

SENATE BILL No. 201

February 14, 2007, Introduced by Senators PATTERSON and RICHARDVILLE and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20120b and 21310a (MCL 324.20120b and 324.21310a), section 20120b as added by 1995 PA 71 and section 21310a as amended by 1996 PA 116, and by adding part 207.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20120b. (1) If a remedial action plan is selected or
2 approved by the department based on criteria for the residential
3 category provided for in section 20120a(1)(a), land use
4 restrictions or monitoring are not required once those standards
5 have been achieved by the remedial action.

6 (2) If a remedial action plan is selected or approved by the
7 department based on criteria in categories provided for in section

1 20120a(1)(b) to (e), a notice of approved environmental remediation
2 shall be recorded with the register of deeds for the county in
3 which the facility is located within 21 days after selection or
4 approval by the department of the remedial action, or within 21
5 days after completion of construction of the remedial action as
6 appropriate to the circumstances. A notice shall be filed pursuant
7 to this section only by the property owner or by another person who
8 has the express written permission of the property owner. The form
9 and content of the notice are subject to approval by the state. Any
10 restrictions contained in the notice shall be binding on the
11 owner's successors, assigns, and lessees, and shall run with the
12 land. A notice of environmental remediation recorded pursuant to
13 this subsection shall state which of the categories of land use
14 ~~specified~~ **PROVIDED FOR** in section 20120a(1)(b) to ~~(d)~~ **(E)** are
15 consistent with the environmental conditions at the property to
16 which the notice applies, and that a change from that land use or
17 uses may necessitate further evaluation of potential risks to the
18 public health, safety, or welfare, or the environment. The notice
19 of approved environmental remediation shall include a survey and
20 property description that define the areas addressed by the
21 remedial action plan if land use or resource use restrictions apply
22 to less than the entire parcel or if different restrictions apply
23 to different areas of a parcel, and the scope of any land use or
24 resource use limitations. Additional requirements for financial
25 assurance, monitoring, or operation, and maintenance do not apply
26 if a remedial action complies with criteria provided for in section
27 20120a(1)(b) to (e), unless monitoring or operation and maintenance

1 are required to assure the compliance with criteria that apply
2 outside the boundary of the property that is the source of the
3 release.

4 (3) If a remedial action plan is selected or approved by the
5 department based on criteria provided for in section 20120a(1)(f)
6 to (j) or (2), provisions concerning subdivisions (a) through (e)
7 shall be stipulated in a legally enforceable agreement with the
8 department. If the department concurs with an analysis provided in
9 a remedial action plan that 1 or more of the requirements specified
10 in subdivisions (b) to (e) is not necessary to protect the public
11 health, safety, or welfare, or the environment and to assure the
12 effectiveness and integrity of the remedial action, that element
13 may be omitted from the agreement. If provisions for any of the
14 following, determined by the department to be applicable for a
15 facility, lapse or are not complied with as provided in the
16 agreement or remedial action plan, the department's approval of the
17 remedial action plan is void from the time of the lapse or
18 violation, unless the lapse or violation is corrected to the
19 satisfaction of the department:

20 (a) Land use or resource use restrictions.

21 (b) Monitoring.

22 (c) Operation and maintenance.

23 (d) Permanent markers to describe restricted areas of the site
24 and the nature of any restrictions.

25 (e) Financial assurance, in a mechanism acceptable to the
26 department to pay for monitoring, operation and maintenance,
27 oversight, and other costs determined by the department to be

1 necessary to assure the effectiveness and integrity of the remedial
2 action.

3 (4) **THIS SUBSECTION IS SUBJECT TO PART 207, INCLUDING, BUT NOT**
4 **LIMITED TO, SECTION 20704(3)**. If a remedial action plan relies in
5 whole or in part on cleanup criteria approved pursuant to section
6 20120a(1)(f) to (j) or (2), land use or resource use restrictions
7 to assure the effectiveness and integrity of any containment,
8 exposure barrier, or other land use or resource use restrictions
9 necessary to assure the effectiveness and integrity of the remedy
10 shall be described in a restrictive covenant. The restrictive
11 covenant shall be recorded with the register of deeds for the
12 county in which the property is located within 21 days of the
13 department's selection or approval of the remedial action plan, or
14 within 21 days of the completion of construction of the containment
15 or barrier, as appropriate to the circumstances. The restrictive
16 covenant shall be filed by the property owner or with the express
17 written permission of the property owner. The restrictions shall
18 run with the land and be binding on the owner's successors,
19 assigns, and lessees. Such restrictions shall apply until the
20 department determines that hazardous substances that are controlled
21 by the barrier or contained no longer present an unacceptable risk
22 to the public health, safety, or welfare, or the environment as
23 defined by the cleanup criteria and exposure control requirements
24 set forth in the remedial action plan. The restrictive covenant
25 shall include a survey and property description that define the
26 areas addressed by the remedial action plan and the scope of any
27 land use or resource use limitations. The form and content of the

1 restrictive covenant are subject to approval by the department and
2 shall include provisions to accomplish all of the following:

3 (a) Restrict activities at the facility that may interfere
4 with a remedial action, operation and maintenance, monitoring, or
5 other measures necessary to assure the effectiveness and integrity
6 of the remedial action.

