



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

DEC 23 2003

Mr. Lewis McMeen  
Harned & McMeen  
888 Court Avenue  
P.O. Box 267  
Marengo, Iowa 52301

**CON 12-15**  
**Doc # 2285**

Dear Mr. McMeen:

Re: Marengo Coal Gas Site, Marengo, Iowa  
Environmental Protection Easement and Declaration of Restrictive Covenants

Enclosed is the originally executed Environmental Protection Easement and Declaration of Restrictive Covenants and a copy for your record purposes. Please have the original filed and return it to my attention. Thank you in advance for your help in this matter.

Please call me at 913.551.7322 if you have any questions. I hope you have a pleasant holiday season.

Sincerely,

James D. Stevens  
Assistant Regional Counsel

Enclosures

e-mail ccs: Dan Garvey, SUPR/EFLR, EPA Region VII (w/o enclosure)  
Jon Tack, Legal Services Bureau, Iowa Dept. of Natural Resources  
(w/o enclosure)

**DATE STAMP**

2003 DEC 30 P 12:38

DEPT. OF  
NATURAL RESOURCES



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

Ca 12-15  
Marengo Coal Gas

RECEIVED  
JUN 14 2002  
Director's Office

JUN 12 2002

Dear Interested Citizen:

The U.S. Environmental Protection Agency (EPA) Region 7 has been in your community conducting sampling activity related to the Former Marengo Manufacturing Gas Plant Superfund site.

Enclosed is a fact sheet that describes the sampling process in more detail. If you have any questions, please contact me at 1-913-551-7003 or call our toll-free environmental action line at 1-800-223-0425.

Sincerely,

Belinda Young  
Community Involvement Coordinator  
Office of External Programs

Enclosure

# FACT SHEET



## **Marengo Former Manufacturing Gas Plant Superfund Site Marengo, Iowa**

**June 2002**

### **INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) Region 7 performed sampling activities in your community during the week of June 3 - 8, 2002. The purpose of the sampling was to collect ground water samples from 22 wells (one municipal well) to determine the current nature and extent of contamination from the Marengo Former Manufacturing Gas Plant. Soil samples were also collected to assess site contamination.

### **SITE BACKGROUND**

The Marengo Former Manufacturing Gas Plant is located at the south edge of Marengo, situated immediately south of the intersection of Miller Street and Marengo Avenue. The site covers one acre and is currently occupied by Hinrichs Construction Company.

The exact time frame of manufactured gas operations at the site is not known, however, historical records show that gas may have been manufactured at the site by Marengo Gas Company from approximately 1905 until 1919. The manufactured gas production may have resulted in releases of chemicals such as benzene and polycyclic aromatic hydrocarbons (PAHs) in surface soil and ground water at the site.

EPA will examine the sampling results and determine what steps should be taken to address the site.

### **ADDITIONAL INFORMATION**

EPA provides information about the Superfund Program to community members to make sure that individuals clearly understand our clean up process, and our purpose for entering your community. If you have further questions, please contact:

Belinda Young  
Community Involvement Coordinator  
EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
1-913- 551-7003  
Toll-free 1-800-223-0425  
Fax: 1-913-551-7066  
E-mail: [young.belinda@epa.gov](mailto:young.belinda@epa.gov)



Cor 12-15  
Marengo Coal Gas

## STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
JEFFREY R. VONK, DIRECTOR

December 10, 2003

JAMES D STEVENS  
US EPA  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY KS 66101

**Re: Environmental Protection Easement  
Marengo FMGP Site  
Marengo IA**

Dear Jim:

Enclosed is the signed original of the easement for the Marengo FMGP site. Please send me a file-stamped copy once the responsible party has completed the filing of the easement.

If you have any questions, please call me at 515-281-8889. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon C. Tack", written over a horizontal line.

Jon C. Tack  
Attorney,  
Legal Services Bureau



UNITE

*Jeff sign  
→ Jon Tack  
mm*

TAL PROTECTION AGENCY

VII  
H STREET  
INSAS 66101

NOV 26 2003

Mr. Jon Tack  
Attorney  
Compliance and Enforcement Bureau  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50319

Dear Jon,

Re: Environmental Protection Easement and Declaration of Restrictive Covenants  
Maringo FMGP Site  
Maringo, Iowa

The removal action performed by EPA has been completed at the above referenced site. Enclosed you will find a copy of the Environmental Protection Easement and Declaration of Restrictive Covenants that has been signed by the property owners as well as a original signature page that has been signed by me on behalf of EPA. Please have the original signature page executed for the State of Iowa and return the original signature page to my attention at the above address. We will then forward the completed document to the attorney for the site owners so that the Easement can be recorded. Thank you for your assistance in this matter

Please call me at 913.551.7322 if you have any questions or you can e-mail me at [stevens.jim@epa.gov](mailto:stevens.jim@epa.gov).

