



August 24, 2021

R. BRADLEY SKINNER
SKINNER LAW OFFICE
160 ADVENTURELAND DRIVE SUITE B
PO BOX 367
ALTOONA IA 50009

RE: Mid Iowa Plaza LLC
Administrative Consent Order (ACO) No. 2012-SW-18
77-SDP-59-06

Dear Mr. Skinner:

On August 11, 2021, DNR received the Groundwater Monitoring Report for the former Mid Iowa Plaza, LLC site as required in Administrative Consent Order #2012-SW-18 with the Department of Natural Resources (DNR).

The report states that increasing concentrations of strontium were measured in 2020 at downgradient wells MW-1 and MW-2. Additionally, the concentrations of several other parameters were either at or near historically high levels in 2020.

After review of the report, DNR has decided that if an Environmental Covenant (EC), as described in 567 Iowa Administrative Code Chapter 14, is placed on the property with the land use restrictions described in the following paragraph, sufficient environmental and human health protections would be in place to allow the ACO and the requirements therein to end.

The following minimum land use restrictions are necessary to achieve sufficient environmental and human health protections:

- (1) A restriction on Parcel S that requires continued maintenance of the soil cap in perpetuity and prohibits any disturbance or development of this parcel without explicit DNR approval to minimize future releases from the buried wastes,
- (2) A restriction that prohibits installation of a drinking water well on the entire property without DNR approval in order to prevent exposure to the contaminated groundwater present at the site outside of Parcel S, and
- (3) A requirement that the site be inspected biennially, with DNR reporting, that verifies continuing compliance with the property use and limitation requirements in the EC.

If the property owners do not choose to enact the EC described in this letter, DNR will require continued groundwater and surface water monitoring, and engineering inspection, as

conducted in 2020 because groundwater contamination has not stabilized as stipulated in article V.6 of the consent order.

For your information, attached to this letter is guidance on the submission of an approvable EC, as well as an example EC. Your consultant could assist in the EC preparation as they have become common tools used by the DNR in the solid waste, underground storage tank, and contaminated sites programs to address potential future exposures to legacy contamination.

Please respond to this letter by September 15, 2021.

If you have any questions, please contact me at (515) 689-6548 or mick.leat@dnr.iowa.gov.

Sincerely,

Michael B. "Mick" Leat
Land Quality Bureau

cc: Leah Calvert, PG
Evora Consulting
1801 Industrial Circle
West Des Moines, IA 50265

DNR Field Office #5

ATTACHMENT 1

IOWA ENVIRONMENTAL COVENANT SUBMISSION PROCESS TIPS

Environmental Covenants (ECs) are authorized pursuant to Iowa Code Chapter 455I. Administrative rules applicable to ECs are located in 567 Iowa Administrative Code Chapter 14. ECs are available for use in myriad ways, including as institutional controls at sites under the jurisdiction of the Department of Natural Resources' (DNR) Underground Storage Tank program, the Contaminated Sites Program, and the Solid Waste program.

Prior to submitting an EC draft for review by DNR professional staff, the submitting party should discuss whether an EC is a viable option—including whether the EC will provide the sought-after site classification when implemented—with the respective site's DNR project manager. Additionally, the submitting party should determine precisely which "activity and use limitations" must be included in the EC to address outstanding risks. The DNR project manager will be able to provide guidance on commonly-used limitation language.

Following this initial discussion with the DNR project manager, a party considering the use of an EC as an institutional control will submit a draft of the EC to both the DNR project manager and to DNR legal services for comment. This is not a requirement, but it is recommended as an EC with deficiencies or inaccuracies will be returned unsigned. The model covenants on the DNR website are intended to be self-explanatory; so, using these models as the EC template should help to eliminate most formatting and drafting issues.

If the draft EC is submitted to the DNR for review, the DNR project manager will review all aspects of the EC applicable to the property in question including whether the legal description is accurate and whether the limitations included adequately address known site risks. DNR legal will review the format of the draft EC, as well as whether the provided ownership documentation satisfies the requirement of 455I. All efforts will be made to provide comments within two weeks of receipt; however, this guideline will depend on staff workload at the time of receipt.

When the EC is ready for formal Department review and signature, the submitting party should provide a hard copy of the EC, along with all required supporting documentation to the project manager. Once the project manager has reviewed and approved the covenant's activities and use limitations, the EC will be transferred to DNR legal services bureau for final review prior to submission of the EC to the Director of the DNR for signature.

No parties should sign the EC before it has gone through the entire formal review process by the DNR and it has been signed by the Director. All other parties to the EC should sign the EC *once it is returned after the Director has signed it*. The EC is ready to be recorded when all signatories have signed and notarized the document.

Once recorded, the submitting party must mail or hand-deliver a hard copy of the recorded EC to the DNR project manager.

ATTACHMENT 2 - EXAMPLE

IOWA SOLID WASTE PROGRAM ENVIRONMENTAL COVENANT

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

{INSERT name(s) of fee title owners of affected property}, hereafter “grantor(s)”, {INSERT name(s) of all holder(s)}, hereafter “holder(s),” and the Iowa Department of Natural Resources (DNR) 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 DNR in Iowa Code (IC) chapter 455I, § 455B.103(7), and DNR rules in 567 Iowa Administrative Code.

1. **Affected Property.** The grantor(s) is/are the fee title owner(s) of the property located at {INSERT address}. The affected property is legally described as: {INSERT the legal description of the affected property}.

Hereinafter, the affected property will be referred to as “the property.”

