



Thomas N. Griffin, III  
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Charleston, SC  
Charlotte, NC  
Columbia, SC  
Myrtle Beach, SC  
Raleigh, NC  
Spartanburg, SC

August 10, 2011

**Via Federal Express**

Ms. Karen Singer  
US EPA, Region IV  
61 Forsyth Street, SW  
Atlanta, GA 30303

Wallace Finlator, Jr.  
Assistant Attorney General  
North Carolina Department of Justice  
114 West Edenton Street  
Raleigh, NC 27603

Re: **Clariant Corporation -- Institutional Controls  
Martin Marietta/Sodyeco Superfund Site**

Dear Karen and Wallace:

I have enclosed certified copies of the "Declaration of Perpetual Land Use Restrictions" and the "Notice of Contaminated Site" for the Martin Marietta/Sodyeco Superfund Site in Charlotte, North Carolina. I understand from our conversations that these documents satisfy the requirement for institutional controls under the Amended Record of Decision, and that the delisting process for the site can now begin. Please do not hesitate to contact me at any time if you have any questions about these materials or need anything further from me along these lines.

As always, I appreciate your help in this matter. I hope that all is well.

Very truly yours,

Thomas N. Griffin, III

TNG:cmh  
Enclosures



10838722

PPAB 1857791v1

J. David Granberry, Register of Deeds  
720 E. 4<sup>th</sup> Street, Room 103  
Charlotte, North Carolina, 28202  
(704) 336-2443

State of North Carolina  
County of Mecklenburg

I do hereby certify this to be a true copy of the attached document filed and recorded in the aforesaid county as evidenced in Instrument / Book 2664 Page Number 714 and ends with Page Number 723.

Witness my hand and seal this 10<sup>th</sup> day of August, 2011.

J. David Granberry



Register of Deeds, Assistant or Deputy Register of Deeds

**DECLARATION OF PERPETUAL LAND USE RESTRICTIONS  
FOR A FEDERAL SUPERFUND SITE**

**For Property Owned By: Clariant Corporation**

**Martin Marietta/Sodyeco Superfund Site, Charlotte, Mecklenburg County, North Carolina**

The real property which is the subject of this Declaration of Perpetual Land Use Restrictions ("Declaration") consists only of CERCLA areas A, B and D, which areas are located on a larger parcel of property located, in turn, at 11701 Mount Holly Road in Mecklenburg County, North Carolina. Areas A, B and D are referred to in this Declaration as the "Site." The Site contains hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA/SARA"), 42 U.S.C. § 9601 *et seq.*, and, along with other property, is the subject of a Record of Decision ("ROD") issued by the United States Environmental Protection Agency ("EPA") in September 1987. The ROD was modified by three Explanations of Significant Differences ("ESDs") that EPA issued in September 1994, November 1998, and December 1998. Pursuant to the ROD, the remedy selected for the Site was to be implemented by the Site owner under an amendment to a March 31, 1987 Resource Conservation and Recovery Act ("RCRA") Part B Permit, Number NCD0011810365. The remedy for the Site selected in the ROD, as modified by the three ESDs, has been further modified in an Amended ROD ("AROD"), issued by EPA on July 5, 2011, to add a requirement for land use restrictions for the soil. The land use restrictions set forth in this Declaration are included in the remedial action plan for the Site in the AROD that has been approved by the Secretary of the North Carolina Department of Environment and Natural Resources (or its successor in function), or his/her delegate, as authorized by N.C.G.S. Section 143B-279.9. The North Carolina Department of Environment and Natural Resources shall hereinafter be referred to as "DENR."

Clariant Corporation is the owner in fee simple of the Site, which is a portion of the real property legally described in Deed Book 4677, Page 309, Plat Book 53, Page 643 in the Office of the Register of Deeds for Mecklenburg County. The Site is shown on a Notice of Contaminated Site, constituting a survey plat that is concurrently being recorded with this Declaration in the Office of the Register of Deeds for Mecklenburg County at Map Book 53, Page 410. An unrecorded copy of said survey plat is attached hereto as Exhibit A.

For the purpose of protecting public health and the environment, Clariant Corporation hereby declares that all of the Site shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the Site or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 143B-279.9, be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Mecklenburg County Register of Deeds receives and records the written concurrence of the Secretary of DENR (or its successor in function), or his/her delegate, of modification or cancellation of these restrictions and this Declaration.

FOR REGISTRATION J. DAVID GRANBERRY  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2011 AUG 10 03:12:23 PM  
BK: 26664 PG: 714-723 FEE: \$38.00

INSTRUMENT # 2011089373

PPAB 1814158v3

RETURNED TO CUSTOMER

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If any provision of this Declaration 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.

It is the intention of Clariant Corporation and DENR that, to the extent allowed by law, EPA is a third party beneficiary of this Declaration, and, as such, has the authority to enforce these restrictions, to the extent such enforcement is allowed by law. It is expressly agreed that neither EPA nor DENR is a recipient of a real property interest under this Declaration.

