



On this day, JUNE 15, 2011,

the U.S. Environmental Protection Agency (EPA) Determines that

*White Farm Equipment Co. Dump Site
Is Ready for EPA-Approved
Recreational, Commercial, Industrial and Other Uses*

*Cecilia Tapia, Director
Superfund Division
EPA Region 7*

*Roger L. Lande, Director
Iowa Department of
Natural Resources*

This Ready for Reuse (RfR) Determination is for the White Farm Equipment Co. Dump Site (Site) owned by H.E. Construction, Inc. located near Charles City, Floyd County, Iowa. This RfR Determination is based on limitations and requirements established in United States Environmental Protection Agency (EPA) decision documents for the Site, including the Record of Decision (ROD), Explanation of Significant Differences (ESD) and 2009 Environmental Covenant in addition to information regarding the cleanup status of the Site provided by the Five-Year Reviews (1999, 2004 and 2009). EPA has determined that the unacceptable levels of risk to current and future users of the Site have been abated for onsite workers, residential adults and children. This RfR Determination provides that EPA has made a technical determination that the Site is ready for EPA-approved recreational, commercial, industrial and other uses and the Site's remedy will remain protective of human health and the environment, subject to operation and maintenance and limitations as specified in the ROD, ESD and 2009 Environmental Covenant. The 2009 Environmental Covenant has been put in place and is included in Appendix B of this RfR Determination. Additional information regarding the use limitations can be found in Section V of the attached RfR Determination.

Limitations on Site uses include the following: no wells can be used for drinking or irrigation purposes on the property; the soil cap must be maintained and cannot be disturbed unless simple fixes are being made to existing fences or EPA has given permission; prior written approval by EPA is required before the property may be used; and fences and signs around the Site must be maintained unless EPA determines they are no longer necessary.

This RfR Determination is an environmental status report and does not have any legally binding effect, nor does it expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits of any party. EPA assumes no responsibility for reuse activities or for any possible or potential harm that might result from reuse activities. EPA retains any and all rights and authorities it has, including but not limited to legal, equitable, or administrative rights. EPA specifically retains any and all rights and authorities it has to conduct, direct, oversee and/or require environmental response actions in connection with the Site, including instances when new or additional information has been discovered regarding the contamination or conditions at the Site that indicate that the remedy and/or the conditions at the Site are no longer protective of human health or the environment for the uses identified in the RfR Determination.

The types of uses identified as protective in this RfR Determination remain subject to (i) applicable federal, state and local regulation, and to (ii) title documents, including but not limited to easements, restrictions and institutional controls.

Table of Contents

I.	Executive Summary	1
II.	Site and Parcel Location.....	3
III.	Site Summary	5
	<i>Site and Contaminant History</i>	5
	<i>Summary of Cleanup Activities</i>	5
	<i>Redevelopment/Reuse History</i>	8
IV.	U.S. EPA’s Basis for Ready for Reuse (RfR) Determination.....	8
	<i>Background</i>	8
	<i>Description of Risks</i>	9
V.	Ongoing Limitations and Responsibilities Previously Established by U.S. EPA.....	10
	<i>Institutional and Engineering Controls</i>	10
	<i>Operations and Maintenance Requirements</i>	10
VI.	Provisos	11

List of Exhibits

Exhibit 1:	Site Vicinity Map of the White Farm Equipment Co. Dump Site.....	3
Exhibit 2:	White Farm Equipment Co. Dump Aerial Photograph with Tax Parcel.....	4
Exhibit 3:	Timeline of EPA Activities Performed to Date at the White Farm Equipment Co. Dump Site	6
Exhibit 4:	Summary of Baseline Risks at the Site.....	9

List of Appendices

APPENDIX A:	Abbreviations and Acronyms	A-1
APPENDIX B:	Environmental Covenant.....	B-1

I. Executive Summary

This Ready for Reuse Determination (RfR Determination) is for the White Farm Equipment Co. Dump Superfund site (“Site”) located near Charles City, Floyd County, Iowa. The Site is located on tax parcel 073645100400, which comprises just over 15 acres.

The conditions summarized in this RfR Determination are based on limitations and requirements established in United States Environmental Protection Agency (EPA) decision documents for the Site including the Record of Decision (ROD) and Explanation of Significant Differences (ESD), in addition to information regarding the cleanup status of the Site provided by the Five-Year Reviews (1999, 2004 and 2009). EPA has made a technical determination that the Site is ready for EPA-approved recreational, commercial, industrial and other uses and that the Site’s remedy will remain protective of human health and the environment, subject to operation and maintenance of the remedy and the limitations identified below, as specified in the ROD, ESD, and 2009 Environmental Covenant. The following guidelines were paraphrased from the 2009 Environmental Covenant:

- No wells can be used for drinking or irrigation purposes on the property;
- The soil cap must be maintained and cannot be disturbed unless simple fixes are being made to existing fences or EPA has given permission;
- Prior written approval by EPA is required before the property may be used to ensure the remedy stays protective, but, EPA anticipates that many recreational, commercial, industrial and other uses will be appropriate; and
- Fences and signs that limit the Site’s use must be posted around the Site and maintained unless EPA determines they are no longer necessary.

The 2009 Environmental Covenant has been put in place and is included in Appendix B of this RfR Determination. Additional information regarding the restrictions described above can be found in Section V of this RfR Determination.

Requirements and instructions regarding operation and maintenance of the Site’s remedy are described in the Site’s Inspection and Maintenance Plan. Responsibility for ensuring implementation of this plan as well as institutional controls (use limitations) falls to the Site’s owner, H.E. Construction, Inc. (current owner), EPA, and the Iowa Department of Natural Resources (IDNR). EPA and IDNR will continue to coordinate operation and maintenance activities as needed and will coordinate five-year reviews at the Site. The components of the remedy requiring ongoing operation and maintenance activities are the Site’s cap, ground water monitoring wells, drainage facilities, storm water retention areas, access road and perimeter fencing, gates and signs. Ground water monitoring at the Site will continue during the Five Year Review.

