

### NOTICE OF AESTHETIC IMPACT PART 201

A Notice of Aesthetic Impact may be used pursuant to Section 20121(8) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and R 299.2(a)(iii) of the Part 201 Administrative Rules when, upon completion of a remedial action, the only criteria exceeded at the facility are based on aesthetic impacts, or an adverse taste or odor threshold. Pursuant to Rule 299.49(1)(E) of the Part 201 Administrative Rules, a Notice of Aesthetic Impact may be used as an institutional control if groundwater concentrations exceed the aesthetic drinking water criterion, but do not exceed the applicable health-based drinking water value.

These instructions and the attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Notice of Aesthetic Impact and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 20114c(3) of the NREPA, a notice of the land or resource use restrictions shall be provided to EGLE within thirty (30) days after recording with the appropriate Register of Deeds. Approval and consent of the property owner(s) must be obtained prior to recording with the Register of Deeds. 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), Michigan Department of Environment, Great Lakes, and Energy (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 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 shown on the model Notice of Aesthetic Impact. 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.

**A.** EGLE Reference No: NAI-RRD-201-[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 from Mr. Nick Ekel, RRD, EGLE, at [ekeln@michigan.gov](mailto:ekeln@michigan.gov) or 517-284-5090; or you may call the RRD main number at 517-284-5087. Please do not reuse an existing assigned reference number on any other land or resource use restriction.**

**B.** ***If not all of the Property is to be subject to the Notice, insert the following:***

Exhibit 2 (Limits of Aesthetic Impact) provides [choose one of the following: a legal description and a scaled drawing; a survey; or a description or drawing approved by EGLE] of [choose one of the following: the portion or those portions] of the Property that are subject to this Notice.

- C. **Insert a brief narrative description of response activities and environmental contamination at the Property. All environmental contamination at the Property shall be described herein even if the response activities addressed only a portion of the contamination or Property. Insert specific language with respect to what the response activities addressed at the Property, (i.e., all environmental contamination at the Property, environmental contamination within a portion of the Property, a specific release or hazardous substance at the Property or portion of Property, or the media addressed. This narrative shall also describe any conditions at the Property that were not addressed by the response activities or this Notice that would require additional response activities or actions to comply with the due care requirements of Section 20107a of the NREPA in order for the Property to be used in a manner that assures the protection of persons who may be present at the Property:**

**Example when exceed aesthetic-based criteria:** Hazardous substances including but not limited to benzene, toluene, naphthalene, acenaphthylene, benzo(a)pyrene, mercury, and cyanide have been released and/or disposed on the Property from historical manufactured gas operations. Prior to the recording of this Notice, response activities have been undertaken to treat and/or remove hazardous substances. Concentrations of the hazardous substances remain present in the groundwater at the Property at levels that exceed aesthetic-based cleanup criteria, but do not exceed applicable health-based drinking water values. This Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of hazardous substances at concentrations which create aesthetic impacts to the groundwater.

**Example when impart adverse taste or odor:** Hazardous substances including but not limited to benzene, toluene, naphthalene, acenaphthylene, benzo(a)pyrene, mercury, and cyanide have been released and/or disposed on the Property from historical manufactured gas operations. Prior to the recording of this Notice, response activities have been undertaken to treat and/or remove hazardous substances. Although no hazardous substances have been detected and/or remain above health-based or aesthetic criteria, the release has resulted in an adverse taste and/or odor to the groundwater at the Property. The residual contamination is not believed to pose an unacceptable risk to human health and this Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of this aesthetic impact to the groundwater.

- D. ***Insert the following as appropriate for the Property conditions:***
- Declaration of Exceedance of Aesthetic-Based Cleanup Criteria
  - Declaration of Adverse Taste and/or Odor

- E. ***Insert one of the following options as appropriate for the Property conditions:***

**OPTION 1:** The following hazardous substance(s) [**is or are**] present at the Property in concentrations that exceed aesthetic-based cleanup criteria. EGLE has determined that aesthetic impacts including adverse taste and odor characteristics to groundwater occur when concentrations exceed those listed below.

List each hazardous substance that exceeds its respective aesthetic-based criteria, but are below the health-based criteria. List the aesthetic-based criterion for the applicable hazardous substances and the maximum concentrations documented at the Property.

**EXAMPLE:**

<b>CONTAMINANTS</b>	<b>AESTHETIC-BASED DRINKING WATER CRITERION CONCENTRATIONS</b>	<b>MAXIMUM</b>
Ethylbenzene	74 parts per billion (ppb)	
Iron	300 ppb	
Methyl-tert-butyl ether	40 ppb	
Toluene	790 ppb	
1,2,4-trimethylbenzene	63 ppb	
1,3,5-trimethylbenzene	72 ppb	
Xylenes	280 ppb	

**OPTION 2:** Currently the groundwater exhibits an adverse taste or odor, though no hazardous substances have been identified which exceeds either the health-based or aesthetic-based criteria. Based on groundwater analysis, these impacts are not expected to have any adverse health effects.

**F. Select the appropriate option based on the circumstances detailed below:**

If hazardous substances detected at the Property include contaminants that have established health-based drinking water criteria, insert the text of Option 1. If the hazardous substances detected at the Property include contaminants for which health-based drinking water criteria have not been established, and if EGLE concurs that Option 2 is applicable, insert the text of Option 2. If both are applicable, insert the text of both paragraphs from Options 1 and 2. Note: it is the responsibility of the persons proposing this Notice to supply the necessary data to support the conclusion of Option 2.

