

COPY

DONALD ZEE, P. C.

ATTORNEYS AT LAW
1621 CENTRAL AVENUE
ALBANY, NEW YORK 12205

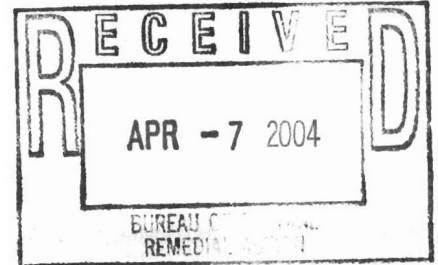
TELEPHONE (518) 464-0891
TELEFAX (518) 464-3613
EMAIL DonaldZeePC@MSN.COM

DONALD ZEE
LINDA S. LEARY

LEGAL ASSISTANT
CHERI A. McGEARY

April 6, 2004

Albany County Clerk's Office
Albany County Court House
Columbia & Eagle Streets
Albany, NY 12207



RE: Joseph Lucarelli to NYSDEC
155 New Karner Road, Town of Colonie
DECLARATION OF COVENANTS & RESTRICTIONS

Dear Sir/Madam:

Enclosed please find an original and one copy of a Declaration of Covenants and Restrictions and a check in the amount of \$40.00 payable to the Albany County Clerk, the filing fee for same.

Kindly have the copy of the Declaration of Covenants and Restrictions time-stamped and return same to our office via the self-addressed, stamped envelope we have provided for your convenience.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Donald Zee, PC

BY:

DZ:we
Encs.
SASE

cc: Kevin Sarnowicz

DONALD ZEE, P.C.
ATTORNEY AT LAW
1621 CENTRAL AVENUE
ALBANY, NEW YORK 12205
(518) 464-0891

REMITTANCE ADVICE

58-256/213
COPY
18881

PAY

Forty and 00/100

DOLLARS

TIME WK'D	DATE	TO THE ORDER OF	NET AMOUNT
	4/5/04	Albany County Clerk	40 00
		Lacorelli	



Evergreen Bank
1256 Central Avenue, Albany, New York 12205

Philip A. Edna



THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈018881⑈ ⑆021302567⑆7300303024⑈

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT is made the 31 day of March, 2004, by Joseph Lucarelli, a natural person residing at RD #5, Gifford Church Road, Schenectady, New York 12306.

WHEREAS, the Albany Karner Road Site is the subject of a Voluntary Agreement executed by Joseph Lucarelli as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real property located along the west side of Karner Road between lands owned by Mabey's Self Storage to the South, N/F of Knighton to the West and the Village of Colonie and an unknown landowner to the North, in the Town of Colonie, County of Albany, State of New York, which is part of lands conveyed by Leonard Spector and Lorraine Spector and Charles Del Regno to Joseph Lucarelli by deed dated December 1983 and recorded in the Albany County Clerk's Office on December 29, 1983 in Book 2253 of Deeds at Page 297 and being more particularly described as follows:

Beginning at a point on the northwesterly margin of NYS Route #155 New Karner Road, said point being situate North 39 deg. 38 min. 00 sec. East, a distance of 578.38 feet from the point of intersection of the common line of lands now or formerly of R.E. Mabey on the northwest, NYS Route #155 New Karner Road on the southeast with the northerly margin of Albany Street as measured along said northwesterly margin of NYS #155 New Karner Road; and runs thence from said point of beginning along the common line of lands herein described on the northeast and lands now or formerly of R.E. Mabey on the southwest, North 50 deg. 22 min. 00 sec. West, a distance of 293.76 feet to a point on the southeasterly line of lands now or formerly of Knighton; thence along said southeasterly line, North 39 deg. 38 min. 00 sec. East, a distance of 573.31 feet to a point on the northeasterly line of lands conveyed by Marks to Winegar as recorded in Book 312 of Deeds at Page 313; thence along said northeasterly line, South 50 deg. 22 min. 10 sec. East a distance of 293.82 feet to a point on the northwesterly margin of NYS Route #155, New Karner Road; thence along said northwesterly margin, South 39 deg. 38 min. 00 sec. West, a distance of 573.33 feet to the point or place of beginning and containing 3.87 plus or minus acres of land,

and hereinafter referred to as "the Property"; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, Joseph Lucarelli, for himself and his successors and/or assigns, covenants that:

First, the Property that is described above is subject to this Declaration of Covenants and Restrictions and is shown on a map attached to this declaration as Appendix "A" and made a part hereof, and consists of all that certain tract, piece or parcel of land situate and being in the Town of Colonie, Albany County, New York, lying along the northwesterly margin of NYS Route #155 New Karner Road, northeasterly of Albany Street as described in a survey made by C.T. Male Associates dated December 14, 1983 and filed in the Albany County Clerk's Office on December 30, 1983.