As part of the remedial investigation, EPA conducted a baseline risk assessment (BLRA) of human and environmental risks at the Site. The BLRA evaluated potential exposure pathways to onsite workers, residential adults and children, and ecological receptors in site surface water drainage areas. Unacceptable risks identified for the Site included human exposure to benzene in

ground water and lead in the soil and landfill materials. Compounds in the landfill material did not pose significant carcinogenic risks. Although offsite concentrations of lead in surface water drainage paths did not indicate any threats to human health or the environment at the time of the BLRA, they did demonstrate that offsite transport via runoff was occurring, resulting in a potential future risk to wetlands adjacent to the site. In the Site's ROD, EPA selected response actions to manage and reduce these risks. With the completion of the response actions required by the ROD, the Site's remedy has attained the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) cleanup goals and remedial action objectives for the Site.

As a result, based on information available as of this date, EPA has determined that while contaminants remain in the landfill material at the Site, the unacceptable levels of risk to current and future users of the Site have been abated. The Site is ready for EPA-approved recreational, commercial, industrial and other uses and the Site's remedy will remain protective of human health and the environment, subject to operation and maintenance and limitations as specified in the ROD and Environmental Covenant. Both EPA and the State of Iowa are signatories on this RfR Determination.

U.S. EPA Region 7 issued this Ready for Reuse Determination, effective 6/15, 2011.

By:

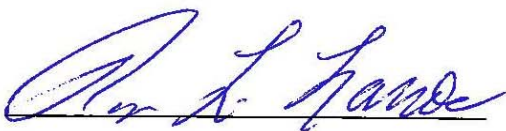


Cecilia Tapia, Director
Superfund Division
United States Environmental Protection Agency
Region 7

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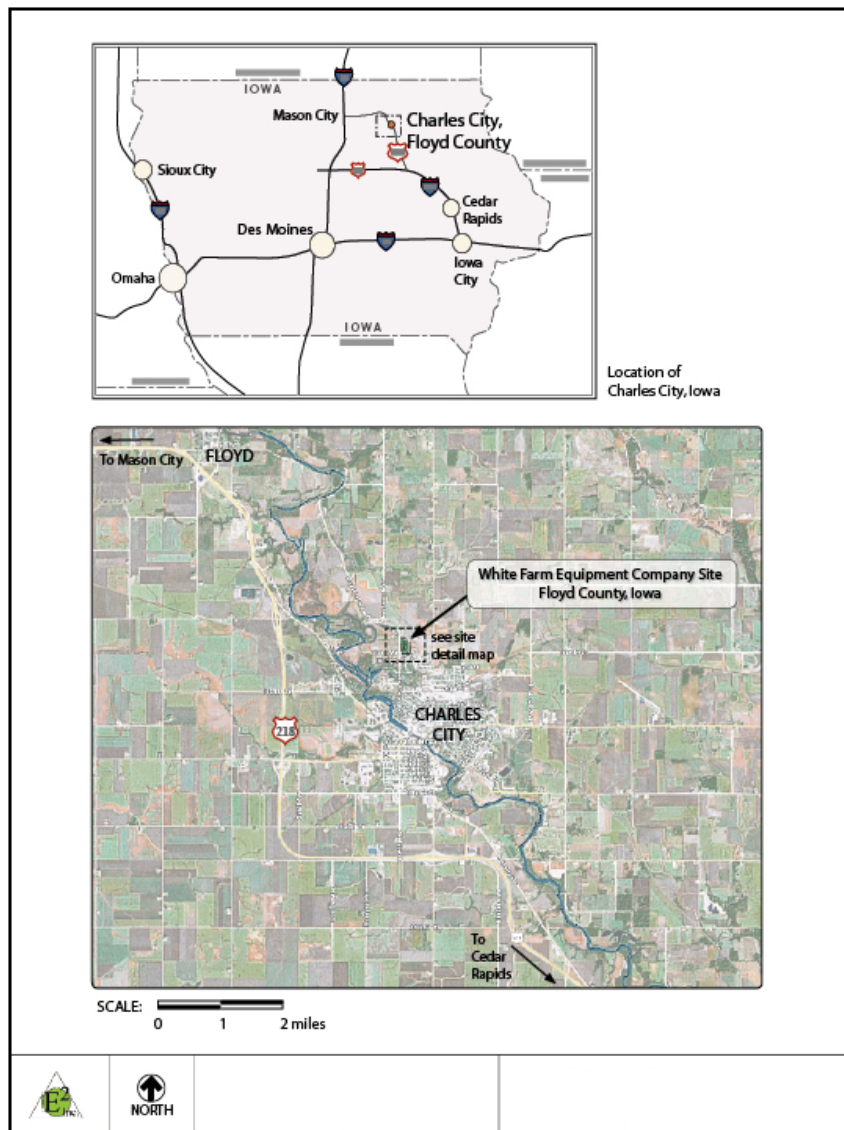
Roger L. Lande, Director
Iowa Department of Natural Resources

Documents pertaining to the Site and the RfR Determination are part of the Administrative Record for the Site, which is available for review at the Charles City Public Library in Charles City, IA, and at U.S. EPA Region 7 offices in Kansas City, KS. For additional information, contact Shelley Brodie, the site's Remedial Project Manager (RPM), at (913) 551-7706 or brodie.shelley@epa.gov.

