

Recorded: 1/31/2025 at 9:50:03.0 AM
County Recording Fee: \$52.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$55.00
Revenue Tax: \$0.00
Polk County, Iowa
Julie M. Haggerty RECORDER
Number: 202500005331
BK: 20038 PG: 374

**IOWA CONTAMINATED SITE
ENVIRONMENTAL COVENANT
Recorder's Cover Sheet**

Preparer Information: (name, address and phone number)

Matt Feller, 1400 Washington Avenue, Suite 1, Evansville, Indiana 47714.
Phone: 812-424-7768

Taxpayer Information: (name and complete address)

Diamond Oil Company, 702 Raccoon Street, Des Moines, Iowa 50309

Return Document To: (name and complete address)

Matt Feller, 1400 Washington Avenue, Suite 1, Evansville, Indiana 47714.
Phone: 812-424-7768

Grantor:

Diamond Oil Company, an Iowa corporation

Agency:

Iowa Department of Natural Resources, Contaminated Sites Section

Legal Description:

See page 2.

Document or instrument number of previously recorded documents: N/A

IOWA CONTAMINATED SITE ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code (IC) chapter 455I entitled Uniform Environmental Covenants Act.

DIAMOND OIL COMPANY, hereafter "grantor(s)", and the Iowa Department of Natural Resources (Department) in its capacity as an agency of Iowa state government enter into this environmental covenant for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the Department in IC chapter 455I, § 455B.103(7), and Department rules in chapter 567 Iowa Administrative Code (IAC) 133.

1. **Affected Property.** The grantor(s) is/are the fee title owner(s) of the property located at 301 Southeast 6th Street, Des Moines, Iowa 50309. The property is legally described as:

That part of Lots 1,2 and 3 in Block 33, Town of De Moines, and that part of the North/South alley lying East and adjoining said lots, now included in and forming a part of the City of Des Moines, Iowa, described as follows : Beginning at the Southeastern intersection of East 6th Street and Elm Street; thence Easterly along the Southern boundary of Elm Street, for a distance of 159 feet more or less, to the center line of the former alley running between Raccoon Street and Elm Street, officially closed by the City of Des Moines by Ordinance No. 4247, November 1, 1934; thence Southerly along said center line for a distance of 146.5 feet (measured as 151.04 feet); thence Westerly a distance of 159 feet more or less to the Eastern boundary of East 6th Street; thence Northerly, along said boundary for a distance of 146.5 feet (measured as 152.25 feet) to the Point of Beginning.

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

2. **Risk Management and Institutional Controls.** Environmental Management Consultants, LLC has performed a soil and groundwater investigation and risk assessment in accordance with 567 IAC 133. The site assessment identified contaminated conditions on the property which may present an unreasonable risk to public health and the environment if certain activities occur on the property. As such, the Director of the Department, pursuant to his authority under IC § 455B.103(7), has determined that an environment covenant is necessary to manage the risk of future exposure to the contamination by limiting specified activities at this property and establishing certain affirmative obligations.

3. **Reopening.** The signatories acknowledge that in the event that the activity and use limitations provided below fail to serve their intended purpose—including the prevention of exposure to contamination—could result in the Department reopening its review and regulatory oversight of the contaminant condition on the property as provided under the terms of this covenant, IC chapter 455I, and applicable Department administrative rules.

4. **Identity of Grantor(s)**

GRANTOR(S): DIAMOND OIL COMPANY

AGENCY: Iowa Department of Natural Resources

5. **Representations and Warranties.** The grantor(s) warrants to the other signatories to this covenant the following:

- a. The grantor[s] is/are the sole fee title owner[s] of the property;
- b. The grantor[s] 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;

6. **Running with the Land.** This environmental covenant is perpetual and runs with the land as provided in IC § 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 activity and use limitations:

- A. "Drinking water wells" as defined by Iowa Administrative Code Section 567-135.2 shall not be installed at the property.
- B. The property shall not be used as a "residential land-use area" as defined by Iowa Administrative Code Section 567-137.2.
- C. All future waterlines (main and service) on the property must be constructed of materials and gaskets that are impervious to petroleum chemicals.
- D. A soil assessment/soil management plan approved by the Department shall be required for any of the following activities or actions on the property:
 - Construction or demolition activities associated with subsurface building foundations (construction of at-grade buildings and above-ground building demolition or maintenance is permissible);
 - Large-scale ditching, draining, diking, filling, drilling, or excavating (routine maintenance activities are permissible, including but not limited to the following: minor grading; placement of gravel; paving; installation of spill pans; repair of surface water drains and culverts);
 - Removal of soil from the property; or
 - Construction activities which will materially change hydrogeologic conditions or will likely cause migration of contaminated groundwater.
- E. New construction of structures containing subsurface confined spaces on the property will require the usage of a vapor barrier or vapor mitigation system.

