

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Janice Carpenter
Fairbanks Marathon
120 West Broad Street
Genesee County
Linden, Michigan

MDEQ Reference No. AOC-RRD-17-002

ADMINISTRATIVE ORDER BY CONSENT

A. This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ), and the Michigan Department of Attorney General (MDAG) (collectively, the "State"), and Ms. Janice Carpenter, 8463 Linden Road, Fenton, Michigan 48430 (Respondent), pursuant to the authority vested in the Attorney General and the MDEQ by 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* (Part 213). All terms used in this Order, which are defined in Part 213 shall have the same meaning in this Order as in Part 213.

B. The purpose of this Order is to resolve MDEQ's claims under Part 213 against Respondent related to and enable the MDEQ to perform corrective action at Respondent's property at 120 West Broad Street, Linden, Genesee County, Michigan.

C. This Order concerns the settlement between the State and the Respondent for the State's claims under Part 213 relating to the release or threat of release of contamination at and emanating from the Fairbanks Marathon property, located at 120 West Broad Street, Linden, Genesee County, Michigan, and legally identified in Attachment A ("Property"), MDEQ Facility ID No. 00003005. The Property is a "site" as defined under Part 213, MCL 324.21303(m), meaning it is a location where a release has occurred or a threat of release exists from an underground storage tank

system. The MDEQ has determined that Respondent is responsible for an activity causing a release or threat of release, and, therefore, is liable pursuant to Section 21323a(1)(a) of Part 213, MCL 324.21323a(1)(a).

D. The Property was operated as a gas station from 1966 until April 2003. During an inspection in October of 2003 there was gasoline noted in the tanks. As part of a state-funded investigation of multiple potential sources of gasoline noted in the City of Linden sewers, soil samples were collected from the Property and immediately adjacent to the Property, which indicated the presence of several contaminants associated with gasoline including, but not limited to, benzene, ethylbenzene, toluene, and xylene ("BETX"). BETX detected at and emanating from the Property were found at concentrations that exceed their respective groundwater/surface water interface and drinking water criteria. Xylene was found at the Property at concentrations ranging from 107,600 to 187,000 parts per billion (ppb). One boring collected in a right-of-way immediately adjacent to the Property showed concentrations of xylene in the soil at 2,450,000 ppb.

E. The MDEQ has determined that the Respondent does not have sufficient resources to fund all of the corrective actions required under Part 213 at the Property.

F. Pursuant to Part 213, the State has incurred and will continue to incur costs of corrective action at the Property. The Respondent desires to resolve the State's claims under Part 213 related to the Existing Contamination and enter into a binding agreement that will permit the MDEQ to implement future corrective actions. Settlement of these claims is in the public interest, will expedite corrective actions, and will minimize litigation.

G. For purposes of this Order, "Effective Date" means the date that the Order has been signed by the MDEQ representative. All dates for performance of obligations under this Order shall be calculated from the Effective Date.

H. For purposes of this Order, "Existing Contamination" means any contamination released at the Property as of the Effective Date of this Order, including any contamination that has migrated beyond the boundaries of the Property.

I. For purposes of this Order, "day" means calendar day.

BASED UPON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND THE MDAG HEREBY ORDER AND THE RESPONDENT HEREBY AGREES TO THE FOLLOWING:

1. The execution of this Order by the Respondent is neither an admission of liability with respect to any issue covered under this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

2. Within thirty (30) days of the Effective Date of this Order, the Respondent shall pay to the MDEQ the sum of Thirty-Five Thousand Dollars (\$35,000.00) to resolve her obligations to the State for past and future costs of corrective action lawfully incurred by the State at the Property to address Existing Contamination.

3. Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and shall be sent to:

By first class mail:

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
Lansing, Michigan 48909-8157

Via courier:

Accounting Services Division
Cashier's Office for MDEQ
1st Floor Van Wagoner Building
425 W. Ottawa Street
Lansing, Michigan 48933-2125

To ensure proper credit, payments made pursuant to this Order must be made by check referencing Fairbanks Marathon, the MDEQ Reference No. AOC-RRD-17-002, and the

RRD Account Number (RRD50097). A copy of the transmittal letter and the check shall be provided simultaneously to:

As to the MDEQ:

Marjorie Easton, Project Manager
Lansing District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30242
Lansing, Michigan 48909-7242
Phone: 517-284-5145
Fax: 517-241-3571
E-mail Address: eastonm1@michigan.gov

and to the MDAG at:

Megen E. Miller
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
P.O. Box 30755
Lansing, Michigan 48909
Phone: 517-373-7540
Fax: 517-373-1610

Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund.

