



## ENVIRONMENTAL LAND USE RESTRICTIONS AND DEED NOTICES: HOW FAR CAN THE GOVERNMENT PUSH PROPERTY OWNERS?

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• You have just spent tens of thousands of dollars cleaning up a minor underground storage tank leak. You have cooperated with the state-supervised cleanup effort. The local regulatory agencies have indicated that the site is ready for closure, and have approved a well closure plan. Now that the cleanup is complete, you want to sell the property.

Since the tank leak was minor and the cleanup was successful, you anticipate an easy sale. The state requests a final site closure plan. As part of its request, the state asks that a notice of the magnitude and extent of residual contamination be placed in the property's deed, but does not cite any authority to support its request. Can it require such a notice in your property's deed?

• After discovery of serious soil contamination at a corporate facility, as president of a large corporation, you had no choice but to shut down operations and undertake an expensive, time-consuming cleanup. Five years and several hundred thousand dollars later, the state indicates that the cleanup is satisfactory, but the property cannot be developed as planned.

The state orders you to place a land use restriction in the deed prohibiting residential development as a condition of site closure. In addition, the state requests a similar restriction in the adjacent property's deed — even though there is no contamination on the adjacent property. Does the state have the right to limit the uses of the corporate facility and the adjacent property?

• You have found an ideal location to build a hazardous waste treatment facility. Once the site has served its purpose, you plan to subdivide it for residential development. To your chagrin, the state refuses to issue a permit to operate the facility unless a land use restriction is placed in the deed prohibiting any future residential development. Can the state demand the use restriction as a condition of granting a permit?

This article will provide an overview of circumstances in which the government may impose land use restrictions and deed notices.

The California statutory scheme has been utilized as the framework for this discussion. Iowa, Maine, Minnesota, Missouri, Washington, and West Virginia have similar provisions authorizing land use restrictions if the land has been contaminated or is subject to remedial action.<sup>1</sup> Readers are encouraged to seek advice of counsel regarding specific fact situations.

The purpose of land use restrictions (often referred to as "covenants") is to protect the environment and the public from exposures to hazardous materials. Typically, they are used to:

- Prevent inappropriate use of property impacted by or near property impacted by hazardous substances;
- Ensure that site mitigation and monitoring requirements are met; and
- Impose restrictions or requirements on subsequent owners/lessees.

Land use restrictions may be appropriate where significant residual contamination remains following either a short- or long-term stabilization action, a corrective action, or a substantial remedial action. In other circumstances, soil contamination that is immobile and no threat to groundwater may be contained or encapsulated to prevent inhalation, ingestion, or direct contact exposure to nearby populations. In these situations, restricting the land use, rather than removal of the hazardous wastes, is viewed as a cost-effective and efficient mitigation strategy.

In the case of hazardous waste landfills, or where groundwater is at risk, control of off-site migration of waste constituents may be necessary. Land use restrictions may be used to ensure that control technologies and monitoring systems are properly maintained and operated, so as to prevent risks to public health.

### Types of Restrictions

In California, the Health & Safety Code permits the state's Department of Toxic Substances Control, formerly the Department of Health Services, to impose various types of land use restrictions, which may include combinations of easements, restrictions, and servitudes.

Easements allow access to property, for example, to ensure continued operation and maintenance of mitigation or monitoring systems. Land use restrictions are specific provisions that prohibit certain uses of the property. Servitudes are specific provisions that apply to the property owner and either obligate or restrict the property owner; i.e., restraining the property owner from certain uses of the property that would impair an established easement.

Land use restrictions are site-specific. They may require the property owner to perform certain activities, limit certain uses, or impose general restrictions and requirements.

For example, a property owner may be required to monitor soil, air, or water at the site. If off-site migration of contaminants is a concern, construction and maintenance of containment systems may be required. (Calif. Health and Safety Code §§25202.5, 25230 [West Supp. 1992].)

