

CERTIFICATE OF NO ACTION NECESSARY AND LAND USE DISCLOSURE



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Fees: \$23.00 Doc: \$0.00
Lori Hendricks, County Clerk
Wagoner County - State of Oklahoma

JM ASSET, LP
TRACT 1 AND 3 OF THE FORMER BROKEN ARROW LANDFILL

OKLAHOMA BROWNFIELDS VOLUNTARY REDEVELOPMENT ACT 27A O.S. § 2-15-101 *et seq.* DEPARTMENT OF ENVIRONMENTAL QUALITY

PARTIES. The JM Asset, LP, through John Muhich, President of A-A-A Storage, LLC as General Partner of JM Assets, LP, (hereinafter "Participant") approved a Brownfields Proposal for a No Action Necessary Determination (hereinafter "Proposal") to the Oklahoma Department of Environmental Quality ("DEQ") on October 13, 2014.

LEGAL DESCRIPTION. On March 24, 2009, DEQ and the Participant entered into a Brownfield Consent Order for Site Characterization and Risk-Based Remediation ("CO") CO No. 09-057 for Tract 1 and 3 of the former Broken Arrow Landfill site (hereinafter "Affected Property") located at South 219th East Ave, East 71st South in Broken Arrow, Oklahoma and generally described as an area bound on the north by East 71st, with commercial buildings and residential properties, bound on the east by pasture land and residential development, bound on the south by unoccupied land with surface water and residential housing, and bound on the west by remnants a former strip mine which is now largely unoccupied except for one residence and an oil tank to the very north of the property. It is more specifically described as:

Part of W/2 of NE/4 of Section 8, Township 18 North, Range 15 East of the Indian Base and Meridian, Wagoner County, State of Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows: Beginning at a point 50 feet South of the NE corner of said W/2 of NE/4, Thence S 01°17'51" E along the East line of said W/2 of NE/4 2595.97 feet to the SE corner of said W/2 of NE/4, Thence S 88°49'1" W along the South line of said W/2 of NE/4 1320.16 feet to the SW corner of said W/2 of NE/4, Thence N 01°19'88"E along the West line of said W/2 of NE/4 1473.60 feet, Thence N 88°40'28" a distance of 1261.08 feet to a point that is 60 feet West of the East line of said W/2 of NE/4, Thence N 01°17'51" W and parallel to said East line a distance of 1118.97 feet to a point on the South right-of-way line of East Kenosha Ave. (E. 71st St. South), Thence N 88°40'28" E along said right-of-way 60 feet to the Point of Beginning.

The property has been divided into three separate tracts and the portions of the above property that are subject to this Certificate are Tracts 1 and 3 as more specifically described as follows:



TRACT 1

A tract of land that is port of the W/2 NE/4 of Section 8, Township 18 North, Range 15 East of the Indian Base and Meridian, Wagoner County, State of Oklahoma, being more particularly described as follows: Commencing at the NW Corner of the NE/4, Thence S01'19'59"E along the West line of NE/4 50.00 feet; thence N88'40'18"E 73.54 feet; thence S88'27'57"E 200.25 feet; thence N88'40'18"E 100.00 feet to the Point of Beginning; thence N84'51'37"E 150.33 feet; thence N88'40'28"E 462.22 feet: thence S01'17' 51 "E 331.61 feet; thence WEST 100.00 feet; thence SOUTH 250.00 feet; thence WEST 500.00 feet; thence SOUTH 200.00 feet; thence S88'40'28"W 375.24 feet to a point on said West line of NE/4; thence N01'19'59"W along said West line 222.93 feet; thence N33'30'32"E 653.83 feet to the Point of Beginning, containing 11.73 acres, more or less.

TRACT 3

A tract of land that is part of the W/2 NE/4 of Section 8, Township 18 North, Range 15 East of the Indian Base and Meridian, Wagoner County, State of Oklahoma, being more particularly described as follows: Beginning at a point 1650.13 feet South of the Northeast corner of said W/2 NE/4; thence S01'17'51"E along the East line of said W/2 NE/4 1127.76 feet to the Southeast corner of said W/2 NE/4; thence S88'49'19"W along the south line of said W/2 NE/4 1320.16 feet to the Southwest corner of said W/2 NE/4; thence N01'19'58"E along the West line of said W/2 NE/4 874.39 feet; thence N88'40'28"E 303.15 feet; thence NORTH 250.00 feet; thence EAST 1011.89 feet to the Point of Beginning, containing 32.38 acres, more or less.

