INSTITUTIONAL CONTROLS: DEED NOTICES, TRANSFER NOTICES, ENVIRONMENTAL COVENANTS AND ENVIRONMENTAL USE RESTRICTIONS

David B. Farer, Esq.*
Greenbaum, Rowe, Smith & Davis LLP
Woodbridge, New Jersey

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I. Laws Requiring Deed or Transfer Notices, Detailed Disclosure, Environmental Covenants and Environmental Use Restrictions **

1. United States

42 U.S.C. §9620(h) (CERCLA §120(h)(1)-(5)) [Enacted in 1986; amended in 1992 pursuant to the Community Environmental Response Facilitation Act, P.L.102-426); amended in 1996].
Regulations: 40 C.F.R. pt. 373 [Adopted in 1990; partially vacated and remanded in 1991; vacated portion removed in 1995].

Original 1986 provisions apply when any federal department, agency or instrumentality enters into any contract for sale or other transfer of federal property on which threshold amounts of any defined hazardous substances were stored for one year or more, disposed of or known to have been released. 1992 amendments also impose a new notification requirement concerning leases (see below). (EPA's 1990 regulations provided that the storage, disposal or release had to be during the time the property was owned by the United States, but this provision of the rule was subsequently vacated. See Note A below.)

Requires notice from federal departments, agencies or instrumentalities to buyers as to the types and quantities of hazardous substances, the time at which storage, release or disposal took place and a description of the remedial action taken, if any.

Requires that the deed for such property include a covenant stating that all remedial action necessary to protect human health and the environment with respect to any substance remaining on the property has been taken prior to the transfer and that any additional remedial action found to be necessary after the date of transfer will be conducted by the United States. 1992 amendment provides that for purposes of warranting completion of cleanups where a groundwater treatment system is involved, remedial action will be deemed to have been taken once the cleanup system is operating under EPA approval.

 The author gratefully acknowledges the assistance of Irene Hsieh and Gaitri E. Oare in the update and preparation of these materials.

** See the note at the end of section I of this chapter concerning the Uniform Environmental Covenants Act and the states that have adopted it.

Under the amendment, post-transfer operation and maintenance of the treatment system will not preclude transfer.

The 1992 amendment also requires that the deed include a clause granting the federal government access to the property where post-transfer remedial actions are necessary.

Notice is required for storage of one year or more of hazardous substances only when the hazardous substances have been stored in quantities greater than or equal to: (i) 1000 kilograms, or (ii) the reportable quantity for the hazardous substances under CERCLA (listed at 40 C.F.R. §302.4), whichever is greater, except that as to hazardous substances which are also acutely hazardous wastes under RCRA (listed at 40 C.F.R. §261.30), the notice requirement is triggered by the storage of one kilogram.

Notice is required for released hazardous substances only when released in quantities equal to or greater than CERCLA reportable quantities (listed at 40 C.F.R. §302.4).

New section (4) added by the 1992 Community Environmental Response Facilitation Act requires that when the federal government plans to terminate operations where no hazardous substances were stored for one year or more, or known to have been released, an investigation and concurrence procedure must be followed to confirm the environmental soundness of the property. The process must be completed at least six months prior to termination, except that there are more relaxed deadlines in the case of military base closures.

Where the federal government intends to transfer such benign properties, the deed must contain covenants similar to those required under the original provisions of §120(h).

New section (5) added by the 1992 Community Environmental Response Facilitation Act requires that where the federal government intends to terminate operations and lease out federal property where hazardous substances were stored or disposed of, the federal government must first notify the state where the property is located of the intention to lease, the length of the lease, the party to whom the property will be leased, and a description of the intended use of the property.

A 1996 amendment specifies that the deed covenants do not apply to leases, no matter what their duration, except as follows: For leases after September 1995 of closed military bases, the responsible agency must first determine that the uses contemplated for the lease are consistent with protection of human health and the environment, and must provide assurances that the government will undertake any necessary environmental remedial action not already completed before commencement of the lease.

Note A: When EPA adopted its regulations for CERCLA §120(h) in 1990, it provided that the disclosure and cleanup covenant would only be required if the hazardous substance storage, disposal or release occurred during ownership by a federal entity. CERCLA

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§120(h) contained no such limitation. The rule was challenged, and on July 12, 1991, the U.S. Court of Appeals rejected EPA's narrowing of the notice and cleanup provision, vacated the offending portion of the rule and remanded it to EPA for correction. Hercules Inc. v. EPA, 938 F.2d 276 (D.C. Cir. 1991). Revised regulations were never proposed by EPA. On March 4, 1995, President Clinton directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and to identify obsolete or unduly burdensome regulations. EPA reviewed its regulations under CERCLA §120(h), and removed the vacated portion of the rule, effective June 29, 1995.

Note B: Proposed regulations would have exempted properties obtained by the United States through foreclosure. The adopted regulations do not exempt such properties.

2. Alabama

a. Ala. Code §22-30E-11 [Enacted in 2001].
Regulations: Ala. Dept. of Envtl. Mgmt. Admin. Code §335-15-6-.03(3) [Adopted in 2002; amended in 2004].

Under the 2001 Alabama Land Recycling And Economic Development Act, provisions include requirements for recording deed notices where cleanups are completed to less than unrestricted residential use standards.

b. Ala. Code §§ 35-19-1 et seq. [Enacted in 2007, effective January 1, 2008].
Regulations: Ala. Dept. of Envtl. Mgmt. Admin. Code §335-5-1 to 335-5-5 [Adopted 2009].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in each county where any portion of the real property is located, and in a special state registry of the Alabama Department of Environmental Management.

c. Ala. Dept. of Envtl. Mgmt. Admin. Code §335-13-1-.13 [Adopted in 1981, amended in 1996 and 2010].

When an unauthorized dump is closed in accordance with regulations, the landowner must enter into an Environmental Covenant in accordance with the provisions set forth in Section b. above. However, if all solid wastes are removed according to regulations, then an environmental covenant will not be required. Amended in 2010 to comport with Alabama's enactment of the Uniform Environmental Covenants Act.

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3. Alaska

a. Alaska Admin. Code tit. 18, §60.490 [Adopted in 1996; amended in 1998 and 1999].

Requires that after closure of a monofill the owner or operator must record a notation on the deed or other instrument routinely examined during a title search, explaining in perpetuity to any potential purchaser or leaseholder: (1) the former monofill use, (2) wastes placed there, (3) the geographical boundaries of the monofill, and (4) details of the cap or other closure structure.

Property owner may seek elimination of the institutional control if all wastes were removed and residual contaminants are within state standards.

b. Alaska Admin. Code. Tit. 18, §75.375 and §78.625 [§ 75.375 adopted in 1999, amended in 2008; §78.626 adopted in 1999].

Under the state's Chapter 75 pollution control law, and Chapter 78 underground storage tank law: Where the state Department of Environmental Conservation ("DEC") determines that institutional controls are necessary for a particular site, DEC may require restrictive covenants, easements, deed restrictions and the like that would be examined during routine title searches.

Property owner may seek elimination of the institutional control if residual contaminants are later determined to be within acceptable levels.

