

POSTED: 8/20/2014

INSTITUTIONAL CONTROLS

Environmental Covenants

To expedite review and approval, parties are encouraged to first discuss the types of activity and use limitations and the objectives of the environmental covenant with the LUST site project manager. A draft of the environmental covenant without signatures should then be submitted, preferably by email as an MS Word document, to Department legal counsel for review and comment. Other formats, such as pdf or hardcopy, do not allow for comments to be inserted into the text and are more difficult to circulate for internal DNR review. As such, a substantially longer review time should be expected for non-Word drafts.

Once the Department legal counsel has reviewed and approved the draft of the environmental covenant, a final document can be submitted for signature by the Department. After all signatories have signed, the final document can be filed with the County Recorder's office in the County in which the site is located.

A file-stamped copy of the recorded document *must* be provided to the Department for the environmental covenant to be considered effective. Pathway reclassifications based on an environmental covenant should not be requested and *must not* be indicated in the report until the environmental covenant has been filed with the County Recorder.

Local Ordinance

The following is a list of common errors we are seeing with the documentation provided to use a local ordinance as an institutional control for the groundwater ingestion pathways:

1. The local or county authority certification letter is not printed on the official letterhead of the signee. Certification letters *must* be printed on official letterhead.
2. The signee's name and official title is not printed below their signature. The signee's official title *must* be printed below their signature.
3. The local and county certification letters for granular or nongranular bedrock sites do not identify the area of concern for wells as 1,000 feet from the source. The local and county authority template letters provided online identify the area of concern as the area presently affected by contaminated groundwater (actual plume) and the area which potentially could be contaminated based on modeling (simulated plume). However, this portion of the template language is not applicable to granular or nongranular bedrock sites, where the Tier 2 assessment is conducted using special bedrock procedures. For granular or non-granular bedrock sites, the template letter language *must* be revised to identify the area of concern as 1,000 feet from the source instead of the area of the actual and simulated plumes.
4. Reclassification of the groundwater ingestion pathway is indicated in the report prior to Department's review of the institutional control documentation. Reclassification of the groundwater ingestion pathway should not be requested and *must not* be indicated in the report until the Department has reviewed and approved the institutional control documentation.

Effective September 1, 2014, documentation provided to use a local ordinance as an institutional control for the groundwater ingestion pathways will no longer be accepted if it does not meet all the requirements, including those discussed in this posting.

Contact David Scott at (515) 725-8239 or david.scott@dnr.iowa.gov if you have a question regarding institutional controls.