4. The Respondent consents to the MDEQ and its officers, employees, agents, contractors, and/or authorized representatives entering and having continued access to the Property for the purpose of performing corrective action as may be determined necessary by the MDEQ. Anticipated corrective action at this time includes: conducting an investigation to determine the nature and extent of the release, conducting an investigation to determine the extent of non-aqueous phase liquids present, building demolition and removal, removal of the dispensers and pump islands, removal of the underground storage tank system and any remaining contents of the tank system, excavation and removal of contaminated source soil, backfill with clean

soil, and post-excavation monitoring. The MDEQ may determine it necessary to perform corrective action not listed above and the above list does not limit MDEQ's access rights granted in this Paragraph 4 as long as such corrective action shall be necessary to complete the work contemplated by this Order.

5. MDEQ acknowledges that the Property and the structures thereon are in disrepair. Respondent makes no warranty or representation about the condition of the Property and the same are expressly denied.

6. After the Effective Date of this Order, the MDEQ shall send to the Respondent and her attorney a copy of all final data generated in connection with any sampling undertaken at the Property within twenty-one (21) days after receipt thereof by the MDEQ. The MDEQ will also send to Respondent copies of all final reports prepared by, or on behalf of the MDEQ, within thirty (30) days of their filing by or submittal to the MDEQ. The obligations in this Paragraph 6 shall terminate upon the earlier of the following, unless the MDEQ and Respondent agree in writing to extend the time frame: the transfer of ownership of the Property by the Respondent, the completion of corrective action determined necessary by the MDEQ, or five (5) years after the Effective Date of this Order. For purposes of this paragraph, documents shall be provided electronically to Respondent at gmakupkak2@aol.com and to her attorney at klavalle@gaultdavison.com.

7. Any equipment and buildings required to be removed during the corrective actions, including without limitation the anticipated corrective action described in Paragraph 4 above, will not be replaced and the Respondent will not be compensated or reimbursed for the value of any equipment and buildings removed. The Respondent will not assert any claim against any loss or damage arising from or related to the aforementioned activities.

8. The MDEQ will use reasonable efforts to minimize any interference with the use of the Property. For the purposes of this paragraph, "reasonable efforts" does

not mean taking actions that will result in material cost increases in the corrective actions being conducted by the MDEQ.

9. The Respondent shall not remove, damage, or interfere with the monitoring wells or other equipment and supplies being used for the purpose of performing corrective actions by the MDEQ.

10. Upon completion of corrective actions, the MDEQ will remove all equipment installed for the corrective action and undertake reasonable efforts to restore any property and vegetation damaged by the MDEQ to a condition reasonably similar to the condition that existed immediately prior to the MDEQ's initiation of corrective action except as specified in Paragraphs 4 and 7.

11. The Respondent agrees to execute and record a restrictive covenant for the Property within ninety (90) days of the MDEQ's request, similar in form and function to the attached document shown in Attachment B, with the Genesee County Register of Deeds and provide a true copy of the recorded document within twenty-one (21) days of the MDEQ's request, unless Respondent notifies the MDEQ in writing that, though she has requested a true copy, she has not received a true copy of the recorded document in which case she will provide a true copy within five (5) days of its receipt, that will include land or resource use restrictions to promote protection of public health, safety, or welfare. The time period for execution and recording of the restrictive covenant for the Property may be extended by written agreement of the MDEQ and Respondent. The MDEQ agrees to work with the Respondent to establish the appropriate land or resource use restrictions based on the environmental condition of the Property upon completion of corrective actions by the MDEQ. Any deed, contract, or other agreement entered into by the Respondent, which transfers title to the Property or a portion of the Property to a person who is not a party to this Order, shall contain a provision obligating the transferee to assume the Respondent's obligations to record the restrictive covenant if the restrictive covenant is not yet recorded at the time of transfer of title. Thereafter, it will be the transferee's obligation to execute and record the restrictive covenant in accordance with this paragraph.

