



Doc ID: 005962450015 Type: G/I Kind: AGREEMENT/DEED Recorded: 05/19/2016 at 10:39:37 AM Receipt#: 2016-00004081 Fee Amt: \$152.00 Page 1 of 15 Ashtabula County, Ohio Barbara Schaab Recorder File# 2016-00004590

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To be recorded with Deed Records - ORC 317.08

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Norfolk Southern Railway Company (Owner and Holder), the United States Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration (NOAA) and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property (defined below) to the following activity and use limitations.

<u>Background.</u> The Ashtabula River, approximately 40 miles long, flows through the northeast quadrant of Ashtabula County to Lake Erie. The approximately 137 square mile watershed is located south of the city of Ashtabula, Ohio. Beginning in the 1940's, the sediments and associated floodplains became contaminated with a variety of contaminants, including volatile organic compounds, semi-volatile organic compounds, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, heavy metals and low-level radionuclides.

Fields Brook, a 3-mile tributary of the Ashtabula River, was designated a Superfund Site and placed on the National Priorities List (NPL) in 1983; the Remedial Investigation (RI) began in 1985 with a Record of Decision (ROD) issued in 1986.

Under an agreement with the United States Environmental Protection Agency pursuant to the Great Lakes Legacy Act, an agreement with the United States Army Corps of Engineers pursuant to the Water Resources Development Act, and separate agreements with the Ohio Environmental Protection Agency, the Ashtabula City Port Authority and the members of the Ashtabula River Cooperating Group II, contaminated sediment was dredged from a segment of the Ashtabula River from 2006 to 2008. A dedicated landfill was constructed for the contaminated sediment.

The Ashtabula River watershed and associated natural resources, including macroinvertebrates, fish and fish-eating birds, were impacted as a result of the contamination.

Negotiations between the responsible parties and the natural resource trustees, i.e., the FWS, NOAA and Ohio EPA (Trustees), in conjunction with the United States Department of Justice and the Ohio Attorney General, resulted in a Consent Decree filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned <u>United States v. Cabot Corporation, et. al.</u>, Case No. 1:12-cv-01097, which the Court approved on July 12, 2012. The Administrative Record for this Site, including the ENVIRON Slip 5A Restoration and Design Document (Design Document), is maintained at the FWS, Ohio Field Office, Columbus, Ohio.

Now therefore, Owner and the FWS, NOAA and Ohio EPA agree to the following:

NORFOLK SOUTHERN CORP ATTN: DIANE HOGAN 3 COMMERCIAL PLACE BOX 241 NORFOLK, VA 23510

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- 1. <u>Environmental Covenant.</u> This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
- 2. <u>Property.</u> This Environmental Covenant concerns approximately 5.319 acres of real property located along the shoreline of the Ashtabula River, some of which may be submerged following the completion of restoration and enhancement activities, in Ashtabula, Ashtabula County, Ohio, identified as permanent parcel number 05-000-00-620-00, and more particularly described in Exhibit A attached and hereby incorporated by reference herein (Property).
- 3. Owner. Norfolk Southern Railway Company, 1200 Peachtree Street, Atlanta, GA 30309 currently owns the Property.
  - 4. Holder. The Owner is the Holder of this Environmental Covenant.
- 5. Activity and Use Limitations. As part of the Design Document approved by the Trustees pursuant to the Consent Decree filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned <u>United States v. Cabot Corporation, et. al.</u>, Case No. 1:12-cv-01097, Owner hereby imposes the following activity and use limitations on the Property and agrees to comply with such limitations, subject to the amendment procedures set forth in paragraph 13 herein:
  - A. Any division or subdivision of the Property is prohibited;
  - B. Commercial development or industrial activity on the Property is prohibited;
  - C. The placement or construction of any man made modifications such as buildings, billboards, structures, fences, roads and parking lots, either temporary or permanent, on the Property is prohibited, other than bird nesting boxes / platforms and construction activities that are authorized in accordance with the Design Document and/or the Monitoring & Maintenance Plan.
  - D. There shall be no filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the Property, nor any building of roads or change in topography of the Property in any manner, other than that caused by the forces of nature, except in accordance with the Design Document and/or the Monitoring & Maintenance Plan.
  - E. The control, management and eradication of animal or plant species on the Property must comply with applicable State and Federal requirements and manufacturer specifications and guidelines and must be in accordance with the Design Document and/or the Monitoring & Maintenance Plan.

