



Seneca Environmental Services

File Name Con
S. ... initials

RECORD

CON 12-15
Doc # 10566

*Oil
sites*

DF JAN

January 28, 2005

Mr. Robert Drustrup
Iowa Dept. of Natural Resources
Wallace State Office Building
Des Moines, IA 50319

RE: Institutional Control for Water Well Installation
Former MacMillan Oil Company, 4306 NW 2nd Avenue, Des Moines, IA

Dear Mr. Drustrup:

Seneca is submitting documentation of an institutional control for the above referenced site restricting the installation of drinking and non-drinking water wells, in accordance with Polk County Ordinance No. 49.3 (11). A copy of the most recent request letter has also been included. This information shall provide documentation that an institutional control is in place at the site, as outlined in the Annual Monitoring Report by Seneca dated September 30, 2004. We apologize for the delay in submitting this information.

Sincerely,
Seneca Environmental Services

Beth Curnes, P.E., CGP #2011
Project Manager

Encl.

cc. George Milligan, MacMillan Oil Company, 500 Locust Street, Des Moines, IA 50309

Charles F. Becker, Belin Law Firm, 2000 Financial Center, Des Moines, IA 50309

Seneca Project File 6152505

Des Moines

P.O. Box 3360
4140 N.E. 14th Street
Des Moines, Iowa 50316-0360
515-262-3500
800-369-3500
515-262-2469 FAX

Bettendorf

17851 244th Avenue
Bettendorf, Iowa 52722
563-332-2272
800-728-6900
563-332-9465 FAX

DATE STAMP

6664 02/02/05 PM 3:17

PUBLIC WORKS DEPARTMENT

Larry L. Land, Director
5885 NE 14th Street, Des Moines, IA 50313
Phone: (515)286-3705 Fax: (515)286-3437
Email: publicwrks@co.polk.ia.us



January 13, 2005

Iowa Department of Natural Resources (IDNR)
Underground Storage Tank Section
Wallace Office Building
Des Moines, Iowa 50319

RE: Restriction on installation of drinking and non-drinking water wells

<u>LUST Facility Name</u>	<u>Lust No.</u>	<u>Site Address</u>
MACMILLAN OIL CO	N/A	4306 NW 2 ND AVENUE

Dear IDNR:

The undersigned is authorized to represent the Polk County Department of Environmental Health. The Polk County Department of Environmental Health is the County body having the authority to regulate the installation of private water wells within Polk County and the areas of concern discussed below through the issuance of permits. Polk County Ordinance Number 49.3 (11) restricts the permitting of private water wells as defined in the ordinance when public water is determined to be readily available. The ordinance provides discretionary authority to make exceptions to this general prohibition when public water is determined to be readily available.

The undersigned has reviewed the site maps and other information provided by SENECA which depict the areas presently affected by contaminated groundwater (actual plume) and the areas within 1,000 feet of each of the above-referenced leaking underground storage tank (LUST) sites. These areas are referred to as the areas of concern.

The undersigned has made a determination that a public water system is readily available within the meaning of ordinance number 49.3 (11), to all properties within the areas of concern. The definition of private water wells in the above ordinance is interpreted to include drinking and non-drinking water wells as defined in Department Rule 567 Iowa Administrative Code 135.2.

This letter constitutes a legally non-binding assurance that drinking water and non-drinking water wells as defined by the IDNR Rule 567 Iowa Administrative Code 135.2 would not likely be permitted in the areas of concern due to a determination that public water is available. Polk County Department of Environmental Health will notify the IDNR UST section if an exception to the ordinance is made wherein a well permit is filed and approved in an area where public water is readily accessible.

Sincerely,



John Bein
Environmental Health Coordinator

JB/saf

cc: Beth Curnes
SENECA
4140 NE 14th
Des Moines IA 50313



Seneca Environmental Services

January 10, 2005

Mr. John Bein
Polk County Health Department
5885 NE 14th Street
Des Moines, IA 50313

RE: Polk County ordinance regulating water well permitting – 2nd Request

Dear Mr. Bein:

Seneca Companies is conducting environmental assessment and cleanup activities at the former MacMillan Oil Company site addressed as 4306 NW 2nd Avenue, Des Moines [Saylor Twp.], Iowa. Activities are performed at this site under the direction of the IDNR Contaminated Sites Section, and therefore are not subject to IDNR RBCA (Risk Based Corrective Action) guidance. However, adequate protection of public health and the environment may still be achieved by preventing unsafe exposure to on-site contaminated groundwater at the MacMillan Oil Company, 2nd Avenue site.

Public ordinances regulating the installation or construction of future potential receptors, commonly referred to as Institutional Controls (IC), may be utilized to eliminate various potential receptor pathways. In this particular case, the Polk County ordinance regulating water wells will be used to limit exposure to on-site contaminated groundwater at the MacMillan Oil Company, 2nd Avenue site. The information provided generally conforms to RBCA guidance for institutional controls at leaking underground storage tank (LUST) sites.

A copy of the Polk County Well Regulation pertaining to the "availability of public water supply", has been submitted as documentation of the existence of the IC. Also included for your convenience are page 67 of the IDNR RBCA Tier 2 guidance, a prepared letter for the IDNR, along with a copy of the scaled site maps, which show utility lines and contaminant levels at the subject site.

Please review page 67 of the IDNR Guidance carefully; notice that the checked items have been provided to you. In accordance with page 67, the definitions of drinking and non-drinking water wells (as defined by 567 Iowa Code, chapter 135, section 2), are as follows:

Drinking Water Well- means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption in facilities routinely characterized with the Standard Industrial Codes (SIC) group 283 for drugs and 20 for foods.

Non-drinking Water Well- means any groundwater well (except an extraction well used as part of a remediation system) not defined as a drinking water well including a groundwater well which is not properly plugged in accordance with department rules in 567- chapters 39 and 49.

Des Moines

P.O. Box 3360
4140 N.E. 14th Street
Des Moines, Iowa 50316-0360
515-262-3500
800-369-3500
515-262-2469 FAX

Bettendorf

17851 244th Avenue
Bettendorf, Iowa, 52722
563-332-2272
800-728-6900
563-332-9465 FAX



Seneca Environmental Services
Des Moines • Bettendorf

Please familiarize yourself with the attached information and then sign the letter addressed to the IDNR Contaminated Sites Section.

Please return the signed Iowa DNR letter to our office. A pre-addressed envelope is provided for your convenience. Your cooperation is appreciated. Please do not hesitate to contact me at 261-7720 or via my email (bcurnes@senecaco.com) if you have any questions regarding this letter or its attachments.

Regards,

Beth Curnes
Project Manager, Seneca Companies

CC. Seneca Companies, File

Enc.: IDNR RBCA Tier 2 Guidance (pg. 67), Polk County Well Regulation, prepared letter for IDNR, well survey request and site vicinity map, scaled contaminant plume map

given the permitting authorities under these rules and delegated authorities. At this point, there is a great deal of uncertainty regarding DNR's authority to deny well permits and the criteria to be applied in considering applications for private well permits where the proposed location is within or near an actual groundwater or soil plume or within a modeled groundwater plume. There are conflicting policy objectives between the right of a permittee to use uncontaminated groundwater which may or may not be threatened by contamination depending on the reliability of plume data, simulations and well design and construction, and the objective of avoiding expensive, long-term, and often impractical and ineffective remediation of groundwater contamination. Because of the substantial degree of discretion and the uncertainty of standards in applying Chapter 38 and Chapter 49 rules and county ordinances regulating well permitting under delegated authority, DNR is not considering these authorities as effective institutional controls until more definitive policy and permitting standards are developed.

Local Ordinances Regulating on the Basis of Availability of Public Water Supply. Most counties and metropolitan areas have ordinances which regulate the permitting of private water wells when a public water supply is "readily available". Generally, these ordinances restrict the construction of "private wells" whenever public water is "readily available" but also reserve exception authority to grant variances. These types of ordinances may provide a much more reliable basis for restricting well construction within the area of concern and may serve as an effective institutional control if the county or municipal permitting authority is prepared to meet certain conditions outlined below.

• These ordinances may specifically state the county is exercising its authority in the county and within municipal jurisdictions or the county may have entered into 28E agreements with certain large municipalities to clarify and resolve any issues of conflicting jurisdiction. In some cases, a municipality may also have adopted a similar ordinance. These ordinances may or may not define "private well" to include DNR's definition of "non-drinking water wells". Typically, there will also be a provision giving the permitting authority variance or exception authority. In order for these ordinances to be considered an effective institutional control, the groundwater professional must submit the following documentation as part of a request for approval as an institutional control:

- ✓ • A copy of the entire county and municipal ordinance regulating well permitting and any applicable 28E agreement which clarifies jurisdiction within the relevant municipality.²
- ✓ • A copy of a letter to the permitting authority acknowledging it has been provided
 - ✓ (1) the necessary soil plume and groundwater receptor ID plume maps showing the extent of the actual plume and simulated plume (area of concern);
 - ✓ (2) the definition of drinking and non-drinking water wells from 567 IAC 135.2; and
 - ✓ (3) a diagram showing the location of the public water deliver system in relation to the area of concern.

The letter must explain that the purpose of the request is to obtain an assurance that the permitting authority would not permit a drinking or non-drinking water well within the proposed area of concern.

• A letter from the permitting authority consistent with DNR's model letter in Appendix E2 which confirms that :

- (1) the authority has jurisdiction over the area of concern;
- (2) the permitting authority has made a determination that a public water supply is "readily available" within the meaning of their ordinance in the area proposed to be subject to the private well restriction;
- (3) the permitting authority "would not" or "would not likely" permit a "drinking or non-drinking water well" as defined in 567 IAC 135.2 within the area proposed to be subject to the control due to the presence of public water and
- (4) the permitting authority will make a reasonable effort to notify the DNR UST section of any permit application, approval or denial within the proposed area of concern.

please submit →

of specific distances to other possible sources of contamination...does not minimize their potential hazard. These must be evaluated in each particular situation and a distance arrived at that is based on pertinent facts."

