



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND  
ENERGY

Remediation and Redevelopment Division

**DECLARATION OF RESTRICTIVE COVENANT PART 213**

This document provides instructions on the use of a Declaration of Restrictive Covenant to comply with Section 21310a(2) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.*, when the corrective action at a site results in a final remedy that relies on an institutional control in the form of a Restrictive Covenant (RC). A RC is not required if the corrective action solely relies on an ordinance under Section 21310a(3)(a) of the NREPA, or an alternate mechanism that is approved by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) pursuant to 21310a(3) of the NREPA. This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of this RC and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Approval and consent of the property owner(s), including any easement holders affected by the RC, must be obtained prior to recording with the Register of Deeds. A copy of the RC and proof of recording must be submitted with the Closure Report (EQP3843) to the appropriate EGLE District Office at the address listed in form EQP4410. The recording requirements for instruments filed with Michigan County Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at: [www.legislature.mi.gov](http://www.legislature.mi.gov).

Please contact Mr. Kevin Schrems, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at [SchremsK@Michigan.gov](mailto:SchremsK@Michigan.gov) or 517-275-1180 for any questions relating to this document or the attached model document; or you may send an email to [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov) for assistance.

The lettered instructions below explain what information should be inserted into the corresponding blanks identified by letter in the model Declaration of Restrictive Covenant. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***. Remove all bolded font and drafting notes. The first page should have a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.

**A. *Insert as appropriate based on the land use proposed for the Restrictive Covenant and the risk-based screening levels or site-specific target levels that have been satisfied for the corrective action:***

- Restricted Residential

- Restricted Nonresidential
- Restricted Site-Specific (i.e., recreational)

**B. EGLE Reference No: RC-RRD-213-[year]-[number]. *This Reference Number ensures the protectiveness, enforcement, and tracking of institutional controls. All institutional control Reference Numbers assigned shall be predominantly displayed on the first page. The EGLE Reference Number can be obtained by emailing [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov). If you have received a Reference Number over a year prior to finalizing the Restrictive Covenant, please send an email to [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov) above to request a new Reference Number.***

**C. *Enter the name of the county where the Property is located.***

**D. *Enter the address location of the Property, including city or township and county.***

**E. *Select the appropriate option based upon the proposed restricted area:***

**OPTION 1: *To be used if the entire Property is subject to all the land and/or resource use restrictions provided in this RC. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:***

Exhibit 2 (Survey of Property) provides a survey of the Property that is subject to the land or resource use restrictions specified in this Restrictive Covenant.

**OPTION 2: *To be used if not all of the Property is subject to all the land and/or resource use restrictions provided in this RC. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific area(s) that will be subject to the restrictions is required. Insert the following:***

Exhibit 2 (Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions) provides a survey of the Property that depicts the area or areas subject to restriction and contains additional legal descriptions that distinguish those portions of the Property that are subject to the land or resource use restrictions specified in this Restrictive Covenant.

**F. *Enter the Part 213 Site name and Facility ID number.***

**G. *Insert as appropriate:***

- Final Assessment Report (FAR)
- Closure Report (CR)

**H. *Enter the date of the Final Assessment Report (FAR) or the Closure Report (CR). If a date is not available, please contact the Remediation and Redevelopment Division District Office staff for the property and discuss alternative language.***

- I. **Add the following language if the corrective action relies on site-specific target levels:**

and site-specific target levels developed for the Property as part of a Tier II or Tier III evaluation under the risk-based corrective action (RBCA).

- J. **Add the following to the sentence if there is a long-term physical component of the corrective action (i.e., an asphalt cap, containment barrier, or monitoring wells):**

and 4) to prevent damage or disturbance of any element of the corrective action constructed on the Property.

