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Michele Mustello

T20210001268

Butler County Recorder PA

RECEIVED
JAN 15 2021
BY: MJC

Environmental Covenant



I hereby CERTIFY
that this document is
recorded in the
Recorder's Office
of Butler County,
Pennsylvania

Michele M. Mustello
Michele M. Mustello - Recorder of Deeds

When recorded, return to:
Mr. Mitchell Cole
Ascensus Specialties Callery, LLC
1424 Mars-Evans City Road
Evans City, Pennsylvania 16033

The Property is described by the following Deed Instrument Nos.: 200403040006813 (7 parcels); and 201103280007720, 201103280007721, and 201107290017988 (1 parcel each).

The Property is also identified by County Parcel Identification Nos. 350-S1-12 or 160-4F-31-25G (4 parcels); 160-4F-31-25; 160-4F-31-14A1E; 160-4F-31-14A1F; 160-4F-31-26; 350-S1-14; and 350-S1-1.

GRANTOR: Ascensus Specialties Callery, LLC

PROPERTY ADDRESS: 1424 Mars Evans City Road, Evans City, Pennsylvania 16033

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed pursuant to the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 – 6517 (UECA). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document. As indicated later in this document, this Environmental Covenant has been approved by the Pennsylvania Department of Environmental Protection (DEP or the Department).

1. **Property Affected.** The property affected (Property) by this Environmental Covenant is located in Callery Borough and Adams and Forward Townships, Butler County.

The postal street address of the Property is: 1424 Mars-Evans City Road.

The latitude and longitude of the center of the Property affected by this Environmental Covenant is: 40.7462, -80.0369.

The Property has been known by the following names: Callery Chemical Company; Mine Safety Appliances Company (MSA); BASF Corporation; former Kunzler property and former Watt/Wirsing property; Callery, LLC; and Ascensus Specialties Callery LLC.

The PA DEP Facility ID is PAD004322913.

A complete description of the Property and its 10 deed parcels is attached to this Environmental Covenant as Exhibit A. A map of the Property showing the 10 affected parcels is attached to this Environmental Covenant as Exhibit B. A separate map showing the area of contaminated groundwater is attached as Exhibit C.

2. **Property Owner / GRANTOR /GRANTEE.** Ascensus Specialties Callery, LLC is the owner of the Property and the GRANTOR and GRANTEE of this Environmental Covenant. The mailing address of the Owner is: 1424 Mars Evans City Road, Evans City, Pennsylvania 16033.

3. **Description of Contamination & Remedy.** Pre-industrial uses of the Property included farmland and incidental country-bank coal mining. A small fireworks manufacturing plant was established in the early 1900s. In 1937, Mine Safety Appliances Company (MSA) began manufacture of safety equipment and related devices, product and applications research, and specialty chemical manufacturing (primarily alkali metals and boron compounds).

MSA implemented source control measures and clean closures at numerous locations on the Property from the late 1980s through 2001 to address environmental impacts. Remediation consisted of several source removal actions followed by recovery and treatment of impacted groundwater. A former acid wastewater impoundment was taken out of service and clean closed in September 1990, as confirmed in a Pennsylvania Department of Environmental Resources (DER) letter dated October 11, 1990. An adjacent former caustic wastewater impoundment was taken out of service and clean closed in September 1992, as approved in a DER letter dated December 16, 1992. Two nearby settling impoundments were taken out of service in 1998 and clean closed in 1999, as approved by a DEP letter dated September 15, 1999.

In 1998 during demolition of Building 21 (B21), which formerly housed a process utilizing 1,1,1-trichloroethane (TCA), MSA detected and reported to DEP a release of TCA to groundwater. MSA commenced monitoring well installation, characterization and groundwater pumping to capture and control contaminants within a coal/void system beneath the B21 area. In late 1998, a portion of the void system was grouted to support new construction of Building 64. In September 1999, a discharge of caustic groundwater was discovered near Outfall 009. After notifying DEP, MSA took initial response actions and initiated groundwater control pumping and soil remediation in this area, including the excavation and removal of a former Imhoff tank, aerator, chlorinator and filter bed comprising an earlier wastewater treatment facility. Additional monitoring wells were installed on the Property in 2001, 2003 and 2005. Groundwater controls were continuously maintained by BASF Corporation from 2003 through early 2017, and by Callery, LLC or Ascensus Specialties Callery, LLC since early 2017. Groundwater monitoring and remediation will continue pursuant to the DEP/EPA-approved 2018 Post Remedial Care Plan.

4. **Activity & Use Limitations.** The Property is subject to the following activity and use limitations, which the then current owner of the Property and its tenants, agents, employees and other persons under its control, and each subsequent owner of the Property shall abide by:

- a. The Property shall be used solely for nonresidential purposes, in accordance with Act 2 and Department regulations. Nonresidential use excludes any improvement,

structure or dwelling used for living accommodations (single or multi-family occupancy, including, without limitation, detached housing, condominiums, apartment buildings, dormitories, and senior citizen housing); any day care facility (whether for infants, children, the infirm, or the elderly); any hospital, hospice, and nursing home facility; any school for individuals under the age of twenty-one (21); any prison; any playground; and any other similar or like use.

b. Groundwater within the Groundwater Exclusion Area shown on Exhibit C shall not be used for any purpose other than to conduct the operation, maintenance and monitoring activities required by the Department and/or EPA, unless it is demonstrated to the Department that such use will not pose a threat to human health or the environment, and the Department provides prior written approval for such use. This restriction is specifically meant to include, but is not limited to, earlier water rights, if any such still exist, noted at DBV 600 page 151 and DBV 625 page 277.

c. Groundwater outside the Groundwater Exclusion Area shown on Exhibit C shall not be used for potable purposes or agricultural activities including, but not limited to, irrigation of crops or lawns, watering of livestock, and food production, processing or packaging, unless it is demonstrated to the Department that such use will not pose a threat to human health or the environment and the Department provides prior written approval for such use. This restriction is specifically meant to include, but is not limited to, earlier water rights, if any such still exist, noted at DBV 600 page 151 and DBV 625 page 277.

d. Any future building or structure that will be occupied and constructed inside the Groundwater Exclusion Area must incorporate either a vapor barrier or a soil gas mitigation system unless adequate testing is done (according to then current Department requirements) to ensure vapor intrusion from groundwater impacted by volatile organic compounds will not present a potential human health concern.

5. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.

6. **Compliance Reporting.** By the end of every March following the recording of this Environmental Covenant, the then current owner of the Property shall submit to the Department and to the EPA written documentation stating whether or not the activity and use limitations listed in Section 4 are abided by. In addition, the then current owner of the Property shall submit written documentation to the Department and to the EPA within 1 month after any of the following events: noncompliance with the activity and use limitations of this Environmental Covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if the building or proposed site work will affect the contamination on the Property subject to this Environmental Covenant.

7. **Access by the Department.** In addition to any rights already possessed by the Department and the EPA, this Environmental Covenant grants to the Department and to the EPA

a right of reasonable access to the Property in connection with implementation or enforcement of this Environmental Covenant.

8. **Recordation & Proof of Notification.** Within 30 days after the date of the Department's approval of this Environmental Covenant, the Owner shall file this Environmental Covenant with the Recorder of Deeds for Butler County, and send a file-stamped copy of this Environmental Covenant to the Department within 60 days of recordation. Within that time period, the Owner also shall send a file-stamped copy to Callery Borough, Adams Township, Forward Township, Butler County and the EPA.

9. **Termination or Modification.**

a. This Environmental Covenant may only be terminated or modified in accordance with 27 Pa. C.S. §§ 6509 or 6510, or in accordance with this paragraph.

b. This Environmental Covenant may be amended or terminated as to any portion of the Property that is acquired for use as state highway right-of-way by the Commonwealth provided that: (1) the Department waives the requirements for an environmental covenant and for conversion pursuant to 27 Pa. C.S. § 6517 to the same extent that this Environmental Covenant is amended or terminated; (2) the Department determines that termination or modification of this Environmental Covenant will not adversely affect human health or the environment; and (3) the Department provides 30-days advance written notice to the current property owner, each holder, and, as practicable, each person that originally signed the Environmental Covenant or successors in interest to such persons.

c. This Environmental Covenant shall terminate upon attainment, in accordance with 35 P.S. §§ 6026.101 – 6026.908, with an unrestricted use remediation standard for the above-described contamination at the Property. The Department must approve, in writing, of such termination.

10. **EPA.**

(a) **Notification.** The then current owner shall provide the EPA written notice of:

- (1) the pendency of any proceeding that could lead to a foreclosure as referred to in 27 Pa. C.S. § 6509(a)(4), within seven calendar days of the owner's receiving notice of the pendency of such proceeding;
- (2) any judicial action referred to in 27 Pa. C.S. § 6509(a)(5), within seven calendar days of the owner's receiving notice of such judicial action;
- (3) any judicial action referred to in 27 Pa. C.S. § 6509(b), within seven calendar days of the owner's receiving notice of such judicial action; and
- (4) termination or amendment of this Environmental Covenant pursuant to 27 Pa. C.S. § 6510, within seven calendar days of the owner's becoming aware of such termination or amendment.

(b) **Enforcement.** A civil action for injunctive or other equitable relief for violating this Environmental Covenant may be maintained by the EPA.

11. **Department's and EPA's Addresses.**

Communications with the Department regarding this Environmental Covenant shall be sent to:

Regional Manager, Environmental Cleanup and Brownfields Program
Pennsylvania Department of Environmental Protection
Northwest Regional Office
230 Chestnut Street
Meadville, PA 16335

Communications with EPA:

A file-stamped copy of this Environmental Covenant shall be sent to:

US EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

Subsequent submissions required by this Environmental Covenant shall be sent to the Region 3 RCRA Corrective Action digital repository for institutional control and reporting documents. The documents shall reference the RCRA Facility name and RCRA ID Number. The documents shall be submitted to: R3_RCRAPOSTREM@epa.gov

12. **Severability.** The paragraphs of this Environmental Covenant shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

ACKNOWLEDGMENTS by Owner in the following form:

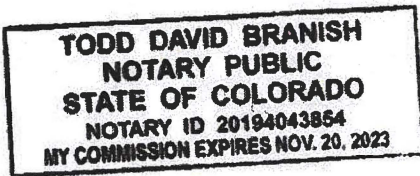
Date:

Ascensus Specialties Callery, LLC Grantor
By: *M. R. Sandoval*
Name: *Marco R. Sandoval*
Title: *COO - Ascensus Specialties*

~~COMMONWEALTH OF PENNSYLVANIA~~) State of Colorado
)
~~COUNTY OF _____~~) SS: County of Douglas

On this *10th* day of *September*, 20*20*, before me, the undersigned officer, personally appeared *Marco Sandoval* [Owner, Grantor] who acknowledged himself/herself to be the person whose name is subscribed to this Environmental Covenant, and acknowledged that s/he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



Todd Branish
Notary Public

APPROVED, by Commonwealth of Pennsylvania, Department of Environmental Protection

Date: By: Staci Gustafson
Name: STACI GUSTAFSON
Title: ASST REGIONAL DIRECTOR

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF CRAWFORD) SS:

On this 7th day of JANUARY, 2021, before me, the undersigned officer, personally appeared STACI GUSTAFSON, who acknowledged himself/herself to be the ASST REG. DIRECTOR [Title] of the Commonwealth of Pennsylvania, Department of Environmental Protection, South West Regional Office, whose name is subscribed to this Environmental Covenant, and acknowledged that s/he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Commonwealth of Pennsylvania-Notary Seal
Teresa G. Willey, Notary Public
Crawford County
My Commission Expires May 19, 2022
Commission Number 1282192

Teresa G. Willey
Notary Public

EXHIBIT A

ALL those 10 certain parcels of ground situated in Callery Borough, Adams Township and Forward Township of Butler County and Commonwealth of Pennsylvania, totaling 88.74 acres and being known as the following:

1 through 4. 350-S1-12 or 160-4F-31-25G (4 subparcels) totaling 32.30 acres in Callery Borough (Adams Township) and Forward Township: Subparcel 1 is 5.90 acres in Forward Township; Subparcel 2 is a total of 21.41 acres, with 17.53 acres in Callery Borough and 3.88 acres in Forward Township; Subparcel 3 is 0.25 acres in Forward Township; and Subparcel 4 is 4.74 acres in Forward Township.

