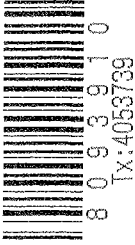


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Doc #28952

2013-09984
STEVE MANGAN
CLINTON COUNTY RECORDER
CLINTON, IA
RECORDED ON
12/10/2013 1:39:13 PM
REC FEE: 87.00



ENVIRONMENTAL COVENANT

Recorder's Cover Sheet

Preparer Information:

Jane B. McAllister, 100 Court Avenue, #600, Des Moines, IA 50309, Phone: (515) 243-7611

Taxpayer Information:

N/A

Return Address:

Jane B. McAllister
100 Court Avenue, Suite 600
Des Moines, IA 50309

Grantors:

DeWitt Industrial Properties LLC

Grantees:

DeWitt Industrial Properties LLC

Legal Description: See Page 13

Document or instrument number of previously recorded documents:

ENVIRONMENTAL COVENANT

This Environmental Covenant is established and executed pursuant to Iowa Code Chapter 455I, entitled Uniform Environmental Covenants Act (see 2005 Iowa Acts, Senate File 375).

The signatories hereto have entered into this Environmental Covenant for the purpose of subjecting the property described below, or a portion thereof, to certain activity and use limitations in accordance with the terms and conditions specified herein.

1. **The Property.** DeWitt Industrial Properties LLC, is the sole fee simple title owner of that real property legally described in Exhibit A hereto and incorporated herein, with a local address of 112 Third Avenue East in DeWitt, Clinton County, Iowa (hereinafter "Property"). Exhibit B, attached hereto and incorporated herein, shows a cross-hatched portion of the Property where either soil or groundwater exceeds cleanup standards (hereinafter "Contamination Area.").

2. **Background.** Pursuant to the Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency (hereinafter "EPA" or "Agency") has conducted oversight on the voluntary closure/ corrective action taken by Stolper Industries, Inc., a prior owner/operator of the Property. On April 17, 2013, EPA issued its Final Remedy Decision and Response to Comments for the Former Stolper Industries Facility, Exhibit C, attached hereto and incorporated herein ("Environmental Response Project"). The Agency has requested the Grantor and Holders execute this Environmental Covenant as part of the implementation of the Environmental Response Project because certain soil and groundwater contamination will remain on the Property or portions thereof upon completion of the Environmental Response Project. Specific information concerning any remaining contamination can be found in the administrative record for this Environmental Response Project known as the Former Stolper Industries Facility, RCRA ID No. IAD052437019, which may be reviewed at the offices of EPA at the address specified in Section 18 below.

3. **Reopening.** The signatories acknowledge that failure of the activity and use limitations to serve their intended purpose including the prevention of exposure to contamination could result in the Agency reopening its review and regulation of the contaminant condition on the Property as may be allowed by applicable law.

4. Identity of Grantor, Grantee/Holder, and Agency, as each is defined in this Environmental Covenant and as provided in SF 375:

- Grantor: DeWitt Industrial Properties LLC, an Illinois limited liability company, is the current owner of the Property and the Grantor of this Environmental Covenant.
- Grantee/Holder: DeWitt Industrial Properties LLC, an Illinois limited liability company, is the Grantee/Holder of this Environmental Covenant.
- Holder: Stolper Industries, Inc., a Wisconsin corporation, is a Holder of this Environmental Covenant.
- Holder: Maschio-Gaspardo North America, Inc., an Illinois corporation, has a contractual right to purchase the Property pursuant to a contract with DeWitt Industrial Properties LLC, entitled "Agreement for Sale of Commercial Real Estate between Maschio-Gaspardo North America, Inc., as Purchaser, and DeWitt Industrial Properties LLC, as Seller," signed October 15, 2013, and shall be a Holder upon taking title to the Property. In the event Maschio-Gaspardo North America, Inc. does not take title to the Property, it shall not be a Holder hereunder and shall have no rights and/or obligations under this Environmental Covenant.
- Agency: The U.S. Environmental Protection Agency (EPA), an agency of the United States, is the Agency under this Environmental Covenant.
- Third-Party Beneficiary: Iowa Department of Natural Resources (IDNR), an agency of the State of Iowa, which has certain benefits granted by this Environmental Covenant, although not an Agency hereunder nor a signatory to this Environmental Covenant

5. Representations and Warranties. DeWitt Industrial Properties LLC warrants to the Grantee, all Holders and EPA the following:

- a. that it is the sole fee simple title owner of the Property;
- b. that it holds sufficient fee simple title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims, and

c. that it has identified all other persons holding legal or equitable interests to the Property, including, but not limited to, contract buyers, mortgagees, other consensual lien holders, and lessees and they are:

(i) Maschio-Gaspardo North America, Inc., described above, who signs this Environmental Agreement as a Holder.

