

1620

FILED FOR RECORD 4-15-15 AT 10:05A.M.
BOOK 66 OF Gen PAGE 148
PLATSMOUTH, CASS CO., NE *David John*
#1620 \$ 52.00

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Mike Pogany
Black Hills/Nebraska Gas Utility Company, LLC
P.O. Box 1400, Rapid City, SD 57709-1400

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 27 day of MARCH, 2015, by and between Black Hills/Nebraska Gas Utility Company, LLC, a Delaware limited liability company as "Grantor" and "Holder/Grantee", pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS:

- A. Grantor is the owner of real property located at 210 Livingston Highway, Plattsmouth, Cass County, Nebraska, legally described as follows:

Lots 9, 10, 11, and 12, Block 48, except the West 30 feet of Lot 9, Original Town of Plattsmouth, Cass County, Nebraska.
- B. Holder/Grantee is Black Hills/ Nebraska Gas Utility Company, LLC, a Delaware limited liability company, owner of the Property.
- C. The Property was previously owned and operated by the Centel Corporation ("Centel") a Delaware corporation.
- D. The Property was used for the production of manufactured gas from at various times from 1887 to 1932. As a result of historic operations, there are hazardous substances located on the Property.
- E. The Property is the subject of an environmental response project pursuant to the Nebraska voluntary cleanup program authorized by the Remedial Action Plan

KV

Monitoring Act to address groundwater and soil contamination for: Benzene (C₆H₆), Benzo(a)anthracene (C₁₈H₁₂), Benzo(a)pyrene (C₂₀H₁₂), Dibenz(a,h)anthracene (C₂₂H₁₄), Indeno(1,2,3-cd) Pyrene (C₂₂H₁₂), Antimony, Arsenic (As), Selenium (Se), Benzene, Ethylbenzene (C₈H₁₀), Styrene (CH₂), Toluene (CH₃), Polycyclic Aromatic Hydrocarbons (PAHs).

- F. The Agency, as defined in Neb. Rev. Stat. §76-2602, who approved the Remedial Action Plan is NDEQ.
- G. The selected environmental response project or action is documented in a Remedial Action Plan which was approved on May 21 2012. The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400, Lincoln, NE.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer,

lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its duties and obligations under the approved environmental response project.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

- a. The Property shall not be used for residential purposes, including child care facilities.
- b. Extraction and use of the ground water underlying the property, except for investigation or remediation approved by NDEQ, is prohibited.
- c. Except where excavation is necessary to prevent or address a previously unknown threat to human health or the environment, including without limitation a natural gas pipeline leak, excavation activities on the Property that affect impacted groundwater are prohibited unless an Occupational Health and Safety Administration-compliant health and safety plan is developed and implemented.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the Holder/Grantee and by the Agency in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of

such action, including reasonable attorney fees. Both the Holder/Grantee and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Cass County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF _____ COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The Property shall not be used for residential purposes, including child care facilities.
- b. Extraction and use of the ground water underlying the Property, except for investigation or remediation approved by NDEQ, is prohibited.
- c. Except where excavation is necessary to prevent or address a previously unknown threat to human health or the environment, including without limitation a natural gas pipeline leak, excavation activities on the Property that affect impacted groundwater are prohibited unless an Occupational Health and Safety Administration

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

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. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the Property, with the Cass County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Cass County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c).

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Agency;

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

If to the Grantor and holder/Grantee:

Black Hills/Nebraska Gas Utility Company, LLC.
P.O. Box 1400
Rapid City, South Dakota 57709-1400

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor, as the owner of the Property [and the Holder] of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 27 day of March, 2015.

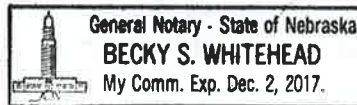
By: [Signature]
[Name of Grantor] JEFF SYLVESTER
VICE PRESIDENT
[Title]

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 27 of March, 2015 by JEFF SYLVESTER who acknowledged said Environmental Covenant on behalf of Grantor.

[Signature: Becky Whitehead]
Notary Public

(SEAL)



HOLDER/GRANTEE: [If different from the Grantor]

IN WITNESS WHEREOF, Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this ___ day of ___, 20__.

By: _____
[Name of Holder/Grantee]
[Title]

AGENCY:

IN WITNESS WHEREOF, NDEQ, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *Jim Macy*
Jim Macy
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 31 of March, 2015 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.

Kerrie Carpenter
Notary Public

(SEAL)



680976 (Reg. 12.00)
Re: Black Hills Corp Attn: Ally Little
1102 E 1st St
Papillion 68046 (enu)