



Con 12-1-1 Doc # 210

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

CERTIFIED MAIL

April 24, 2007

DAVE KLACKAU, DIRECTOR OF MARKETING AND OPERATIONS
ENVIRONMENTAL RECLAMATION & RECYCLING, LLC.
1422 EAST SCOTT AVENUE
DES MOINES, IA 50317

**Re: Notice of Intent to Rescind Beneficial Use Determination
IDNR ID #77-SDP-59-06X**

Dear Mr. Klackau:

The following correspondence is notice of the department's intent to rescind Environmental Reclamation & Recycling, LLC's (ERR) Beneficial Use Determination for the fill project located at Mid-Iowa Plaza, 6003 N.E. 72nd Street, Bondurant, IA. Per the April 20, 2007 letter submitted by Barker Lemar Engineering Consultants (Barker Lemar) on behalf of ERR, the department understands that it is ERR's intent to remove all stockpiled material from the site. Under separate cover, the department will allow ERR thirty (30) days to submit a detailed plan for final deposition of the stockpiled material.

This notice is a result of ERR's substantial non-compliance with provisions outlined in the department's November 7, 2006 beneficial use determination approval (enclosed). The department has provided ERR multiple opportunities to address all non-compliance issues over the past quarter. The department has routinely notified ERR of their non-compliance through written correspondence and multiple site visits to the beneficial use site and their processing facility located at 1422 East Scott Avenue, Des Moines, IA 50317. The following beneficial use site non-compliance issues continue:

- 1) Fill material not meeting approval specifications
- 2) Exceeded January 1, 2007 project timeframe
- 3) Fill material not mixed/layered with clean soil prior to disposition
- 4) No clean soil stockpiled onsite to facilitate mixing/layering prior to disposition
- 5) Site access not restricted
- 6) Excessive litter migrating off-site
- 7) Delinquent Annual Solid Waste By-Product Management Plan

- 8) Beneficial use justification centered on raising elevation to that of surround areas for future commercial development. Current material consistency will not allow development.

As a result, beneficial use determination #77-SDP-59-06X is hereby rescinded, effective thirty days (30) from the date of this notice unless you file an appeal prior to the expiration of the thirty (30) day period ending May 24, 2007. By rescinding this beneficial use determination, all stockpiled material must be removed from the site. If you believe that this action is not warranted then you may submit an appeal, which shall include evidence that the project is in compliance with the approved beneficial use determination and all other local, state and federal statutes, ordinances, and rules.

An appeal of this notice of rescission should be sent to the Director, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, IA 50319.

If you have questions or need additional information, please contact me at (515) 281-8927 or Brian.Tormey@dnr.state.ia.us.

Sincerely,



Brian Tormey, Bureau Chief
Energy and Waste Management Bureau

Enclosure

Cc: IDNR Field Office # 5, Des Moines, IA
Jon Tack, IDNR Legal Services
Tracy Lemar, Barker Lemar Engineering Consultants, 1801 Industrial Circle, West Des Moines, IA 50265
James Myers, Environmental Reclamation & Recycling, LLC., 1422 East Scott Avenue, Des Moines, IA 50317
Kurt Pagliai, Environmental Reclamation & Recycling, LLC., 1422 East Scott Avenue, Des Moines, IA 50317
Mark Arentsen, City Administrator, City of Bondurant, 200 Second Street N.E., Bondurant, IA 50035



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

November 7, 2006

JAMES MYERS, MANAGER
ENVIRONMENTAL RECLAMATION & RECYCLING, LLC
6600 WESTOWN PARKWAY
WEST DES MOINES, IA 50266

**Re: Beneficial Use Determination
Environmental Reclamation & Recycling, LLC (ERR) Fill Project
Fill Project Location at Mid-Iowa Plaza 6003 NE 72nd Street, Bondurant, IA
IDNR ID # 77-SDP- 59 -06X**

Dear Mr. Myers:

This correspondence serves as the Department's notice of approval to beneficially use material that is derived from screening construction and demolition waste accepted at ERR for non-structural fill at the abandoned truckstop located at the Bondurant property address above. This approval shall remain in effect for one (1) year until November 1, 2007 or until the project is complete, whichever occurs first.

This determination is contingent upon compliance with the following requirements:

1. The existing stockpile of processed C & D material being stored at the project location must be screened to an acceptable size of 1 ½ inch or less and either used beneficially on site in accordance with this determination, returned to the ERR C & D processing facility for further processing or properly disposed of by January 1, 2007. Once the existing stockpile is removed, no future stockpiling shall occur at the site without prior approval from the department and local officials. The estimated volume of material for the proposed fill area is approximately 151,200 cubic yards. Any additional material needed for fill beyond what is currently being stockpiled must be incorporated immediately at the fill project location.
2. The fill material shall be managed in accordance with the October 3, 2006 justification and general scope of work submittal. Only material that is screened and separated from the C & D material accepted at the ERR C & D processing facility to a size of 1 ½ inch or less is approved under this authorization for fill material. The majority of the material shall consist of soil, sand, rubble and may contain minimal amounts (less than 1 ½ inch in size) of other organic and inorganic materials normally received at the ERR C & D processing facility. The fill material shall be consistent with the photos in Appendix A attached to this determination.
3. Filling operations for this beneficial use determination shall take place in the area shown on the site map in Appendix B and shall be limited to the property address referenced above.

