

IOWA CONTAMINATED SITE ENVIRONMENTAL COVENANT

This IOWA CONTAMINATED SITE ENVIRONMENTAL COVENANT ("Environmental Covenant") dated April 28, 2020 is established pursuant to Iowa Code (IC), Chapter 455I entitled Uniform Environmental Covenants Act.

RECITALS:

Union Pacific Railroad Company, a Delaware corporation ("Grantor"), and the Iowa Department of Natural Resources ("Department") in its capacity as an agency of the State of Iowa, enter into this Environmental Covenant, for the purpose of subjecting certain affected real property owned by Grantor and legally described below, to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the Department in Iowa Chapter 455I § 455B.103(7), and Department rules in Chapter 567 Iowa Administrative Code (IAC) 133.

AGREEMENT:

1. **Affected Property.** Grantor is the fee title owner of certain real property located in Fayette County, State of Iowa, as legally described below, which will hereinafter be referred to as the "Property":

That Portion of the NW ¼ of Section 28, Township 91 North, Range 9 West of the 5th Principal Meridian lying Southeasterly of a line 25.0 feet southerly measured at right angles from the centerline of main track as presently constructed and operated and extended easterly from the prolongation northerly of the easterly line of Fourth Avenue S.W. to the prolongation northerly of the easterly line of Second Avenue S.W.

The Property is depicted on **Exhibit A**, attached hereto and made a part hereof. The impacted groundwater area depicted on **Exhibit B**, attached hereto and made a part hereof, represents the modeled groundwater plume delineated to the Iowa Statewide Standard for diesel fuel, for a protected groundwater source.

2. **Risk Management and Institutional Controls.** Grantor has performed a soil and groundwater investigation and risk assessment in accordance with 567 IAC 133. The site assessment identified contaminated conditions on the Property which may present an unreasonable risk to public health and the environment if certain activities occur on the Property. As such, the Director of the Department, pursuant to his authority under IC § 455B.103(7), has determined that an environmental covenant is necessary to manage the risk of future exposure to the contamination by limiting specified activities at this Property and establishing certain affirmative obligations.

3. **Reopening.** The Grantor acknowledges that in the event the activity and use limitations provided below fail to serve their intended purpose, including the prevention of exposure to contamination, that the Department may reopen its review and regulatory oversight

of the contaminant condition on the Property as provided under the terms of this Environmental Covenant, IC Chapter 455I, and applicable Department administrative rules.

4. **Identity of Grantor and Department.**

GRANTOR: Union Pacific Railroad Company, a Delaware corporation, Property Owner.

DEPARTMENT: Iowa Department of Natural Resources.

5. **Representations and Warranties.** Grantor warrants the following:

- a. Grantor is the sole fee title owner of the Property;
- b. 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. Grantor has identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement.

6. **Running with the Land.** This Environmental Covenant is perpetual and runs with the Property as provided in IC § 455I.9 until modified or terminated. The terms of this Environmental Covenant are binding on Grantor, its successors and assigns, and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators and devisees. 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, contract buyers, mortgagees, easement holders and/or lessees.

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

- (1) The installation of any well, except for groundwater monitoring wells, is prohibited. For the purposes of this Environmental Covenant, "well" means any excavation that is drilled, cored, driven, dug, bored, augered, jetted, washed or is otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer as defined by 567 IAC 49 (or subsequently revised).
- (2) The Property may not be redeveloped as a residential area. For the purposes of this Environmental Covenant, "residential area" means land

used as a permanent residence or domicile, such as a house, apartment, nursing home, school, child care facility or prison, land zoned for such uses, or land where no zoning is in place as defined by 567 IAC 135 (and as subsequently revised).

- (3) The Property may not be utilized for the installation of plastic water lines or sewer lines.
- (4) This Environmental Covenant also requires that a Department-approved vapor intrusion (VI) evaluation be conducted in the future if redevelopment is to take place on the Property. Prior to any such activity, the Department shall be notified by the Property owner, and the Property owner shall be responsible for the development and submittal of a VI evaluation work plan detailing the proposed site activities. The results of the VI evaluation may require a response action in the form of a technological control or VI mitigation, as determined by the Department. In that case, the Property owner shall develop and submit a response action work plan to the Department for approval. The Department's review of all work plans will be based on the requirements and recommendations outlined in OSWER Publication 9200.2-154 (and as subsequently revised). No site redevelopment shall occur without the Department's prior approval.

8. **Notice of Non-Compliance.** Any Property owner or subsequent transferee of an interest in the Property shall notify the Department as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph seven (7) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their Property interest.

9. **Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the Property, and any subsequent transferee shall incorporate the activity and use limitations of this Environmental Covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the Property.

