

Tax Parcel ID Number: 1560000000010

Prepared by and return to: Timothy O. Trant II, Esq.
VSB # 48845
Kaufman & Canoles, P.C.
150 West Main Street
Norfolk, VA 23514

EPA Site ID #: VAD003178126

UECA ENVIRONMENTAL COVENANT

This environmental covenant is made and entered into as of the 2nd day of August, 2021, by and between **ELIZABETH RIVER TERMINALS, LLC** (hereinafter referred to as the "Grantor" or "Owner"), a Delaware limited liability company (as successor by conversion to **ELIZABETH RIVER TERMINALS, INC.**, a Delaware corporation), whose address is 4100 Buell Street, Chesapeake, VA 23324 and **ELIZABETH RIVER TERMINALS, LLC** (hereinafter referred to as the "Grantee" or "Holder"), whose address is 4100 Buell Street, Chesapeake, VA 23324. The United States Environmental Protection Agency – Region III, whose address is 1650 Arch Street, Philadelphia, PA, 19103 (herein referred to as the "Agency") also joins in this environmental covenant.

This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia ("UECA"). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.

1. **Property Affected.** The property affected (the "Property") by this environmental covenant is located at 120 Pratt Street, Chesapeake, Virginia, Tax Parcel Number 1560000000010, and is further described as follows:

A certain piece or parcel of land situated at or near Money Point in Washington Magisterial District in Norfolk County, in the State of Virginia, the same fronting on the Eastern side of the Southern Branch of the Elizabeth River, the same containing with the land under water out to the Port Warden's Line, in said river twenty-four and eighty-one one hundredths acres (24.81) acres and the same being designated as Block Number One (1) upon a plat which is filed with a deed from said Money Point Land Corporation of Dwight W. Pratt, dated the 16th day of March, 1917, and recorded in the Clerk's Office of the Circuit Court of Norfolk County in Deed Book No. 456, at page 140, said plat being recorded in Map Book No. 14, page 81, in said Office. The said parcel of land is bounded on the North by the land of B. Galumbeck and D. Levitin, on the East and Southeast by the Right of Way of the railroad of C. W. Priddy & Co., on the South-west by the land of C. W. Priddy & Co., and on the West by the Elizabeth River. It is a portion of the land which was conveyed to said Money Point Land Corporation by Alice G. Reid by her deed dated February 9, 1911, recorded in said Clerk's Office in Deed Book No. 360, page 439 and is more particularly described on said plat as follows: Beginning at the point there the land of Chas. W. Priddy & Co. Inc., meets the western line of the right of way strip of said C. W. Priddy & Co.,

Inc., and running thence along the line of the land of C. W. Priddy & Co., Inc., North 49 degrees, 15 minutes West, eight hundred and forty and four-tenths (840.4) feet to the Pier Head Line in said Elizabeth River, thence running along Pier Head Line, North 45 degrees, 05 minutes, 30 seconds, East, five hundred and eighty-nine (589) feet to the southern line of the land of B. Galumbeck and D. Levitin, thence along the southern line of said land of Galumbeck and Levitin, South 87 degrees 52- ½ minutes East, eleven hundred and seventy-nine and eight tenths (1179.8) feet to the western line of said right of way strip of C. W. Priddy & Co. Inc., and thence following the western line of said right of way strip as it curves to the westward, to the point of beginning, the various course and distances along said curving line being set out on said plat.

And being more particularly described as “N/F ELIZABETH RIVER TERMINALS, INC. (DB 2233, P 280) (MB 17, P 12) TMP 1560000000010 TOTAL AREA = 1,080,038 S.F. OR 24.794 AC.” on that certain plat entitled “BOUNDARY SURVEY OF TMP 1560000000010 FOR ELIZABETH RIVER TERMINALS, LLC” dated December 10, 2019, prepared by Timmons Group, attached hereto and incorporated herein by reference as **Exhibit A**.

