarter, 16.29 +/- acres
035-00000052-00	Tuscarawas Township 4 th Quarter, 20.13 +/- acres
035-00000053-00	Tuscarawas Township 4 th Quarter, 4.630 +/- acres
035-00000054-00	Tuscarawas Township 4 th Quarter, 2.20 +/- acres
035-00000055-00	Tuscarawas Township 4 th Quarter, 1.080 +/- acres
035-00001018-00	Tuscarawas Township 4 th Quarter, Vacated Alley
035-00000303-00	Lot 591, Board of Trade 5 th Addition
035-00000305-00	Lot 592, Board of Trade 5 th Addition
035-00000306-00	Lot 593, Board of Trade 5 th Addition
035-00000307-00	Lot 594, Board of Trade 5 th Addition
035-00000308-00	Lot 595, Board of Trade 5 th Addition
035-00000310-00	Lot 597, Board of Trade 5 th Addition
035-00000312-00	Lot 596, Board of Trade 5 th Addition
035-00000313-00	Vacated Alley, Board of Trade 5 th Addition
035-00000296-00	Lot 402, Board of Trade 5 th Addition
035-00000297-00	Lot 599, Board of Trade 5 th Addition
035-00000298-00	Lot 598, Board of Trade 5 th Addition

PARCEL NUMBER	DESCRIPTION
035-00000299-00	Lot 588, Board of Trade 5 th Addition
035-00000300-00	Lot 589, Board of Trade 5 th Addition
035-00000301-00	Lot 590, Board of Trade 5 th Addition
035-00000302-00	Lot 769, Board of Trade 5 th Addition
035-00000304-00	Lot 770, Board of Trade 5 th Addition
035-00000309-00	Lot 772, Board of Trade 5 th Addition
035-00000311-00	Lot 771, Board of Trade 5 th Addition
035-00000056-00	Tuscarawas Township, 4 th Quarter, .336 +/- acre
035-00000566-00	Lot 722, Board of Trade 5 th Addition
035-00000567-00	Lot 723, Board of Trade 5 th Addition
037-00000021-00	Tuscarawas Township, 4 th Quarter, 10.25 +/- acres
037-00000307-00	Lot 316, Board of Trade 5 th Addition
037-00000308-00	Lot 203, Board of Trade 5 th Addition
037-00000309-00	Lot 315, Board of Trade 5 th Addition
037-00000310-00	Lot 204, Board of Trade 5 th Addition
037-00000311-00	Lot 202, Board of Trade 5 th Addition
037-00000312-00	Lot 205, Board of Trade 5 th Addition
037-00000313-00	Lot 199, Board of Trade 5 th Addition
037-00000314-00	Lot 200, Board of Trade 5 th Addition
037-00000315-00	Lot 197, Board of Trade 5 th Addition
037-00000316-00	Lot 201, Board of Trade 5 th Addition
037-00000317-00	Lot 198, Board of Trade 5 th Addition
037-00000318-00	Lot 196, Board of Trade 5 th Addition
037-00000320-00	Lot 195, Board of Trade 5 th Addition
037-00000321-00	Lot 324, Board of Trade 5 th Addition
037-00000322-00	Vacated Alley, Board of Trade 5 th Addition
035-00000192-01	Tract #1 - .3872 acres

EXHIBIT "B"