7 (b) Restrict activities that may result in exposures above
8 levels established in the remedial action plan.

9 (c) Require notice to the department of the owner's intent to
10 convey any interest in the facility 14 days prior to consummating
11 the conveyance. A conveyance of title, an easement, or other
12 interest in the property shall not be consummated by the property
13 owner without adequate and complete provision for compliance with
14 the terms and conditions of the agreement described in subsection
15 (3) and the prevention of releases and exposures described in
16 subdivision (b).

17 (d) Grant to the department the right to enter the property at
18 reasonable times for the purpose of determining and monitoring
19 compliance with the remedial action plan, including the right to
20 take samples, inspect the operation of the remedial action
21 measures, and inspect records.

22 (e) Allow the state to enforce the restriction set forth in
23 the covenant by legal action in a court of appropriate
24 jurisdiction.

25 (f) Describe generally the uses of the property that are
26 consistent with the categorical criteria and limitations approved
27 as part of a remedial action plan.

1 (5) If the department determines that exposure to hazardous
2 substances may be reliably restricted by an institutional control
3 in lieu of a restrictive covenant, and that imposition of land use
4 or resource use restrictions through restrictive covenants is
5 impractical, the department may approve of a remedial action plan
6 under section 20120a(1)(f) to (j) or (2) that relies on such
7 institutional control. Mechanisms that may be considered under this
8 subsection include, but are not limited to, an ordinance that
9 prohibits the use of groundwater or an aquifer in a manner and to a
10 degree that protects against unacceptable exposures as defined by
11 the cleanup criteria approved as part of the remedial action plan.
12 An ordinance that serves as an exposure control pursuant to this
13 subsection shall be published and maintained in the same manner as
14 zoning ordinances and shall include a requirement that the local
15 unit of government notify the department at least 30 days prior to
16 adopting a modification to the ordinance, or to the lapsing or
17 revocation of the ordinance.

18 (6) Selection or approval by the department of a remedial
19 action does not relieve a person who is liable under section 20126
20 of that person's responsibility to report and provide for response
21 activity to address a subsequent release or threat of release at
22 the facility.

23 (7) A remedial action shall not be considered approved by the
24 department unless a remedial action plan is submitted to the
25 department and the department approves the plan. Implementation by
26 any person of response activity without department approval does
27 not relieve that person of an obligation to undertake response

1 activity or limit the ability of the department to take action to
2 require response activity necessary to comply with this act by a
3 person who is liable under section 20126.

4 (8) A person shall not file a notice of approved environmental
5 remediation indicating approval or a determination of the
6 department unless the department has approved of the filing of the
7 notice.

8 (9) A person who implements a remedial action plan approved by
9 the department pursuant to subsections (2) to (5) shall provide
10 notice of the land use restrictions that are part of the remedial
11 action plan to the zoning authority for the local unit of
12 government in which the facility is located within 30 days of
13 approval of the plan.

14 (10) The state, with the approval of the state administrative
15 board, may place restrictive covenants related to land or resource
16 use on deeds of state owned property.

17 PART 207. ENVIRONMENTAL COVENANTS

18 SEC. 20701. AS USED IN THIS PART:

19 (A) "ACTIVITY AND USE LIMITATIONS" MEANS RESTRICTIONS OR
20 OBLIGATIONS CREATED UNDER THIS PART WITH RESPECT TO REAL PROPERTY.

21 (B) "AGENCY" MEANS THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR
22 ANY OTHER STATE OR FEDERAL AGENCY THAT DETERMINES OR APPROVES THE
23 ENVIRONMENTAL RESPONSE PROJECT PURSUANT TO WHICH THE ENVIRONMENTAL
24 COVENANT IS CREATED.

25 (C) "COMMON INTEREST COMMUNITY" MEANS A CONDOMINIUM,
26 COOPERATIVE, OR OTHER REAL PROPERTY WITH RESPECT TO WHICH A PERSON,
27 BY VIRTUE OF THE PERSON'S OWNERSHIP OF A PARCEL OF REAL PROPERTY,

1 IS OBLIGATED TO PAY PROPERTY TAXES OR INSURANCE PREMIUMS OR FOR
2 MAINTENANCE OR IMPROVEMENT OF OTHER REAL PROPERTY DESCRIBED IN A
3 RECORDED COVENANT THAT CREATES THE COMMON INTEREST COMMUNITY.

4 (D) "ENVIRONMENTAL COVENANT" OR "COVENANT" MEANS A SERVITUDE
5 ARISING UNDER AN ENVIRONMENTAL RESPONSE PROJECT THAT IMPOSES
6 ACTIVITY AND USE LIMITATIONS.

7 (E) "ENVIRONMENTAL RESPONSE PROJECT" MEANS A PLAN OR WORK
8 PERFORMED FOR ENVIRONMENTAL REMEDIATION OF REAL PROPERTY AND
9 CONDUCTED AS PROVIDED IN EITHER OR BOTH OF THE FOLLOWING:

10 (i) UNDER A FEDERAL OR STATE PROGRAM GOVERNING ENVIRONMENTAL
11 REMEDIATION OF REAL PROPERTY, INCLUDING PART 201.