10. **Access to the Property.** Reasonable access to the Property can be granted to (versus will be granted to) the Department or any authorized representative of the Department, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this Environmental Covenant, following prior authorization and approval by Grantor. This stipulation is in place due to inherent safety concerns over close proximity to the railroad tracks. Once an Environmental Right-of-Entry is established with Grantor, access to the Property shall not be limited or otherwise impede the Department's rights of access and entry. The Department, its authorized representatives or other persons entitled to access shall provide the current owner of the Property and the Easement Holder with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. As used herein, the term "Easement Holder" means D&W Railroad, LLC or its successor as holder of the easement in the Property,

pursuant to the Easement Deed, as such document is further described in Section 19 of this Environmental Covenant. Right of access includes, but is not limited to, the following activities:

- a. Repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures;
- b. Fencing and other technological controls;
- c. Groundwater sampling and monitoring;
- d. Additional drilling;
- e. construction of soil boring and/or groundwater monitoring wells; and,
- f. other activities authorized or otherwise directed by the Department.

11. **Groundwater Hazard Statement Notice.** IC § 558.69 requires submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the Property as defined in IC § 455B.411(3) or if the Department determines that solid waste exists on the Property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The Grantor and all subsequent transferees required to submit a groundwater hazard statement under IC § 558.69 shall make reference to this Environmental Covenant in substantially the following form, filling in the blanks with the relevant and applicable details:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED APRIL 28, 2020, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FAYETTE COUNTY, IOWA RECORDER ON _____, 2020, Book ____, Pages ____.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

(1) The installation of any well, except for groundwater monitoring wells, is prohibited. For the purposes of this environmental covenant, “well” means any excavation that is drilled, cored, driven, dug, bored, augered, jetted, washed or is otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer as defined by 567 IAC 49 (or subsequently revised).

(2) *The Property may not be redeveloped as a residential area. For the purposes of this Environmental Covenant, “residential area” means land used as a permanent residence or domicile, such as a house, apartment, nursing home, school, child care facility or prison, land zoned for such uses, or land where no zoning is in place as defined by 567 IAC 135 (and as subsequently revised).*

(3) *The Property may not be utilized for the installation of plastic water lines or sewer lines.*

(4) *The Environmental Covenant also requires that a Department-approved vapor intrusion (VI) evaluation be conducted in the future if redevelopment is to take place on the Property. Prior to any such activity, the Department shall be notified by the Property owner and the Property owner shall be responsible for the development and submittal of a VI evaluation work plan detailing the proposed site activities. The results of the VI evaluation may require a response action in the form of a technological control or VI mitigation, as determined by the Department. In that case, the Property owner shall develop and submit a response action work plan to the Department for approval. The Department’s review of all work plans will be based on the requirements and recommendations outlined in OSWER Publication 9200.2-154 (and as subsequently revised). No site redevelopment shall occur without the Department’s prior approval.*

12. **Modification and Termination.** Modification or termination of the terms of this Environmental Covenant shall comply with the standards in IC Chapter 455I and applicable Department administrative rules. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner and all original signatories (unless exempted under the provisions of IC § 455I.10(1)“c” in accordance with and subject to the provisions of IC § 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded in the official records of Fayette County, Iowa Recorder. If not by consent, any modification or termination of this Environmental Covenant shall be in accordance with IC § 455I.9 and such additional terms as specified in this Environmental Covenant.

13. **Enforcement.** The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with IC § 455I.11.

14. **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.

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

16. **Recordation.** Within thirty (30) days after Department approval of this Environmental Covenant, Grantor shall record the Environmental Covenant in the official records of the Fayette County, Iowa Recorder.

17. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been properly recorded in the official records of the Fayette County, Iowa Recorder.

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

If to Grantor:

Union Pacific Railroad Company
Attn: Real Estate Sales (Folder No. 3119-98)
1400 Douglas Street, MS 1690
Omaha, NE 68179

If to the Department:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

Any notice to D&W Railroad, LLC (as Easement Holder) pursuant to Section 10 of this Environmental Covenant shall be submitted to:

D&W Railroad, LLC
21233 W Creekside Drive
Kildeer, Illinois 60047

Any notice to any successor to D&W Railroad, LLC (as Easement Holder) pursuant to Section 10 of this Environmental Covenant shall be given to such successor at such address as such successor shall provide in writing to the Department.

