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Doc # 21579

STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

August 24, 2009

Gerald Eganhouse
1035 - 33rd Avenue SW
Cedar Rapids, IA 52404

RE: 10th Street SW PCE Site
Iowa Land Recycling Program

Dear Gerald:

Attached is a copy of the approved environmental covenant for the 10th Street SW property. As we discussed, you and you wife need to sign the covenant, have it notarized and have it recorded at the county recorder's office. Please send us a copy of the final covenant that has the sticker and stamp from the county recorder.

Upon receipt of a copy of the recorded covenant we will finalize the No Further Action Certificate.

If you have any questions about any of this, please contact the DNR's attorney, Tamara Mullen at (515) 281-8934.

Yours truly,

A handwritten signature in black ink that reads "Bob Drustrup".

Bob Drustrup
Iowa DNR Contaminated Sites Section

cc: Tamara Mullen, DNR Legal Services



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

Memorandum

To: Bob Drustrup
From: Tamara Mullen, attorney
Date: August 21, 2009
RE: 3350 10th Street --- environmental covenant

Hi Bob

The Director has signed the environmental covenant for 3350 10th Street; it is attached. Not sure if you wanted to include it as part of a larger correspondence concerning reclassification for this property so I am sending it to you. Please send it to the RP (at 3350 10th Street SW, Cedar Rapids) rather than to Kim. He said it would be a "waste of time" to send it to him first.

Please let me know when we receive the final recorded copy so I can update my personal tracking sheet.

Thanks!

A handwritten signature in cursive script that reads "Tamara".

Copy

LRP ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code 455I entitled Uniform Environmental Covenants Act (*see also* 2005 Iowa Acts, Senate File 375).

3350 10th Street SW, LLC, hereafter "grantor(s)" and Gerald R. and Barbara G. Eganhouse, "holders" enter into this environmental covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified below, authority granted the Iowa Department of Natural Resources (Department) in Iowa Code sections 455B.103(7) and 455H.206 and Department rules in chapter 567 Iowa Administrative Code (I.A.C.) 137.

1. **Affected Property.** The grantor(s) identified below is the fee title owner(s) of the property located at 3350 10th Street SW, Cedar Rapids, Iowa. The property is legally described as:

Lot 1, Wagner Third Addition to Cedar Rapids, Iowa,

Also known as: A portion of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, described as: Commencing at the Southeast corner of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, being the point of beginning; thence N 89 degrees 25 minutes 30 seconds West 730.65 feet; thence North 1 degree 56 minutes 30 seconds West 273.65 feet; thence South 89 degrees 25 minutes 30 seconds East 742.59 feet; thence South 0 degrees 34 minutes 30 seconds West 273.50 feet to the point of beginning; together with servient easements and estates and subject to public roads, covenants, easements and restrictions of record.

Hereinafter, the affected property will be referred to as "the property."

2. **Land Recycling Program Risk Management.** The property subject to this covenant is enrolled in the Department's Land Recycling Program (LRP) established in Iowa Code chapter 455H and administered under Department rules in chapter 567 Iowa Administrative Code (I.A.C.) 137.

Under the LRP, the environmental response project as defined in Iowa Code section 455I.2(5) has consisted of a soil and groundwater investigation and risk assessment of an affected area which includes this property. This response action has been undertaken by Gerald R. Eganhouse. Soil and/or groundwater contamination has been identified on the property. The Department has approved a response action plan which includes the use of this environmental covenant as one method for managing the risk of future exposure to this contamination.

All relevant documents are available for review on the LRP's online database.

3. **Institutional Controls.** Iowa Code section 455H.206 and Department rules in chapter 567 I.A.C. 137 authorize the use of an environmental covenant as an institutional control.

The purpose of this environmental covenant is to manage the risk of future exposure to existing contaminant conditions by limiting specified land use activities at this property, establishing affirmative obligations and enforcing the terms of this covenant.

4. **Reopening.** The signatories acknowledge that failure of these activity and use limitations to serve their intended purpose of preventing the risk of exposure to contaminant conditions could result in the Department reopening review and regulation of the property as provided under the terms of this environmental covenant, Iowa Code chapter 455H, Iowa Code chapter 455I and applicable Department administrative rules.