12 (ii) INCIDENT TO CLOSURE OF A LANDFILL AS DEFINED IN SECTION
13 11103 OR 11504, IF THE CLOSURE IS CONDUCTED WITH APPROVAL OF AN
14 AGENCY.

15 (F) "HOLDER" MEANS THE GRANTEE OF AN ENVIRONMENTAL COVENANT AS
16 SPECIFIED IN SECTION 20702(1).

17 (G) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
18 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

19 (H) "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS
20 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC
21 OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

22 (I) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
23 OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY
24 TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE
25 UNITED STATES.

26 SEC. 20702. (1) ANY PERSON, INCLUDING A PERSON THAT OWNS AN
27 INTEREST IN THE REAL PROPERTY SUBJECT TO THE ENVIRONMENTAL

1 COVENANT, THE AGENCY, OR A MUNICIPALITY OR OTHER UNIT OF LOCAL
2 GOVERNMENT, MAY BE A GRANTEE OF AN ENVIRONMENTAL COVENANT. A
3 COVENANT MAY IDENTIFY MORE THAN 1 HOLDER. THE INTEREST OF A HOLDER
4 IS AN INTEREST IN REAL PROPERTY.

5 (2) A RIGHT OF AN AGENCY UNDER THIS PART OR UNDER AN
6 ENVIRONMENTAL COVENANT, OTHER THAN A RIGHT AS A HOLDER, IS NOT AN
7 INTEREST IN REAL PROPERTY.

8 (3) AN AGENCY IS BOUND BY ANY OBLIGATION IT ASSUMES IN AN
9 ENVIRONMENTAL COVENANT, BUT AN AGENCY DOES NOT ASSUME OBLIGATIONS
10 MERELY BY SIGNING A COVENANT. ANY OTHER PERSON THAT SIGNS A
11 COVENANT IS BOUND BY THE OBLIGATIONS THE PERSON ASSUMES IN THE
12 COVENANT, BUT SIGNING THE COVENANT DOES NOT CHANGE OBLIGATIONS,
13 RIGHTS, OR PROTECTIONS GRANTED OR IMPOSED UNDER LAW OTHER THAN THIS
14 PART EXCEPT AS PROVIDED IN THE COVENANT.

15 (4) ALL OF THE FOLLOWING RULES APPLY TO INTERESTS IN REAL
16 PROPERTY IN EXISTENCE AT THE TIME AN ENVIRONMENTAL COVENANT IS
17 CREATED OR AMENDED:

18 (A) AN INTEREST THAT HAS PRIORITY UNDER OTHER LAW IS NOT
19 AFFECTED BY A COVENANT UNLESS THE PERSON THAT OWNS THE INTEREST
20 SUBORDINATES THAT INTEREST TO THE COVENANT.

21 (B) THIS PART DOES NOT REQUIRE A PERSON THAT OWNS A PRIOR
22 INTEREST TO SUBORDINATE THAT INTEREST TO A COVENANT OR TO AGREE TO
23 BE BOUND BY THE COVENANT.

24 (C) A SUBORDINATION AGREEMENT MAY BE CONTAINED IN A COVENANT
25 COVERING REAL PROPERTY OR IN A SEPARATE RECORD. IF THE COVENANT
26 COVERS COMMONLY OWNED PROPERTY IN A COMMON INTEREST COMMUNITY, THE
27 RECORD MAY BE SIGNED BY ANY PERSON AUTHORIZED BY THE GOVERNING

1 BOARD OF THE OWNERS' ASSOCIATION.

2 (D) AN AGREEMENT BY A PERSON TO SUBORDINATE A PRIOR INTEREST
3 TO A COVENANT AFFECTS THE PRIORITY OF THAT PERSON'S INTEREST BUT
4 DOES NOT BY ITSELF IMPOSE ANY AFFIRMATIVE OBLIGATION ON THE PERSON
5 WITH RESPECT TO THE COVENANT.

6 SEC. 20703. (1) AN ENVIRONMENTAL COVENANT SHALL:

7 (A) STATE THAT THE INSTRUMENT IS AN ENVIRONMENTAL COVENANT
8 EXECUTED PURSUANT TO PART 207 OF THE NATURAL RESOURCES AND
9 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.20701 TO
10 324.20713.

11 (B) CONTAIN A LEGALLY SUFFICIENT DESCRIPTION OF THE REAL
12 PROPERTY SUBJECT TO THE COVENANT.

13 (C) DESCRIBE THE ACTIVITY AND USE LIMITATIONS ON THE REAL
14 PROPERTY.

15 (D) IDENTIFY EVERY HOLDER.

16 (E) BE SIGNED BY THE AGENCY, EVERY HOLDER, AND, UNLESS WAIVED
17 BY THE AGENCY, EVERY OWNER OF THE FEE SIMPLE OF THE REAL PROPERTY
18 SUBJECT TO THE COVENANT.

