

# Clock-In Copy

Tax Parcel No.: 08-046.00-002

Prepared By: Department of Natural Resources and  
Environmental Control

Return To: Environmental Program Administrator  
DNREC-SHWMS  
89 Kings Highway  
Dover, DE 19901



20140207-0005651

Pages: 11 F: \$153.00

02/07/14 04:12:30 PM

T20140003087

Michael E. Kozikowski  
New Castle Recorder MISC

## ENVIRONMENTAL COVENANT

This Environmental Covenant ("Environmental Covenant") is entered into by W.L. Gore & Associates, Inc. (the "Owner") and the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act, and is made effective as of the Effective Date (as defined below) for the purpose of subjecting certain property, as described more fully herein, to land use restrictions as set forth herein.

## WITNESSETH

**WHEREAS**, W.L. Gore & Associates, Inc. is the owner of certain real estate located at 555 Paper Mill Road, in New Castle County, Delaware, as described below ("Property"); and

**WHEREAS**, pursuant to 7 Del. C. Chapters 60 and 63; and 7 DE Admin. Code 1302, Delaware *Regulations Governing Hazardous Waste* (DRGHW), the Owner was required to implement corrective action in certain portions of the Property; and

**WHEREAS**, on February 19, 2008, representatives from the Owner met with personnel from DNREC-SHWMS; the focus of the meeting was to discuss RCRA Corrective Action reasonability stemming from the Owner's closed interim status hazardous waste facility at the Property ("Facility"). All parties agreed that using a Facility Lead Corrective Action Agreement ("Agreement"), which is a voluntary Agreement between the Environmental Protection Agency ("EPA"), DNREC, and the Owner that established a scope of work to take the Facility through Corrective Action, could be effective at the Facility. Subsequent correspondence between DNREC and the Owner resulted in an Agreement for the Facility. The Agreement identifies the corrective action activities that the Owner was required to complete. In March 2012, the Owner submitted the Corrective Measures Study which characterized potential sources of contamination and their corrective measures; DNREC accepted the preferred remedial alternatives in a Statement of Basis (the "Plan") which summarized corrective measures to address contamination in certain portions of the Property; and

**WHEREAS**, the Plan identifies certain portions of the Property requiring Institutional Controls stated in Section II of the Plan; and

**WHEREAS**, on September 27, 2012, DNREC issued a Final Decision and Response to Comments (the "Decision") selecting, as part of the final remedy for the Property, certain land use restrictions to ensure long-term control of certain portions of the Property and protection of selected remedies in the portions of the Property identified as "Restricted Areas" defined by the data points listed in Table 1 of the Plan; and

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**WHEREAS**, the Owner is willing to establish this Environmental Covenant applicable to the Restricted Areas in order to implement part of the selected remedy pursuant to the Plan; and

**WHEREAS**, the Owner and DNREC acknowledge and agree that EPA shall be permitted to enforce the obligations and conditions, including the activity and land use restrictions, set forth herein.

Now, therefore, the Owner and DNREC agree to the following:

1. Environmental Covenant. This instrument is an Environmental Covenant developed and executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act.

2. Property. The Property consists of one (1) parcel of land located at 555 Paper Mill Road, Newark, in New Castle County, Delaware, and is referenced as New Castle County Tax Parcel Number 08-046.00-002. Only the Restricted Areas, and not the entire Property, are subject to this Environmental Covenant.

3. Restricted Areas. This Environmental Covenant concerns the portions of the Property identified as the Restricted Areas. A sketch plan of the Restricted Areas (“Sketch Plan”) is attached hereto as Exhibit “A.” Further, the Restricted Areas are defined by the data points listed in Table 1 of the Plan (“Table 1”), attached hereto as Exhibit B. There are two separate Restricted Areas depicted on the Sketch Plan and defined by the data points listed in Table 1: (1) an area referred to in the Plan as “SWMU 7” or “SWMU 7/Shed Area”; and (2) an area referred to in the Plan as “Surface Impoundment.”