12. This Order does not constitute a warranty of any kind by the MDEQ that the corrective actions performed will achieve remedial criteria established by law; assure protection of public health, safety or welfare, or the environment; or result in closure or cleanup of the Property. In the event that the MDEQ's actions do not achieve a closure or cleanup, the MDEQ will not pursue Respondent for performance of corrective actions related to the Existing Contamination, as provided for in Paragraph 14.

13. Any lease, deed, contract or other agreement entered into by the Respondent, which transfers to a person who is not a party to this Order a right of control over the Property or a portion of the Property, shall contain a provision preserving full rights of the MDEQ under this Order and obligating the transferee to comply with this Order. Any change in ownership of the Property shall not in any way alter the Respondent's obligations under this Order except with regard to provisions of Paragraph 11 pertaining to recording of the restrictive covenant. The Respondent shall notify the MDEQ Project Manager for the Property at the address for the Lansing District Office set forth in Paragraph 3 of this Order of any change in ownership or ownership interest in the Property at least thirty (30) days prior to the change occurring.

14. In consideration for the obligations to which the Respondent has agreed under this Order, and except as specifically reserved by the State below, the State hereby covenants not to sue or take administrative action against the Respondent under Part 213 for:

- (a) Performance of corrective actions related to the Existing Contamination;
- (b) Recovery of past and future costs of corrective action incurred by the State related to the Existing Contamination; and
- (c) Payment of civil fines and any applicable interest for violations of Part 213 related to the Existing Contamination.

15. The covenants not to sue shall take effect upon the MDEQ's receipt of full payment by the Respondent in accordance with Paragraph 2 of this Order. The covenant not to sue shall be deemed void from the date it first took effect if Respondent does not prepare and file an appropriate restrictive covenant as required in Paragraph 11. The covenant not to sue extends only to the Respondent and not to any other person or entity.

16. The covenants not to sue apply only to those matters specified in Paragraph 14. The State reserves the right to bring an action against the Respondent under federal and state laws for any matters for which the Respondent has not received a covenant not to sue. The State expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a civil or criminal action pursuant to any applicable authority against the Respondent with respect to the following:

- (a) The past, present, or future treatment, handling, disposal, release or threat of release of contamination taken from the Property;
- (b) Liability arising out of the Respondent's failure to comply with: Section 21304b relocation of contaminated soil requirements; Section 21304c due care requirements; Section 21307a (2) notification requirements; Section 21326 information and access requirements;
- (c) The past, present, or future treatment, handling, disposal, release, or threat of release of contamination that occur outside of the Property;
- (d) The release or threatened release of contamination at the Property that occurs after the Effective Date of this Order;
- (e) Liability that arises out of conditions at the Property that were unknown as of the Effective Date of this Order;
- (f) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resources assessment;
- (g) Criminal acts;
- (h) Any other violations of state or federal law for which the Respondent has not received a covenant not to sue;

- (i) Any issue addressed in Section 21323a(4)(d)(i)-(v); and
- (j) Enforcement of this Order.

In the event the State takes any administrative action or files any judicial action for matters as reserved in this paragraph, and except as otherwise provided in this Order, the Respondent reserves all of her rights and defenses against liability in any such administrative action or judicial action. The Respondent agrees, however, not to assert and shall not maintain any defenses or claims that are based on the principles of waiver, *res judicata*, collateral estoppel, issue preclusion or claim splitting; provided, however, that nothing from the foregoing statements affects the enforceability of the covenants not to sue in Paragraph 14.

17. The State reserves the right to take action against the Respondent under Part 213 if it is discovered at any time that any material information provided prior to or after entry of this Order was false or misleading. The covenant not to sue shall be considered void under those circumstances.

