

CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
381 East Main Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Received

FEB 23 2010

REMEDICATION &
REDEVELOPMENT

February 22, 2010

Gary A. Edelstein, P.E.
WI DNR - RR/5
P.O. Box 7921
Madison, WI 53707

Re: Amundson Landfill – Environmental Protection Easement and Declaration of Restrictive Covenants

Dear Mr. Edelstein:

The City of Stoughton has executed the above agreement. This version was approved by the EPA. Please have the document routed, signed, and notarized as necessary. Please make sure all signatures are in black ink for acceptance at the Dane County Register of Deeds. Once the document is executed, please return it to me for recoding. We will also have a copy sent to John Tielsch at the EPA.

If you have any questions, please let me know.

Sincerely,
City of Stoughton

A handwritten signature in black ink that reads "Rodney J. Scheel". The signature is written in a cursive style.

Rodney J. Scheel
Director of Planning & Development

Enclosure

DATE: October 29, 2010

TO: Matthew J. Frank – AD/8

FROM: Mark F. Giesfeldt – RR/5 *MFG*

SUBJECT: Stoughton City Landfill Superfund Site Environmental Protection Easement and Declaration of Restrictive Covenants Approval

Item/action seeking approval:

The attached “Environmental Protection Easement and Declaration of Restrictive Covenants” has been prepared by the City of Stoughton for the Superfund site known as the Stoughton City Landfill, located within Amundson Park at Stoughton, Wisconsin

Purpose of item/action:

The purpose of this document is to:

1. Ensure continued access to the site for the U.S. Environmental Protection Agency (EPA), WDNR and any contractors acting on behalf of WDNR
2. Put in place property restrictions to protect human health and the environment

Date approval needed:

We are requesting this document to be signed within 2 weeks after receipt.

Purpose of the Item:

The instrument, once recorded with the County Register of Deeds, will restrict certain activities and uses at the landfill property. Some activities and uses might be allowed under the instrument with prior approval from WDNR and USEPA. The instrument was required to be prepared under a Superfund enforcement agreement between the City of Stoughton, WDNR and USEPA. WDNR must be a signatory to the document because of the prior approval requirements and because, under the Superfund agreement, WDNR provides site long-term operation and maintenance.

Item Nature:

We have approved/signed similar instruments at other Superfund sites, so this isn't a new type of action.

Contact Information:

The State Project Manager is Gary Edelstein – RR/5, 7-7563, gary.edelstein@wisconsin.gov

The assigned Agency Attorney is Dan Graff, who has already reviewed and accepted the document. Dan can be reached at 4-8527 and daniel.graff@wisconsin.gov

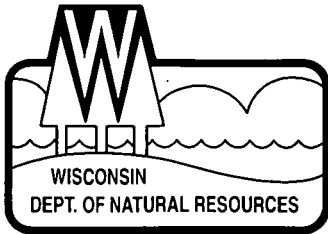
Routing instructions:

Once signed, please return to Gary Edelstein – RR/5 for distribution.

Matt -

This environmental easement and deed restrictions are the important & necessary steps to continue to have access to this superfund site & to limit activities thereon. If you have questions, let me know. SUB.





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

November 11, 2010

Mr. Rodney J. Scheel
Director of Planning and Development
City of Stoughton
381 E. Main St.
Stoughton, WI 53589

Subject: City of Stoughton Landfill Superfund Site Restrictive Covenant

Dear Mr. Scheel:

Enclosed is the executed original of the above-reference document. I understand you will record it with the County Register of Deeds.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Gary A. Edelstein, P.E.
Waste Management Engineer
Remediation & Redevelopment Program

Attach.



8 2 1 2 1 0 9
Tx:8135127

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
4717518**

11/23/2010 2:01 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 13

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 10th day of November, 2010, by and between the CITY OF STOUGHTON, WISCONSIN ("Grantor"), having an address of 381 East Main Street, Stoughton, Wisconsin 53589, and WISCONSIN DEPARTMENT OF NATURAL RESOURCES ("Grantee"), having an address of 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921.

RETURN TO: *

Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 178
Madison, WI 53701-1784

P.I.N.

281/0511-43-8690-6
281/0511-43-8885-1
281/0511-42-9340-8
281/0511-43-8600-4
281/0511-43-8500-5

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the County of Dane, State of Wisconsin, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property");

WHEREAS, the Property is part of the City of Stoughton Landfill Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("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, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 18, 1985;

WHEREAS, in a Record of Decision dated September 30, 1991, and an Explanation of Significant Differences dated February 1996 (the "ROD"), the EPA Region Five (5) Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions: excavation of wastes outside the area of main waste disposal and placement of these materials under a landfill cap; placement of a solid waste landfill cover (cap) system over the waste disposal area; placement of a fence around the cap, or

slightly within the edges of the cap; land use restrictions to prevent the installation of drinking water wells within 1200 feet of the Property boundary and to prevent residential development of the Property; long term groundwater monitoring; extraction and treatment of groundwater if necessary. The remedial action has been implemented at the Site;

WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment;

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

WHEREAS, the Grantor and Grantee intend that the provisions of this Environmental Protection Easement and Declaration of Restrictive Covenants also be for the benefit of the United States, a third party beneficiary; and

WHEREAS, the Grantee, Wisconsin Department of Natural Resources, is acquiring this interest pursuant to s. 292.31(7), Wis. Stat.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the remedial action performed at the Site by the Grantee and the EPA under the Consent Decree in the case of United States and State of Wisconsin v. City of Stoughton, United States District Court for the Western District of Wisconsin, Docket No. 96-C-887, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this instrument that the EPA and its

successors and assigns as Third Party Beneficiary shall have the right to enforce the terms of this instrument.

3. Third Party Beneficiary: Grantor on behalf of itself and its successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA and its successors and assigns shall be the Third Party Beneficiary under this instrument.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land for the benefit of the Grantee and are binding upon the Grantor including its successors, transferees, assigns or other persons acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

a. No water wells, other than monitoring wells, shall be located on the Property.

b. Grantor shall not use the Property or take any action at the Property that may interfere with the performance of remedial work required by the Consent Decree or the Record of Decision.

c. Grantor shall not take any activity on the Property which may damage or impair the effectiveness of any remedial action component constructed for or installed pursuant to the Consent Decree or the Record of Decision.

d. No buildings, wells, pipes, roads, ditches or any other structures shall be installed, constructed, removed or used within the area which is both (i) located on the Property and (ii) within the fence installed pursuant to the Record of Decision, except as approved by the EPA as consistent with the Consent Decree and the Record of Decision.

e. There shall be no recreational use of the Property within the fence installed pursuant to the Record of Decision.

f. There shall be no residential use of the Property.

5. Modification of restrictions: Any request for modification or rescission of this instrument shall be made to the Grantee and the EPA at the address given in paragraph 14 below. This instrument may be modified or rescinded only with the prior written approval of the EPA and the Grantee. Grantor on behalf of its successors, transferees, assigns or other

persons acquiring an interest in the Property agrees to file any EPA approved and WDNR approved modification to or rescission of this Environmental Protection Easement and Declaration of Restrictive Covenants with the appropriate Registrar of Deeds and a certified copy shall be returned to the EPA and the Grantee at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby grants to the Grantee for its use an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing, operating and maintaining the response actions in the ROD, including but not limited to those actions generally described herein;
- b) Verifying any data or information submitted to EPA or the State of Wisconsin;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions that the EPA determines i) that such actions are necessary to protect public health or the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and ii) will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

7. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

8. EPA Entry, Access, and Response Authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law. The Grantor and Grantee consent to officers, employees, contractors, and authorized representatives of the EPA entering and having continued access to this property for the purposes described in paragraph 6.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. Notice requirement: Grantor agrees to include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 20___, RECORDED WITH THE REGISTER OF DEEDS FOR DANE COUNTY, WISCONSIN, AS DOCUMENT NUMBER _____, PAGES _____ THROUGH _____, ON _____, 20___, IN FAVOR OF, AND ENFORCEABLE BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AS GRANTEE AND THE UNITED STATES OF AMERICA AS THIRD PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement: The Grantee and the EPA as Third Party Beneficiary shall be entitled to enforce, individually or jointly, the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee or the EPA as Third Party Beneficiary, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or the EPA as Third Party Beneficiary of such term or of any

subsequent breach of the same or any other term, or of any of the rights of the Grantee or the EPA as Third Party Beneficiary under this instrument.

12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

13. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit B** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

City of Stoughton
381 East Main Street
Stoughton, WI 53589
Attn: City Clerk

To Grantee:

Bureau of Remediation and
Redevelopment
Wisconsin Dept. of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

To Third Party Beneficiary:

U.S. Environmental Protection Agency
Region Five Administrator
77 West Jackson Boulevard
Chicago, IL 60604

15. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state of Wisconsin.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are assignable, subject to the notice provisions hereof. However, the rights of the Grantee may be assigned only to a governmental entity with authority to assume the rights and obligations of that Grantee under the Consent Decree.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

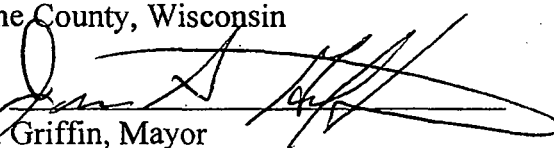
j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

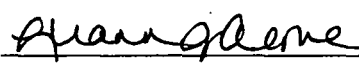
TO HAVE AND TO HOLD unto the Wisconsin Department of Natural Resources and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS to be signed in its name.

Executed this 22nd day of February, 2010.