19 (F) IDENTIFY THE NAME AND LOCATION OF ANY ADMINISTRATIVE
20 RECORD FOR THE ENVIRONMENTAL RESPONSE PROJECT REFLECTED IN THE
21 COVENANT.

22 (2) IN ADDITION TO THE INFORMATION REQUIRED BY SUBSECTION (1),
23 AN ENVIRONMENTAL COVENANT MAY CONTAIN OTHER INFORMATION,
24 RESTRICTIONS, AND REQUIREMENTS AGREED TO BY THE PERSONS THAT SIGNED
25 IT, INCLUDING ANY OF THE FOLLOWING:

26 (A) REQUIREMENTS FOR NOTICE FOLLOWING TRANSFER OF A SPECIFIED
27 INTEREST IN, OR CONCERNING PROPOSED CHANGES IN USE OF, APPLICATIONS

1 FOR BUILDING PERMITS FOR, OR PROPOSALS FOR ANY SITE WORK AFFECTING
2 THE CONTAMINATION ON, THE PROPERTY SUBJECT TO THE COVENANT.

3 (B) REQUIREMENTS FOR PERIODIC REPORTING DESCRIBING COMPLIANCE
4 WITH THE COVENANT.

5 (C) RIGHTS OF ACCESS TO THE PROPERTY GRANTED IN CONNECTION
6 WITH IMPLEMENTATION OR ENFORCEMENT OF THE COVENANT.

7 (D) A BRIEF NARRATIVE DESCRIPTION OF THE CONTAMINATION AND
8 REMEDY, INCLUDING THE CONTAMINANTS OF CONCERN, THE PATHWAYS OF
9 EXPOSURE, LIMITS ON EXPOSURE, AND THE LOCATION AND EXTENT OF THE
10 CONTAMINATION.

11 (E) LIMITATIONS ON AMENDMENT OR TERMINATION OF THE COVENANT IN
12 ADDITION TO THOSE CONTAINED IN SECTIONS 20708 AND 20709.

13 (F) RIGHTS OF THE HOLDER IN ADDITION TO ITS RIGHT TO ENFORCE
14 THE COVENANT PURSUANT TO SECTION 20710.

15 (3) IN ADDITION TO OTHER CONDITIONS FOR THE AGENCY'S APPROVAL
16 OF A COVENANT, THE AGENCY MAY REQUIRE THOSE PERSONS SPECIFIED BY
17 THE AGENCY THAT HAVE INTERESTS IN THE REAL PROPERTY TO SIGN THE
18 COVENANT.

19 SEC. 20704. (1) AN ENVIRONMENTAL COVENANT THAT COMPLIES WITH
20 THIS PART RUNS WITH THE LAND.

21 (2) AN ENVIRONMENTAL COVENANT THAT IS OTHERWISE EFFECTIVE IS
22 VALID AND ENFORCEABLE EVEN IF 1 OR MORE OF THE FOLLOWING APPLY:

23 (A) IT IS NOT APPURTENANT TO AN INTEREST IN REAL PROPERTY.

24 (B) IT CAN BE OR HAS BEEN ASSIGNED TO A PERSON OTHER THAN THE
25 ORIGINAL HOLDER.

26 (C) IT IS NOT OF A CHARACTER THAT HAS BEEN RECOGNIZED
27 TRADITIONALLY AT COMMON LAW.

1 (D) IT IMPOSES A NEGATIVE BURDEN.

2 (E) IT IMPOSES AN AFFIRMATIVE OBLIGATION ON A PERSON HAVING AN
3 INTEREST IN THE REAL PROPERTY OR ON THE HOLDER.

4 (F) THE BENEFIT OR BURDEN DOES NOT TOUCH OR CONCERN REAL
5 PROPERTY.

6 (G) THERE IS NO PRIVITY OF ESTATE OR CONTRACT.

7 (H) THE HOLDER DIES, CEASES TO EXIST, RESIGNS, OR IS REPLACED.

8 (I) THE HOLDER IS AN OWNER OF AN INTEREST SUBJECT TO THE
9 COVENANT.

10 (3) AN INSTRUMENT THAT CREATES RESTRICTIONS OR OBLIGATIONS
11 WITH RESPECT TO REAL PROPERTY THAT WOULD QUALIFY AS ACTIVITY AND
12 USE LIMITATIONS EXCEPT FOR THE FACT THAT THE INSTRUMENT WAS
13 RECORDED BEFORE THE EFFECTIVE DATE OF THIS PART IS NOT INVALID OR
14 UNENFORCEABLE BECAUSE IT IS SUBJECT TO ANY OF THE LIMITATIONS ON
15 ENFORCEMENT OF INTERESTS DESCRIBED IN SUBSECTION (2) OR BECAUSE IT
16 WAS IDENTIFIED AS AN EASEMENT, SERVITUDE, DEED RESTRICTION, OR
17 OTHER INTEREST. THIS PART DOES NOT APPLY IN ANY OTHER RESPECT TO
18 SUCH AN INSTRUMENT.

