

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.20121 Land or resource use restrictions; restrictive covenants or other instruments.

Sec. 20121. (1) A person may impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, to eliminate a potential exposure pathway, to assure the effectiveness and integrity of containment or exposure barriers, to provide for access, or to otherwise assure the effectiveness and integrity of response activities undertaken at a property.

(2) A restrictive covenant used to impose land or resource use restrictions under subsection (1) shall, at a minimum, include all of the following:

(a) A legal description of the property that is subject to the restrictions that is sufficient to identify the property and is sufficient to record the document with the register of deeds for the county where the property is located. If the property being restricted constitutes a portion of a parcel, the restrictive covenant shall also include 1 of the following:

(i) A legal description and a scaled drawing of the portion that is restricted.

(ii) A survey of the portion that is restricted.

(iii) Another type of description or drawing approved by the department.

(b) A brief narrative description of response activities and environmental contamination at the property or identify a publicly accessible information repository where that information may be obtained, such as a public library.

(c) A description of the activity and use limitations imposed on the property. The description should be drafted, to the extent practicable, using plain, everyday language in an effort to make the activity and use limitations understandable to the reader without having to reference statutory or regulatory text or department guidance.

(d) A grant to the department of the ability to enforce the restrictive covenant by legal action in a court of appropriate jurisdiction.

(e) A signature of the property owner or someone with the express written consent of the property owner unless the restrictive covenant has been ordered by a court of competent jurisdiction. For condominium common elements and similar commonly owned property, the restrictive covenant may be signed by an authorized person.

(3) In addition to the requirements of subsection (2), a restrictive covenant may contain other information, restrictions, requirements, and rights agreed to by the persons signing it, including, but not limited to, 1 or more of the following:

(a) A provision requiring notice to the department or other persons upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.

(b) A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

(c) A provision subordinating a property interest that has priority, if agreed to by the person that owns the superior interest.

(d) A provision granting the right to enforce the restrictive covenant to persons in addition to the department, including, but not limited to, the local unit of government in which the property is located or the United States environmental protection agency.

(e) A provision obligating the owner of the land subject to the restrictive covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.

(f) A provision limiting the restrictive covenant to a specific duration, or terminating the restrictive covenant upon the occurrence of a specific event or condition, such as the completion of additional response activities that are approved by the department.

(g) A provision providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.

(4) A restrictive covenant used to impose land or resource use restrictions under this section shall be recorded with the register of deeds for the county where the property is located.

(5) A restrictive covenant under this section that is recorded under subsection (4) does both of the following:

(a) Runs with the land.

(b) Is perpetual unless, by its terms, it is limited to a specific duration or is terminated by the occurrence of a specific event.

(6) Upon recording, a copy of the restrictive covenant shall be provided to the department together with a notice that includes the street address or parcel number for the property or properties subject to the covenant.

A restrictive covenant that meets the requirements of this section need not be approved by the department except as expressly required elsewhere in this part.

(7) The following instruments may impose the land or resource use restrictions described in subsection (1) if they meet the requirements of a restrictive covenant under this section:

(a) A conservation easement.

(b) A court order or judicially approved settlement involving the property.

(8) An institutional control may be used to impose the land or resource use restrictions described in subsection (1) instead of or in addition to a restrictive covenant. Institutional controls that may be considered include, but are not limited to, local ordinances or state laws and regulations that limit or prohibit the use of contaminated groundwater, prohibit the raising of livestock, prohibit development in certain locations, or restrict property to certain uses, such as a zoning ordinance. A local ordinance that serves as an institutional control under this section shall be published and maintained in the same manner as a zoning ordinance and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance or prior to the lapsing or revocation of the ordinance.

(9) Alternative instruments and means may be used, with department approval, to impose the land or resource use restrictions described in subsection (1), including, but not limited to, licenses and license agreements, contracts with local, state, or federal units of government, health codes or regulations, or government permitting requirements.

(10) The department, with the approval of the state administrative board, may place restrictive covenants described in this section on deeds of state-owned property.

(11) A restrictive covenant recorded pursuant to this part, whether recorded before or after the effective date of the amendatory act that added this section, is valid and enforceable even if 1 or more of the following situations exist:

(a) It is not appurtenant to an interest in real property.

(b) The right to enforce it can be or has been assigned.

(c) It is not of a character that has been recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes an affirmative obligation on a person having an interest in the real property.

(f) The benefit or burden does not touch or concern real property.

(g) There is no privity of estate or contract.

(h) The owner of the land subject to the restrictive covenant and the person benefited or burdened are the same person.

(12) Restrictive covenants or other instruments that impose land or resource use restrictions that were recorded before the effective date of the amendatory act that added this section are not invalidated or made unenforceable by this section. Except as provided in subsection (11), this section only applies to a restrictive covenant or other instrument recorded after the effective date of the amendatory act that added this section. This section does not invalidate or render unenforceable any instrument or interest that is otherwise enforceable under the law of this state.

History: Add. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Compiler's note: Former MCL 324.20121, which pertained to creation of office of environmental cleanup facilitation, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA