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Colleen Pearce, Cerro Gordo County Recorder

*Aud*



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(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Return Document to: Name: \_\_\_\_\_ John A Flores  
*3700ck* Address: \_\_\_\_\_ 1840 North Federal Ave - Mason City, Iowa 50401  
Telephone: \_\_\_\_\_ 734-529-7754

Preparer Information: Name: Holcim (US) Inc., care of Brian Smith, Esq.  
Address: 6211 N. Ann Arbor Rd., Dundee, MI 48131  
Telephone: (734) 529-2411

Taxpayer Information: Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Grantor: Holcim (US) Inc.  
6211 N. Ann Arbor Rd.  
Dundee, Michigan 48131

Grantee/Holder: As Above

## ENVIRONMENTAL COVENANT

This Environmental Covenant (Covenant) is entered into by and between Holcim (US) Inc. as "Grantor," Holcim (US) Inc. as "Holder," and the United States Environmental Protection Agency (EPA) as "Agency," pursuant to Iowa's Uniform Environmental Covenants Act (Act), Iowa Code sections 455I.1 – 455I.12. Grantor and Holder enter into this Covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions specified herein.

1. **Affected Property.** Grantor is the fee title owner of the property located at 1840 North Federal Avenue, Mason City Iowa 50401, at which cement kiln dust (CKD) a byproduct from the manufacturing of Portland Cement exists. The property is legally described in Attachment 1.
  
2. **Risk Management and Institutional Controls.** Layne GeoSciences, Inc. on behalf of Holcim (US) Inc. has conducted an "environmental response project," as defined in section 455I.2.5 of the Act at the Property, pursuant to the CERCLA/RCRA Consent Decree between the United States of America (Plaintiff), and Northwestern States Portland Cement Company and Holnam Inc. (Holcim (US) Inc.). Following the completion of this environmental response project contamination will remain/remains at the Property which may present a risk to public health and the environment if certain activities occur on the Property. As such, Agency has determined that an Environment Covenant is necessary to manage the risk of future exposure by limiting specified activities at the Property and establishing affirmative obligations.
  
3. **Reopening.** The signatories acknowledge that the failure of the activity and use limitations imposed on the Property hereby 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.
  
4. **Identity of Grantor(s) and Holder(s).**

**GRANTOR:** Holcim (US) Inc.

**HOLDER:** Holcim (US) Inc., fee simple owner of the property.

**AGENCY:** United States Environmental Protection Agency

**THIRD-PARTY BENEFICIARY:** The Iowa Department of Natural Resources (IDNR), an agency of the State of Iowa, has certain benefits granted by this Covenant, although not as Agency or a signatory to this Covenant.

5. **Representations and Warranties.** Grantor warrants to the Agency to this Covenant that Grantor:
  - a. Is the sole fee title owner of the Property;
  
  - b. 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; and
  
  - c. has 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.
  
6. **Running with the Land.** This Covenant is perpetual and runs with the Property, as provided in section 455I.9 of the Act, until modified or terminated. This Covenant is binding on Grantor and all successors in interest, assigns, and

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 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 activity and use limitations:
  - A. The construction, installation, maintenance or use of any wells on the property for the purpose of extracting water for human drinking purposes or for the irrigation of food or feed crops shall be prohibited;
  - B. The soil cap located on the property shall be maintained in good repair in order to prevent direct contact with the landfill materials, reduce infiltration and leaching of contaminants and minimize run-off transport of contaminants;
  - C. The soil cap located on the property shall not be excavated or disturbed unless approved in advance in writing by the EPA or its assigns; and
  - D. Residential use is prohibited on the property unless approved in advance in writing by the EPA or its assigns.
8. **Notice of Non-Compliance.** Any owner of the Property, or transferee, shall notify Agency and the Iowa Department of Natural Resources (IDNR) 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 of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.
9. **Notice of Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the Property, and any transferee shall incorporate the activity and use limitations of this Covenant either in full or by reference, in any lease, license, or other instrument granting a right to possession of the Property.
10. **Access to Property.** Access to the Property is granted to Agency and IDNR and their authorized representatives for the purpose of implementing, monitoring, and/or enforcing this Covenant. Agency and/or IDNR agree to provide the then current owner of the Property reasonable notice prior to access. Right of access includes, but is not limited to, the following:
  - a. repair and maintenance of response 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; and
  - f. other activities authorized or otherwise directed by Agency and/or IDNR.
11. **Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires the 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 Agency 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 IDNR 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 CERRO GORDO 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.]

12. **Modification and Termination.** Any modification or termination of this Covenant shall comply with Iowa Code chapter 455I and applicable IDNR administrative rules. This Covenant may be modified or terminated by written consent of Agency, 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 Covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.
13. **Enforcement.** This Covenant may be enforced by Agency 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. Additionally, the signatories to this Covenant expressly grant to IDNR the power to enforce this Covenant.
14. **Severability.** If any provision of this 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 Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.
16. **Recordation.** Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, owner or transferee shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner or transferee shall be responsible for any costs associated with recording this Covenant.
17. **Effective Date.** The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of each county in which the Property is situated.
18. **Notice.** Any notice, document, or other item required by this Covenant to be given to another party hereto shall be sent to:

Grantor/Transferee:

Holcim (US) Inc.