19 (4) THIS PART DOES NOT INVALIDATE OR RENDER UNENFORCEABLE ANY
20 INTEREST, WHETHER DESIGNATED AS AN ENVIRONMENTAL COVENANT OR OTHER
21 INTEREST, THAT IS OTHERWISE ENFORCEABLE UNDER THE LAW OF THIS
22 STATE.

23 SEC. 20705. THIS PART DOES NOT AUTHORIZE A USE OF REAL
24 PROPERTY THAT IS OTHERWISE PROHIBITED BY ZONING, BY LAW OTHER THAN
25 THIS PART REGULATING USE OF REAL PROPERTY, OR BY A RECORDED
26 INSTRUMENT THAT HAS PRIORITY OVER THE ENVIRONMENTAL COVENANT. A
27 COVENANT MAY PROHIBIT OR RESTRICT USES OF REAL PROPERTY THAT ARE

1 AUTHORIZED BY ZONING OR BY LAW OTHER THAN THIS PART.

2 SEC. 20706. (1) A COPY OF AN ENVIRONMENTAL COVENANT SHALL BE
3 PROVIDED BY THE PERSONS AND IN THE MANNER REQUIRED BY THE AGENCY TO
4 ALL OF THE FOLLOWING:

5 (A) EACH PERSON THAT SIGNED THE COVENANT.

6 (B) EACH PERSON HOLDING A RECORDED INTEREST IN THE REAL
7 PROPERTY SUBJECT TO THE COVENANT.

8 (C) EACH PERSON IN POSSESSION OF THE REAL PROPERTY SUBJECT TO
9 THE COVENANT.

10 (D) EACH LOCAL UNIT OF GOVERNMENT IN WHICH REAL PROPERTY
11 SUBJECT TO THE COVENANT IS LOCATED.

12 (E) ANY OTHER PERSON THE AGENCY REQUIRES.

13 (2) THE VALIDITY OF A COVENANT IS NOT AFFECTED BY FAILURE TO
14 PROVIDE A COPY OF THE COVENANT AS REQUIRED UNDER THIS SECTION.

15 SEC. 20707. (1) AN ENVIRONMENTAL COVENANT AND ANY AMENDMENT OR
16 TERMINATION OF THE COVENANT SHALL BE RECORDED IN EACH COUNTY IN
17 WHICH ANY PORTION OF THE REAL PROPERTY SUBJECT TO THE COVENANT IS
18 LOCATED. FOR PURPOSES OF INDEXING, A HOLDER SHALL BE TREATED AS A
19 GRANTEE.

20 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 20708(3), AN
21 ENVIRONMENTAL COVENANT IS SUBJECT TO THE LAWS OF THIS STATE
22 GOVERNING RECORDING AND PRIORITY OF INTERESTS IN REAL PROPERTY.

23 SEC. 20708. (1) AN ENVIRONMENTAL COVENANT IS PERPETUAL UNLESS
24 IT IS ANY OF THE FOLLOWING:

25 (A) BY ITS TERMS LIMITED TO A SPECIFIC DURATION OR TERMINATED
26 BY THE OCCURRENCE OF A SPECIFIC EVENT.

27 (B) TERMINATED BY CONSENT PURSUANT TO SECTION 20709.

1 (C) TERMINATED PURSUANT TO SUBSECTION (2) .

2 (D) TERMINATED BY FORECLOSURE OF AN INTEREST THAT HAS PRIORITY
3 OVER THE ENVIRONMENTAL COVENANT .

4 (E) TERMINATED OR MODIFIED IN AN EMINENT DOMAIN PROCEEDING,
5 BUT ONLY IF:

6 (i) THE AGENCY THAT SIGNED THE ENVIRONMENTAL COVENANT IS A
7 PARTY TO THE PROCEEDING .

8 (ii) ALL PERSONS IDENTIFIED IN SECTION 20709(1) AND (2) ARE
9 GIVEN NOTICE OF THE PENDENCY OF THE PROCEEDING .

10 (iii) THE COURT DETERMINES, AFTER HEARING, THAT THE TERMINATION
11 OR MODIFICATION WILL NOT ADVERSELY AFFECT HUMAN HEALTH OR THE
12 ENVIRONMENT .

13 (2) IF THE AGENCY THAT SIGNED AN ENVIRONMENTAL COVENANT HAS
14 DETERMINED THAT THE INTENDED BENEFITS OF THE COVENANT CAN NO LONGER
15 BE REALIZED, A COURT, UNDER THE DOCTRINE OF CHANGED CIRCUMSTANCES,
16 IN AN ACTION IN WHICH ALL PERSONS IDENTIFIED IN SECTION 20709(1)
17 AND (2) HAVE BEEN GIVEN NOTICE, MAY TERMINATE THE ENVIRONMENTAL
18 COVENANT OR REDUCE ITS BURDEN ON THE REAL PROPERTY SUBJECT TO THE
19 ENVIRONMENTAL COVENANT. THE AGENCY'S DETERMINATION OR ITS FAILURE
20 TO MAKE A DETERMINATION UPON REQUEST IS SUBJECT TO REVIEW IN A
21 CONTESTED CASE HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES
22 ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328 .

