

CON 12-15
Doc #29896

Buena Vista Shari O'Bannon
Fee Book 140811
04/10/2014 @02:08PM # Pages 9
COV COVENANTS
Total Fees: \$47.00

INDEX

Recorder's Cover Sheet

pd
E
Type / Title of Document:

Environmental Covenant for the James Bauer Properties, Storm Lake, Iowa

Return Document to:

Return Document to:

Name: Vicky Kitelinger, ALLIANT ENERGY (Interstate Power and Light Company)
RE/ROW Department - 9th Floor

Address: 200 First Street SE Cedar Rapids, IA 52401-1409
Street Address City, State Zip

Telephone: (319) 786-4619

Preparer Information:

Name: Jill Stevens, Interstate Power and Light Company

Address: 4902 North Biltmore Lane Madison, WI 53718-2148
Street Address City, State Zip

Telephone: (608) 458-0446

Taxpayer Information

Name: James Bauer

Address: 225 W. Milwaukee Avenue
Storm Lake, Iowa 50588

Telephone: (712) 732-1775

Grantor: James Bauer (Manasota Key LLC, James L & Elizabeth L Bauer)

Holder/Grantee: James Bauer (Manasota Key LLC, James L & Elizabeth L Bauer)

Legal Description, including parcel identification number, if available:

Buena Vista County Parcel ID Nos.: 10-34-383-006

The Legal Description is provided on Page 1 of the Environmental Covenant.

ENVIRONMENTAL COVENANT

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

James Bauer, hereafter "grantor/holder", and the Iowa Department of Natural Resources (Department) in its capacity as an agency 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 Department in Iowa Code section 455B.103(7), 455I, and Department rules in 567 Iowa Administrative Code (I.A.C.) 133.

1. Affected Property. The grantor as identified below is the fee title owner of property legally described as:

Lot 4, Iowa Land and Building's Third Addition, according to the recorded plat thereof, City of Storm Lake, Buena Vista, County, Iowa.

This property is located on the northwest corner of the intersection of Ontario Street and Milwaukee Avenue and is locally known as 405 West Milwaukee Avenue, Storm Lake (hereafter "property") and shown on the drawing in Exhibit A. The property is included under Consent Order 90-HC-12 between IPL and the Department.

2. Risk Management and Institutional Controls. IPL and the Department entered into Administrative Consent Order No. 90-HC-12 in August 1990. The Consent Order applied to a number of former manufactured gas sites including the site subject to this environmental covenant. The terms and conditions of the Consent Order required IPL to conduct soil and groundwater assessment, perform site-specific risk evaluations, and design and implement appropriate environmental remedies. The Consent Order can be obtained at the offices of the Iowa Department of Natural Resources and from the Department's online database (<http://www.iowadnr.gov/land/consites/index.html>).

Pursuant to the terms and condition of the Consent Order, the site assessment identified contaminated conditions on the property that may present an unreasonable risk to public health and the environment if certain activities occur on the property. As such, the Director, pursuant to his authority under Iowa Code section 455B.103(7) and consistent with the terms of the Consent Order, has determined that an environmental covenant is necessary to manage the risk of future exposure by limiting specified activities at this property and establishing affirmative obligations.

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

4. Identity of Grantor(s) and Holder(s).

GRANTOR: James Bauer (Manasota Key LLC, James L & Elizabeth L Bauer)

HOLDER: James Bauer (Manasota Key LLC, James L & Elizabeth L Bauer)

AGENCY: Iowa Department of Natural Resources

5. Representations and Warranties. The grantor warrants 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 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 grantor has identified all other persons holding legal or equitable interests, including but not limited to, contract buyers, mortgage holders, other consensual lien holders, and lessees, and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement.

6. 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.

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

- a. Land Use: Limitations on land use are required. Due to residual MGP-related contamination, the property shall not be developed for residential use as defined by the Department.
- b. Subsurface Excavation: Limits on subsurface excavation are required due to residual MGP-related contamination. Exhibit B contains Figure B-1 showing the location of residual soil contamination left in place following the remedial action with total carcinogenic polynuclear aromatic hydrocarbon (PAH) concentrations exceeding Department cleanup levels. Because this area could represent a potential exposure route during basement or foundation construction, no soil below 13 feet shall be excavated from the area of residual contamination without notification to the Department, and implementation of appropriate controls to assess, handle, and dispose of potential contamination.

- c. Groundwater: Limitations on groundwater use are required. A groundwater monitoring well on the property contain concentrations of MGP-related chemicals above the statewide standards for non-protected groundwater. Therefore, no groundwater wells shall be allowed on the property to make use of the shallow groundwater unit comprised of glacial drift deposits underlying the property, with the exception of monitoring wells to collect groundwater for analysis pursuant to the Consent Order. Groundwater below the aforementioned shallow glacial drift deposits (which extend to approximately 200 to 400 feet below ground surface) may be used without restriction with appropriate precautions as approved by the Department. Figure B-2 in Exhibit B shows the area with groundwater contamination exceeding the statewide standards.

8. 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 seven (7) if they have actual knowledge within the normal course of administration of their property interest.

9. 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 the right to possession of the property.

10. 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 included, 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. construction of soil boring and/or groundwater monitoring wells
- e. other activities authorized or otherwise directed by the Department.

11. Groundwater Hazard Statement. Iowa Code section 558.69 requires submission of a groundwater hazard statement and notice if "hazardous waste" exists on the property as defined in Iowa Code sub-sections 455B.411(3), 455B.412(2) or section 455B.464. 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 _____, 20____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE BUENA VISTA COUNTY RECORDER ON _____, 20____, BY PARCEL NUMBER 10-34-383-06. 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.]*

12. Modification and Termination. Modification or termination of the terms of this covenant shall comply with the standards in Iowa Code chapter 455I 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" 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 as provided by Iowa Code section 455I.9 and such additional terms as specified in this covenant.

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 section 455I.11.

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 after Department approval of this environmental covenant, the grantor shall record the environmental covenant in the same manner as a deed to the property, with the Buena Vista County 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 Buena Vista County Recorder.

18. 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
Contaminated Sites Section Supervisor

502 E 9th Street
Des Moines, IA 50319

19. **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.

20. **Notice of Change of 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

GRANTOR/HOLDER

James Bauer Dated this 29 day of October, 2013
James Bauer

State of Iowa)
County of Buena Vista) ss.

On this 29 day of October, 2013, before me personally appeared James Bauer, known to me to be the person(s) named in and who executed the foregoing instrument, and acknowledge that James Bauer executed the same as his/her/their voluntary act and deed.

Cheryl A Deman
Notary Public, State of Iowa:



AGENCY

Iowa Department of Natural Resources

Chuck Gipp Dated this 4th day of March, 2014.
Chuck Gipp
Director

State of Iowa)
County of Rock) ss.

On this 4th day of March, 2014, before me personally appeared Chuck Gipp, 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.

Karen Fynaardt
Notary Public, State of Iowa:



EXHIBIT A
PROPERTY DRAWING
405 W. Milwaukee Avenue, Storm Lake, Iowa
Parcel No. 10-34-383-06



Image Source: Buena Vista County, Iowa, Assessor property search website (<http://ww2.co.buena-vista.ia.us>), March 31, 2011.

Legal Description: Lot 4, Iowa Land and Building's Third Addition, according to the recorded plat thereof, City of Storm Lake, Buena Vista, County, Iowa.

EXHIBIT B FIGURE B-1 LOCATION OF RESIDUAL SOIL CONTAMINATION

