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Michael E. Kozikowski
New Castle Recorder MISC

Tax Parcel No.: 08-027.00-002

Prepared By: State of Delaware
Department of Natural Resources and
Environmental Control

Return To: Nancy C. Marker,
Environmental Program Administrator
DNREC-SHWMS
89 Kings Highway
Dover, DE 19901

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Hercules LLC (“Owner”) and the Delaware Department of Natural Resources and Environmental Control (“DNREC”) pursuant to 7 *Del. C.* Chapter 79, Subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting the Property, to the activity and use limitations and requirements as set forth herein.

WITNESSETH

WHEREAS, Hercules LLC is the owner of certain real estate located at 500 Hercules Road, in New Castle County, Delaware, as described below (“Property”); and

WHEREAS, pursuant to Title 7 of the Delaware Code (*Del. C.*), Chapters 60 and 63, and the *Delaware Regulations Governing Hazardous Waste* (DRGHW), Hercules was required to implement corrective action on the Property; and

WHEREAS, on December 1, 2004, the United States Environmental Protection Agency (“EPA”), and Owner entered into a RCRA Corrective Action Permit (“Permit”) pursuant to Section 3008(h) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(h); and

WHEREAS, the Permit identifies the corrective action activities that Owner was required to complete; and

WHEREAS, on January 16, 2007, Hercules submitted the *Revised Final (100%) Remedial Design* (“the Plan”), which characterized potential sources of contamination and their corrective measures, DNREC accepted the preferred remedial alternatives in the Plan, which summarized corrective measures to address contamination at the site; and

WHEREAS, the Plan identifies portions of the property requiring Institutional and Engineering Controls as stated in Section 2.7 of the Plan; and

WHEREAS, on March 11, 2010, DNREC issued an APPROVAL LETTER (“Approval Letter”), attached hereto as Exhibit A, selecting, as part of the final remedy for the Property, certain activity and use limitations and requirements to ensure long-term control of relevant portions of the Property and protection of selected remedies; and

WHEREAS, Owner is willing to establish this Environmental Covenant on the Property in order to implement the activity and use limitations and requirements required as part of the selected remedy for the Property; and

WHEREAS, Owner and DNREC acknowledge and agree that EPA shall be permitted to enforce the obligations and conditions, including the activity and use limitations and requirements, set forth herein.

NOW THEREFORE, Owner and DNREC agree to the following:

1. Environmental Covenant. This instrument is an Environmental Covenant developed and executed pursuant to 7 *Del. C.* Chapter 79, Subchapter II, Uniform Environmental Covenants Act.

2. Property. This Environmental Covenant concerns the Property, an approximately 60.73 acre tract of real property, which is located at 500 Hercules Road, in New Castle County, Delaware. The Property consists of one parcel bisected by the Wilmington and Western Railroad Right-of-Way ("WWR"), and is further identified as New Castle County tax parcel number 08-027.00-002. The Property contains areas which are required to be restricted pursuant to the Permit, Plan, and Approval Letter ("Restricted Areas"), and are more particularly described in the survey attached hereto as Exhibit B of this Environmental Covenant.

3. Holder. DNREC is the holder of this Environmental Covenant ("Holder").

4. Activity and Use Limitations and Requirements. As required by the remedial action described in the Plan, Owner hereby agrees to comply with the following activity and use limitations and requirements:

- [a.] Use of the Restricted Areas shall be restricted solely to those non-residential type uses allowable within the New Castle County Unified Development Code in effect as of the date this Environmental Covenant is recorded;
- [b.] There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities within the Restricted Areas, without the prior written approval of DNREC's Solid and Hazardous Waste Management Section (SHWMS). Notwithstanding the foregoing, Owner may conduct maintenance, repair, and/or replacement activities in the event of an emergency that requires immediate action ("Emergency Action") in the Restricted Areas without prior written notice to DNREC-SHWMS. In the event that an Emergency Action is undertaken, Owner shall notify DNREC-SHWMS as soon as possible but no later than twenty-four (24) hours after initiation of the Emergency Action, and shall submit to the DNREC-SHWMS a written and detailed description of the activity or activities undertaken in response to the Emergency Action within seven (7) days of the initial notification. In addition, any soils or other materials removed as a result of addressing such emergency shall be stockpiled at a safe and convenient location until DNREC-SHWMS is consulted regarding appropriate disposal;
- [c.] Limitation of Groundwater Withdrawal. No groundwater wells shall be installed, and no groundwater shall be withdrawn from any well within the Restricted Area, without the prior written approval of DNREC- SHWMS;
- [d.] Compliance with laws and regulations. Comply with all applicable local, state, and federal laws, regulations, and ordinances;