and legally known as EX LYG N OF LN BEG 1315.51F S & 60F E NW COR THN E 34.81F SE 68.83F E 825.74F NE 143.14F-BEG 811.5F S OF NW COR THN E 1105F S610.2F SWLY ON N ROW LN INTST HWY TO W LN THN N TO POB NW 1/4N OF INTST HWY LESS RD SEC 7-79-22 and EX W 85F- w 1105F S 412.89F NW1/4 NW1/4 LESS SEC 7-79-22. Beneficial use of the referenced material for any purpose or at any other location other than stated in this authorization must receive prior approval from the Department.

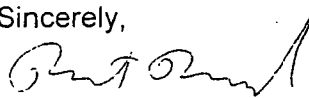
4. Access onto the property shall be controlled (fencing, signage, etc.) to discourage illegal dumping of solid waste at the site by unauthorized persons. Any illegal dumping that may occur shall be addressed immediately and disposed of properly.
5. The leachate characteristics of the screened material, measured by the synthetic precipitation leaching procedure (SPLP), shall be less than or equal to ten times the maximum contaminant levels (MCL) for drinking water. Total metals testing results shall be consistent with the Department's statewide standards for soil pursuant to 567-Chapter 137. Arsenic levels shall be consistent with the statewide standards for soil or the naturally occurring arsenic levels of the soil, whichever are greater. Testing of the screened material using the SPLP and total metals analysis shall be done on a quarterly basis beginning January 1, 2007. Test results shall be submitted to the Department's Main Office in Des Moines, IA and Field Office #5 in Des Moines, IA within 30 days of each quarter.
6. The screened material must be mixed with clean soil in a 2:1 ratio (screened material:clean soil) before final disposition or placed in alternating layers of no more than twelve inches deep of screened material then applicable ratio of clean fill dirt. Total material, including clean soil, to be used as fill shall not exceed 151,200 cubic yards. A daily log should be kept of the amounts of fill material and soil used at the site. This is necessary in order to ensure compliance with the 2:1 mix requirement and the 151,200 cubic yards fill material/soil deposition limit. These records must be available upon request.
7. Adequate clean soil must be available at all times and a stockpile must be established on-site for use during inclement weather and when the ground freezes.
8. Upon completion of the fill area, it shall be properly graded, vegetated, and erosion controlled. The final fill grade site elevation of screened fill material shall be terminated at two (2) feet below the natural ground surface elevation. The final two (2) feet of fill shall consist of clean topsoil that can sustain growing media as final cover to reclaim the area.
9. All necessary National Pollution Discharge Elimination (NPDES) permits for stormwater management and air quality permits for dust control must be obtained prior to commencing filling operations.
10. Temporary measures, including the use of terraces, silt fences and geofabrics shall be employed as necessary to control erosion. Site erosion that occurs during filling and after completion of final cover shall be promptly corrected.
11. Record-keeping and reporting shall be followed in accordance with Iowa Administrative Code (IAC) 567 Chapter 108.7. This includes submittal of an annual Solid By-product Management Plan pursuant to subrule 108.6(2). Analytical results, including the synthetic precipitation leaching procedure (SPLP) and RCRA Total Metals, including Thallium, of the screened material that is beneficially used as fill shall be submitted with the annual Solid By-product Management Plan within 60 days of the end of the calendar year. The report shall

be submitted to the Department's Main Office in Des Moines, IA and Field Office #5 in Des Moines, IA.

12. The Department's Main Office in Des Moines, IA and Field Office #5 in Des Moines, IA shall be notified in writing upon completion of the project or within thirty (30) days prior to November 1, 2007, whichever occurs first, so that project operations may be observed to confirm compliance with the conditions defined under this authorization.

Please note that the issuance of this beneficial use determination does not relieve ERR from the responsibility of complying with all other local, state and federal statutes, ordinances and rules or other applicable requirements. Failure to comply shall result in revocation of this approval and may result in legal enforcement action. If you have any questions regarding this determination, you may contact me at (515) 281-6807 or alex.moon@dnr.state.ia.us.

Sincerely,

 for Alex Moon

Alex Moon
Solid Waste Planning, Permitting & Engineering Services
Energy & Waste Management Bureau

cc: Iowa DNR Field Office #5, Des Moines, IA
Brad Skinner, Skinner Law office, 204 8th Street S.E., P.O. Box 367, Altoona, IA 50009
Mark Arentsen, City Administrator, City of Bondurant, 200 Second Street, NE, Bondurant, Iowa 50035

Appendix A

