

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 3, 2010

Ms. Jane Smith, President  
Smiths Enterprise, Inc.  
9876 Main Street  
Anytown, TX 78912

Re: Certificate of Completion  
Smiths Office Park, 9876 Main Street, Anytown, Williams County; Voluntary Cleanup Program  
(VCP) No. 123; Customer No. CN123456789; Regulated Entity No. RN987654321

Dear Ms. Smith:

The Texas Commission on Environmental Quality (TCEQ) has reviewed the January 1, 2009 report entitled Response Action Completion Report (RACR) as well as other requested information. Based on this review, the TCEQ has determined that the site has attained Texas Risk Reduction Program Remedy Standard B commercial/industrial land use standards for all exposure pathways in accordance with 30 Texas Administrative Code §350.33. Therefore, the TCEQ issues the enclosed conditional COC. The TCEQ records for this site will be maintained at the Central Records office of the TCEQ in Austin, Texas.

Response actions performed in the VCP which do not attain residential health-protective levels or which rely upon physical controls, remediation systems, post-response action care, or permanent or non-permanent institutional controls (for this purpose inclusive of PST exposure assumptions) require filing of the certificate in the real property records of the county in which the site is located in accordance with 30 TAC §333.9. Please submit proof of filing the certificate in the real property records no later than 90 days from the date of the certificate to my attention at the TCEQ, VCP-CA Section, mail code MC-221, at the letterhead address. Failure to submit proof of filing demonstrating that the certificate was filed within 90 days of issuance may result in termination of the VCP agreement and an enforcement action.

Please be aware that there may be outstanding charges reflecting TCEQ oversight activities that occurred prior to the date of this letter that may still be forthcoming. You may contact Jim Jones with any questions or comments you have at (512) 239-2200.

Sincerely,

*Division Director's Signature*

Brent Wade, Director  
Remediation Division

BW/JJ/jdm

cc: Mr. Will Turner, ABC Environmental Consulting, Inc., Anytown, TX  
Mr. John Anderson, Region 17 Office, Bigtown

Enclosure: COC

Example

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



VOLUNTARY CLEANUP PROGRAM
CONDITIONAL CERTIFICATE OF COMPLETION

This Conditional Certificate of Completion (Certificate) applies to the tract of land described in Exhibit "A", attached hereto and incorporated herein by reference. This Certificate and the related protection described herein apply solely to releases at the tract of land described in Exhibit "A" prior to the execution date of this Certificate. The continued effectiveness of this Certificate is dependent upon compliance with the conditions set forth in Exhibit "D", attached hereto and incorporated herein by reference. If there is not satisfactory compliance with these conditions, this Certificate is voidable by the Texas Commission of Environmental Quality (TCEQ). This Certificate shall be a covenant that runs with the land.

As provided in Section 361.609 of the Texas Health and Safety Code:

I, Brent Wade, Director of the Remediation Division, TCEQ, certify as follows:

Certain response actions have been completed for VCP No. 123 as of December 3, 2009, for the tract of land described in Exhibit "A" so that the tract is acceptable for commercial/industrial land use.

This certification is based on the Affidavit of Completion of Response Action (Exhibit "B"), Restrictive Covenant (Exhibit "C"), and Exposure Assumptions (Exhibit "E"), attached hereto and incorporated herein by reference, and on additional site information in TCEQ files.

The following persons are qualified to obtain the protection from liability described in Section 361.610 of the Texas Health and Safety Code, provided the applicant or future owners are not in violation of the restrictive covenant in Exhibit "C" and satisfactorily achieving and maintaining the conditions described in Exhibit "D":

- 1) An applicant who on the date of submittal of an application to the Voluntary Cleanup Program was not a responsible party under Sections 361.271 or 361.275(g) of the Texas Health and Safety Code; and
2) All persons (e.g., future owners, future lessees, future operators and lenders) who on the date of issuance of this Certificate were not responsible parties under Sections 361.271 or 361.275(g) of the Texas Health and Safety Code.

Further information concerning this matter may be found at the TCEQ Central File Room in Building E, Room 103, 12100 Park 35 Circle, Austin, Texas 78753 under Voluntary Cleanup Program No. 123.