- [e.] Compliance with Operations and Maintenance Plan. Perform all work required by the Operation and Maintenance Plan (“O&M Plan”), as issued, approved, modified, or amended, to the satisfaction of DNREC;
- [f.] Compliance with the March 11, 2010 Approval Letter attached hereto as Exhibit A;
- [g.] Prior to human occupancy of any enclosed structure constructed on the Restricted Areas after the recording date of this Environmental Covenant, Owner shall either: (i) obtain approval from DNREC-SHWMS, and comply with its plan to install, operate, and maintain a remedy that eliminates indoor air vapor intrusion exposure due to hazardous substances from soil or groundwater in excess of applicable standards (such remedy may include a demonstration that any such structure has been constructed in a manner to meet applicable performance standards within the building); or (ii) make a demonstration to DNREC-SHWMS (attested to by a certified professional approved by DNREC) that the Restricted Areas comply with applicable standards for vapor intrusion to indoor air exposure pathways without implementation of any further remedial activity; and that such standards conform with all applicable federal and state regulations.
- [h.] Compliance with Other Institutional and Engineering Controls. No easements shall be granted for the Restricted Areas. The existing WWRR Right-of Way shall be restricted to prevent expansion. The existing security fence shall be properly maintained and regularly inspected. Security control shall continue to be conducted by use of existing Hercules Research Center procedures in effect as of the date this Environmental Covenant is recorded. A site-information sign shall be posted and properly maintained at the entrance to the Restricted Areas, providing notification of prohibited activities.

5. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to 7 Del. C. § 7910(a), subject to amendment or termination as set forth herein. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

6. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 Del. C. § 7916. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations and requirements contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to take action to enforce against any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law. Additionally, Owner and DNREC understand and agree that EPA may enforce compliance with this Environmental Covenant including, but not limited to, the activity and use limitations and requirements contained herein.

7. Rights of Access. Owner hereby grants to DNREC and EPA, its agents, contractors, and employees the right of access to the Property for implementation and/or enforcement of this Environmental Covenant.

8. Administrative Record. The Administrative Record in support of DNREC's Approval Letter contains all documents which support DNREC's issuance of the Final Remedy and is located at the offices of DNREC-SHWMS, 89 Kings Highway, Dover, Delaware, 19901.

9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE ENVIRONMENTAL COVENANT, DATED AND RECORDED IN THE OFFICIAL RECORDS OF THE NEW CASTLE COUNTY RECORDER OF DEEDS ON THE DATE OF THIS DOCUMENT AND NOTED AS THE INSTRUMENT NUMBER AT THE TOP LEFT CORNER OF THE FIRST PAGE OF THIS ENVIRONMENTAL COVENANT. THIS ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS AND REQUIREMENTS:

- [a.] Use of the Restricted Area shall be restricted solely to those non-residential type uses allowable within the New Castle County Unified Development Code in effect as of the date this Environmental Covenant is recorded;
- [b.] There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities within the Restricted Areas, without the prior written approval of DNREC's Solid and Hazardous Waste Management Section (SHWMS). Notwithstanding the foregoing, Owner may conduct maintenance, repair, and/or replacement activities in the event of an emergency that requires immediate action ("Emergency Action") in the Restricted Area without prior written notice to DNREC-SHWMS. In the event that an Emergency Action is undertaken, Owner shall notify DNREC-SHWMS as soon as possible but no later than twenty-four (24) hours after initiation of the Emergency Action, and shall submit to the DNREC-SHWMS a written and detailed description of the activity or activities undertaken in response to the Emergency Action within seven (7) days of the initial notification. In addition, any soils or other materials removed as a result of addressing such emergency shall be stockpiled at a safe and convenient location until DNREC-SHWMS is consulted regarding appropriate disposal;
- [c.] Limitation of Groundwater Withdrawal. No groundwater wells shall be installed, and no groundwater shall be withdrawn from any well, within the Restricted Area without the prior written approval of DNREC- SHWMS;
- [d.] Compliance with laws regulations. Comply with all applicable local, state, and federal laws, regulations, and ordinances;
- [e.] Compliance with Operations and Maintenance Plan. Perform all work required by the Operation and Maintenance Plan ("O&M Plan"), as issued, approved, modified, or amended, to the satisfaction of DNREC;
- [f.] Compliance with the March 11, 2010 Approval Letter referenced attached hereto as Exhibit A.

