

State Funded LUST Closures in MI *Using Restrictive Covenants*

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Environmental Quality**

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Overview of Presentation

- MI's LUST program
- ICs available for closure
- "Triage Program"
- Case Studies



Before



After

Michigan's LUST Program

Program Goals

- Protect the public health, safety, welfare, and the environment through:
 - Responsible party cleanups – overseeing, compliance assistance, enforcement actions, recover costs
 - State-funded actions – funding and oversight of state contractor actions
 - Investigations, risk assessments, and more – investigations, sampling, monitoring, etc..

Michigan's LUST Program

- At the time of a release, owner/operator is responsible for corrective actions mandated by Part 213
- Owners/operators are required to hire consultants that meet statutory qualifications to perform corrective actions, and to submit specific reports required
- RRD is charged with selectively auditing the final assessment reports and closure reports

Institutional Controls

Expressed Options Under Part 213

- Notice of Corrective Action
- Restrictive Covenant
- Alternate Mechanisms
 - Ordinance that prohibits the use of groundwater
 - Local unit of government must notify Department 30 days before adopting a modification or lapsing, or revocation.
 - Ordinance must be filed with the register of deeds as an ordinance affecting multiple properties.

Part 213 – Restrictive Covenant

- Michigan has not adopted UECA
- Statutory requirements:
 - Survey and property description
 - Restrict activities
 - Grant access to the MDEQ
 - Allow state to enforce restrictions
 - Describe general uses of the property
- Model template available, but not required

MI's LUST Triage Program

Purpose and Objectives

- Improve RRD's knowledge about LUST sites across MI
- ~4,500 LUST releases with no liable &/or viable party
- Risks posed not adequately understood; data is non-existent, very limited, or very old
- Help understand risks/potential risks;
Prioritize orphan sites for limited state funded work;
Close sites that do not pose any risk.
- Prior to 2013 - MDEQ's Geological Services Unit performed triage at ~40 sites per year



MI's LUST Triage Program

Design

- Simple and fast
- Contractors “self-implement”
- Staff not needed on-site
- Work can be completed in less than 1 day
- Most contractors can complete 2 sites per day
- \$2.5 million per year



Triage Program Results 2013-2015

DISTRICT	TOTAL NUMBER OF SITES SAMPLED	CATEGORY						
		NO KNOWN RISK(S) EXIST		RISK(S) ARE PRESENT BUT NOT IMMEDIATE		RISK(S) ARE PRESENT AND IMMEDIATE		
		Part 213 Close	APC	Orphan	Liabe Party	Orphan	Emergency Fund	Action Plan Funding
TOTALS	739	190	119	182	182	0	41	25
CATEGORY TOTAL		309		364		66		
PERCENTAGES		61.5%	38.5%	50.0%	50.0%	0.0%	62.1%	37.9%
TOTAL %		100.0%		100.0%		100.0%		

Case Studies



Baker Oil, Marshall, MI



Image U.S. Geological Survey

Baker Oil, Marshall, MI

- Former bulk petroleum storage facility that used several ASTs and at least one UST
- 1993 - Release confirmed from UST system
- PRP was unresponsive to MDEQ requests to perform corrective actions and later became insolvent
- Property later tax-reverted to Calhoun County

Baker Oil, Marshall, MI

- State removed 1 UST in 2000, followed by demolition of building and removal of 8 ASTs in 2003
- 2011 - With new funding, MDEQ's contractor conducted an investigation and identified substantial residual light non-aqueous phase liquid (LNAPL) in the subsurface, mostly below the water table.
- MDEQ conducted a remedial excavation during the winter 2012 to remove the remaining LNAPL

Baker Oil, Marshall, MI



Baker Oil, Marshall, MI

Restrictive Covenant Filed



USER 4003 PAGE 615



STATE OF MICHIGAN - CALHOUN COUNTY
RECORDED
10/29/2015 9:32:25 AM
ANNE B. NORLANDER - CLERK/REGISTER

RECEIPT# 1644886 STATION 6
DEED

13
**DECLARATION OF RESTRICTIVE COVENANT
FOR A RESTRICTED RESIDENTIAL CORRECTIVE ACTION**

MDEQ Reference No: RC-RRD-213-14-199

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Calhoun County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to regulated substances present at the Property located at 1035 East Michigan Avenue, Marshall, Calhoun County, and legally described in the attached Exhibit 2 (Legal Description of the Property).

The Property is associated with Baker Oil (E. Michigan), Facility ID# 00011103, for which state-funded correction actions were implemented under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the site file available from the Michigan Department of Environmental Quality (MDEQ), Remediation and Redevelopment Division (RRD), Kalamazoo District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the Calhoun County Register of Deeds based upon the corrective action measures for the site to: 1) restrict unacceptable exposures to regulated substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA.

The restrictions contained in this Restrictive Covenant are based upon information available at the time that corrective actions were implemented. Failure of the corrective action to achieve and maintain the cleanup criteria and exposure controls; future changes in the environmental conditions of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for at the time of recording this Restrictive Covenant; or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

RECEIVED

OCT 29 2015

MDEQ-KAL-RRD



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ANNE B. NORLANDER - CLERK/REGISTER OF DEEDS

11 Steve Berkman

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Harvard Transportation, Albion, MI



Harvard Transportation, Albion, MI

Background

- Harvard Transportation operated as a fueling facility for Harvard Industries in Albion
- Facility closed several years ago when Harvard Industries ceased operations
- No viable liable party
- Property reverted to Calhoun County Landbank Authority due to tax foreclosure

Harvard Transportation, Albion, MI

Background continued

- 2011 - Calhoun County Road Commission removed a 20,000 gallon diesel UST and confirmed release
 - Based on soil samples exceeding drinking water protection criteria
- 2014 - MDEQ conducted investigation through State-Wide Expanded Triage program
- Contamination remaining appears to be minimal
- Risks related to drinking water pathway can be protected by a restrictive covenant that restricts groundwater use on the property

Harvard Transportation – Albion, MI Restrictive Covenant Filed

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RECEIPT# 164486 STATION#
24100 DEED

LEP 4000 PAGE 628

10 DECLARATION OF RESTRICTIVE COVENANT
FOR A RESTRICTED RESIDENTIAL CORRECTIVE ACTION

MDEQ Reference No: RC-RRD-213-14-203

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Calhoun County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to regulated substances present at the Property located at 823 Austin Avenue, city of Albion, Calhoun County, and legally described in the attached Exhibit 2 (Legal Description of the Property).

The Property is associated with Harvard Transportation Corp (Facility ID 00004994) for which Corrective Actions were completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 et seq. Corrective actions that were implemented to address environmental contamination are fully described in the site file available from the Michigan Department of Environmental Quality (MDEQ), Remediation and Redevelopment Division (RRD), Kalamazoo District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the Calhoun County Register of Deeds based upon the corrective action measures for the site to: 1) restrict unacceptable exposures to regulated substances located on the Property; and 2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective actions were implemented. Failure of the corrective action to achieve and maintain the cleanup criteria and exposure controls; future changes in the environmental conditions of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for at the time of recording this Restrictive Covenant; or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

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11 Steve Beckman



Harvard Transportation, Albion, MI

Agency Benefits

➤ MDEQ

- Access to property
- Obtaining a restrictive covenant
- Close release under Part 213

➤ CCLBA

- Contamination/risk identified
- Data reduces concerns
- Restrictive covenant ensures future compliance

Questions?

LRURs



Michigan Department of Environmental Quality

www.michigan.gov/deq
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