***If there is no long-term physical component of the correction action remove the semicolon and end the sentence.***

- K. **Enter the name of owner or operator, as defined by Section 21303(b) or (c) of the NREPA, who is proposing the FAR or CR and the filing of this RC.**

- L. **Insert a paragraph similar to the following example that briefly describes the nature and extent of the regulated substances released, the affected media and routes of potential exposure, any long-term components of the corrective action that are to remain in-place on the Property, and how the corrective action proposed including restricting land or resource uses will be effective to address unacceptable risks for all relevant exposure pathways that require restrictions:**

**Example:** Regulated substances including benzene, toluene, ethyl benzene, xylenes, naphthalene and trimethylbenzenes were released from an underground storage tank resulting in contamination of the Property. Soil and groundwater contamination remain present at levels that do not allow unrestricted use of the Property. Specifically, concentrations of regulated substances remain present in the groundwater in excess of the nonresidential drinking water RBSLs. This potential exposure risk has been addressed by preventing the use of the groundwater. In addition, concentrations of regulated substances remain in the soils at certain locations on the Property that could pose an exposure risk from direct contact with the contaminated soils and from inhalation of the regulated substances in their vapor phase. An exposure barrier has been constructed (identified in Exhibit 2) to prevent direct contact with these contaminated soils. An engineered vapor barrier has been constructed under Building B (identified in Exhibit 2) to prevent migration of contaminants in the vapor phase into the building at levels that would result in unacceptable exposures through inhalation.

***[Insert the following language if a vapor mitigation system has been installed on the Property]***

**Example:** A vapor mitigation system (VMS) has been installed by **[insert the entity responsible for the release or insert the name of the engineering firm**

who installed the VMS on behalf of a non-liable entity] within the Property building (identified in Exhibit 6) [renumber if necessary] to mitigate unacceptable risk from exposure to regulated substances via the Volatilization to Indoor Air Pathway. Specific activity and use limitations and operation and maintenance of the VMS is provided in this Restrictive Covenant.

***[Insert the following language if residual (or mobile) nonaqueous-phase liquid is being left in place at the Property]***

Residual (or mobile) Nonaqueous-Phase Liquid (NAPL), including [select all that apply: gasoline, diesel, heating oil, or waste oil] were properly characterized using a Conceptual Site Model in accordance with ASTM International designation E 2531-06 E1 and will remain in place. The NAPL exists below the ground surface at a depth of [insert approximate depth]. Exhibit 2 (***Survey of Property or Survey of the Property and Limits of Land or Resource Use Restrictions***) provides the location of the institutional control and the horizontal and vertical extent of the NAPL is described in Exhibit 4 (Horizontal and Vertical Extent of NAPL in Relation to Property Boundaries) [renumber if necessary]. The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to regulated substances as a result of the conditions created by the presence of the NAPL soil or groundwater contaminant concentrations that exceed the unrestricted residential RBSLs under Section 21304a(2) of the NREPA.

**M. Enter as appropriate:**

- as Owner of the Property
- with the express written permission of the Owner of the Property

**N. Select one of the following options as appropriate to describe the restrictions on land use necessary to comply with the appropriate RBSLs or SSTLs that are consistent with the zoning of the Property. The person preparing the Restrictive Covenant must examine the zoning code or ordinance that applies to the Property to determine what land uses are allowed under the zoning category:**

***OPTION 1: If the Property is subject to land use restrictions required to satisfy the nonresidential RBSLs or SSTLs, insert the following paragraph below:***

a. **Prohibited Land Uses:** The Owner shall prohibit all uses of [insert as appropriate: the Property or portions of the Property as described in Exhibit 2 (***Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions***)] that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential RBSLs or SSTLs established pursuant to Section 21304a(2) of the NREPA. Uses that are compatible with nonresidential RBSLs are generally described in Exhibit 3 (Description of Allowable Uses). ***[If the local zoning ordinance allows for residential uses within the Property's current zoning, insert the following:*** At the time of recording of this Restrictive Covenant, the [insert name of local zoning authority and zoning code designation] zoning code designation

allowed for the following residential uses that are not compatible with the nonresidential RBSLs and are therefore prohibited by this Restrictive Covenant: **[list prohibited uses]**. RBSLs for land use based response activities are located in the Government Documents Section of the State of Michigan Library.

***OPTION 2: Site-specific target levels are based on alternative exposure assumptions unique to the Property (i.e., recreational). Land use restrictions must be in place to assure that activities or characteristics of the Property continue unchanged into the future such that unacceptable exposures will not occur. If the Property is subject to land use restrictions required to satisfy site-specific target levels, insert the following paragraph below:***

a. **Prohibited Land Uses:** The Owner shall prohibit all uses of **[insert as appropriate: the Property or portions of the Property as described in Exhibit 2 (Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions)]** that are not compatible with or are inconsistent with the assumptions and basis for the site-specific target levels developed for the Property. Uses that are compatible with the site-specific target levels developed for the Property are generally described in Exhibit 3 (Description of Allowable Uses). **[If the local zoning ordinance allows for uses within the Property’s current zoning that are not compatible with the site-specific target levels developed for the Property, insert the following:** At the time of recording of this Restrictive Covenant, the **[insert name of local zoning authority and zoning code designation]** zoning code designation allowed for the following uses that are not compatible with the site-specific target levels developed for the Property and are therefore prohibited by this Restrictive Covenant **[list prohibited uses]**.