23 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (1) AND (2),
24 AN ENVIRONMENTAL COVENANT MAY NOT BE EXTINGUISHED, LIMITED, OR
25 IMPAIRED THROUGH ISSUANCE OF A TAX DEED, FORECLOSURE OF A TAX LIEN,
26 OR APPLICATION OF THE DOCTRINE OF ADVERSE POSSESSION, PRESCRIPTION,
27 ABANDONMENT, WAIVER, LACK OF ENFORCEMENT, OR ACQUIESCENCE, OR A

1 SIMILAR DOCTRINE.

2 (4) AN ENVIRONMENTAL COVENANT MAY NOT BE EXTINGUISHED,
3 LIMITED, OR IMPAIRED BY APPLICATION OF 1945 PA 200, MCL 565.101 TO
4 565.109, OR 1963 PA 42, MCL 554.291 TO 554.294.

5 SEC. 20709. (1) AN ENVIRONMENTAL COVENANT MAY BE AMENDED OR
6 TERMINATED BY CONSENT ONLY IF THE AMENDMENT OR TERMINATION IS
7 SIGNED BY ALL OF THE FOLLOWING:

8 (A) THE AGENCY.

9 (B) UNLESS WAIVED BY THE AGENCY, THE CURRENT OWNER OF THE FEE
10 SIMPLE OF THE REAL PROPERTY SUBJECT TO THE COVENANT.

11 (C) EACH PERSON THAT ORIGINALLY SIGNED THE ENVIRONMENTAL
12 COVENANT, UNLESS THE PERSON WAIVED IN A SIGNED RECORD THE RIGHT TO
13 CONSENT OR A COURT FINDS THAT THE PERSON NO LONGER EXISTS OR CANNOT
14 BE LOCATED OR IDENTIFIED WITH THE EXERCISE OF REASONABLE DILIGENCE.

15 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) (B), THE
16 HOLDER.

17 (2) IF AN INTEREST IN REAL PROPERTY IS SUBJECT TO AN
18 ENVIRONMENTAL COVENANT, THE INTEREST IS NOT AFFECTED BY AN
19 AMENDMENT OF THE COVENANT UNLESS THE CURRENT OWNER OF THE INTEREST
20 CONSENTS TO THE AMENDMENT OR HAS WAIVED IN A SIGNED RECORD THE
21 RIGHT TO CONSENT TO AMENDMENTS.

22 (3) EXCEPT FOR AN ASSIGNMENT UNDERTAKEN PURSUANT TO A
23 GOVERNMENTAL REORGANIZATION, ASSIGNMENT OF AN ENVIRONMENTAL
24 COVENANT TO A NEW HOLDER IS AN AMENDMENT.

25 (4) EXCEPT AS OTHERWISE PROVIDED IN AN ENVIRONMENTAL COVENANT,
26 ALL OF THE FOLLOWING APPLY:

27 (A) A HOLDER MAY NOT ASSIGN ITS INTEREST WITHOUT CONSENT OF

1 THE OTHER PARTIES.

2 (B) A HOLDER MAY BE REMOVED AND REPLACED BY AGREEMENT OF THE
3 OTHER PARTIES SPECIFIED IN SUBSECTION (1).

4 (C) A COURT OF COMPETENT JURISDICTION MAY FILL A VACANCY IN
5 THE POSITION OF HOLDER.

6 SEC. 20710. (1) A CIVIL ACTION FOR INJUNCTIVE OR OTHER
7 EQUITABLE RELIEF FOR VIOLATION OF AN ENVIRONMENTAL COVENANT MAY BE
8 MAINTAINED BY ANY OF THE FOLLOWING:

9 (A) A PARTY TO THE COVENANT.

10 (B) THE AGENCY OR, IF IT IS NOT THE AGENCY, THE DEPARTMENT OF
11 ENVIRONMENTAL QUALITY.

12 (C) ANY PERSON TO WHOM THE COVENANT EXPRESSLY GRANTS POWER TO
13 ENFORCE.

14 (D) A PERSON WHOSE INTEREST IN THE REAL PROPERTY OR WHOSE
15 COLLATERAL OR LIABILITY MAY BE AFFECTED BY THE ALLEGED VIOLATION OF
16 THE COVENANT.

17 (E) A LOCAL UNIT OF GOVERNMENT IN WHICH THE REAL PROPERTY
18 SUBJECT TO THE COVENANT IS LOCATED.

19 (2) THIS PART DOES NOT LIMIT THE REGULATORY AUTHORITY OF THE
20 AGENCY OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER LAW OTHER
21 THAN THIS PART WITH RESPECT TO AN ENVIRONMENTAL RESPONSE PROJECT.

22 (3) A PERSON IS NOT RESPONSIBLE FOR OR SUBJECT TO LIABILITY
23 FOR ENVIRONMENTAL REMEDIATION SOLELY BECAUSE THE PERSON HAS THE
24 RIGHT TO ENFORCE AN ENVIRONMENTAL COVENANT.

