



Michigan Department of Environmental Quality
Environmental Response Division

THE ATTACHED MODEL DOCUMENT ENTITLED:

DECLARATION OF RESTRICTIVE COVENANT
[for “on-site” containment property]

IS A DRAFT DOCUMENT WHICH IS SUBJECT TO REVISION. IT IS PROVIDED TO THE PUBLIC AS PRELIMINARY GUIDANCE AS TO THE CONTENT, FORMAT AND TERMS OF THIS DOCUMENT. IT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, BY ANY OTHER PARTY. PLEASE CONTACT THE COMPLIANCE AND ENFORCEMENT SECTION, ENVIRONMENTAL RESPONSE DIVISION, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, AT 517-373-7818 TO RECEIVE THE MOST RECENT DRAFT OF THIS DOCUMENT.

[NOTE: There are recording requirements for instruments filed with Michigan county register of deeds offices. The recording requirements contained in 1996 PA 459, which took effect April 1, 1997, are attached to this model document.]

The Michigan Department of Environmental Quality (MDEQ) will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. Questions or concerns should be directed to the MDEQ Office of Personnel Services, P.O. Box 30473, Lansing, MI 48909.

[note: drafting notes and optional language appear in bold and italicized text]
[note: each parcel of property addressed by a Remedial Action Plan for a Limited category closure must be restricted by a restrictive covenant or an institutional control]

Draft 4/27/98
RCON.DOC

[Note: First page must have a 2 1/2 inch top margin]

DECLARATION OF RESTRICTIVE COVENANT
[for "on-site" containment property]

MDEQ Reference No.: RC-ERD-[YR]-[#]

This Restrictive Covenant has been recorded with the [County] Register of Deeds for the purpose of protecting public health, safety and welfare and the environment.

[Insert name of property owner] has received notice of approval from the Michigan Department of Environmental Quality (MDEQ) dated [date], for a Remedial Action Plan (RAP) that includes land use-based cleanup criteria as defined and set forth in Section 20120a(*) of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.*, for the environmental remediation associated with the property located in the [City or Township] of _____, County of _____, (Property) more particularly described as:

See Attachment A for legal description of Property

[note: If the land or resource-use restrictions apply to less than the entire parcel or if different restrictions apply to different areas of the parcel, the survey, included as Attachment B, must identify the restricted areas and clearly state which restrictions apply to which areas if appropriate to the circumstances]

See Attachment B for a survey of the property subject to land-use restrictions

Property Tax ID Number of Property: _____

As used herein, the term "Owner" shall mean at any given time the then current title holder of the Property.

NOW THEREFORE *[insert Owner name and address]*, pursuant to Section 20120b(4) of NREPA and the Limited Land Use or Site-Specific, Criteria-Based Remedy Agreement entered by and between *[name of property owner]* and the MDEQ (LANDUSE-ERD-[yr]-[#]), hereby imposes restrictions on the Property and covenants and agrees that:

1. The Owner shall restrict the uses of the Property to those uses compatible with the **limited (**)** or **site-specific criteria based land use category** as defined in Section 20120a(1) or (2) of Part 201 of NREPA, as amended in June 1995, and the RAP, or other use that is consistent with the assumptions and basis for the cleanup criteria established pursuant to Section 20120a(*). Cleanup criteria for land use-based remedial action plans are located in the Government Documents section of the State of Michigan Library. See Attachment C for a description of the allowable land uses. ***[Attachment C of the allowable land-use description must be taken verbatim from the RAP.]***

2. The Owner shall restrict activities at the Property that may interfere with a remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial action.

* ***Insert (1)(f), (1)(g), (1)(h), (1)(i) (1)(j) or (2) as appropriate, corresponding to Residential, Commercial, Recreational, Industrial, other land-use category or site-specific, criteria-based land use, respectively.***

** ***Insert the appropriate land-use category: Residential, Commercial Subcategory II, Commercial Subcategory III, Commercial Subcategory IV, Recreational, Industrial or other land-use category.***

3. The Owner shall restrict activities at the Property that may result in exposures above levels established in the RAP. These activities include:

[note: a list of restricted activities which are necessary to maintain the integrity of the exposure barrier and thus avoid exposures above levels established in the RAP must be included here; e.g. restrict excavation activities below the thickness of a soil barrier.]

4. The Owner shall provide notice to the MDEQ of the Owner's intent to convey any interest in the Facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the Property shall not be consummated by the Property owner without adequate and complete provision for compliance with the terms and conditions of this Covenant.

[if appropriate, describe the meaning of "adequate and complete provision" for the particular transaction]

5. The Owner shall grant to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of the remedial action measures and inspect records.

[note: include the following optional requirement #6 if necessary]

6. The Owner shall install permanent markers that have been approved by the MDEQ on each side of the Property which describe the restricted area and the nature of the prohibitions specified in the provisions of number 2 above and include the liber and page number of this Restrictive Covenant as recorded in the [County] County Register of Deeds.