- [g.] Prior to human occupancy of any enclosed structure constructed on the Restricted Areas after the recording date of this Environmental Covenant, Owner shall either: (i) obtain approval from DNREC-SHWMS, and comply with its plan to install, operate, and maintain a remedy that eliminates indoor air vapor intrusion exposure due to hazardous substances from soil or groundwater in excess of applicable standards (such remedy may include a demonstration that any such structure has been constructed in a manner to meet applicable performance standards within the building); or (ii) make a demonstration to DNREC-SHWMS (attested to by a certified professional approved by DNREC) that the Restricted Areas comply with applicable standards for vapor intrusion to indoor air exposure pathway without implementation of any further remedial activity; and that such standards conform with all applicable federal and state regulations.
- [h.] Compliance with Other Institutional and Engineering Controls. No easements shall be granted for the Restricted Area. The existing WWRR Right-of Way shall be restricted to prevent expansion. The existing security fence shall be properly maintained and regularly inspected. Security control shall continue to be conducted by use of existing Hercules Research Center procedures in effect as of the date this Environmental Covenant is recorded. A site-information sign shall be posted and properly maintained at the entrance to the Restricted Area, providing notification of prohibited activities.

Owner shall notify DNREC within ten (10) days after each conveyance of an interest in any portion of the Restricted Areas. Owner's notice shall include the name, address, and telephone numbers of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Restricted Areas being transferred.

10. Representations and Warranties. Owner hereby represents and warrants to Holder:

- [a.] That Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;
- [b.] That Owner is the sole owner of the Property and holds fee simple title, which is free, clear, and unencumbered;
- [c.] That Owner has identified all other parties that hold any interest (e.g., encumbrance) of record in those portions of the Property encumbered by this Environmental Covenant, and any unrecorded interests known to Owner, and notified such parties of Owner's intention to enter into this Environmental Covenant, and as of the effective date of this Environmental Covenant, no person holds a mortgage or other lien on that portion of the Property that includes one or more of the Restricted Areas that is superior in time and right to the Environmental Covenant and known to Owner;
- [d.] That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document, or instrument to which Owner is a party of by which Owner may be bound or affected.

11. Amendment or Termination.

- [a.] This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee and DNREC, pursuant to 7 *Del. C.* § 7915 and other applicable law. The term “Amendment,” as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations and requirements set forth herein, or the elimination of one or more activity and use limitations or requirements when there is at least one limitation or requirement remaining. An Amendment shall also include an assignment of the Environmental Covenant, as specified in 7 *Del. C.* § 7915. The term “Termination,” as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations and requirements set forth herein and all other obligations under this Environmental Covenant.
- [b.] This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the State of Delaware, through DNREC (or its successor), and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, Owner or Transferee shall file such instrument for recording with the New Castle County Recorder of Deeds Office, and shall provide a file-and date-stamped copy of the recorded instrument to DNREC and the EPA.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the New Castle County Recorder of Deeds Office. This Environmental Covenant must be indexed in the grantor’s index in the name of the Owner, and in the grantee’s index in the name of the Holder.

15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the New Castle County Recorder of Deeds.

16. Distribution of Environmental Covenant. Owner shall distribute a file-and-date-stamped copy of the recorded Environmental Covenant to DNREC, the EPA, and the County of New Castle.

17. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Holder:

Environmental Program Administrator
DNREC-SHWMS
89 Kings Highway
Dover, DE 19901

Delaware Department of Natural Resources and Environmental Control

Nancy C. Marker

9-20-17

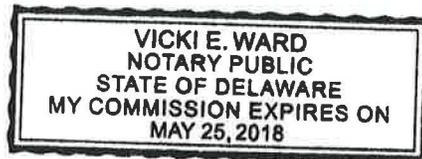
Nancy C. Marker
Environmental Program Administrator
Solid & Hazardous Waste Management Section
Division of Waste and Hazardous Substances

State of Delaware) SS:

County of Kent)

Before me, a notary public, in and for said county and state, personally appeared Nancy C. Marker, Environmental Program Administrator, a duly authorized representative of the Delaware Department of Natural Resources and Environmental Control, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of DNREC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 20 day of Sept, 2017



Vicki E. Ward
Notary Public
Name: Vicki E. Ward
Commission Expires: 5-25-18

March 11, 2010

Mr. John Hoffman
Safety, Health, Environment and Regulatory Affairs
Ashland Inc.
Hercules Incorporated Research Center
500 Hercules Road
Wilmington, DE 19808-1599

Subject: Approval of Final (100%) Remedial Design Hercules Research Center Landfill SWMU 8/9C dated January 16, 2007
Reference: DED001315647, File Code: 28-C

Dear Mr. Hoffman:

The Delaware Department of Natural Resources and Environmental Control (DNREC) Solid and Hazardous Waste Management Branch (SHWMB) has completed its review of the Final (100%) Remedial Design for the Hercules Research Center Landfill SWMU 8/9C. On January 13, 2010 SHWMB staff met with representatives from Ashland, Environmental Resources Management, and Advanced Geoservices to discuss SWMU 8/9C. During our meeting three changes for closure of SWMU 8/9C were presented and discussed for incorporation into the landfill closure plan and are listed below.

1. SHWMB approves Ashland proposal to use the existing sample data as post-excavation confirmatory samples for the area adjacent to the Wilmington and Western Railroad (WWRR).
2. The 100% design used Health Based Numbers for Soil and Sediment that were established in the Corrective Measures Study using residential 350 days/year area contact. Ashland requested a change to use the most restrictive of the DNREC Uniform Risk Based Remediation Standards, Critical Water Resource Area, Restricted Use Setting, or the Region III Risk Based Concentrations for Industrial Exposure. These standards are more in-line with the planned re-use of the area, site would be used by recreational visitors with less than 100 days/year contact.
3. In Ashland's design plan a deed restriction was to be placed on the landfill cap footprint to restrict future use, prevent sub-surface work, and protect the cap. SHWB will require Ashland to use an Environmental Covenant pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act (UECA), for the purpose of subjecting the property to land use restrictions. The area of excavation adjacent to the WWRR will also need to be included under the UECA Covenant.

With these changes DNREC is satisfied with the remedy proposed. In order to move these units to a final remedy DNREC shall be parceling this section away from the site as a whole. We shall proceed with public noticing a Statement of Basis for the proposed remedy of 8/9c only. The public notice process will

