



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

RECEIVED

JUN - 5 2017

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Nebraska Dept of Environmental Quality  
By: \_\_\_\_\_ DEQ#182 \_\_\_\_\_

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number: 7014 1200 0000 6126 1317

Mr. William G. Blake  
Baylor, Evnen, Curtiss, Grit & Witt, LLP  
Wells Fargo Center  
1248 O Street, Suite 600  
Lincoln, Nebraska 68508

RE: Signed Environmental Covenant  
Brunswick  
Lincoln, Nebraska  
EPA ID # NED043534635

Dear Mr. Blake:

This letter transmits the executed environmental covenant for you to record, signed by the Director of the Air and Waste Management Division of the U.S. Environmental Protection Agency Region 7. Please provide a copy of the recorded environmental covenant to the EPA within 30 days of the date of recording.

Please note that Exhibit 1, while appropriate for inclusion in the covenant, does not identify Areas 2 and 4 at the property that have activity and use restrictions imposed. We are enclosing an example of a figure that could be recorded with the covenant to identify these areas.

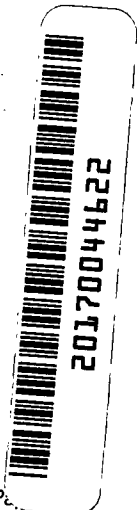
If you have any questions, please contact me at (913) 551-7657 or by email at [grisolano.mary@epa.gov](mailto:grisolano.mary@epa.gov). The EPA would like to express our appreciation for the Miller's cooperation in this matter.

Sincerely,

Mary Grisolano, P.E.  
Project Manager  
RCRA Corrective Actions and Permits Section  
Waste Remediation and Permitting Branch  
Air and Waste Management Division



Printed on Recycled Paper



Enclosures

cc: Ed Southwick, NDEQ  
~~Ben Kittrell, NDEQ~~  
David Selig, Brunswick  
Steven Lange, Knight Piesold and Co.  
John W. Watson, Baker & McKenzie, LEPS 10 MUL

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

[Grantor]  
[Address]

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Space Above for Record's Use Only

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is executed this \_\_\_ day of \_\_\_\_\_, 2017, by and between Miller Seed Company, a Nebraska Partnership, (Millers), as Grantor and Miller Seed Company, as 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 south of Superior Street between 27th and 40th Street, in Lincoln, Lancaster County, Nebraska, legally described as follows:

Lot 188, IT, formerly Lot 93 IT except the north 10 feet thereof, and  
Lot 189 IT, formerly Lot 170 except the north 10 feet thereof, Irregular Tracts  
in the North Half of Section 7, Township 10 North, Range 7, Lancaster County,  
Nebraska and shown on Exhibit 1 attached hereto, "Property."

B. Grantor's Property is located adjacent to other property ("Source Area") previously owned and operated by Brunswick Corporation. Brunswick Corporation and its corporate predecessors previously owned and used the Source Area as an industrial facility that used trichloroethene (TCE) as a cleaning solvent.

C. The Source Area was identified as the site of release(s) of hazardous substances, pollutants, and/or contaminants into the groundwater underlying the Property. These contaminants include TCE and breakdown products cis-1, 2-dichloroethene, trans-1,2-dichloroethene, and vinyl chloride; hereinafter known collectively as "Site Contaminants."

D. Grantor's Property has been used for agricultural purposes and may in the future be developed for commercial or industrial use.

E. The Source Area has been the subject of an environmental response project pursuant to a Resource Conservation and Recovery Act (RCRA) Corrective Action Permit, issued June 30, 1998 (EPA ID No. NED 043534635), administered by the United States Environmental Protection Agency (EPA).

F. As defined in Neb. Rev. Stat. § 76-2602(2), the federal Agency is the EPA and the state Agency is the Nebraska Department of Environmental Quality (NDEQ). Reference herein to Agency shall refer to both the federal and state Agencies listed in this paragraph, unless specifically identified as one or the other.

G. The administrative record for this environmental response project is available to the public and located at EPA Region 7 offices, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**NOW, THEREFORE,**

Grantor hereby declares that Grantor's Property, except the north 300 feet thereof, (the "Encumbered 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. The Encumbered Property is shown and described on Exhibit 1 attached hereto.