4. Arizona

a. Ariz. Rev. Stat. Ann. §33-434.01 [Enacted in 1995].
Regulations: Ariz. Admin. Code §18-7-201 to -210 [Adopted in 1997, replacing previous emergency interim rules bearing same citation; amended in 2007].

Applies to the transfer of property which has been subject to soil remediation and which did not result in the soil attaining residential use standards established by the Arizona Department of Environmental Quality ("DEQ").

Law requires owner to give written notice of the soil remediation to purchaser if owner has actual knowledge that the property was subject to such remediation, and where the remediation did not result in the soil attaining residential use standards.

Failure to provide written notice to purchaser subjects owner to a civil action.

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DEQ promulgated formal soil remediation rules in 1997, establishing soil cleanup standards that allow parties to conduct remedial actions based on site-specific remediation levels determined by human health and ecological risk assessments.

If the property owner elects to leave contamination at levels above residential standards, or to use institutional or engineering controls to meet remediation standards, DEQ requires recording of a declaration of environmental use restriction, pursuant to Ariz. Rev. Stat. Ann. §49-152, discussed below.

b. Ariz. Rev. Stat. Ann. §49-152 and §49-158 [Section 49-152 enacted in 1995, amended in 2000 and 2003; Section 49-158 enacted in 2000, amended in 2003].
Regulations: Ariz. Admin. Code §18-7-604 [Adopted in 2004].

Under the state's Voluntary Remediation Program, where a property owner elects to clean up property to a nonresidential standard or has elected to use an institutional or engineering control, the owner must record, in the county where the property is located, a detailed restrictive covenant labeled "declaration of environmental use restriction," specifying the area where the institutional or engineering control applies, and the area to be restricted to non-residential use if contaminants are to remain above risk-based standards.

Rules, promulgated in 2004, established fees to be paid for recording a use restriction. Amendments to the law in 2003 provide a variety of financial assurances available to parties using engineering controls, to ensure that the engineering controls will be maintained.

The terms of an environmental use restriction must be incorporated into any lease, license or other agreement granting rights to a property covered by any environmental use restriction.

c. Ariz. Rev. Stat. Ann. §33-422 to -424 [Section 422 enacted in 2000, amended in 2001, recodified 2002, amended in 2003, 2005, 2006, 2008; and 2010; Section 423 enacted in 2006, amended in 2007; Section 424 enacted in 2007].

Applies to sellers of unsubdivided land in unincorporated areas of a county.

Section 422 requires that seller provide a disclosure affidavit to buyer concerning matters including environmental conditions.

Section 423 allows third parties to prepare and provide disclosure reports for sellers, including information on environmental conditions, and requires third parties to carry insurance with minimum limits.

Section 424 makes it unlawful for third party providers of disclosure reports to represent in marketing materials, contracts or otherwise that

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such reports must be purchased, or that the third party provider offers liability protections or property information that are not within its ability to provide.

5. Arkansas

Ark. Code Ann. §8-7-1104 [Enacted in 1997; amended in 2001 and 2005].

Under the state's voluntary cleanup program, a purchaser proceeding under the program is required to place a deed restriction on the property where there are restrictions of use to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property.

6. California

a. Cal. Health & Safety Code §25359.7 [Enacted in 1987; amended in 1988; reenacted and extended indefinitely in 1999].

Law mandates that owners of non-residential real property who know of or suspect contamination on their property must notify buyers or tenants prior to sale, lease or rental, and that tenants who know of or suspect contamination at leased non-residential premises must notify landlords.

Failure to provide written notice to each buyer subjects the owner to actual damages and any other remedies provided by law. Willful violations are subject to penalties.

Failure of a tenant to provide required notice to its landlord constitutes a default under the lease. (Original provision provided that such a failure rendered the tenant's lease and leasehold interest voidable at the discretion of the owner. Provision was amended in 1988.) Tenant may cure default by commencing and completing a removal or remedial action approved in writing by the owner or landlord. Willful violations are subject to penalties.

b. Cal. Health & Safety Code §§25915, 25915.2 - 25919.7 [Enacted in 1988, effective January 1, 1989; amended in 1989, 1990, 1991 and 1992].

Applies to, among other things, sale of commercial and industrial buildings constructed prior to 1979 which incorporate asbestos-containing construction materials.

Requires owner to provide written notice of any asbestos-containing construction materials to purchasers of the affected property within 15 days of "effective date of the agreement under which a person becomes a new owner".

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c. Cal. Health & Safety Code §§25220 - 25226 [Enacted in 2012].

2012 successor legislation to earlier Code provisions from 1994 and 2001 recasts state procedures on means for memorializing land use controls and restrictions.

Under 2012 legislation, a party may enter an agreement with the California Department of Public Health ("CDPH"), concerning part or all of a particular property, to restrict specified uses of the property.

Except as otherwise provided, the agreement is irrevocable and is to be recorded by the owner, with the county recorder of the county where the property is located, in the form of a hazardous waste easement, covenant, restriction or servitude.

Public notice must be provided in advance of entering agreement, and CDPH must allow for public comment in advance of entering agreement.

Parties may apply for variances or removal from land use restrictions. Applicants for variances bear the burden of establishing that it will not cause hazard, diminish ability to mitigate hazard or increase exposure. Applicants for removal bear burden of establishing that hazardous condition that led to restriction has been removed, or altered in a manner that precludes hazard, or that new scientific evidence is available on the nature of the condition or property geology/characteristics that led to the restriction.

d. Cal. Health & Safety Code §26140 - 26153 [Enacted 2001, effective following California Department of Public Health Services ("CDPH") adoption of standards; amended in 2002].

Law mandates disclosures where certain parties become aware of or suspect mold conditions in buildings.

As to seller of commercial or industrial real property, written disclosure must be made to buyer prior to closing where seller is aware of unremediated mold condition.

As to commercial and industrial landlord, written disclosure must be made to current and prospective tenants upon landlord learning of condition.

As to commercial and industrial tenants, tenants must alert landlords in writing when they become aware of mold conditions. Responsibility for cleanup may be allocated by lease terms.

Similar disclosures apply to residential landlords.

Disclosure requirements will become effective on the first January 1 or July 1 that occurs at least six months after CDPH adopts guidelines for the law. In April 2005, CDPH issued a report to the California

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legislature in which the agency reported on the progress of developing these guidelines. According to the report, CDPH scientists concluded that sound permissible exposure limits for toxic mold could not be developed. In addition, the report indicates that a lack of funding has kept CDPH from adopting the statutorily-required guidelines. The most recent update in July 2008 reported no change in the implementation of these guidelines.

e. Cal. Code Regs. tit. 22, §67391.1 [Adopted in 2003; amended in 2005, 2007, 2013].

Regulations detail requirements for land use covenants. Land use covenants imposing limitations on land use must be used when hazardous substances will remain at the property at levels that are not suitable for unrestricted use of land.

All land use covenants are to be recorded in the county where the property is located.

f. Cal. Health & Safety Code §§25395.95(c), .99, .109 [.95 enacted in 2004, amended in 2005; .99 enacted in 2004, amended in 2012; .109 enacted in 2006, amended in 2009].