- F. No power or petroleum transmission lines may be constructed, nor may any other interests in the Property be granted for this purpose. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains on existing easements needed to provide for the needs of the Owner, successors or assigns. The Owner reserves the right to undertake activities necessary to service and maintain nearby rail structures in accordance with applicable laws and standards. The area affected by the repair work shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities or rail structures, the area shall be restored to its previous state, except in the case where rail safety laws or standards require otherwise, in which case the area shall be restored to its previous state to the greatest extent possible.
- G. No towers for communication or otherwise shall be constructed on the Property.
- H. Any cutting of trees, ground cover, or vegetation, or destroying by means of herbicides or pesticides, on the Property is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Trustees or except as may be required in connection with activities covered by paragraph 5.F.
- I. The Owner shall not store or place garbage, trash, machinery, or other unsightly material on the Property.
- J. Use of vehicles for recreation, including snowmobiles, all-terrain vehicles or other motorized vehicles, shall not be permitted on the Property.
- K. Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Property, other than as part of activities that are authorized by the Trustees.
- 6. <u>Breach.</u> If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, or any other person constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the FWS, NOAA and Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action.
- 7. Running with the Land. This Environmental Covenant, including the activity and use limitations set forth in paragraph 5, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, 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 including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

- 8. <u>Compliance Enforcement.</u> Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations 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 any provision of this Environmental Covenant. Nothing in this Environmental Covenant shall restrict the Trustees from exercising their authority under applicable law in order to protect public health or safety or the environment.
- 9. <u>Rights of Access.</u> Subject to a twenty-four (24) hour notice, Owner hereby grants to the FWS, NOAA, Ohio EPA, the Ohio Department of Natural Resources, their agents, contractors, and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant. Any such person entering the Property shall present proper credentials when seeking access, shall participate in a site safety briefing to be conducted by Owner and shall make reasonable efforts to comply with appropriate safety instructions provided by Owner and to avoid disruption of rail operations.
- 10. <u>Compliance Reporting.</u> Upon request of Ohio EPA, FWS or NOAA, Owner or any Transferee shall submit to the FWS, NOAA, and Ohio EPA written documentation verifying compliance with this Environmental Covenant. Such a request shall be made no more frequently than once a year.
- 11. <u>Notice upon Conveyance</u>. Each instrument hereafter conveying any interest in the Property, or any portion thereof, 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 I	HEREBY IS	<b>SUBJECT TO</b>	AN ENVIRON	IMENTAL
COVENANT, R	ECORDED IN T	THE DEED	OR OFFICIAL	RECORDS OF	THE
ASHTABULA C	COUNTY RECC	ORDER ON,		, 2015, IN [I	OCUMENT
ID#	].				

Owner or Transferee shall use best efforts to notify the Trustees within ninety (90) days after each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a survey map that shows the boundaries of the property being transferred, and a copy of the original document that imposed restrictions on the Property.

- 12. <u>Representations and Warranties.</u> Owner hereby represents and warrants to the other signatories hereto:
  - A. that the Owner is the sole owner of the Property;
  - B. the Owner holds fee simple title to the Property that is free, clear and unencumbered with the exception of preexisting interests of record, but based on a diligent review of Owner's internal documents, such preexisting interests of record do not limit the power and authority of Owner to enter into this Environmental Covenant and to carry out Owner's obligations thereunder;
  - C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests provided herein and to carry out all obligations hereunder;
  - D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
- 13. Amendment. This Environmental Covenant may be amended by consent of all of the following: the Owner or a Transferee; the FWS; NOAA; and the Ohio EPA, pursuant to ORC §5301.90 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 set forth herein, or the elimination of one or more activity and use limitations when there is at least one activity and use limitation remaining.