18. Nothing in this Order shall otherwise limit the power and authority of the State, pursuant to Section 21323g(7) of Part 213, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contamination on, at, or from the Property. The State retains its information-gathering, inspection, access, and enforcement authorities and rights under Part 213 and any other applicable statute or regulation. The State retains all of its authority and reserves all of its rights to perform, or contract to have performed, any corrective actions that MDEQ determines are necessary.

19. Except as provided otherwise in this Order, the State expressly reserves all rights and defenses pursuant to any legal authority that it may have to enforce this Order or to compel the Respondent to comply with the NREPA and any other applicable statute or regulation.

20. This Order in no way affects the Respondent's responsibility to comply with any other applicable state, federal, or local laws and regulations.

21. The Respondent covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Order, other than as permitted in MCL 324.21323a(5) or for enforcement of this Order as provided in Paragraph 22. The covenant not to sue in this Paragraph 21 does not affect Respondent's reservation of rights and defenses as provided in Paragraph 16.

22. This Order may only be modified by written agreement of the parties and may be enforced by filing an action in a court of competent jurisdiction.

23. No interest or right is conferred upon any third party by this Order. The Respondent shall not be held out as a party to any contract entered into by or on behalf of MDEQ in carrying out activities for which MDEQ has been granted access under Paragraph 4 of this Order.

24. The Respondent agrees that all applicable statutes of limitation are tolled until the Respondent has complied with Paragraph 2 and until execution and recording of the restrictive covenant attached as Attachment B in accordance with Paragraph 11.

25. If the Respondent fails to pay the amount indicated in Paragraph 2 pursuant to the schedule set forth therein, the Respondent also shall pay the MDEQ interest on that amount at the rate specified in Section 6013(8) of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.6013(8).

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The signature of Ms. Carpenter indicates her agreement with this Order. By signing the Order, signatories certify that they are authorized to execute the Order on behalf of their respective entity. This Order is binding upon any successors of the aforementioned persons and entities and becomes effective on the date of the signature of the DEQ representative.

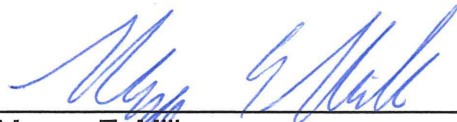
IT IS SO AGREED AND ORDERED BY:

FOR THE STATE OF MICHIGAN



Kathleen Shirey, Acting Director
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

5/9/18
Date



Megan E. Miller
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

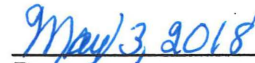
5/8/18
Date

IT IS SO AGREED BY:

MS. JANICE CARPENTER,



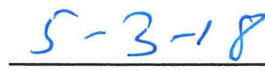
Ms. Janice Carpenter
8463 Linden Road,
Fenton, Michigan 48430


Date

AS TO FORM:



Mr. Kevin A. Lavalley
G-8455 S. Saginaw, Ste. 2
Grand Blanc, Michigan 48439


Date

ATTACHMENT A

LEGAL DESCRIPTION

Village of Linden, County of Genesee, State of Michigan:

PART OF LOTS 28 & 29 BEG AT SE COR OF LOT 29 TH N 14 DEG 16 MIN W 110 FT
TH S 75 DEG 11 MIN W 85.30 FT TH S 15 DEG 15 MIN E 110 FT TH N 75 DEG 11
MIN E 85.30 FT TO PLACE OF BEG ASSESSORS PLAT

Commonly known as: 120 West Broad Street, Linden, Michigan

Parcel No.: 61-20-551-031

ATTACHMENT B
RESTRICTIVE COVENANT



Remediation and Redevelopment Division

Michigan Department of Environmental Quality

Restrictive Covenant Part 213.doc

04/17/2013

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) of the NREPA, or an alternate mechanism that is approved by the Michigan Department of Environmental Quality (MDEQ) pursuant to 21310a(4) 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 MDEQ 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: <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

Please contact Mr. Kevin Schrems, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), MDEQ, at schremsk@michigan.gov or 517-284-5149 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 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 insertion directions appear as ***bold italicized font***.