(ii) Iowa Electric Light and Power Company, and/or its successor in interest, pursuant to a pipeline easement dated May 14, 1970 and recorded November 4, 1970 as Instrument No. 5457-70 in the records of the Clinton County, Iowa Recorder of Deeds. Pursuant to the survey of the Property dated April 6, 2000 and recorded May 3, 2000 with the Clinton County Recorder of Deeds, it has been determined that the easement area does not include the Contamination Area shown on Exhibit B and thus the holder of this easement interest does not need to subordinate its interest in the Property to this Environmental Covenant.

(iii) Sprint Communications Company, L.P., pursuant to an Easement Deed filed February 4, 2013 as Instrument No. 2013-00944 in the records of the Clinton County Recorder of Deeds. It has been determined that the easement area does not include the Contamination Area shown on Exhibit B and thus the holder of the easement interest does not need to subordinate its interest in the Property to this Environmental Covenant.

6. **Running with the Property.** This Environmental Covenant is perpetual and runs with the Property as provided in Iowa Code Section 455I.9 until modified or terminated. This Environmental Covenant is binding on Grantor and all of Grantor's successors, assigns, (including, without limitation, Maschio-Gaspardo North America, Inc.) 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.

7. **Activity and Use Limitations and Terms.** The Property, or a portion thereof specifically identified in this Section 7, is subject to the following activity and use limitations:

a. Current and future owners of the Property shall notify all occupants or tenants or persons engaged in excavation work thereon of these Activity and Use Limitations and shall condition all occupancy and tenancy or excavation work on compliance with these Activity and Use Limitations. Failure by any occupant or tenant or person engaged in excavation work to so comply does not excuse compliance by the owner with these Activity and Use Limitations.

b. The Property shall not be used for any purpose other than industrial use excluding office and administrative use incidental to such industrial use.

c. The Property shall not be used for residential use or use where children may be present for extended periods of time, including school or day care.

d. Contaminated soils and groundwater exist within the Contamination Area (see Exhibit B). Excavation of soils within the Contamination Area or under the building adjacent to the Contamination Area may pose an inhalation or direct contact hazard at the time of excavation. Special precautions may need to be taken during excavation activities in these areas to prevent direct contact and inhalation health threats to humans. In the event the surface and/or subsurface of these areas is to be disturbed, the owner or occupant or tenant of these areas must (i) notify any person who will be disturbing these areas of the location of the contaminated soils; (ii) provide such person with a copy of this Environmental Covenant, including exhibits thereto, (iii) ensure that all appropriate and necessary assessments and precautions are taken prior to such activities, including but not limited to OSHA Standard 1910.120 or other demonstrated level for hazardous waste site operations protectiveness; and (iv) ensure that the materials generated at or from the excavation or disturbance of soil are properly managed and/or disposed of as may be required by law, making all appropriate and necessary assessment prior to such activity. *This provision does not apply to Holder Stolper Industries, Inc. when performing the Environmental Response Project approved by EPA, which work will be governed by other requirements.*

e. In the event the surface or subsurface of the Contamination Area or under the building adjacent to the Contamination Area is to be disturbed, the then owner or occupant or tenant of these areas must provide no less than thirty (30) days advance written notice thereof to the Agency. *This provision does not apply to disturbance of surface or subsurface when Holder Stolper Industries, Inc. is performing the Environmental Response Project approved by EPA.*

f. Except for monitoring wells authorized by the EPA or IDNR, installation and/or use of wells for any purpose whatsoever, including but not limited to potable and non-potable water supply, for human or animal consumption, irrigation, heat pumps or sanitation, is prohibited.

g. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agency.

8. **Notice of Non-Compliance.** Any property owner or occupant or tenant or subsequent transferee of an interest in the Property shall notify the Agency as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph 7 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 interests.

9. **Access to the Property.** Reasonable access to the Property, with prior reasonable notice to the owner or occupant or tenant, is hereby granted to the authorized representatives of EPA and IDNR and the Holders of this Environmental Covenant to conduct environmental

activities (including without limitation the Environmental Response Project) at the Property, to ascertain or ensure that the Environmental Response Project taken at the Property is or has been implemented and remains effective and protective of human health or welfare or the environment, and to determine compliance with the terms of this Environmental Covenant. Access may include the collection of environmental samples, including but not limited to surface water, groundwater and soil.