Laws require implementation of land use controls when completion of cleanup at brownfields properties leaves hazardous substances at levels unsafe for unrestricted use. Such land use controls must be recorded with the county recorder in the county in which the property is located.

Pursuant to Cal. Health & Safety Code § 25395.109 (enacted in 2006, amended in 2009), repeal date of state's Land Reuse and Revitalization of 2004, including these provisions, was extended to January 1, 2017.

g. Cal. Civil Code §1471 [Enacted in 1995; amended in 2002].

Law sets forth conditions pursuant to which an environmental restriction, which is expressed as being for the benefit of the covenantee (regardless of whether it is for the benefit of land owned by the covenantee), will run with the land and bind successive owners.

Requires, among other things, that each act that the owner or grantee is to do or refrain from doing is reasonably necessary to protect present or future human health or safety or the environment due to presence of hazardous materials on the land.

County recording officer may send copy of environmental restriction to California EPA for posting on its website for informational purposes.

h. Cal. Water Code §13307.1 [Enacted in 1998; amended in 2002 and 2003].

Law requires recording of land use restriction prior to issuance of a closure letter or no further action determination by a state or regional

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Water Quality Control Board in instances where the board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety, or the environment.

Provision applies to sites that are subject to a cleanup or abatement order pursuant to §13304 of the Porter-Cologne Water Quality Control Act and that are not underground storage tank sites.

7. Colorado

a. Colo. Rev. Stat. Ann. §25-15-101 and §25-15-317 et seq. [Relevant provisions enacted in 2001; amended in 2005, 2006, 2008 and 2010].

Requires that environmental covenants memorializing environmental use restrictions must be obtained where cleanups leave behind residual contamination; that has not been determined "to be safe for all uses" or where engineering controls that have been incorporated require monitoring, maintenance or operation, or would not function as intended if disturbed.

The 2008 amendments allow for the Colorado Department of Public Health and Environment to unilaterally impose environmental use restrictions on subject properties of parties who fail to execute environmental covenants within the requisite timeframe.

b. Colo. Rev. Stat. Ann. §25-15-303 [Enacted in 1981, effective and amended 1984].

Requires that where a property has been used for the permitted disposal of hazardous waste under authority of applicable state or federal law, the deed for the property must contain a notation indicating that the property has been utilized for the disposal of hazardous waste.

8. Connecticut

Conn. Gen. Stat. Ann. §22a-133n to 133s [Enacted in 1994; amended 1995, 1996, 1997; relevant §22a-133o amended in 2011].
Regulations: Regs. of Conn. State Agencies §§22a-133k-2, 22a-133k-3, 22a-133q-1 [Adopted in 1996].

Provides for the use of an environmental land use restriction, to be executed by a property owner and recorded in the land records of the municipality where the property is located, where use restriction is accepted by DEP as an alternative to remediating contamination to concentrations consistent with specific state criteria.

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9. Delaware

a. Del. Code Ann. tit. 7, §9115 [Enacted in 1990; amended in 1995].

Requires that where the Department of Natural Resources and Environmental Control deems a hazardous release to be a threat to human health or the environment, the property owner must record a notice with the county deed recorder which: (a) identifies the facility; (b) identifies the property owner; (c) identifies the occurrence of a release and its date; and (d) directs further inquiries to the state environmental agency.

Further provides that once the release is cleaned up to state standards, a notice of completion of the remedy must also be promptly filed by the owner.

b. Del. Code Ann. tit. 7, §§7907 et seq. [Enacted in 2005].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

c. Del. Code Regs. §§ 5.11.5, 6.11.5 [§ 5.11.5 adopted in 2004 and amended in 2007; § 6.11.5 adopted in 2004, amended in 2007 and 2010].

Requires that the owner of a property where a sanitary or industrial landfill is located must record an environmental covenant with the deed to the property, which must in perpetuity notify any potential purchaser that the land has been used as a disposal site and that use of the land is restricted under regulations. A map or description clearly specifying the area that was used for disposal must be included with the covenant.

10. District of Columbia

a. D.C. Code §§8-113.02, .09, and .12 [Relevant section 8-113.02(g) enacted in 1992].
Regulations: D.C. Mun. Regs., tit. 20, §5604 et seq. [Adopted in 1993, amended in 1999].

Law requires disclosure to prospective buyers of real property of the existence of any underground storage tanks of which the seller has knowledge or of the removal of any underground storage tank during the seller's ownership. If the sale is of commercial property, the seller must also disclose any prior use of the property of which seller has actual knowledge which suggests the existence of underground storage tanks on

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the property. Law does not apply to sellers of individual condominium units or cooperative units.

Disclosure must be on the form developed by the Department of Consumer and Regulatory Affairs, or in a letter incorporating each item of information requested on the form.

Written disclosure must be made prior to execution of a contract for sale of the real property. Knowing failure to disclose, or submission of false information, subjects seller to potential civil penalties of up to $10,000 per tank, per day of violation, or to such lesser civil infraction fines as may be set by regulation. Alternatively, civil fines, penalties or fees may be imposed.

b. D.C. Code §8-635.01 [Enacted in 2001; amended in 2006, 2009, 2011].

Authorizes the District Department of the Environment to require institutional controls incorporating use restrictions or memorializing engineering control requirements, and provides for such instruments to be recorded with the D.C. Recorder of Deeds.

Amended in 2006 to conform with adoption of the Uniform Environmental Covenants Act (see immediately below).

c. D.C. Code §§8-671.01 et seq. [Enacted in 2006].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – with the D.C. Recorder of Deeds.

11. Florida

a. Fla. Stat. Ann §376.81 [Enacted in 1997; amended in 1998 and 2000].
Regulations: Fla. Admin. Code Ann. Ch. 62-785.

Provides for use of institutional controls such as deed restrictions, restrictive covenants or conservation easements at brownfield sites where remedial activities do not reach unrestricted use standards but institutional controls, or institutional plus engineering controls, are protective of human health and safety and the environment.

b. Fla. Stat. Ann. §376.303(5), (6) [Enacted in 2000].

Requires owner of a designated brownfield property where institutional control has been implemented to provide information on the control to

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the local government for inclusion in local and land use and zoning maps and a Department of Environmental Protection ("DEP") registry.

Requires state to prepare and maintain registry of contaminated brownfield sites subject to institutional controls, including types of contaminants and land use limitations. Sites may be removed from registry once DEP issues a no further action letter, provided no institutional control is still required.

c. Fla. Stat. Ann. §376.3078(4)(d) [Section enacted in 1994, relevant text added in 2000].
Regulations: Fla. Admin. Code Ann. Chapter 62-782.

Authorizes use of institutional controls at sites contaminated by dry-cleaning solvents. Use of controls only permissible with pre-approval of state DEP and after notice and opportunity to comment is provided to local governments and to specified nearby residents and property owners.

d. Fla. Stat. Ann. §376.30701 [Enacted in 2003].
Regulations: Fla. Admin. Code Ann. Chapter 62-780.700.

