

May 17, 2018

Ms. Shelly Nellesen
Environmental Specialist
Contaminated Sites
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, IA 50319

**RE: Land Recycling Program for Nexus at Grey's Landing
Tuttle to Murphy, SW 9th to SW 11th
Des Moines, Iowa
IDNR Site ID # 1334**

Dear Ms. Nellesen:

Sherman Associates respectfully requests that the above referenced site remain in the Land Recycling Program (LRP). The site was enrolled in the LRP. IDNR requested that a Participation Agreement be provided. An internal communication glitch occurred, causing a delay in Sherman Associates providing the Iowa Department of Natural Resources (IDNRs) with the requested Participation Agreement. Processes have been corrected and future communications from IDNR will be managed in appropriate time frames.

Enclosed is a draft of the requested Participation Agreement.

Below is information on processes that have occurred to date on site.

The Project Site was entered into the LRP and has gone through the initial steps toward obtaining a no further action (NFA) certificate. Steps completed to date include:

1. Discovery (As Site ID 426)
2. Voluntary application and acceptance by the IDNR on October 21, 2010
3. Work Plan approval (As Site ID 426 and SGMP May 19, 2015)
4. Characterization approval (As Site ID 426)
5. Initial Risk Evaluation/response action approval (As Site ID 426), and
6. Initial demonstration of compliance (As Site ID 426)

The site was initially proposed as a commercial development. The steps completed above met commercial requirements (As Site ID 426) and the Project Site could have received the NFA certificate at that time with an application for an environmental covenant. However, development plans changed; the site shifted to a residential use. As a residential development parts 5 and 6 required a re-evaluation and different approach to meet requirements.

The initial Risk Evaluation (item 5 above) would still be considered complete since it was done for residential as well as commercial and site worker exposure assessments. Therefore, the Soil and Groundwater Management Plan (approved in the May 19, 2015 IDNR letter) updates the proposed response action under the LRP. Once the response action is complete, the final report will be completed to fulfill the final demonstration of compliance by documenting the final cover being a minimum of 2-feet of clean soil, etc., as outlined in the plan. Following acceptance of the final report, an environmental covenant will be drafted on the Project Site for IDNR legal review and once accepted by the IDNR, the NFA certificate can be issued and the covenant filed.

Again, our apologies for our delay in responding. Please copy the following for future communications:

Nexus at Gray's Landing LLC
Attn: Will Anderson
233 Park Ave South Ste 201
Minneapolis, MN 55415
Email: wanderson@sherman-associates.com

Terracon
Attn: Dennis R. Sensenbrenner, P.G.
600 SW 7th Street, Suite M
Des Moines, Iowa 50309
Email: Dennis.Sensenbrenner@terracon.com

The current status of our project is nearing completion. With your acceptance of the Participation Agreement, we will update you on our schedule for the Final Demonstration of Compliance report.

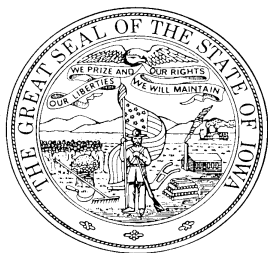
Sincerely,



Will Anderson
Developer – Sherman Associates
E: wanderson@sherman-associates.com
P: 612-604-0866

Enclosed: Draft of Participation Agreement

IOWA DEPARTMENT OF NATURAL RESOURCES
LAND RECYCLING PROGRAM



PARTICIPATION AGREEMENT



For the

THE NEXUS at GRAY'S LANDING

415 SW 11th Street
Des Moines, IA 50309

I. RECITALS

WHEREAS, the following participants (“the participants”) in the Iowa Land Recycling Program (LRP) and the Iowa Department of Natural Resources (“the department”) enter into this agreement as required by Iowa Code section 455H.107(2) and in accordance with administrative rule 567 Iowa Administrative Code (IAC) 137.3(4).

WHEREAS, Iowa Code chapter 455H grants participants certain benefits, privileges and immunities as well as establishing certain obligations. Only those parties who have entered into this agreement shall be considered “participants” as defined in Iowa Code section 455H.103(11) and entitled to those benefits, privileges and immunities. Parties may be removed from this agreement by withdrawal or upon final agency action terminating enrollment in accordance with department rules 567 IAC 137.3(6) - (8). Parties may be added to this agreement by written consent of all participants or a determination by the department that the party meets the criteria for consideration as a participant as defined in Iowa Code section 455H.103(11).

WHEREAS, an essential purpose of this agreement is to establish a general understanding between the participant(s) and the department as to the scope of the project being undertaken by the participants and a general set of mutual expectations. To the extent possible at the time of entering into this agreement, the parties are expected to reach an understanding on such issues as what contaminants associated with what known or suspected sources within the affected area are to be addressed and are not to be addressed, the scope of expected liability protection arising out of participation in the LRP, and any barriers the parties foresee in completion of the environmental project and the planned reuse of the affected area.

II. PARTICIPANTS

The following parties to this agreement are participants:

Person/organization: Nexus at Gray's Landing LLC

Form of business organization or affiliation: limited liability company

Address: 233 Park Avenue South, Suite 201

City, State: Minneapolis, MN

III. TERMS

1. The participants shall grant the department and all authorized representatives reasonable access to the affected area as defined in Iowa Code section 455H.103(1) in order to fulfill regulatory duties including but not limited to site inspections and oversight of all response actions conducted by participants or their agents and surface or subsurface site investigation and response actions related to any suspected contaminants.