2. Description of Contamination & Remedy.

a. The Administrative Record pertaining to the corrective action on the Property that is described in this environmental covenant is located at:

U.S. Environmental Protection Agency, Region III
Land and Chemicals Division - RCRA
1650 Arch Street – 11th Floor
Philadelphia, PA 19103

b. The relevant history of the use of the Property, its contamination, and corrective actions undertaken is described in the Final Decision and Response to Comments dated September 22, 2008 attached hereto as **Exhibit B**, for the Former Royster Company Facility, Chesapeake, Virginia, 23324, EPA ID. No. VAD003178126.

c. A brief overview of the relevant history of the use of the Property, its contamination, and corrective actions undertaken is as follows:

(i) The Property was formerly occupied by the Royster Company's (Royster) Money Point Plant which manufactured commercial fertilizer from approximately the mid-1930s until 1973. From 1978 through 1986, certain materials storage and mixing operations took place on the Property with materials having metal constituents such as zinc, chromium, lead, and cadmium. According to the 1986 Facility Management Plan, the only regulated hazardous waste managed by Royster at the Property was granulated emission control dust (emission dust) from the off-site production of steel in electric furnaces. The emission dust was transported to the Property and mixed with a non-hazardous, zinc rich filter cake sludge (filter cake) which was also generated off-site at a nearby zinc-sulfate production facility and transported to the Property for the mixing operations. The resulting mixture was then transferred to Royster's South Norfolk facility and used

as feed stock for the production of commercial fertilizer. As of May 1986, Royster no longer received or handled hazardous waste at the Property.

(ii) Two Solid Waste Management Units of concern were identified on the Property, SWMU # 1 and SWMU # 2.

(iii) SWMU # 1 consisted of an open-top, steel plate tank that was used to receive and mix the emission dust and filter cake. Operation of this SWMU reportedly began in December 1985 and ceased by May 1986. The emission dust had a high zinc content with low concentrations of hexavalent chromium, lead, and cadmium. The emission dust and filter cake were mixed approximately three to six times per year to produce approximately 100 tons of material per year. The tank mixing unit has been closed in accordance with a Closure Plan approved by the Virginia Department of Environmental Quality. Closure activities included four rounds of sampling and analyses, and three rounds of soil excavation and removal. RCRA closure sampling results and additional sample results from 2006 as part of the Elizabeth River Project wetland restoration effort showed that contaminants remain in the soil in the vicinity of the tank mixing unit at levels above EPA Region III Risk-Based Screening criteria for residential soils. "Warehouse Building B" (hereinafter defined), housing the tank mixing facility, and the foundation of Warehouse Building B were also demolished and removed.

(iv) SWMU #2 consisted of two indoor storage piles, Waste Piles A and B, that were used to store the emission dust and filter cake. Waste Pile A, operated from approximately 1978 to September 1984 and was used to store approximately 5,000 tons of material. It was located inside Warehouse Building A, which was destroyed during a windstorm in September 1984. Waste Pile B replaced Waste Pile A and was located in Warehouse Building B, located adjacent to the former Warehouse Building A. Waste Pile B was used from September 1984 until December 1985. SWMU # 2 underwent closure activities under State supervision that included five rounds of sampling and analyses, and three rounds of soil excavation and removal. RCRA closure sampling results and additional sample results from 2006 as part of the Elizabeth River Project wetland restoration effort showed that contaminants remain in the soil in the vicinity of Waste Piles A and B at levels above EPA Region III Risk-Based Screening criteria for residential soils. Building A and Warehouse Building B were demolished and removed.

On September 22, 2008, EPA issued a Final Decision and Response to Comments in which it selected the Final Remedy for the Property. EPA's Final Remedy for the Property included the activity and use limitation set forth directly below.

3. **Activity & Use Limitation.**

a. The Property is subject to the following activity and use limitations, which shall run with the land and become binding on Grantor and any successors, assigns, tenants, agents, employees, and other persons under its control, until such time as this environmental covenant may terminate as provided by law:

(i) The Property shall not be used for Residential purposes unless it is demonstrated to the Agency that such use will not pose a threat to human health and the environment, and the Agency provides written approval for such use. Any change in use will require an amendment to this environmental covenant.

b. The following geographic coordinates define the boundary of the Property depicted on **Exhibit A**.

LOCATION ID	LATITUDE	LONGITUDE
'A'	36.78066822	-76.30288173
'B'	36.78166640	-76.30431602
'C'	36.78166552	-76.30399625
'D'	36.78165153	-76.30390693
'E'	36.78165914	-76.30375637
'F'	36.78170339	-76.30359332
'G'	36.78174164	-76.30360195
'H'	36.78177755	-76.30353430
'I'	36.78180021	-76.30347356
'J'	36.78200492	-76.30307672
'K'	36.78210372	-76.30291642
'L'	36.78234114	-76.30262524
'M'	36.78244424	-76.30257285
'N'	36.78274574	-76.30263803
'O'	36.78293151	-76.30262156
'P'	36.78313010	-76.30244069
'Q'	36.78327671	-76.30214854
'R'	36.78320027	-76.29961143
'S'	36.78228812	-76.29978604
'T'	36.78094480	-76.30134681

4. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the use limitation set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.

