



LIBER 1403

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OTSEGO COUNTY MICHIGAN
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RCRD MAY 26 2016 10:43

DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No: RC-RRD-201-16-027

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Otsego County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 580 South Otsego Avenue, Gaylord, Michigan 49735 and legally described in Exhibit 1 attached hereto ("Property").

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. The DEQ 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 requirements of Section 20107a of the NREPA.

The response activities required the recording of this Restrictive Covenant with the Otsego County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of Property is consistent with the exposure assumptions used to develop the Residential cleanup criteria under Section 20120a(1)(a) of the NREPA and the exposure control measures relied upon at the Property,

The restrictions contained in this Restrictive Covenant are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the Residential cleanup criteria under Section 20120a(1)(a) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; 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.

Exhibit 2 provides a survey of the Property that is subject to the land use or resource use restrictions specified herein.

Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"DEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

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"Owner" means at any given time the then current title holder of the Property or any portion thereof.

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, 2002 Michigan Register; Effective December 21, 2002, 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 Restrictive Covenant.

Summary of Response Activities

Hazardous substances of certain petroleum constituents including acenaphthalene, sec-butylbenzene, ethylbenzene, fluorene, 2-methylnaphtalene, naphthalene, phenanthrene, n-propylbenzene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, and xylenes, and petroleum residual light non-aqueous phase liquid exists under the central portion of the Property. Response activities consist of resource use restrictions.

Residual and mobile Light Nonaqueous-Phase Liquids (LNAPL), including fuel oil were properly characterized using a Conceptual Site Model in accordance with ASTM E 2531-06 and will remain in place. The LNAPL exists below the ground surface at a depths between 21-feet and 83 feet. The horizontal and vertical extent of the LNAPL is described in Exhibit 4. The restrictions provided for in this restrictive covenant serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the presence of the LNAPL."

NOW THEREFORE,

1. Declaration of Land Use or Resource Use Restrictions

Michigan Department of Natural Resources with the express written permission of the Owner of the Property hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. Prohibited Activities to Eliminate Unacceptable Exposure to Hazardous Substances.
The Owner shall prohibit activities on the Property that may result in exposures to hazardous substances at the Property. These prohibited activities include:

The construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:

(a) Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.

(b) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.



b. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. Access. The Owner grants to the DEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

3. Conveyance of Property Interest. The Owner shall provide notice to the DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Chief, Remediation and Redevelopment Division, Michigan DEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, DEQ Reference Number **RC-RRD-201-16-027**. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

4. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be 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 Restrictive Covenant shall continue in effect until the DEQ or its successor determines that hazardous substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. This Restrictive Covenant may only be modified or rescinded with the written approval of the DEQ.

5. Enforcement of Restrictive Covenant. The State of Michigan, through the DEQ, and Owner may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

6. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

7. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.



IN WITNESS WHEREOF, Michigan Department of Natural Resources has caused this Restrictive Covenant, RC-RRD-201-16-027 to be executed on this 16th day of May, 2016.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

By: William E Moritz
Signature
Name: William E Moritz
Print or Type Name
Its: Director
Title

STATE OF Michigan
COUNTY OF Ingham

The foregoing instrument was acknowledged before me this May 16, 2016 by William E. Moritz of Michigan Department of Natural Resources, on behalf of the department.

Lynda Kay Jones
Notary Public Signature
Lynda Kay Jones
Print Name
Notary Public, State of Michigan
County of Clinton
My Commission Expires: 10/01/2020
Acting in the County of Ingham

Prepared by and when recorded return to:

J. Adam Patton
PM Environmental, Inc.
3340 Ranger Road
Lansing, Michigan 48906
800-313-2966



CONSENT OF OWNER

Otsego County, the current and legal Owner of the Property, hereby consents to the recording of this Restrictive Covenant, **RC-RRD-201-16-027**, and authorize Michigan Department of Natural Resources to file the Restrictive Covenant with the Otsego County Register of Deeds for recording.

OTSEGO COUNTY

By: John M. Burt

Signature

Name: John M. Burt

Print or Type Name

Its: County Administrator

Title

STATE OF Michigan
COUNTY OF Otsego

The foregoing instrument was acknowledged before me this APRIL 27, 2016 by JOHN M. BURT of Otsego County, on behalf of the county.

Susan C. Premo

Notary Public Signature

SUSAN C. PREMO

Print Name

Notary Public, State of MICHIGANCounty of OTSEGOMy Commission Expires: JULY 19, 2018Acting in the County of OTSEGO



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EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

That Property in Gaylord, Otsego County described as follows:

COMM. 20 RDS. S OF S LINE OF 4TH ST. ON W LINEU. S. 27 TH W TO M.C.R.R.
R/W S TO PT IN LINE WITH N LINE OF 5TH ST. E TO U.S. 27 N TOP. O.B. SEC. 4 T
30N R 3W