[a.] SWMU 7 or SWMU 7/Shed Area. The SWMU 7 or SWMU 7/Shed Area is the basement of a utility building on the Property. On the Sketch Plan, the SWMU 7 or SWMU 7/Shed Area is cross-hatched and labeled “Basement” within the structure labeled “Utility Building.” Within Table 1, the GIS data points defining the area of SWMU 7 or SWMU 7/Shed Area (referred to as the “Basement”) are set forth.

[b.] Surface Impoundment. On the Sketch Plan, the Surface Impoundment is cross-hatched and labeled “Stake (5’ Radius) GPI-4.” Within Table 1, the Surface Impoundment is described as a five-foot radius around GPI-4 and the data points for GPI-4 are listed.

4. Owner. W.L. Gore & Associates, Inc. is the owner of the Property and has an address at 555 Paper Mill Road, Newark, DE 19711.

5. Holder. DNREC is the holder of this Environmental Covenant.

6. Land Use Restrictions. As required by DNREC’s final remedy for certain portions of the Property described in the Decision, the Owner hereby imposes and agrees to comply with the following land use restrictions for the Restricted Areas of the Property:

[a.] Land Use Restrictions. Use of any of the Restricted Areas shall be restricted solely to those non-residential uses allowable within the New Castle County Unified Development Code, as the same may be amended from time to time.

The SWMU 7/Shed Area shall not be occupied on a full-time basis unless it is demonstrated to DNREC, in consultation with the Environmental Protection Agency (“EPA”), that such use will not pose a threat to human health or the

environment or adversely affect or interfere with the selected remedy and DNREC, in consultation with EPA, provides prior written approval for such use.

- [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities at depths greater than two (2) feet on either of the Restricted Areas without the prior written approval of DNREC's Solid and Hazardous Waste Management Section ("DNREC-SHWMS"). Notwithstanding the foregoing, Owner may conduct maintenance, repair and/or replacement activities in the event of an emergency, such as a disruption to site utilities, or other event that requires immediate action ("Emergency Action") within either Restricted Areas without prior notice to DNREC-SHWMS; provided that such Emergency Action activities are conducted in accordance with such written health and safety standards as are adopted in the normal course of business activities on the Property. In the event of an Emergency Action, Owner shall notify DNREC-SHWMS as soon as reasonably possible after the onset of any land disturbing activity and shall submit to DNREC-SHWMS a written description of the activity within seven (7) days of the initial notification.

7. Reporting Requirements. Commencing from the Effective Date, the Owner shall evaluate compliance with the institutional controls on a biennial basis and provide a report documenting the findings of the evaluation to EPA and DNREC.

8. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee (as defined below), and shall run with the Property pursuant to 7 Del. C. Section 7910(a), 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 Restricted Areas or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees; provided, however, that the inclusion in the foregoing definition of mortgagees, easement holders, and/or lessees is intended to clarify that their respective interests in the Restricted Areas, or any portion thereof, are subject to this Environmental Covenant but is not intended to change the character of their respective interests to that of an owner of the Property or any portion thereof or to re-characterize their respective interests in the Property for any other purposes.

9. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 Del. C. Section 7916. Failure to timely enforce compliance with this Environmental Covenant or the land use restrictions 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 Secretary of DNREC from exercising any authority under applicable law. Additionally, Owner and DNREC understand and agree that EPA may enforce compliance with this Environmental Covenant including, but not limited to, the activity and land use restrictions contained herein.

10. Rights of Access. Owner hereby grants to DNREC and the EPA, their respective agents, contractors, and employees (the "Permittees"), the non-exclusive right of reasonable access to and from the Restricted Areas and those adjacent areas of the Property reasonably necessary for implementation or enforcement of this Environmental Covenant. DNREC and EPA agrees to exercise reasonable care in the use and enjoyment of the rights granted hereunder by Owner under this Enforcement Covenant. DNREC and EPA shall provide reasonable notice to Owner, when applicable, of any such access to and from the Restricted Areas. In addition, any such

access shall be undertaken in such a manner as to minimize the extent of any disruption to the Owner's business operations at the Property and otherwise in accordance with the Owner's reasonable security measures pertaining to access to and from the Property.