### **PERPETUAL LAND USE RESTRICTIONS**

1. These land use restrictions are intended to prevent direct contact with Site contaminants and soils impacted by Site contaminants and, except as otherwise set forth herein, to preclude any future activity that would disturb, remove, or damage any cap, engineered or otherwise.

2. No cap at the Site, engineered or otherwise, shall be disturbed, removed, or damaged in any way without prior written approval of the Hazardous Waste Section of DENR's Division of Waste Management or its successor in function (the "Section"); provided, however, that routine maintenance of caps may be conducted without the Section's prior approval so long as such maintenance does not expose contaminants of concern in the soil underlying such caps, which contaminants of concern are the subject of the ROD, ESDs and AROD at the Site ("Contaminants of Concern"); and provided further that the Section shall be notified in writing upon completion of any such routine maintenance.

3. To ensure hazardous waste is handled and disposed of in a safe and appropriate manner and to prevent direct contact with contaminated soils, no caps at the Site, engineered or otherwise, may be altered, or other actions taken, in a manner that would result in a completed exposure pathway to Contaminants of Concern and/or result in increased risk of adverse exposure to Contaminants of Concern, without the owner conducting a RCRA Facility Investigation ("RFI") and implementing the appropriate RCRA action required as a result of the RFI, in both cases if and to the extent directed by the Section.

4. The Site shall not be developed or utilized for residential purposes or for childcare centers, nursing homes, schools, parks, recreational areas or athletic fields, without prior written approval of the Section.

5. The Site shall not be used for grazing purposes or for agricultural purposes related to human consumption, without prior written approval of the Section.

6. The Site shall not be used for kennels, private animal pens, or for riding clubs.

7. The Site shall not be used for mining or extraction of coal, oil, gas or any other minerals or non-mineral substances.

8. Unless otherwise permitted under this Declaration, below-ground construction is prohibited at the Site, except for remedial action activities undertaken with prior written approval of

the Section.

9. No repairs to underground utilities and remedial action underground piping and plumbing may be undertaken at the Site without prior approval of the Section; provided that such prior approval is not necessary if repairs are required to address an emergency situation. In the case of an emergency situation, the Section shall be notified by phone within 4 business hours of the discovery of the emergency, and within 72 hours of the emergency a written account of the emergency and actions taken shall be submitted to the Section.

10. Activities necessary to remediate contamination at the Site are permitted if approved in writing in advance by the Section.

11. Each person who owns any portion of the Site shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31<sup>st</sup>, to the Section and the EPA Region 4 Superfund Division, or its successor in function, confirming that this Declaration is still recorded in the Office of the Mecklenburg County Register of Deeds, and that activities and conditions at the Site remain in compliance with the land use restrictions herein.

12. No person conducting environmental assessment or remediation at the Site, or involved with determining compliance with applicable land use restrictions, at the direction of, or pursuant to, a permit or order issued by DENR or EPA or their successors in function, may be denied access to the Site for the purpose of conducting such activities.

13. Each person who owns any portion of the Site shall cause the instrument of any sale, lease, grant, or other transfer of any interest in the Site to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration.

14. The owner of any portion of the Site that is the subject of this Declaration may submit a written request to the Section for modification or cancellation of these restrictions. DENR will concur with and grant such request for modification if DENR determines, based upon a showing by the owner, that the modification is justified. DENR will concur with and grant such request for cancellation if DENR determines, based upon a showing by such owner, that all Contaminants of Concern at the Site have been eliminated or remediated to unrestricted use standards pursuant to N.C.G.S. Section 143B-279.9(d), or, if no unrestricted use standard pursuant to N.C.G.S. Section 143B-279.9(d) is applicable to a Contaminant of Concern, then upon achievement of all applicable requirements in the state RCRA permit for the Site, in effect at the time of request for cancellation. If DENR concurs with any such modification or cancellation, it shall submit such written concurrence to the Mecklenburg County Register of Deeds. Such owner must provide written notification to EPA Region 4's Superfund Division that it is requesting a modification or cancellation of the restrictions at the same time its request is submitted to DENR.

**REPRESENTATIONS AND WARRANTIES**

Clariant Corporation hereby represents and warrants to the other signatories hereto:

that it is the sole owner of the Site;

that it holds fee simple title to the Site free, clear, and unencumbered;

that it has the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Clariant Corporation is a party or to which it is bound or affected.

**ENFORCEMENT**

The land use restrictions set forth in this Declaration are an integral part of the remedy for the contamination at the Site. Adherence to the restrictions is necessary to protect public health and the environment. These land use restrictions shall be enforced by any owner, operator or other party responsible for any part of the Site. The land use restrictions may also be enforced by DENR through the remedies provided by any provision of law that is implemented or enforced by DENR, or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site or by EPA to the extent allowed by law. Any attempt to cancel this Declaration without the prior written approval of DENR, and notification to the EPA Region 4 Superfund Division, or their successors in function, shall constitute noncompliance with EPA's ROD, as modified by three ESDs and the AROD for the Site, which have been approved by DENR for the Site, and shall be subject to enforcement by DENR and/or, to the extent allowed by law, by EPA. Failure by any party required or authorized to enforce any of the above restrictions or provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

**FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS**

When any portion of the Site is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 143B-279.10(e), the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred is a Contaminated Site, together with a reference by book and page to the recordation of the Notice of Contaminated Site referenced in this Declaration.

