

EXHIBIT H

Model Restrictive Covenant

After Recording Return to:

Department of Ecology
[fill in regional address]

Environmental Covenant

Grantor: [land owner]

Grantee: State of Washington, Department of Ecology

Legal: [fill in brief legal description]

Tax Parcel Nos.: [fill in]

Cross Reference: [if amendment, recording number of original covenant]

Grantor, [land owner], hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this _ day of _____, 200_ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(g), and the Uniform Environmental Covenant Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

[INSERT THE DATE AND TITLE FOR CLEANUP ACTION PLAN and other documents as applicable].

1 These documents are on file at Ecology's [Insert Office Location] Office.

2 This Covenant is required because the Remedial Action resulted in residual
3 concentrations of [SPECIFICALLY LIST SUBSTANCE(S)] which exceed the Model Toxics
4 Control Act Method B Residential Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.]
5 established under WAC 173-340-_____.

6 The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property
7 (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is
8 subject to this Covenant. The Property is legally described [AS FOLLOWS: (insert legal
9 description language)] -or- [IN ATTACHMENT A OF THIS COVENANT AND MADE A
10 PART HEREOF BY REFERENCE (attach document containing legal description)].

11 [NAME OF PROPERTY OWNER] makes the following declaration as to limitations,
12 restrictions, and uses to which the Property may be put and specifies that such declarations
13 shall constitute covenants to run with the land, as provided by law and shall be binding on all
14 parties and all persons claiming under them, including all current and future owners of any
15 portion of or interest in the Property (hereafter "Owner").

16 Section 1. (This Section must describe with particularity the restrictions to be placed on the
17 property.)

18 1. If the groundwater contains hazardous substances above drinking water
19 standards (and a prohibition on withdrawal of groundwater will not be accomplished by
20 alternate means under WAC 173-340-440(8)(c)) use the following sentence: "No groundwater
21 may be taken for domestic use from the Property."

22 2. If contaminated soil remains that is above Method A or B Residential Cleanup
23 Levels describe prohibited activities as follows:
24 For contaminated soil under a structure use the following sentence: "A portion of the Property
25 contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located
26 [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE
SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove
the existing structure[s] 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."

1 b. Example language for contaminated soil under a cap: "Any activity on the Property
2 that may result in the release or exposure to the environment of the contaminated soil that was
3 contained as part of the Remedial Action, or create a new exposure pathway, is prohibited.
4 Some examples of activities that are prohibited in the capped areas include: drilling, digging,
5 placement of any objects or use of any equipment which deforms or stresses the surface
6 beyond its load bearing capability, piercing the surface with a rod, spike or similar item,
7 bulldozing or earthwork."

8 Section 2. Any activity on the Property that may interfere with the integrity of the Remedial
9 Action and continued protection of human health and the environment is prohibited.

10 Section 3. Any activity on the Property that may result in the release or exposure to the
11 environment of a hazardous substance that remains on the Property as part of the Remedial
12 Action, or create a new exposure pathway, is prohibited without prior written approval from
13 Ecology.

14 Section 4. The Owner of the property must give thirty (30) day advance written notice to
15 Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title,
16 easement, lease, or other interest in the Property shall be consummated by the Owner without
17 adequate and complete provision for continued monitoring, operation, and maintenance of the
18 Remedial Action.

19 Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive
20 Covenant and notify all lessees of the restrictions on the use of the Property.

21 Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the
22 Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve
23 any inconsistent use only after public notice and comment.

24 Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the
25 Property at reasonable times for the purpose of evaluating the Remedial Action; to take
26 samples, to inspect remedial actions conducted at the property, and to inspect records that are
related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an
instrument that provides that this Restrictive Covenant shall no longer limit use of the Property

1 or be of any further force or effect. However, such an instrument may be recorded only if
2 Ecology, after public notice and opportunity for comment, concurs.

3 Section 9. Neither Ecology nor the Owner intend to include any third party beneficiaries with
4 enforcement rights under this Covenant.

5 [Insert the following section into the covenant for the railyard facility property: Section 10. By
6 signing this Covenant, the Owner does not intend to affect the scope of existing preemption
7 under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 100501.]

8 _____
9 [NAME OF PROPERTY OWNER]

10 _____
11 [DATE SIGNED]

12 [NOTE: The Property Owner must have this restrictive Covenant notarized.]
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