11. Administrative Record. The Administrative Record in support of the Decision contains all documents which support DNREC's issuance of the Final Remedy (as defined in the Decision) and is located at the offices of DNREC-SHWMS, 89 Kings Highway, Dover, Delaware, 19901.

12. Notice upon Conveyance. Each instrument hereafter conveying any fee simple interest in the Restricted Areas, or any portion thereof, shall contain a notice of the land use restrictions 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 \_\_\_\_\_, 2013, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS IN AND FOR NEW CASTLE COUNTY, DELAWARE, AT INSTRUMENT NUMBER \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[a.] Land Use Restrictions. Use of any Restricted Areas shall be restricted solely to those non-residential uses allowable within the New Castle County Unified Development Code, as the same may be amended from time to time; and

The Restricted Area (SWMU 7/Shed Area only) shall not be occupied on a full-time basis unless it is demonstrated to DNREC, in consultation with the Environmental Protection Agency ("EPA"), that such use will not pose a threat to human health or the environment or adversely affect or interfere with the selected remedy and DNREC, in consultation with EPA, provides prior written approval for such use.

[b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities at depths greater than two (2) feet on any Restricted Area without the prior written approval of DNREC's Solid and Hazardous Waste Management Section ("DNREC-SHWMS"). Notwithstanding the foregoing, Owner may conduct maintenance, repair and/or replacement activities in the event of an emergency, such as a disruption to site utilities, or other event that requires immediate action ("Emergency Action") within a Restricted Area without prior written notice to DNREC-SHWMS; provided that such Emergency Action activities are conducted in accordance with such written health and safety standards as are adopted in the normal course of business activities on the Property. In the event of an Emergency Action, Owner shall notify DNREC-SHWMS as soon as reasonably possible after the onset of the land disturbing activity and shall submit a written description of the activity to DNREC-SHWMS within seven (7) days of the initial notification.

The property owner shall evaluate compliance with the institutional controls on a biennial basis and provide a report documenting the findings of the evaluation to EPA and DNREC.

Failure to include the foregoing notice in any such instrument does not in any way affect the validity and enforceability of such instrument or the validity or enforceability of this Environmental Covenant.

Owner shall notify DNREC within ten (10) days after each conveyance of a fee simple interest in any portion of the Property that includes one or more of the Restricted Areas. Owner's notice shall include the name and address of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and, if less than the entire Property, a subdivision plan, survey or tax map that shows the boundaries of that portion of the Property being transferred.

13. Representations and Warranties. Owner hereby represents and warrants to DNREC:

- [a.] 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;
- [b.] that the Owner is the sole owner of the Property and holds fee simple title to the Property;
- [c.] as of Effective Date of this Environmental Covenant, no person holds a mortgage or other lien on that portion of the Property that includes one or more of the Restricted Areas that is superior in time and right to this Environmental Covenant and known to the Owner;
- [d.] that the Owner has identified all other parties that hold any interest (e.g., encumbrance) of record in those portions of the Property consisting of the Restricted Areas encumbered by this Environmental Covenant, and any unrecorded interests known to Owner, and notified such parties of 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 Owner is a party or by which Owner is bound.

14. Amendment or Termination.

- a. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee who is then the Owner of that portion of the Property that is subject to this Environmental Covenant and is the subject of the amendment or termination; and DNREC, pursuant to 7 Del. C. Section 7915 and other applicable laws. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the land use restrictions set forth herein, or the elimination of one or more land use restrictions when there is at least one limitation remaining; an Amendment shall also include an assignment of the Environmental Covenant, as specified in 7 Del. C. Section 7915. 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.
- b. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by DNREC and the Owner or Transferee, as applicable, who is then the Owner of that portion of the Property that is subject to this Environmental

Covenant and is the subject of the amendment or termination. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, the Owner or such Transferee shall file such instrument for recording with the New Castle County Recorder of Deeds Office, and shall provide a file- and date-stamped copy of the recorded instrument to DNREC and the EPA. Failure to record such instrument as aforesaid does not in any way affect the validity and enforceability of such instrument.

