

PRESTOLITE PLANT Site 961009

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MAY 16 2001
NYSDEC-REG. 9
Hazardous Waste/UNREL

DECLARATION OF COVENANTS AND RESTRICTIONS

2001 APR 24 AM 10:01
WYOMING COUNTY CLERK

THIS DECLARATION is made as of December 31, 2000 by WYOMING COUNTY INDUSTRIAL DEVELOPMENT AGENCY, with offices at 200 Allen Street, Warsaw, New York, 14569 ("IDA") and PRESTOLITE ELECTRIC INCORPORATED, a Delaware corporation, with offices at 400 Main Street, Arcade, New York 14009 ("Prestolite"). (IDA and Prestolite are sometimes collectively referred to herein as "Declarant").

Background

A. IDA is the owner of an industrial facility of approximately twenty-two (22) acres located at 400 Main Street between Bixby Hill Road and Prospect Street, as described in the legal description attached hereto as Exhibit "A" and as depicted on the site plan attached hereto as Exhibit "B" (the "Property"). Prestolite occupies the Property as tenant pursuant to a certain Agency Lease Agreement dated February 28, 1994 between IDA and Prestolite. The Property was formerly owned by Motorola, Inc. ("Motorola").

B. The Property is the subject of a certain Order on Consent (B9-0468-94-11) issued by the Commissioner of the New York State Department of Environmental Conservation ("NYSDEC"), which directed Motorola, as responsible party, to develop, implement, monitor and maintain a remedial program for the Property (the "Order"). The Order was effective on January 30, 1995 according to applicable law. A copy of the Order is attached hereto as Exhibit "C".

C. The requirements of the remedial program selected by the NYSDEC in accordance with the New York State Environmental Conservation Law, and consistent with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), were published in a Proposed Remedial Action Plan issued by the NYSDEC in April, 2000, a copy of which is attached hereto as Exhibit "D".

NOW, THEREFORE, Notice is hereby given:

1. The Order is binding upon Motorola and Prestolite.
2. This Declaration shall run with the Property and to the benefit of NYSDEC, and shall be binding upon all future owners of the portions of the Property affected by this Declaration, and upon each and every tenant, subtenant, invitee and licensee of thereof, and cannot be modified without the consent of the NYSDEC (or any New York State Department, Bureau or other entity replacing NYSDEC).
3. The Property, having been listed by NYSDEC as a Class 3 Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State, is subject to applicable restrictions on the use of the Property, including those specified by § 375-1.2(c) of the

Environmental Conservation regulations embodied in Title 6 of the New York Code of Rules and Regulations.

Use of the Property is thereby limited such that no person may engage in any activity:

(a) that will, or that is reasonably anticipated to, prevent to interfere significantly with any proposed, ongoing or completed remedial program affecting the Property, including any activity that will intrude into waste materials or will otherwise diminish the effectiveness of the remedy, or

(b) that will, or is reasonably likely to, expose the public health or the environment to a significantly increased threat of harm or damage to the Property.

In addition, (i) there shall be no wells drilled into any groundwater aquifer(s) beneath the Property and (ii) with respect to the portion of the Property lying southwest of the railroad tracks which includes the "wastewater treatment plant" and the "former chemical storage building" (as depicted on the Site Plan attached hereto as Exhibit "B"), there shall be no construction of new buildings, and any utility work shall be done in accordance with health and safety plans approved by NYSDEC. Except in emergency situations as determined by the applicable utility company, NYSDEC shall be provided with reasonable prior notice of any proposed utility work in these affected portions of the Property.

4. Use of the Property may be further restricted by applicable law and/or by other orders issued or to be issued according to applicable law.

5. Any deed of conveyance of the Property is subject to and encumbered by this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date first above written.

IDA:

WITNESSES:

WYOMING COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

Eleanor Jackson
Lucia Leibel

By: Richard L. Tindell
Richard L. Tindell, Executive Director

STATE OF NEW YORK)
) SS:
COUNTY OF WYOMING)

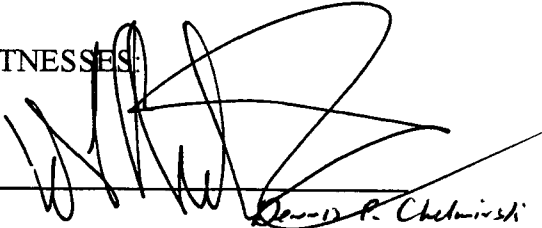
On the 24th day of APRIL in the year 2001, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD L. TINDELL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual (s), or the person upon behalf of which the individual(s) acted, executed the instrument.

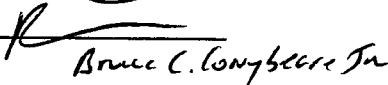
Amy S. Hoffmeister
(Signature and office of individual taking acknowledgment)

AMY S. HOFFMEISTER
Notary Public, State of New York
No. 01H05068765
Qualified in Wyoming County
Commission Expires November 04, 2002

PRESTOLITE:


WITNESSES:



 Donald P. Chelminski


 Bruce C. Conybeare, Jr.

PRESTOLITE ELECTRIC
INCORPORATED, a Delaware corporation

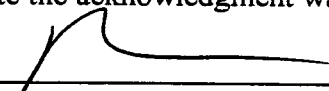
By: 

 Kenneth C. Cornelius, Sr. Vice President

STATE OF MICHIGAN)
) SS.:
 COUNTY OF WASHTENAW)

On the 16th day of April, in the year 2001 before me, the undersigned, personally appeared KENNETH C. CORNELIUS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the

(Insert the city or other political subdivision and the state the acknowledgment was taken).



 Notary Public

Instrument drafted by and
when recorded return to:

Bruce C. Conybeare, Jr.
 Bruce C. Conybeare, Jr., P.C.
 1119 S. Main Street, Suite 103
 Chelsea, Michigan 48118
 734.443.0575 Telephone
 734.433.0576 Fax