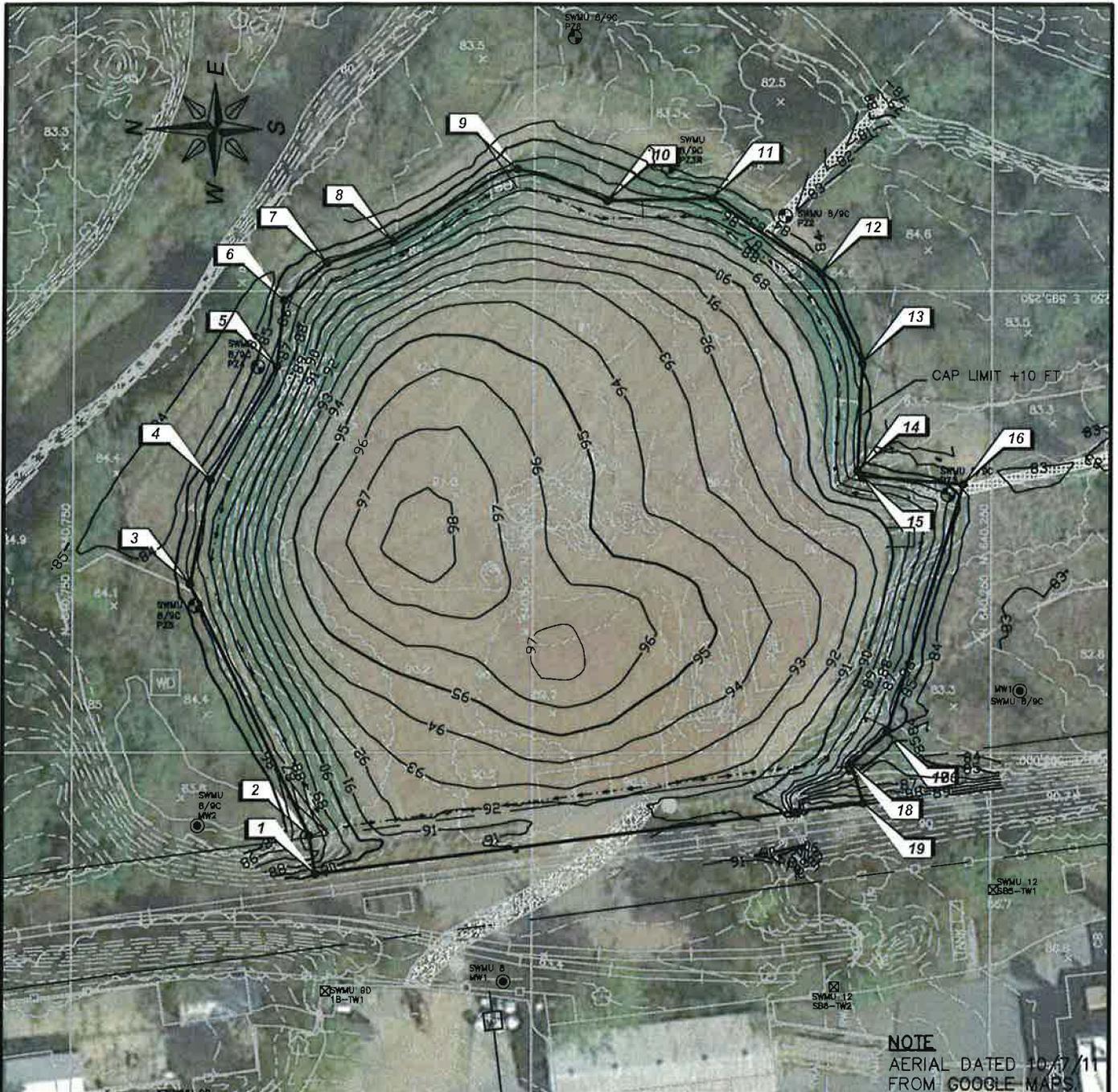
allow for public input and inquiry into the proposed remedy. Based on public comments additional changes to the remedy, or consideration of an alternative remedy may be required.

If you have questions please contact Douglas Zeiters at (302) 739-9403.

Sincerely,

Bryan A. Ashby
Environmental Program Manager
Solid and Hazardous Waste Management Branch

cc: Barbara Smith, USEPA, Region III
Jennifer DiJoseph, P.E., Advanced Geoservices
Doug Zeiters, SHWMB



NOTE
 AERIAL DATED 10/17/11
 FROM: GOOGLE MAPS

TABLE OF COORDINATES

Point #1: E = 594932.9476	N = 640617.5279	Point #11: E = 595299.0389	N = 640403.6501
Point #2: E = 594953.6411	N = 640620.8416	Point #12: E = 595258.4903	N = 640343.9211
Point #3: E = 595090.0471	N = 640686.5129	Point #13: E = 595210.0694	N = 640320.6720
Point #4: E = 595146.6855	N = 640675.5653	Point #14: E = 595151.5291	N = 640322.9566
Point #5: E = 595207.7293	N = 640639.7381	Point #15: E = 595148.7404	N = 640320.5229
Point #6: E = 595243.8054	N = 640635.9151	Point #16: E = 595144.2842	N = 640265.8064
Point #7: E = 595263.9585	N = 640612.4589	Point #17: E = 595010.1006	N = 640306.5641
Point #8: E = 595275.7578	N = 640576.3751	Point #18: E = 594992.4554	N = 640325.6762
Point #9: E = 595314.7643	N = 640509.4846	Point #19: E = 594971.5206	N = 640319.1894
Point #10: E = 595297.6956	N = 640459.7335		

BASE MAP BASED ON NGVD 1929(VERTICAL) AND NAD 1983(HORIZONTAL)



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SWMU 8/9C RESTRICTED AREA
ASHLAND RESEARCH CENTER LANDFILL
NEW CASTLE COUNTY, DELAWARE

PROJECT ENGINEER:	J.W.D.	SCALE:	1" = 80'
CHECKED BY:	J.W.D.	PROJECT NUMBER:	2003-1176-10
DRAWN BY:	P.S.G.	DATE:	FIGURE: Exhibit A