RISK EVALUATION. Site Characterization Activities were conducted with approval of DEQ in 2010, 2011 and 2013. Property investigation was subsequently completed in December 2013 and was performed under DEQ oversight.

Levels of arsenic in surface soils are above screening levels for industrial property use, and exceed USGS background levels for the county. According to the USGS arsenic can be associated with coal and coal mines such as the mine that was a former use of the property. The levels of arsenic present on the property are considered background levels within the footprint of the strip mine. No remedial action will be required for the proposed future use of the property.

An evaluation of the risk the contamination presents to human health and the environment was performed using DEQ published methods. DEQ has determined that potential exposure to the contamination can be adequately controlled by the physical barriers to the contamination, namely the concrete building slabs and a solid surface parking lot.

PUBLIC NOTICE. On October 15, 2014, the Participant published a Public Legal Notice of the Proposal for a No Action Determination in compliance with the Brownfields Voluntary Redevelopment act, 27A O.S. § 2-15-101 *et seq.*, and the rules of the DEQ, Oklahoma Administrative Code ("OAC") Title 252, Chapter 221. A notarized and dated Publisher's Affidavit from Coweta American newspaper in Coweta, Oklahoma, is on file as part of the Proposal. The Legal Notice notified the public of the opportunity to review and comment on the Proposal and provided an opportunity to request a public forum to discuss the Proposal. No comments were received.



LAND USE RESTRICTIONS. The intended future use specified in the Proposal for the Affected Property is restricted to commercial use. Investigation of the Affected Property has shown contamination in exceedance of conservative, risk-based screening levels that are protective of human health and the environment which will be managed by this Brownfield Certificate which acts as a land use control. The Land use restrictions imposed on the property are:

1. No use of groundwater and no drilling of wells.
2. No residential use of the property. Residential use is defined for exposure evaluation as having the potential for someone to live on site for 350 days a year for 30 years. Property may not be used for day cares, preK-12 schools, or edible agriculture uses.

The owner of the Affected Property and all persons using the Affected Property shall comply with all land use restrictions. Said restrictions and controls shall apply to the Affected Property and to the persons who own and/or use the property until such time as the DEQ files a subsequent Notice of Remediation that changes or removes one or more of them. The land use may not be changed until after the DEQ has filed a recordable notice of remediation pursuant to 27A O.S. §2-7-123 and/or other applicable law in the land records in the office of the county clerk where the site is located designating the new land use.

CHANGING LAND USE RESTRICTIONS. Changes to land use restrictions must be approved by the Department of Environmental Quality or its successor agency. The person requesting the change in land use must demonstrate to the DEQ's satisfaction that contamination at the site has reached levels appropriate for the proposed new land uses and that further remediation is not necessary or that additional institutional or engineering controls are adequate to achieve levels protective of human health and the environment for the proposed uses.

The DEQ may require oversight costs, work plans, sampling, reports, and public participation as part of its review of the new information to support the requested change in land use restrictions. The person requesting the change will be required to follow agency procedures effective at the time of the request.

The DEQ at its discretion may determine, based on the new information submitted, that contaminants are present at the site at levels that will not pose a risk to human health or the environment if the new land use restrictions being requested are allowed. Upon making this determination, the DEQ will file a recordable notice of remediation pursuant to state law in the land records in the office of the county clerk where the Site is located designating the new land use restrictions.

This Certificate and the restrictions and requirements contained herein run with the land and no change of ownership of the Affect Property will change the Land Use Restrictions.

NO ACTION NECESSARY DETERMINATION. Investigation of the Affected Property has shown the existence of pollutants in the surface soil at levels above DEQ screening levels for arsenic. Given the intended future use of the property, which is commercial, the site does not pose an unreasonable risk to human health and safety or to the environment as determined by the DEQ as long as the use is in compliance with the restrictions enumerated below. Based on the controls placed on the property, no remediation is necessary.