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 direct or indirect exposure to groundwater contamination, resulting from releases of Site Contaminants from the Source Area, that remains on the Encumbered Property and to ensure that the Encumbered Property is not developed, used, or operated in a manner which may result in unacceptable exposures to residual contamination.

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, and Holder/Grantee, their 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 defined herein 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 set forth herein 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 or Grantee from any respective duties and obligations it may have under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations for the Areas depicted in Exhibit 1:

- A. The portion of the Property depicted as Area 3 on Exhibit 1 shall not be used for residential, childcare, preschool, elementary or secondary school, dormitory or nursing home facilities.
- B. Extraction and use of the groundwater underlying the Property is prohibited within Areas 2, 3 and 4 as depicted on Exhibit 1, except for investigation or remediation thereof approved by the Agency.
- C. Any new building or structure planned for human occupancy constructed on the Property within Area 3 as depicted and described in Exhibit 1 must be constructed with a vapor mitigation system or any other acceptable technologies as appropriate to protect human health, unless groundwater sampling indicates that levels of Site Contaminants in the groundwater are below levels acceptable to the Agency, with such acceptance provided in writing. Upon request, the Agency shall be provided with a copy of the construction plans for the as-built vapor mitigation technology.
- D. Any such remedial system must be operated and maintained in accordance with standards for protectiveness of human health and the environment, unless or until groundwater sampling indicates that levels of Site Contaminants in the groundwater are below levels acceptable to the Agency.

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 limitation granted herein.

6. Compliance Reporting. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions known to 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 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 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.

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 or be accompanied by 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 Lancaster 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 LANCASTER COUNTY, NEBRASKA ON \_\_\_\_\_, AT DOCUMENT NUMBER \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The portion of the Property depicted as Area 3 on Exhibit 1 shall not be used for residential, childcare, preschool, elementary or secondary school, dormitory or nursing home facilities.
- b. Extraction and use of the groundwater underlying the Property is prohibited within Areas 2, 3 and 4 as depicted on Exhibit 1, except for investigation or remediation thereof approved by the Agency.
- c. Any new building or structure planned for human occupancy on the Property within Area 3 as depicted and described in Exhibit 1 must be constructed with a vapor mitigation system or any other acceptable technologies as appropriate to protect human health, unless groundwater sampling indicates that levels of Site Contaminants in the groundwater are below levels acceptable to the Agency, with

such acceptance provided in writing. Upon request, the Agency shall be provided with a copy of the construction plans for the as-built vapor mitigation technology.

- d. Any such remedial system must be operated and maintained in accordance with standards for protectiveness of human health and the environment, unless or until groundwater sampling indicates that levels of Site Contaminants in the groundwater are below levels acceptable to the Agency.

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 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 Lancaster 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 Lancaster County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Holder/Grantee shall distribute a file and date-stamped copy of the recorded Environmental Covenant to the Grantor, the state Agency, and the federal Agency.

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

Miller Seed Company  
P. O. Box 81823  
Lincoln, NE 68501

With a copy to:

William G. Blake, Attorney at Law  
1248 "O" Street, Suite 600  
Lincoln, NE 68508

#### STATE AGENCY

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

#### FEDERAL AGENCY

United States Environmental Protection Agency, Region 7  
Air and Waste Management Division/RCRA  
11201 Renner Boulevard  
Lenexa, KS 66219



ACKNOWLEDGEMENTS

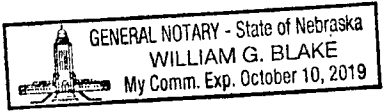
GRANTOR:

IN WITNESS WHEREOF, Grantor, as the owner of this Property of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 25 day of April, 2017.

Miller Seed Company  
By: Thomas R Miller [Name of Grantor]  
Partner  
[Title]

STATE OF NEBRASKA )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> of April, 2017, by Thomas R. Miller, Partner of Miller Seed Company, who acknowledged said Environmental Covenant on behalf of Grantor.

(SEAL) 

William G. Blake  
Notary Public

HOLDER/GRAVTEE:

IN WITNESS WHEREOF, Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 25 day of April, 2017.

Miller Seed Company  
By: James P. Miller [Name of Holder/Grantee]  
Partner  
[Title]

STATE OF NEBRASKA )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> of April, 2017, by James P. Miller who acknowledged said Environmental Covenant on behalf of Holder/Grantee.

