



**Alana Christlieb**  
Project Manager  
3807 Transportation Drive  
Fort Wayne, Indiana 46818  
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Fax: 260/497-7646  
a.christlieb@sesadvantage.com

June 13, 2013

67-18  
Bruce Hamilton  
Indiana Department of Environmental Management  
Office of Land Quality - LUST Section  
100 North Senate Avenue, Room 1101  
Indianapolis, Indiana 46204-2251

*Ref: Recorded ERC and Request for NFA  
Phillips 66  
110 North Clark Street  
Markle, Huntington County  
FID #6182  
LUST #1992-01-544*

Dear Mr. Hamilton:

Enclosed is a recorded Environmental Restrictive Covenant for the referenced site. On behalf of National Oil & Gas Company, Inc., SES is requesting no further action designation for release incident 1992-01-544.

Please do not hesitate to contact SES with any questions, concerns, or requests for additional information.

Sincerely,  
**SES Environmental**

A handwritten signature in blue ink, appearing to read "Alana Christlieb", is written over a light blue rectangular background.

**Alana Christlieb**  
Project Manager

Enclosure

Lansing

Fort Wayne

Indianapolis

Louisville



2013003389  
CHERYL A. SCHENKEL  
HUNTINGTON, IN RECORDER  
TX: 32118  
06/13/2013 03:14:09PM  
\$ 28.00

### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 29 day of May 2013, by National Oil and Gas Company, Inc., P.O. Box 476, Bluffton, IN 46714.

WHEREAS: Owner is the fee owner of certain real estate in the County of Huntington Indiana, which is located at 110 North Clark Street, Markle and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on November 7, 1969 and recorded on November 13, 1969 as Deed Record 32448, in the Office of the Recorder of Huntington County, Indiana. The Real Estate consists of approximately 0.2 acres and has also been identified by the county as parcel identification number 35-07-01-100-027.100-015.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the Phillips 66 fuel marketing station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 1992-01544, and the relevant facility identification number is 6182.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. The known COCs remaining are listed in Exhibit B, which is attached hereto and incorporated herein.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently [www.in.gov/idem/](http://www.in.gov/idem/)).

NOW THEREFORE, National Oil and Gas Company, Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

#### I. RESTRICTIONS

1. Restrictions. The Owner:

27/ICR  
9-28 cash haoo.org.

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall not construct or allow occupancy of a dwelling or work space on the Real Estate unless a vapor mitigation system is installed, operated, and maintained within the dwelling or work space. IDEM may waive this restriction in writing if the Owner has provided data and analysis demonstrating to IDEM's satisfaction that there is no unacceptable risk to human health via the vapor intrusion exposure pathway.

## II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED May 29 2013, RECORDED IN THE OFFICE OF THE RECORDER OF Huntington COUNTY ON June 13, 2013, INSTRUMENT NUMBER (or other identifying reference) 2013003389 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

### III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Huntington County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

#### V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:  
National Oil and Gas Company, Inc.  
P.O. Box 476  
Bluffton, IN 46714

To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Section Chief, Leaking Underground Storage Tank Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

**EXHIBIT A.**

**LEGAL DESCRIPTION OF REAL ESTATE**

## WARRANTY DEED

EX-211 R-350

32448

2:30 P.M. NOV 13 1969

This indenture witnesseth that Lillian J. McGuffey, an adult woman, and being the unmarried widow of Paul C. McGuffey, deceased,

of Huntington, County in the State of Indiana

Conveys and warrants to National Oil and Gas Inc., an Indiana corporation,

of Wells County in the State of Indiana

for and in consideration of One dollar and other good and valuable consideration the receipt whereof is hereby acknowledged, the following Real Estate in Huntington County in the State of Indiana, to wit:

Twenty-two (22) feet of even width off of the entire east side of Lot Number Eighty (80) in the Original Plat to the Town of Markle, Indiana; also. The west thirty-eight (38) feet of Lot Number Eighty (80) in the Original Plat to the Town of Markle, Indiana.

Subject to all legal highways, all valid zoning laws and ordinances and liens of record.

