

RECORDING REQUESTED BY:

Commodity Refining Exchange Inc.  
11847 United Street  
Mojave, CA 93501

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control  
Fresno District Office  
1515 Tollhouse Road  
Clovis, CA 93611  
Attention: Danny G. Domingo

James Maples Assessor-Recorder  
Kern County Official Records

PATTI  
Pages: 14  
2/04/1997  
13-43-22

DOCUMENT #: 0197014785



Fees	46 00
Taxes	
Other	9 50
TOTAL	
PAID	55 50

Stat Types 1

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT  
FOR ENVIRONMENTAL RESTRICTION CONCERNING  
11847 UNITED STREET, MOJAVE, CALIFORNIA 93501

This Covenant and Agreement ("Covenant") is made on the 8  
day of JAN 1997, 1997 by Commodity Refining Exchange, Inc., a  
California Corporation ("Covenantor"), which is the owner of record  
of certain property situated in Mojave, County of Kern, State of  
California, described in Exhibit "A", which are attached hereto and  
incorporated herein by this reference ("the Property") and by the  
California Department of Toxic Substances Control, with reference  
to the following facts:

- A. A portion of the Property approximately located within the North Quarter of the Eastern Half of the Property described in Exhibit "A" contains hazardous substances at concentrations posing a potential health risk if uncontrolled. This portion of the Property is referred to as the "Capped Area" as shown in Exhibit "B" attached hereto and made a part hereof.
- B. Some of the shallow soils located within the Capped Area have been contaminated with lead, copper, zinc, dioxin and furan. Soils containing these hazardous substances in excess of the health based remediation goals for industrial use of the Property of 1,000 milligrams per kilogram (mg/kg) for lead, 2,500 mg/kg for copper, 5,000 mg/kg for zinc and 5 microgram per kilogram (ug/kg) Toxic Equivalence Factor (TEF) for Dioxin/Furan have been consolidated in the Capped Area. This Capped Area is being capped with concrete to eliminate potential risks posed to human health associated with ingestion, inhalation, and dermal contact with the hazardous substances. The cap also serves to minimize, if not eliminate the potential for movement of the hazardous substances toward groundwater. The cap will be subject to ongoing Operation and Maintenance (O&M) activities pursuant to an O&M plan approved

by the Department. . Lead, the primary hazardous substance of concern found within the Capped Area of the Property is an experimental teratogen. Acute health effects of lead are manifested by gastrointestinal colic, encephalopathy and other neurological manifestation, particularly in children. Lead is present in the surface soil located in the Capped Area identified in Exhibit "B" at an estimated average concentration of approximately 2,562 mg/kg. Dioxin/Furan is present in the surface soil in the Capped Area at an estimated 0.062 mg/kg. Copper is present in the surface soils in the Capped Area at an estimated average of 5,441 mg/kg.

- C. Covenantor desires and intends that in order to protect the present or future public health and safety, the Capped Area of the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been deposited on the Capped Area of the Property.

#### ARTICLE I

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to California Health and Safety Code (H&SC) §§25355.5 and 25356.1 and California Civil Code §1471 and run with the land pursuant to H&SC §25355.5 and California Civil Code §1471. Each and all of the Restrictions are enforceable by the Department of Toxic Substances Control.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Capped Area, or the Property depending on the context.

2.05 Property. "Property" shall mean the parcel legally described in Exhibit A.

2.06 Capped Area. "Capped Area" shall mean the surveyed portion of the Property described in Exhibit B.

## ARTICLE III

### DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY AND THE CAPPED AREA

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property and the Capped Area of the Property as follows:

A. The Capped Area:

- (1) Covenantor shall not alter the cap, permit the construction of any improvements on top of the Capped Area, allow any new use of the Capped Area, or shall not allow any work to be performed which could jeopardize the integrity of the cap without first applying for and receiving a written variance from the DTSC pursuant to Article IV of this covenant and agreement.
- (2) Owner/Occupant of the Capped Area shall not allow any excavation or digging, in or adjacent to the Capped Area without obtaining written approval from the Department do so.

B. The Property Excluding the Capped Area:

- (1) Covenantor shall not allow the construction or placement of building or structure on the Property which is

intended for use as any of the following, or the use of an existing structure for the purpose of serving as any of the following without first applying for and receiving a written variance from the Department for that use pursuant to Article IV of this covenant and agreement:

- a. A residence.
  - b. A hospital for humans.
  - c. A school for persons under 21 years of age.
  - d. Any permanently occupied human habitation other than those used for industrial or commercial purposes that are not specifically excluded above.
- (2) The Property shall be used in such a way as to preserve the integrity of the Capped Area and any hazardous waste containment.
- (3) Owner/Occupant shall not conduct any activities of the Property including the capped area, which may interfere with any operation, maintenance, or monitoring activities of the capped area required by the Department.

3.02 Notification of Disturbances to the Cap. The Owner/Occupant shall notify the Department of each of the following: 1) The type, cause, location and date of any disturbance to the cap to contain subsurface hazardous substances in the Capped Area of the Property and 2) the type and date of repair of such disturbance. Notification to the Department shall be made by registered mail within ten (10) working days of both the discovery of cap disturbance and the completion of repairs.

3.03 Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sale, lease, or other conveyance of the Property by Owner or Owners of an interest in the Capped Area of the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.04 Access for Department. The Owner(s)/Occupant(s) shall allow the Department access to the Capped Area of the Property for inspection, surveillance, monitoring, maintenance, and other activities consistent with the purposes of this covenant as deemed necessary by the Department in order to protect the public health and safety.