[note: include this optional Owner acknowledgment language when necessary to protect public health, safety welfare and the environment]

The Owner also acknowledges that:

[example 1. Surface and subsurface soils found on the Property must be managed in accordance with the requirements of Section 20120c of NREPA and other applicable state and federal laws.]

[example 2. Contaminated groundwater which is migrating under the Property from an off-site source shall not be used for any domestic or industrial purpose.]

[example 3. Areas not contained within the survey are known to contain hazardous substances in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) and have not been remediated as of the date of filing of this Restrictive Covenant.

The state may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of appropriate jurisdiction.

This Restrictive Covenant shall run with the Property and shall be binding upon all future owners, successors, lessees or assigns and their authorized agents, employees, or persons acting under their direction and control, and shall continue until the MDEQ or its successor approves modifications or rescission of this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, assigns and transferees by the person transferring the interest.

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

The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, the said Owner of the above-described Property has caused this Restrictive Covenant to be executed on this ___ day of _____, 19__.

*[Print or type property owner name)
and address]*

Signed in the presence of:

Witness *[Print or type name]*

Witness *[Print or type name]*

STATE OF MICHIGAN
COUNTY OF *[county where owner signs]*

[drafting note: choose only one of the following paragraphs]

[If property owner is an individual:]

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

[If property owner is 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/owner]*, a *[state or place of incorporation corporation]*, on behalf of the corporation.

[If property owner is 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/owner]*, a partnership.

[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]*.

Notary Public
[Print or type name]
[Commissioned in] County, [State]

My Commission Expires: _____

Prepared by: *[Type name of preparer]*
[Title and address]

Act No. 459
Public Acts of 1996
Approved by the Governor
December 21, 1996
Filed with the Secretary of State
December 26, 1996

STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996

Introduced by Reps. Hammerstrom, McBryde, Hill, Hanley, Goschka, Jellema, Green, Brackenridge, Crissman and Galloway

ENROLLED HOUSE BILL NO. 5858

AN ACT to amend section 1 of Act No. 103 of the Public Acts of 1937, entitled "An act to prescribe certain conditions relative to the execution of instruments entitled to be recorded in the office of the register of deeds," being section 565.201 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 1 of Act. No. 103 of the Public Acts of 1937, being section 565.201 of the Michigan Compiled Laws, is amended to read as follows:

Section 1. (1) An instrument executed after October 29, 1937 by which the title to or any interest in real estate is conveyed, assigned, encumbered, or otherwise disposed of shall not be received for record by the register of deeds of any county of the state unless that instrument complies with each of the following requirements:

(a) The name of each person who executed the instrument is legibly printed, typewritten or stamped upon the instrument immediately beneath the signature of each person and the address of each person is printed, typewritten, or stamped upon the face of the instrument.

(b) A discrepancy does not exist between the name of a person as it appears either in the body of the instrument or in the acknowledgment or jurat, as printed, typewritten or stamped upon the instrument beneath the signature, and in the signature of that person.

(c) The name of each witness to the instrument is legibly printed, typewritten or stamped upon the instrument immediately beneath the signature of the witness.

(d) The name of any notary public whose signature appears upon the instrument is legibly printed, typewritten or stamped upon the instrument immediately beneath the signature of that notary public.

(e) Wherever in this act the name of a person is required to be "printed, typewritten or stamped upon such instrument immediately beneath the signature" of the person, it is the intent of the legislature to require that the signature be written upon the instrument directly preceding the name "printed, typewritten or stamped". That signature shall not, however, be superimposed upon the name so as to render either illegible. However, the instrument is entitled to be received for record if the name and signature are, in the discretion of the register

of deeds, so placed upon the instrument as to render the connection between the two apparent. Any instrument received and recorded by a register of deeds shall be conclusively presumed to comply with this act. The requirements contained in this act are cumulative to the requirements imposed by any other act relating to the recording of instruments.

(f) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where street number addresses are in common use, or, if not, the post office address, is legibly printed, typewritten, or stamped on the instrument.

(g) If the instrument is executed before April 1, 1997, each sheet of the instrument is all of the following:

- (i) Typewritten or printed in type not smaller than 8-point size.
- (ii) Not more than 8-1/2 by 14 inches.
- (iii) Legible.
- (iv) On paper of not less than 13 (17x22—500) pound weight.

(h) If the instrument is executed after April 1, 1997, each sheet of the instrument complies with all of the following requirements:

- (i) Has 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.
- (ii) Subject to subsection (3), displays on the first line of print on the first page of the instrument a single statement identifying the recordable event that the instrument evidences.
- (iii) Is electronically, mechanically, or hand printed in 10-point type or the equivalent of 10-point type.
- (iv) Is legibly printed in black ink on white paper that is not less than 20-pound weight.
- (v) Is not less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.
- (vi) Contains no attachment that is less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.

(2) Subsection (1)(g) and (h) do not apply to instruments executed outside this state or to the filing or recording of a plat or other instrument, the size of which is regulated by law.

(3) A register of deeds shall not record an instrument executed after April 1, 1997 if the instrument purports to evidence more than 1 recordable event.

Section 2. This amendatory act shall take effect April 1, 1997.

This act is ordered to take immediate effect.