EXECUTED this the 1st day of January 2010

Division Director's Signature

Brent Wade, Director
Remediation Division

STATE OF TEXAS
TRAVIS COUNTY

BEFORE ME, on this the 1st day of January, personally appeared Brent Wade, Director of the Remediation Division of the Texas Commission on Environmental Quality, known to me to be a representative of said commission whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1st day of January 2010



Notary's Signature for TCEQ

Notary Public in and for the State of Texas

***EXHIBIT "A"***  
***Legal Description of Site***  
***VCP No. 123***

The Site is a 1.4 acre tract, more or less, located at 9876 Main Street, Anytown in the Bob Jones League 4, Abstract 18, recorded in Volume 250, Page 4 of the Deed of Records in Williams County, Texas, more particularly described as follows:

Example



AFTER RECORDING PLEASE  
RETURN TO:

DALENS  
ATTN: DAVE

**PROPERTY DESCRIPTION**

Block 1337, Lot 1, containing 13,992 sq. ft. of land, more or less, bounded on the north by the 40-foot right-of-way street, on the east by the 25-foot drive line, on the south by the 40-foot right-of-way street, and on the west by the 40-foot right-of-way street. This tract is subject to a 10-year leasehold interest in favor of the lessor, as shown on the plat.

Block 1337, Lot 2, containing 7,937 sq. ft. of land, more or less, bounded on the north by the 40-foot right-of-way street, on the east by the 25-foot drive line, on the south by the 40-foot right-of-way street, and on the west by the 40-foot right-of-way street. This tract is subject to a 10-year leasehold interest in favor of the lessor, as shown on the plat.

Block 1337, Lot 3, containing 26,067 sq. ft. of land, more or less, bounded on the north by the 40-foot right-of-way street, on the east by the 25-foot drive line, on the south by the 40-foot right-of-way street, and on the west by the 40-foot right-of-way street. This tract is subject to a 10-year leasehold interest in favor of the lessor, as shown on the plat.

**EXHIBIT A**

**Texas Natural Resources Conservation Commission**

**Legal Description of Property**

This plat is a part of a larger plat, and is subject to the same terms, conditions and covenants as the larger plat. The plat is subject to the same terms, conditions and covenants as the larger plat. The plat is subject to the same terms, conditions and covenants as the larger plat.

**PROPERTY SURVEY**

DALENS

ACRES	13.992
SQ. FT.	13,992
FRAC.	1/4
BLK.	1337
LOT	1



**EXHIBIT "B"**  
**Affidavit of Implementation of Response Actions**  
**VCP No. 123**

BEFORE ME, the undersigned authority, on this day personally appeared Jane Smith, as an authorized representative of Smiths Enterprise, Inc., known to me to be the person whose name is subscribed below who being by me first duly sworn, upon their oath, stated as follows:

I am over the age of 18 and legally competent to make this affidavit. I have personal knowledge of the facts stated herein.

Smiths Enterprise, Inc. (Applicant) has implemented response actions pursuant to Chapter 361, Subchapter S, Texas Health and Safety Code, at the tract of land described in Exhibit "A" to this certificate that pertains to Smiths Office Park (Site), VCP No. 123 located at 9876 Main Street, Anytown, Williams County, Texas. The Site was owned by Smiths Enterprise, Inc. at the time the application to participate in the Voluntary Cleanup Program was filed. The Applicant has submitted and received approval from the Texas Commission on Environmental Quality (TCEQ) Remediation Division on all plans and reports required by the Voluntary Cleanup Agreement necessary for receipt of a Conditional Certificate of Completion (Certificate) for the tract of land in Exhibit "A". The plans and reports were prepared using a prudent degree of inquiry of the Site consistent with accepted industry standards to identify all hazardous substances, waste and contaminated media of regulatory concern. The response actions for the Site have achieved standards acceptable for commercial/industrial land use as determined by the TCEQ.