II. Site and Parcel Location

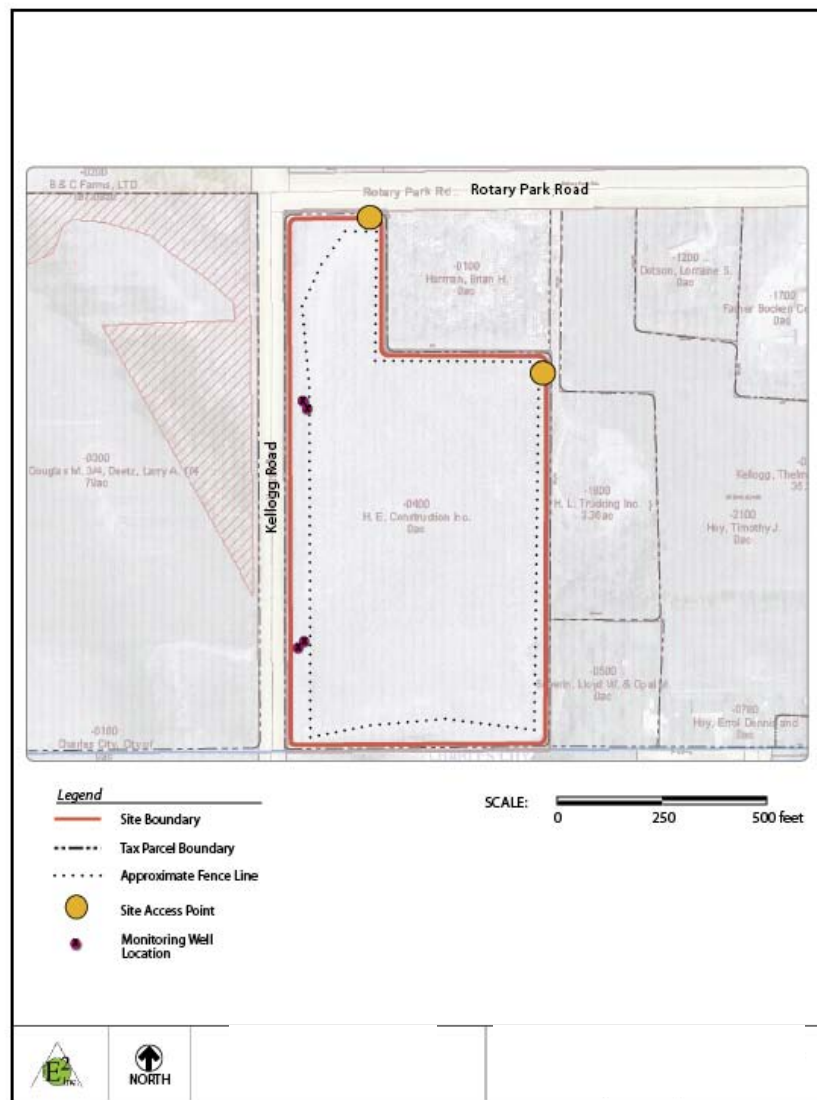
The White Farm Equipment Co. Dump Site is located along the northern edge of Charles City, Floyd County, Iowa, at 43.085 latitude and 92.680781 longitude. The Site lies at the southwest corner of Kellogg Avenue and Rotary Park Road. The Site is located on tax parcel 073645100400, which is just over 15 acres. Rotary Park Road is located on the western half of the Site's northern boundary. The Site's entire western boundary is along Kellogg Avenue. Surrounding land use is mainly agricultural with some residential and commercial uses. Exhibit 1 shows a labeled aerial photograph of the Site and surrounding areas.

Exhibit 1: Site Vicinity Map of the White Farm Equipment Co. Dump Site



The Site is located near a former oxbow lake formed by a cutoff meander of the Cedar River. Wetlands remnants of the oxbow lake exist to the northwest and south of the Site. A junkyard is located on an adjacent property to the northeast portion of the landfill. The Site is currently unoccupied and covered by a vegetated soil cap, which is sloped to provide runoff. The capped area makes up the majority of the Site. Water runoff from the Site drains to the wetlands to the northwest and south of the Site and ultimately, the Cedar River. The Cedar River is approximately 2,200 feet west-southwest of the Site. The Site is zoned for residential uses. Exhibit 2 shows the tax parcel—outlined in red—that is included in whole at the White Farm Equipment Co. Dump site.

Exhibit 2: White Farm Equipment Co. Dump Aerial Photograph with Tax Parcel Overlay



III. Site Summary

Site and Contaminant History

Various companies have manufactured tractors and other farm equipment near the Site since the early 1900s. Starting in the 1920s, the White Farm Equipment Company operations generated foundry sand, sludges and dust from air pollution control equipment. Since 1971, the plant intermittently disposed of foundry sands, baghouse dust and other industrial wastes at the Site. White Farm Equipment Company operated this disposal site on land leased from H.E. Construction Company until White Farm Equipment Company filed for bankruptcy in 1980. Allied Products Company subsequently purchased the White Farm Equipment Company Operations in 1986.

In 1984, the Iowa Department of Environmental Quality (IDEQ) required White Farm Equipment Company to install four ground water monitoring wells at the Site to determine whether adverse environmental impacts had occurred as a result of dumping activities at the Site. White Farm Equipment Company monitored these wells on a semi-annual schedule for potential Site contaminants, including lead, zinc and trichloroethylene (TCE). This sampling effort found no major ground water impacts from potential contaminants at the Site.