10. **Cooperation and Assistance.** The owner and any occupant or tenant of the Property must fully cooperate with the authorized representatives of EPA and IDNR and Holders of this Environmental Covenant as they conduct environmental activities (including without limitation the Environmental Response Project) at the Property, if any, and the owner and any occupant or tenant shall not destroy, damage, interfere with or impede the effectiveness or integrity of any environmental activities on the Property.

11. **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 IDNR determines that solid waste exists on the property that is potentially hazardous. 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 _____, 2013 and RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE CLINTON COUNTY RECORDER ON _____, 2013 IN INSTRUMENT No. _____.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Current and future owners of the Property shall notify all occupants or tenants or persons engaged in excavation work thereon of these Activity and Use Limitations and shall condition all occupancy and tenancy or excavation work on compliance with these Activity and Use Limitations. Failure by any occupant or tenant or person engaged in excavation work to so comply does not excuse compliance by the owner with these Activity and Use Limitations.
- b. The Property shall not be used for any purpose other than industrial use, excluding office and administrative use incidental to such industrial use.
- c. The Property shall not be used for residential use or use where children may be present for extended periods of time, including school or day care.
- d. Contaminated soils and groundwater exist within the Contamination Area (see Exhibit B). Excavation of soils within the Contamination Area or under the building adjacent to the Contamination Area may pose an inhalation or direct contact hazard at the

time of excavation. Special precautions may need to be taken during excavation activities in these areas to prevent direct contact and inhalation health threats to humans. In the event the surface and/or subsurface of these areas is to be disturbed, the owner or occupant or tenant of these areas must (i) notify any person who will be disturbing these areas of the location of the contaminated soils; (ii) provide such person with a copy of this Environmental Covenant, including exhibits thereto, (iii) ensure that all appropriate and necessary assessments and precautions are taken prior to such activities, including but not limited to OSHA Standard 1910.120 or other demonstrated level for hazardous waste site operations protectiveness; and (iv) ensure that the materials generated at or from the excavation or disturbance of soil are properly managed and/or disposed of as may be required by law, making all appropriate and necessary assessment prior to such activity. *This provision does not apply to Holder Stolper Industries, Inc. when performing the Environmental Response Project approved by EPA, which work will be governed by other requirements.*

e. In the event the surface or subsurface of the Contamination Area or under the building adjacent to the Contamination Area is to be disturbed, the then owner or occupant or tenant of these areas must provide no less than thirty (30) days advance written notice thereof to the Agency. *This provision does not apply to disturbance of surface or subsurface when Holder Stolper Industries, Inc. is performing the Environmental Response Project approved by EPA.*

f. Except for monitoring wells authorized by the EPA or IDNR, installation and/or use of wells for any purpose whatsoever, including but not limited to potable and non-potable water supply, for human or animal consumption, irrigation, heat pumps or sanitation, is prohibited.

g. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agency.

12. **Modification and Termination.** This Environmental Covenant may be modified or terminated in accordance with and subject to the provisions of Iowa Code Chapter 455I. The termination or modification of this Environmental Covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

13. **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 Chapter 455I, including but not limited to Grantor, Grantees, Holders, EPA and IDNR.

14. **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.

15. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Iowa.

16. **Recordation**. Within thirty (30) days following execution of this Environmental Covenant by all parties hereto, Grantor shall properly record this Environmental Covenant with the Clinton County, Iowa, Recorder's Office.

17. **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 Clinton County, Iowa, Recorder's Office.

18. **Notice**. Unless otherwise notified in writing by an Agency, any document or notice required by this Environmental Covenant shall be submitted to:

Director, Air and Waste Division
U.S. Environmental Protection Agency, Region VII
11201 Renner Blvd.
Lenexa, Kansas 66219.

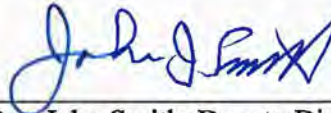
19. **Subordination and Consent**. By signing this Environmental Covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this Environmental Covenant and agree to subordinate their interest in the Property thereto. Holder Maschio-Gaspardo North America, Inc. specifically acknowledges that it intends to become an owner of the Property, possibly prior to the recordation of this Environmental Covenant, and it consents to the recordation of this Environmental Covenant and agrees to be bound by the terms of the Environmental Covenant as the owner of the Property once title is acquired.

20. **Signature**. This Environmental Covenant may be signed in counterpart.

AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

12/4, 2013



By: John Smith, Deputy Director, on behalf of
Rebecca Weber, Director
Air and Waste Management Division
U.S. EPA, Region VII

State of Kansas)
 SS:
County of Johnson)

On this 4th day of December, 2013, before me personally appeared John Smith, Deputy Director, on behalf of Rebecca Weber, the Director of the Air and Waste Management Division of Region VII of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Environmental Covenant.



Notary Public, State of Kansas

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp 7/23/15

EXHIBIT A

Part of the Southwest Quarter of the Southwest Quarter of Section 17, Township 81 North, Range 4 East of the 5th P.M., in the City of Dewitt, Iowa, Clinton County, Iowa, being more particularly described as follows:

Commencing at the Southwestern corner of said Section 17, thence North 00 Degrees 33 Minutes 20 Seconds East 100.00 feet along the West line of said Section 17 to its intersection with the North right-of-way line of the Chicago & Northwestern Railway Company's land; thence East 66.00 feet along the said right-of-way line to a 1-1/2" iron pipe found on said right-of-way line at its intersection with the East right-of-way line of a public road known as 3rd Avenue East (formerly Hummeston Road) and the place of beginning; from the point of beginning as thus established thence North 00 Degrees 33 Minutes 20 Seconds East 692.09 feet along the east right-of-way line of said 3rd Avenue East to a 1-1/2" iron pipe found; thence South 89 Degrees 59 Minutes 35 Seconds East 1,261.03 feet to an iron rod set in the East line of the Southwest Quarter of the Southwest Quarter of said Section 17; thence South 00 Degrees 31 Minutes 26 Seconds West 692.09 feet along the East line of the Southwest Quarter of the Southwest Quarter of said Section 17 to an iron rod set on the East line of the Southwest Quarter of the Southwest Quarter of said Section 17 at its intersection with the North right-of-way line of said Chicago & Northwestern Railway Company's Land; thence North 89 Degrees 59 Minutes 35 Seconds West 1,261.41 feet along the North right-of-way line of the Chicago & Northwestern Railway Company's land to an 1-1/2" iron pipe found and the place of beginning; situated in Clinton County, Iowa.

00986156-1\21912-001

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

FINAL REMEDY DECISION and RESPONSE TO COMMENTS

**FORMER STOLPER INDUSTRIES FACILITY
112 3rd Avenue East, DeWitt, Iowa
EPA I.D. Number IAD052437019**

INTRODUCTION

This Final Remedy Decision and Response to Comments (FD/RTC) is issued by the U.S. Environmental Protection Agency. The purpose of the FD/RTC is to present issues and concerns raised during the public comment period on the remedy proposed for the Former Stolper Industries Facility, to provide responses to those issues and concerns, and to identify the remedy the EPA has selected for the site.

BACKGROUND

The Former Stolper Industries Facility is located at 112 3rd Avenue East, DeWitt, Iowa, and consists of a 22-acre parcel of land on which a 122,000 square foot building, driveways, and parking lots are located. Stolper Industries originally developed the property and operated a sheet metal components fabrication business from 1970 until 1985. During the time the facility was owned and operated by Stolper Industries, degreasing and painting operations generated hazardous wastes which were stored in two designated hazardous waste storage areas referred to as the Outdoor Storage Area and the Indoor Storage Area. When Stolper Industries ceased operations in 1985, they submitted a Closure Plan to the EPA which specified how the two areas would be properly cleared of hazardous wastes, cleaned and verified as decontaminated to the EPA-approved cleanup standards. While the Outdoor Storage Area underwent successful closure, it was determined that hazardous wastes had been released within the Indoor Storage Area, and had also been discharged to the outside Receiving Dock Area through an outfall from floor drains located inside the Indoor Storage Area. Subsequent environmental investigations performed by Stolper Industries revealed the discharge from the outfall resulted in soil and groundwater contamination in the Receiving Dock Area. This contamination was found to consist primarily of chlorinated and non-chlorinated chemical solvents associated with degreasing and painting operations, and two metal contaminants (chromium and lead) which are typically associated with paint pigments.

The environmental investigations conducted at the facility determined the nature and extent of soil and groundwater contamination, and evaluated air inside the building. The extent of soil contamination was found to be in an area of from 50 to 75 feet from the outfall in the Receiving Dock Area, with the highest concentrations found mainly at a depth of from 4 to 8 feet below the ground surface. Several contaminants were found in soil at levels exceeding the EPA health-based Regional Screening Levels (RSLs) for direct contact exposure under an industrial exposure scenario.