Provides that risk-based corrective action principles, including use of institutional controls, are to be applied to sites contaminated by pollutants or hazardous substances.

12. <u>Georgia</u>

a. Ga. Code Ann. §12-8-97 [Enacted in 1992, effective July 1, 1993; amended in 1993 and 2010].
Regulations: Ga. Comp. R. & Regs. 391-3-19-.08 [Adopted in 1994, amended in 2010].

Applies to real property which has been listed on the state's hazardous site inventory by the Environmental Protection Division of the Department of Natural Resources (the "Division") and which is designated as having a known release and needing corrective action. The state's hazardous site inventory is to include all known or suspected sites where hazardous wastes, hazardous constituents or hazardous substances ("regulated substances") have been disposed of or released in amounts exceeding reportable quantities. Does not apply to properties with regulated substance concentrations which provide no significant risk on the basis of standardized exposure assumptions and defined risk levels for residential properties, or which pose no significant risk on the basis of a site-specific risk assessment for residential properties.

Requires owner of such property to include a specified notice in any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the owner which creates an interest in or grants a use of the property.

Notice must indicate that the property is listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of regulated substances. The notice must also advise that the owner or the Division be contacted for further information.

Requires owners of such property to file and record affidavits in the deed records of the clerk of the court of the county where such property is located, indicating that the property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of regulated substances.

Such affidavits must be filed within forty-five days after owner receives notice that the Division has designated the property as needing corrective action. A copy of the affidavit must be filed with the Division within thirty days after it is returned by the county clerk to the property owner. If the Division determines that no further action is needed, and the property is removed from the Hazardous Site Inventory, the owner may file an additional affidavit with the county clerk stating that the property was designated as needing no further action.

b. Ga. Code Ann. §44-5-48 [Enacted in 1988].

All deeds conveying interest in real property used as a commercial landfill must include notice of landfill operations, date of operations commenced and terminated, a legal description of the actual location of the landfill and a description of the type of materials which have been deposited in the landfill.

Commercial landfill means an area where materials have been deposited for a fee.

Applies only to those who have actual knowledge of landfill operations when conveying real property.

A seller who willfully violates these provisions is liable to the purchaser for treble damages for any losses sustained as a result of the sale.

c. Ga. Code Ann. §§44-16-1 et seq. [Enacted in 2008].

Enacts the Uniform Environmental Covenants Act, aimed at assuring the institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of an Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in county where the site is located.

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d. Ga. Code Ann. §§12-8-100 et seq. [Enacted in 2009, amended in 2010].

Under the state's Voluntary Remediation Program Act, a qualifying remediation site that implements controls to meet cleanup standards must execute a covenant in conformance with the Georgia Uniform Environmental Covenants Act.

13. Hawaii

a. Haw. Rev. Stat. §128D-39 [Enacted in 1997; amended in 1998 and 2005].

Under state's voluntary cleanup program, where contamination is to be left on site following completion of state-approved activities, any required land use restrictions noted on the Department of Health's letter of completion must be noted on the property deed and provided to the county agency that issues building permits.

b. Haw. Rev. Stat. §508C-1 et seq. [Enacted in 2006].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of an Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in county land records.

14. Idaho

a. Idaho Code Ann. §39-7210 [Enacted in 1996].
Regulations: Idaho Admin. Code r. 58.01.18.027 [Adopted in 1997].

Provides for the use of institutional and engineering controls, including deed restrictions and restrictive covenants, where the state allows residual contamination to remain at a property in excess of prevailing standards. Document is to be executed by the property owner and recorded in the county where the site is located.

b. Idaho Code §§55-3001 et seq. [Enacted in 2006].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.
Requires recording of an Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in county where the site is located.

15. Illinois

a. Ill. Comp. Stat. ch. 415, §5/21(m) [Enacted in 1989 as subsection (n); re-designated as subsection (m) in 1991].

Prohibits transfer of an interest in any land which has been used as a hazardous waste disposal site without written notification to: (1) the Illinois Environmental Protection Agency ("IEPA") of the transfer, and (2) the transferee; of the conditions imposed by the Agency upon the use of the land.

b. Ill. Comp. Stat. ch. 415, §5/39(g) [Enacted in 1989.]

Requires that permits for any hazardous waste disposal site include such restrictions on the future use of the site as are reasonably necessary to protect public health and the environment, including permanent prohibitions of use of sites for purposes that may create unreasonable risk to health or environment. Agency is to file the restrictions in the Office of the Recorder of the county in which the disposal site is located, once any potential administrative or judicial challenges are resolved.

c. Ill. Comp. Stat. Ch. 415, §5/44(o) [Enacted in 1992; amended in 1994.]

When a person is convicted of or agrees to a settlement in an enforcement action over illegal dumping of waste on the person's own property, the state Attorney General, IEPA or local prosecuting authority is to file notice of the conviction, finding or agreement in the office of the Recorder in the county where the landowner lives.

d. Ill. Comp. Stat. Ch. 415, §5/58.5 [Enacted in 1995; amended in 1996 and 2000].
Regulations: Ill. Admin. Code tit. 35, §742.1000 et seq. [Adopted in 2001; amended in 2007].

IEPA regulations provide for the use of Environmental Land Use Controls (ELUCs) to impose land use restrictions where unrestricted use standards cannot be met for any of a variety of reasons. ELUCs are used when no further remediation letters are either not available or cannot be used. ELUCs are effective when approved by IEPA and recorded in the Office of the Recorder or the Registrar of Titles for the county in which the subject property is located. A copy of the ELUC, demonstrating that it has been recorded, must be submitted to IEPA. An ELUC is only effective when recorded in the chain of title and must remain in effect in perpetuity. The 2007 amendments to the regulations regarding institutional controls added a new model ELUC document.

e. Ill. Comp. Stat. Ch. 765, §122/1 et seq. [Enacted in 2008, effective January 1, 2009].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over

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time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of an Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in county land records.

f. Ill. Admin. Code tit. 35, §730.172 [Adopted in 1990; amended in 2006].

Requires that, after closure of a Class I hazardous waste injection well, the owner of the well and the owner of the property on which the well is located record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will provide any potential purchaser of the property with prescribed information including the type and volume of waste injected and the period over which injection occurred.

16. <u>Indiana</u>

Ind. Code §13-11-2-193.5, §13-25-4-24, and §§13-25-3-7.5 to -9 [Section 13-11-12-193.5 enacted in 2001, amended in 2009; Section 13-25-4-24 enacted in 1989, recodified in 1996; Section 13-25-3-7.5 to -9 enacted in 1996, amended in 2006, 2012].

Provides for enforcement of restrictive covenants, deed notices and the like where state has allowed contaminants to remain at a property subject to land use restrictions. Document is to be recorded in the county where the site is located. Restrictive covenants recorded after June 30, 2009 require notice to transferee of the existence of the restriction and describe how to access the files related to the land. Covenants after this date afford Department of Environmental Management access to the land.