5. **Compliance and Use Reporting.**

a. By the end of July 2026, and every five years thereafter following the approval of this environmental covenant and whenever else requested in writing by the Agency or the Department of Environmental Quality, the then current owner of the Property shall submit, to the Agency, the Department of Environmental Quality, and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. This documentation shall be signed by a duly authorized representative of the then current owner-who has inspected and investigated compliance with this environmental covenant.

b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit, to the Agency, the Department of Environmental Quality, and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant.

6. **Access by the Holder and the Agency.** In addition to any rights already possessed by the Holder, the Department of Environmental Quality, and the Agency, this environmental covenant grants to the Holder, the Department of Environmental Quality, and the Agency a right of reasonable access to the Property in connection with implementation, inspection, or enforcement of this environmental covenant.

7. **Subordination.** RESERVED

8. **Recording & Proof & Notification.**

a. Within 90 days after the date of the Agency's approval of this environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for the City of Chesapeake, Virginia (the "Clerk's Office"). The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this environmental covenant with the Clerk's Office within 90 days of their execution. Any environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect.

b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Grantee within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of the locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this environmental covenant not previously mentioned, and any other parties to whom notice is required pursuant to the UECA.

c. All notifications and submissions provided to the Agency pursuant to this environmental covenant shall be sent electronically to: R3_RCRAPOSTREM@epa.gov.

9. **Termination or Amendment.** This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with the UECA.

10. **Enforcement of Environmental Covenant.** This environmental covenant may be enforced in accordance with § 10.1-1247 of the Code of Virginia. In addition, the Agency reserves its regulatory authorities under any law to enforce the activity and use limitations described in the environmental covenant.

ACKNOWLEDGMENTS:

GRANTOR

Elizabeth River Terminals, LLC, Grantor
 Date _____ By (signature): [Signature]
 Name (printed): Daryl A. Vance
 Title: VP, Deputy GC for Kinder Morgan, Inc.

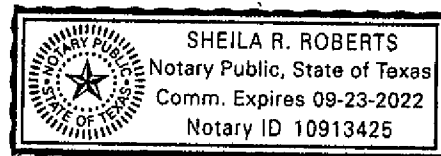
STATE OF TexasCITY/COUNTY OF Harris

On this 2nd day of August, 2021, before me, the undersigned officer, personally appeared Elizabeth River Terminals, LLC who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: 9/23/2022Registration #: 10913425Sheila R. Roberts

Notary Public



HOLDER

Elizabeth River Terminals, LLC

, Grantee

Date

By (signature):

Name (printed):

Title:

Darryl A. Vance
VP, Deputy GC for Kinder Morgan, Inc.

STATE OF

Texas

CITY/COUNTY OF

Harris

On this 2nd day of August, 2021, before me, the undersigned officer, personally appeared Elizabeth River Terminals, LLC who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.

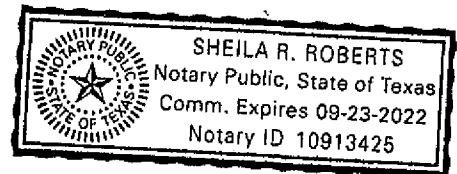
In witness whereof, I hereunto set my hand and official seal.

My commission expires: 9/23/2022

Registration #: 10913425

Sheila R. Roberts

Notary Public



AGENCY

APPROVED by the U. S. Environmental Protection Agency, Region as required by § 10.1-1238
et seq. of the Code of Virginia.