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 of these conditions or would reasonably be deemed to have 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 a 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 includes, 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. additional drilling,
- e. construction of soil boring and/or groundwater monitoring wells, and,
- f. other activities authorized or otherwise directed by the Department.

11. Groundwater Hazard Statement Notice. IC § 558.69 requires submission of a groundwater hazard statement and disclosure if "hazardous waste" exists on the property as defined in IC § 455B.411(3) or if the Department 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 Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under IC § 558.69 shall make reference to this environmental covenant in substantially the following form—filling in the blanks with the relevant and applicable details:

THE INTEREST CONVEYED IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED (____), RECORDED
IN THE DEED OR OFFICIAL RECORDS OF THE (____)
COUNTY RECORDER ON (____) IN (_____).

THE ENVIRONMENTAL COVENANT CONTAINS THE
FOLLOWING ACTIVITY AND USE LIMITATIONS:

- A. "Drinking water wells" as defined by Iowa Administrative Code Section 567-135.2 shall not be installed at the property.
- B. The property shall not be used as a "residential land-use area" as defined by Iowa Administrative Code Section 567-137.2.

- C. All future waterlines (main and service) on the property must be constructed of materials and gaskets that are impervious to petroleum chemicals.
- D. A soil assessment/soil management plan approved by the Department shall be required for any of the following activities or actions on the property:
 - Construction or demolition activities associated with subsurface building foundations (construction of at-grade buildings and above-ground building demolition or maintenance is permissible);
 - Large-scale ditching, draining, diking, filling, drilling, or excavating (routine maintenance activities are permissible, including but not limited to the following: minor grading; placement of gravel; paving; installation of spill pans; repair of surface water drains and culverts);
 - Removal of soil from the property; or
 - Construction activities which will materially change hydrogeologic conditions or will likely cause migration of contaminated groundwater.
- E. New construction of structures containing subsurface confined spaces on the property will require the usage of a vapor barrier or vapor mitigation system.

12. Modification and Termination. Modification or termination of the terms of this covenant shall comply with the standards in IC 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 IC § 455I.10(1)“c” in accordance with and subject to the provisions of IC § 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 in accordance with IC § 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 IC § 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[s] shall record the environmental covenant in the same manner as a deed to the property with the Polk 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 Polk County Recorder's Office.

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
6200 Park Avenue, Suite 200
Des Moines, IA 50321

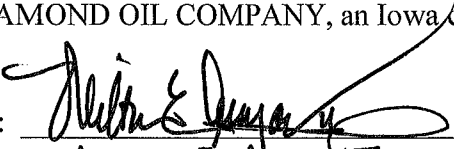
19. **Subordination and Consent.** By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property. The following persons have expressly consented and subordinated interests: None.

20. **Notice of Change in Ownership.** Grantor, any 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

DIAMOND OIL COMPANY, an Iowa corporation

By: 

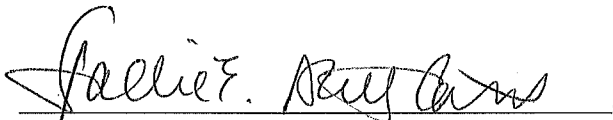
Name: MILTON E. AUNAN II

Title: VICE PRESIDENT

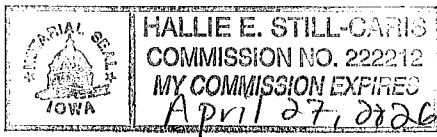
Signed this 29th day of JANUARY, 2025

State of IOWA)
County of POLK) ss.

This record was acknowledged before me on January 29th, 2025, by Milton E. Aunan II as Vice President of Diamond Oil Company, an Iowa corporation.


Notary Public

My Commission Expires: April 27, 2026



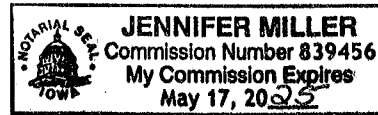
AGENCY:

Kayla Lyon Signed this 20th day of Jan, 2025.
Kayla Lyon
Director, Iowa Department of Natural Resources

State of Iowa)
County of Polk) ss.