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TERMS, CONDITIONS, AND RELEASE OF LIABILITY. In accordance with the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 et seq.:

1. The Department shall not pursue administrative penalties and civil actions against the Participant(s), lenders, lessees, and successors (including successors in title) and assigns associated with actions taken to remediate the contamination caused by regulated substances which is the subject of the Certificate of Completion,
2. The Department shall not pursue administrative penalties and civil actions against the Participant(s), lenders, lessees, and successors (including successors in title) and assigns are in compliance with any post-certification conditions or requirements specified in the Certificate of Completion,
3. The Participant(s) and all lenders, lessees, and successors (including successors in title) and assigns shall not be subject to civil liability with regard to the remedial actions taken by the Participant(s) for pollution, as required by the Certificate of Completion if the remedial action is not performed in a reckless or negligent manner,
4. The Department of Environmental Quality shall not assess against a Participant administrative penalties or pursue civil actions associated with the pollution which is the subject of the Certificate of Completion if:
 - a. the Participant is in compliance with the consent order during remediation or with the Certificate of Completion, and
 - b. the Participant is in compliance with any post-certification conditions or requirements specified in the Certificate of Completion,
5. After issuance of the Certificate of Completion, the Department shall not assess administrative penalties or pursue civil actions associated with the contamination which is the subject of the Certificate of Completion against any lender, lessee, or successor (including successors in title) or assign if the lender, lessee, or successor or assign is in compliance with any post-certification conditions or requirements as specified in the Certificate of Completion,
6. Failure of the Participant(s) and any lenders, lessees, or successors (including successors in title) or assigns to materially comply with the Certificate of Completion entered into pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act shall render the Certificate of Completion voidable,
7. Submission of any false or materially misleading information by the Participant(s), knowing such information to be false or misleading shall render the Certificate of Completion voidable,
8. The Participants and each of the Participant's lenders, lessees, or successors (including successors in title) or assigns, or any other person, this state or a local political subdivision thereof, or any other legal entity acquiring, in good faith, the property which was subject to the Oklahoma Brownfields Voluntary Redevelopment Act shall not be subject to civil

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liability regarding the pollution which was the subject of the Consent Order or this Certificate so long as the participant is in compliance with any post-certification conditions or requirements specified in the Consent Order or this Certificate.

9. The Certificate of Completion shall remain effective as long as the Affected Property is in substantial compliance with the Certificate of Completion,
10. The issuance of this Certificate of Completion shall not be construed or relied upon in any manner as a determination by the DEQ that the Affected Property has not been or is not environmentally contaminated by pollution.
11. This Certificate applies only to conditions caused by pollution on the Affected Property, to applicable state and federal laws and to applicable rules and standards promulgated by the Board of Environmental Quality that existed at the time of submission of the Brownfield Proposal.
12. The release of liability from administrative penalties and any civil actions authorized by the Oklahoma Brownfields Voluntary Redevelopment Act shall not apply to:
 - a. any pollution and consequences thereof that the participant causes or has caused outside the scope of this Certificate,
 - b. any pollution caused or resulting from any subsequent redevelopment of the property,
 - c. existing pollution not addressed prior to issuance of this Certificate, or
 - d. any person responsible for pollution who has not participated in the voluntary remediation of the Affected Property.

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RECEIVED
March 13, 2017
BROKEN ARROW
PLAN DEVELOPMENT

FOR THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

Scott A. Thompson
Scott A. Thompson, Executive Director
Executive Director

12-8-14
Date

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ACKNOWLEDGMENT

STATE OF OKLAHOMA)
)
) SS:
COUNTY OF OKLAHOMA)

Before me, Deborah Ray, in and for said county and state, on this 8th day of December, 2014, personally appeared Scott Thompson, Executive Director, Oklahoma Department of Environmental Quality, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Certificate of No Action Necessary and acknowledged before me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such governmental agency, for the uses and purposes therein set forth.

Deborah Ray
Notary Public



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