In 1985, EPA performed a preliminary assessment at the Site. The assessment suggested that lead, cadmium and phenols may be among the contaminants of concern at the Site. In 1986, EPA conducted a site inspection and collected samples. The site inspection documented releases of lead and chromium to the shallow aquifer in close proximity to the Charles City Municipal Wells. As a result of the investigation, EPA proposed the Site for inclusion on the National Priorities List (NPL) in June 1988. On October 5, 1988, EPA inspected the White Farm facility. As part of this inspection, EPA examined the materials that were continuing to be disposed of at the landfill. This inspection concluded that no hazardous wastes were present in these solid wastes. Therefore, EPA allowed disposal of such wastes at the Site to continue until a new landfill was constructed in the area. EPA listed the Site on the NPL on August 30, 1990.

In April 1989, EPA conducted a remedial investigation to inform selecting a cleanup remedy for the Site. The remedial investigation documented low levels of metals in the fill material and a localized plume of shallow ground water with organic contamination. Subsequent reports determined principal threats to human health and the environment at the Site to be heavy metal contamination in landfill material, volatile organic contamination in onsite ground water and transport of heavy metal contamination via surface water runoff.

Summary of Cleanup Activities

Exhibit 3 shows a timeline of EPA Activities performed to date at the White Farm Equipment Co. Dump site.

Exhibit 3: Timeline of EPA Activities Performed to Date at the White Farm Equipment Co. Dump Site

Date	Activity
1920s – 1980	White Farm Equipment Company operates at the Site on land leased from H.E. Construction Company
1980	Site discovery following complaints from the Floyd County Board of Health; White Farm Equipment Company files for bankruptcy
10/30/1985	Preliminary Assessment completed
1986	Allied Products Company purchases the White Farm Equipment Company Operations
09/19/1986	Site inspection completed
06/24/1988	Site proposed for the National Priorities List (NPL)
11/09/1989	Remedial investigation (RI) completed by the responsible parties
06/1990	Feasibility study and Risk Assessment completed
07/1990	EPA-prepared focused feasibility study completed
08/30/1990	Final Listing on the NPL
09/28/1990	Record of Decision (ROD) signed
07/13/1992	Explanation of Significant Differences (ESD) issued to change the capping material and ground water treatment requirements
03/30/1994	Remedial design completed
06/27/1994	Remedial action initiated, consisting of capping the landfill materials
09/08/1995	Remedial action completed
09/29/1999	First Five-Year Review completed
10/30/2000	Site deleted from the NPL
09/20/2004	Second Five-Year Review completed
06/22/2009	Third Five-Year Review completed
10/16/2009	Environmental Covenant recorded

EPA selected a remedy in the Site’s 1990 ROD. All of the potential remedies considered for the Site assumed that the likely future use of the Site would be for residential purposes. The remedy was selected to address the risks identified in the Risk Assessment. These risks included direct contact with landfill material and ingestion of contaminated ground water.

The Site's selected remedy in the 1990 ROD included:

- Controlling surface water runoff and infiltration by installing a low permeability protective cap over the landfill material to prevent direct contact and minimize surface water runoff and infiltration; and
- Restoring ground water to allow its use as a potable water supply through ground water extraction and treatment.

In 1992, EPA issued an ESD that changed the 1990 ROD in the following way:

- Modified the type of cap to a more cost-effective cap that would not sacrifice the protectiveness of the remedy;
- Revised the time frame to complete construction of the cap; and
- Clarified the ground water point of compliance.

EPA determined ground water extraction and treatment was not needed because no ground water contamination existed at or beyond the edges of the landfill. According to the ESD, the cap would be constructed using foundry sand wastes that were consistent with EPA and the State of Iowa's cleanup goals for the landfill cover. The landfill was capped in accordance with State of Iowa solid waste landfill closure requirements. Before installing the cap, Allied Products Company demonstrated that the foundry sand wastes were non-hazardous, could achieve the required level of impermeability and could also support sufficient vegetative growth to prevent erosion of the cover. EPA determined that the foundry sand wastes which Allied Products Company proposed using as cover materials would provide performance equal or superior to topsoil and clay.

The major components of the final remedy for the Site as implemented included the following:

- Installing the compacted cap;
- Vegetating the cap;
- Installing perimeter fencing; and
- Implementing institutional controls.

Construction completion was achieved in September 1995.

EPA completed the first Five-Year Review of the Site in September 1999, the second in September 2004 and the third in September 2009. Each concluded that the Site's remedy remains protective of human health and the environment. The 2009 Five-Year Review also stated "Due to the limited risks posed by the site, it appears to be a suitable candidate for a Ready-for-Reuse determination."

EPA deleted the Site from the NPL on October 30, 2000. The Site was listed on the State of Iowa Registry of Hazardous Waste or Hazardous Substances Disposal Sites (the Registry) as an institutional control.

However, the Registry listing was deemed no longer necessary with the recording of the environmental covenant in 2009. The Site was removed from the Registry in January of 2010.

Redevelopment/Reuse History

The current owner of the Site, H.E. Construction Inc., reports that deer frequently jump over the Site fencing to graze on native vegetation on the Site's cap. Nearby residents have also placed bird feeders on poles in the wetland areas located south of the Site. Interested parties have expressed interest in reusing the Site for ecological, agricultural or wildlife purposes. Prior to implementing any type of reuse at the Site, parties must consult with EPA to ensure that reuse does not impair or damage the Site's remedy in any way.

IV. U.S. EPA's Basis for Ready for Reuse (RfR) Determination

Background

The White Farm Equipment Co. Dump Site RfR Determination is based on U.S. EPA documents produced during the course of remedial activities at the Site. These documents provide evidence that the Site is ready for U.S. EPA-approved recreational, commercial, industrial and other uses and that the Site's remedy will remain protective of human health and the environment, subject to operation and maintenance of the remedy and limitations as specified in the ROD, ESD and environmental covenant. Documents providing information about the Site's remedy, operation and maintenance requirements and limitations include: the ROD, ESD, Preliminary Closeout Report, Final Closeout Report, Consent Decree, Environmental Covenant, and Five-Year Reviews (1999, 2004 and 2009). These reports can be found in the Site's Administrative Record, which is available for review at the Charles City Public Library in Charles City, IA, and at the EPA Region 7 offices in Kansas City, KS.