**OPTION 1:**

However the presence of [**insert hazardous substance(s) listed above**] at the detected concentration is below the level determined to be harmful to human health as established by Section 5 of the Safe Drinking Water Act, 1976 PA 399, as amended, MCL 325.1005; or other applicable health-based criteria established pursuant to Part 201. Owners of property subject to this Notice are ineligible for state assistance for water supply replacement when the concentration of regulated substances in the supply exceeds aesthetic-based criteria but is below, and will remain below, health-based drinking water criteria.

**OPTION 2:**

Currently, groundwater at the Property exhibits an adverse taste or odor for which no health-based or aesthetic-based criteria have been established for the hazardous substance(s). However, based upon an analysis of the concentrations of ***[insert hazardous substance previously listed]*** detected in the groundwater underlying the Property and available toxicological data, ***[insert hazardous substance(s) previously listed]*** at ***[this or these]*** concentration(s) ***[is or are]*** not expected to have any adverse health effects.

- G. *Insert the following sentence if hazardous substance concentrations in soil located on the Property pose a threat of groundwater contamination at concentrations exceeding the aesthetic groundwater criteria.***

The Owner also acknowledges that surface and subsurface soils found on the Property must be managed in accordance with the requirements of Sections 20107a and 20120c of the NREPA, and other applicable state and federal laws.

- H. *Insert the following as appropriate for the Property conditions (use both if necessary):***

- at levels that exceed the aesthetic-based cleanup criteria
- that impart an adverse taste and/or odor

- I. OPTION: Enter the name of the person or entity that has the right to enforce the Notice.**

- J. OPTION: If party that is filing the Notice is different than the Property Owner, insert the following sentence:**

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

- K. *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]*** corporation, 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]**.

L. **Place stamp of the Notary Public.**

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

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

**EXHIBIT 2: LIMITS OF AESTHETIC IMPACT.**

***This exhibit must be titled as appropriate for the impacted area. The depiction must identify, clearly delineate, and graphically depict the spatial extent of the impacted area in relation to the Property boundaries. This exhibit shall contain one of the following:***

- 1. A legal description and scaled drawing of the portion of the Property that is impacted,***
- 2. A survey of the portion of Property that is impacted, or***
- 3. Another type of description or drawing of the portion of Property that is impacted that is approved by EGLE.***

**-- END OF INSTRUCTIONS --**

## NOTICE OF AESTHETIC IMPACT

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

This Notice of Aesthetic Impact (Notice) has been recorded with the **[enter the name of the county where the Property is located]** County Register of Deeds to protect public welfare by describing environmental conditions which impart aesthetic impacts at the Property located at **[enter the address location of the Property, including city or township and county]** and legally described in the attached Exhibit 1 (Legal Description of the Property). \_\_\_(B)\_\_\_

The Property is associated with **[enter the Part 201 Site name and Site ID number]** for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. EGLE recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the due care requirements of Section 20107a of the NREPA.

This Notice was recorded to notify the public of environmental conditions at the Property which exceed the aesthetic criteria established pursuant to Section 20120a of the NREPA. This Notice is based upon information available at the time the response activities were implemented. Failure of response activities to achieve and maintain the cleanup criteria; failure to maintain any requirements specified by the response activities; future changes in the environmental condition of the Property; changes in the cleanup criteria developed under Section 20120a of the NREPA; or the discovery of environmental conditions at the Property that were not accounted when the response activities were implemented may result in this Notice not being protective of public welfare.

### Definitions

For the purposes of this Notice, 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 Notice that is subject to the terms and conditions described herein.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, Michigan Administrative Code, 2013 AACRS R 299.1 – R 299.50, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Notice.

Summary of Response Activities and Environmental Contamination

\_\_\_(C)\_\_\_

1. \_\_\_(D)\_\_\_

\_\_\_(E)\_\_\_

\_\_\_(F)\_\_\_

\_\_\_(G)\_\_\_

2. Term of Notice. This Notice 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 Notice shall continue in effect until it is determined that hazardous substances are no longer present \_\_\_(H)\_\_\_ . A copy of this Notice shall be provided to all future owners; and their successors and assigns, lessees, and easement holders by the person transferring the interest pursuant to Section 20116(1) of the NREPA. Improper modification or rescission of this Notice may result in the need to perform additional response activities to comply with Section 20107a of the NREPA.

3. Enforcement of Notice. The State of Michigan, through EGLE, and \_\_\_(I)\_\_\_ may individually enforce this Notice by legal action in a court of competent jurisdiction.

4. Severability. If any provision of this Notice 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 Notice, which shall continue unimpaired and in full force and effect.

5. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized to execute and record this Notice.

IN WITNESS WHEREOF, I, **[enter the name of the current property owner]**, the current and legal Owner of the Property, has caused this Notice to be executed on this **[enter the current day of the month]** day of **[enter the current month]**, **[enter the current year]** **[\_\_(J)\_\_]**.

**[enter the name of the current property owner]**

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

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

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

STATE OF **[enter the state where the document is signed]**  
COUNTY OF **[enter the county where the document is signed]**

\_\_\_\_(K)\_\_\_\_

\_\_\_\_\_  
Notary Public Signature  
\_\_\_\_(L)\_\_\_\_

Prepared by:  
**[Enter the name of the person preparing the document]**

When recorded return to:  
**[Enter the address to return the document to once recorded with the Register of Deeds]**



## **EXHIBIT 1**

### **LEGAL DESCRIPTION OF PROPERTY**

## **EXHIBIT 2**

### **LIMITS OF AESTHETIC IMPACT**