101-104-000-395-00

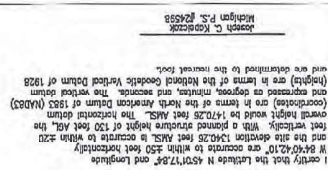


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EXHIBIT 2

SURVEY OF THE PROPERTY



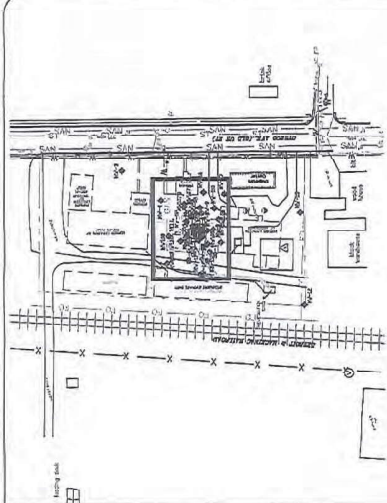
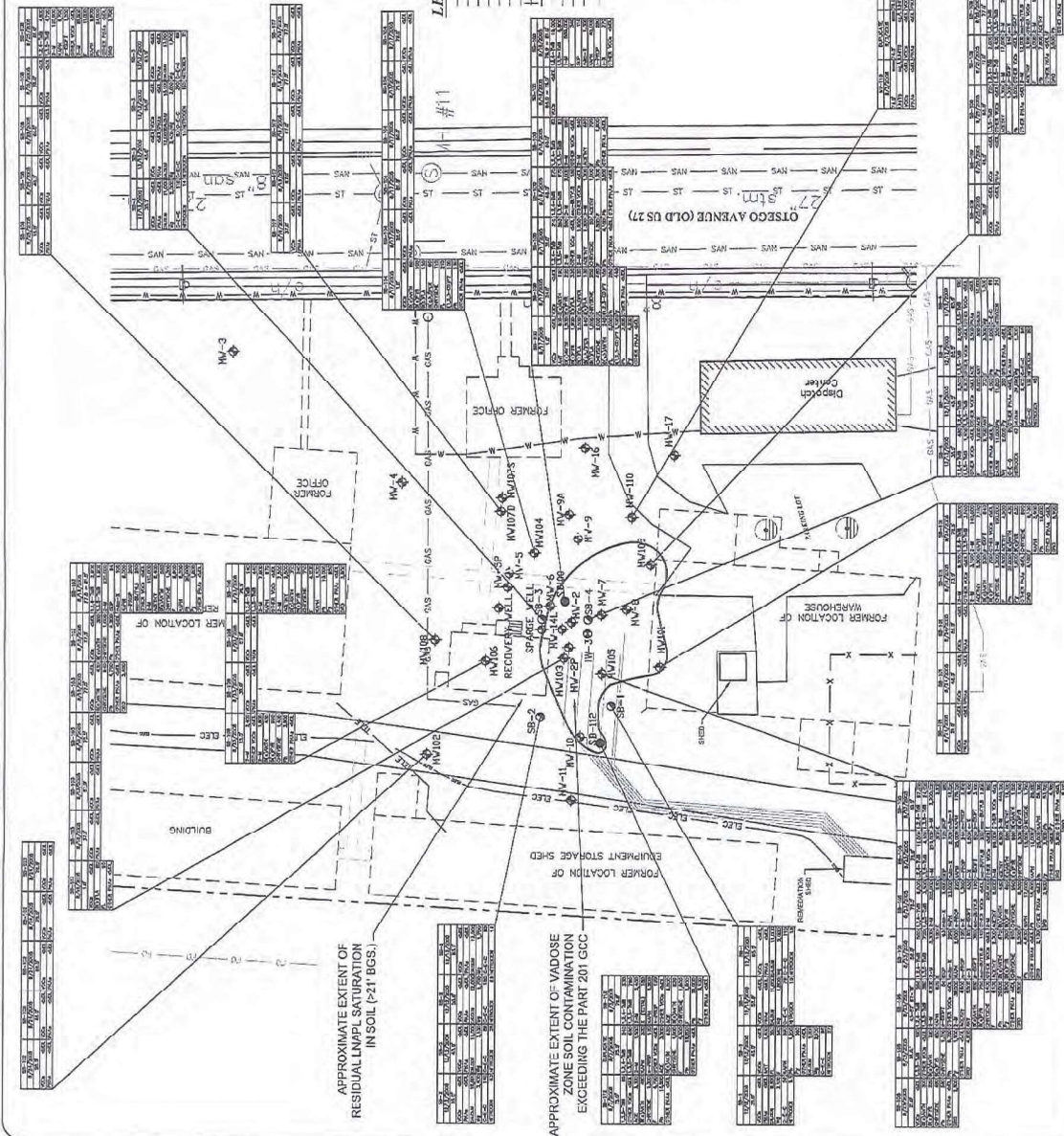


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EXHIBIT 4

HORIZONTAL AND VERTICAL EXTENT OF LNAPL



SCALE: 1" = 200'

LEGEND:

SUBJECT SITE

FORMER SITE FEATURES

FENCE

SANITARY SEWER

STORM SEWER

RAILROAD TRACKS

BURIED PHONE LINE

SANITARY TUNNEL

FORMER GAS

ELECTRIC

INFILTRATION GALLERY PIPING

CATCH BASIN

MONITORING WELL

INJECTION WELL (2000)

SOIL BORING

FIRE HYDRANT

WATER WELL

TOLUENE

ETHYLENE

FLUORENE

FLUORANTHRENE

PHENANTHRENE

2-METHYLNAPHTHALENE

1-METHYLNAPHTHALENE

ANTHRACENE

CATACRYSTIC CARBON

ACETYLENE

ACETONE

BENZONITRILE

BENZONITRILE

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FIGURE 3
SOIL BORING / MONITORING WELL LOCATION
MAP WITH SOIL ANALYTICAL RESULTS

FORMER GAYLARD REPAIR FACILITY
540 SOUTH OTSEGO AVENUE
GAYLORD, MI

PROJ:

THIS IS NOT A LEGAL
DOCUMENT
IF ANY PART OF THIS
DOCUMENT IS NOT
DATE: 12/11/2015
SCALE: 1" = 40'
FILE NAME: 10-469-0707PRO3