5. 160-4F-31-25 totaling 21.17 acres in Forward Township.

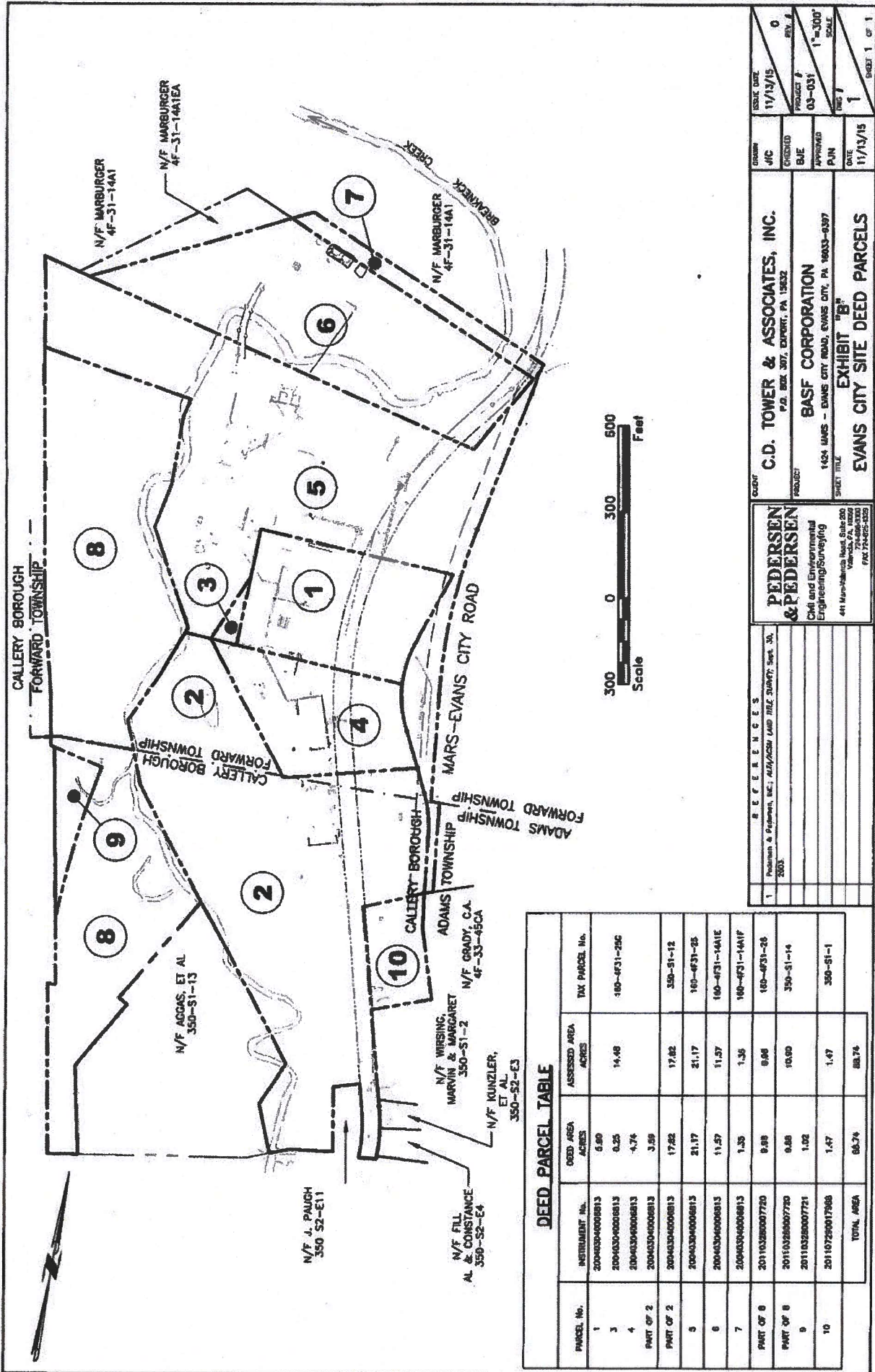
6. 160-4F-31-14A1E totaling 11.57 acres in Forward Township.