The department may limit use of the property by restricting any new uses, or expansion of existing industrial facilities. Certain types of development, such as residential, agricultural, or commercial uses, may be prohibited. Uses that would disturb containment or monitoring systems and the soil, water, or air may also be prohibited. (Calif. Health & Safety Code §§25202.5, 25232 [West Supp. 1992].)

In addition to these site-specific restrictions, the department can impose general restrictions and requirements, including:

- Granting of an easement to the department for inspection, surveillance, monitoring, maintenance, or other purposes necessary to protect public health or safety;
- Requiring the owner to give notice of residual contamination in all leases, subleases, and rental agreements;
- Requiring advance notice to the department of any sale, lease, or other conveyance of the property; and
- Provisions for enforcement, variance, and termination.

(Calif. Health & Safety Code §§25200-25241 [West Supp. 1992].)

Basically, the department is authorized to impose any site-specific land use restriction to protect against a potential threat to public health and safety. (Calif. Health & Safety Code §25202.5(b) West Supp. 1992.) However, the restriction may be no broader than necessary to protect the health and safety of the public. (Id.)

### Statutory Authority

The department has the authority to place land use restrictions on two categories of property: 1) "Hazardous Waste" and "Border Zone" property, and 2) operating permitted or "Interim Status" hazardous waste treatment, storage, or disposal facilities (TSDF).<sup>2</sup>

Hazardous Waste property is defined as that which is permitted for disposal, or property where a significant disposal of hazardous waste has occurred, resulting in a significant existing or potential public health hazard. (Calif. Health & Safety Code §25117.3 [West Supp. 1992].) Border Zone property is property within 2,000 feet of such a site. (Calif. Health & Safety Code §25117.4 [West Supp. 1992].)

If the property is classified as a Hazardous Waste or Border Zone property (none has been so classified in California as of this writing), the department is directed by statute to require the owner to record a covenant, which imposes land use restrictions on the property. (Calif. Health & Safety Code §§25229, 25230, subd. (a)(1) [West Supp. 1992].) If the owner does not comply, the department may seek a court order to impose the restriction. (Calif. Health & Safety Code §25230, subd. (b) [West Supp. 1992].)

The department is required to hold public hearings prior to its classification of a Hazardous Waste or Border Zone property. (Calif. Health & Safety Code §25222 [West Supp. 1992].) In addition, the owner must prepare a written statement of the Hazardous Waste or Border Zone designation to provide with all purchase, lease or rental agreements. (Calif. Health & Safety Code §25230, subd. (a)(2) [West Supp. 1992].)

As an alternative to this formal process, the department and a property owner may enter into a mutually agreed upon covenant regarding appropriate land use restrictions. (Calif. Health & Safety Code §25222.1 [West Supp. 1992].) Public notice of the proposed covenant is required. (Calif. Health & Safety Code §25223 [West Supp. 1992].)

A hazardous waste TSDF is defined as any land or improvements used for the treatment, storage, transfer, resource recovery, disposal, or recycling of hazardous waste. (Calif. Health & Safety Code §25117.1 [West Supp. 1992].) All TSDFs are required to have permits or "interim status" to operate. (Calif. Health & Safety Code §§25200, 25200.5 [West Supp. 1992].) Interim status may be granted if a TSDF in existence on the effective date of the regulation completes part A of the permit application and complies with all regulations applicable to TSDFs. (Calif. Health & Safety Code §25200.5 [West Supp. 1992].)

The department may require a land use restriction as a condition

to granting a TSDF permit or interim status. (Calif. Health & Safety Code §25202.5 subd. (a)(2) [West Supp. 1992].) Additionally, California Health & Safety Code §25202.5(c) authorizes the department to impose land use restrictions on a minimum buffer zone of 2,000 feet surrounding a new hazardous waste disposal facility.