In groundwater, several contaminants were found at levels that exceeded federal Safe Drinking Water Act Maximum Contaminant Levels (MCLs) and EPA RSLs. Groundwater contamination exceeding health-based standards was found to be confined to the Former Stolper Facility property. Indoor air sampling found that while some contaminants associated with the former Indoor Storage Area and Receiving Dock Area were detected in indoor air inside the building, none were found at levels that exceed health-based standards for industrial use.

PUBLIC PARTICIPATION ACTIVITIES

A thirty (30) day public comment period was held from August 22, 2012 to September 21, 2012. A public notice announcing the availability for public review of the Statement of Basis and the associated Administrative Record documents was published in the local newspaper, the *DeWitt Observer*. Fact sheets were mailed to congressional contacts and persons having previously expressed interest in environmental issues at the Facility. The Statement of Basis and Administrative Record were available throughout the public comment period at the Frances Banta Waggoner Community Library, 505 10th Street, DeWitt, Iowa; and the Regional Library at the EPA Region 7 Headquarters, 901 N. 5th Street, Kansas City, Kansas 66101.

The EPA elected not to hold an availability session because interest in having one was not expressed by the public. The Former Stolper Industries Facility is located in an industrial area.

The following summarizes the comments that were received during public review of the Statement of Basis and Administrative Record for the Former Stolper Industries Facility and provides the EPA's responses to these comments.

COMMENT: A municipal drinking water well is located approximately 450 feet from the loading dock area of the Former Stolper Industries Facility. This municipal well produces water from the Jordan Aquifer. Should there be any concern that this well could be impacted by the contamination present at the Former Stolper Industries Facility?

RESPONSE: The EPA reviewed logging and construction information on the municipal well in question, and also information from the Iowa Geological Survey publication *Iowa Geological Survey Water Atlas Number 6 - Water Resources of East-Central Iowa* (Wahl, Ludvigson, Ryan, and Steinkampf, 1978) prepared by the U.S Geological Survey in cooperation with the Iowa Geological Survey. The EPA does not believe this municipal well could be adversely impacted by contamination from the Former Stolper Industries Facility for several reasons. The municipal well was constructed with surface casing from ground surface to 879 feet below ground surface, and then is open another approximately 400 feet into the Jordan Sandstone aquifer. Groundwater contamination at the Former Stolper Industries Facility is in the relatively shallow surficial aquifer from approximately 4 to 25 feet below ground surface. Additionally, the municipal well is located in a direction upgradient from the area of groundwater contamination at the Former Stolper Industries Facility so that contaminated groundwater from the Stolper Facility would flow in a direction away from the municipal well.

COMMENT: In the groundwater section on page three, USEPA indicates that the MCL for ethylbenzene is 70 ppb; the MCL for ethylbenzene is 700 ppb. In the table on page five, the RSL for naphthalene is incorrectly listed as 1.4 ppb; it should be 0.14 ppb.

RESPONSE: The EPA acknowledges these errors and will strive to ensure all future references to MCLs and RSLs are reviewed closely for accuracy.

SELECTED FINAL REMEDY

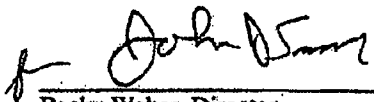
The selected final remedy for the Former Stolper Industries Facility is the same as that proposed in the Statement of Basis and consists of the following:

The proposed remedy for the facility will consist of institutional controls such as an environmental covenant which will prohibit the extraction and use of groundwater from beneath the facility, as well as ensure that the property use remains industrial. Institutional controls will also identify the area of soil and shallow aquifer contamination in the Receiving Dock Area so that if any future excavation work in this area is needed, the presence of this contamination will be made known and appropriate worker precautions may be taken. Further, if the contaminated subsurface materials are excavated or removed, this will ensure these materials are properly managed.

Groundwater monitoring for the identified facility contaminants will be required on a regular basis to assess whether contamination is migrating past the facility property boundary and if so at what levels. Although contaminated groundwater is not currently migrating off-site, ongoing monitoring will ensure that this continues to be the case. Groundwater monitoring will consist of sampling the five (5) monitoring wells that have been utilized since 2003. The remedy, in the form of a Corrective Measures Implementation Plan, will also specify actions to be taken should it be determined that contamination is migrating from the facility property at unacceptable levels. These actions would consist of additional confirmation sampling, and, upon confirmation, an evaluation of techniques available for controlling and preventing further contaminant migration onto neighboring property.

DECLARATION

Based on information contained in the facility files, the EPA Region 7 has determined that the selected final remedy for the Former Stolper Industries Facility is appropriate and will be protective of human health and the environment.



Becky Weber, Director
Air and Waste Management Division
EPA Region 7

4/12/17

Date