7. 160-4F-31-14A1F totaling 1.35 acres in Forward Township.

8. 160-4F-31-26 (former Kunzler property, north) totaling 9.98 acres in Forward Township.

9. 350-S1-14 (former Kunzler property, south) totaling 10.90 acres in Callery Borough (Adams Township).

10. 350-S1-1 (former Watt/Wirsing property) totaling 1.47 acres in Callery Borough (Adams Township).



DEED PARCEL TABLE

PARCEL No.	INSTRUMENT No.	DEED AREA ACRES	ASSESSED AREA ACRES	TAX PARCEL No.
1	20040304000813	6.80		
3	20040304000813	0.25	14.48	180-4731-25C
4	20040304000813	4.74		
PART OF 2	20040304000813	3.59		
PART OF 2	20040304000813	17.82	17.82	350-51-12
5	20040304000813	21.17	21.17	180-4731-25
6	20040304000813	11.57	11.57	180-4731-14A1E
7	20040304000813	1.35	1.35	180-4731-14A1F
PART OF 8	20110328007720	0.88	0.88	180-4731-28
PART OF 8	20110328007720	0.88	10.00	350-51-14
9	20110328007721	1.02		
10	201107280017803	1.47	1.47	350-51-1
TOTAL AREA				88.74
				88.74

REFERENCES		OWNER	
1	Ordinance & Eminent, INC.; ALA/ACM/ LAD TITLE SURVEY, Sept. 30, 2003	J/C	11/13/15
		CREATED	0
		B/E	PROJECT #
		APPROVED	03-031
		P/J/N	FIG. #
		DATE	11/13/15
			SHEET 1 OF 1
PEDERSEN & PEDERSEN Civil and Environmental Engineering/Surveying 411 Mars-Evans Road, Suite 200 Mars, PA 15060 TEL: 724-855-0300		C.D. TOWER & ASSOCIATES, INC. P.O. BOX 307, DUNFORD, PA 15032	
		PROJECT	
		1624 MARS - DAVIS CITY ROAD, EVANS CITY, PA 16033-9397	
		SHEET TITLE	
		EXHIBIT "B" EVANS CITY SITE DEED PARCELS	

