

Environmental Covenant for Municipal Solid Waste and Limited Purpose Landfills

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

After Recording Return
Original Signed Covenant to:¹

Name

Solid Waste Management Program

Department of Ecology

Ecology Office Address

NOTE: This Covenant is not valid without Ecology's approval and signature.

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: See box below

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.

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.

- b. The property that is the subject of this Covenant is part or all of a municipal solid waste or limited purpose 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.
- 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 County County 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, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and 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 Grantee. 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 Grantee.
- 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, 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.

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 WAC 173-351-500(1)(h) or WAC 173-350-400(8)(e).

- 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

- 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. Provide written notice to Grantee of the intended conveyance 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 Grantee, provide Grantee 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 Grantee.
- 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 Grantee 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. **Notification procedure.** 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. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Insert name and contact information for
Grantor

Insert Ecology contact name
Washington State Department of Ecology
Solid Waste Management Program
Insert regional office address
Insert regional office phone number

Section 5: Modification or Termination.

- a. Grantor must provide written notice and obtain approval from Grantee 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. ⁴ For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site: ⁵
 - i. Grantee must issue a public notice and provide an opportunity for the public to comment on the proposal; and
 - ii. If Grantee approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b. 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.
- c. **Optional:** By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Grantee, agree to waive all rights to sign amendments to and termination of this Covenant. ⁶

Section 6: Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Within ten (10) days of execution of this Covenant, Grantor shall provide Grantee with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c. Grantee 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 Grantee, 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 Grantee of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Grantee under this Covenant.
- d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Grantee, shall be obligated to pay for

⁴ Example of inconsistent uses are using the Property for a use not allowed under the covenant, or drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

⁵ An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

⁶ 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.

Grantee'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.
- 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.

[Grantor's Signature Block For Original Covenants]

Each person who signs must have a separate signature block and applicable notary acknowledgment. Repeat as many times as necessary.

Holders of other property interests must either sign the amended Covenant as a Grantor or sign the subordination agreement in Exhibit D.

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

EXECUTED this _____ day of _____, 20__.

Signature

By: _____

Printed Name

Title: _____

Insert one of the following, as applicable, after each signature.

- Individual acknowledgement
- Corporate acknowledgement
- Representative acknowledgement

[GRANTOR'S SIGNATURE BLOCK FOR AMENDED COVENANTS]

Each person who signs must have a separate signature block and applicable notary acknowledgment. Repeat as many times as necessary.

When amending a Covenant, each Grantor of the existing Covenant must sign the amended Covenant unless the Grantor waived its rights under Section 5(b) of the Covenant.

Holders of other property interests must either sign the amended Covenant as a Grantor or sign the subordination agreement in Exhibit D.

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

EXECUTED this _____ day of _____, 20__.

The undersigned further acknowledges Covenant # of the Original Covenant filed in Name of County County, is hereby terminated and replaced with the above Environmental Covenant.

Signature

By:

Printed Name

Title:

Insert one of the following, as applicable, after each signature.

- Individual acknowledgement
- Corporate acknowledgement
- Representative acknowledgement

Individual Acknowledgement

STATE OF _____
COUNTY OF _____

On this day of _____, 20____, I certify that _____ personally appeared before me, 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 ⁷
Residing at _____
My appointment expires _____

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 ⁸
Residing at _____
My appointment expires _____

Representative Acknowledgement

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the Type of Authority of Name of Party Being Represented to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of Washington ⁹
Residing at _____
My appointment expires _____

⁷ Where landowner is located out of state, replace with appropriate out-of-state title and location.

⁸ Where landowner is located out of state, replace with appropriate out-of-state title and location.

⁹ Where landowner is located out of state, replace with appropriate out-of-state title and location.

[ECOLOGY'S SIGNATURE BLOCK]

The Department of Ecology hereby accepts the status as Grantee and Holder of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Signature

By: _____

Printed Name

Title: _____

Ecology Section Manager

Dated: _____

State 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 state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said state agency.

Notary Public in and for the State of Washington

Residing at _____

My appointment expires _____

Exhibit A

Legal Description

Required

Exhibit B

Property Map

Required

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.

Exhibit D

SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That Holder's Name the owner and holder of that certain Instrument – e.g. Easement/ROW/Mortgage/etc bearing the date the Day day of Month, Year, executed by Name of Person that Granted the Interest being Subordinated, Legal Status of Original Grantor – e.g. Landowner, Corporate Officer, etc., and recorded in the office of the County Auditor of County County, State of Washington, on Date under Auditor's File Number File Number, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated Date, executed by Name of Person Signing this Subordination Agreement, and recorded in County County, Washington under Auditor's File Number File Number.

Signature

By: _____

Printed Name

Title: _____

Dated:

Insert one of the following, as applicable, after each signature.

- Individual acknowledgment
- Corporate acknowledgment
- Representative acknowledgment

Individual Acknowledgment

STATE OF _____
COUNTY OF _____

On this day of _____, 20__, I certify that _____ personally appeared before me, 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 ¹⁰
Residing at _____
My appointment expires _____

¹⁰ Where landowner is located out of state, replace with appropriate out-of-state title and location.

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 ¹¹
Residing at _____
My appointment expires _____

Representative Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the Type of Authority of Name of Party Being Represented to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of Washington ¹²
Residing at _____
My appointment expires _____

¹¹ Where landowner is located out of state, replace with appropriate out-of-state title and location.

¹² Where landowner is located out of state, replace with appropriate out-of-state title and location.