15. 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.

16. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.

17. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant and delivery to the Owner, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the New Castle County Recorder of Deeds Office. This Environmental Covenant shall be indexed by the Recorder of Deeds in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.

18. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded with the New Castle County Recorder of Deeds.

19. Delivery of Environmental Covenant. The Owner shall deliver a filed and date-stamped copy of the recorded Environmental Covenant to DNREC.

20. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

DNREC:  
Environmental Program Administrator  
DNREC-SHWMS  
89 Kings Highway  
Dover, DE 19901

Enforcing Authority:  
US EPA Region III  
Land and Chemicals Division  
Office of Remediation  
3LC20  
1650 Arch Street  
Philadelphia, PA 19103-2029

Owner:  
W.L. Gore & Associates, Inc.  
P.O. Box 9206  
Newark, DE 19714  
Attn: General Counsel

W.L. Gore & Associates, Inc.  
Attn: Jay A. Steimer  
Corporate Facilities & Real Estate  
Paper Mill East Facility  
P.O. Box 8176  
Newark, DE 19714-8176

All notices or other communications required or permitted to be given under this Agreement shall be given in writing and delivered by email, if email addresses are provided, personally, or mailed by certified or registered mail, postage prepaid, addressed to the parties address first set forth above. The foregoing addresses may be changed or supplemented by written notice given as above provided. Any notice, if sent by mail, shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or if delivered personally or by email, on the day of such delivery.

21. No Third Party Beneficiaries. Notwithstanding anything contained in this Environmental Covenant to the contrary, this Environmental Covenant is solely for the benefit of DNREC, its successors and assigns, and Owner, its successors and assigns, and shall not benefit any third party or create or operate to create, either expressly or impliedly any rights, title or interests hereunder in favor of any third party.

22. Reservation of Rights. Owner expressly reserves and retains, for itself and its successors and assigns, all other rights, title and interest in and to the Restricted Areas not otherwise expressly granted to DNREC under this Environmental Covenant.

In Witness Thereof, the undersigned representative of the Owner and DNREC, respectively, represents and certifies that the undersigned is authorized to execute this Environmental Covenant and have set their respective hands and seals as of the date(s) indicated below as a sealed instrument under Delaware law.

IT IS SO AGREED:

W.L. Gore & Associates, Inc.

*Holliday Williams*  
Signature of Owner

A. HOLLIDAY WILLIAMS, SECRETARY-TREASURER  
Printed Name and Title

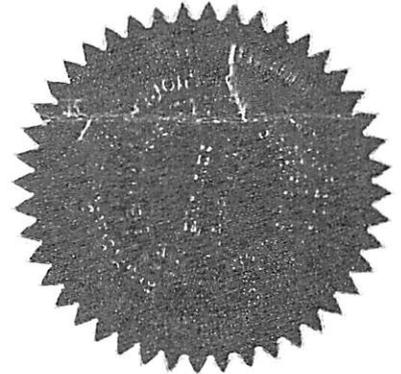
11-26-2013  
Date

STATE OF DELAWARE )  
 ) SS.  
COUNTY OF NEW CASTLE )

Before me, a notary public, in and for said county and state, personally appeared Holliday Williams, a duly authorized representative of W.L. Gore & Assoc who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of W.L. Gore & Assoc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26 day of November, 2013.

Barbara A. Meyson  
Notary Public  
Name:  
Commission expires: March 15, 2017



Delaware Department of Natural Resources and Environmental Control

Nancy C. Marker  
Nancy C. Marker, Administrator

1/2/14  
Date

STATE OF DELAWARE )  
 ) SS:  
COUNTY OF Kent )

Before me, a notary public, in and for said county and state, personally appeared Nancy C. Marker, Environmental Administrator, a duly authorized representative of the Delaware Department of Natural Resources and Environmental Control, who acknowledged to me that she did execute the foregoing instrument on behalf of the Department of Natural Resources and Environmental Control.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 2 day of January, 2014.