NAME OF GRANTOR
CITY OF STOUGHTON
Dane County, Wisconsin

By: 
Jim Griffin, Mayor

By: 
LuAnn Alme, City Clerk

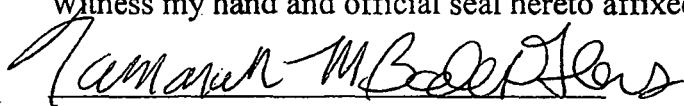
STATE OF WISCONSIN

) ss

COUNTY OF DANE

On this 22nd day of February, 2010, before me, the undersigned, a Notary Public in and for the State of Wisconsin, duly commissioned and sworn, personally appeared Jim Griffin and LuAnn Alme, known to be the Mayor and City Clerk of the City of Stoughton, Wisconsin, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.



Notary Public, State of Wisconsin

My Commission Expires: 5-6-12

Tamarah Bader-Fleres

This ENVIRONMENTAL PROTECTION EASEMENT, AND
DECLARATION OF RESTRICTIVE COVENANTS is accepted this 10th day of
November, 2010.

STATE OF WISCONSIN

WISCONSIN DEPARTMENT OF NATURAL
RESOURCES

By *Matthew J. Frank*
Matthew J. Frank, Secretary *for MTH*

STATE OF WISCONSIN

) ss

COUNTY OF DANE

Signed and sworn to before me
this 10th day of November, 2010.

Daniel G. Graff Daniel Graff
Notary Public, State of Wisconsin
My Commission expires: is permanent

Attachments: EXHIBIT A
 EXHIBIT B

Legal Description of the Property
List of Recorded Title Encumbrances

drafted by:

John H. Tielsch
US Environmental Protection Agency
Office of Regional Counsel
77 West Jackson Blvd., #C-14J
Chicago, IL 60604-3511
312/353-7447

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A part of the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4, and a part of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 in Section 04, Township 05 North, Range 11 East, City of Stoughton, Dane County, Wisconsin, more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55" W 693.20 feet along the West line of said Section 04 to the North right-of-way line of Ridge Street;

Thence N89°44'14"E 3.93 feet along said North line;

Thence N88°51'30" E 1302.95 feet along said North line of Ridge Street to the West right-of-way line of Amundson Parkway;

Thence N01°41'46" W 890.08 feet along the West right-of-way line of Amundson Parkway to the point of beginning of this description;

Thence N75°08'00" W 527.77 feet;

Thence N04°04'20" W 946.60 feet to the East-West Quarter line of Section 04;

Thence continuing N02°04'20" W 668.49 feet;

Thence N89°10'7" E 683.24 feet;

Thence S02°54'40" E 667.82 feet to the East-West Quarter line of Section 04;

Thence S02°04'20" E 1143.57 feet;

Thence N75°08'00" W 196.52 feet to the point of beginning of this description.

AND

A part of the Southwest 1/4 of the Northwest 1/4 and a part of the Northwest 1/4 of the Southwest 1/4 in Section 04, Township 05 North, Range 11 East, City of Stoughton, Dane County, Wisconsin, more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55" W 693.20 along the West line of said Section 04 to the North right-of-way line of Ridge Street;

Thence N89°44'15" E 3.93 feet along said North line;

Thence N88°51'30" E 1302.95 feet along the North line of Ridge Street to the west right-of-way line of Amundson Parkway;

Thence N01°41'46" W 890.08 feet along the West right-of-way line of Amundson Parkway;

Thence N75°08'00" West 527.77 feet to the point of beginning of this description;

Thence continuing N75°08'00" W 837.24 feet;

Thence N01°56'41" W 1072.41 feet more or less to the centerline of the bed of the Yahara River;

Thence in a Northeasterly direction along said riverbed centerline N49°33'49" E 495.65 feet more or less to the North line of the South 1/2 of the Northwest 1/4;

Thence N89°10'07" E 410 feet more or less along said North line to a point which is N02°04'20" W 1615.01 feet from the point of beginning;

Thence S02°04'20" E 688.49 feet to the East-West Quarter line;

Thence continuing S02°04'20" E 946.60 feet to the point of beginning of this description.

EXHIBIT B

LIST OF RECORDED TITLE ENCUMBRANCES

1. Reservations and conditions set forth in instrument recorded November 14, 1950 as Document No. 808415.
2. Electric line easement recorded June 2, 1952 as Document No. 835144.
3. Electric line easement recorded June 16, 1952 as Document No. 835868.
4. Annexation ordinance recorded May 21, 1980 as Document No. 1665960.
5. Reservations and conditions set forth in instrument recorded March 12, 1987 as Document No. 2002839.
6. Corrected ordinance recorded April 4, 1988 as Document No. 2073246.
7. Certificate in the matter of corporate limits recorded January 20, 2006 as Document No. 4154384.
8. Certificate in the matter of corporate limits recorded February 21, 2007 as Document No. 4283044.
9. Certificate in the matter of corporate limits recorded January 7, 2008 as Document No. 4386297.
10. Certificate in the matter of corporate limits recorded February 4, 2010 as Document No. 4632764.