(SEAL) 

William G. Blake  
Notary Public

**FEDERAL AGENCY:**

IN WITNESS WHEREOF, EPA, as an Agency defined in Nev. 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 EPA, a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).


United States Environmental Protection Agency

By: *Becky Weber*  
*su*

Becky Weber  
Director, Air and Waste Management Division  
Region 7, EPA

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> of May, 2017  
by Scott Hayes, who  
acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) 

*Milady R. Peters*  
Notary Public

**STATE AGENCY:**

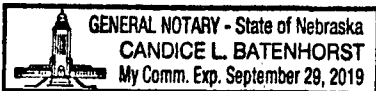
IN WITNESS WHEREOF, the NDEQ, as an Agency defined in Nev. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ, a Holder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

Nebraska Department of Environmental Quality

By: *Jim Macy*  
*Jim Macy*  
*Director, NDEQ*  
NDEQ

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

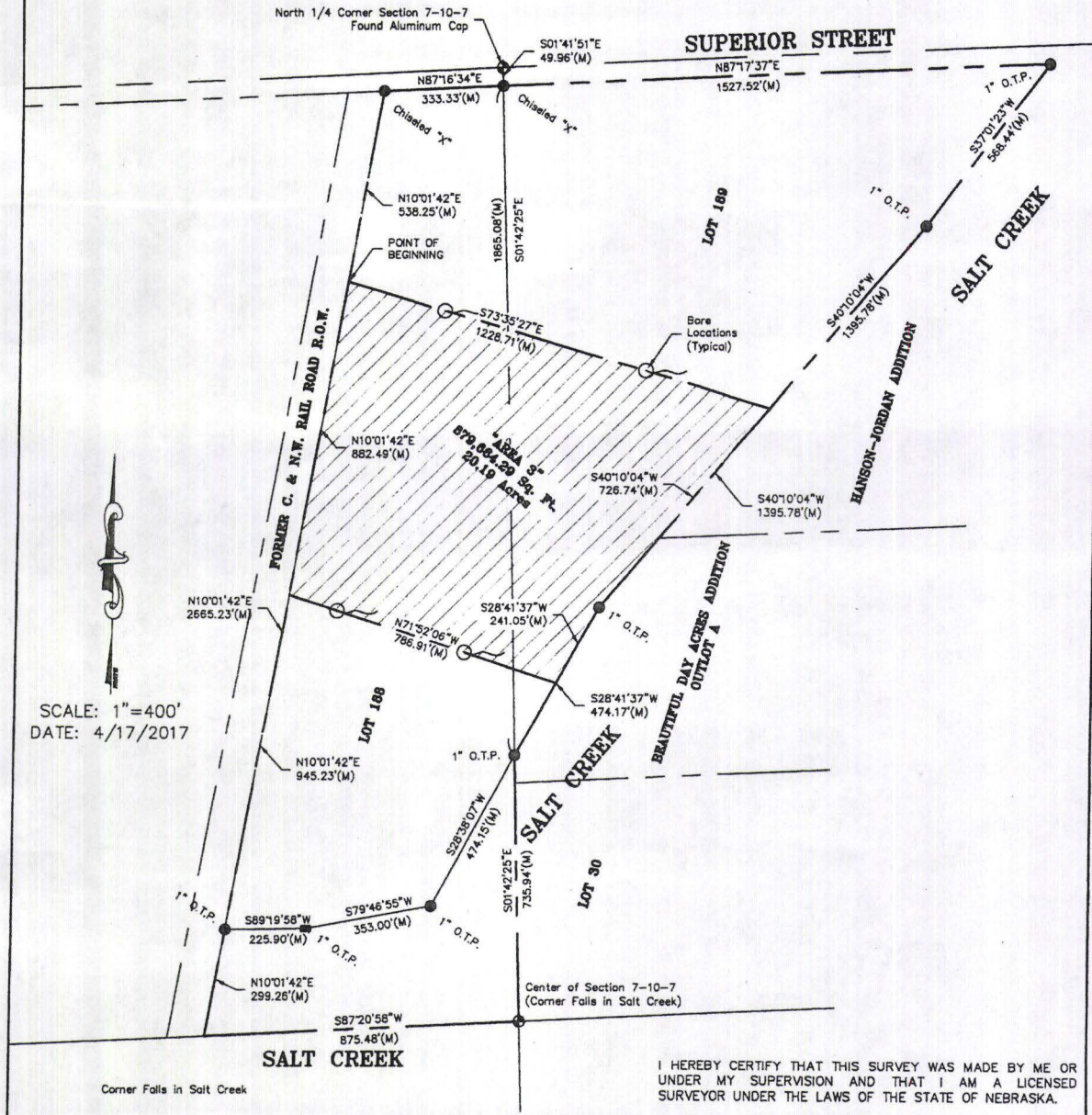
The foregoing instrument was acknowledged before me this 1 of May, 2017  
by Jim Macy, who  
acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) 