Brian M. Smith – Regional Counsel, Midwest, North Central & Great Lakes

6211 N. Ann Arbor Road

Dundee, Michigan 48131

Holder:

As Above

USEPA:

Region 7 – Superfund Division

Diana Engemen – Remedial Project Manager

11201 Renner Blvd.

Lenexa, Kansas 66219

**IDNR:**

Iowa Department of Natural Resources  
Contaminated Sites Section Supervisor  
Wallace State Office Building  
502 E. 9<sup>TH</sup> Street  
Des Moines, Iowa 50319

19. **Notice of Change in Ownership.** Grantor and any holder of any interest in the Property and any subsequent transferee shall reference and incorporate the terms of this Covenant into any subsequent instrument which conveys a possessory interest in the Property.

**GRANTOR(S):**

09/15/16  
Date

Brian M. Smith  
Brian M. Smith - Regional Counsel, Midwest,  
North Central & Great Lakes  
Holcim (US) Inc.  
6211 N. Ann Arbor Road  
Dundee, Michigan 48131

STATE OF MICHIGAN )  
COUNTY OF MONROE ) ss.

On this 15<sup>th</sup> day of September, 2016, before me personally appeared Brian M. Smith, known to me to be Regional Counsel & Assistant Secretary of Holcim (US) Inc., and acknowledged the he/she executed the same as his/her voluntary act and deed.

Anita Letter  
Notary Public

**ANITA LETTER**  
Notary Public, State of Michigan  
County of Monroe  
My Commission Expires May, 09, 2018  
Acting in the County of Monroe



**HOLDER:**

09/16/16  
Date

John A. Flores  
John A. Flores - Site Manager  
Holcim (US) Inc. - Mason City Plant  
1840 N. Federal Avenue  
Mason City, Iowa 50401

STATE OF IOWA )  
COUNTY OF CERRO GORDO ) ss.

On this 16<sup>th</sup> day of September, 2016, before me personally appeared John Flores, known to me to be Site Manager, Mason City Plant of Holcim (US) Inc., and acknowledged the he/she executed the same as his/her voluntary act and deed.

Colleen Young  
Notary Public



AGENCY:

*Mary P. Peterson*

9-27-16

Mary P. Peterson, Director, Superfund Division  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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STATE OF KANSAS        )  
COUNTY OF JOHNSON ) ss.

On this 27<sup>th</sup> day of September, 2016, before me personally appeared Mary P. Peterson, known to me to be the Director of the Superfund Division of the United States Environmental Protection Agency, Region 7, and acknowledged the he/she executed the same as his/her voluntary act and deed.

*Milady R. Peters*  
Notary Public



## ATTACHMENT 1

### Legal Description

South Half (S½), except right-of-way of the Chicago and Northwestern Transportation Company and except 0.08 acres conveyed to State of Iowa and described in Land Deed Record 128 at page 347, in Section Thirty-three (33) in Township Ninety-seven (97) North, Range Twenty (20) West of the 5<sup>th</sup> P.M.

and

That part of the Northwest Quarter (NW¼) of Section Four (4) in Township Ninety-six (96) North, Range Twenty (20) West of the 5<sup>th</sup> P.M. conveyed by Charles M. Thompson, as Trustee, of Chicago and North Western Railway Company, and Chicago and North Western Railway Company, by Quit Claim Deed dated May 11, 1942, and recorded in Land Deed Record 95 at page 11, bounded and described as follows:

Beginning at the point of intersection of the North line of said Northwest Quarter with the West line of the North line of said Northwest Quarter with the west line of the Brice and Ong Land Company's Street Railway Addition to the City of Mason City; thence South along the West line of said Addition, 610 feet; thence West parallel with the North line of said Northwest Quarter, 280 feet; thence Northwesterly in a straight line to a point in the North line of said Northwest Quarter which is 440 feet West of the place of beginning; thence East along the North line of said Northwest Quarter, 440 feet to place of beginning, (containing 5.04 acres, more or less),

and

That part of the Northwest Quarter (NW¼) of Section Four (4) in Township Ninety-six (96) North, Range Twenty (20) West of the 5<sup>th</sup> P.M., bounded and described as follows: Beginning at the point of intersection of the extended North line of Fifteenth Street Northwest with the West line of Brice and Ong Land Company's Street Railway Addition to the City of Mason City; thence North 0°0' along the West line of said Addition, 492 feet, more or less, to the Southeast corner of the land conveyed by Charles M. Thompson, as Trustee of the property of Chicago and North Western Railway Company, and Chicago and North Western Railway Company to Northwestern States Portland Cement Company by Quit Claim Deed dated May 11, 1942; thence West 0°0' along the South line of the land so conveyed by said Deed of May 11, 1942, distance of 280 feet to the Southwest corner thereof; thence North 14°42' West along the westerly line of the land so conveyed by said Deed of May 11, 1942, a distance of 630.42 feet, more or less, to a point in the North line of the Northwest Quarter of said Section 4, being also the Northwest corner of the land so conveyed by said Deed of May 11, 1942; thence West 0°0' along the North line of the Northwest Quarter of said Section 4 a distance of 119.15 feet to a point; thence South 19°52' East a distance of 298 feet to a point; thence South 15°20' East, a distance of 588 feet to a point; thence South 1°29' East a distance of 251.75 feet, more or less, to said extended North line of Fifteenth Street Northwest; thence South 89°26' East along said extended North line of Fifteenth Street Northwest, a distance of 295.90 feet, more or less, to the point of beginning, (containing 4.92 acres, more or less).

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