**MODIFICATION OR CANCELLATION OF NOTICE OF  
CONTAMINATED SITE**

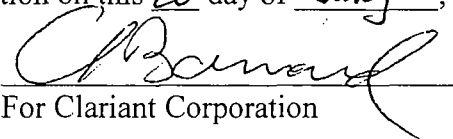
The owner of any portion of the Site that is the subject of this Declaration may also submit a written request to the Section that the Notice of Contaminated Site ("survey plat") be modified or cancelled.

DENR will concur with and grant such request for modification if DENR determines, based upon a showing by the owner, that the modification is justified. DENR will concur with and grant such request for cancellation if DENR determines, based upon a showing by such owner, that all Contaminants of Concern at the Site have been eliminated or remediated to unrestricted use standards pursuant to N.C.G.S. Section 143B-279.9(d) or, if no unrestricted use standard pursuant to N.C.G.S. Section 143B-279.9(d) is applicable to a contaminant of concern, then upon achievement of all applicable requirements in the state RCRA permit for the Site, in effect at the time of request for cancellation. If DENR concurs with any such modification or cancellation, it shall submit such written concurrence to the Mecklenburg County Register of Deeds. Such owner must provide written notification to EPA Region 4's Superfund Division that it is requesting a modification or cancellation of the survey plat at the same time the request is submitted to DENR.

**OWNER'S SIGNATURE**

IN WITNESS WHEREOF, I CHRISTOPHER S. BALNARD, exercising power of attorney for Clariant Corporation, have executed this Declaration on this 26<sup>th</sup> day of July, 2011.

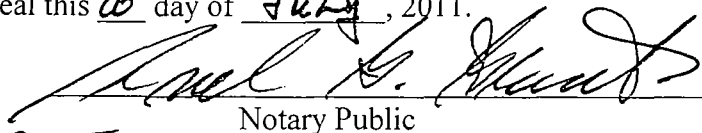
Signatory's name:

  
For Clariant Corporation

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

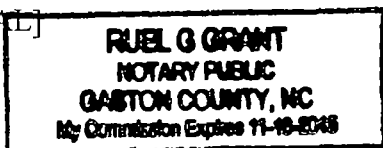
I, RUEL G. GRANT, a Notary Public, do hereby certify that CHRISTOPHER S. BALNARD personally appeared before me this day and Declared that he is SR. VICE PRESIDENT + SECRETARY of Clariant Corporation and that by authority duly given, and as the act of Clariant Corporation, he has signed this Declaration.

WITNESS my hand and official seal this 26<sup>th</sup> day of July, 2011.

  
Notary Public

My Commission expires: 11-18-2015

[SEAL]



APPROVAL AND CERTIFICATION OF THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified this 9th day of August, 2011.

By: Dexter R. Matthews  
Dexter R. Matthews, Director  
Division of Waste Management  
North Carolina Department of Environment and Natural Resources

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

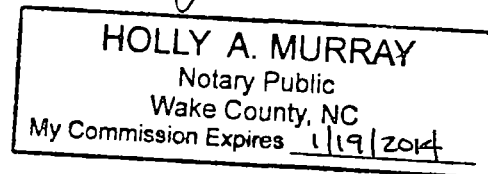
I, Holly A. Murray, a Notary Public, do hereby certify that Dexter R. Matthews personally appeared before me this day and produced proper identification in the form of personally known to notary, and signed this Declaration.

WITNESS my hand and official seal this 9th day of August, 2011.

Holly A. Murray  
Notary Public

My Commission expires: 1/19/2014

[SEAL]



Prepared by  
And Mail to: Thomas N. Griffin, Esq  
Parker Pop Adams + Bernstein  
Three Wells Fargo Center  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202



**REGISTER OF DEEDS CERTIFICATION**

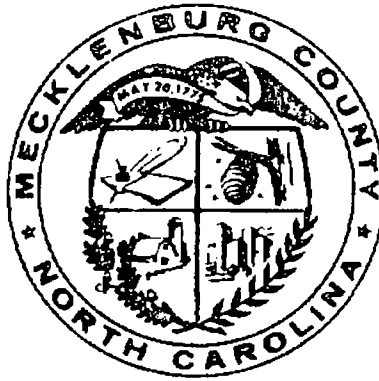
The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Book and Page, shown on the first page hereof.

Register of Deeds for Mecklenburg County

By: \_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(type or print name and title)

Exhibit A  
Copy of Survey Plat





J. DAVID GRANBERRY  
REGISTER OF DEEDS, MECKLENBURG  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE, NC 28202

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of the recorded document, and must be submitted with original for re-recording  
and/or cancellation.

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Book: RE 26664 Page: 714-723  
Document No.: 2011089373  
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