Vicki E. Ward

Notary Public

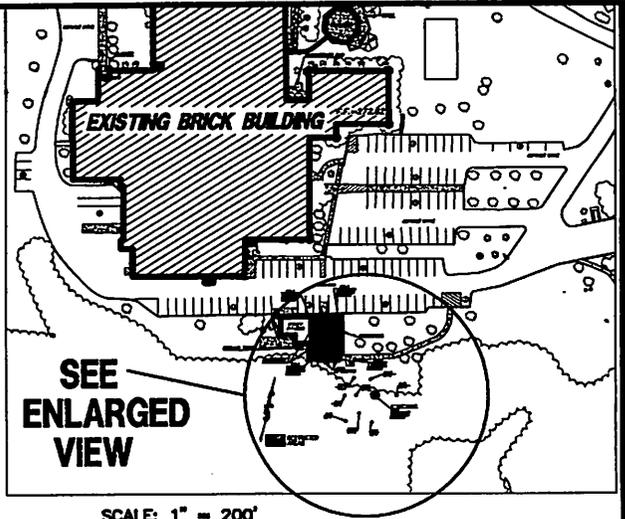
Name:

Commission Expires: 6-21-14

This instrument prepared by:

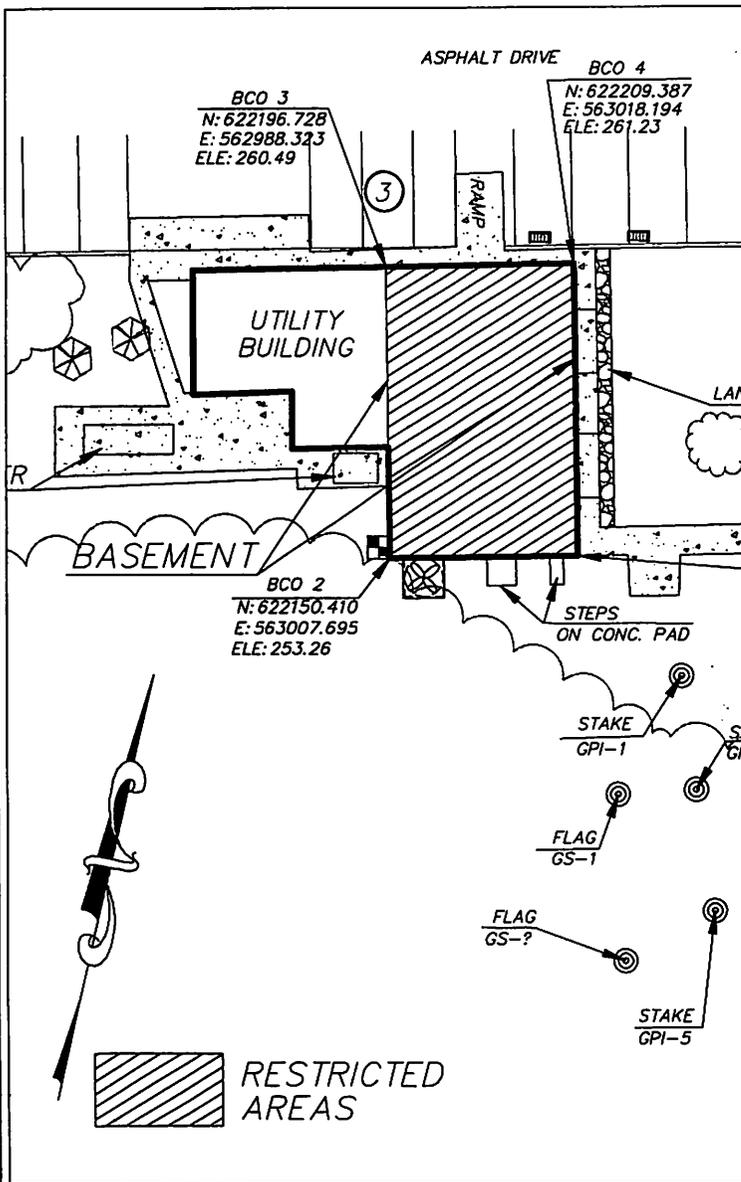
Lawrence D. Matson, P.G.  
Hydrologist IV  
Department of Natural Resources and Environmental Control  
Division of Waste & Hazardous Substances  
Solid & Hazardous Waste Management Section  
89 Kings Highway  
Dover, DE 19901





