



Environmental Covenants for Construction and Demolition Debris Facilities

Instructions for completion of an Environmental Covenant for Construction and Demolition Debris Facilities (CDD).

Uses for an Environmental Covenant

An Environmental Covenant is a legal document created for the purpose of subjecting a property to an activity, use limitations and/or specified obligations as stated in the covenant. As specified under Ohio Administrative Code 3745-400-13, the owner and operator of the CDD landfill will need to establish and maintain financial assurance to guarantee funding for final closure, including funding for the cost of soils needed for the cap system. An environmental covenant is an available option that can eliminate the need for soil purchase costs, for prequalified soils, in the cost estimate. Cost for transportation, placement, and compaction of the soil still needs to be addressed in the estimate.

Completion of the Covenant

An environmental covenant (one copy will generally be sufficient) should be submitted with supporting cost estimation details at the time of license application. Until the environmental covenant is effective, soil purchasing costs cannot be eliminated from the financial assurance total. A fillable environmental covenant template, which can be completed and printed out for submission, is available at the following web link:

<http://epa.ohio.gov/dmwm/Home/NonHWFfinancialAssurance.aspx>

The template contains the basic provisions for the environmental covenant to be acceptable to the director of Ohio EPA. Substantive changes made to the Environmental Covenant template may result in refusal by the director to enter into the Environmental Covenant.

Additional Documentation to be included in the submission of the Covenant

Exhibit A

Exhibit A to the Environmental Covenant consists of: Exhibit A-1, the legal description of the Property subject to the Environmental Covenant; Exhibit A-2, the deed to the real property upon which the Property subject to the Environmental Covenant is located; and Exhibit A-3, a title search for the real property upon which the Property subject to the Environmental Covenant is located that goes back at least forty years. The deed and title search may be for a larger recorded tract of real property when the Property subject to the Environmental Covenant is only a portion of the recorded tract. The Property subject to the Environmental Covenant should include any land needed for site access unless the Property consists of prequalified soil placed above the limits of emplaced construction and demolition debris. In cases where the Property consists of soil placed above the limits of emplaced construction and demolition debris, the legal description must describe with particularity the horizontal and vertical location of the Property that has been placed above the limits of emplaced construction and demolition debris. All documents will be supplied by owner and operator of the C&D landfill. In cases where the Property consists of soil placed above the limits of emplaced construction and demolition debris, the owner and operator may wish to include within the legal description and surveyed area defined as the Property any planned expansion area that will be used for the placement of additional prequalified soils. All documents are to be supplied by the owner and operator of the CDD landfill.

Exhibit B

This exhibit is to contain a survey of the Property prepared by a professional surveyor, photographs, and a topographical map of the Property subject to the environmental covenant. In particular, in cases where the Property consists of soil placed above the limits of emplaced construction and demolition debris at the Facility, the survey must depict the limits of the emplaced construction and demolition debris and the horizontal and vertical location of soil above the limits of emplaced construction and demolition debris or any constructed and certified cap.

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Soil Quantity, Quality, and Location

The owner or operator will need to document the following:

- The amount of soil needed to cap the facility, and the amount of soil subject to the environmental covenant.
- That the soil quality meets the criteria established in OAC rule 3745-400-07(G)(2). This will entail submittal of test results for all of the soil to be subject to the environmental covenant. Note: The owner or operator will not need to retest the soil prior to use in constructing the cap.
- The location of the soil with respect to the facility and the environmental covenant. The soil can be located at a site other than the facility. The soil subject to the environmental covenant can be excavated or it can be stockpiled.

Role of the Licensing Authority

Although the environmental covenant is signed by the director of Ohio EPA, the environmental covenant draft and supporting documentation is to be submitted to the licensing authority as part of the license application. Prior to sending the package to the manager of the Engineering, Remediation and Authorizations Section of DMWM, the licensing authority is to review the package for completeness and determine whether the prequalification requirements for the designated soil have been met. Only the environmental covenant and Exhibits A and B need to be forwarded. The evaluation for completeness includes:

- Was the fillable template used?
- Is there a legal description (Exhibit A)?
- Is there a survey of property (Exhibit B)?
- Do the soil quantities add up? If there is insufficient quantity of soil subject to the environmental covenant, the cost estimate for the remaining soil must also include cost of purchasing soil.
- Was the cohesive soil tested to confirm quality? Were enough samples taken?
- Is the soil to be accessed on the property subject to the environmental covenant?

After receipt of the environmental covenant and supporting documentation from the licensing authority, Ohio EPA will contact the applicant directly to resolve any outstanding issues.

After the Environmental Covenant is Signed

After the environmental covenant is signed by the director and the property owner, the owner has obligation to record the environmental covenant within 30 days. This is noted in Item #23 of the environmental covenant template. The owner is also required to provide a file and date stamped copy of the recorded covenant to a number of parties including Ohio EPA and the licensing authority. This is noted in item #25 of the environmental covenant template.

The owner or operator will need to reference a valid environmental covenant in their financial assurance documentation included in their renewal license application if they wish to continue using an environmental covenant to reduce the cost of obtaining soil for constructing the final cap in future licensing cycles. The licensing authority should also verify that the soil subject to the environmental covenant remain available through the existing compliance/inspection process.

Contact

For more information, contact the Engineering, Remediation and Authorizations Section at (614) 644-2621.