5. **Identity of Grantor(s) and Holder(s):**

GRANTOR(S): 3350 10th Street SW, LLC

HOLDERS: Dr. Gerald R. Eganhouse and Barbara G. Eganhouse

AGENCY: Iowa Department of Natural Resources

6. **Representations and Warranties.** The grantor(s) warrant to the other signatories to this covenant the following:

- a. that the grantor is the sole fee title owner of the property;
- b. that the grantor holds hold sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims;
- c. that the grantors have identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lienholders, and lessees and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement attached as Exhibit A and B.

7. **Running with the Land.** This environmental covenant is perpetual and runs with the land as provided in Iowa Code section 455I.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

8. **Activity and Use Limitations and Terms.** The property is subject to the following use limitations and terms:

Construction of a residential building or any building with a footprint of less than 50,000 square feet is prohibited in the affected area without the approval of the Iowa Department of Natural Resources. In addition precautionary measures are required to address potential vapors during any excavation in the affected area.

9. **Notice of Non-Compliance.** Any property owner or subsequent transferee of an interest in the property shall notify the Department as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph eight (8) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

10. **Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the property, and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

11. **Access to Property.** Reasonable access to the property is granted the Department or any authorized representative of the Department, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The Department, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures
- b. fencing and other technological controls.
- c. groundwater sampling and monitoring
- d. additional drilling
- e. construction of soil boring and/or groundwater monitoring wells
- f. other activities authorized or otherwise directed by the Department.

12. **Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or if the Department determines that solid waste exists on the property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED [*date month, day, year*]
RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE [*NAME*]
COUNTY RECORDER ON [*date month, day, year*] IN [*document, book and*
page, or parcel number].

THE ENVIRONMENTAL COVENANT CONTAINS THE
FOLLOWING ACTIVITY AND USE LIMITATIONS: [*language that describes*
the activity and use limitations exactly as it appears in the environmental
covenant.]

13. **Modification and Termination.** Modification or termination of the terms of this covenant shall comply with the standards in Iowa Code chapter 455H.206 and applicable Department administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)“c” in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.

14. **Enforcement.** The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code section 455I.11.

15. **Severability.** If any provision of this environmental covenant 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.

16. **Governing Law.** This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

17. **Recordation.** Within thirty (30) days after Department approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the Linn County Recorder’s Office.

18. **Effective Date.** The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the Linn County Recorder’s Office.

19. **Notice.** Unless otherwise notified in writing by the Department, any document or communication required by this environmental covenant shall be submitted to:

Iowa Department of Natural Resources
Land Recycling Program
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

20. **Subordination and Consent.** By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property. The following persons have expressly consented and subordinated interests:

21. **Notice of Change in Ownership.** Grantor and holder with sufficient property interest to convey a possessory interest in the property and any subsequent transferee with sufficient interest shall reference and incorporate the terms of this agreement into any subsequent instrument which conveys a possessory interest in the property.

ACKNOWLEDGMENTS

INSERT property acknowledgments in accordance with Iowa Code 558.20 and Iowa Code chapter 9E, and specific to individuals, partnerships, corporate entities, municipalities, State agencies and political subdivisions, etc.

GRANTORS/HOLDERS:

_____ Signed this ____ day of _____, 20__.
3350 10th Street SW LLC
Gerald R. Eganhouse

State of _____)
County of _____) ss.

On this ____ day of _____, 20__, before me personally appeared _____, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Notary Public for State of Iowa

_____ Signed this ____ day of _____, 20__.
3350 10th Street SW LLC
Barbara Eganhouse

State of _____)
County of _____) ss.

On this ____ day of _____, 20__, before me personally appeared _____, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Notary Public for State of Iowa

AGENCY:

for the Director
Richard A Leopold Signed this 19 day of Aug, 2009
Richard A Leopold
Director, Iowa Department of Natural Resources

State of Iowa)
County of Polk) ss.

On this 19th day of August, 2009, before me personally appeared Patricia L. Boddy, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Melissa A. Speed
Notary Public for State of Iowa

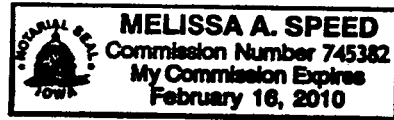


EXHIBIT A

SUBORDINATION AND CONSENT AGREEMENT

Whereas, the undersigned, Hills Bank & Trust Co., is the holder of a mortgage on property ("property") described as follows and recorded in the office of the Recorder of Linn County, Iowa, Book 7277 at Page 388.