2. **Risk Management and Institutional Controls.**

In accordance with Chapter 455B of the Iowa Code, DNR permitted municipal solid wastes to be disposed on the affected property under solid waste disposal project permit {INSERT permit number} issued to {INSERT permit holder}.

Permit, investigations and reports are available for review in the DNR Solid Waste files under permit {INSERT permit number}.

Presence of buried municipal solid wastes on the property may present a risk to public health and the environment if certain activities occur on the property. As such, the Director, pursuant to her authority under IC § 455B.103(7), has determined that an environmental covenant is necessary to manage risk of future exposure by limiting specified activities on the property and establishing affirmative obligations.

{INSERT the following alternative paragraph if the contamination source is not the property.} In response to a release of {INSERT contaminant} on an adjacent property (the source site) located at {INSERT address of source site}, {INSERT name of the party requesting that grantor enter into this covenant} has requested that the grantor execute this environmental covenant in order to satisfy the regulatory requirements applicable to the source site under 567 IAC 113. This environmental covenant is an institutional control which will allow the source site to obtain the {No Further Action Classification or low-risk classification} for the entire site or for certain exposure pathways.

3. **Reopening.** The signatories acknowledge that in the event that activity and use limitations provided in this environmental covenant fail to serve their intended purpose - including prevention of exposure to contamination - DNR may reopen 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 DNR administrative rules.
4. **Identity of Grantor(s) and Holder(s).**

GRANTOR(S): {INSERT name of each fee title holder}

HOLDERS: {INSERT each person signing the covenant as a holder and describe their relationship to the property. A grantor can be a holder as well. Other persons may include contract buyers, lessees, mortgage holders, municipalities, owners of the source site, and other interested parties.}

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;
 - c. The grantor(s) has/have 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 attached as Exhibit {*INSERT Exhibit*}. {*Consult DNR guidance to assure that all contract buyers, mortgagees, lessees and other consensual lienholders either sign this instrument or sign a separate DNR approved subordination and consent agreement.*}
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. Construction of drinking water wells within the boundaries of the property shall require approval by DNR. “Drinking water wells” are defined as any groundwater wells used as a source of drinking water by humans and groundwater wells used primarily for production of food or medicine for human consumption in facilities characterized with standard industrial codes group 283 for drugs and 20 for foods.
 - b. No deposited waste shall be excavated, disrupted, or removed from the site without first providing written notice to DNR.
 - c. The soil cover and associated vegetation on Area S must be maintained by the property owner and the construction of any structures on this parcel must be approved by DNR.
 - d. On a biennial basis, the site shall be inspected, by a professional engineer licensed in the State of Iowa, to verify that the property activity and use limitations enumerated in this covenant have been complied with. A report of this inspection shall be sent to the DNR’s Solid Waste Section within 30 days of completion.

{INSERT any discretionary provisions applicable to designated signatories, future fee title owners, contract buyers, lessees and other designated transferees of interests in the property. This may include provisions to establish affirmative obligations to notify the DNR regarding changes in use, building permits, etc.}

8. **Notice of Non-Compliance.** Any property owner or subsequent transferee of an interest in the property shall notify DNR 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 to DNR or any authorized representative of DNR, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. DNR, 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 DNR.

Access is also granted to {INSERT name specific persons who are granted access rights and the rationale for allowing access}.

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 DNR 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 DNR 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 {date}, RECORDED IN THE DEED OR OFFICIAL
RECORDS OF THE {county name} COUNTY RECORDER ON {date} IN
{document, book and page, or parcel number}.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY
AND USE LIMITATIONS: {INSERT the activity and use restrictions from
section seven (7) here.}

12. **Modification and Termination.** Modification or termination of terms of this covenant shall comply with standards in IC chapter 455I and applicable DNR administrative rules. Terms of this

environmental covenant may be modified or terminated by written consent of the Director of the DNR, 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.** 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. {DISCRETIONARY PARAGRAPH – Additionally, the signatories to this covenant authorize the following person(s) the right to enforce the terms of this covenant as provided in IC § 455I.11(1)"c": {INSERT name of any additional parties with enforcement power.}}
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 DNR 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 {INSERT name} 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 {INSERT name} County Recorder's Office.
18. **Notice.** Unless otherwise notified in writing by the DNR, any document or communication required by this environmental covenant shall be submitted to:

Iowa Department of Natural Resources
Solid Waste Section Supervisor
Wallace State Office Building
502 E 9th St
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. The following persons have expressly consented and subordinated interests:

{INSERT: Identify persons and entities that are consenting and subordinating their interests such as mortgagees and other consensual lienholders, lessees, etc. Identify the nature of the subordinated interest. If no subordinated interest, enter "None."}

20. {[DISCRETIONARY PARAGRAPH]: **Notice of Change in 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

GRANTORS

{INSERT signature blocks and appropriate acknowledgements for all grantors. Each signature must be separately notarized.}

HOLDERS:

{INSERT signature blocks and appropriate acknowledgements for all holders. Each signature must be separately notarized.}

AGENCY:

Signed this _____ day of _____, 20_____
Kayla Lyon
Director, Iowa Department of Natural Resources

State of _____
County of _____ §

On this _____ day of _____, 20_____, before me personally appeared _____, known to me to be the Acting Director of the Iowa Department of _____ 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.

Notary Public for State of Iowa

SUBORDINATED INTERESTS:

{INSERT signature blocks and appropriate acknowledgements for all subordinated interests - If none then strike this heading and section.}

Exhibit A
Plat Map

Provide map that exhibits the affected property and any restricted sub-areas as needed.