

ENVIRONMENTAL COVENANT AMENDMENT

WHEREAS, The Keystone Gravel Company (“Keystone”) owns fourteen parcels of real property, which are listed in Attachment A, that collectively cover approximately 102 acres in the City of Dayton, Ohio (“Property”);

WHEREAS, the Property is a former sand and gravel quarry that was used in the past for the disposal of commercial, industrial, municipal, and other types of waste;

WHEREAS, the U.S. Environmental Protection Agency designated the Property, and other adjoining properties, as the North Sanitary (aka “Valleycrest”) Landfill Superfund Site (“Site”) and placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 31, 1994, 59 Fed. Reg. 27989;

WHEREAS, EPA issued a final Record of Decision (“ROD”) on August 16, 2013, selecting a remedial action to address contamination at the Site by, among other things, installing a solid waste “cap” in accordance with Ohio Administrative Code 3745-27-08 over a portion of the Site;

WHEREAS, the EPA-selected remedial action will be implemented by a group of companies (“Settling Work Parties”) pursuant to a Consent Decree, which was entered by the Federal District Court for the Southern District of Ohio (“Court”) on the _____ day of _____, 2017 and docketed as United States v. Bridgestone Americas Tire Operations, LLC et al., Docket No. _____ (S.D. Ohio) (*hereinafter* “Consent Decree”);

WHEREAS, the entities that comprise the Settling Work Parties are also members of the ValleyCrest Landfill Site Group (“VLSG”), which is the holder of an Environmental Covenant at Attachment B pertaining to the Property (“Original Environmental Covenant”);

WHEREAS, the Original Environmental Covenant was entered into by Keystone (“Owner”), the VLSG (“Holder”), and Ohio Environmental Protection Agency (“Ohio EPA”) on July 18, 2007 for the purpose of, among other things, subjecting the Property to certain activity and use limitations pursuant to Ohio Revised Code (“ORC”) §§ 5301.80 to 5301.92;

WHEREAS, the Consent Decree requires, among other things, that the Settling Work Parties obtain an amendment of the Original Environmental Covenant that shall:

(1) limit the use of the Property to include all of the restrictions set forth in Paragraph 25 (Land, Water, or Other Use Restrictions) of the Consent Decree that are included within the Institutional Controls Implementation and Assurance Plan (“ICIAP”) approved by EPA in accordance with Section 6 (Deliverables) of the SOW, which is attached at Appendix B to the Consent Decree;

(2) provide EPA and its representatives, contractors, and subcontractors, with access at all reasonable times to the Keystone Affected Property for the purpose of conducting any activity regarding the Consent Decree, including those activities listed Paragraph 24 (Access Requirements) that are included within the EPA-approved ICIAP; and

(3) grant to EPA the right to seek judicial enforcement of the Amended EC against Keystone and all future owners or transferees of the Keystone Affected Property;

WHEREAS, the Original Environmental Covenant provides under Paragraph 12 that it may amended only by written consent of (1) the Owner or a Transferee, (2) the Holder, and (3) Ohio EPA, and that such amendment shall be pursuant to ORC § 5301.90 and other applicable law;

WHEREAS, in 2011, the Secretary of State for the State of Ohio cancelled the Articles of Incorporation for Owner due, among other things, to the Owner's failure to pay certain taxes within the time period prescribed by law;

WHEREAS, based upon a search conducted by the Settling Work Parties, there are no known surviving officers or directors who may act on behalf of Owner, nor are there any known corporate successors of Owner, and

WHEREAS, . . . [*Settling Work Parties shall insert additional "whereas" clauses, as appropriate, to explain steps taken to allow the Original Environmental Covenant to be amended in accordance with the requirements of ORC § 5301.90 and Paragraph 20(a)(1) of the Consent Decree*]

NOW THEREFORE, Owner [*Settling Work Parties shall omit "Owner" if amendment will not require signature by Keystone*], Holder, Ohio EPA, and EPA agree to the following:

1. **Amended Environmental Covenant.** This instrument is an Environmental Covenant executed, amended, and delivered pursuant to §§ 5301.80 to 5301.92 of the ORC. Except as specifically provided herein, the terms and conditions of the Original Environmental Covenant at Attachment B, remain unaltered and in full effect after the Effective Date of this instrument ("Amended Environmental Covenant"). Specifically, this Amended Environmental Covenant maintains, and incorporates by reference, Paragraphs 6 (Running with the Land), 7 (Compliance Enforcement), 11 (Representations and Warranties), and 13 (Severability) of the Original Environmental Covenant.
2. **Property.** This Amended Environmental Covenant concerns approximately 102 acres of real property in City of Dayton, Montgomery County, Ohio, and more particularly described in Attachment A.
3. **Owner.** The Keystone Gravel Company, a former Ohio Corporation, is the owner of the Property. [*Settling Work Parties shall insert additional information to describe the current legal status of Keystone. For instance, if a receiver is appointed for Keystone, the receiver's address and information should be included here.*]