This Environmental Covenant may be amended only by a written instrument duly executed by the Regional Director of the FWS, the Director of NOAA's Office of Response and Restoration, the Director of Ohio EPA and the Owner or Transferee of the Property, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Ashtabula County Recorder's Office, and shall provide a file and date-stamped copy of the recorded instrument to the FWS, NOAA and Ohio EPA.

- 14. <u>Severability</u>. 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.
- 15. <u>Governing Law.</u> This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

- 16. <u>Recordation</u>. 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 Ashtabula County Recorder's Office.
- 17. <u>Effective Date.</u> 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 Ashtabula County Recorder.
- 18. <u>Distribution of Environmental Covenant.</u> The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the FWS; NOAA; Ohio EPA; the County of Ashtabula and the City of Ashtabula.
- 19. <u>Notice.</u> Unless otherwise notified in writing by or on behalf of the current owner, the FWS or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Regional Director
U.S. Fish and Wildlife Service Region 3
1 Federal Drive
Fort Snelling, Minnesota 55111

Ashtabula River Site Coordinator Ohio EPA 2110 East Aurora Road Twinsburg, Ohio 44087

NOAA Office of General Counsel Natural Resources Section 501 W. Ocean Blvd., Suite 4470 Long Beach, California 90802

General Counsel Operations Norfolk Southern Corporation Three Commercial Place Norfolk, VA 23510-9241

20. <u>Counterparts.</u> This Environmental Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Environmental Covenant.

The undersigned representative of Owner represents and certifies that *[he/she]* she is authorized to execute this Environmental Covenant.

### IT IS SO AGREED:

### NORFOLK SOUTHERN RAILWAY COMPANY

You folk Southern Karles	ay l	Umpany [Owner and Holder]
Pgansee	/	
P. G. Carroll, Asst. Vice-Pres	sident	
State of Virginia	)	
	)	ss;
City of Norfolk	)	

Before me, a notary public, in and for said county and state, personally appeared P. G. Carroll, a duly authorized representative of the Norfolk Southern Railway Company, who acknowledged to me that she did execute the foregoing instrument on behalf of the Norfolk Southern Railway Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this and agreement of the subscribed my name and affixed my official seal this agreement.

E. HUGGINS
Notary Public, Georgia
Rockdale County
My Commission Expires
February 19, 2018

Notary Public

Date of My Commission Expiration

## OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director	_	12/18/15 Date	
State of Ohio	)	ss:	
County of Franklin	)		

Before me, a notary public, in and for said county and state, personally appeared Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of **DECEMBER**, 2015.



Notary Public

CHARMA DIANE CASTEEL

May 10, 2019

AY COMMISSION EXPIRES

Date of My Commission Expiration

U.S. Fish & Wildlife Service  Thomas O. Melius, Regional Director.	egion 3	12/1/15 Date	
State of Minas fra	)	ss:	
County of Dalsha	)		
Melius, a duly authorized representative execute the foregoing instrument on behavior and foregoing instrument of the behav	e of the lf of the	FWS.	at he did
CONNI J CONNER Notary Public State of Minnesota		Somi J. Comm	
My Commission Expires January 31, 2020	Notary	Public	
		uniay 31, 2020	
1/15301K	Date o	of My Commission Expiration	

National Oceanic and Atmospheric A	Administration	
Westerholm, Director Office of Response and Restoration	David Date	G.
State of <u>Maryland</u> County of <u>Prince</u> Hear	) ss:	The state of the s
David G. Westerholm, Director, Office representative of NOAA, who acknown behalf of NOAA.	nd for said county and state, personally appearing of Response and Restoration, a duly autowledged to me that he did execute the fore	horized going instrument
day of Jan 05, 201	ve subscribed my name and affixed my office \$.60	cial seal this
<u>Wanda</u> C	Halt Notary Public	
	Date of My Commission Expiration	
This instrument prepared by:	WANDA E. HOLTZ NOTARY PUBLIC STATE OF M My Commission Expires Novemb	ARYLAND er 9, 2019
Mark J. Navarre, Esq. Supervising Attorney Ohio EPA, Legal Office 50 West Town Street	Gregory J. DeGulis, Esq. McMahon DeGulis LLP The Caxton Building 812 Huron Road, Suite 650	