### Implementation

The department is responsible for implementing land use restrictions. Recommendations of specific provisions generally are made by the regional office project manager. (California Toxic Substances Control Program Official Policy and Procedure No. 87-14, May 1990 at 6.) The regional project manager is authorized to:

- Recommend appropriate land use restrictions;
- Negotiate agreements with the property owner;
- Prepare the covenant; and
- Obtain the necessary signatures and ensure that the covenant is recorded.

Only the Regional Administrator or Division Chief can sign the covenant on the department's behalf. (Id. at 8.)

Three criteria are to guide the project manager's decision as to the specific provisions:

- The type of property;
- The scope of land use restriction necessary (i.e., the entire property or a portion); and
- The nature and extent of residual contamination, potential exposure pathways, and possible future land use in the context of protecting the public health and safety.

(Id.)

The appropriate land use restrictions are selected based on the project manager's assessment of site-specific information and the criteria set forth above. (Id. at 7.)

The department's headquarters offices are responsible for notification of local governments of the covenants recorded within each jurisdiction. Typically, property owners will interact directly with the department's regional office staff. However, if legal questions arise, headquarters is responsible for the department's position.

In recent discussions with the department's staff, it was indicated that virtually all land use restrictions are entered into by voluntary agreement with the property owner, not unilaterally imposed by the department. A property owner is entitled to judicial review of the department's decision as to the necessity for and specific terms of a land use restriction if it is imposed unilaterally. (Calif. Health Safety Code §25202.7, 25231 [West Supp. 1992].)

The court must uphold the department's decision if it finds the decision is supported by substantial evidence. (Id.)

Land use restrictions must be recorded and are binding on all subsequent owners. (Calif. Health & Safety Code §§ 25202.5, 25230 [West Supp. 1992].) They remain in effect until they are formally removed or modified. (Id.) Violations of land use restrictions are not without penalty. The department is required to pursue "feasible civil and criminal actions" against property owners or other responsible parties for violating a land use restriction. (Calif. Health & Safety Code §25236 [West Supp. 1992].)

### Modification, Variances, and Removal

Land use restrictions imposed pursuant to California Health & Safety Code §25202.5 (TSDFs) may be modified, varied, or removed. At the owner's request, the department may approve modification or removal of specific provisions following a public hearing. (Calif. Health & Safety Code §25202.6 [West Supp. 1992].)

Similarly, for land use restrictions imposed pursuant to Califor-

nia Health & Safety Code §§25222.1 and 25229 (Hazardous Waste and Border Zone Property), aggrieved persons may also apply for variance or removal of land use restrictions. (Calif. Health & Safety Code §§25233, 25234 [West Supp. 1992].) In the case of a variance, the applicant has the burden of proving that the variance will not lead to any of the following:

- The creation or increase of significant present or future public health hazards;
- Any substantial decrease in the ability to mitigate a significant potential or actual hazard to public health; or
- Any long-term increase in the number of humans or animals exposed to significant hazards that affect the health, well-being, or safety of the public.

(Id. at §25233.)

In addition, the department can remove land use restrictions if there is sufficient evidence for a finding that:

- The hazardous waste that caused the land to be restricted has since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health; or
- New scientific evidence is available since the land use restrictions were placed concerning the nature of the hazardous waste or concerning the geology or other physical environmental characteristics of the land that would remove the existing or potential hazard to present or future public health.

(Id. at §25234.)

As with implementation of a land use restriction, the department's decisions regarding modification, variance or removal are subject to judicial review and will be upheld if supported by substantial evidence. (Calif. Health & Safety Code §§25202.7, 25233, 25234 [West Supp. 1992].)

Land use restrictions affect property in significant ways. First, the immediate expense of time and money surrounding the imposi-

tion of the land use restriction can be substantial. Legal fees, site monitoring costs, and bureaucratic delays may make challenges to land use restrictions expensive. Second, if land use restrictions are imposed, the type and scope of the restriction may severely limit uses of the property. Finally, land use restrictions are likely to reduce the property's present and future value and marketability.