17. <u>Iowa</u>

a. Iowa Code §558.69 [Enacted in 1987; amended in 1988, 1990, 2011].
Regulations: Iowa Admin. Code r. 561-9.1(558) to -9.2(558) [Adopted in 1987; amended in 1998, 2001, 2005 and 2009; Rule 561-9.2(558) also amended in 2010].

Any time an instrument of real property transfer is filed with the county recorder, a form must be submitted both to the county recorder and to the transferee of any real property as to the existence (or not), location and condition of any wells, solid waste disposal sites, underground storage tanks, hazardous wastes, private burial sites, or private sewage disposal systems on the real property.

If the form reveals no reportable conditions, the county recorder is to return the original to the transferee. If reportable conditions are revealed, then the county recorder is to send one copy of the form to the State Department of Natural Resources ("DNR"), retain a copy of the form and return the original to the transferee.

Disclosure statement is to be signed by at least one of the sellers or their agents. The owner of the property is solely responsible for the accuracy of the information submitted in the statement.

b. Iowa Code §455H.206 [Enacted in 1997; amended in 2005].

Under Iowa's Voluntary Cleanup Program, pursuant to the Land Recycling and Remediation Standards law, a participant may propose, or DNR may require, use of an institutional control where applicable cleanup standards cannot, or will not, be met. An environmental covenant is required where future use is limited to non-residential purposes, or where uses of particular areas of a site are to be restricted. Where engineering controls are involved, DNR may require financial assurance. The participant must use an environmental covenant, filed with the county recorder, if the restriction in use is limited to nonresidential use.

c. Iowa Code §§455I.1 et seq. [Enacted in 2005; amended in 2006].
Regulations: Iowa Admin. Code r. 567-14.1(455B.455H) et seq. [Adopted in 2006].

In 2005, Iowa adopted the Uniform Environmental Covenants Act, deleting contrary provisions of its pre-existing environmental easement requirements.

The law is aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in every county in which any portion of the property is located.

Regulations specify the requirements for obtaining approval of an environmental covenant from DNR.

18. Kansas

a. Kan. Stat. Ann. §§65-1,221 to -1,235 [Enacted in 2003].
Regulations: Kan. Admin. Regs. §§28-73-1 to -7 [Adopted in 2006; §28-73-1 amended in 2009].

Provides that where property owner elects, with approval of the state Department of Health and Environment ("Department"), to leave contamination in place at levels exceeding unrestricted use standards, owner must register a pre-approved environmental use control with the register of deeds in the county where the property is located. Document must contain appropriate restrictions, state access rights, an inspection schedule to monitor conditions, and confirmation as to the availability of

funds to administer the state requirements. Financial assurances may also be required.

Environmental use control may be in perpetuity or for a term of years, and may be removed with Department approval if remaining risks are mitigated.

Department has specific enforcement powers to ensure that use controls are effectively implemented.

b. Kan. Stat. Ann. §§65-34,161 et seq. [Enacted 1997].
Kan. Admin. Regs. §28-71-11 et seq. [Adopted 1998].

Under Kansas's Voluntary Cleanup & Property Redevelopment program, Kan. Admin. Regs. §28-71-11(g) provides that the Kansas Department of Health and Environment may require institutional controls as part of a voluntary remediation plan, and that such institutional controls must be described in a restrictive covenant approved by the Department and recorded with the register of deeds for the county in which the property is located.

c. Kan. Admin. Regs. §28-29-20 [Adopted in 1978; amended in 1981, 1982, and 2003].

Permits the Kansas Department of Health and Environment to require the owner of a solid waste disposal area to execute a restrictive covenant and file it with the county register of deeds.

19. Kentucky

a. Ky. Rev. Stat. Ann. §224.01-526 [Enacted in 2001; amended in 2006].

Provides for recording restrictive covenants, deed restrictions and any other institutional controls, as well as state covenants not to sue, with county clerks where the affected properties are located.

b. Ky. Rev. Stat. Ann. §224.46-520 [Enacted 1980; amended 1982; 1986, 1988, 1990 and 2006].

Holds person who obtains disposal permit for hazardous waste responsible for post-closure monitoring and maintenance of the permitted facility for minimum of thirty years after closure of the facility. During this period, permittee may apply to state Environmental and Public Protection Cabinet for termination of the responsibility for post-closure monitoring and maintenance. If Cabinet determines that additional post-closure monitoring and maintenance of the site are still required, the Cabinet may impose restrictive covenants as to future use of the property as necessary for adequate protection of public health and the environment.

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c. Ky. Admin. Regs. Tit. 401, rr. 45:110, 47:080, 48:060, 48:090, 48:170 [Regulation 45:110 adopted in 1992; r. 47:080 adopted in 1990; r. 48:060 adopted in 1990; r. 48:090 adopted in 1990 and amended in 1994; r. 48:170 adopted in 1990].

Require that upon landfill closure, owner or operator must record a deed notice informing any potential purchaser of the property of the location and time of the operation of the facility and the nature of the waste placed in the site, and cautioning against future disturbance of the area. Notice must be recorded according to applicable state law, and it must be recorded prior to acceptance of closure of the landfill.

Title 401, r. 45:110 applies to special waste landfills (landfills that contain wastes of high volume and low hazard as defined in Ky. Rev. Stat. Ann. §224-50-760(1)(a)).

Title 401, 4. r. 47:080, §5(2)(c)(3) and Title 401, r. 48:170, §3(5) apply to residual landfills (landfills that contain certain industrial wastes/residues such as residuals from air and water pollution control devices and energy generation which are co-disposed in a mining operation).

Title 401, 4. r. 48:060 applies to construction/demolition debris landfills.

Title 401, 4. r. 48:090 applies to contained landfills.

d. Ky. Rev. Stat. Ann. §§224.80-100 et seq. [Enacted in 2005].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

20. Louisiana

a. La. Rev. Stat. Ann. §30:2286(D) [Enacted in 1995].
Regulation: La. Admin. Code, tit. 33, Part VI, §915 [Adopted in 2001].

Requires owner of property subject to partial remediation to impose such use restrictions as may be required by the Louisiana Department of Environmental Quality ("DEQ"), and to record notice of the use restrictions in the official records of the parish where the property is located.

Recorded restrictions may not be removed without DEQ authority.

b. La. Rev. Stat. Ann. §30:2039 [Enacted in 1989; amended in 1990 and 1991].

Requires a landowner to record notice of the location of a solid or hazardous waste site in the mortgage or conveyance records of the property when the landowner has actual or constructive knowledge that the property was used as such a site and that wastes remain on the property; or when the property has been identified by DEQ as an inactive or abandoned solid waste landfill or hazardous waste site.

Failure of the owner to file the required notice may constitute grounds for the purchaser to rescind the transaction unless the purchaser has actual or constructive knowledge that the property has been so used.

An action to rescind must be commenced within one year from the date when the purchaser first becomes aware of the use of the property, but in no event later than three years from the date of the transaction.

c. La. Rev. Stat. Ann. §30:74(A)(3) [Enacted in 1990; amended in 1997].

Requires thirty days notice to the Louisiana Office of Conservation, and written consent from the Office of Conservation, prior to sheriff's sale or public auction of any property related to the operation of oil and gas wells.