*Candice L. Batenhorst*  
Notary Public

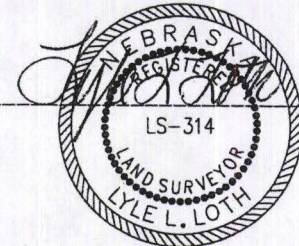
# SURVEY EXHIBIT "AREA 3"

LOTS 188 AND 189, ALL LOCATED IN THE NE 1/2 OF SECTION 7, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA



I HEREBY CERTIFY THAT THIS SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION AND THAT I AM A LICENSED SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

**NOTE:**  
BORE LOCATIONS ARE CONVERTED FROM LATITUDE AND LONGITUDE FROM THE TERRACON REPORT DATED MAY OF 2015 TO NEBRASKA STATE PLANE COORDINATES.



## LEGAL DESCRIPTION

A LEGAL DESCRIPTION FOR AREA 3  
A LEGAL DESCRIPTION FOR AREA 3, LOCATED IN THE NORTH HALF OF SECTION 7, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
REFERRING TO THE NORTH QUARTER CORNER OF SAID SECTION 7, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, THENCE S01°41'51"E, A DISTANCE OF 49.96 FEET; THENCE S87°16'34"W, A DISTANCE OF 333.33 FEET; THENCE S10°01'42"W, A DISTANCE OF 538.25 FEET TO THE POINT OF BEGINNING; THENCE S73°35'27"E, A DISTANCE OF 1228.71 FEET; THENCE S40°10'04"W, A DISTANCE OF 726.74 FEET; THENCE S28°41'37"W, A DISTANCE OF 241.05 FEET; THENCE N71°52'06"W, A DISTANCE OF 786.91 FEET; THENCE N10°01'42"E, A DISTANCE OF 882.49 FEET, TO THE POINT OF BEGINNING, CONTAINING A CALCULATED AREA OF 879,664.29 SQUARE FEET OR 20.19 ACRES, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