Second, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the soil cap, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by maintaining its vegetative cover or, after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial or commercial uses excluding day care, child care and medical care uses without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls (listed below) required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

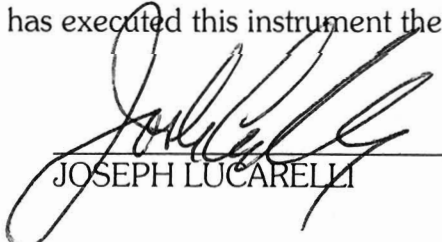
1. Imposition of an institutional control for the Lucarelli property in such form as the NYSDEC may approve that would prevent the use of groundwater as a source of potable or process water without necessary water quality treatment as determined by the Albany County Department of Health.
2. Imposition of an institutional control for the Lucarelli property in the form of environmental easements, to be sent to the county clerk for filing, to notify future owners of the elevated residual PCB contamination remaining in subsurface soil and residual benzene and phenol remaining in groundwater on the site.
3. Imposition of an institutional control of the Lucarelli property in the form of environmental easements which will require a Soil Management Plan to provide for the proper sampling, handling, and treatment and/or disposal (if required) if subsurface soils containing elevated levels of PCBs greater than 1 ppm are disturbed following the completion of the remedial action. The plan would delineate measures that may be necessary for the protection of on-site workers, the public, and the environment in the event of future subsurface soil disturbance.
4. Imposition of an institutional control in the form of an environmental easement on the Lucarelli property to restrict the future use of the property to non-residential activities, in accordance with the Voluntary Agreement for the parcel.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner and its successors and assigns consent to enforcement by the Relevant Agency of the prohibitions recited herein, and hereby covenant not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

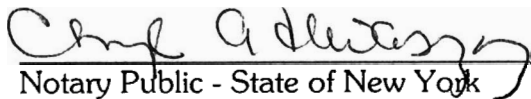
Ninth, the property owner shall be required to annually certify in writing to the NYSDEC that the above measures remain in place and use of the property is in compliance with the institutional and engineering controls.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