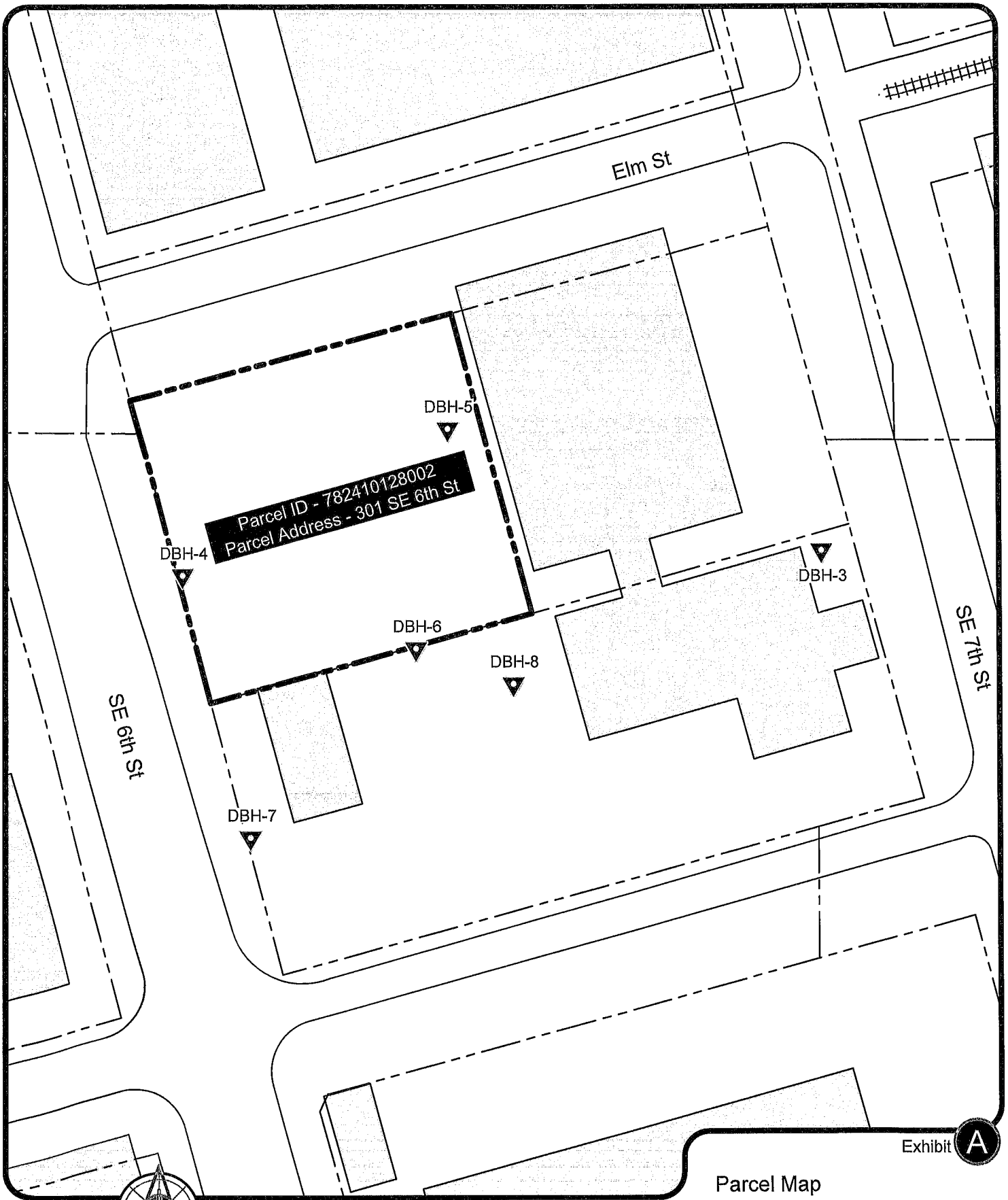
On this 30th day of January, 2025, before me personally appeared Kayla Lyon, known to me to be the ~~Acting~~ Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Jennifer Miller
Notary Public for State of Iowa



My Commission Expires: May 17, 2025

**EXHIBIT A
PARCEL MAP**



Exhibit

A

Parcel Map

Environmental Management Consultants

1400 Washington Ave., Suite 1, Evansville, IN 47714
(812) 424-7768 - emcevv.com

124061-20-130
301 E. 6th Street, Des Moines, Iowa
Environmental Restrictive Covenant
Drafted by AL on 1/10/2025

124061

Scale: 1"=60'

