

Recorded June 10, 2022 11:50 AM

Inst. No. 2022-00940

Fees: \$ 58.00 Pages 9

Penelope Cooper Deputy
Register of Deeds, Red Willow County, NE

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

Van Diest Supply Company
PO Box 410
McCook, NE 69001-0410

Space Above for Recorder's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 26 day of April, 2022, by Van Diest Supply Company, an Iowa corporation, 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 206 Karrer Street, McCook, Red Willow County, Nebraska, legally described in **Exhibit A**, attached hereto (the "Property").
- B. Holder/Grantee is the Van Diest Supply Company, an Iowa corporation, the owner of the Property. The Property was previously owned and operated by Cornbelt Chemical Company.
- C. The Property has been used as a pesticide distribution facility. As a result of historic operations and use, by Cornbelt Chemical Company, there are hazardous wastes located on the Property.
- D. The Property is the subject of an environmental response project pursuant to the Resource Conservation and Recovery Act (RCRA) and as documented in the RCRA permit.
- E. The Agency, as defined in Neb. Rev. Stat. §76-2602 is the Nebraska Department of Environment and Energy (NDEE).

F. The selected environmental response project or action is documented in the draft Corrective Action Objectives (CAOs) presented by the EPA on March 25, 2019 and is part of the administrative record. The administrative record for the project is available to the public and located at NDEE's offices located at 245 Fallbrook Blvd., Lincoln, NE 68521. The administrative record for this project is also available online at <http://deq.ne.gov> by selecting "Public Records Search" at the bottom of the NDEE webpage and providing the site-specific NDEE "Facility Number".

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 or action.

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

(a) Extraction and use of the ground water underlying the Property is prohibited, except for investigation or remediation approved by the NDEE. The construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited.

(b) Permanent residential occupancy, or occupancy by any business serving primarily sensitive populations (such as child or elder care or athletic facilities), shall be prohibited.

(c) The use of the Property shall be limited to industrial and commercial uses as defined by the McCook, Nebraska zoning code.

(d) Construction limitation—No new structures capable of human occupancy shall be built on the Property without a properly designed and constructed vapor mitigation system. The mitigation system must be approved by the Agency in order to demonstrate that it is designed to prevent airborne concentrations of volatile organic compounds (VOCs) within the structure from exceeding applicable risk-based standards.

(e) The concrete cap on the Property must be maintained in accordance with the facility's Permit. Any alterations of the cap must receive the prior written approval of the Agency in accordance with the agency's applicable permit modification procedures, except to maintain the cap or the groundwater monitoring wells.

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 signatories, the United States Environmental Protection Agency (EPA), as a third-party beneficiary, and those

persons authorized by and 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 or EPA and shall not be deemed a waiver of the signatory's or EPA's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency or EPA 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 attorneys' fees. Any Holder/Grantee, EPA, 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, or, as appropriate, EPA, 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, EPA, and their 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 or EPA's right of entry and access or their 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 and EPA with a certified copy of said instrument and its recording reference in the Red Willow County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED 4/26/2022, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF RED WILLOW COUNTY, NEBRASKA ON 6/10/2022, IN DOCUMENT 202200940, BOOK -, Page -. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

(a) Extraction and use of the ground water underlying the Property, except for investigation or remediation approved by the NDEE, is prohibited.

(b) Permanent residential occupancy, or occupancy by any business servicing primarily sensitive populations (such as child or elderly care), shall be prohibited on the Property.

(c) The use of the Property shall be limited to industrial and commercial uses as defined by the McCook, Nebraska zoning code.

(d) Construction limitation—No new structures capable of human occupancy shall be built on the Property without a properly designed and constructed vapor mitigation system. The mitigation system must be approved by the Agency in order to demonstrate that it is designed to prevent airborne concentrations of volatile organic compounds (VOCs) within the structure from exceeding applicable risk-based standards.

(e) The concrete cap on the Property must be maintained in accordance with the facility's Permit. Any alterations of the cap must receive the prior written approval of the Agency in accordance with the agency's applicable permit modification procedures, except to maintain the cap or the groundwater monitoring wells.

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 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 Red Willow 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 Red Willow County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a filed and date-stamped copy of the recorded Environmental Covenant to the Agency.

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

RCRA/Federal Facilities Section
Monitoring & Remediation Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

If to the Grantor and Holder/Grantee:

Van Diest Supply Company
Attn: Jake Van Diest, President
1434 220th Street, PO Box 610
Webster City, Iowa 50595-0610

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

ACKNOWLEDGMENTS

GRANTOR and HOLDER:

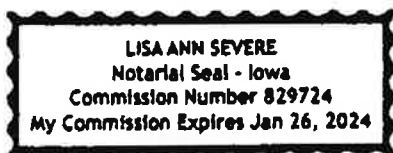
IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 26 day of April, 2022.

VAN DIEST SUPPLY COMPANY

By: Jake Van Diest
Jake Van Diest, President

STATE OF IOWA)
) ss.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 26 day of April, 2022 by Jake Van Diest, President, on behalf of the Van Diest Supply Company.



Lisa Severe
Notary Public

[seal]

AGENCY:

IN WITNESS WHEREOF, NDEE, 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 NDEE a Holder under Neb. Rev. Stat. §§76-2602(6) and 76-2603(a).

**NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY**

By 
Director

STATE OF NEBRASKA)

) ss.

COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 5 day of May, 2022 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Nebraska Department of Environment and Energy.


Notary Public

[seal]

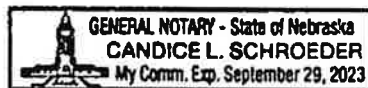


EXHIBIT A

A tract of land in Part of the E1/2 SW1/4 and Part of the W1/2 SE1/4 of Section 29, T3N, R29W of the 6th P.M. in Red Willow County, Nebraska; more particularly described as follows:

Referring to the South Corner of said Section 29; thence on Azimuth $01^{\circ}47'00''$ along the section $\frac{1}{4}$ section line a distance of 33.02 feet to a point; thence on Azimuth $89^{\circ}56'00''$ along the north right-of-way line of South Street and parallel to the south line of said Section 29 a distance of 378.24 feet to the True Point of Beginning;

Thence on Azimuth $00^{\circ}05'00''$ a distance of 717.41 feet to a point; thence on Azimuth $269^{\circ}55'40''$ a distance of 820.63 feet to a point; thence on Azimuth $359^{\circ}54'15''$ a distance of 401.58 feet to a point; thence Southwesterly along a curved line whose radius is 410.30 feet an arc distance of 80.00 feet; thence on Azimuth $318^{\circ}08'00''$ a distance of 97.15 feet to a point; thence on Azimuth $51^{\circ}18'40''$ a distance of 125.75 feet to a point of curvature (P.C.); thence along a curved line concave to the Southeast whose radius is 858.40 feet an arc distance of 260.42 feet to a point of tangency (P.T.); thence on Azimuth $68^{\circ}42'30''$ a distance of 496.90 feet to a point of curvature; thence along a curved line concave to the south whose radius is 911.99 feet an arc distance of 415.53 to a point of tangency; thence on Azimuth $94^{\circ}48'50''$ a distance of 220.58 feet to a point on the west right-of-way line of U.S. Highway 83; thence on Azimuth $180^{\circ}03'20''$ along said right-of-way a distance of 1,596.13 feet to a point on the north right-of-way line of South Street; thence on Azimuth $269^{\circ}56'00''$ along said right-of-way a distance of 450.58 feet to the Point of Beginning.