1. Electric line easement from J.B. Clow and Sons Company to The Ohio Power Company filed October 5, 1925 and recorded in Volume 24, Page 181, Coshocton County Lease Records.
2. Right of way from James B. Clow and Sons to the Board of County Commissioners signed May 22, 1936, filed June 17, 1936 and recorded in Volume 222, Page 530, Coshocton County Deed Records.
3. Right of way and easement to construct, erect, operate and maintain a line of poles and wires for the purpose of transmitting electric or other power from James B. Clow and Sons to The Ohio Power Company signed March 14, 1940, filed April 1, 1940 and recorded in Volume 174, Page 168, Coshocton County Deed Records.
4. Easement for the purpose of constructing a 16 foot wide public alley from James B. Clow and Sons to The Board of County Commissioners of Coshocton County signed July 21, 1953, filed August 4, 1953 and recorded in Volume 201, Page 585, Coshocton County Deed Records.
5. Right of way from James B. Clow and Sons, Inc. to The Ohio Power Company signed August 29, 1956, filed September 21, 1956 and recorded in Volume 222, Page 538, Coshocton County Deed Records.
6. Easement from Ward E. Lanning and Ethel B. Lanning to The Ohio Power Company signed October 12, 1956, filed October 26, 1956 and recorded in Volume 223, Page 255, Coshocton County Deed Records.
7. Right of way from Ward F. Lanning, Inc. to Columbia Gas of Ohio, Inc. signed October 9, 1964, filed November 18, 1964 and recorded in Volume 261, Page 38, Coshocton County Deed Records.
8. Pipeline right of way from Elizabeth M. Gabor to Cyclops Corporation signed March 29, 1973, filed May 9, 1973 and recorded in Volume 293, Page 46, Coshocton County Deed Records.
9. Right of way and easement for an electric transmission line from by Clow Corporation to The Ohio Power Company signed March 16, 1977, filed March 24, 1977 and recorded in Volume 310, Page 454, Coshocton County Deed Records. NOTE: The legal description is too vague to determine the exact location of said easement.
10. Easement for water main purposes from Clow Corp. to the Coshocton Metropolitan Housing Authority signed October 22, 1980, filed November 10, 1980 and recorded in Volume 328, Page 498, Coshocton County Deed Records.
11. Easement to construct, alter, maintain, replace and repair a system channel from James B. Clow and Sons to the Board of County Commissioners signed May 21, 1982, filed October 13, 1982 and recorded in Volume 337, Page 87, Coshocton County Deed Records.
12. Right of way and easement granted for an electric transmission line from James B. Clow and Sons, Inc. to The Ohio Power Company signed October 1, 1985, filed October 17, 1985, and recorded in Volume 350, Page 739, Coshocton County Deed Records.

13. Right of way and easement for an electric transmission line from the Clow Water Systems Corporation to The Ohio Power Company signed February 21, 1986, filed March 7, 1986 and recorded in Volume 352, Page 339, Coshocton County Deed Records.
14. Mechanics' lien in favor of Rental Services Corporation against McWane, Inc. signed October 4, 2004, filed October 18, 2004 and recorded in Volume 359, Page 39, Coshocton County Official Records, in the original amount of \$6,418.86.
15. Easement and right of way from McWane, Inc. to The Ohio Power Company signed December 13, 2004, filed March 1, 2005 and recorded in Volume 370, Page 473, Coshocton County Official Records.
16. Easement and right of way from McWane, Inc. to The Ohio Power Company signed December 5, 2006, filed January 10, 2007 and recorded in Volume 433, Page 499, Coshocton County Official Records.
17. Easement and right of way from McWane, Inc. to The Ohio Power Company signed January 15, 2008, filed October 30, 2008 and recorded in Volume 481, Page 913, Coshocton County Official Records.
18. Affidavit of facts regarding hazardous waste in compliance with OAC 3745-66-19(B) filed by McWane, Inc. signed November 25, 2008, filed November 28, 2008 and recorded in Volume 483, Page 295, Coshocton County Official Records.
19. Subject to the conditions and restrictions of the Board of Trade Fifth Addition to the City of Coshocton.
20. Taxes for the year 2007 are paid. Taxes for the year 2008 are not yet determined or payable and are a lien on the premises.

200900002454
Filed for Record in
COSHOCKTON COUNTY, OHIO
DAVID H DILLY
06-30-2009 At 10:23 am.
AGREE/MISC 108.00
OR Book 496 Page 320 - 331