Iowa DNR Guidance on Environmental Covenants for Closed Landfills

This document provides Iowa Department of Natural Resources (DNR) guidance regarding the use of Environmental Covenants to transition a sanitary landfill site from being subject to a closure permit to closure permit rescission and final site use.

Closure permits, rescinding permits and requirements for post-closure care:
The initial term of most closure permits currently in force in Iowa is thirty years from the date of initial closure.

567 Iowa Administrative Code (IAC) 101.4(2) establishes that, upon request of a closure permit permittee, if the DNR finds that the permittee has completed "all required post-closure activity" and the site "no longer presents a significant risk to human health or the environment" then the DNR "shall issue written notification that a closure permit is no longer required for the facility." In the alternative, the DNR has the latitude to lengthen the closure permit period based on actual, or potential for, contamination at the site. This authorization is provided in Iowa Code 455B.304(6) and 567 IAC 101.113(2)"b".

Note that parties with closure permits are not obligated to request permit rescission. If permit rescission is not sought, DNR will require the permittee to continue to comply with permit terms, and may reissue a permit for an extended period as authorized by law. If closure permit holders do not wish to rescind the closure permit, they should contact DNR.

Use of Environmental Covenants:
Environmental Covenants are authorized pursuant to Iowa Code Chapter 455I.

Parties seeking to end post-closure care requirements by requesting that their closure permit be rescinded must complete an environmental covenant and attach the covenant to the property deed. In addition to the fact that doing so will fulfill the required "notation on the deed in perpetuity" as noted in 567 IAC 101.112(9), a covenant may include certain DNR-required use restrictions for the property that will prevent such things as the construction of drinking water wells or certain construction activities. Other affirmative obligations may also be included in a covenant, such as maintaining plant or grass growth on the cap. The restrictive provisions of the covenant will be based on site-specific factors and will be developed jointly by the permittee and the DNR.

Covenants may also be used at sites where there certain risks remain to human health or the environment but the permittee still wishes to have the closure permit rescinded. In such cases, rescission may be contingent upon attaching a covenant to the property with more detailed site use restrictions and affirmative obligations of owners and future owners. The terms of such covenants would, again, be developed with DNR oversight and be based on DNR approval of the terms.

Environmental Covenant Development and Submission:
The property owner and the DNR must agree on the terms of any covenant and must both sign the covenant for it to be considered valid by the DNR. Parties are expected to use the model Environmental Covenant developed by the DNR. Since most of the terms in the model are based on the Iowa Code, the DNR is unlikely to agree to changes to the basic terms of the model.

Entities are encouraged to discuss the terms of the covenant with the DNR project manager in advance of any submittal to determine the types of activity and use limitations that are appropriate and what objectives this particular institutional control is intended to satisfy. It is preferable that activity and use limitation language be developed in

consultation with the DNR project manager and DNR legal counsel *before* submittal of a draft covenant. DNR staff will provide examples of acceptable language for use in the covenant based on site-specific factors.

Entities are required to submit certain basic supporting documentation as provided below in order for the DNR to review and approve the covenant.

1. **Property interest certification**. The preparer should submit a letter documenting that sufficient title and lien research has been conducted to identify all necessary legal and equitable interests and that they have given preliminary consent. This would include at a minimum all fee title owners by deed, contract sellers, buyers and assignees, mortgagees, lessees and other consensual lienholders.

2. **Proof of ownership.** Documentation of the legal capacity of all signatories is required. This will usually be in the form of a deed or contract for deed, mortgage instrument, lease or other consensual lien instruments which document the legal capacity as an individual or other entity, such as a partnership, governmental body, corporation or other business organization.

3. **Plat Map or other appropriate diagram**. A map, which clearly depicts the boundaries of the property as legally, described in the covenant (such as a plat map) is required. The purpose of this map is to allow the DNR to confirm that the area legally described corresponds to the restricted area, which is depicted in the technical reports in the project file. The map should have sufficient legal description information to easily allow the reviewer to trace the boundaries of the site as legally described. It is recommended that the preparer highlight the boundaries of the legally described property subject to the covenant. If a plat map is not practical, a diagram showing property boundaries in relationship to a larger parcel or adjoining parcels with the legal description outlined may be submitted. The preparer needs to certify that the depicted area corresponds to the area legally described in the covenant.

Once a covenant has been approved in principle, staff from DNR will perform a site inspection to verify that all potential concerns are taken care of and that no outstanding issues exist.

When the covenant is ready for formal DNR review and signature, the submitting party should provide a hard copy of the covenant, 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 covenant will be transferred to DNR legal services bureau for final review prior to submission to the Director of the DNR for signature.

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

Once the document is signed by the Director, the permittee, and any other party to the covenant, it must be recorded with the applicable county. Once recorded, the submitting party must mail or hand-deliver a hard copy of the recorded covenant to the DNR project manager. Upon receipt of the recorded covenant, the project manager will then move forward with releasing the permittee from the requirements of the relevant closure permit and issue a letter to this effect.

Benefits of an Environmental Covenant

The DNR believes that this policy addresses the concerns encountered in the implementation of 567 IAC 101.4(2) and will continue to provide adequate protection of public health, safety and the environment. Closed landfills *must* have attached a covenant to the property in order to rescind a closure permit. This will ensure, among other things, that current and/or future property owners, adjacent landowners, and the environment are reasonably protected.