4. Holder. The Valleycrest Landfill Site Group, whose members consist of the Settling Work Parties identified in Appendix D of the Consent Decree, is the Holder of this Environmental Covenant. The Settling Work Parties, who are members of Holder, are:

- Bridgestone Americas Tire Ops., LLC
- Cargill, Inc.
- Flowserve Corporation
- NCR Corporation
- Northrop Grumman Corporation
- Waste Management of Ohio, Inc.
- Kelsey-Hayes Company

5. Activity and Use Limitations,

a. Land Use Restrictions. The Property shall not be used for Residential Uses and Other Prohibited Uses. The term “Residential Uses and Other Prohibited Uses” means: (i) single and multi-family dwellings and transient residential units; (ii) occupancy on a 24-hour basis; (iii) uses to house, educate, or provide care for children, the elderly, the infirm, or other sensitive subpopulations; and (iv) agricultural uses. The Property shall also not be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the Remedial Action which has been implemented or which will be implemented pursuant to the Consent Decree unless the written consent of the EPA to such use is first obtained. Further, no Waste Material shall be brought onto the Property, except in accordance with any federal, state or local permit or the Consent Decree.

b. No Interference with Cover. Except as provided in a plan approved in writing by EPA, the following activities are prohibited in any cover installed pursuant to the requirements of the Consent Decree: 1) any excavation or other intrusive activity that could affect the integrity of the cover; and 2) any disturbance of the materials underneath the cover.

c. Groundwater Restrictions. Except as required as part of an EPA approved activity, or upon written certification by EPA that all applicable performance standards have been met, construction of wells and activities that extract, consume, or otherwise use any groundwater are prohibited on the Property.

d. Restrictions on Construction. Construction over areas where a vapor intrusion pathway may occur is prohibited unless such construction includes adequate mitigation measures for the vapors, as demonstrated in a plan approved in writing by EPA.

e. Fencing and Security. Fences and signs to secure the Property shall be maintained until the written consent of the EPA is obtained to modify such features.

f. *[Settling Work Parties shall insert any other restrictions set forth in Paragraph 25 (Land, Water, or Other Use Restrictions) of the Consent Decree that are included within the Institutional Controls Implementation and Assurance Plan (“ICIAP”) approved by EPA in accordance with Section 6 (Deliverables) of the SOW, which is attached at Appendix B to the Consent Decree]*

6. Requirements for Notice to EPA before Transfer of a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Work Affecting Contamination on the Property. Neither Owner nor Holder (nor any member of the Holder) shall transfer any interest in the Property or make proposed changes in the use of the Site, or make applications for building permits for, or proposals for any work in the Site without first providing notice to EPA and obtaining any approvals or consents thereto which are required under Sections V (General Provisions), VI (Performance of Work), VII (Remedy Review), VIII (Property Requirements), XIII (Notices and Submissions) or Appendix B (Statement of Work) of the Consent Decree.

7. Access to the Site. EPA, Ohio EPA, and the Settling Work Parties (listed in paragraph 4 above), their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively “Access Grantees”) shall each have unrestricted right of access to the Property to undertake the Permitted Uses described in Paragraph 8 below and, in connections therewith, to use all roads, drives and paths, pave or unpaved, located on the Property for ingress to or egress from portions of the Property (collectively “Access Roads”). The right of access granted under this Paragraph 8 shall be irrevocable while this Covenant remains in full force and effect.

8. Permitted Uses. The right of access granted under Paragraph 7 of this Amended Environmental Covenant shall provide Access Grantees with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the Consent Decree or the purchase of any part of the Property, including, but not limited to, the following activities:

- a. Monitoring the “Work,” as defined under Paragraph 4.ss of the Consent Decree;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in Appendix B (Statement of Work) of the Consent Decree;
- g. Implementing the Work pursuant to the conditions set forth in Paragraph 76 (Work Takeover) of the Consent Decree;

h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Parties or their agents, consistent with Section XIX (Access to Information) of the Consent Decree;

i. Assessing compliance with the Consent Decree by Settling Parties, as defined in Paragraph 4.hh of the Consent Decree;

j. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

k. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls, as defined under Paragraph 4.k of the Consent Decree.