Address: 3350 10th Street SW, Cedar Rapids, Iowa

Legal Description: Lot 1, Wagner Third Addition to Cedar Rapids, Iowa,

Also known as: A portion of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, described as: Commencing at the Southeast corner of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, being the point of beginning; thence N 89 degrees 25 minutes 30 seconds West 730.65 feet; thence North 1 degree 56 minutes 30 seconds West 273.65 feet; thence South 89 degrees 25 minutes 30 seconds East 742.59 feet; thence South 0 degrees 34 minutes 30 seconds West 273.50 feet to the point of beginning; together with servient easements and estates and subject to public roads, covenants, easements and restrictions of record.

WHEREAS, the fee title owner(s) of the property, 3350 10th Street SW, LLC, have executed an Environmental Covenant acknowledged and dated _____, 20____, a copy of which is attached as Exhibit A. The Environmental Covenant runs with the land and by its terms is intended to place certain activity and use limitations on the property to reduce the risk of exposure to contamination in accordance with Iowa Code chapter 455L.

WHEREAS, the undersigned agrees it is in its interest to assure the activity and use limitations on the property remain in effect and are enforceable against all the property owners, successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators, and devisees;

THEREFORE, For valuable consideration, the undersigned knowingly and intelligently consents to imposition of the activity and use limitations contained in the above referenced Environmental Covenant and hereby agrees that its property interest shall be subject to and subordinate to the terms of the Environmental Covenant.

Dated this _____ day of _____, 20____.

IN WITNESS WHEREOF, the undersigned has set its hand as of the day and year first above written.

LeSaffre Yeast Corporation
(Name)

By: _____
Its: (Title)

By: _____
Its: (Title)

Complete the appropriate acknowledgment based on whether the property owner(s) is an individual, partnership, corporation, governmental entity, etc. See Iowa Code 558.20 and Iowa Code chapter 9E.

EXHIBIT B

SUBORDINATION AND CONSENT AGREEMENT

Whereas, the undersigned, LeSaffre Yeast Corporation, is the holder of a lease on property ("property") described as follows and as entered in to on February 15, 2008.

Address: 3350 10th Street SW, Cedar Rapids, Iowa

Legal Description: Lot 1, Wagner Third Addition to Cedar Rapids, Iowa,

Also known as: A portion of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, described as: Commencing at the Southeast corner of Lot 2, Interstate Properties Third Addition to Cedar Rapids, Iowa, being the point of beginning; thence N 89 degrees 25 minutes 30 seconds West 730.65 feet; thence North 1 degree 56 minutes 30 seconds West 273.65 feet; thence South 89 degrees 25 minutes 30 seconds East 742.59 feet; thence South 0 degrees 34 minutes 30 seconds West 273.50 feet to the point of beginning; together with servient easements and estates and subject to public roads, covenants, easements and restrictions of record.

WHEREAS, the fee title owner(s) of the property, 3350 10th Street SW, LLC, have executed an Environmental Covenant acknowledged and dated _____, 20__ , a copy of which is attached as Exhibit B. The Environmental Covenant runs with the land and by its terms is intended to place certain activity and use limitations on the property to reduce the risk of exposure to contamination in accordance with Iowa Code chapter 455L.

WHEREAS, the undersigned agrees it is in its interest to assure the activity and use limitations on the property remain in effect and are enforceable against all the property owners, successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators, and devisees;

THEREFORE, For valuable consideration, the undersigned knowingly and intelligently consents to imposition of the activity and use limitations contained in the above referenced Environmental Covenant and hereby agrees that its property interest shall be subject to and subordinate to the terms of the Environmental Covenant.

Dated this _____ day of _____, 20__.

IN WITNESS WHEREOF, the undersigned has set its hand as of the day and year first above written.

LeSaffre Yeast Corporation
(Name)

By: _____
Its: (Title)

By: _____
Its: (Title)

Complete the appropriate acknowledgment based on whether the property owner(s) is an individual, partnership, corporation, governmental entity, etc. See Iowa Code 558.20 and Iowa Code chapter 9E.

August, 05