Date 8/30/21

By (signature):

Name (printed):

Title:



Dana Aunkst

Director, Land, Chemicals, and Redevelopment
Division

SEEN AND RECEIVED by the Department of Environmental Quality

Date 9/8/2021

By (signature):

Name (printed):

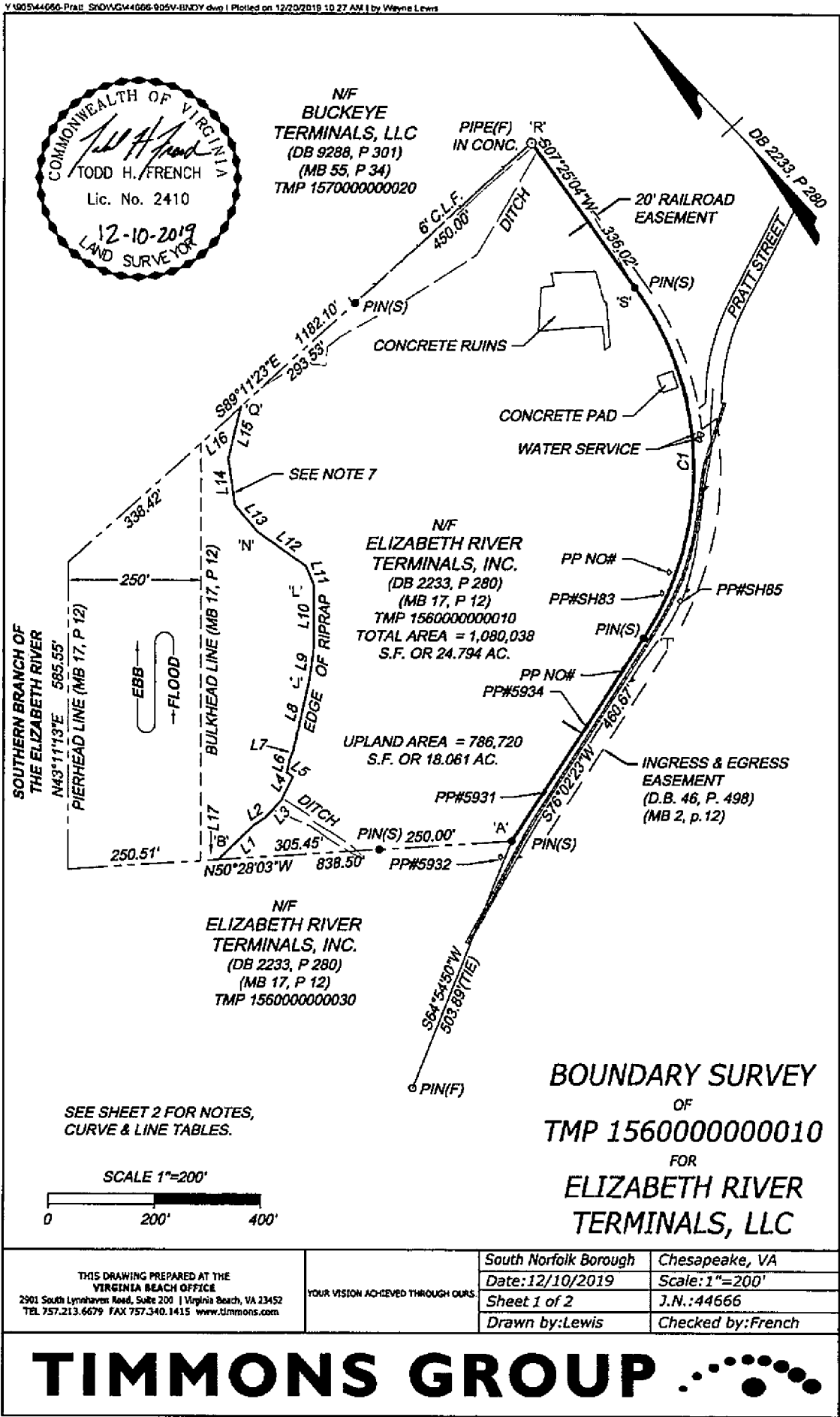
Title:



Tara Mason

Corrective Action Team Lead, Office of
Remediation, Division of Land Protection and
Revitalization

EXHIBIT A



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SURVEY LEGEND

- BOUNDARY MONUMENT FOUND
- BOUNDARY MONUMENT SET
- ◇ UTILITY POLE

LOCATION ID	LATITUDE	LONGITUDE
'A'	36.78066822	-76.30288173
'B'	36.78166640	-76.30431602
'C'	36.78166552	-76.30399625
'D'	36.78165153	-76.30390693
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'R'	36.78320027	-76.29961143
'S'	36.78228812	-76.29978604
'T'	36.78094480	-76.30134681

