**STATE OF WEST VIRGINIA**

**VOLUNTARY REMEDIATION PROGRAM**

**CERTIFICATE OF COMPLETION AND COVENANT**

[Insert Applicant(s)] entered into a Voluntary Remediation Agreement with the Secretary of the West Virginia Department of Environmental Protection (hereinafter, “WVDEP”), dated [Insert Date] (“Agreement”). The Agreement was entered into to address the release of any contaminants at [Insert VRP Project Name (and Parcel if applicable)] (“Site”) located at [Insert Street Address], Insert City, in [Insert County] County, West Virginia, more particularly described in deed book [Insert Deed Book Number], page number [Insert Page Number], and tax parcel identification number [Insert Tax Parcel ID Number].

The following documents are incorporated as a part of this certificate and covenant:

* The application dated [Insert Date of WVDEP Application Cover Letter], and the site assessment submitted with the application. [IF APPLICABLE: Also reference any Application Amendments and the corresponding dates.]
* The Agreement dated [Insert Date(s) of WVDEP Approval for Agreement and Agreement Mod(s)]. [IF APPLICABLE: Also reference any VRA Modifications and the corresponding dates.]
* A map depicting the Site and remediated acres [per parcel if applicable] (see Exhibit A).
* A list of the contaminants of concern in each environmental media for which the Site meets applicable standards and a list of the remediation standards applicable to each media (see Exhibit B).
* The final report dated [Insert Date as listed on Final Report], issued for the Site by a licensed remediation specialist.
* The land use covenant recorded for the Site (see Exhibit C). [IF APPLICABLE]

The administrative record for the environmental response project reflected in this certificate and covenant is maintained at the WVDEP headquarters, and is entitled:

VRP Project Name, (and parcel, if applicable) VRP #VRP Project Number

This Certificate of Completion is issued pursuant to W. Va. Code § 22-22-13 to [Insert Applicant(s)] in recognition of the completion of the work required under the Agreement. Pursuant to W. Va. Code §§ 22-22-7(f), 22-22-13, 22-22-14, and 22-22-18, the Secretary of the WVDEP, in the name of and on behalf of the State of West Virginia, now covenants not to bring any civil, criminal, or administrative action or claim, resulting from or based upon the release or threatened release of contaminants that were the subject of the Voluntary Remediation Agreement. This covenant shall bar actions against [Insert Applicant(s)], their successors and assigns, and those persons identified in W. Va. Code § 22-22-18, from all public and private claims arising under Chapter 22 of the West Virginia Code or rules adopted thereunder in connection with the release or threatened release that was the subject of the Voluntary Remediation Agreement. This covenant shall not apply to [Insert Applicant(s)]’s predecessors in title.

**CONDITIONS**

This certificate and the covenant it contains are subject to the terms and conditions set forth below:

1. The following conditions, contained in W. Va. Code § 22-22-15, which may cause the Voluntary Remediation Agreement to be reopened:
2. fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;
3. new information confirms the existence of an area of previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;
4. the level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as a change in land use, or new information is obtained about a contaminant associated with the site which revises exposure assumptions beyond the acceptable range. This condition applies only where the level of risk is increased by a factor of at least five or the hazard index exceeds 1.0 for any individual or group of toxicants that act on the same target organ. Where multiple systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index for each target organ shall not exceed 1.0;
5. the release occurred after the effective date of this Article on a site not used for industrial activity prior to the effective date of this Article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination; and treatment, removal, or destruction has become technically and economically practicable; or
6. the remediation method failed to meet the remediation standard or combination of standards.

For purposes of this paragraph, “new information” means any information obtained directly or indirectly by the Department from any person after issuance of a Certificate of Completion, but does not include information the Department has received in the application for participation in the Voluntary Remediation Program, including any site assessment, or other information available to the Department under the Voluntary Remediation Program prior to the execution of the Certificate of Completion. Information that does not qualify as new information may be considered by the Secretary along with new information if necessary, to determine whether any of the conditions for reopening set out in Section 16 of the Voluntary Remediation and Redevelopment Rule have occurred.

Where one of the foregoing conditions is found to exist for a portion but not all of the site, this certificate and covenant shall continue to apply to all portions of the site that were unaffected by the occurrence of that condition.

1. To the extent that the Agreement or any of the documents referenced in this certificate impose obligations that continue after the execution of this certificate, there shall be continued compliance with such obligations.
2. This certificate and covenant do not preclude the State of West Virginia from taking any unilateral action at the site, under any existing or future statutory authority, to protect human health and the environment; provided, however, in no event shall the State have a right of recovery against [Insert Applicant(s)] or any other person to whom the covenant herein applies to the extent that such right of recovery arises under Chapter 22 of the West Virginia Code, and relates to matters covered by the Agreement.
3. This certificate and covenant do not preclude the State from seeking recovery of such sums as the [Insert Applicant(s)] has agreed to pay the WVDEP under the Agreement.

**WHEREFORE**, the Secretary of the Department of Environmental Protection, on behalf of the State of West Virginia, issues this certificate and covenant, with all aforementioned privileges, responsibilities, conditions, and reservations, this date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to [Insert Applicant(s).

|  |
| --- |
|  |
| Secretary, Department of Environmental Protection |