The Site's BLRA evaluated potential exposure pathways to onsite workers and residential adults and children, and determined that the Site posed unacceptable risks to these populations. The BLRA concentrated on the health effects of metal and organic constituents in the landfill material and ground water.

EPA's construction and post-construction completion reports confirm the successful cleanup of the White Farm Equipment Co. Dump Site. The Site's Preliminary Closeout Report states that the Site's remedy has reached "construction completion," meaning that all remedy components have been built and are operational. The Site's Construction Completion Report describes the construction of the remedy and operation and maintenance requirements. EPA asserts that the Site's remedy is functioning according to expectations.

Description of Risks

A BLRA was prepared for the White Farm Equipment Co. Dump Superfund site in 1990 as part of the remedial investigation. The term “baseline” refers to the risk assessment’s assumption that remedial work had not been performed at the Site and that access to the Site was not limited in any way. Individual exposures and dose and risk calculations were developed for adults and children who would drink contaminated ground water and for onsite workers and adults and children who would be exposed to lead on the Site. Unacceptable risks identified for the Site included exposure to benzene in ground water and lead in the soil and landfill materials.

Exhibit 4: Summary of Baseline Risks at the Site

Populations	Summary of Baseline Risks at the Site for Ground Water	
	Contaminant of Concern: Benzene	
	Intake (Mg/kg per day)	Risk
Residential Child	1.56×10^{-3}	4.53×10^{-5}
Residential Adult	7.14×10^{-4}	2.07×10^{-5}

Populations	Summary of Baseline Risks at the Site for Soil	
	Contaminant of Concern: Lead	
	Intake (Mg/kg per day)	Hazard Index (HI)
Residential Child	1.21×10^{-1}	86.6
Residential Adult	1.39×10^{-2}	9.89
Onsite Worker	9.49×10^{-3}	6.8

The BLRA identified risks associated with exposure to lead contamination in the landfill material that exceeded acceptable exposure levels. The Hazard Index (HI) for lead at the Site was 86.6 for residential children, 9.89 for residential adults, and 6.8 for onsite workers. None of the compounds in ground water at the Site resulted in a HI greater than 1.

The BLRA evaluated excess lifetime cancer risks across exposure pathways for benzene, a Class A human carcinogen. The excess lifetime cancer risk for the ground water pathway to children was 4.53×10^{-5} for benzene. Compounds in the landfill material did not pose significant carcinogenic risks. Although offsite concentrations of lead in surface water drainage paths did not indicate any threats at the time of the BLRA to human health or the environment, they did demonstrate that offsite transport via runoff was occurring, resulting in a potential future risk to wetlands adjacent to the site. In the Site’s ROD, EPA selected response actions to manage and reduce these risks. The remedy selected in the ROD covered contaminants onsite with a cap to prevent exposure.

V. Ongoing Limitations and Responsibilities Previously Established by U.S. EPA

Institutional and Engineering Controls

The ROD and ESD for the Site require one restriction on ground water use. Adherence to this restriction is necessary in order for the remedy implemented for the White Farm Equipment Co. Dump Site to remain protective of human health and the environment. The ROD included the following language regarding the selection of institutional controls:

“Institutional controls including perimeter fencing and deed restrictions on well installations and property use.”

When contaminants are left onsite, restrictions prevent contact with that waste, such as a restrictive covenant barring digging into the capped area. In order to consolidate all the information regarding restrictions needed to protect human health, EPA and Iowa Department of Natural Resources (IDNR) signed and implemented a single environmental covenant with the site owner, H.E. Construction Inc., in October 2009. This covenant runs with the land and is enforceable under Iowa Code § 455I.11. The covenant places the following limitations on the property, which can be amended in consultation with EPA and IDNR if those agencies determine the future use will not damage the remedy:

- a) The construction, installation, maintenance or use of any wells on the Property for the purpose of extracting water for human drinking purposes or for the irrigation of food or feed crops shall be prohibited;
- b) The soil cap located on the Property shall be maintained in good repair in order to prevent direct contact with the landfill materials, reduce infiltration and leaching of contaminants and minimize runoff transport of contaminants;
- c) The soil cap on the Property shall not be excavated or disturbed except for minor excavations necessary to install, maintain or repair fences unless approved in advance in writing by the EPA or its assigns;
- d) The Property may not be used for any residential, commercial, recreational or agricultural purposes unless approved in advance in writing by the EPA or its assigns; and
- e) The fence located on the Property shall be maintained in good condition and repair. The hazardous chemical warning signs shall continuously be displayed in a conspicuous place on said fence, and such signs shall be maintained in legible condition.

The Environmental Covenant is included in Appendix B.

Operations and Maintenance Requirements

Operation and maintenance activities are designed to ensure that the remedy is operating and continues to operate properly. The components of the remedy requiring ongoing operation and

maintenance activities are the Site's cap; ground water monitoring wells; drainage facilities; storm water retention areas; access road; and perimeter fencing, gates and signs.

The 1994 Inspection and Maintenance Plan for the Site included inspection and maintenance of perimeter fencing, the landfill cover and vegetation and the ground water treatment facility, and long-term ground water monitoring and sampling. Although no ground water treatment facility was needed, long-term ground water monitoring and sampling continues. The 2009 EPA Five Year Review confirmed that EPA and IDNR would continue to coordinate maintenance to ensure the integrity of the cap. It is required that Five-Year Reviews of the White Farm Equipment Co. Dump Site continue because contaminants remain at the Site above levels which would allow for unlimited use and unrestricted exposure. Ground water monitoring should be conducted at the time of the next Five-Year Review (by 2014).