***OPTION 3: If the Property does not require any restrictions on land use because regulated substances left in place would allow for a limited or restricted residential closure with the appropriate resource use restrictions, there is no need to insert any restriction language under “Prohibited Land Uses.” Therefore, this paragraph should be excluded from the Restrictive Covenant and the remainder of the paragraphs should be renumbered accordingly.***

- O. ***Enter as appropriate:***
- on the Property
  - within the portions of the Property designated in Exhibit 2 (Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions) as **[insert designation i.e., “Restricted Area”]**
- P. ***Enter additional paragraphs, as appropriate, to describe the prohibited activities necessary to reliably restrict exposure to regulated substances located on the Property or within the portions of the Property designated in Exhibit 2 (Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions). The following are examples that may or may not be appropriate for use. Number each new restriction accordingly when entering the information into the Restrictive Covenant.***

**Examples:**

**Exposure Restriction for Use of Groundwater:**

- (i.) The construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose is prohibited, except as provided below:
  - (a) Wells and other devices constructed for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of regulated substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
  - (b) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

**Direct Contact Exposure Barrier Restriction:**

- (ii.) Any excavation or other intrusive activity that could affect the integrity of the ***[insert thickness and material of barrier]*** that serves to prevent direct contact exposure to contaminated soils at the Property. The ***[insert thickness and material of barrier]*** barrier has a base elevation of ***[insert reproducible benchmark]*** and is located on the Property as shown on Exhibit 2 (***Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions***) as ***[insert designation, i.e., “Area Restricted for Direct Contact”, “No Build Area”, etc.]***. ***Note: if multiple cover types are relied on as an engineering control, the thickness and the base elevation of each cover type must be described in this paragraph and depicted in Exhibit 2. Exhibit 2 should also indicate the variation in base elevation(s)***. Disturbance of the barrier may be allowed during short-term construction or repair projects, or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the ***[insert material of barrier]***, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 213.

**Volatilization to Indoor Air Pathway Exposure Restriction (no buildings):**

- (iii.) The construction of new structures, **[insert if appropriate: or modifications to existing structures on the Property identified in Exhibit 2]**, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase regulated substances to migrate into the new structure at concentrations greater than applicable RBSLs or SSTLs; or, unless prior to construction of any structure, an evaluation of the potential for any regulated substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and is in compliance with Section 21304c of the NREPA.

**Note: Under Part 213 the final remedy to achieve closure of a release cannot include the on-going operation and maintenance of a vapor mitigation system. The following example language is not appropriate to include within a Restrictive Covenant that is part of the final remedy to achieve closure.**

**Vapor Mitigation System:**

***Example language to protect the integrity of an active or passive vapor mitigation system (if installed at the Property to address risks through the volatilization to indoor air pathway, while corrective actions are being implemented to reduce the concentrations of regulated substances in soil or groundwater) in addition to the volatilization to indoor air pathway language above:***

- (iv) The Owner shall prohibit any activity that would affect the integrity, effectiveness, and operation of the vapor mitigation system (VMS) at the location(s) in Exhibit 6 **[renumber if necessary]**. This includes, but is not limited to, removing, destroying, altering, or shutting down the VMS in any way that renders it inoperable, or incapable of functioning as intended. The VMS prevents unacceptable exposure to regulated substances in the **[insert as appropriate: soil or groundwater]** as a result of volatilization of those regulated substances into indoor air. An Operation and Maintenance manual for the VMS is provided to the Owner attached as Exhibit 7 **[renumber if necessary]**. The Owner shall not perform any building modifications without evaluating the impact on the operation of the VMS. Modifications include but are not limited to: modifications of the existing structure, or on the existing floors, slabs, or subsurface areas which are likely to decrease the efficiency of the VMS or otherwise interfere with the operation of the VMS. Continued operation and maintenance of the VMS is necessary, unless the Owner performs an evaluation of the potential for regulated substances to volatilize into indoor air and demonstrates that the VMS is no longer necessary. Any questions related to the VMS should be directed to **[insert the entity responsible for the release or insert the name of the engineering firm who installed the VMS on behalf of a non-liable entity]**.