### LEGEND

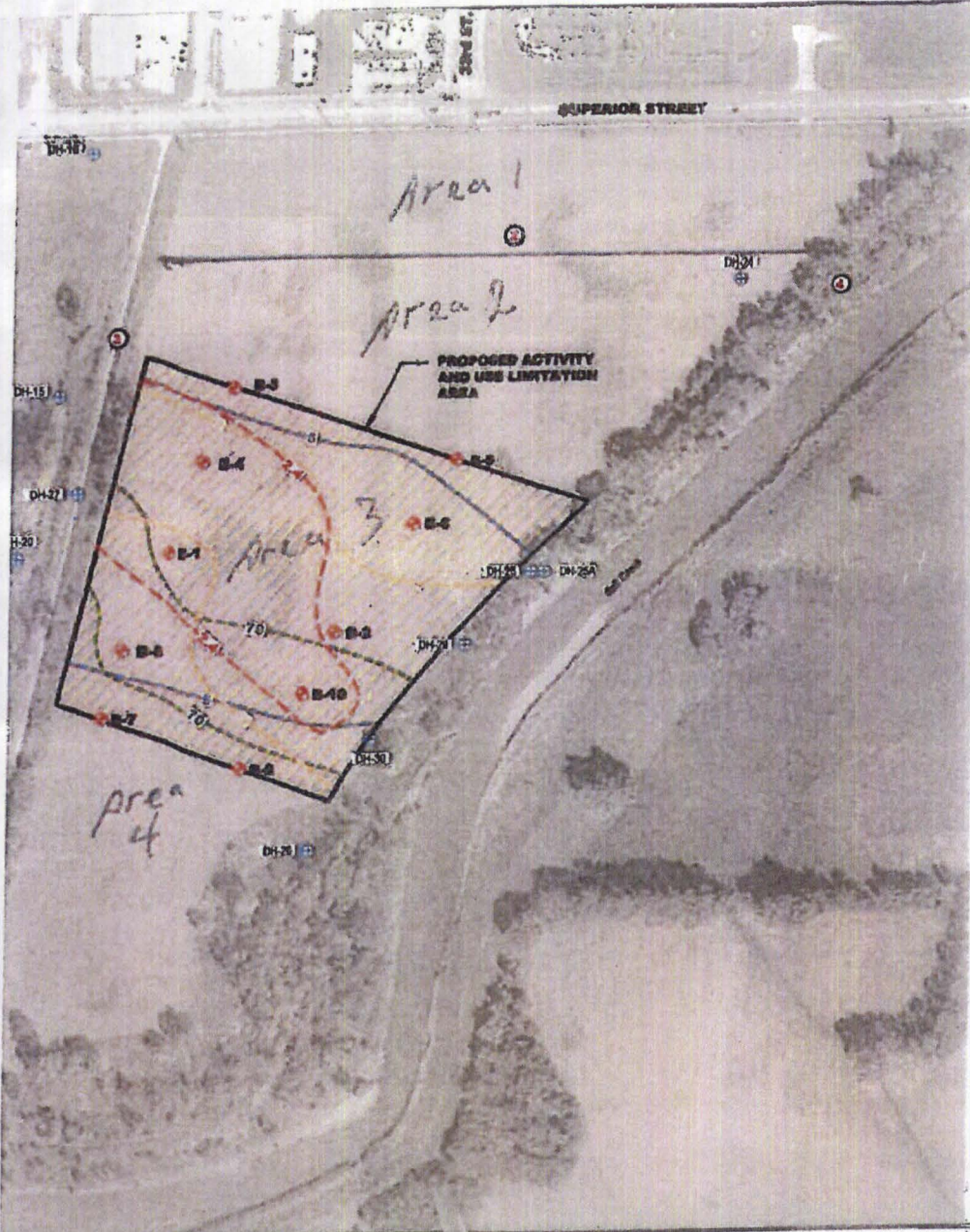
- P PLATTED DISTANCE
- M MEASURED DISTANCE
- CORNER FND. (AS NOTED)
- CORNER SET (3/4" X 24" BAR W/ CAP)

**REGA**  
ENGINEERING GROUP, INC.

601 OLD CHENEY ROAD, STE A  
LINCOLN, NEBRASKA 68512  
(402).484.7342

- ENGINEERING
- PLANNING
- SURVEYING





**LEGEND**

- FORMER BRUNSWICK CONSTRUCTION
- MILLER SEED COMPANY (PROJECT SITE)
- CITY OF LINCOLN RECREATIONAL TRAIL
- NATURAL RESOURCE DISTRICT
- APPROXIMATE TERRACON BORING LOCATION
- DH-30 ○ MONITORING WELL INSTALLED BY OTHERS
- 2.4- 1.5 DGM OR GREATER CONCENTRATION CONTOUR LINE (GPA)
- 70- 2.4 DGM OR GREATER CONCENTRATION CONTOUR LINE (GPA)
- 70- 7.0 DGM OR GREATER CONCENTRATION CONTOUR LINE (GPA)
- 70- 15.0 DGM OR GREATER CONCENTRATION CONTOUR LINE (GPA)

**NOTE:**

1. PROPOSED ACTIVITY AND USE LIMITATION (AUL) IS BASED ON GROUNDWATER ASSESSMENT SERVICES PROVIDED BY THE LIMITED LIABILITY INVESTIGATION (LLI) ACTIVITIES CONDUCTED ON MAY 19, 1983 & MAY 20, 1983.

**ALL-STATE LEGAL**  
**EXHIBIT**  
2  
**covenant**

REVISION NO.	DATE	DESCRIPTION

**PROPOSED ACTIVITY + USE LIMITATION**  
**MILLER SEED COMPANY LSI**  
 SOUTH OF SUPERIOR STREET AT 33rd STREET  
 LINCOLN  
 NEBRASKA

Terracon

Consulting Engineers and Scientists

301 SOUTH 10TH STREET  
 LINCOLN, NEBRASKA 68502  
 (402) 464-8888

REVISION NO.	DATE	DESCRIPTION