2. The participants shall be jointly and severally responsible to reimburse the department for actual costs assessed in accordance with department subrule 567 IAC 137.3(3). The participants also agree to allocate the costs of reimbursement amongst themselves according to the method as described in the attached Exhibit but in doing so do not relieve themselves of their joint and several liability to the department for full reimbursement.

IV. CERTIFICATION OF FINANCIAL ABILITY

1. The participants certify they have obtained an estimate from a qualified groundwater professional of the costs of completing the site assessment and risk evaluation/response phase for the affected area in accordance with chapter 567 IAC 137 based on currently available information. Further, the participants certify they have the financial means to complete the site assessment and risk evaluation/response phase of this project based on this initial estimate and have entered into a legally enforceable contract with the following qualified professional, Terracon Consultants, Inc., Mr. Dennis R. Sensenbrenner, CGP, PG. Further, the participants certify that if costs of completion of

this response action are to be allocated amongst participants, this allocation has been specified and made part of a legally binding contractual agreement.

2. Unless the cost of response action and demonstration of compliance leading to a no further action classification can be reasonably estimated at the time of execution of this agreement, the participants agree to amend this agreement, and provide certification of financial ability upon approval of a response action. If the participants choose to expedite response action without prior review and approval of the department as provided in subrule 567 IAC 137.9(8), they agree to provide financial certification prior to or within a reasonable time after notice to the department of expedited response action.

3. The participants agree to notify the department in writing and at the earliest practicable date if they have reason to believe they will not be able to complete response actions in accordance with chapter 567 IAC 137 and this certification.

V. SCOPE OF PROJECT

The participants have (or have not) met with the department project manager and agree to the following project description:

- a. *A general description of the contaminants expected to be evaluated and those know nor suspected contaminants, sources and probable locations which the participants do not expect to evaluate.*

Contaminants consist of Lead and Arsenic in soil and dissolved petroleum (TEH as Diesel and Waste Oil, and Naphthalene) in groundwater. The site was fully assessed as the former Pitt/Des Moines Steel site under the LRP.

- b. *A general description of the affected area including areas which are not currently within the control of the participants or for which access agreements have not been obtained.*

The subject site is located at the southeast intersection of Tuttle Street & SW 11th Street in Des Moines, IA. Areas around the site are mixed commercial and residential. North of the site is a commercial hotel (Holiday Inn Express) and undeveloped land to the northeast; east of the site is completed residential (The Edge); southeast of the site is currently under development as commercial (New Horizons); south and west of the site is undeveloped.

- c. *A timetable for initiation of site assessment and submittal of assessment work plans and reports. If the participants intend to proceed with or have begun expedited site assessment in accordance with 567 IAC 137.8(2) and (5), please attach a copy of the required notice of expedited action.*

Site assessments, risk assessments, and remediation was completed under the former Pitt/Des Moines site LRP evaluation. The site was remediated to commercial criteria. An accepted Soil and Groundwater Management Plan was approved to guide the site for residential usage with an environmental covenant. See attached Table of time line for completed activities under the Pitt/Des Moines Steel LRP site and the participant's proposed time lines for LRP completion.

- d. *A projected timetable for each phase of the proposed project and any outlying deadlines applicable to property development objectives.*

See Attached Table for Completed and proposed timelines.

VI. CONSTRUCTION

Words and phrases in this document shall be interpreted consistent with meanings and definitions as used in Iowa Code Chapter 455H and Chapter 567 IAC 137.

Alex Moon
Land Quality Bureau Chief
Iowa Department of Natural Resources

George E. Sherman
President
Nexus at Gray's Landing LLC

Dated this day of ,
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Dated this day of May, 2018

TABLE 1 – COMPLETED AND PROPOSED LRP ACTIVITIES

Action/Documents	Timetable
Participation Agreement	May 2018
DNR Review	2 weeks - 2 months
Site Assessment Activities	Completed 2001-2004
1 st Public Notice – Applicant submits names and mailing addresses of adjacent property owners to DNR; DNR will send out certified letters informing the property owners of investigation	Completed 6-03-2009 Update May 2018?
Site Assessment Reports	Completed 2001, 2003, 2004
DNR Review	Completed - Drustrup
1 st quarterly compliance groundwater monitoring (if no remedial measures; otherwise after remedial measures have been completed).	N/A GW was Risked out utilizing RBCA Analysis and split sampling w/ the IDNR following remedial efforts.
Risk Evaluation/Response Action	Completed 2009 - Drustrup
DNR Review	Completed 2009 - Drustrup
Remediation Complete	Sept 2009
¹ Final Demonstration of Compliance per SGMP	May/June 2018
Draft Environmental Covenant	June 2018
2 nd Public Notice-Summary of site conditions and response actions published in a local paper (completed by DNR)	Completed 6-16-2009 Update June 2018?
Completed and Recorded EC	June/July 2018
Final Report	June/July 2018
DNR Review	2 weeks - 2 months
No Further Action Certificate (completed by DNR)	July 2018
Well Abandonment	Completed

TBD: To Be Determined

N/A: Not Applicable

¹NOTE: This site was fully assessed and approved under the cognizance of the LRP as the former Pitt/Des Moines Steel (PDM) site; INDR Site ID 426. This site was also identified as Riverpoint West under a Brownfield assessment. Under the LRP this site has been assessed, remediated, and met the final requirements (with the exception of the EC) for LRP closure for commercial development. The SGMP was prepared as a plan to utilize the site for residential redevelopment with an EC as approved in the INDR correspondence dated May 19, 2015. *Additional assessment with respect to the approved Plan for final compliance soil testing, is for the upper 2-feet of green spaces.* Once completed, an EC will be drafted for the site for NFA closure.