To ensure proper plugging and abandonment of any wells at a subject property, Office of Conservation may retain a first lien on the property. The lien must be filed in the parish where the property is located.

d. La. Rev. Stat. Ann. §30:79 [Enacted in 1991].

Requires owner of property containing an abandoned oilfield waste site to record notice of the identification of the location of the site in the mortgage and conveyance records of the property.

Does not apply to a commercial establishment operating under a permit issued by the Office of Conservation unless such notice is later required by an order, permit or rule applicable to the establishment.

e. La. Admin. Code. tit. 43, Part XVII, §209 [Adopted in 1989].

Subsection (M)(1)(3) requires that, after closure of a Class I hazardous waste injection well, the owner of the well and the owner of the property on which the well is located record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will provide any potential purchaser of the property with prescribed information involving the type and volume of waste injected and the period over which injection occurred.

21. <u>Maine</u>

a. Code of Maine Rules, Dep't of Professional and Financial Regulation, Real Estate Commission, 02-039, ch. 410 (Section 18) [Adopted in 1988 as ch.

330; amended in 1991, 1994, 1999 (pursuant to Maine Real Estate Brokerage License Act, 32 M.R.S.A. §13065), and 2002; ch. 330 repealed in April 2006 and replaced by ch. 410 in May 2006].

Requires listing real estate broker, and broker where there is no listing broker, to disclose in writing, information provided by the Seller as to private water supply, heating system and private waste disposal system, as well as whether the seller makes any representations regarding current or previously existing hazardous materials on or at marketed real property, and to provide a written statement encouraging the buyer to undertake a due diligence inquiry with the assistance of professionals.

Broker in possession of such information and any other information pertinent to hazardous materials must convey information, in writing, to buyer prior to or during preparation of an offer.

Original code requirements and pre-2006 amendments applied to all real property. New rules apply to residential properties and commercial properties with residential component.

Original provision, amended in 1999, had required the broker to inquire of a seller whether it had any knowledge of hazardous materials at site. The affirmative duty of inquiry was deleted in the 1999 revision.

b. Code of Maine Rules, Dep't of Envtl. Protection, 06-096, ch. 695 §5(D) [Adopted in 1990; amended in 1996].

Requires that the owner or operator of an underground hazardous substance storage tank or facility, or of real property which includes such tank or facility, notify prospective buyers or tenants, prior to sale or transfer, that the property contains an underground hazardous substance storage tank or facility, as well as specifics including location, registration, and whether the tank or facility has been closed in accordance with state regulations.

Although not required, facility owners are encouraged by Maine Department of Environmental Protection ("DEP") rules to record the notice given to prospective buyers in the Registry of Deeds in the county where facility is located, in order to create a record of the owner's compliance with the notice requirements.

c. Me. Rev. Stat. Ann. tit. 38, §1319-S [Enacted in 1981; amended in 1983, 1987 and 1989].
Regulations: Code of Maine Rules, Dep't of Envtl. Protection, 06-096, ch. 855, §9(L) and ch. 856, § 10(B)(13)[Chapter 855, § 9(L) adopted in 1994, Chapter 856 adopted in 1983, amended in 1985, 1986, 1994, 1996, 2000, and 2002].

Maine Board of Environmental Protection may require the present or subsequent owner of land used for a facility for hazardous waste to

execute and record a written instrument which imposes a restrictive covenant on the present and future uses of all or part of the land.

The covenant is recorded in the registry of deeds in the county where the property is located. The Board may remove part or all of the restrictions upon subsequent petition by a property owner.

An applicant for a license for a hazardous waste facility must include in its application a notice that a hazardous waste facility is located on the property, identify the name and address of the owner and operator, specify the wastes handled and the methods of handling, and indicate that a facility closure plan is on file with DEP. The notice is then to be filed by DEP in the registry of deeds for the county in which the facility is located.

d. Me. Rev. Stat. Ann. Tit. 38, §568(3) [Enacted in 2005; relevant provision added in 2009].

When DEP determines cleanup order is necessary after release from underground oil storage facility, responsible party may be required to impose deed restriction on use of contaminated property as part of clean up plan.

e. Me. Rev. Stat. Ann. tit. 38, §§3001 et seq. [Enacted in 2005].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

22. Maryland

a. Md. Code Ann., Envir. §7-506 [Enacted in 1997; amended in 1998, 2003 and 2004].

Under the state's Voluntary Cleanup Program, where a determination of no further requirements issued by the Maryland Department of the Environment ("Department") is conditioned on certain property uses or maintenance requirements, the applicant must record the Department's determination in the land records of the local jurisdiction within 30 days after receiving the determination.

If the applicant fails to record the determination in the land records, the determination becomes void.

In 2004, the legislature added a requirement that the applicant also send a copy of the determination to the state's "one-call" system.

b. Md. Code Ann., Envir. §1-801 et seq. [Enacted in 2005; amended in 2006 and 2010].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

23. Massachusetts

Mass. Gen. Laws ch. 21E, §6 [Enacted in 1992, amended in 1998, 2001, 2002, 2003 and 2004].
Regulations: 310 Mass. Code Regs. 40.1000 et seq. [Enacted in 1988; last amended in 2007].

When the state environmental agency, the Massachusetts Department of Environmental Protection ("DEP"), has restricted use of property that was formerly an oil or hazardous material storage or disposal site, or the site of an oil or hazardous substance spill or discharge, DEP may record, or require the owner to record, notice of the restrictions in the registry of deeds or, if the land is registered land, in the registry section of the land court where the land is located.

24. Michigan

a. Mich. Comp. Laws §324.11139 [Enacted in 1979; recodified in 1994].

Requires the applicant for an operating license for a hazardous waste disposal facility to demonstrate to the director that the owner of the property has recorded on the deed to the property, or some other document which is normally examined during a title search, a notice that will notify in perpetuity any potential purchaser that the property has been used to manage hazardous wastes, that the use of the land should not disturb the facility, and that the survey plat and records of the facility have been filed with the local zoning or land use authority.

Also requires that an instrument imposing a restrictive covenant upon the land involved must be filed by the state environmental agency, the Michigan Department of Natural Resources, in the office of the register of deeds in the county in which the disposal facility is located.

b. Mich. Comp. Laws §324.20114c [Enacted 1995].

Requires that a restrictive covenant that includes, among other things, the land use or resource use restrictions for a hazardous waste facility that has not met the cleanup criteria for unrestricted residential use, be

recorded within 21 days after the completion of the remedial actions or within 21 days after the completion of construction of the containment or barrier.

The restrictive covenant must include a survey and property description that define the areas addressed by the remedial action and the scope of any land use or resource use restrictions.

Notice of the land use or resource use restrictions must be given to the department and to the zoning authority for the local unit of government where the property is located within 30 days after recording the land use or resource use restrictions with the register of deeds.

May only be recorded by the property owner or with the owner's express written consent.

Restrictions are deemed to run with the land and be binding on successors, assigns and lessees.

c. Mich. Comp. Laws §324.20116 [Enacted 1995].