VI. Provisos

This RfR Determination is a technical decision document and does not have any legally binding effect and does not expressly or implicitly create, expand or limit any legal rights, obligations, responsibilities, expectations or benefits of any party. EPA assumes no responsibility for reuse activities and/or for any potential harm that might result from reuse activities. EPA retains any and all rights and authorities it has, including, but not limited to legal, equitable or administrative rights. EPA specifically retains any and all rights and authorities it has to conduct, direct, oversee and/or require environmental response actions in connection with the Site, including but not limited to instances when new or additional information has been discovered regarding the contamination or conditions at the Site that indicate that the response and/or the conditions at the Site are no longer protective of human health or the environment for the types of uses identified in the Ready for Reuse Determination.

The types of uses identified as protective in this RfR Determination remain subject to (i) applicable federal, state and local regulation and to (ii) title documents, including, but not limited to, easements, restrictions and institutional controls.

This RfR Determination remains valid only as long as the requirements specified in the ROD, other response decision documents and the Environmental Covenant are met.

APPENDIX A: Abbreviations and Acronyms

AOC – Administrative Order on Consent

AR – Administrative Record

BLRA/BRA – Baseline Risk Assessment

CC – Construction Completion

CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)

CERCLIS – Comprehensive Environmental Response, Compensation, and Liability Information System

COC – Contaminant of Concern

ELCR – Excess Lifetime Cancer Risks

EPA - United States Environmental Protection Agency

ESD – Explanation of Significant Differences

FCOR – Final Close Out Report

GIS – Geographic Information System

HRS – Hazard Ranking System

HI – Hazard Index

IDEQ – Iowa Department of Environmental Quality

IDNR – Iowa Department of Natural Resources

NOID – Notice of Intent to Delete

NOD – Notice of Deletion

NPL – National Priorities List of Superfund Hazardous Waste Sites

O&M – Operations and Maintenance

OSRTI – Office of Superfund Remediation and Technological Innovation

OSWER – Office of Solid Waste and Emergency Response

PA – Preliminary Assessment

PCOR – Preliminary Close Out Report

PRP – Potentially Responsible Party

RA – Remedial Action

RD – Remedial Design

RfR – Ready for Reuse determination

RI/FS – Remedial Investigation/Feasibility Study

ROD – Record of Decision

RPM – Remedial Project Manager

SI – Site Inspection

TCE – Trichloroethylene

APPENDIX B: Environmental Covenant



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NOTE

DEBORAH K ROBERTS, COUNTY RECORDER
FLOYD COUNTY IOWA

SCAN
ODD

Type/Title of Document: Environmental Covenant

Return Document to: Jonathan Meyer
Office of Regional Counsel
USEPA, Region 7
501 N. 5th St.
Kansas City, KS 66101
(913) 551-7140

Preparer Information: Jonathan Meyer
Office of Regional Counsel
USEPA, Region 7
501 N. 5th St.
Kansas City, KS 66101
(913) 551-7140

Taxpayer Information: H.E. Construction, Inc.
3011 190th Street
Charles City, IA 50616

Grantor(s): H.E. Construction, Inc.
3011 190th Street
Charles City, IA 50616

Holder/Grantee: H.E. Construction, Inc.
3011 190th Street
Charles City, IA 50616

Legal Description: See Attachment 1

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between H.E. Construction, Inc. ("H.E. Construction"), an Iowa Corporation, as both "Grantor" and "Holder" pursuant to the Iowa Uniform Environmental Covenants Act codified at Chapter 455I of the Iowa Code.

RECITALS

WHEREAS, H.E. Construction, whose mailing address is 3011 190th Street, Charles City, IA 50616, is the owner in fee simple of that real property legally described on Attachment 1 hereto, the "Property;"

WHEREAS, the White Farm Equipment Dump Superfund Site ("Site") is located on the Property, which the EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990;

WHEREAS, on November 13, 1989, the Site was listed on the State of Iowa's Registry of Confirmed Hazardous Waste or Hazardous Substance Disposal Sites ("Iowa Registry") pursuant to Iowa Code § 455B.426 *et al*, which provides in pertinent part:

- a. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry...is used without the written approval of the director.
- b. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry...without the written approval of the director. Iowa Code § 455B.430

A statement that the Site was listed on the Iowa Registry was filed in book 44, at page 390, in the Office of the Recorder of Deeds of Floyd County, Iowa;

WHEREAS, in a Record of Decision dated September 28, 1990, the EPA Region VII Regional Administrator selected a "remedial action" for the Site that consisted of installing a soil cover on landfill materials, fencing the perimeter of the site to restrict access to landfill materials, installation of a groundwater treatment system, and deed restrictions to limit future property use and well installation.

WHEREAS, Allied Products Corporation, H.E. Construction and the United States entered into a Consent Decree ("Consent Decree") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq*. In this Consent Decree, Allied Products Corporation agreed to conduct the "remedial action" selected in the ROD, in order to respond to the release or threat of release of hazardous substances into the environment on the Property. The remedial action is an "environmental response project," as defined in Iowa Code § 455I.2(5). This Consent Decree was styled "United States of America v. Allied Products Corporation and H.E. Construction, Inc." and was entered under Civil Action No. C92-2043, in the United States District Court for the

Northern District of Iowa, on July 14, 1992.

WHEREAS, a copy of the Administrative Record for the remedial action, including the Consent Decree, Record of Decision, Explanation of Significant Differences, and Five-Year Reviews, is located at the Charles City Public Library, 106 Milwaukee Mall, Charles City, Iowa 50616.