25 SEC. 20711. (1) THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL
26 ESTABLISH A REGISTRY THAT CONTAINS ALL ENVIRONMENTAL COVENANTS AND
27 ANY AMENDMENT OR TERMINATION OF THOSE COVENANTS. THE REGISTRY MAY

1 ALSO CONTAIN ANY OTHER INFORMATION CONCERNING COVENANTS AND THE
2 REAL PROPERTY SUBJECT TO THEM THAT THE DEPARTMENT OF ENVIRONMENTAL
3 QUALITY CONSIDERS APPROPRIATE.

4 (2) AFTER AN ENVIRONMENTAL COVENANT OR AN AMENDMENT OR
5 TERMINATION OF AN ENVIRONMENTAL COVENANT IS FILED IN THE REGISTRY
6 ESTABLISHED PURSUANT TO SUBSECTION (1), A NOTICE OF THE COVENANT,
7 AMENDMENT, OR TERMINATION THAT COMPLIES WITH THIS SECTION MAY BE
8 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN LIEU OF
9 RECORDING THE ENTIRE COVENANT. ANY SUCH NOTICE SHALL CONTAIN ALL OF
10 THE FOLLOWING:

11 (A) A LEGALLY SUFFICIENT DESCRIPTION AND ANY AVAILABLE STREET
12 ADDRESS OF THE REAL PROPERTY SUBJECT TO THE COVENANT.

13 (B) THE NAME AND ADDRESS OF THE OWNER OF THE FEE SIMPLE
14 INTEREST IN THE REAL PROPERTY, THE AGENCY, AND THE HOLDER IF OTHER
15 THAN THE AGENCY.

16 (C) A STATEMENT THAT THE ENVIRONMENTAL COVENANT, AMENDMENT, OR
17 TERMINATION IS AVAILABLE IN A REGISTRY AT THE DEPARTMENT OF
18 ENVIRONMENTAL QUALITY AND THAT DISCLOSES THE METHOD OF ANY
19 ELECTRONIC ACCESS.

20 (D) A STATEMENT THAT THE NOTICE IS NOTIFICATION OF AN
21 ENVIRONMENTAL COVENANT EXECUTED PURSUANT TO PART 207 OF THE NATURAL
22 RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL
23 324.20701 TO 324.20713.

24 (3) A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM, EXECUTED
25 WITH THE SAME FORMALITIES AS A DEED IN THIS STATE, SATISFIES THE
26 REQUIREMENTS OF SUBSECTION (2):

27 "1. THIS NOTICE IS RECORDED WITH THE REGISTER OF DEEDS OF

1 [INSERT NAME OF COUNTY IN WHICH THE REAL PROPERTY IS LOCATED]
2 PURSUANT TO SECTION 20711 OF THE NATURAL RESOURCES AND
3 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.20711.

4 2. THIS NOTICE AND THE ENVIRONMENTAL COVENANT, AMENDMENT, OR
5 TERMINATION TO WHICH IT REFERS MAY IMPOSE SIGNIFICANT OBLIGATIONS
6 WITH RESPECT TO THE PROPERTY DESCRIBED BELOW.

7 3. A LEGAL DESCRIPTION OF THE PROPERTY IS ATTACHED AS EXHIBIT
8 A TO THIS NOTICE. THE ADDRESS OF THE PROPERTY THAT IS SUBJECT TO
9 THE ENVIRONMENTAL COVENANT IS [INSERT ADDRESS OF PROPERTY] [NOT
10 AVAILABLE].

11 4. THE NAME AND ADDRESS OF THE OWNER OF THE FEE SIMPLE
12 INTEREST IN THE REAL PROPERTY ON THE DATE OF THIS NOTICE IS [INSERT
13 NAME OF CURRENT OWNER OF THE PROPERTY AND THE OWNER'S CURRENT
14 ADDRESS AS SHOWN ON THE TAX RECORDS OF THE JURISDICTION IN WHICH
15 THE PROPERTY IS LOCATED].

16 5. THE ENVIRONMENTAL COVENANT, AMENDMENT, OR TERMINATION WAS
17 SIGNED BY [INSERT NAME AND ADDRESS OF THE AGENCY].

18 6. THE ENVIRONMENTAL COVENANT, AMENDMENT, OR TERMINATION WAS
19 FILED ON [INSERT DATE OF FILING] IN THE REGISTRY MAINTAINED FOR
20 THAT PURPOSE BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AT [INSERT
21 ADDRESS AND ROOM OF BUILDING IN WHICH THE REGISTRY IS MAINTAINED].

22 7. THE FULL TEXT OF THE ENVIRONMENTAL COVENANT, AMENDMENT, OR
23 TERMINATION AND ANY OTHER INFORMATION REQUIRED BY THE AGENCY IS ON
24 FILE IN THE REGISTRY AND AVAILABLE FOR INSPECTION AND COPYING. [THE
25 COVENANT, AMENDMENT, OR TERMINATION MAY BE FOUND ELECTRONICALLY AT
26 [INSERT WEB ADDRESS FOR COVENANT].]"

