

Environmental Covenant for Municipal Solid Waste Landfills

- Use F11 to move between fields.
- Text highlighted by yellow are instructions/comments and options.
- Delete yellow instruction/comments before finalizing.
- Delete footnotes before finalizing.
- Questions about specific provisions should be directed to Ecology's Waste 2 Resources Program.

After Recording Return
Original Signed Covenant to: ¹

Name
Waste 2 Resources Program
Department of Ecology
Ecology Office Address

NOTE: *This Covenant should not be recorded without Ecology's approval and signature.*

Grantors must have a title search conducted within the last 6 months to identify all recorded interests in the Property including title holders, holders of other interests (such as easements, right of ways, water & mineral rights), and encumbrances (such as lien and mortgage holders). The results of this search, typically called a title report or plat certificate, must be included with any request asking Ecology to sign a Covenant. An update to the title search should be provided to Ecology along with the request to sign the final covenant.

Environmental Covenant

Grantor: Name of Landowner or other Grantor ²

Grantee: State of Washington, Department of Ecology

Brief Legal Description: Provide brief legal description

Tax Parcel Nos.: Provide tax parcel numbers

Cross Reference:

- If superseding or amending an existing Covenant, insert one of the following: "Original Covenant #____ (superseding)" OR "Original Covenant #____ (amending)"
- Insert a reference to any subordination agreements, if separately recorded
- Insert a list of other related documents such as consent decree, order, or NFA opinion
- Otherwise, delete

RECITALS ³

a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

b. The Property that is the subject of this Covenant is part or all of a municipal solid waste landfill commonly known as Landfill Name. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

¹ Some counties keep the original covenant, others don't. If the signed original is available, it must be sent to Ecology. If the signed original is not available, send a legible copy to Ecology.

² The Grantor of a covenant typically is the fee simple land owner of the property. The Grantor may also include holders of other property interests such as a holder of an easement, right of way, mineral right, lien, or mortgage.

³ This section is primarily used to describe this document and its purpose. It should not be used for substantive binding provisions.

Environmental Covenant for Municipal Solid Waste Landfills

- c. The Property is subject to post-closure requirements under RCW 70.95. This covenant is required because solid waste is contained on the Property beneath a final cover system that is designed to minimize infiltration and erosion and to prevent exposing waste. In addition, during the post-closure care period, the owner or operator is required, under the terms of its permit from the jurisdictional health department, to maintain and operate systems such as leachate collection, gas control, groundwater monitoring, and erosion control systems on the Property.
- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of the landfill unit/s.
- e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as holder is not an ownership interest under Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW.
- f. **Optional–Include the following statement if this Covenant is superseding another environmental covenant.** This Covenant supersedes and replaces the existing Environmental (Restrictive) Covenant, which is recorded with Name of CountyCounty as # of original covenant.

COVENANT

Name of Landowner or other Grantor, as Grantor add "s" if more than one Grantor and fee simple, easement, or other owner of the Property hereby grants to the Washington State Department of Ecology, as Grantee, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. Interference with the Landfill Unit/s. The Grantor shall not engage in any activity on the Property that may impact or interfere with the landfill unit/s and any operation, maintenance, inspection or monitoring of the landfill unit/s without prior written approval from the Grantees. The Grantor shall not engage in or allow any uses or activities on the Property that:

i. Threaten the integrity of any cover, waste containment, storm water control, gas, leachate, public access control, or environmental monitoring system.

ii. May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the landfill unit/s and continued protection of human health and the environment.

iii. May result in release of solid waste constituents or otherwise exacerbate exposures.

b. Protection of Human Health and the Environment. The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from the Grantees.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation,

Environmental Covenant for Municipal Solid Waste Landfills

maintenance and monitoring of the landfill unit/s in accordance with post-closure permit requirements and continued compliance with this Covenant.

d. Leases. Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. Amendment to the Covenant. Grantor must notify and obtain approval from Grantees at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Grantees must issue a public notice and provide an opportunity for the public to comment on the proposal. If Grantees approve the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

The prohibitions set forth here should be as set out in the post-closure plan approved by the jurisdictional health department, and specifically that part of the plan that describes “the planned uses of the property during the post-closure period and activity and use limitations placed on the property” as required to be submitted under WAC 173-351-500(2)(c)(iv).

- a. Land use.**
- b. Containment of waste materials.**
- c. Stormwater facilities.**
- d. Vapor/gas controls.**
- e. Groundwater use.**
- f. Monitoring.**
- g. Other.**

Section 3. Access.

a. The Grantor shall maintain clear access to all components necessary to construct, operate, inspect, monitor and maintain the landfill unit/s.

b. The Grantor freely and voluntarily grants Grantees and their authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated landfill activities, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any structures or systems on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

Environmental Covenant for Municipal Solid Waste Landfills

a. Conveyance of Any Interest. The Grantor, when conveying any interest in any part of the Property OR within the area of the Property described/illustrated in Exhibit B/C, including but not limited to title, easement, leases, and security or other interests, must:

- i. Notify Grantees at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON DATE AND RECORDED WITH THE NAME OF COUNTY COUNTY AUDITOR UNDER RECORDING NUMBER RECORDING #. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Grantees, provide Grantees with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Grantees.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Grantees of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Environmental Covenant for Municipal Solid Waste Landfills

Insert name and contact information for Grantor	Insert Ecology contact name Washington State Department of Ecology Waste 2 Resources Program Insert regional office address Insert regional office phone number
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 5. Modification or Termination.

- a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.95 RCW and any rules promulgated under these chapters.
- b. **Optional** By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant. ⁴

Section 6. Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.95 RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

⁴ As time passes, the original grantor and other signers of the covenant may no longer exist as viable entities. This is intended to allow future amendments or termination of the covenant without Ecology having to seek court authorization, as provided by RCW 64.70.100.



Environmental Covenant for Municipal Solid Waste Landfills

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this _____ day of _____, 20__.

NAME OF GRANTOR

SIGNATURE _____
TITLE

DATED _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

SIGNATURE _____
SECTION MANAGER

DATED _____

Unless waived under Section 5b above, add the following provision where a covenant is being amended or superseded.

The undersigned acknowledge Environmental (Restrictive) Covenant # of the original filed in Name of County County is hereby terminated and replaced with the above Environmental Covenant.

NAME OF GRANTOR OF ORIGINAL COVENANT

SIGNATURE _____
TITLE

DATED _____

Special accommodations

To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at (360) 407-6900. Persons with impaired hearing may call Washington Relay Service at 711. Persons with a speech disability may call TTY at 877-833-6341.

Environmental Covenant for Municipal Solid Waste Landfills

GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

Environmental Covenant for Municipal Solid Waste Landfills

Exhibit A

LEGAL DESCRIPTION

Required

Environmental Covenant for Municipal Solid Waste Landfills

Exhibit B

PROPERTY MAP

Required

Environmental Covenant for Municipal Solid Waste Landfills

Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

While a map illustrating the location of the restrictions is required, the grantor has the option of creating a separate map or including this information in Exhibit B.

More than one map may be necessary to illustrate the area subject to restrictions. For example, the area encompassing a soil cap may be different than the area where gas exposure is a concern.

The area subject to the restrictions, if less than the entire property, should be a contiguous area with even boundaries that follow physical features on the site so the boundary can be easily discerned in the field.