WHEREAS, pursuant to the Consent Decree, H.E. Construction agreed to, among other things, provide access to the Property to the United States Environmental Protection Agency ("EPA") for the purposes of implementing, facilitating, and monitoring the environmental response project required to be performed under the Consent Decree, and file a Restrictive Covenant that imposes activity and use limitations on the Property that would run with the Property and bind subsequent owners;

WHEREAS, on October 5, 1992, H.E. Construction filed a Restrictive Covenant in book 50, at page 453 and 454, in the Office of the Recorder of Deeds of Floyd County, Iowa;

WHEREAS, H.E. Construction and EPA agree that it is appropriate at this time to revoke, rescind, and terminate the Restrictive Covenant and supersede the Restrictive Covenant with this Environmental Covenant.

WHEREAS, H.E. Construction desires to grant to itself as Holder, as that term is defined in Iowa Code § 455I.2(7), this Environmental Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Iowa Uniform Environmental Covenants Act;

WHEREAS, as hazardous substances remain at the Property at levels which do not allow for unlimited use of, and unrestricted exposure at, the Property, H.E. Construction is subjecting the Property to the activity and use limitations contained herein;

NOW THEREFORE, H.E. Construction hereby states and declares as follows:

1. Parties: In addition to H.E. Construction, who is the owner of the Property and Holder hereunder, the EPA and the Iowa Department of Natural Resources ("IDNR") and any successor agency, is a party to this Environmental Covenant. EPA and IDNR are each an "Agency" hereunder as defined in Iowa Code § 455I.2(2), and may enforce this Environmental Covenant as provided in Iowa Code § 455I.11 and paragraph 4 below.

2. Activity and Use Limitations: The following activity and use limitations are hereby imposed on the Property:

- a. The construction, installation, maintenance or use of any wells on the Property for the purpose of extracting water for human drinking purposes or for the irrigation of food or feed crops shall be prohibited;
- b. The soil cap located on the Property shall be maintained in good repair in order to prevent direct contact with the landfill materials, reduce infiltration and leaching of contaminants and minimize run-off transport of contaminants;

- c. The soil cap located on the Property shall not be excavated or disturbed except for minor excavations necessary to install, maintain, or repair fences unless approved in advance in writing by the EPA or its assigns;
- c. The Property may not be used for any residential, commercial, recreational or agricultural purposes unless approved in advance in writing by the EPA or its assigns; and
- e. The fence located on the Property shall be maintained in good condition and repair. The hazardous chemical warning signs shall continuously be displayed in a conspicuous place on said fence, and such signs shall be maintained in legible condition.

3. Running with the Land: This Environmental Covenant shall be binding upon H.E. Construction and its successors, assigns, and Transferees in interest, and shall run with the land, as provided in Iowa Code § 455I.5(1), subject to amendment or termination as set forth herein. 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, mortgagees, easement holders, and/or lessees.

4. Enforcement: Compliance with this Environmental Covenant may be enforced as provided in Iowa Code § 455I.11. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict any person from exercising any authority under any other applicable law.

5. Notice of Non-Compliance: Grantor and any subsequent Transferee of the Property shall notify EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Paragraph 2.

6. Rights of Access: Grantor grants to the Holder and to EPA and IDNR's agents, contractors, and employees, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for implementation, monitoring or enforcement of this Environmental Covenant and the aforementioned Consent Decree. Nothing herein shall be deemed to limit or otherwise affect EPA's right of access and entry under federal law.

7. Notice of Proposed Conveyance: Grantor or its Transferee shall, at least 30 days prior to the conveyance of any interest in the Property or any portion thereof, give written notice to EPA of the proposed conveyance, including the name and address of the proposed Transferee, and the date on which the notice of the Consent Decree and this Environmental Covenant was given to the proposed Transferee, and that all of the provisions of the Consent Decree continue in full force and effect, notwithstanding any such transfer.

8. Groundwater Hazard Statement: Iowa Code § 558.69 requires submission of a groundwater hazard statement and notice if "hazardous waste," as defined in Iowa Code §§ 455B.411(3), 455B.412(2) or section 455B.464, is present on real property. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. Grantor and all subsequent Transferees required to submit a groundwater hazard statement under Iowa Code § 558.69 for the Property shall make reference to this Environmental Covenant in any instrument conveying an interest in the Property. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2009, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF FLOYD COUNTY, IOWA, ON _____, 2009, AS DOCUMENT ____, BOOK ____, PAGE ____.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- A. THE CONSTRUCTION, INSTALLATION, MAINTENANCE OR USE OF ANY WELLS ON THE PROPERTY FOR THE PURPOSE OF EXTRACTING WATER FOR HUMAN DRINKING PURPOSES OR FOR THE IRRIGATION OF FOOD OR FEED CROPS SHALL BE PROHIBITED;
- B. THE SOIL CAP LOCATED ON THE PROPERTY SHALL BE MAINTAINED IN GOOD REPAIR IN ORDER TO PREVENT DIRECT CONTACT WITH THE LANDFILL MATERIALS, REDUCE INFILTRATION AND LEACHING OF CONTAMINANTS AND MINIMIZE RUN-OFF TRANSPORT OF CONTAMINANTS;
- C. THE SOIL CAP LOCATED ON THE PROPERTY SHALL NOT BE EXCAVATED OR DISTURBED EXCEPT FOR MINOR EXCAVATIONS NECESSARY TO INSTALL, MAINTAIN, OR REPAIR FENCES UNLESS APPROVED IN ADVANCE IN WRITING BY THE EPA OR ITS ASSIGNS;
- D. THE PROPERTY MAY NOT BE USED FOR ANY RESIDENTIAL OR AGRICULTURAL PURPOSES UNLESS APPROVED IN ADVANCE IN WRITING BY THE EPA OR ITS ASSIGNS; AND
- E. THE FENCE LOCATED ON THE PROPERTY SHALL BE MAINTAINED IN GOOD CONDITION AND REPAIR. THE HAZARDOUS CHEMICAL WARNING SIGNS SHALL CONTINUOUSLY BE DISPLAYED IN A CONSPICUOUS PLACE ON SAID FENCE, AND SUCH SIGNS SHALL BE MAINTAINED IN LEGIBLE CONDITION.

