

# PROPERTY OWNER'S GUIDE TO RESTRICTIVE COVENANTS IMPOSED AT SITES OF ENVIRONMENTAL CONTAMINATION

## Guidance

### What is a Restrictive Covenant?

Restrictive covenants or deed restrictions are legal instruments recorded with the county register of deeds and are used to impose land use or resource use restrictions where environmental contamination is present at a particular property. Restrictive covenants serve three purposes: 1) inform prospective owners or tenants of the environmental conditions of the property 2) ensure the long-term compliance with use restrictions that are necessary to prevent unacceptable exposure to environmental contamination and 3) maintain the integrity of the remedy over time. Restrictive covenants may only be placed on a property deed with written consent of the property owner.

Restrictive covenants may be used in conjunction with engineering controls, which are physical controls that prevent human exposure to, or migration of, contamination. These controls limit direct contact with contaminated areas, reduce exposures, and control migration of contaminants through environmental media. Examples of engineering controls include capping (pavement, clean soil, gravel, etc.), vapor mitigation systems, containment, slurry walls, extraction wells, and treatment methods that minimize the spread of contamination.

### Why are Restrictive Covenants Necessary?

Michigan's environmental remediation programs authorize the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to set cleanup standards by considering how the contaminated land will be used in the future. Michigan's cleanup standards are risk-based and reflect the potential for human health or ecological risks from exposure to hazardous or regulated substances at contaminated sites. Thus, a person may rely upon the imposition of land use or resource use restrictions, through instruments such as restrictive covenants, to manage risk by preventing exposure to environmental contamination left in-place at a property. For example, if corrective action has been completed at a property and the level of contaminants in the groundwater are in excess of drinking water cleanup criteria, the responsible party may prepare and record a restrictive covenant which prohibits the use of potable water wells on the property, thus preventing the risk of potential exposure to contamination remaining in the groundwater.



*Construction of a soil cover (exposure barrier) over the former Linden Road Landfill in Flint Charter Township (Genesee Co.).*



*Saturday morning soccer games are played on the site of the former Linden Road Landfill. A restrictive covenant is recorded on the property deed to prohibit excavation or other soil disturbance activities below the cover.*

### What are the Benefits of Restrictive Covenants?

Restrictive covenants help reduce or eliminate the risks of people coming in contact with contamination, and may also protect expensive cleanup equipment from damage. A restrictive covenant remains in the “chain of title” for the particular property forever, or until it is determined that the hazardous or regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. With this benefit of “running with the land,” the instrument reliably provides knowledge of the environmental conditions and restrictions to current and future persons who own or have an interest in the property through property transactions. Finally, the use of restrictive covenants can allow and promote a previously undeveloped or abandoned property to be returned to a safe and productive reuse.

### What Types of Land or Resource Use Restrictions May be Imposed by Restrictive Covenants?

Restrictions commonly imposed in restrictive covenants to reduce or eliminate unacceptable exposure risk to hazardous or regulated substances include:

- Restrict land use to nonresidential (e.g. commercial or industrial) uses.
- Prohibit the construction or use of drinking water wells on the property.
- Prohibit or limit excavation activities on the property.
- Prohibit the construction or use of buildings or allow construction of a building after an evaluation is made to determine if a vapor mitigation system is necessary or, if installed, to ensure it is being maintained.

### What Does it Mean to Me as a Property Owner?

If you have knowledge that the property you own or operate is contaminated, you have “due care” obligations, even if you aren't responsible for the contamination. “Due care” means that an owner or operator of contaminated property must take steps to prevent unacceptable exposures to the contamination, or doing things that worsen the contamination. Under a restrictive covenant, you are obligated to:

- Comply with any land use or resource use restrictions created or relied upon in connection with the response or corrective action activities at the property.
- Do nothing to hinder those restrictions as applied to the response or corrective activities at the property.

### Where Can I Find More Information?

Multiple sources of information are available if you have questions about restrictive covenants related to your property, your neighbor's property, or other property in your community. Your county Register of Deeds office holds all documents, including restrictive covenants, recorded on a particular property.

The Michigan Environmental Mapper ([www.mcgi.state.mi.us/EnvironmentalMapper](http://www.mcgi.state.mi.us/EnvironmentalMapper)) allows you to view sites of contamination and underground storage tank sites, and any land use or resource use restrictions (including restrictive covenants), that EGLE is aware of, imposed on a property. The user can display the sites based on search criteria by city, county, EGLE district, and Michigan legislative district. In addition the user can view sites within a certain distance of a location, a land lot, or a stream segment. The results can be printed, with the map, or exported to an Excel spreadsheet.

In addition, Remediation and Redevelopment Division field staff located at EGLE offices statewide can provide information regarding specific properties. The field staff are the first line of contact with citizens, the business community, industry, and local units of government for prompt customer service about the Environmental Remediation and Leaking Underground Storage Tank programs.