



Remediation and Redevelopment Division

Michigan Department of Environment, Great Lakes, and Energy

Notice of Aesthetic Impact Part 213.docx

04/14/2020

NOTICE OF AESTHETIC IMPACT PART 213

This document provides instructions on the use of a Notice of Aesthetic Impact (Notice) which may be used pursuant to Section 21310a(4) of 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.*, to comply with Section 21304a(4) of the NREPA, when the corrective action at a site results in a final remedy that exceeds either the Tier 1 aesthetic criteria, or an adverse taste or odor threshold. This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of this RC and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Approval and consent of the property owner(s) must be obtained prior to recording with the Register of Deeds. A copy of the Notice and proof of recording must be submitted with the Closure Report (EQP3843) to the appropriate Michigan Department of Environment, Great Lakes, and Energy (EGLE) District Office at the address listed in form EQP4410. The recording requirements for instruments filed with Michigan County Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at: <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

Please contact Mr. Kevin Schrems, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at schremsk@michigan.gov or 517-275-1180 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

The lettered instructions below explain what information should be inserted into the corresponding blanks shown on the Model Notice of Aesthetic Impact. Drafting notes and insertion directions appear as ***bold italicized font***.

- A. EGLE Reference No: NAI-RRD-213-[year]-[number]. ***This Reference Number ensures the protectiveness, enforcement, and tracking of institutional controls. All institutional control Reference Numbers assigned shall be predominantly displayed on the first page. The EGLE Reference Number can be obtained from Mr. Nick Ekel, RRD, EGLE, at ekeln@michigan.gov or 517-284-5090; or you may call the RRD main number at 517-284-5087.***
- B. ***Enter the name of the county where the Property is located.***
- C. ***Enter the address location of the Property, including city or township and county.***
- D. ***Select the appropriate option based upon the area of aesthetic impact:***

OPTION 1: To be used if the entire Property is subject to this Notice of Aesthetic Impact (Notice). Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:

Exhibit 3 (Survey of the Property) provides a survey of the Property that is subject to this Notice.

OPTION 2: To be used if not all of the Property is subject to this Notice.

Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific area of the Property that is subject to this Notice. Insert the following:

Exhibit 3 (Survey of the Property and Limits of Aesthetic Impact), provides a survey and legal description of the Property, and an additional survey and legal description that distinguishes the portion of the Property that is subject to this Notice.

- E. Enter the Part 213 Site name and Facility ID number.**
- F. Insert as appropriate:**
 - Final Assessment Report (FAR)
 - Closure Report (CR)
- G. Enter the date of the Final Assessment Report (FAR) or the Closure Report (CR).**
- H. Enter the name of the owner or operator, as defined by Section 21303 (a) or (b) of the NREPA, that is proposing the FAR or CR and the filing of this Notice.**
- I. Insert a paragraph similar to the following example that briefly describes the nature and extent of the regulated substances released, the affected media, and how restricting the land use will be effective to address unacceptable risks for all relevant pathways:**

EXAMPLE: Hazardous substances associated with gasoline including toluene, ethyl benzene and xylenes, trimethylbenzenes, and methyl-tert-butyl ether were released from an underground storage tank resulting in contamination of the Property. Concentrations of the contaminants remain present at levels that exceed aesthetic-based cleanup criteria, but do not exceed applicable health-based drinking water values. This Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of regulated substances at concentrations which create aesthetic impacts.

EXAMPLE: Hazardous substances associated with gasoline including toluene, ethyl benzene and xylenes, trimethylbenzenes, and methyl-tert-butyl ether were released from an underground storage tank resulting in contamination of the Property. Although no hazardous substances have been detected and/or remain above health-based or aesthetic criteria, the release has resulted in an adverse taste and/or odor to the groundwater. The residual petroleum contamination is not believed to pose an unacceptable risk to human health and this Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of this aesthetic impact.

- J. Insert the following as appropriate for the Property conditions:**
 - Declaration of Exceedance of Aesthetic-Based Cleanup Criteria

- Declaration of Adverse Taste and/or Odor

K. ***Insert one of the following options as appropriate for the Property conditions:***

OPTION 1:

In accordance with the **[FAR or CR]** the following regulated substance(s) **[is or are]** present in concentrations that exceed aesthetic criteria. EGLE has determined that aesthetic impacts including adverse taste and odor characteristics to groundwater occur when concentrations exceed those listed below.

List each regulated substance that exceeds its respective aesthetic criteria, but are below the health-based criteria. List the aesthetic-based Tier 1 criterion for the applicable regulated substances and the maximum concentrations documented at the Property.

EXAMPLE:

CONTAMINANTS	TIER 1 AESTHETIC DRINKING WATER CRITERION CONCENTRATIONS	MAXIMUM
<i>Methyl-tert-butyl ether</i>	<i>40 parts per billion (ppb)</i>	
<i>Ethylbenzene</i>	<i>74 ppb</i>	
<i>1,2,4-trimethylbenzene</i>	<i>63 ppb</i>	
<i>1,3,5-trimethylbenzene</i>	<i>72 ppb</i>	
<i>toluene</i>	<i>790 ppb</i>	
<i>xylenes</i>	<i>280 ppb</i>	

OPTION 2:

Currently the groundwater exhibits an adverse taste or odor, though no regulated substance has been identified which exceeds either the health-based or aesthetic criteria. Based on groundwater analysis, these impacts are not expected to have any adverse health effects.

L. ***Select the appropriate option based on the circumstances detailed below:***

If regulated substances detected at the Property include contaminants that have established health-based drinking water criteria, insert the text of Option 1. If the regulated substances detected at the Property include contaminants for which health-based drinking water criteria have not been established, and if EGLE concurs that Option 2 is applicable insert the text of Option 2. If both are applicable, insert the text of both paragraphs from Options 1 and 2. Note: it is the responsibility of the persons proposing this Notice to supply the necessary data to support the conclusion of Option 2.

OPTION 1:

However the presence of **[insert regulated substance(s) listed above]** at the detected concentration is below the level determined to be harmful to human health as established by Section 5 of the Safe Drinking Water Act, 1976 PA 399, as amended, MCL 325.1005; or other applicable health-based criteria established pursuant to Part 213. Owners of property subject to this Notice are ineligible for state assistance for water supply replacement when the concentration of regulated substances in the supply

exceeds aesthetic criteria but is below, and will remain below, health-based drinking water criteria.

OPTION 2:

Currently, groundwater at the Property exhibits an adverse taste or odor for which no health-based or aesthetic criteria have been established for the regulated substance(s). However, based upon an analysis of the concentrations of [***insert regulated substance previously listed***] detected in the groundwater underlying the Property and available toxicological data, [***insert regulated substance(s) previously listed***] at [***this or these***] concentration(s) [***is or are***] not expected to have any adverse health effects.

- M. *Insert the following sentence if regulated substance concentrations in soil located on the Property pose a threat of groundwater contamination at concentrations exceeding the aesthetic groundwater criteria.***

The Owner also acknowledges that surface and subsurface soils found on the Property must be managed in accordance with the requirements of Sections 21304b and 21304c of the NREPA, and other applicable state and federal laws.

- N. *Insert the following as appropriate for the Property conditions (use both if necessary):***

- at levels that exceed the aesthetic-based cleanup criteria
- that impart and adverse taste and/or odor

- O. *Enter the current day of the month.***

- P. *Enter the current month.***

- Q. *Enter the current year.***

- R. *Enter the state where the document is signed.***

- S. *Enter the county where the document is signed.***

- T. *Enter the appropriate form of acknowledgement from the following:***

OPTION 1: For an individual:

The foregoing instrument was acknowledged before me this [***date***] by [***name of individual***].

OPTION 2: For a corporation:

The foregoing instrument was acknowledged before me this [***date***] by [***name of officer or agent, title of officer or agent***] of [***name of corporation***], a [***state or place of incorporation***], on behalf of the corporation.

OPTION 3: For a partnership:

The foregoing instrument was acknowledged before me this [***date***] by [***name of partnership or agent***], partner [***or agent***] on behalf of [***name of partnership***], a partnership.

OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):

The foregoing instrument was acknowledged before me this [date] by [name of attorney in fact] as attorney in fact on behalf of [name of principal].

- U. Place stamp of the Notary Public.
- V. Enter the name of the person preparing the document
- W. Enter the address to return the document to once recorded with the Register of Deeds.

EXHIBIT 1: CONSENT OF OWNER ATTACHMENT:

This form is only necessary if the current Property owner and the person signing the Notice are not the same person. This document provides the express written permission of the current Property owner for recording.

- X. Enter the name of the current Property owner.
- Y. Enter the name of the person proposing to file the Notice.

EXHIBIT 2: LEGAL DESCRIPTION OF PROPERTY:

This exhibit must provide the legal description of the Property, including parcel identification number(s) of the Property if available.

EXHIBIT 3: SURVEY OF PROPERTY OR SURVEY OF THE PROPERTY AND LIMITS OF AESTHETIC IMPACT.

This exhibit must be titled as appropriate for the impacted area.

The survey must identify, clearly delineate, and graphically depict the spatial extent of the Property boundaries. The survey must also provide an additional legal description of the impacted area, if not, all of the Property is subject to the Notice.