As long as the restrictive covenant present in Exhibit "C" is observed and the conditions present in Exhibit "D" are maintained, the response action will sufficiently eliminate present or future risk to public health and safety and the environment from releases and threatened releases of hazardous substances and/or contaminants at or from the Site. The Applicant has not acquired this Certificate by fraud, misrepresentation or knowing failure to disclose material information. Further information concerning the response action at this Site may be found in the final report at the central office of the TCEQ under VCP No. 123.

The preceding is true and correct to the best of my knowledge and belief.

Applicant

Jane Smith's Signature

(Signature)

Jane Smith

(Printed Name)

President

(Title)

STATE OF Texas

COUNTY OF Williams

SUBSCRIBED AND SWORN before me on this the 3<sup>rd</sup> day of December 2009,  
to which witness my hand and seal of office.



Notary's Signature  
Notary Public in and for the State of Texas

***EXHIBIT "C"***  
***Restrictive Covenant***  
***VCP No. 123***

Smiths Enterprise, Inc. (Owner), is the owner of the tract of land described in Exhibit "A" to this certificate that pertains to Smiths Office Park (Site), VCP No. 123 located at 9876 Main Street in Anytown, Williams County, Texas. In consideration of the Response Actions by Smiths Office Park (VCP Applicant) and issuance of this Conditional Certificate of Completion, the Owner has agreed to place the restrictions listed below on the Site at the areas described in the attached exhibit(s) and in favor of the Texas Commission on Environmental Quality (TCEQ) and the State of Texas. This Restrictive Covenant is filed to provide information concerning certain environmental conditions and use limitations.

This Restrictive Covenant is required for the following reasons:

The area described in Exhibit "C-1" overlies groundwater which contains concentrations of chemicals exceeding TCEQ-approved protective concentrations, plus any additional area allowed by the TCEQ. The area in Exhibit "C-1" is being managed such that human exposure is prevented and other groundwater resources are protected. Exhibit "D" and attachments therein provide the entire location and extent of the area being so managed and describes the maintenance and monitoring required. This maintenance and monitoring must be implemented unless and until TCEQ approves some modification of those requirements.

The area described in Exhibit "C-1" is subject to TCEQ regulatory requirements for properties containing concentrations of chemicals exceeding TCEQ-approved protective concentrations in soil in order to prevent exposure to these chemicals in soil. The area in Exhibit "C-1" provides the location of the physical control and extent of the soil that exceeds the TCEQ-approved protective concentration for certain chemicals. The attached Exhibit "D" provides the reason the physical control must remain in place, and describes the required maintenance and monitoring for the physical control. This monitoring program must be implemented unless and until the TCEQ approves any modification.

The area described in Exhibit "C-1" is subject to TCEQ regulatory requirements for properties containing concentrations of chemicals exceeding TCEQ-approved protective concentrations in groundwater underlying a waste control unit in order to prevent exposure to these chemicals in underlying groundwater. A waste control unit includes municipal or industrial solid waste landfills, including RCRA-regulated units closed as landfills, with a liner system and engineered cap. Exhibit "D" and attachments therein provide the entire location of the waste control unit and extent of the groundwater underlying the waste control unit that exceeds the TCEQ-approved protective concentrations for certain chemicals. The attached Exhibit "D" also describes the maintenance and monitoring required for the waste control unit. This program must be implemented unless and until TCEQ approves any modification.

The area described in Exhibit "C-1" currently meets regulatory standards for commercial/industrial land use. Based upon the reports, the chemicals at the Site pose no significant present risk to humans or the environment based on commercial/industrial land use. However, because of the nature of the chemicals, if buildings are developed at the Site, the Site may not be protective against indoor vapor intrusion from the underlying groundwater. Therefore, buildings should be designed to preclude indoor vapor intrusion, or the Site should be re-evaluated for potential indoor vapor intrusion prior to building development. If any person desires in the future to develop buildings at the Site, the TCEQ must be notified at least 60 days in advance of construction and additional response actions may be necessary during or before the building development.

The TCEQ has approved the use of an exposure area of 1.4 acre(s) to evaluate potential exposure of residents to surface soils within the area specified in Exhibit "C-1". The default assumption for the size of the soil exposure area at residential properties is 1/8 acre or the size of the existing front or backyard at the residential lot. The approval of this larger than default exposure area is based upon site-specific documentation that the activity pattern of residents is such that they will have free and equal access to surface soils over a 1.4 acre area. If conditions change such that residents are restricted to a smaller surface area over which exposure to surface soils may occur (e.g., installation of a playscape), the area specified in Exhibit "C-1" must be re-evaluated with TCEQ to ensure protection of human health.

The TCEQ has approved the use of an exposure area of 1.4 acre(s) to evaluate potential exposure of commercial/industrial workers to surface soils within the area specified in Exhibit "C-1". The default assumption for the size of the soil exposure area at commercial/industrial properties is 1/2 acre. The approval of this larger than default exposure area is based upon site-specific documentation that the activity pattern of commercial/industrial workers is such that they will have free and equal access to surface soils over a 1.4 acre area. If conditions change such that commercial/industrial workers are restricted to a smaller surface area over which exposure to surface soils may occur, the area specified in Exhibit "C-1" must be re-evaluated with TCEQ to ensure protection of human health.

The TCEQ has approved the use of an exposure frequency of 30 days per year and an exposure duration of 5 to evaluate potential exposure of commercial/industrial workers to the groundwater which contain certain identified chemicals within the area specified in Exhibit "C-1". The approval of a reduced exposure frequency and/or exposure duration is based upon site-specific documentation that the activity patterns of commercial/industrial workers is such that they will not have access to affected media for a time period exceeding 30 days per year and/or a total of 5 years. The default exposure frequency is 250 days per year and the default exposure duration is 25 years for commercial/industrial workers. If conditions change such that commercial/industrial workers are exceeding either the approved exposure frequency or exposure duration, an unprotective situation may exist.

Now, therefore, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following Restrictive Covenant in favor of the TCEQ and the State of Texas is placed on the Site, at the areas described in the attached exhibits, to-wit:

1. The following restrictions shall be a covenant running with the land.
2. Use of and exposure to the groundwater at the Site for any purpose is prohibited until such time when all of the chemicals of concern in groundwater within the area specified in Exhibit "C-1" no longer exceed levels which are protective of the public health. The condition related to maintenance and monitoring present in Exhibit "D" must be maintained. Removal or modification of this restrictive covenant is prohibited without prior written approval of the TCEQ.
3. Remedial actions performed at the Site rely, at least in part, upon a physical control. Therefore, the removal or modification of the concrete cap at the Site described in Exhibit "C-1" is prohibited without prior written approval from the TCEQ. The condition related to inspection and (if necessary) repair of the physical control present in Exhibit "D" must be maintained. Removal or modification of this restrictive covenant is prohibited without prior written approval of the TCEQ.
4. The removal or modification of the waste control unit at the Site described in Exhibit "C-1" is prohibited without prior written approval from the TCEQ. Use of and exposure to the groundwater underlying the waste control unit for any purpose is also prohibited until such time when all of the chemicals of concern no longer exceed levels which are protective of the public

5. The development of buildings at the Site described in Exhibit "C-1" is prohibited without prior written approval from the TCEQ. Removal or modification of this restrictive covenant is prohibited without prior written approval of the TCEQ.
6. The area specified in Exhibit "C-1" shall not be subdivided into individual tracts smaller than 1.4 acre(s) without prior written approval from the TCEQ.
7. The area specified in Exhibit "C-1" shall not be used in a manner that would allow commercial/industrial workers access to the Site for a time period exceeding 30 days per year and/or a total of 5 years, without prior written TCEQ approval.

For additional information, contact:

TCEQ  
 Central Records  
 12100 Park 35 Circle, Building E  
 Austin, Texas 78753

Mail: TCEQ - MC 199  
 P.O. Box 13087  
 Austin, Texas 78711-3087

This Restrictive Covenant may be rendered of no further force or effect only by a release executed by the TCEQ or its successor agencies and filed in the same Real Property Records as those in which this Restrictive Covenant is filed.

Property Owner

Property Owner's Signature  
 (Signature)

Property Owner's Name  
 (Printed Name)

P. O. Box 45678, Anytown, TX 78912  
 (Mailing Address)

STATE OF Texas

COUNTY OF Williams

SUBSCRIBED AND SWORN before me on this the 3<sup>rd</sup> day of December 2009, to which witness my hand and seal of office.



Notary's Signature for Property Owner  
 Notary Public in and for the State of Texas

VCP Applicant

Jane Smith Signature  
(Signature)

Jane Smith  
(Printed Name)  
President  
(Title)

STATE OF Texas  
COUNTY OF Williams

SUBSCRIBED AND SWORN before me on this the 3<sup>rd</sup> day of December 2009, to which witness my hand and seal of office.



Notary's Signature for VCP Applicant  
Notary Public in and for the State of Texas

Accepted as Third Party Beneficiary this 1<sup>st</sup> day of January 2010

Texas Commission on Environmental Quality

Division Director's Signature  
(Signature)

Brent Wade  
(Printed Name)  
Director, Remediation Division  
(Title)

STATE OF TEXAS  
TRAVIS COUNTY

SUBSCRIBED AND SWORN before me on this the 1<sup>st</sup> day of January 2010, to which witness my hand and seal of office.



Notary's Signature for TCEQ  
Notary Public in and for the State of Texas



**EXHIBIT "D"**  
**Conditions**  
**VCP No. 123**

The following post-response action care conditions apply to the tract(s) of land described in the attached exhibit(s) where contamination has been released at Smiths Office Park (Site), located at 9876 Main Street in Anytown, Williams County, Texas:

Site Conditions

1. Maintain the extent of the contaminant plume, perform any necessary groundwater treatment and any necessary groundwater monitoring at the tract of land described in Exhibit "D-1", to meet the requirements of Texas Risk Reduction Program Remedy B in accordance with 30 TAC §350.33. The monitoring and treatment activities should be conducted according to the January 1, 2008 Response Action Plan (RAP) for the site or subsequently approved reports or other TCEQ written correspondence. Where TCEQ correspondence and other reports conflict, TCEQ correspondence prevails over the reports. Reports documenting the groundwater monitoring activities, any necessary groundwater treatment and the continued effectiveness of the remedy are to be submitted quarterly to the TCEQ for review unless this frequency is modified by subsequent TCEQ correspondence.
2. The concrete cap described in Exhibit "D-1" shall be inspected and maintained quarterly. The inspection and maintenance shall be conducted according to the January 1, 2008 Response Action Plan (RAP) for the site or subsequently approved reports or other TCEQ written correspondence. Where TCEQ correspondence and other reports conflict, TCEQ correspondence prevails over the reports. Reports documenting the type of physical control condition, maintenance, repair, replacement and the continued effectiveness of the remedy are to be submitted quarterly to the TCEQ for review unless this frequency is modified by subsequent TCEQ correspondence.
3. Maintain the extent of the contaminant plume, perform any necessary groundwater treatment and any necessary groundwater monitoring of the wells at the periphery of the waste control unit described in Exhibit "D-1", to meet the requirements of Texas Risk Reduction Program Remedy B in accordance with 30 TAC §350.33 relating to a plume management zone beneath the waste control unit. The monitoring and treatment activities should be conducted according to the January 1, 2008 Response Action Plan (RAP) for the site or subsequently approved reports or other TCEQ written correspondence. Where TCEQ correspondence and other reports conflict, TCEQ correspondence prevails over the reports. Reports documenting the groundwater monitoring activities, any necessary groundwater treatment and the continued effectiveness of the remedy are to be submitted quarterly to the TCEQ for review unless this frequency is modified by subsequent TCEQ correspondence.
4. A municipal ordinance (non-permanent institutional control) is being utilized pursuant to the VCP agreement to prevent and/or mitigate exposure to the COCs at the tract of land described in Exhibit "D-1". The effectiveness of the implemented remedy is dependent upon the continued existence of the non-permanent institutional control, attached hereto and incorporated herein by reference in Exhibit "D-1". The status and content of the non-permanent institutional control present over the area described in Exhibit "D-1" shall be inspected quarterly. The inspection activities should be conducted according to the January 1, 2008 Response Action Plan (RAP) for the site or subsequently approved reports or other TCEQ written correspondence. Where TCEQ correspondence and other reports conflict, TCEQ correspondence prevails over the reports.