- Q. ***Enter additional paragraphs, as appropriate, to describe the prohibited activities necessary to maintain the effectiveness and integrity of the corrective action implemented at the Property. The following examples may or may not be appropriate for use. Number each new restriction accordingly when entering the information into the Restrictive Covenant.***

**Examples:**

**Infiltration Barrier Restriction:**

- (i.) Any excavation or other intrusive activity that could affect the integrity of the ***[insert thickness and material of barrier]*** that serves to prevent infiltration of water through contaminated soils at the Property. The ***[insert thickness and material of barrier]*** barrier has a base elevation of ***[insert reproducible benchmark]*** and is located on the Property as shown on Exhibit 2 (***Survey of Property or Survey of Property and Limits of Land or Resource Use Restrictions***) as ***[insert designation, i.e., "Infiltration Barrier Restricted Area"]***. Any excavation or other intrusive activity that could affect the integrity of the ***[insert material of barrier]*** is prohibited, except during short-term construction or repair projects, or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the ***[insert material of barrier]***, that could affect the integrity of the barrier, must include the use of engineering controls to prevent the infiltration of water into the contaminated soil underlying the barrier until the barrier is repaired or replaced. The barrier must be repaired or replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair or replacement of the barrier must be completed unless additional sampling is conducted which demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 213.

**Note: The following example language may be appropriate to include within a Restrictive Covenant to assure the effectiveness and integrity of the corrective action when the corrective action plan includes the operation of a treatment system or includes provisions for on-going monitoring. The following example language is not appropriate to include within a Restrictive Covenant that is part of the final remedy to achieve closure.**

**Monitoring Well Disturbance Restriction:**

- (ii.) Any activity that would interfere with the function of or obstruct access to any monitoring wells and devices located on the Property. This includes, but is not limited to, removing, destroying, or altering any well or device in any way that renders it inoperable, or incapable of functioning as intended.

**Treatment System Restriction:**

- (iii.) Any activity that could affect the integrity, effectiveness, and operation of the groundwater interception trench and treatment system as described in the FAR and depicted in Exhibit 2 (***Survey of Property or Survey of***



Property and Limits of Land or Resource Use Restrictions) as [*insert designation*].

- R. ***Insert if portions of the Property subject to land or resource use restrictions overlap and affect any easement holder's Property interests:***

and all other holders of a legal interest whose interest is affected by this Restrictive Covenant as documented and attached as Exhibit 4 [**renumber if necessary**].

- S. ***Enter the name of the current property owner.***

***[Option 1: use if individual or single owner of property]***

I, [*insert name of owner*] am signing this Restrictive Covenant on this [**enter day of the month**] day of [**enter month**], [**enter year**].

***[Option 2: use if more than one owner of the property]***

We [*insert name of owners*] are signing this Restrictive Covenant on this [**enter day of the month**] day of [**enter month**], [**enter year**]. [**include additional signature blocks as appropriate if more than one owner.**]

- T. ***Enter the current day of the month.***

- U. ***Enter the current month.***

- V. ***Enter the current year.***

- W. ***OPTION: If party that is filing the Declaration of Restrictive Covenant is different than the Property Owner, insert the following sentence:***

***I authorize [enter the name of the person proposing to file the Declaration of Restrictive Covenant] to file the Declaration of Restrictive Covenant with the [enter the name of the county where the Property is located] County Register of Deeds for recording.***

- X. ***Enter the state where the document is signed.***

- Y. ***Enter the county where the document is signed.***

- Z. ***Enter the appropriate form of acknowledgement from the following:***

***OPTION 1: For an individual:***

The foregoing instrument was acknowledged before me this [**date**] by [**name of individual**].

***OPTION 2: For a corporation:***

The foregoing instrument was acknowledged before me this [**date**] by [**name of officer or agent, title of officer or agent**] of [**name of corporation**], a [**state or place of incorporation**], on behalf of the corporation.

**OPTION 3: For a partnership:**

The foregoing instrument was acknowledged before me this **[date]** by **[name of partnership or agent]**, partner **[or agent]** on behalf of **[name of partnership]**, a partnership.

**OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):**

The foregoing instrument was acknowledged before me this **[date]** by **[name of attorney in fact]** as attorney in fact on behalf of **[name of principal]**.

- AA. Stamp name of the Notary Public.**
- BB. Enter the name of the person preparing the document.**
- CC. Enter the address to return the document to once recorded with the Register of Deeds.**

**EXHIBIT 1: LEGAL DESCRIPTION OF PROPERTY:**

***This exhibit must provide the legal description of the Property, including parcel identification number(s) of the Property.***

**EXHIBIT 2: SURVEY OF PROPERTY OR SURVEY OF THE PROPERTY AND LIMITS OF LAND AND RESOURCE USE RESTRICTIONS.**

***This exhibit must be titled as appropriate for the restricted area.***

***The survey must identify, clearly delineate, and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and any key features of the corrective action. The survey must also provide separate legal descriptions for any distinct restricted areas of the Property if not, all areas of the Property are subject to the same restrictions.***

***To provide for a reliable and consistent standard of quality for surveys, all surveys shall be conducted by a licensed professional surveyor employed to provide land surveying services.***

***At a minimum the survey shall include all the following:***

- A clear concise description of the Property surveyed by bearings and distances, commencing with some corner marked and established in the United States system of public land surveys, or reestablished in accordance with accepted methods.***
- The graphical and numerical scale used.***
- A north arrow.***
- Identification of all government corners and related witnesses.***
- A statement of the manner of bearing determination.***
- The ratio of closure of latitudes and departures, which shall be within limits accepted by the profession of land surveying.***

### EXHIBIT 3: DESCRIPTION OF ALLOWABLE USES

DD. *This exhibit is only necessary when the Property is restricted to nonresidential or site-specific land uses. It must be consistent with the zoning of the Property (do not include zoning code as part of this description) and with the generic exposure assumptions utilized in the FAR or CR under Section 21304a(2) of the NREPA, or the alternative exposure assumptions used to derive site-specific target levels if approved in the FAR or CR.*

***OPTION 1: Insert the following paragraph exactly as provided if the Property is restricted to the nonresidential land use category:***

**Nonresidential Land Use:** The nonresidential RBSLs or SSTLs are applicable to industrial, commercial, office or retail nonresidential land use categories with potential exposure to adult workers during a business day and potential intermittent exposures of adults and children who are customers, patrons, or visitors to the establishments during a portion of the business day. Industrial uses typically involve manufacturing operations engaged in processing and manufacturing of materials or products. Other examples of industrial uses are utility companies, industrial research and development, and petroleum bulk storage. Commercial uses include any business or income-producing use such as commercial warehouses, lumber yards, retail gas stations, auto dealerships and service stations, as well as office buildings, banks, and medical or dental offices (not including hospitals). Commercial uses also include retail businesses whose principal activity is the sale of food or merchandise within an enclosed building and personal service establishments which perform services indoors such as health clubs, barber or beauty salons, photographic studios, etc.

If the nonresidential land use allows for routine exposures to children, the land use does not satisfy the nonresidential RBSLs. Residential land uses do not satisfy the nonresidential RBSLs. Residential land use may include, but is not limited to, homes and surrounding yards, single family dwellings, multiple family structures, mobile homes, condominiums, and apartments where people live and sleep for significant periods of time. The use of any accessory building or portion of an existing building as a dwelling unit permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, or for a watchman or caretaker is also prohibited. Any authority that allows for residential use of the Property as a legal non-conforming is also restricted per the prohibitions contained in this Restrictive Covenant.

***OPTION 2: If the Property is restricted to the site-specific land use category, insert a paragraph that describes those uses that are consistent with assumptions used to develop site-specific target levels.***

### EXHIBIT 4: HORIZONTAL AND VERTICAL EXTENT OF NAPL IN RELATION TO PROPERTY BOUNDARIES

***This Exhibit must depict the horizontal and vertical extent of the NAPL in relation to the Property boundaries.***

**EXHIBIT 5: CONSENT OF [choose one of the following: EASEMENT HOLDERS or SUBSURFACE MINERAL RIGHTS OWNERS]**

***This Exhibit is only necessary if easement holders or severed subsurface mineral rights owners on the Property have their rights affected by the restrictions set forth in the Restrictive Covenant. This document provides the express written permission of the easement holder or severed subsurface mineral rights owner to record the Restrictive Covenant and have their Property rights subject to and subordinate to the terms of the Restrictive Covenant. Insert additional pages if multiple easement holders or severed subsurface mineral rights owners exist for the Property.***