To provide for a reliable and consistent standard of quality for surveys, all surveys shall be conducted by a licensed professional surveyor employed to provide land surveying services consistent with R339.17403 of Part 4, Standards of Practice and Professional Conduct, promulgated pursuant to Section 308 of the Occupational Code Act, 1980 PA 299, as amended, MCL 339.308.

At a minimum the survey shall include all the following as adopted from R339.17403:

- *A clear concise description of the Property surveyed by bearings and distances, commencing with some corner marked and established in the United States public land survey, or reestablished in accordance with accepted methods.*
- *The graphical and numerical scale used.*
- *A north arrow.*

- ***Identification of all government corners and related witnesses.***
- ***A statement of the manner of bearing determination.***
- ***The ratio of closure of latitudes and departures, which shall be within limits accepted by the profession of land surveying.***

--END OF GUIDANCE AND INSTRUCTIONS--

NOTICE OF AESTHETIC IMPACT MODEL

NOTICE OF AESTHETIC IMPACT

EGLE Reference No: ___(A)___

This Notice of Aesthetic Impact (Notice) has been recorded with the ___(B)___ County Register of Deeds to protect public welfare by describing environmental conditions existing at the Property located at ___(C)___ and legally described in the attached Exhibit 2 (Legal Description of the Property). ___(D)___

The Property is associated with ___(E)___ for which a ___(F)___ was 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 ___(F)___ dated ___(G)___ . A copy of the ___(F)___ is available from the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division 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. EGLE 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.

The ___(F)___ required the recording of this Notice with the ___(B)___ County Register of Deeds to notify the public of environmental conditions at the Property which exceed the aesthetic criteria established pursuant to Section 23104a(2) of the NREPA. The Notice is based upon information available at the time the ___(F)___ was implemented by ___(H)___ . Failure of the corrective actions to achieve and maintain the cleanup criteria and requirements specified in the ___(F)___; future changes in the environmental condition of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; or the discovery of environmental conditions at the Property that were not accounted for in the ___(F)___ may result in this Notice not being protective of public welfare. The adequacy of the corrective actions undertaken pursuant to the ___(F)___ may not have been reviewed by EGLE.

Definitions

For the purposes of this Notice, the following definitions shall apply:

“EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

“Owner” means at any given time the then-current title holder of all or any portion of the Property.

“Property” means the real property as described in Exhibit 2 (Legal Description of the Property) of this Notice that is subject to the terms and conditions described herein.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA, shall have the same meaning in this document as in Parts 3 and 213 as of the date this Notice is filed.

Summary of Environmental Conditions and Corrective Action.

___(I)___

NOW THEREFORE,

1. ___(J)___

___(K)___

___(L)___

___(M)___

2. EGLE Access. The Owner grants to EGLE and ___(H)___, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the ___(F)___, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the ___(F)___ . The right of access provided to ___(H)___ above is not required under Part 213 for the corrective action to be considered approved. This provision was agreed to by the Owner at the time the Notice was recorded. Accordingly, EGLE will not enforce the Owner’s obligation to provide access to ___(H)___.

3. Conveyance of Property Interest. 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 terms of the ___(F)___ and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in a finding by EGLE that this Notice is not protective of the public welfare.

5. Term of Notice. This Notice shall run with the Property and is 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 Notice shall continue in effect until it is determined that regulated substances are no longer present ___(N)__. Improper modification or rescission of this Notice may result in the need to perform additional corrective actions to comply with Section 21304c of the NREPA.

6. Enforcement of Notice. The State of Michigan, through EGLE, and ___(H)___ may individually enforce this Notice by legal action in a court of competent jurisdiction.

7. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.

8. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

IN WITNESS WHEREOF, ___(H)___ has caused this Notice, ___(A)___, to be executed on this ___(O)___ day of ___(P)___, 20___(Q)___.

___(H)___

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ___(R)___
COUNTY OF ___(S)___

___(T)___

Notary Public Signature
___(U)___

Prepared by:
___(V)___

When recorded return to:
___(W)___

EXHIBIT 1

CONSENT OF OWNER

I, ___(X)___, the current and legal Owner of the Property, do hereby consent to the recording of this Notice, ___(A)___, and authorize ___(Y)___ to file the Notice with the ___(B)___ County Register of Deeds for recording.

___(Y)___

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ___(R)___
COUNTY OF ___(S)___

___(T)___

Notary Public Signature
___(U)___

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 3

SURVEY OF THE PROPERTY

OR

**SURVEY OF THE PROPERTY
AND LIMITS OF AESTHETIC IMPACT**