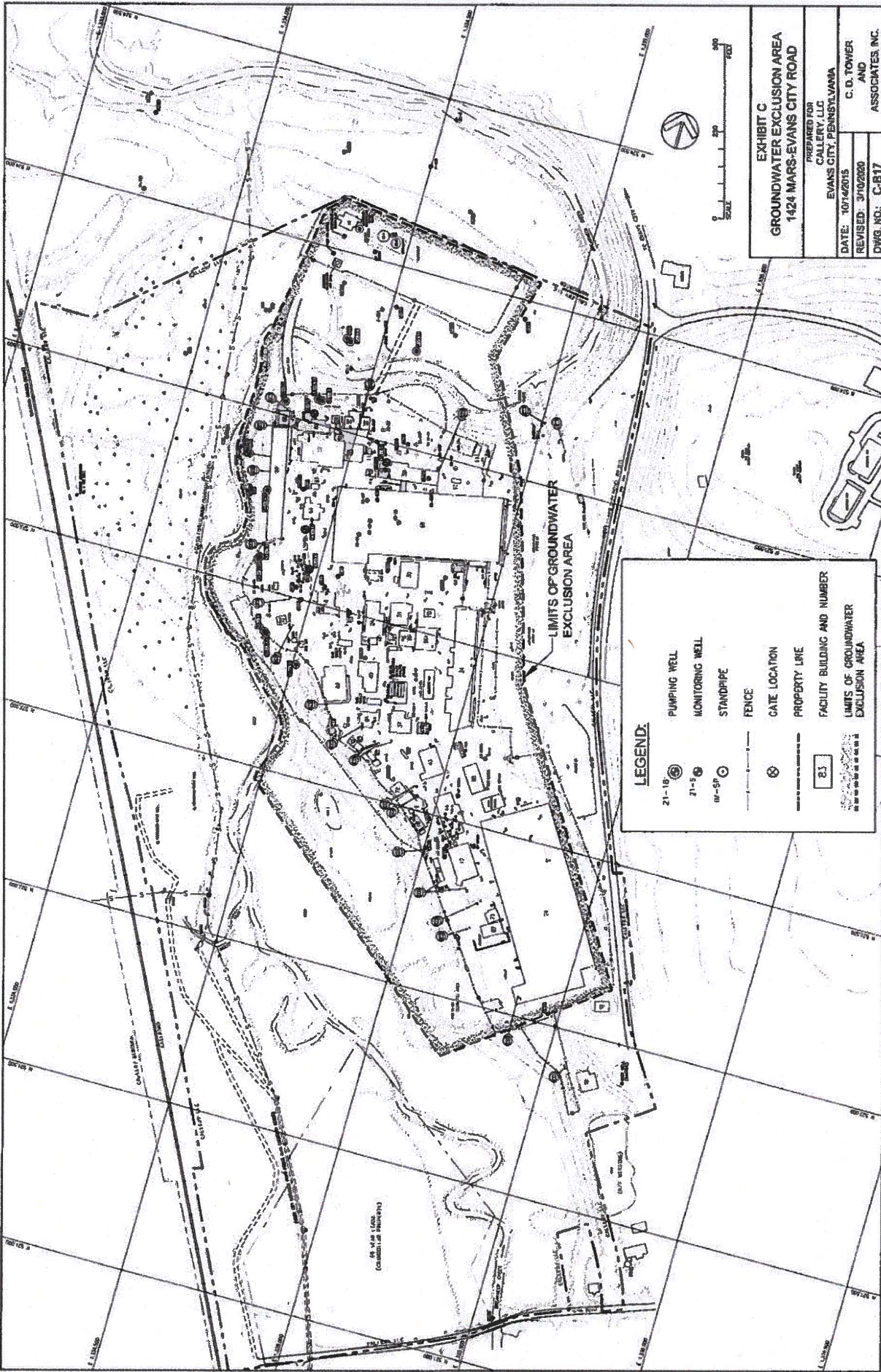


EXHIBIT C
GROUNDWATER EXCLUSION AREA
1424 MARS-EVANS CITY ROAD

PREPARED FOR:
 CALL HER LLC
 EVANS CITY, PENNSYLVANIA

DATE: 10/14/2015
 REVISED: 3/10/2020

C. D. TOWER
 AND
 ASSOCIATES, INC.
 DWG. NO.: C-817

LEGEND:

- 21-18 (Symbol: Circle with dot) PUMPING WELL
- 21-16 (Symbol: Circle with dot) MONITORING WELL
- 18-58 (Symbol: Circle with dot) STANDPIPE
- (Symbol: Dashed line) FENCE
- (Symbol: Circle with cross) GATE LOCATION
- (Symbol: Dotted line) PROPERTY LINE
- 23 (Symbol: Rectangle) FACILITY BUILDING AND NUMBER
- (Symbol: Thick dashed line) LIMITS OF GROUNDWATER EXCLUSION AREA



LIMITS OF GROUNDWATER
 EXCLUSION AREA

TrakRecord Public Access Search Results

Criteria: sm.lastname like 'ASCENSUS%' and Recorded Date is between '1/20/2021 09:14:06 AM' and '2021-01-21'. Names Checked: ASCENSUS SPECIALTIES CALLERY LLC

DETAILS

Instrument: 202101200001663 Recorded: 1/20/2021 9:14:06 AM Prepared: 09/10/2020 Status: Not Verified Document Type: RESTRICTIVE COVENANTS Pages: 10 Notes:
Grantor : ASCENSUS SPECIALTIES CALLERY LLC / COMMONWEALTH OF PENNSYLVANIA / DEPARTMENT ENVIRONMENTAL PROTECTION Grantee :
ASCENSUS SPECIALTIES CALLERY LLC / COMMONWEALTH OF PENNSYLVANIA / DEPARTMENT ENVIRONMENTAL PROTECTION