**EE. Enter the name of the easement holder.**

**EXHIBIT 6: AS-BUILT DESIGN AND SCALED DRAWING OF THE BUILDING SHOWING LOCATION OF VAPOR MITIGATION SYSTEM**

***This Exhibit must identify, establish, delineate, and graphically depict the spatial extent of all components of the VMS in relation to the structure. It must also include a figure that identifies the entire structure in relation to all property lines and any system component that may require periodic inspection, replacement, or maintenance. All drawings and figures must be to scale, and it is recommended that each figure contains a certified engineer seal. This Exhibit should include both vertical and horizontal as-builts that identify and establish key VMS components.***

**EXHIBIT 7: VAPOR MITIGATION SYSTEM OPERATION, MAINTENANCE AND MONITORING MANUAL AND PERFORMANCE OBJECTIVES**

***This Exhibit must provide the following drawings and figures to scale that include a certified engineer seal and identifies:***

- ***The location of the VMS in relation to the entire structure including all subsurface features including sumps, pits, foundations, utility penetrations or other features that are likely to impact the operation of the VMS,***
- ***Key components of the VMS that require operation, maintenance, or monitoring,***
- ***The spatial extent and location of all components of the VMS in relation to the structure and their location within it,***
- ***Locations and description of any expendable components that may wear out due to use or that may become ineffective over time,***
- ***Mechanical operating equipment signage and any notification placards that must be maintained,***
- ***Seals that are installed that aid in the system functioning, and***
- ***Location of and operation of any installed electronic alarms or monitoring equipment that is designed to identify the operating status of the VMS.***

***Text must also be provided in the Exhibit that:***

- ***Identifies metrics that must be measured and maintained for the system to be considered operating as designed and commissioned,***
- ***Establishes an inspection or maintenance schedule that must be performed, and***
- ***Discusses what steps are necessary to implement if the VMS is found to be not operating, if any installed electronic alarm has been activated, or if any visual indicators or audible signal is encountered.***

--END OF GUIDANCE AND INSTRUCTIONS--

**DECLARATION OF RESTRICTIVE COVENANT  
FOR A \_\_\_(A)\_\_\_ CORRECTIVE ACTION**

EGLE Reference No: \_\_\_(B)\_\_\_

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the \_\_\_(C)\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to regulated substances present at the Property located at \_\_\_(D)\_\_\_ and legally described in the attached Exhibit 1 (Legal Description of the Property). \_\_\_(E)\_\_\_

The Property is associated with \_\_\_(F)\_\_\_ for which a \_\_\_(G)\_\_\_ was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the \_\_\_(G)\_\_\_ dated \_\_\_(H)\_\_\_ . A copy of the \_\_\_(G)\_\_\_ is available from the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division (RRD) District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential RBSLs under Section 21304a(2) \_\_\_(I)\_\_\_ of the NREPA. EGLE recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the \_\_\_(C)\_\_\_ County Register of Deeds based upon the corrective action measures for the site to: 1) restrict unacceptable exposures to regulated substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop RBSLs or SSTLs under Section 21304a(2) of the NREPA; and 3) assure the exposure control measures relied upon in the \_\_\_(G)\_\_\_ are effective; \_\_\_(J)\_\_\_.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective action was implemented by \_\_\_(K)\_\_. Failure of the corrective action to achieve and maintain the RBSLs or SSTLs, exposure controls, and requirements specified in the \_\_\_(G)\_\_; future changes in the environmental condition of the Property; changes in the RBSLs or SSTLs developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the \_\_\_(G)\_\_; or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. The adequacy of the corrective action undertaken pursuant to the \_\_\_(G)\_\_\_ may not have been reviewed by EGLE.

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

“EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

“Owner” means at any given time the then-current title holder of all or any portion of the Property.

“Property” means the real property as described in Exhibit 1 (Legal Description of the Property) of this Restrictive Covenant.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA and Part 213 of the NREPA, shall have the same meaning in this document as in Part 3 and Part 213 of the NREPA, as of the date this Restrictive Covenant is filed.