EXHIBIT "

# D.B. Kosie

& Associates

Professional Land Surveying

11040 Madison Road Montville, Ohio 44064

<sup>(440)</sup> 286-2131

www.dbksurveys.com

## **5.319 ACRE ENVIRONMENTAL COVENANT**

Deed of Record: PPN 05-000-00-620-00, Pennsylvania Lines LLC, Document No. 2000-00003186, Volume 122, Page 37

Situated in The City of Ashtabula, County of Ashtabula and State of Ohio and known as being part of Original Ashtabula Township Lot No. 7, and Range 3, Township 13 of The Connecticut Western Reserve, and bounded and described as follows:

Beginning at a 1/2" drill hole set in the northwest concrete abutment corner of Bascule Bridge as shown on The June 30th, 1917 New York Central Railroad Company's (New York Central Railroad, West of Buffalo, Youngstown Branch, Ashtabula Harbor, Ohio - From Sta. 50+00 To Sta. 105+60) Valuation and Station Map showing tracks and structures as recorded on Plan No. V221, St. 1B of Ashtabula County Records and Deeds (ACRD). Said drill hole having a Station of 73+38 (end of bridge) and State Plane Coordinates (Ohio North) of North 815182.58 and East 2431834.70.

Thence N 36°11'43" E, a distance of 307.87 feet to a point. Said point being the southeasterly corner of an existing 2.2 Acre Environmental Covenant as conveyed from Norfolk Southern Railroad Company (Pennsylvania Lines LLC) to The Ohio Environmental Protection Agency and recorded in Document No. 2012-00000113, Volume 509, Page 516 of ACRD.

Thence N 44°50'58" E, along an easterly line of the said 2.2 Acre Environmental Covenant, a distance of 344.18 feet to an angle point therein.

Thence N 29°31'09" E, along an easterly line of the said 2.2 Acre Environmental Covenant, a distance of 772.77 feet to a 5/8" iron pin set. Said point being the northeasterly corner of the said 2.2 Acre Environmental Covenant and having State Plane Coordinates (Ohio North) of North 816347.50 and East 2432640.00. Said point also being **The Principal Place of Beginning** of this survey.

## **5.319 ACRE ENVIRONMENTAL COVENANT**

(Continued)

Thence North 66°52'10" West, along the northerly line of the said 2.2 acre Environmental Covenant, being the southerly line of the parcel herein described and passing through a 5/8" iron pin set at 74.59 feet, a total distance of 94.59 feet to a point on the approximate ordinary high water line of The Ashtabula River, having an elevation of 572.8 feet (NAVD88). Said point being a southwesterly corner of the parcel herein described.

Thence, along the approximate ordinary high water line of The Ashtabula River and along the westerly side of No. 5 1/2 Slip Peninsula as shown on the said New York Central Railroad Company's Valuation and Station Map, the following seven courses:

North 18°42'53" East, a distance of 104.69 feet to a point.

North 21°29'59" East, a distance of 72.07 feet to a point.

North 00°48'53" East, a distance of 27.44 feet to a point.

North 23°54'59" East, a distance of 78.29 feet to a point.

North 33°15'41" East, a distance of 90.69 feet to a point.

North 23°33'35" East, a distance of 56.23 feet to a point.

North 36°34'47" West, a distance of 22.90 feet to a point.

Thence North 43°33'59" East, along the westerly side of newly created Emergent Wetlands, a distance of 177.91 feet to a point on the westerly side of the said No. 5 1/2 Slip Peninsula, at the approximate ordinary high water line of The Ashtabula River.

Thence, along the westerly side of the said No. 5 1/2 Slip Peninsula, and along the approximate ordinary high water line of The Ashtabula River, the following six (6) courses:

North 31°52'57" East, a distance of 48.90 feet to a point.

North 22°44'39" East, a distance of 157.23 feet to a point.

North 27°27'39" East, a distance of 93.51 feet to a point.

North 32°37'44" East, a distance of 74.17 feet to a point.

North 42°08'05" East, a distance of 102.78 feet to a point.

North 21°28'40" East, a distance of 94.84 feet to a point. Said point being the most northerly corner of the parcel herein described.