Sincerely

James D. Stevens  
Assistant Regional Counsel

Enclosure

**ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 17 day of November, 2003, by and between Vance and Deborah Hinrichs, husband and wife, ("Grantors"), having an address of 1405 William Street, Marengo, Iowa 52301-1165; the United States of America ("Grantee"), represented herein by the United States Environmental Protection Agency, Region VII, having an address of 901 N. Fifth Street, Kansas City, Kansas 66101; and the State of Iowa ("Grantee"), represented herein by the Iowa Department of Natural Resources, having an address of Wallace State Office Building, Des Moines, Iowa 50319.

**WITNESSETH:**

2. WHEREAS, Grantors are the fee owner of parcels of land located in the County of Iowa, State of Iowa (the "Property"). The Property consists of two adjacent lots in Marengo, Iowa, commonly known as 210 East Miller Street and legally described as follows:

West 8 inches of Lot 2 and all of Lot 3, and the East 22 feet of lot 4, all in Block "C" in Durant's Addition; Also a tract 15 inches wide, north & south immediately north of and adjoining all of said above described Lots in said Block "C" and the West 60 feet of Lot 4 in Block "C" in Durant's addition to the Town, now City of Marengo, Iowa County, Iowa.

3. WHEREAS, the Property is within the Marengo FMGP Site ("Site"); and

4. WHEREAS, in an Action Memorandum dated May 13, 2003, (the "Action Memo"), EPA Region VII selected a "response action " for the Site, which provides, in part, for the following actions:

Following removal of the top layer of contaminated soils and back filling with clean soils, Institutional Controls in the form of deed restrictions to provide notice of contamination at the facility and to control and monitor disturbance of remaining contaminated soils or groundwater, excavation and disposal, and groundwater monitoring; and

5. WHEREAS, with the exception of the institutional controls and groundwater monitoring, the response actions measures have been implemented at the Site; and

6. WHEREAS, the parties hereto have agreed to impose on the Property, use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment and, although the Grantor is not a participant in the Land Recycling Program established under Iowa Code Chapter 455H, it is the intent of the parties to establish a valid and enforceable environmental easement as provided in Iowa Code Section 455H.206.

NOW, THEREFORE:

7. Grant: Grantors, on behalf of themselves, and their successors and assigns, in consideration of the terms of the Action Memo, do hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and do give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) the right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

8. Purpose: It is the purpose of this instrument to retain with Grantors and its successors and assigns, and convey to the Grantee, real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

9. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on Grantors and its successors and assigns:

a) Unless otherwise approved in writing by EPA, there shall be no installation of any shallow aquifer extraction or consumption wells during the term of these covenants. Any deep aquifer wells shall be installed by a driller certified pursuant to the Iowa Department of Natural Resources rules or regulations and all reasonable and prudent precautions shall be taken to prevent the potential contamination of a deep aquifer by a shallow aquifer.

b) Unless otherwise approved in writing by EPA, with respect to the Property the restrictions below, designated (i), (ii), (iii), (iv) and (v) will apply in addition to all other restrictive covenants herein:

(i) The Property shall be limited to industrial or commercial use (excluding day care facilities, schools, parks or any facility which results in the repeated or extended presence of children, any business or use involving temporary or permanent housing of individuals, such as homes, mobile homes, hotels, motels, apartments, hospitals or nursing homes)

(ii) The storage of liquid or solid wastes, liquid or solid chemicals, and/or hazardous materials is prohibited;

- (iii) An appropriate Health and Safety Plan must be followed during any subsurface soil removal, excavation, trenching or similar activities within the boundaries of the Site; and,
- (iv) The cultivation of crops or grazing of livestock and domesticated animals is prohibited.

Further, the restrictions designated as (i), (ii), (iii) and (iv) described above for the Site shall remain in place until EPA determines the Property is safe without imposition of the restrictions. The study to determine safety shall be developed from human health risk assessment calculations methodologies that utilize estimates of chemical toxicity and human exposure based on applicable regulatory agency policies and standards.

Grantors, or their successor(s) in title, shall execute and record an instrument indicating termination of these restrictions as to all or any portion of the restricted areas once the above-described conditions have been met.

10. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by either Grantee or Grantors, when approved in writing by EPA. Such modification will be executed by Grantors in recordable form.

11. Environmental Protection Easement: Grantors hereby retain, and grant and convey to the Grantee, and its assigns, with general warranties of title, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing the response actions in the Action Memo, including but not limited to groundwater monitoring, monitoring well installation, maintenance, and/or abandonment.
- b) Verifying any data or information submitted to EPA.
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the response action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if Grantors, or EPA, determine i) that such actions are necessary to protect the environment because either the original

response action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

This right of access shall extend to the parties' permitted agents, representatives, invitees, contractors and subcontractors in furtherance of the purposes listed above.

12. Reserved rights of Grantors: Grantors hereby reserve unto themselves, their successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein. Nothing contained in this Declaration shall in any way prohibit, restrict or limit Grantors, their successors or assigns, from fully conveying, transferring, occupying or using the Property for all purposes not inconsistent with this Declaration.

13. Notice requirement: Grantors agree to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS, DATED \_\_\_\_\_, 2003, RECORDED IN  
THE PUBLIC LAND RECORDS ON \_\_\_\_\_, 2003 IN  
BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND  
ENFORCEABLE BY, EITHER THE STATE OF IOWA OR  
THE UNITED STATES OF AMERICA.**

**THE CURRENT USE OF THIS SITE IS NON-RESIDENTIAL AND  
SUBJECT TO THE RESTRICTIONS ON THE USE SET FORTH  
THEREIN.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantors must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

14. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

15. Enforcement: Both Grantee and Grantors shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.

Enforcement of the terms of this instrument shall be at the discretion of Grantee or Grantors. Any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or Grantors of such term or of any subsequent breach of the same or any other term, or of any of the rights of Grantee or Grantors under this instrument.

If any person, firm or entity shall violate or attempt to violate any of the covenants contained herein, it shall be lawful for any person holding any lien or other interest in the Property to prosecute a proceeding in equity to enjoin the person, firm or entity from such violation.

16. Damages: Grantee or Grantors shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

17. Covenants: Grantors hereby covenants to and with the United States and its assigns, that Grantors is lawfully seized in fee simple of the Property, that Grantors has a good and lawful right and power to retain, sell or convey it or any interest therein, that the Property is free and clear of encumbrances, and that Grantors will forever warrant and defend the title thereto and the quiet possession thereof.

18. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

1405 William Ave.  
Marengo, IA  
52301

To Grantee United States of America:

U.S. Environmental Protection Agency  
Attn: Director, Superfund Division  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

To Grantee State of Iowa:

Iowa Department of Natural Resources  
Attn: Director of the Department  
Wallace State Office Building  
Des Moines, Iowa 50319

19. Term of Covenants: The covenants contained herein shall be deemed covenants running twenty-one (21) years after these covenants are recorded in the office of the County Recorder of Iowa County, except that the Declaration may be extended for successive twenty-one (21) year periods by the filing of a verified claim in accordance with Iowa Code § 614.24, which verified claim may be filed by the Administrator of EPA or his or her designees, Grantors or any party holding any lien or other interest in the Property.

20. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Iowa.

b) Liberal construction:

(i) Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of effecting the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

(ii) This environmental easement is intended to be perpetual until terminated as provided herein and in accordance with the provisions of Iowa Code Section 455H.206 and Department of Natural Resources rules contained in 567 Iowa Administrative Code 137. The easement is intended to run with the land such that it is binding on the Grantors as current owners of the described real estate and all successors, assigns and other persons claiming an interest in the Property.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantee herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantors", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantors" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantors under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: Grantors's rights and obligations under this instrument do not terminate upon transfer of the party's interest in the Easement or Property.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantors and Grantee and their assigns forever.

IN WITNESS WHEREOF, Grantors has caused this Environmental Protection Easement and Declaration of Restrictive Covenants to be signed in their name.

Executed this 17 day of November, 2003

Vance Hinrichs  
Vance Hinrichs

Deborah Hinrichs  
Deborah Hinrichs

STATE OF Iowa  
COUNTY OF Iowa

On this 17 day of Nov, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, duly commissioned and sworn, personally appeared Vance Hinrichs and Deborah Hinrichs, husband and wife, known to me, and executed the foregoing instrument, and acknowledged the said instrument to be his and her free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year written above.



[Signature]  
Notary Public in and for the  
State of Iowa

My Commission Expires: 12-12-2003

This declaration is accepted this 25<sup>th</sup> day of November, 2003

UNITED STATES OF AMERICA  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY

By: James D. Steven  
Asst. Reg. Counsel

This declaration is accepted this \_\_\_\_ day of \_\_\_\_\_, 2003.

STATE OF IOWA

By: \_\_\_\_\_  
\_\_\_\_\_

This declaration is accepted this 25<sup>th</sup> day of November, 2003

UNITED STATES OF AMERICA  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY

By: James D. Stevens  
Asst. Reg. Counsel

This declaration is accepted this 8 day of December, 2003.

STATE OF IOWA

By: Jeffery A. [Signature]