9. Notice upon Conveyance: Grantor and any subsequent Transferee shall notify EPA within ten (10) days following each conveyance of an interest in the Property, or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties: Grantor hereby represents and warrants to EPA that Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all of Grantor's obligations hereunder, and that Grantor is the sole owner of the Property and holds fee simple title which is free, clear, and unencumbered.

11. Amendment or Termination: This Environmental Covenant may be amended or terminated by consent signed by EPA, IDNR and Grantor or its Transferee. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, Grantor or its Transferee shall file such instrument for recording with the Office of the Recorder of Deeds of Floyd County, Iowa, and shall provide a file- and date-stamped copy of the recorded instrument to EPA.

12. 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.

13. Governing Law: This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

14. Recordation: Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Grantor shall record this Environmental Covenant with the Office of the Recorder of Deeds of Floyd County, Iowa.

15. Effective Date: The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Office of the Recorder of Deeds of Floyd County, Iowa.

16. Distribution of Environmental Covenant: Within thirty (30) days following the recording of this Environmental Covenant, Grantor shall, in accordance with Iowa Code § 455I.7, distribute a file- and date-stamped copy of the recorded Environmental Covenant to: (a) each signatory hereto; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated by EPA.

17. Notice to EPA: Any document, notice, or other item required by this Environmental Covenant to be given to EPA shall be sent to:

Superfund Division Director
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

EPA may change the recipient title and address from time to time and will provide written notice to Holder or its Transferee of any such changes.

18. Termination of Declaration: It is the intention of the parties for this Environmental Covenant to supersede and take the place of the Restrictive Covenant referred to above. Accordingly, that Restrictive Covenant is hereby revoked, rescinded, and terminated.

The undersigned represents and certifies that he/she is authorized to execute this Environmental Covenant on behalf of Holder, EPA and IDNR.

IT IS SO AGREED:

GRANTOR:

FOR H.E. CONSTRUCTION, INC.,

By: Homer L. Bickenderfer Date: 10/2/2009

Name (print): Homer L. Bickenderfer

Title: President

STATE OF Iowa)

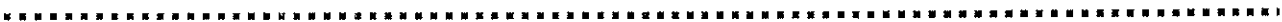
COUNTY OF Floyd)

On this 2nd day of October, 2009, before me a Notary Public in and for said state, personally appeared Homer L. Bickenderfer [NAME], President [TITLE], of H.E. Construction, Inc., known to me to be the person who executed the within Environmental Covenant in behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.



LARRY R. STEWART
Commission No.: 107620
My Commission Expires
9/20/2011

Larry R. Stewart
Notary Public
LARRY R. Stewart



HOLDER:

FOR H.E. CONSTRUCTION, INC.,

By: Homer L. Blickenderfer

Date: 10/2/2009

Name (print): Homer L. Blickenderfer

Title: President

STATE OF Iowa)

COUNTY OF Floyd)

On this 2nd day of October, 2009, before me a Notary Public in and for said state, personally appeared Homer L. Blickenderfer [NAME], President [TITLE], of H.E. Construction, Inc., known to me to be the person who executed the within Environmental Covenant in behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.



LARRY R. STEWART
Commission No.: 107620
My Commission Expires
9/20/2011

Larry R. Stewart
Notary Public
Larry R. Stewart



AGENCY:

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: (Cecilia Tapia)

Date: 10/6/09

Name (print): CECILIA TAPIA

Title: DIRECTOR SUPERFUND DIVISION

STATE OF Kansas)

COUNTY OF Wyandotte)

On this 6th day of October, 2009, before me a Notary Public in and for said state, personally appeared Cecilia Tapia (or her designee), the Director of EPA Region VII's Superfund Division, known to me to be the person who executed the within Environmental Covenant in behalf of EPA and acknowledged to me that she executed the same for the purposes therein stated.

Kent Johnson
Notary Public

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 7/23/11



AGENCY:

FOR THE IOWA DEPARTMENT OF NATURAL RESOURCES

By: *Richard A. Leopold*

Date: 10-8-09

Name (print): Richard Leopold

Title: Director

STATE OF Iowa)

COUNTY OF Polk)

On this 8th day of October, 2009, before me a Notary Public in and for said state, personally appeared the 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 for the purposes therein stated.

Lisa Nissen
Notary Public



ATTACHMENT 1

Legal Description

The West One-half (W1/2) of the Southwest quarter (SW1/4) of the Southeast quarter (SE1/4) of Section Thirty-six (36), Township Ninety-six North (96N), Range Sixteen West (16W) of the 5th P.M., excepting Twenty-three hundredths (.23) acres for the highway, and also excepting therefrom a parcel of land described as follows: Commencing at a point Two hundred seventy-two and four tenths feet East (272.4'E) of the Northwest (NW) corner of the Southwest quarter (SW1/4) of the Southeast quarter (SE1/4) of Section Thirty-six (36), Township Ninety-six North (96N), Range Sixteen (16), thence South Three Hundred seventy feet (S370') at a right angle to the quarter-quarter line, thence East (E) parallel to the quarter-quarter line, a distance of Three hundred ninety-five feet (395'); thence North Three hundred seventy feet (N370') to the quarter-quarter line; thence West Three hundred ninety five feet (W395') to the point of beginning, in Floyd County, Iowa.