Subject also to any assessments and to the taxes for the unexpired portion of 1969, due and payable in 1970 and thereafter which Grantee assumes and agrees to pay.

Grantor whose name also appears of record as Lillian McGuffey is one and the same person, and Paul C. McGuffey was one and the same person as Paul McGuffey and Emma Bender and Emma S. Bender was one and the same person.

Duly entered for taxation this 13 day of November 1969  
J. H. Wiley  
Auditor  
HUNTINGTON CO. IND.

Real Estate Transfer  
Valuation Affidavit Filed  
J. H. Wiley  
Auditor of Huntington County

State of Indiana, Huntington County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 7 day of November 1969 personally appeared:

Lillian J. McGuffey, an adult woman, and being the unmarried widow of Paul C. McGuffey, deceased,

Dated this 7 Day of November 1969.

Lillian J. McGuffey  
(Lillian J. McGuffey)

Seal

Seal

RECEIVED FOR RECORD

Seal

Ned M. Simone  
RECORDER HUNTINGTON CO. IND.

Seal

Seal

And acknowledged the execution of the foregoing deed. In witness whereof, I have hereunto subscribed my name and affixed my official seal. My commission expires January 16 1971

Donald L. Hopkinson  
Notary Public

This instrument was prepared by

Lawrence E. Carlson, Attorney at Law

Member of Huntington Co. Indiana Bar Association

MAIL TO:

**EXHIBIT B.**  
**TESTING RESULTS**

*Only concentrations exceeding Residential Default Closure Levels are depicted.*

Table 1. Contaminated Soil Sampling Results Phillips 66 Markle, Huntington County						
Sample Date	Boring Identification	Sample Depth (ft)	Benzene mg/kg	Ethylbenzene mg/kg	Xylenes mg/kg	TPH-GRO mg/kg
15-Jan-02	PZ-3	8-10'	---	---	---	790
8-Jul-02	PZ-6	6-8'	---	---	---	200
	PZ-7	8-10'	---	---	---	300
3-Aug-12	CB-1	10-12'	0.169	---	---	384
	CB-2	10-12'	0.344	---	---	141
	CB-3	10-12'	0.574	82.3	191.96	3490
RISC Default Closure Levels (2009)						
<i>Residential Migration to Groundwater</i>			0.034	13	210	100
<i>Industrial Migration to Groundwater</i>			0.35	160	430	100
<i>Construction Direct Contact</i>			560	29000	4800	1200

Table 2. Groundwater Testing Results Phillips 66 Markle, Huntington County						
Sample Date	Well ID	Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Xylenes (µg/L)	MTBE (µg/L)
3-Aug-12	OW-1	1,050	---	---	---	---
	OW-4a	152	---	928	---	---
	OW-9	9.21	---	---	---	---
RISC Default Closure Levels (2009)						
<i>Residential</i>		5	1,000	700	10,000	40
<i>Industrial</i>		52	8,200	10,000	20,000	720

*Bold indicates concentration exceeds RISC RDCL*

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, *National Oil and Gas Company, Inc.* the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 29<sup>th</sup> day of May, 2013.

Ked Ringger  
*Ked Ringger, National Oil & Gas Company, Inc.*  
*Vice President of Operations*

STATE OF Indiana

) SS:

COUNTY OF Wells

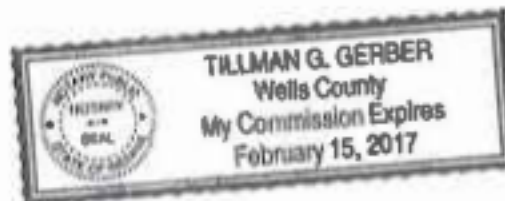
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared KED RINGGER, the V.P. of the NAT. Oil & Gas, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 29 day of May, 2013.

Tillman G. Gerber  
*TILLMAN G. GERBER*, Notary Public

Residing in Wells County, IN

My Commission Expires: 2-15-17



This instrument prepared by:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: SES Environmental / Alana Christlieb

SES Environmental / Alana Christlieb  
3807 Transportation Drive  
Fort Wayne, IN 46818