SEE ENLARGED VIEW

SCALE: 1" = 200'



SCALE: 1" = 30'

**SKETCH PLAN**

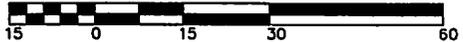
OF

**555 PAPERMILL ROAD**

PREPARED FOR

**W.L. GORE & ASSOCIATES, INC.**

MILL CREEK HUNDRED, NEW CASTLE COUNTY, DELAWARE



DATUM: NAD 1983 AND NAVD 1988



**McBRIDE & ZIEGLER, INC.**

LAND SURVEYORS PLANNERS ENGINEERS  
2607 EASTBURN CENTER, NEWARK, DELAWARE 19711  
PHONE (302) 737-9138 FAX (302) 737-2610

SURVEY BY: M&Z	CHECKED BY: M.Z.
DESIGN BY: --	SCALE: AS NOTED
DRAWN BY: TWf.	DATE: OCTOBER 12, 2012
DWG. NO.: 9603164-	SHEET 1 OF 1

EXHIBIT B

SMWU GPS DATA POINTS

DATUM

HORIZONTAL NAD 1983 VERTICAL NAVD 1988

MEASURED IN U.S. FEET

<u>DESCRIPTION</u>	<u>NORTHING(Y)</u>	<u>EASTING(X)</u>	<u>ELEVATION</u>
BCO 1	622162.904	563037.568	252.68
BCO 2	622150.410	563007.695	253.26
BCO 3	622196.728	562988.323	260.49
BCO 4	622209.387	563018.194	261.23
GPI-4	622140.953	563091.266	244.21

The Restricted Areas subject to the Environmental Covenant are defined by the above data points. There are two Restricted Areas: (1) an area referred to in the Statement of Basis as "SWMU 7" or "SWMU 7/Shed Area"; and (2) an area referred to in the Statement of Basis as "Surface Impoundment." The SWMU 7 or SWMU 7/Shed Area is the basement of a utility building on the Property. This basement does not occupy the entire footprint of the utility building. Instead, the utility building presently consists of two floors with the upper floor currently used for manufacturing processes and the basement currently used for file storage. The basement exists only under a portion of the upper floor. The four corners of the basement are defined by the GPS data points above and the basement is shown graphically on the Sketch Plan attached hereto as Exhibit A. The Surface Impoundment is a five-foot radius around data point GPI-4 defined above and is also shown graphically on the Sketch Plan attached hereto as Exhibit A.



CUSTOMER RECEIPT - RECORDING SERVICES

Receipt Number: T20140003087  
Date/Time: 02/07/2014 16:12:30  
Method Received: OVER THE COUNTER  
Clerk: ppastor

Customer Name : YOUNG CONAWAY

MAIL  
DELAWARE STATE DEPT OF  
NATURAL RESOURCES &  
DNREC-SIRS  
89 KINGS HWY

Transaction Detail

<u>Instrument Number</u>	<u>Instrument Type</u>	<u>Recording Fee</u>	<u>State Document Fee</u>	<u>Copy</u>	<u>Cert. Copy</u>	<u>Total Copy Fee</u>	<u># Pgs</u>	<u>Technology Fee</u>	<u>Subtotal</u>
201402070005651	MISC	\$122.00	\$30.00	N	N	\$0.00	11	\$ 1.00	\$153.00

First Party Name  
W L GORE & ASSOCIATES INC

Second Party Name  
DELAWARE STATE OF DEPT OF NTRL RSCRS & E C

Payment Information

<u>Method of Payment</u>	<u>Payment Control ID</u>	<u>Authorized Agent</u>	<u>Amount</u>
Check	155719		\$153.00

AMOUNT PAID: \$153.00  
 LESS AMOUNT DUE: \$153.00  
 CHANGE RECEIVED: \$0.00