As land use restrictions are site-specific and vary widely in their scope and terms, quantifying their precise impact on a property is not possible. However, it is fair to say that contaminated property is worth less than equivalent property with no contamination. (REEL, May 22, 1992, p. 4-5)

Since these restrictions are imposed because of a property's past involvement in, or proximity to, hazardous substances, it is reasonable to assume that a land use restriction, to the extent it limits the property's otherwise economically efficient uses, will negatively impact both its value and marketability. Furthermore, land use restrictions may stigmatize a property and give potential buyers the impression that the property is in worse condition than it really is. The California Legislature has acknowledged this in California Health and Safety Code section 25240, which specifically recognizes the impact of land use restrictions on the value of real property. Section 25240 directs tax assessors to reassess property subject to enforceable land use restrictions.

Although there are ways to modify or remove land use restrictions, they may also involve the expenditure of significant time and money. Thus, a property owner may be better off initially challenging the imposition of the restriction, because once the restriction is imposed, the damage to the property's value may not be reversible.

*(Editor's note: A model of a typical land use restriction appears at the end of this article.)*

### Examples of Site Conditions and Appropriate Land Use Restrictions

#### Property Conditions

Hazardous waste containment systems need maintenance, inspection, record-keeping, or monitoring.

Residual wastes are localized in specified portions of a property and there is little potential for future migration of residual wastes.

The nature and extent of the residual contamination is certain.

The nature and extent of residual contamination is uncertain.

A potential for significant exposure to hazardous waste exists.

A potential for migration of residual wastes exists.

#### Appropriate Land Use Restrictions

Specify those containment systems in the covenant.

Apply the restrictions to only those portions of the property. Identify an appropriate safety zone if necessary.

Restrict inappropriate use as determined by site-specific evaluation. For example, restrict residential but not commercial or industrial development as appropriate.

Restrict all new uses of the property until the nature and the extent of the residual contamination has been defined.

Describe the potential for exposure and specify protection measures.

Describe the potential hazard and specify whatever containment or monitoring systems need to be installed or maintained. Identify an appropriate safety zone if necessary.

*(Source: California Toxic Substances Control Program, Official Policy and Procedure, #87-14, May 1990 at A-1.)*

## Deed Notices

Deed notices are contained in a document that is recorded in the chain of title to real property. The purpose of a deed notice is to protect public health and safety. The deed notice is intended to disclose to the public and other government entities the presence of residual contamination, land use restrictions, or monitoring requirements on a property. Deed notices are usually requested after remedial action is taken as a condition of site closure.

Delaware, Minnesota, Tennessee, and West Virginia, in addition to California, similarly require owners of contaminated land to place information about the contamination in a deed notice.<sup>3</sup>

Deed notices vary in content more than in form. A property's environmental characteristics, concerns for public safety, and the information necessary for full disclosure determines the content. Typically, a deed notice contains information about the property's past involvement with hazardous substances. Often, land use restrictions and monitoring requirements are also included.

Deed notices are authorized in fewer instances than land use restrictions. Most deed notices are imposed as part of the closure requirements for TSDFs. Title 22 of the California Code of Regulations §§66264.119 and 66265.119 require the owner or operator of permitted or interim status TSDFs, waste piles, and surface impoundments, which have undergone closure, to place a notice in the property's deed that "will in perpetuity notify any potential purchaser of the property" that the land was used to manage hazardous waste. The notice must include a survey plat (showing the location of the contamination) that must be filed with the local zoning authority and the department. Finally, the notice must state that the property's use is restricted to those necessary to eliminate any remaining health or environmental threats at the site.<sup>4</sup> (Sections 66264.119 and 66265.119 do not authorize the imposition of land use restrictions. Land use restrictions must be imposed pursuant to the statutes discussed in this article.)