19. **Subordination and Consent.** By signing this Environmental Covenant, the following parties knowingly and intelligently acknowledge their consent to the terms of this Environmental Covenant and agree to subordinate their interest in the Property to this Environmental Covenant:

- City of Oelwein, licensee and grantee of an easement for the installation of a water pipe line on the Property.
- D&W Railroad, LLC, a Delaware limited liability company, grantee of a Non-Exclusive Perpetual Easement on the Property, rights of ingress and egress for the purpose of constructing, realigning, using, maintaining, repairing, and renewing the railroad trackage and track improvements on the Property, as established under an Easement Deed dated September 26, 2003 and filed on November 24, 2003 as Instrument No. 20035097 in the records of the Recorder of Fayette County, Iowa, as amended and corrected by the Correction Easement Deed dated September 16, 2019, effective as of September 26, 2003, and filed on January 2, 2020 in Book 2020 Page 16 in the records of the Recorder of Fayette County, Iowa.
- Transco Railway Products Inc., a Delaware corporation, as party (with D&W Railroad, LLC) to a Covenant and Services Agreement dated as of May 13, 2019 affecting the Property and certain other real estate, as described in the Memorandum of Covenant and Private Services Agreement dated May 13, 2019 and recorded with the Recorder of Fayette County, Iowa on May 16, 2019 in Book 2019 Page 1339.

Pursuant to IC §455I.3(4)(d), the foregoing consent and agreement by the City of Oelwein, D&W Railroad, LLC and Transco Railway Products Inc. in this Section 19 to subordinate their interests in the Property to this Environmental Covenant affects the priority of their respective interests in the Property but does not impose any affirmative obligations on the City of Oelwein, D&W Railroad, LLC or Transco Railway Products Inc. with respect to this Environmental Covenant.

20. **Notice of Change in Ownership.** Grantor, with sufficient property interest to convey a possessory interest in the Property and any subsequent transferee with sufficient interest, shall reference and incorporate the terms of this Environmental Covenant into any subsequent instrument which conveys a possessory interest in the Property.

21. **Execution in Counterparts.** This Environmental Covenant may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

(Remainder of page intentionally left blank.)

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Chris D. Goble, Assistant Vice President – Real Estate of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

Notary Public

(Seal)

Department:

**IOWA DEPARTMENT OF NATURAL
RESOURCES**

By: _____

Printed Name: Kayla Lyon

Title: Director

STATE OF IOWA)
) ss.
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this _____ day
of _____, 2020, by Kayla Lyon, Director of IOWA DEPARTMENT
OF NATURAL RESOURCES, on behalf of the entity.

WITNESS my hand and official seal.

Notary Public

(Seal)

**Solely for Purposes of Section 19 of this
Environmental Covenant:**

**CITY OF OELWEIN,
an Iowa Municipality**

By: _____
Printed Name: Brett DeVore
Title: Mayor

Attest:

By: _____
Printed Name: Dylan Mulfinger
Title: City Administrator

STATE OF IOWA)
) ss.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me this _____ day
of _____, 2020, by Bret DeVore, Mayor, and by Dylan Mulfinger,
City Administrator, of CITY OF OELWEIN, an Iowa Municipality, on behalf of the entity.

WITNESS my hand and official seal.

Notary Public

(Seal)

**Solely for Purposes of Section 19 of this
Environmental Covenant:**

**D&W RAILROAD, LLC, a Delaware limited
liability company**

By: _____
Printed Name: Charles P. Andersen,
Title: President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day
of _____, 2020, by Charles P. Andersen, President of D&W
RAILROAD, LLC, a Delaware limited liability company, on behalf of the entity.

WITNESS my hand and official seal.

Notary Public

(Seal)

**Solely for Purposes of Section 19 of this
Environmental Covenant:**

**TRANSCO RAILWAY PRODUCTS INC., a
Delaware corporation**

By: _____
Printed Name: _____
Title: _____

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, _____ of TRANSCO RAILWAY PRODUCTS INC., a Delaware corporation, on behalf of the entity.

WITNESS my hand and official seal.

Notary Public

(Seal)

EXHIBIT A DEPICTION OF THE PROPERTY

Exhibit A: Area Subject to the Environmental Covenant

Index Legend
HRS, LLC - 10 East Main Street, New Hampton IA 50659
County: Fayette
City: Oelwein
Section: 28
Township: T91N
Range: R9W
Aliquot Part: NW 1/4
Proprietor: D & W Railroad, Inc.
Requested By: Sue Albrecht Project Manager USA \ Antea*Group





 <p>Herold-Reicks Surveying 10 East Main Street New Hampton IA 50659 641-394-2725 www.hrsurveying.com</p> <p>2206 East Bremer Avenue Waverly IA 50677 319-483-5187</p>		<p>I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.</p> <p><i>Paul R. Herold</i> 3-21-18 Paul R. Herold Date: License number 15525 My license renewal date is December 31, 2018. Sheets covered by this seal: 1-2</p>
--	---	---

EXHIBIT B

DEPICTION OF THE IMPACTED GROUNDWATER AREA