### Summary of Environmental Conditions and Corrective Action.

\_\_\_(L)\_\_\_

### **NOW THEREFORE,**

#### 1. Declaration of Land or Resource Use Restrictions.

\_\_\_(K)\_\_, \_\_\_(M)\_\_\_ hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

- a. \_\_\_(N)\_\_\_
- b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances. The Owner shall prohibit activities \_\_\_(O)\_\_\_ that may result in exposures above levels established in the \_\_\_(G)\_\_\_. These prohibited activities include:

\_\_\_(P)\_\_\_

- c. Prohibited Activities to Ensure Effectiveness and Integrity of the Corrective Action. The Owner shall prohibit activities on the Property that may interfere with any element of the \_\_\_(G)\_\_\_, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the \_\_\_(G)\_\_\_ . These prohibited activities include:

\_\_\_(Q)\_\_\_

2. Contaminated Soil Management. The Owner shall manage all soils, media, or debris located \_\_\_(O)\_\_\_ in accordance with the applicable requirements of Sections 21304b of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

3. Access. The Owner grants to EGLE and \_\_\_(K)\_\_\_, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the \_\_\_(G)\_\_\_, including, but not limited to, the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the \_\_\_(G)\_\_\_ . The right of access provided to \_\_\_(K)\_\_\_ above is not required under Part 213 for the corrective action to be considered approved. That provision was agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, EGLE will not enforce the Owner's obligation to provide access to \_\_\_(K)\_\_\_ .

4. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the \_\_\_(G)\_\_\_, and this Restrictive Covenant and prevention of exposure to regulated substances. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 21310a(2)(c) of the NREPA.

5. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in a finding by EGLE that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.

6. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until it is determined that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional corrective actions by those parties responsible for performing corrective action at the Property or to comply with Section 21304c of the NREPA.



7. Enforcement of Restrictive Covenant. The State of Michigan, through EGLE, and \_\_\_(K)\_\_\_ may each enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.

9. Authority to Record Restrictive Covenant. The undersigned person recording this Restrictive Covenant is the Owner or has the express written permission of the Owner \_\_\_(R)\_\_\_, and represents and certifies that he or she is duly authorized and has been empowered to record this Restrictive Covenant.

IN WITNESS WHEREOF, \_\_\_(S)\_\_\_ the current and legal Owner of the Property, has caused this Restrictive Covenant, \_\_\_(B)\_\_\_, to be executed on this \_\_\_(T)\_\_\_ day of \_\_\_(U)\_\_\_, 20\_\_\_(V)\_\_\_.  
\_\_\_(W)\_\_\_

**[Enter the name of the current Property Owner]**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF \_\_\_(X)\_\_\_  
COUNTY OF \_\_\_(Y)\_\_\_

\_\_\_(Z)\_\_\_

\_\_\_\_\_  
Notary Public Signature  
\_\_\_(AA)\_\_\_

Prepared by:  
\_\_\_(BB)\_\_\_

When recorded return to:  
\_\_\_(CC)\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY  
AND LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

**EXHIBIT 3**

**DESCRIPTION OF ALLOWABLE USES**

*Insert appropriate option from instruction \_\_\_\_ (DD) \_\_\_\_*

**EXHIBIT 4**

**HORIZONTAL AND VERTICAL EXTENT OF NAPL IN RELATION TO PROPERTY BOUNDARIES**

**EXHIBIT 5**

**CONSENT OF [*choose one of the following*: EASEMENT HOLDERS or  
SUBSURFACE MINERAL RIGHTS OWNERS]**

As evidenced below by my signature, I agree and consent to the recording of the land and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

\_\_\_\_(EE)\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF \_\_\_\_ (X) \_\_\_\_  
COUNTY OF \_\_\_\_ (Y) \_\_\_\_

\_\_\_\_(Z)\_\_\_\_

\_\_\_\_\_  
Notary Public Signature  
\_\_\_\_(AA)\_\_\_\_

**EXHIBIT 6**

**AS-BUILT DESIGN AND  
SCALED DRAWING OF THE BUILDING SHOWING LOCATION OF  
VAPOR MITIGATION SYSTEM**



## EXHIBIT 7

# VAPOR MITIGATION SYSTEM OPERATION, MAINTENANCE AND MONITORING MANUAL AND PERFORMANCE OBJECTIVES

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