- A. ***Insert as appropriate based on the land use proposed for the Restrictive Covenant and the cleanup criteria that have been satisfied for the corrective action:***
- Restricted Residential
 - Restricted Nonresidential
 - Restricted Site-Specific
- B. MDEQ 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 MDEQ Reference Number can be obtained from Mr. Nick Ekel, RRD, MDEQ, at ekeln@michigan.gov or 517-284-5090; or you may call the RRD main number at 517-284-5087.***
- 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 3 (Survey of Property) provides a survey of the Property that is subject to the land and/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 3 (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 and/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).*

I. *Add the following to the sentence if there is a long-term physical component of the corrective action (e.g., 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.

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

K. *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: Hazardous 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 cleanup criteria. This potential exposure risk has been addressed by preventing the use of the groundwater for ingestion. 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 3) to prevent direct contact with these contaminated soils. An engineered vapor barrier has been constructed under Building B (identified in Exhibit 3) 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 residual (or mobile) nonaqueous-phase liquid is being left in place at the Property]

Residual (or mobile) Light Nonaqueous-Phase Liquid (LNAPL), including ***[gasoline/diesel/fuel oil/waste oil]*** were properly characterized using a Conceptual Site Model in accordance with American Society for Testing and Materials (ASTM) designation E 2531-06 E1, and will remain in place. The LNAPL exists below the ground surface at a depth of ***[insert approximate depth]***. The location of the LNAPL in the attached Exhibit 3 (Survey of the Property and Limits of Land or Resource Use Restrictions) describes and provides the location of the institutional control and the horizontal and vertical extent of the LNAPL is described in Exhibit ***[insert Exhibit number and include an exhibit to the Restrictive Covenant that depicts the horizontal and vertical extent of the LNAPL in relation to the Property boundaries]***. The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the presence of the LNAPL soil and/or groundwater contaminant concentrations that exceed the unrestricted residential criteria under Section 21304a(2) of the NREPA.

L. Enter as appropriate:

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

M. Select one of the following options as appropriate to describe the restrictions on land use necessary to comply with the appropriate cleanup criteria 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 cleanup criteria, 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 3 (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 cleanup criteria established pursuant to Section 21304a(2) of the NREPA. Uses that are compatible with nonresidential cleanup criteria are generally described in

Exhibit 4 (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 cleanup criteria and are therefore prohibited by this Restrictive Covenant: ***[list prohibited uses]***. Cleanup criteria for land-use based response activities are located in the Government Documents Section of the State of Michigan Library.

OPTION 2: If the Property is subject to land use restrictions required to satisfy site-specific cleanup criteria, 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 3 (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 cleanup criteria developed for the Property. Uses that are compatible with the site-specific criteria developed for the Property are generally described in Exhibit 4 (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 criteria 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 cleanup criteria 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 hazardous substances left in place would allow for a limited or restricted residential cleanup 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.

- N. ***Enter as appropriate:***
- on the Property
 - within the portions of the Property designated in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions) as ***[insert designation]***
- O. ***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 3 (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, 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 3 (Survey of Property and Limits of Land or Resource Use Restrictions) as **[insert designation]**. 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 and/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.

Vapor Intrusion Exposure Restriction (no buildings):

- (iii.) The construction of new structures, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or, unless prior to construction of any structure, an evaluation of the potential for any hazardous 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.

P. 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 in to 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 3 (Survey of Property and Limits of Land or Resource Use Restrictions) as ***[insert designation]***. 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 and/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 two examples may be appropriate when the Restrictive Covenant is filed pursuant to a FAR, however, they may no longer apply upon submittal of a CR.

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

Q. *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 ***[insert number of the exhibit that contains the Consent of Easement Holder documentation]***.

R. *Enter the current day of the month.*

S. *Enter the current month.*

- T. **Enter the current year.**
- U. **Enter the state where the document is signed.**
- V. **Enter the county where the document is signed.**
- W. **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]**.

- X. **Stamp name of the Notary Public.**
- Y. **Enter the name of the person preparing the document**
- Z. **Enter the address to return the document to once recorded with the Register of Deeds.**

EXHIBIT 1: CONSENT OF OWNER ATTACHMENT:

This form is only necessary if the current Property owner and the person signing the Restrictive Covenant are not the same person. This document provides the express written permission of the current Property owner for recording. If the Consent of Owner attachment is not used, renumber the Exhibits accordingly and make the appropriate changes to the Exhibit references throughout the document.