Requires that transferor who has knowledge or information or is on notice through a recorded document that there is hazardous waste at property in excess of the cleanup criteria for unrestricted residential use must provide written notice to transferee and disclose general nature and extent of release.

A person must fully disclose any land or resource use restrictions applicable to the property as part of a remedial action plan before transferring interest in the property.

d. Mich. Comp. Laws §324.21304d [Enacted 1995].

Requires that transferor who has knowledge or information or is on notice through a recorded document that his property has a leaking underground storage tank or that there is threat of a leaking underground storage tank must provide written notice to a transferee.

e. Mich. Comp. Laws §324. 21310a [Enacted 1995, amended 1991, 2012]

Requires that a restrictive covenant memorializing institutional controls implemented at a property where there is a leaking underground storage tank be recorded. The restrictive covenant must be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report.

The restrictive covenant must include a survey and property description that define the areas addressed by the remedial action and the scope of the any land use or resource use restrictions.

If a person relies on land use restrictions as a means to implement corrective action activities, notice of these restrictions must be provided to the local unit of government in which the property is located within 30 days of filing the land use restrictions with the county register of deeds.

25. Minnesota

a. Minn. Stat. Ann. §115B.175 [Enacted in 1992; amended in 1993, 1995 and 1997].

Under state's voluntary cleanup program, state may approve a cleanup plan that does not remedy all releases. Cleanup agreement must be recorded in county where property is located.

b. Minn. Stat. Ann. §114E.01 et seq. [Enacted in 2007].

New chapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in each county where any portion of the real property is located.

26. Mississippi

a. Miss. Code Ann. §49-35-1 et seq. [Enacted in 1998].

Under state's Brownfields Voluntary Cleanup and Redevelopment Act, brownfield cleanup agreement between state and applicant, including any provisions as to future land use restriction, is to be filed with the chancery clerk of the county where the property is located. Following cleanup, state may authorize cancellation of the county filing if cleanup has been completed to unrestricted use standards.

b. Miss. Code Ann. §89-23-1 et seq. [Enacted in 2008].

Enacts the Uniform Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant – specifying environment conditions, as well as activity and use restrictions and requirements – in each county where any portion of the real property is located, and for the Mississippi Department of Environmental Quality ("MDEQ") to establish and maintain an activity and use limitation information system that records the creation, amendment and termination of covenants and differentiates categories of sites depending on the progress and degree of cleanup.

27. Missouri

a. Mo. Ann. Stat. §260.465 [Enacted in 1983; amended in 1988].

Preconditions sale, conveyance or transfer of title to an abandoned or uncontrolled waste disposal site upon specific disclosure to the buyer.

Applies to owners of real property listed in the Missouri Registry of Abandoned or Uncontrolled Hazardous Waste Disposal Sites ("Registry").

Prior to sale, conveyance or transfer of title to a disposal site on the Registry, the owner must disclose to the buyer, early in the negotiation process: (a) that the site is on the Registry, (b) any applicable use restrictions and Registry information, and (c) that the buyer may be assuming cleanup liability.

Within thirty days after the transfer of ownership, the seller must notify the state environmental agency, Missouri Department of Natural Resources ("Department"), of the transaction. If the Department believes that Chapter 260.465 has been violated or is in imminent danger of being violated, the Department may institute a civil action for injunctive relief and for assessment of a maximum penalty of $1,000 per day of the violation.

Note: Prior to its 1988 amendments, the provisions of §260.465 were identical to those of the Iowa Environmental Quality Act cited above at section I.B.

b. Mo. Ann. Stat. §§260.1000 et seq. [Enacted in 2007, effective January 1, 2008; §260.1003 amended in 2008].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in local land records, and for the Department to establish and maintain an activity and use limitation information system that records the creation, amendment and termination of covenants and differentiates categories of sites depending on the progress and degree of cleanup.

28. Montana

Mont. Code Ann. §75-10-727 [Enacted in 1999].

Provides for use of institutional controls including deed restrictions, easements and restrictive covenants, where the Department of Environmental Quality ("DEQ") has approved such controls in lieu of

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remedial activities to mitigate remaining risks to health, safety or the environment.

Institutional control becomes effective by filing a written instrument with the county clerk in the county in which the property is located.

An owner may request DEQ approval to remove all or a portion of the institutional controls from the real property if there is not an unacceptable risk posed to public health, safety, and welfare and the environment. If the DEQ approves the request, the approval must be filed with the county clerk in the county in which the real property is located.

29. Nebraska

a. Neb. Rev. Stat. §81-15, 124.05 [Enacted in 2001].

Following responsible party cleanup of a contaminated spill from an underground storage tank, the Department of Environmental Quality issues a certificate of completion that the responsible party must file in the real estate records of the county where the remediation occurred.

The certificate of completion may contain requirements that the responsible party institute and maintain monitoring, institutional or technical controls.

b. Neb. Rev. Stat. §§76-2601 et seq. [Enacted in 2005].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

30. Nevada

a. Nev. Rev. Stat. §459.638 [Enacted in 1999].

Under the state's Voluntary Cleanup Program, once a participant completes remediation to the satisfaction of the Nevada Department of Conservation and Natural Resources ("Department"), the Department issues a certificate of completion, which it then records in the county where the property is located.

b. Nev. Rev. Stat. §445D.010 et seq. [Enacted in 2005].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are

maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

31. New Hampshire

N.H. Rev. Stat. Ann. §147-F:13 [Enacted in 1996].

Provides process, under state's Brownfields Program, for recording of any use restrictions or continuing monitoring requirements, and also provides procedure for recording state no further action letter and covenant not to sue where all state requirements have been met.

32. New Jersey

a. N.J. Stat. Ann. §58:10B-13 [Enacted in 1993; amended in 1997 and 2009].

Where the state Department of Environmental Protection ("DEP") allows remediation of soil contamination to levels in excess of residential standards, or engineering and/or institutional controls are used in lieu of meeting otherwise applicable standards, a Declaration of Environmental Restrictions on the property must be recorded with the county recording officer to inform prospective holders of an interest in the property that contamination exists on the property. Such notices may not be recorded without the consent of the property owner. If the property owner does not consent to the recording of a notice, the person responsible for conducting the remediation must require the use of a residential soil remediation standard in the cleanup of the contaminated property.

Requires written notice to the governing body of the municipality that contaminants exist above residential soil remediation standards, together with a description of any additional restrictions that exist on the property. The notice must be recorded in the same manner as are deeds and other interests in real property.

b. N.J. Admin. Code §7:26-2A.9 [Adopted in 1982, amended in 1996 and 2002].

Requires that upon closure of a sanitary landfill, a detailed description of the landfill be recorded with the county recording office where the property is located.

The description must include the types of waste at the site, the depth and type of cover material and the dates the landfill was in operation.

2002 amendments require the deed to contain notice that any future disruption of the closed landfill requires prior approval from DEP.

33. New York

a. N.Y. Envtl. Conserv. Law § 27-1401 et seq. and §71-3601 et seq. [Enacted in 2003; amended in 2004, 2005, 2006 and 2008].