5. The Certificate, including all attached exhibits, shall be disclosed to the next subsequent owner prior to transfer of control of the Site or any part of the Site. Any such failure to disclose shall only affect that portion of the Site for which the disclosure is not accomplished.
6. TCEQ oversight costs for review of any work plans or reports necessary to implement the conditions of the Certificate shall be paid in a timely manner.
7. The cleanup rules governing conditional site closure (or any subsequently applicable similar rules), must be complied with in addressing the site.

These conditions may be modified or discontinued only when the TCEQ or its successor agencies have provided prior written consent and when such a document is filed in the same Real Property Records as those in which these conditions are filed.

VCP Applicant

Jane Smith Signature  
(Signature)

Jane Smith  
(Printed Name)

President  
(Title)

STATE OF Texas  
COUNTY OF Williams

SUBSCRIBED AND SWORN before me on this the 3<sup>rd</sup> day of December 2009, to which witness my hand and seal of office.



Notary's Signature for VCP Applicant  
Notary Public in and for the State of Texas



**EXHIBIT "E"**  
**Exposure Assumptions**  
**VCP No. 123**

The following exposure assumptions are consistent with the Petroleum Storage Tank (PST) rules and guidance and are applicable to the property described in Exhibit "E-1" for Leaking Petroleum Storage Tank (LPST) facility ID No. 123456 located at 9876 Main Street in Anytown, Williams County, Texas:

1. Although water wells completed in the impacted groundwater zone are located within 1/2 mile of the site, the dissolved-phase plume is delineated to federal Maximum Contaminant Levels (MCLs).
2. There is no documented beneficial use of the shallow impacted groundwater zone.
3. Although a surface water body is located within 1200' of the site, the dissolved-phase plume is delineated to the appropriate surface water standards.
4. Although the site is located over a state designated major aquifer, there is no documented beneficial use of the shallow impacted groundwater zone.
5. Although the site is located over a state designated major aquifer and water wells completed in the impacted groundwater zone are located within 1/2 mile of the site, the dissolved-phase plume is delineated to Beneficial Groundwater Use Category II standards.
6. Although water wells completed in the impacted groundwater zone are located within 1/2 mile of the site, no wells are located within 500 feet. Groundwater modeling has shown that current dissolved-phase concentrations are protective of water wells located 500 feet or greater from the site.
7. Dissolved-phase concentrations are below the default target concentrations for construction worker exposure.
8. Although dissolved-phase concentrations exceed the default target concentrations for construction worker exposure, the plume is delineated to the default concentrations and no utilities are located within the known plume.
9. The groundwater contaminant plume is stable/decreasing in size and concentrations.
10. Contaminant concentrations in soil are below health-based and explosive concentrations.
11. Contaminant concentrations in soil are below health-based concentrations, and explosive vapors are not present within utilities located adjacent to the site.
12. Although contaminant concentrations in soil exceed groundwater protective concentrations, groundwater is not expected to be impacted based on soil type, precipitation, and depth to groundwater. (Only use this bullet if groundwater has not been encountered or impacted)
13. Although contaminant concentrations in soil exceed residential health-based concentrations, the current commercial/industrial use of the facility is expected to remain the same in the future.
14. Although contaminant concentrations in soil exceed residential and commercial health-based concentrations, there is an impervious cover over the affected area, thus limiting the potential for exposure to any residual contaminants in the subsurface.
15. Explosive vapors are not present within utilities located adjacent to the site.
16. The soil concentrations in the unsaturated zone are below target levels protective of construction worker exposure.
17. Although Non-Aqueous Phase Liquid (NAPL) is present at the site, it is limited in areal extent and has been removed to the maximum extent practicable.

The exposure assumptions are based on the information provided in the following reports contained in the case file of LPST ID No. 123456.

- January 1, 2006 Risk-Based Assessment Report Form
- January 1, 2007 Plan B Risk Assessment Report