9. Administrative Record. The Consent Decree constitutes an environmental response project as defined by ORC § 5301.80(E) and authorizes and requires certain remedial action to be taken by the Settling Work Parties. As described in the fourth “whereas” clause at the beginning of this instrument, EPA issued on August 16, 2013, a ROD which set forth EPA’s determination of the appropriate remedial action to be implemented at the Site to address Site contamination. Copies of the EPA administrative record supporting the ROD are maintained at the following locations: EPA Region 5, Superfund Records Center (7th Floor), 77 W. Jackson, Chicago, Illinois 60604 and at the Ohio EPA Southwest District Office, 401 East Fifth Street, Dayton, Ohio, 45402

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations, and grants of access set forth in this Amended Environmental Covenant, and provide the recorded location of this Amended Environmental Covenant. For instruments conveying any interest in the Site or any portion thereof, the notice shall be substantially in the form set forth in Attachment C.

11. Amendments; Early Termination. This Amended Environmental Covenant may be amended or terminated by [*Settling Work Parties shall insert procedures that comply with ORC § 5301.90*]. Any future changes to this Amended Environmental Covenant shall be recorded in the Office of the Recorder of Montgomery County, Ohio. Upon transfer of all or any portion of the Property, Owner waives any rights that it might otherwise have under Section § 5301.90 of the ORC to withhold its consent to any amendments, modifications, or termination of this Amended Environmental Covenant, to the extent that it has transferred its interest in that portion of the Property affected by said modification, amendment or termination. The rights of Owner’s successors in interest as to a modification, amendment or termination of this Environmental Covenant are governed by the provisions of Section § 5301.90 of the ORC.

12. Other Matters.

a) Future Cooperation; Execution of Supplemental Instruments. This Amended Environmental Covenant does not require the future cooperation of Owner for the purpose of executing supplemental instruments, provided that such instruments are agreed to in writing by EPA, Ohio EPA, and the Holder. The Holder shall cooperate by agreeing to execute and deliver such further documents as may be requested by EPA and/or Ohio EPA to supplement or confirm the rights granted hereunder.

b) Cumulative Remedies; No Waiver. All of the rights and remedies set forth in this Amended Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the Consent Decree or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner, or future owners of the Property, of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of EPA and no extension of the time for performance of any obligations of Owner, or future owners of the Property, hereunder shall operate to release or in any manner affect EPA's rights hereunder.

c) Recordation. Within thirty (30) days after the date of the final required signature upon this Amended Environmental Covenant, Holder shall cause this Amended Environmental Covenant to be recorded, in the same manner as a deed to the Property, with the Montgomery County Recorder's Office.

d) 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 Site with the Montgomery County Recorder.

e) Distribution of Environmental Covenant. The Holder shall cause a file-stamped and date-stamped copy of the recorded Environmental Covenant to be distributed to EPA, Ohio EPA, Montgomery County, and each person holding a recorded interest in the Property.

f) Notices. All notices, requests, demands or other communications required or permitted under this Amended Environmental Covenant shall be given in the manner and with the effect set forth in the Consent Decree.

g) Governing Law. This Amended Environmental Covenant shall be construed according to and governed by the laws of the State of Ohio and the United States of America.

h) Captions. All paragraph captions are for convenience of reference only and shall not affect the construction of any provision of this Environmental Covenant.

IN WITNESS WHEREOF, Owner has executed and delivered this Amended Environmental Covenant as of the date first above written.

[Note: Omit this signature if instrument can be amended in accordance with ORC 5301.90 without need of Owner's signature]

OWNER

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____.

Notary Public

IN WITNESS WHEREOF, Ohio EPA has executed and delivered this Amended Environmental Covenant as of the date first above written.

OHIO EPA

By: _____

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____.

Notary Public

N WITNESS WHEREOF, Ohio EPA has executed and delivered this Amended Environmental Covenant as of the date first above written.

HOLDER

By: _____

STATE OF OHIO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____.