² As the department develops a file of all relevant ordinances, this requirement may be waived.

by protecting groundwater supplies from contamination by establishing uniform minimum standards and methods for well abandonment. All regulations, provisions, conditions and terms of Division 567, Chapter 39 of the Iowa Administrative Code for Properly Plugging Abandoned Wells, are hereby referred to, adopted and made part hereof as if fully set out in this code.

4-4. Unsafe Wells.

In the event a nonpublic water well used for human consumption is found through certified laboratory analysis to be "unsafe", by the Federal Safe Drinking Water Act Standards, and no public water supply system is reasonably accessible, the Department may declare this a public health nuisance and designate the property to be unfit for human habitation.

4-5. Availability of Public Water Supply.

(a) Any dwelling or structure shall be connected to public water if any part of the lot or parcel on which the dwelling or structure is located is within three hundred (300) feet of the nearest adequate line of a public water supply system.

(b) Where a public water supply system becomes reasonably accessible, any dwelling or structure then served by a nonpublic water supply system shall connect to said public water supply within one (1) year.

(c) If a public water supply is available, a nonpublic water supply well which complies with this Regulation may be approved by the Health Officer only for irrigation or agricultural purposes.

4-6. Applicability.

All non-public water supplies and systems constructed, altered or extended within the Polk County after the effective date of this Regulation shall comply with the requirements of this Regulation. All non-public water wells in existence within Polk County before the effective date of these rules shall comply with the requirements of this Regulation if, in reasonable opinion of the Health Officer, a public health hazard exists as a result of any noncompliance.

4-7. Permit Required.

All water wells not required to obtain a State permit shall obtain a County permit. No water well for which a County permit is required shall be installed or reconstructed until an application has been submitted and a permit has been issued by the Department. The installation shall be in accordance with this Regulation. Any construction or reconstruction of a non-public water well pursuant to a valid permit issued prior to the effective date of this amendment may be completed in accordance with the terms and conditions of that permit. Permits issued by the Department shall be coordinated with the withdrawal permits issued by the Iowa Department of Natural Resources.

(a) **Application.** Applications for well permits shall be made in accordance with this Section.

(1) Unless otherwise specified, all applications for permits under this Regulation shall be submitted by the property owner or an authorized agent to the Health

January 10, 2005

To: Iowa Department of Natural Resources (DNR)
Contaminated Sites Section
Wallace State Office Building
Des Moines, IA 50319

Re: Restriction on installation of drinking and non-drinking water wells
Facility ID: MacMillan Oil Company, 4306 NW 2nd Avenue, Des Moines, IA

Dear Iowa DNR:

The undersigned is authorized to represent the permitting authority of Polk County. The permitting authority is the county or local body to regulate the installation of private water wells within the area of concern discussed below through the issuance of permits. Local or county ordinance restricts the permitting of private water wells when public water supply is readily available. The ordinance provides [or does not grant] discretionary authority to make exceptions to this general prohibition when public water is determined to be readily available.

The undersigned has reviewed the site maps and other information provided by Seneca Environmental Services, Inc. which depicts the area presently affected by contaminated groundwater (actual plume) associated with a release of petroleum from the bulk storage facility formerly known as MacMillan Oil Company, located at 4306 NW 2nd Avenue in Des Moines, IA. This area is referred to as the area of concern.

The undersigned has made a determination that a public water system is readily available within the meaning of ordinance to all properties within the area of concern. The definition of private water wells is interpreted to include drinking and non-drinking water wells as defined in Department rule 567 IAC 135.2.

This letter constitutes a legally non-binding assurance that water wells would not likely be permitted in the area of concern, due to a determination that public water is available and that the Health Officer must grant approval for the use of non-drinking water wells. The permitting authority also maintains an information system, which would reasonably assure the DNR Contaminated Sites Section would be notified if a permit application for a private well is filed and approved within the area of concern.

Sincerely,

John Bein
Environmental Health Coordinator

Facsimile Cover Sheet

To:

Company: Iowa Geological Survey Bureau
Phone: (319) 335-1575
Fax: (319) 335-2754

From:

Company: Beth Curnes
Seneca Environmental Services
Phone: (515) 261-7720
Fax: (515) 262-2469

Date: September 22, 2003

No. of pages including cover page: 2

Comments:

Please conduct a well search for the following site:

1. Former MacMillan Oil Site (No UST or LUST number available)
4306 NW 2nd Avenue, Des Moines, IA
Seneca Project No. 6213004
Legal Description: NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Sec.22, T79N, R24W, Polk County

Copy of the site location is included on the following page.

Desired search area for each project: ****1,000-foot radius****

Please search all well databases.

Thank you in advance,



Beth Curnes
Seneca Environmental Services

Verbal Report from Bob Mackay, GSB 10/1/03:

No wells within 1000' Radius.
Will not generate paperwork.

B.C.