CURVE TABLE			
CURVE	RADIUS	LENGTH	TANGENT
C1	593.80'	711.18'	405.23'
DELTA	CHORD BEARING		CHORD
68°37'18"	S41°43'44"W		669.43'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N88°51'53"E	93.65'
L2	S80°18'57"E	26.65'
L3	N85°04'16"E	44.18'
L4	N70°01'18"E	50.40'
L5	N11°37'32"W	14.15'
L6	N55°14'49"E	23.74'
L7	N63°47'25"E	19.61'
L8	N55°59'39"E	138.07'
L9	N51°12'29"E	59.14'
L10	N43°16'36"E	121.43'
L11	N20°53'58"E	40.55'
L12	N11°11'53"W	111.42'
L13	N02°44'49"E	67.81'
L14	N34°53'31"E	89.63'
L15	N56°42'26"E	100.84'
L16	S89°11'23"E	100.15'
L17	N50°28'03"W	32.54'

SURVEY NOTES

1. THE MERIDIAN SOURCE OF THIS SURVEY IS BASED ON THE PLAT REFERENCED IN D.B. 2233, P. 280.
2. THIS SURVEY DOES NOT GUARANTEE THE EXISTENCE, SIZE OR HORIZONTAL LOCATION OF ANY UNDERGROUND UTILITIES.
3. LAST DATE OF FIELD SURVEY: NOVEMBER 25, 2019.
4. THIS SURVEY DOES NOT ADDRESS THE EXISTENCE OR NONEXISTENCE OF WETLANDS, ENVIRONMENTAL HAZARDS, CEMETERIES OR UNDERGROUND STRUCTURES NOT OBSERVED DURING THE COURSE OF THE SURVEY.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT, AND MAY NOT REFLECT ALL EASEMENTS OR ENCUMBRANCES THAT MAY AFFECT THE PROPERTY.
6. RAILROAD PROPERTY ADJACENT TO THE SUBJECT PROPERTY IS OWNED BY NORFOLK & PORTSMOUTH BELT LINE RAILROAD.
7. OWNERSHIP OF PRIVATE LANDS IN THE COMMONWEALTH OF VIRGINIA EXTENDS TO THE MEAN LOW WATER MARK AS STATED IN VIRGINIA STATE CODE (VSC) 28.2-1202, AND AS AMENDED. ANY AREA BELOW THE MEAN LOW WATER MARK MAY BE SUBJECT TO THE OWNERSHIP, REGULATION AND JURISDICTION OF THE COMMONWEALTH OF VIRGINIA, THE FEDERAL GOVERNMENT OF THE UNITED STATES OF AMERICA AND/OR AGENCIES THEREOF.



BOUNDARY SURVEY
OF
TMP 1560000000010
FOR
ELIZABETH RIVER
TERMINALS, LLC

THIS DRAWING PREPARED AT THE VIRGINIA BEACH OFFICE 2901 South Lynnhaven Road, Suite 200 Virginia Beach, VA 23452 TEL 757.213.6679 FAX 757.340.1415 www.timmons.com	YOUR VISION ACHIEVED THROUGH OURS	South Norfolk Borough	Chesapeake, VA
		Date: 12/10/2019	Scale: 1"=200'
		Sheet 2 of 2	J.N.: 44666
		Drawn by: Lewis	Checked by: French

TIMMONS GROUP

9-22-08
RECEIVED

NOV 14 2008

EXHIBIT B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AGENCY DETERMINATION

UNDER THE
 RESOURCE CONSERVATION AND RECOVERY ACT
 AS AMENDED BY THE HAZARDOUS AND SOLID WASTE
 AMENDMENTS OF 1984

6142

Final
Determ.

Facility: Former Royster Company Facility

ID Number: VAD003178126

Address: Pratt Street
Chesapeake, Virginia 23324Purpose

This Final Decision is issued by the United States Environmental Protection Agency (EPA) under the authority of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6901 *et seq.*, and EPA regulations at 40 C.F.R. Parts 260-271 and Part 124, for the Former Royster Company Facility, Chesapeake, Virginia. EPA has used the administrative procedures for permitting found in 40 C.F.R. Part 270 to provide public notice and solicit comment on EPA's proposed remedy.

Proposed Remedy

In July 2008, EPA proposed a remedy of Corrective Action Complete with Controls for the Former Royster Company Facility.