Notary Public

ATTACHMENT A

Legal Description of Property

Settling Work Parties shall insert a legal description of Property, including the lot numbers listed in the Original Environmental Covenant, the parcel numbers listed in Paragraph 20.a of the Consent Decree, and any update of the surveys performed by Settling Work Parties under Paragraph 20.a(3) of the Consent Decree

ATTACHMENT B

Original Environmental Covenant

[Settling Work Parties shall attach a copy of the Original Environmental Covenant]

ATTACHMENT C

Notice upon Conveyance of Site or any Portion thereof

THE INTEREST CONVEYED HEREBY IS SUBJECT TO (1) A CONSENT DECREE DATED _____, 2017 WHICH WAS ENTERED BY THE FEDERAL DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ON THE _____ DAY OF _____, 2017 AND DOCKETED AS UNITED STATES V. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC, ET AL., DOCKET NO. _____ (S.D. OHIO) (*HEREINAFTER* “CONSENT DECREE”), AND (2) AN AMENDED ENVIRONMENTAL COVENANT, DATED _____, 20__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE OFFICE OF THE MONTGOMERY COUNTY RECORDER ON _____, 20__, IN BOOK _____, PAGE _____. THE AMENDED ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND ACCESS RIGHTS:

1. Activity and Use Limitation on the Site.

a. Land Use Restrictions. The Property shall not be used for Residential Uses and Other Prohibited Uses. The term “Residential Uses and Other Prohibited Uses” means: (i) single and multi-family dwellings and transient residential units; (ii) occupancy on a 24-hour basis; (iii) uses to house, educate, or provide care for children, the elderly, the infirm, or other sensitive subpopulations; and (iv) agricultural uses. The Property shall also not be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the Remedial Action which has been implemented or which will be implemented pursuant to the Consent Decree unless the written consent of the EPA to such use is first obtained. Further, no Waste Material shall be brought onto the Property, except in accordance with any federal, state or local permit or the Consent Decree.

b. No Interference with Cover. Except as provided in a plan approved in writing by EPA, the following activities are prohibited in any cover installed pursuant to the requirements of the Consent Decree: 1) any excavation or other intrusive activity that could affect the integrity of the cover; and 2) any disturbance of the materials underneath the cover.

c. Groundwater Restrictions. Except as required as part of an EPA approved activity, or upon written certification by EPA that all applicable performance standards have been met, construction of wells and activities that extract, consume, or otherwise use any groundwater are prohibited on the Property.

d. Restrictions on Construction. Construction over areas where a vapor intrusion pathway may occur is prohibited unless such construction includes adequate mitigation measures for the vapors, as demonstrated in a plan approved in writing by EPA.

e. Fencing and Security. Fences and signs to secure the Property shall be maintained until the written consent of the EPA is obtained to modify such features.

f. *[Settling Work Parties shall insert any other restrictions set forth in Paragraph 25 (Land, Water, or Other Use Restrictions) of the Consent Decree that are included within the Institutional Controls Implementation and Assurance Plan (“ICIAP”) approved by EPA in accordance with Section 6 (Deliverables) of the SOW, which is attached at Appendix B to the Consent Decree]*

2. Requirements for Notice to EPA Following Transfer or a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Work Affecting Contamination on the Property. Neither Owner nor Holder (nor any member of the Holder) shall transfer any interest in the Property or make proposed changes in the use of the Site, or make applications for building permits for, or proposals for any work in the Site without first providing notice to EPA and obtaining any approvals or consents thereto which are required under Sections V (General Provisions), VI (Performance of Work), VII (Remedy Review), VIII (Property Requirements), XIII (Notices and Submissions) or Appendix B (Statement of Work) of the Consent Decree.

3. Access to the Site. Pursuant to the Amended Environmental Covenant EPA and the Settling Work Parties (listed in paragraph 4 of the Amended Environmental Covenant), their successors and assigns, and their respective officers, employees, agents, contractors and other invitees (collectively “Access Grantees”) shall each have unrestricted right of access to the Property to undertake the Permitted Uses described in Paragraph 4 below and, in connections therewith, to use all roads, drives and paths, pave or unpaved, located on the Property for ingress to or egress from portions of the Property (collectively “Access Roads”). The right of access granted under the Amended Environmental Covenant shall be irrevocable while the covenant remains in full force and effect.

4. Permitted Uses. The right of access granted under the Amended Environmental Covenant shall provide Access Grantees with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the Consent Decree or the purchase of any part of the Property, including, but not limited to, the following activities:

- a. Monitoring the “Work,” as defined under Paragraph 4.ss of the Consent Decree;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in Appendix B (Statement of Work) of the Consent Decree;

g. Implementing the Work pursuant to the conditions set forth in Paragraph 76 (Work Takeover) of the Consent Decree;

h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Parties or their agents, consistent with Section XIX (Access to Information) of the Consent Decree;

i. Assessing compliance with the Consent Decree by Settling Parties, as defined in Paragraph 4.hh of the Consent Decree;

j. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

k. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls, as defined under Paragraph 4.k of the Consent Decree.