Thence, South 40°56'15" East, along the northerly side of the parcel herein described, being the northerly side of the said No. 5 1/2 Slip Peninsula, and along the approximate ordinary high water line of The Ashtabula River, a distance of 30.39 feet to a point on the easterly side of the said No. 5 1/2 Slip Peninsula at the approximate ordinary high water line of The Ashtabula River.

## 5.319 ACRE ENVIRONMENTAL COVENANT

(Continued)

Thence along the easterly side of the said No. 5 1/2 Slip Peninsula, and along the approximate ordinary high water line of The Ashtabula River, the following Ten (10) courses:

South 07°34'26" West, a distance of 51.63 feet to a point. South 02°27'44" East, a distance of 37.17 feet to a point. South 18°18'45" West, a distance of 99.41 feet to a point. South 53°32'17" West, a distance of 21.26 feet to a point. South 30°20'06" West, a distance of 35.92 feet to a point. South 14°33'56" West, a distance of 49.15 feet to a point. South 07°54'44" West, a distance of 60.45 feet to a point. South 13°20'15" West, a distance of 68.40 feet to a point. South 21°54'11" West, a distance of 31.11 feet to a point. South 16°13'18" West, a distance of 88.58 feet to a point.

Thence along the easterly side of the aforesaid newly created Emergent Wetlands, the following Four (4) courses:

South 21°00'32" West, a distance of 31.37 feet to a point.

South 11°57'59" West, a distance of 128.03 feet to a point.

South 18°50'11" West, a distance of 56.57 feet to a point.

South 11°01'12" West, a distance of 56.10 feet to a point on the easterly side of the said No. 5 1/2 Slip Peninsula at the approximate ordinary high water line of The Ashtabula River.

Thence South 10°51'23" West, along the easterly side of the said No. 5 1/2 Slip Peninsula, and along the approximate ordinary high water line of The Ashtabula River, a distance of 122.33 feet to a point.

Thence South 73°19'27" East, along a northerly line of the parcel herein described, crossing The Ashtabula River, and passing through a 5/8" iron pin set at 94.00 feet, a total distance of 124.00 feet to a 5/8" iron pin set. Said point being a northeasterly corner of the parcel herein described.

Thence South 22°45'18" West, along an easterly line of the parcel herein described, a distance of 120.00 feet to a 5/8" iron pin set at an angle point therein.

Thence South 31°19'31" West, along an easterly line of the parcel herein described, a distance of 132.38 feet to a 5/8" Iron pin set. Said point being a southeasterly corner of the parcel herein described.

# 5.319 ACRE ENVIRONMENTAL COVENANT

(Continued)

Thence North 66°52'10" West, along the southerly line of the parcel herein described, a distance of 270.63 feet to The Principal Place of Beginning of this Survey and containing 5.319 acres of land as surveyed by D.B. Kosie and Associates (Robert L. Kosie, Registered Professional Land Surveyor No. 8167). Bearings are to True North using The ODOT VRS and CORS GNSS network (NAD83 (2011), NAVD88, GRS80, and GEOID2012a). Date: May 22, 2015. Be the same, more or less, but subject to all legal highways.

The intent of this survey is to describe a 5.319 Acre Environmental Covenant over PPN 05-000-00-620-00 as conveyed to Pennsylvania Lines LLC and recorded in Document No. 2000-00003186, Volume 122, Page 37, of ACRD.

All 5/8" iron pins set shown herein noted as being 5/8" x 30" iron (steel) rebar pins (#5 rebar) with yellow plastic cap bearing "KOSIE P.S. 8167".

All drill holes set shown herein noted as being 1/2" diameter x 3/4" deep drill holes (circular borings), in concrete.

Dated: \_\_\_\_\_

Robert L. Kosie Ohio Registered Professional Surveyor No. 8167

> TRANSFERRED Auditor, Ashtabula County, Ohio

MAY 1 9 2016 50 Pages a Color, EPA

In compliance with Scc. 319.202 R.C. and Sec. (F) 319.54 R.C. VX effective January 1st, 1968 DATE: 5-19-16
BY: 7m

9UDITOR