EPA requested comments from the public by announcing the forty-five (45) calendar day comment period on the proposed remedy in a local newspaper. The comment period lasted from July 16 to September 2, 2008. During that time, the Administrative Record, including the Statement of Basis describing the proposed remedy was made available for review by the public at the EPA Region III office in Philadelphia and also at the Portsmouth Public Library as well as the Elizabeth River Project Offices located in Portsmouth, VA.

Response to Comments

The forty-five (45) day comment period on the proposed remedy ended on September 2, 2008 and no comments were received.

Final Decision

Consistent with EPA's February 2003 document Final Guidance on Completion of Corrective Action Activities at RCRA Facilities (reference 68 FR 8757), EPA is making a determination of "Corrective Action Complete with Controls" for the Former Royster Company Facility. The guidance recommends that EPA make this determination where the full set of corrective measures has been implemented and all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and maintenance of any institutional controls. The final remedy for the Former Royster Company Facility meets these objectives and is protective of human health and the environment. The final remedy for the Former Royster Company Facility site is as follows:

The waste pile unit (SWMU No. 2) at the Royster property underwent closure activities that included five rounds of sampling and analyses, and three rounds of soil excavation and removal. The foundation of the building that formerly housed the waste pile facility was demolished and also removed prior to closure.

In addition, the tank mixing unit (SWMU No. 1) has been closed in general accordance with the approved Closure Plan for this SWMU. Closure activities included four rounds of sampling and analyses, and three rounds of soil excavation and removal. In addition to the excavation of contaminated soil, the building housing the tank mixing facility and the foundation were also demolished and removed. These actions have mitigated any environmental impacts from historic operations and have resulted in the Facility posing no unacceptable risk to human health and the environment.

The distribution of residual contaminants in soils (post remedial action) at the SWMUs is such that there is insufficient mass of contamination in any one area to remain a concern for potential leaching to groundwater. In December 1988, the facility was inspected by a representative from the Virginia Department of Waste Management. Based on the December 1988 site visit, the Virginia Department of Waste Management determined that the company had completed a clean closure at the Facility. EPA Region III agrees with this determination.

Furthermore, the former Royster property is presently included as part of the Money Point Revitalization Plan, one of the largest environmental restoration efforts on the Chesapeake Bay. The revitalization plan will include remediating an area just offshore of the Royster site. The contaminants of concern identified at this offshore location are not related to activities that occurred on the Former Royster Property. As part of the Money Point Revitalization Plan, Kinder Morgan, the current property owner, has placed the Former Royster Property in a conservation agreement with the Elizabeth River Project, a community-based non-profit organization leading restoration of the Elizabeth River. The Money Point revitalization plan includes a large wetland restoration project that will take place on a portion of the Former Royster Property. The wetland restoration will greatly improve the shoreline of the site. It is anticipated that future use of the remaining Former Royster Property will be as open space as part of the wetlands restoration project or for some industrial purpose.

Various Virginia State Offices and the USEPA provided oversight for activities at the Royster property during the operating years of the facility through facility close out. The Virginia Department of Waste Management was the lead agency during the closure of the facility. The agency worked with the property owners through three rounds of contaminated soil excavation and removal, and confirmation analyses before approving the closure of the facility in June 1989.


Additional soil samples were collected in 2006 through the Elizabeth River Project as part of the wetland restoration effort at the site.

Based on the sampling results under RCRA Closure of SWMUs Nos. 1 and 2 and the more recent facility soil sampling, the VDEQ and the USEPA agree that Corrective Action is Complete at the facility provided that future use of the property will be restricted to industrial use and/or wetlands revitalization. The facility will be required to file a notice with the Recorder of Deeds in the City of Chesapeake to prohibit residential use of the property as the institutional control measure to meet the Corrective Action is Complete with Controls Determination.

If residential use for this property is proposed in the future, the site soils would have to be rescreened and reevaluated to demonstrate acceptable levels of constituents of concern for unrestricted residential uses.

DECLARATION

Based on the Administration Record compiled for the corrective action at the Former Royster Company Facility site, I have determined that the remedy selected is protective of human health and the environment and RCRA Corrective Action is Complete with Controls.


Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA Region III

9/22/08
Date

INSTRUMENT # 210043437
E-RECORDED IN THE CLERK'S OFFICE OF
CHESAPEAKE ON
SEPTEMBER 23, 2021 AT 10:38AM

ALAN P. KRASNOFF, CLERK
RECORDED BY: GJB