- AA. **Enter the name of the current Property owner.**
- BB. **Enter the name of the person proposing to file the Restrictive Covenant.**

EXHIBIT 2: LEGAL DESCRIPTION OF PROPERTY:

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

EXHIBIT 3: 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 consistent with R339.17403 of Part 4, Standards of Practice and Professional Conduct, promulgated pursuant to Section 308 of the Occupational Code Act, 1980 PA 299, as amended, MCL 339.308.

At a minimum the survey shall include all the following as adopted from R339.17403:

- 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 4: DESCRIPTION OF ALLOWABLE USES

- CC.** *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 criteria 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: This land use is characterized by any use which is not residential in nature and is primarily characterized by industrial and commercial uses. 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/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/beauty salons, photographic studios, etc.

Any residential use is specifically prohibited from the nonresidential land use category. This would include the primary use of the Property for human habitation and includes structures such as single family dwellings, multiple family structures, mobile homes, condominiums, and apartment buildings. Residential use is also characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm, or other sensitive populations, and therefore could include day care centers, educational facilities, hospitals, elder care facilities, and nursing homes. 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 criteria.

EXHIBIT 5: CONSENT OF EASEMENT HOLDERS

This Exhibit is only necessary if easement holders 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 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 exist for the Property.

DD. Enter the name of the easement holder.

--END OF GUIDANCE AND INSTRUCTIONS--

DECLARATION OF RESTRICTIVE COVENANT MODEL

DECLARATION OF RESTRICTIVE COVENANT **FOR A ____ (A) ____ CORRECTIVE ACTION**

MDEQ 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 2 (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 Environmental Quality (MDEQ), Remediation and Redevelopment Division (RRD) District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. The MDEQ 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 cleanup criteria under Section 21304a(2) of the NREPA; and 3) assure the exposure control measures relied upon in the ____ (G) ____ are effective; ____ (I) ____.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective action was implemented by ____ (J) _____. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the ____ (G) ____; future changes in the environmental condition of the Property; changes in the cleanup criteria 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 the MDEQ

Definitions

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

"MDEQ" means the Michigan Department of Environmental Quality, 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 2 (Legal Description of the Property) of this Restrictive Covenant that is subject to the restrictions, terms and conditions described herein.

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.

____(K)____

NOW THEREFORE,

1. Declaration of Land or Resource Use Restrictions.

____(J)____, ____ (L)____ hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. ____ (M)____

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

____ (O)____

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:

____ (P)____

2. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located ____ (N)____ 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 the MDEQ and ____ (J) ____, 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 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 ____ (J) ____ above is not required under Part 213 for the corrective action to be considered approved. This provision was agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, The MDEQ will not enforce the Owner's obligation to provide access to ____ (J) _____.

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. 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 the MDEQ 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 the MDEQ, and ____ (J) ____ may individually 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 Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner ____ (Q) ____, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, ____ (J) ____ has caused this Restrictive Covenant, ____ (B) ____, to be executed on this ____ (R) ____ day of ____ (S) ____, 20 ____ (T) ____.

____ (J) ____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (U) ____
COUNTY OF ____ (V) ____

____ (W) ____

Notary Public Signature
____ (X) ____

Prepared by:
____ (Y) ____

When recorded return to:
____ (Z) ____

EXHIBIT 1

CONSENT OF OWNER

I, ____ (AA) ____, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant, ____ (B) ____, and authorize ____ (BB) ____ to file the Restrictive Covenant with the ____ (C) ____ County Register of Deeds for recording.

____ (AA) ____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (U) ____
COUNTY OF ____ (V) ____

____ (W) ____

Notary Public Signature
____ (X) ____

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 3

SURVEY OF THE PROPERTY

OR

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

EXHIBIT 4

DESCRIPTION OF ALLOWABLE USES

Insert appropriate option from instruction ____ (CC) ____

EXHIBIT 5

CONSENT OF EASEMENT HOLDERS

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.

____(DD)____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (U) ____
COUNTY OF ____ (V) ____

____(W)____

Notary Public Signature
____(X)____