The sale or transfer of federal real property triggers similar deed notice requirements. (42 U.S.C. §9620(h); 40 C.F.R. 373.) The federal agency selling the property must disclose that the property was used to store or dispose of hazardous substances. The notice must include the type, quantity, and time any hazardous wastes were stored or disposed of at the site. Finally, the agency must warrant that "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken care of prior to the date of transfer" and that the federal government will be responsible for any future remedial action on the property.

## Implementation

The department implements deed notices in the same manner as land use restrictions. The department's regional office usually works with the property owner and its headquarters to determine the content of the notice. The department's regional office usually requests a "proposed statement of the magnitude and extent of residual contamination" for insertion in the deed. (Evidently, the department is willing to let the property owner have some say in the content of the deed notice.)

The notice must be recorded and filed with the department. As with land use restrictions, the deed notice remains until formally modified or removed with the department's authorization. (Calif. Code. Regs. tit. 22, §§66264.119, 66265.119 subd. (c) [Barclays 1991].)

Owners or operators of a TSDF may request a modification of the post-closure permit to remove residual hazardous wastes. (Ca-

lif. Code. Regs. tit. 22, §§66264.119, 66265.119 subd. (c) [Barclays 1991].) If the owner subsequently removes the waste and any residues and the removal is to the department's satisfaction, the owner can request departmental approval to remove the notice or to add a second notice that the waste has been removed.

This provision ensures that the content of the deed notice will reflect the present conditions at the property. If no risk to the public health or safety remains, the notice will be removed. (Id.)

## Practical Effects

The deed notice may not have as significant an impact on a property as a land use restriction. Although the deed notice appears in the chain of title, it does not restrict or limit the use of the property itself in any way. Of course, the content of the notice, i.e., notice of land use restrictions, residual contamination, etc., may significantly affect the value of the property. Additionally, the discussions and activities surrounding the imposition of the deed notice may involve significant legal fees.

The effect of a deed notice is lessened by the requirement that written notice of any contamination or release of hazardous waste must be given by owners to buyers, lessees, or renters of nonresidential real property. (Calif. Health & Safety Code §25359.7(a) [West Supp. 1992].) Thus, the deed notice may not provide any different information than that already required in the written disclosure.

However, a deed notice may stigmatize a property. Potential buyers may believe that properties with deed notices have worse environmental problems than properties subject to only written disclosure. California requires disclosure of environmental problems on a residential property as part of a sales transaction. (Calif. Civ. Code §1102.6 [West Supp. 1992].)

## Format

A typical California deed notice follows.

### NOTICE THAT PROPERTY HAS BEEN USED TO MANAGE HAZARDOUS WASTE AND THAT ITS USE IS RESTRICTED

Notice is hereby given by \_\_\_\_\_, the owner and operator of the property legally described on the attached Exhibit "A", that the property has been used to manage hazardous waste, that its use is restricted under the provision of title 40, Code of Federal Regulations (CFR), Subpart G, including Section 264.117(c) and 264.119(b), and under the provisions of corresponding California Code of Regulations (CCR), Title 22, Chapter 14, Article 7, Sections 66264.117(d), and 66264.119(b). The survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or other hazardous waste disposal units of the facility required by Sections 264.119(a) of Title 40, CFR and Sections 66264.116 and 66264.119(a) of Title 22, CCR has been filed with the \_\_\_\_\_ County Planning Agency, which is the local zoning authority and the authority with jurisdiction over land use, with the Regional Administrator, Region IX, U.S. Environmental Protection Agency, and with the California Department of Toxic Substances Control.

As approved by the U.S. Environmental Protection Agency, Region IX, and the California Department of Toxic Substances Control, Region 1, two areas within the former hazardous waste management area, as indicated in the attached Exhibit "A", are used as well pads. Activities on the well pads are limited to those related to developing and producing the oil reserves beneath the facility.