3.05 Access For Implementing O&M. Covenantor agrees that all owners and occupants shall forever grant reasonable right of entry and access to the entity or person responsible for implementing the O&M agreement or any portion thereof, for the purpose of implementing such O&M agreement.

3.06 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

3.07 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Capped Area of the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, H&SC.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or the Capped Area or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Capped Area of the Property. Such application shall be made in accordance with Section 25234, H&SC.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V

##### MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Capped Area or the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and

shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Department"  
Mr. James L. Tjosvold, P.E., Chief  
Central California Cleanup Operations Branch  
Attn: Danny G. Domingo  
Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis CA 93611

To: "Covenantor"  
Commodity Refining Exchange Inc.  
Attn. Mr. Donald Hamilton  
11847 United Street  
Mojave, CA 93501

Copy To: Commodity Refining Exchange, Inc.  
Attn. Mr. Lawrence DeWitt  
116 E. Prospect Ave.  
Burbank, CA 91502

5.03 Partial Invalidation. If any portion of the Restrictions set forth herein or other terms of this instrument is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Headings. Headings at the beginning of each numbered article and paragraphs of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed and acknowledged in front of a notary public by the Covenantor and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Kern within ten (10) days of the date of execution and delivery.

5.06 References. All references to Code sections include successor provisions.

5.07 Effect. Notwithstanding anything to the contrary herein above set forth and without in any way limiting the rights or privileges of Covenantor or its successors or assigns as provided by law or otherwise, neither Covenantor, nor any officer, employee or agent, or other person acting for or on behalf of the Covenantor, shall be liable for any breach or default of any of the Restrictions or

terms contained in this Covenant and Agreement, occurring after Covenantor has parted with Covenantor's estate in the land that is subject to this Covenant and Agreement or ceased to enjoy its benefits.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

COVENANTOR

COMMODITY REFINING EXCHANGE INC.

Donald R Hamilton

By: Donald Hamilton  
Vice-President

Date: 1-8-97

DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL

James L. Tjosvold

By: James L. Tjosvold. P.E.  
Chief  
Northern California Central  
Cleanup Operations Branch

Date: 1/14/97

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIA

County of FRESNO

On JAN 8, 1997 before me, JIM DICENSO

personally appeared DONALD R. HAMILTON

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Jim Di Censo, SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- Individual, Corporate Officer, Partner(s) Limited/General, Attorney-in-Fact, Trustee(s), Guardian/Conservator, Other.

DESCRIPTION OF ATTACHED DOCUMENT

Covenant and Agreement

16 NUMBER OF PAGES

JAN 8, 1997 DATE OF DOCUMENT

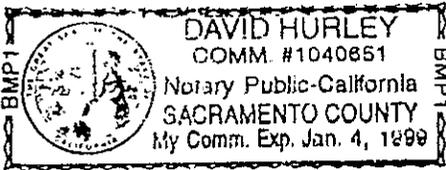
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO )

On 1-14 (date), 1997 before me, the undersigned, a Notary Public in and for said state, personally appeared (Name) JAMES IVOSVOLD, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as BOARD (Title) CHIEF, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



[Signature]  
Notary Public in and for said  
County and State

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ (date), 19\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared (Name), personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as \_\_\_\_\_ (Title), of the Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

Exhibit A

Legal Description for Commodity Refining Inc. Site a.k.a. "The Property", Source: Book 5249, Page 1652, Kern County Official Records

The Commodity Refining Exchange, Inc. site consist of one parcel identified by Kern County Assessor's Parcel Number 429-17-34 and is further described as follows:

*"PROPERTY SITUATED IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:*

*The East Half of the South 330 feet of the North 990 feet of the Easterly 600 of the Easterly 660 feet of the East Half of the Fractional Section 4, Township 10 North, Range 12 West, S.B.M., according to the Official Plat of the survey of said land approved by the Surveyor General on September 19, 1856.*

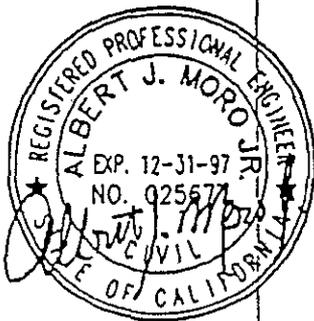
*EXCEPT any portion thereof in that portion of said Section 4, as conveyed to Herman C. Nelson, et ux, et al., by deed recorded in the office of the County Recorder of said County, in book 2390 Page 44B, of Official Records.*

*ALSO EXCEPT one-half of the precious minerals, oil and gas rights, as reserved from L. W. Ballard, Trustee, for the Fieta Syndicate, recorded January 27, 1955 in Book 2359 Page 112, of Official Records."*

Exhibit B-1  
THE "CAPPED AREA"  
COMMODITY REFINING EXCHANGE INC.  
Mojave, Kern County

The south 137 feet of the north 797 feet of the east 479 feet of the east 1/2 of Fractional Section 4, Township 10 North, Range 12 West, San Bernardino Meridian, in the unincorporated area of the County of Kern, State of California, as per the official plat thereof on file in the office of the Surveyor General, approved September 19, 1856.

Excepting therefrom the south 69 feet of the east 337 feet of said south 137 feet.



*Albert J. Moro Jr.*  
Albert J. Moro Jr.  
R.C.E. 25677

*7/12/96*  
Date