27 SEC. 20712. IN APPLYING AND CONSTRUING THIS PART,

1 CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF
2 THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT
3 THE UNIFORM LAW REPRESENTED BY THIS PART.

4 SEC. 20713. THIS PART MODIFIES, LIMITS, OR SUPERSEDES THE
5 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC
6 7001 TO 7031, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE 15 USC
7 7001(A).

8 Sec. 21310a. (1) If the corrective action activities at a site
9 result in a final remedy that relies on tier I commercial or
10 industrial criteria, institutional controls shall be implemented as
11 provided in this subsection. A notice of corrective action shall be
12 recorded with the register of deeds for the county in which the
13 site is located prior to submittal of a closure report under
14 section 21312a. A notice shall be filed under this subsection only
15 by the property owner or with the express written permission of the
16 property owner. The form and content of the notice shall be subject
17 to approval by the department. A notice of corrective action
18 recorded under this subsection shall state the land use that was
19 the basis of the corrective action selected by a consultant
20 retained by the owner or operator. The notice shall state that if
21 there is a proposed change in the land use at any time in the
22 future, that change may necessitate further evaluation of potential
23 risks to the public health, safety, and welfare and to the
24 environment and that the department shall be contacted regarding
25 any proposed change in the land use. Additional requirements for
26 financial assurance, monitoring, or operation and maintenance shall
27 not apply if contamination levels do not exceed the levels

1 established in the tier I evaluation.

2 (2) **THIS SUBSECTION IS SUBJECT TO PART 207, INCLUDING, BUT NOT**
3 **LIMITED TO, SECTION 20704(3)**. If corrective action activities at a
4 site rely on institutional controls other than as provided in
5 subsection (1), the institutional controls shall be implemented as
6 provided in this subsection. The restrictive covenant shall be
7 recorded with the register of deeds for the county in which the
8 property is located within 30 days from submittal of the final
9 assessment report pursuant to section 21311a, unless otherwise
10 agreed to by the department. The restrictive covenant shall be
11 filed only by the property owner or with the express written
12 permission of the property owner. The restrictions shall run with
13 the land and be binding on the owner's successors, assigns, and
14 lessees. The restrictions shall apply until the department
15 determines that regulated substances no longer present an
16 unacceptable risk to the public health, safety, or welfare or to
17 the environment. The restrictive covenant shall include a survey
18 and property description ~~which~~**THAT** define the areas addressed by
19 the corrective action plan and the scope of any land use or
20 resource use limitations. The form and content of the restrictive
21 covenant are subject to approval by the department and shall
22 include provisions to accomplish all of the following:

23 (a) Restrict activities at the site that may interfere with
24 corrective action, operation and maintenance, monitoring, or other
25 measures necessary to assure the effectiveness and integrity of the
26 corrective action.

27 (b) Restrict activities that may result in exposure to

1 regulated substances above levels established in the corrective
2 action plan.

3 (c) Prevent a conveyance of title, an easement, or other
4 interest in the property from being consummated by the property
5 owner without adequate and complete provision for compliance with
6 the corrective action plan and prevention of exposure to regulated
7 substances described in subdivision (b).

8 (d) Grant to the department and its designated representatives
9 the right to enter the property at reasonable times for the purpose
10 of determining and monitoring compliance with the corrective action
11 plan, including but not limited to the right to take samples,
12 inspect the operation of the corrective action measures, and
13 inspect records.

14 (e) Allow the state to enforce restrictions set forth in the
15 covenant by legal action in a court of appropriate jurisdiction.

16 (f) Describe generally the uses of the property that are
17 consistent with the corrective action plan.

18 (3) If a consultant retained by the owner or operator
19 determines that exposure to regulated substances may be reliably
20 restricted by a means other than a restrictive covenant and that
21 imposition of land use or resource use restrictions through
22 restrictive covenants is impractical, the consultant may select a
23 corrective action plan that relies on alternative mechanisms.
24 Mechanisms that may be considered under this subsection include,
25 but are not limited to, an ordinance that prohibits the use of
26 groundwater in a manner and to a degree that protects against
27 unacceptable exposure to a regulated substance as defined by the

1 cleanup criteria identified in the corrective action plan. An
2 ordinance ~~that serves as an exposure control~~ under this subsection
3 shall include both of the following:

4 (a) A requirement that the local unit of government notify the
5 department 30 days before adopting a modification to the ordinance
6 or the lapsing or revocation of the ordinance.

7 (b) A requirement that the ordinance be filed with the
8 register of deeds as an ordinance affecting multiple properties.

9 (4) Notwithstanding subsections (1), (2), and (3), if a
10 mechanism other than a notice of corrective action, ~~an ordinance,~~
11 ~~or a restrictive covenant,~~ **OR AN ORDINANCE** is requested by a
12 consultant retained by an owner or operator and the department
13 determines that the alternative mechanism is appropriate, the
14 department may approve of the alternate mechanism.

15 (5) A person who implements corrective action activities shall
16 provide notice of the land use restrictions that are part of the
17 corrective action plan to the local unit of government in which the
18 site is located within 30 days of submittal of the corrective
19 action plan, unless otherwise approved by the department.