**MODEL COVENANT  
(FOR REMEDIATED SITES)**

Recording Requested By: \_\_\_\_\_

When Recorded, Mail To:

Department of Health Services\*  
Toxic Substances Control Program  
Regional Office  
(Address of Regional Office)  
Attention:

**COVENANT TO RESTRICT USE OF PROPERTY  
(Name of Property/Site/Facility)**

This Covenant and Agreement ("Covenant") is made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_ ("Covenantor"), who is the owner of record of certain property situated in \_\_\_\_\_, County of \_\_\_\_\_, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Health Services, with reference to the following facts:

A. (Choose one): This Property has been the site of a hazardous waste facility and has been used for disposal of hazardous waste; or this property contains hazardous substances.

B. Description of Facts, (Describe contamination, health effects, surrounding land use, etc.).

C. Covenantor desires and intends that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been deposited on unspecified portion(s) of the Property.

D. (optional) The Covenantor further desires and intends that \_\_\_\_\_

**ARTICLE I**

**GENERAL PROVISIONS**

**1.01 Provisions to Run With the Land.** This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all of the Restrictions are enforceable by the Department of Health Services. [If the remedial action plan does not specifically require a deed restriction, the citation should only be 25355.5 instead of

\* The Department of Health Services is now known as the California Environmental Protection Agency.

both 25355.5 and 25356.1, H&SC.]

**1.02 Concurrence of Owners Presumed.** All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

**1.03 Incorporation Into Deeds and Leases.** Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

**ARTICLE II**

**DEFINITIONS**

**2.01 Department.** "Department" shall mean the California State Department of Health Services and shall include its successor agencies, if any.

**2.02 Improvements.** "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

**2.03 Occupants.** "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

**2.04 Owner.** "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

**ARTICLE III**

**DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY**

**3.01 Restrictions on Use.** Covenantor promises to restrict the use of the [portion of the] Property [as described in Exhibit \_\_\_] as follows: \_\_\_\_\_ (Cite specific restrictions)

**3.02 Conveyance of Property.** The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

**3.03 Enforcement.** Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

**3.04 Notice in Agreements.** All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health

and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this covenant. Such application shall be made in accordance with Section 25233, H&SC.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, H&SC.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, Postage Paid certified, return receipt requested:

To: "Covenantor" (cite name and address)

Copy to: Department of Health Services
Toxic Substances Control Program
Regional Office
(Address of Regional Office)
Attention:

5.03 Partial Invalidity. If any Portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Health Services. This instrument shall be recorded by the Covenantor in the County of \_\_\_\_\_ within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER \_\_\_\_\_
By: \_\_\_\_\_
Title: \_\_\_\_\_
Date: \_\_\_\_\_

DEPARTMENT OF HEALTH SERVICES
By: \_\_\_\_\_
Title: \_\_\_\_\_
Date: \_\_\_\_\_

STATE OF CALIFORNIA )
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ (date), 19\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ (Name), personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as \_\_\_\_\_ (Title), of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

STATE OF CALIFORNIA )
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ (date), 19\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ (Name), personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as \_\_\_\_\_ (Title), of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

NOTES:

1. The relevant statutes are: Iowa Code §558.69, 455B.430; Maine D.E.P., Rules for Haz. Waste Mgmt., Ch. 855, (9)B 1986; Minn. Stat. §115B.16; Mo. Ann. Stat. §260.465; Wash. Admin. Code §§173-340-440; W. Va. Code §20-SE-20.

2. As a prerequisite to spending State Hazardous Substance Cleanup Funds for removal or remedial actions at sites listed on the California State "Superfund" list ("Bond Expenditure Plan"), the department may enter into an enforceable agreement with a potentially responsible party to clean up the site. Land use restrictions may be included in the agreement. (Calif. Health & Safety Code §25355.5 [West Supp. 1992].)

3. The relevant statutes are: Del. Code Ann. Tit. 7, §9115; Minn. Stat. §115B.16; Tenn. Code Ann. §68-46-212; W. Va. Code §20-SE-20.

4. This provision is identical to the federal provision set forth at 40 C.F.R. §§264.119(b)(1) and 265.119(b)(1). All 50 states have identical provisions. □