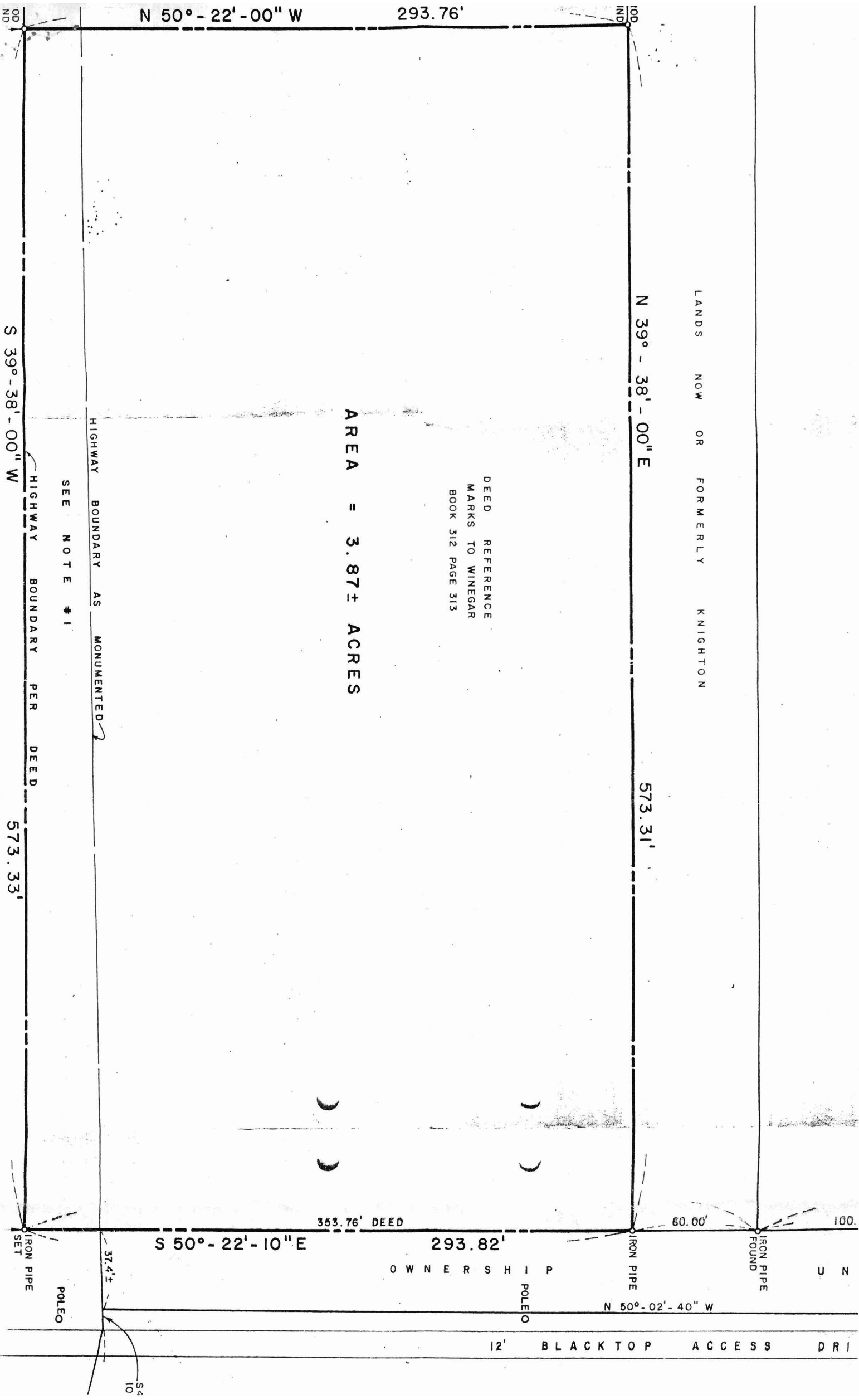

JOSEPH LUCARELLI

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the 31 day of March, in the year 2004, before me, the undersigned, a notary public in and for said State, personally appeared JOSEPH LUCARELLI, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

CHERYL A. HWASZCZ
Notary Public, State of New York
No. 01HW6060351
Qualified in Schenectady County
Commission Expires June 25, 20 07

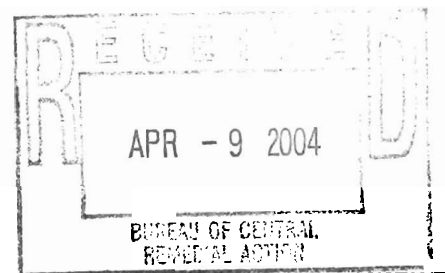


DONALD ZEE
LINDA S. LEARY

DONALD ZEE, P. C.

ATTORNEYS AT LAW
1621 CENTRAL AVENUE
ALBANY, NEW YORK 12205

TELEPHONE (518) 464-0891
TELEFAX (518) 464-3613
EMAIL DonaldZeePC@MSN.COM



LEGAL ASSISTANT
CHERI A. McGEARY

April 8, 2004

Mr. Kevin Sarnowicz
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7016

RE: Voluntary Cleanup Project
Albany Karner Road site

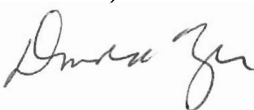
Dear Mr. Sarnowicz:

Enclosed please find a time-stamped copy of the Declaration of Covenants and Restrictions for your records.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,

Donald Zee, PC

BY: 

DZ:we

Enc.

cc: Joseph Lucarelli4



**Albany County Clerk
Albany County Court House
16 Eagle Street Rm 128
Albany, NY 12207**

Receipt

Issued to: LUCARELLI, JOSEPH

Receipt #: 115565

Issued: 04/07/2004 at 11:49 AM

Operator: SP

Document# 9215060 - Deed, Agreement	
Cover Page	3.00
Cultural Ed	14.25
Deed Agts	17.00
Record Mgt	4.75
Surcharge Ret	1.00
Sub-total:	40.00

Received:

Check 18881 (DONALD ZEE)	40.00
Total:	\$ 40.00

Thomas G. Clingan, County Clerk

DECLARATION of COVENANTS and RESTRICTIONS

COPY

THIS COVENANT is made the 31 day of March, 2004, by Joseph Lucarelli, a natural person residing at RD #5, Gifford Church Road, Schenectady, New York 12306.

WHEREAS, the Albany Karner Road Site is the subject of a Voluntary Agreement executed by Joseph Lucarelli as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real property located along the west side of Karner Road between lands owned by Mabey's Self Storage to the South, N/F of Knighton to the West and the Village of Colonie and an unknown landowner to the North, in the Town of Colonie, County of Albany, State of New York, which is part of lands conveyed by Leonard Spector and Lorraine Spector and Charles Del Regno to Joseph Lucarelli by deed dated December 1983 and recorded in the Albany County Clerk's Office on December 29, 1983 in Book 2253 of Deeds at Page 297 and being more particularly described as follows:

Beginning at a point on the northwesterly margin of NYS Route #155 New Karner Road, said point being situate North 39 deg. 38 min. 00 sec. East, a distance of 578.38 feet from the point of intersection of the common line of lands now or formerly of R.E. Mabey on the northwest, NYS Route #155 New Karner Road on the southeast with the northerly margin of Albany Street as measured along said northwesterly margin of NYS #155 New Karner Road; and runs thence from said point of beginning along the common line of lands herein described on the northeast and lands now or formerly of R.E. Mabey on the southwest, North 50 deg. 22 min. 00 sec. West, a distance of 293.76 feet to a point on the southeasterly line of lands now or formerly of Knighton; thence along said southeasterly line, North 39 deg. 38 min. 00 sec. East, a distance of 573.31 feet to a point on the northeasterly line of lands conveyed by Marks to Winegar as recorded in Book 312 of Deeds at Page 313; thence along said northeasterly line, South 50 deg. 22 min. 10 sec. East a distance of 293.82 feet to a point on the northwesterly margin of NYS Route #155, New Karner Road; thence along said northwesterly margin, South 39 deg. 38 min. 00 sec. West, a distance of 573.33 feet to the point or place of beginning and containing 3.87 plus or minus acres of land,

Albany County Clerk
Document Number 9215060
Rcvd 04/07/2004 11:46:08 AM



and hereinafter referred to as "the Property"; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, Joseph Lucarelli, for himself and his successors and/or assigns, covenants that:

First, the Property that is described above is subject to this Declaration of Covenants and Restrictions and is shown on a map attached to this declaration as Appendix "A" and made a part hereof, and consists of all that certain tract, piece or parcel of land situate and being in the Town of Colonie, Albany County, New York, lying along the northwesterly margin of NYS Route #155 New Karner Road, northeasterly of Albany Street as described in a survey made by C.T. Male Associates dated December 14, 1983 and filed in the Albany County Clerk's Office on December 30, 1983.

Second, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the soil cap, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by maintaining its vegetative cover or, after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial or commercial uses excluding day care, child care and medical care uses without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls (listed below) required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

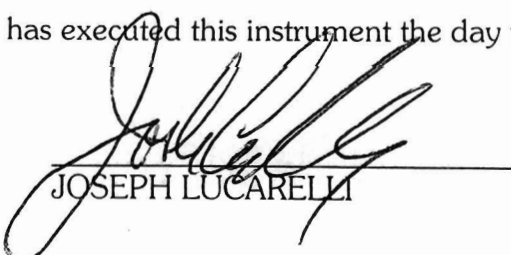
1. Imposition of an institutional control for the Lucarelli property in such form as the NYSDEC may approve that would prevent the use of groundwater as a source of potable or process water without necessary water quality treatment as determined by the Albany County Department of Health.
2. Imposition of an institutional control for the Lucarelli property in the form of environmental easements, to be sent to the county clerk for filing, to notify future owners of the elevated residual PCB contamination remaining in subsurface soil and residual benzene and phenol remaining in groundwater on the site.
3. Imposition of an institutional control of the Lucarelli property in the form of environmental easements which will require a Soil Management Plan to provide for the proper sampling, handling, and treatment and/or disposal (if required) if subsurface soils containing elevated levels of PCBs greater than 1 ppm are disturbed following the completion of the remedial action. The plan would delineate measures that may be necessary for the protection of on-site workers, the public, and the environment in the event of future subsurface soil disturbance.
4. Imposition of an institutional control in the form of an environmental easement on the Lucarelli property to restrict the future use of the property to non-residential activities, in accordance with the Voluntary Agreement for the parcel.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner and its successors and assigns consent to enforcement by the Relevant Agency of the prohibitions recited herein, and hereby covenant not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

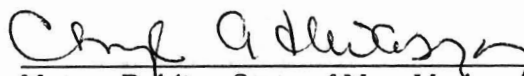
Ninth, the property owner shall be required to annually certify in writing to the NYSDEC that the above measures remain in place and use of the property is in compliance with the institutional and engineering controls.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.


JOSEPH LUCARELLI

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the 31 day of March, in the year 2004, before me, the undersigned, a notary public in and for said State, personally appeared JOSEPH LUCARELLI, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public - State of New York

CHERYL A. HWASZCZ
Notary Public, State of New York
No. 01HW6060351
Qualified in Schenectady County
Commission Expires June 25, 20 07

LANDS NOW OR FORMERLY KNIGHTON

N 39° - 38' - 00" E

573.31'

DEED REFERENCE
MARKS TO WINEGAR
BOOK 312 PAGE 313

AREA = 3.87± ACRES

HIGHWAY BOUNDARY AS MONUMENTED

SEE NOTE #1

HIGHWAY BOUNDARY PER DEED

S 39° - 38' - 00" W

573.33'

353.76' DEED

S 50° - 22' - 10" E

293.82'

60.00'

100'

OWNERSHIP

N 50° - 02' - 40" W

12' BLACKTOP ACCESS DR

POLE

POLE

IRON PIPE FOUND

IRON PIPE

IRON PIPE SET

S 4
10