Under New York's Brownfield program, effective October 7, 2003, parties may elect to undertake remedial actions that include restrictions on future use of remediated property, and which require the recordation of an environmental easement in the office of the recording officer in the county where the property is located.

The State Department of Environmental Conservation ("DEC") will not issue a "certificate of completion" to the applicant until the environmental easement has been recorded.

b. N.Y. Envtl. Conserv. Law §56-0503 [Enacted in 1996; amended in 2003 and 2004].

Where DEC is providing funding to a municipality for an environmental restoration project, DEC may require that the municipality employ institutional controls including an environmental easement. If DEC requires an environmental easement, the municipality must record and index the easement in the office of the recording officer for the county in which the property is located.

c. N.Y. Envtl. Conserv. Law §27-1318 [Enacted in 2003; amended in 2004].

Provides that within 60 days of commencement of a remedial design of an inactive hazardous waste disposal site, the owner or other responsible party must execute an environmental easement if institutional or engineering controls are being employed.

34. North Carolina

a. N.C. Gen. Stat. §130A-310.8 [Enacted in 1987; amended in 1989, 1997, 2012].

Requires owner to file notice of inactive hazardous substance or waste disposal site in the office of the register of deeds in the county in which the land is located.

When such property is sold, leased, conveyed, or transferred, a statement that the property has been used as a hazardous substance or waste disposal site, and a reference to the notice filed with the deed register, must be included in the deed or other instrument of conveyance.

Once the hazard is eliminated, the notice may be cancelled with the concurrence of North Carolina Department of Environment and Natural Resources ("DENR").

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Recordation is not required for an inactive hazardous substance or waste site that is undergoing a voluntary remedial action, unless DENR determines that: (1) Following the voluntary cleanup, concentrations of hazardous substances or hazardous wastes will still pose a danger to heath or the environment; or (2) the voluntary cleanup is not being implemented in a satisfactory manner in compliance with existing DENR agreements.

b. N.C. Gen. Stat. §130A-310.35 [Enacted in 1997; amended in 1997, 2012].

Under the state's Brownfields redevelopment program, a developer must submit to DENR a Notice of Brownfields Property, including a description of the property, areas of particular environmental concern, the type and quantity of regulated substances and contaminants existing on the property, and current or future use restrictions placed on the Brownfields site.

Once DENR approves the redevelopment plan, the developer must file the Notice of Brownfields Property in the Register of Deeds office in the county where the land is located.

When the Brownfields property is sold, leased or otherwise transferred, the deed or other instrument of conveyance must include a statement that the property has been classified as a Brownfield and, if applicable, cleaned up pursuant to the North Carolina program.

Upon the request of a landowner, and with the concurrence of DENR, a Notice of Brownfields Property may be cancelled once the hazards on the property have been eliminated.

c. N.C. Gen. Stat. §143-215.104M [Enacted in 1997, effective January 1, 1999; amended in 2007, 2009, 2011, 2012].

Where the owner of a dry-cleaning solvent contamination site chooses to employ land-use restriction as part of remedy, the owner must file Notice of Dry-Cleaning Solvent Remediation including survey plat, legal description, details of contamination being left in place, location of areas of environmental concern, and any restrictions on current or future land use.

By its terms, the law is scheduled for repeal effective January 1, 2022.

d. N.C. Gen. Stat. §143B-279.9 to -279.11 [-279.9 and -279.10 enacted in 1999, -279.11 enacted in 2001. -279.9 amended in 2001, 2002 and 2007; -279.10 amended in 2000, 2001, 2002, and 2012; -279.11 amended in 2002 and 2012].

Clarifies the land use restriction recordation requirements for cleanups of contamination sites, including those resulting from releases from underground petroleum storage tanks, where remedial measures will not reach state's unrestricted use standards.

Where site is subject to current or future use restrictions due to oil or hazardous substance discharge, owner must submit notice in the form of a survey plat prepared and certified by a professional land surveyor identifying areas designated by DENR. Once DENR approves and certifies the notice, owner must file a certified copy with the register of deeds.

Where residual petroleum contamination from an underground storage tank is to be left at a property pursuant to DENR-approved plan, the owner must submit notice to DENR before the property is conveyed or when the person responsible for the release requests that DENR issue a no further action determination. A notarized copy of the department approved notice must be filed in the register of deeds office.

A party responsible for a discharge or release from underground petroleum storage tanks may record the requisite notice without the agreement of the property owner of the real property.

35. <u>North Dakota</u>

N.D. Cent. Code §23-20.3-03.1 [Enacted in 2005; amended in 2007, 2011].

Provides for the use of institutional controls at contaminated properties in order to protect public health.

Institutional controls may be established through agreement to an environmental covenant by the Department of Health and the property owner. All such environmental covenants must be filed with the county recorder in the county in which the property is located.

36. <u>Ohio</u>

a. Ohio Rev. Code Ann. §317.08 [Enacted in 1994; amended in 2001, 2002, 2004, 2005, 2006 and 2007].

Requires that the county recorder must keep a record of land use restrictions, including environmental covenants and use restrictions, imposed in voluntary cleanup actions.

b. Ohio Rev. Code Ann. §3746.05 [Enacted in 1994, amended in 2004].
Regulations: Ohio Admin Code §3745-300-09 and -13 [Section 3745-300-09 adopted in 1996, amended in 2002; Section 3745-300-13 adopted in 1995, amended in 1996, 2006 and 2009].

Procedures under state Voluntary Cleanup Program for use of institutional controls and activity and use limitations restricting use or access at a property, and/or memorializing the use of engineering controls, after completion of a voluntary cleanup action of hazardous substances or petroleum.

c. Ohio Rev. Code Ann. §§5301.80 et seq. [Enacted in 2004].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

Ohio was the first state to adopt the Uniform Environmental Covenant Act with the enactment of this section in 2004.

37. Oklahoma

a. Okla. Stat. tit. 27A, §2-7-123 [Relevant provision enacted in 2000; amended in 2004, 2005 and 2009].

Requires that the Department of Environmental Quality record a notice, in the land records of the county where a site is located, where remediation is performed at the site to state risk-based standards, or where a cleanup is proceeding under the federal Superfund law.

The notice will run with the land and must identify all engineering controls, and prohibitions against activities that could cause damage to the controls or recontamination. Use restrictions must be detailed.

b. Okla. Stat. tit. 27A §2-15-107 [Enacted in 1996; amended in 2009].

Requires that where cleanups are completed under the state's Brownfields Voluntary Redevelopment Act, the state's Certificate of Completion or Certificate of No Action Necessary must be filed by the brownfield applicant in the land records of the county where the site is located.

c. Okla. Stat. tit. 60, §§49.11 et. seq. [Enacted in 2006, effective January 1, 2007].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Effective January 1, 2007, requires recording of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in county records.

38. Oregon

a. Or. Rev. Stat. §§466.360 to .375 [Enacted in 1985; amended in 1987 and 1991].

Requires the Department of Environmental Quality ("DEQ") to file an Environmental Hazard Notice ("Notice") with the city and county where property contains potentially hazardous environmental conditions, describing restrictions that apply to post-closure use of that property.

DEQ must notify the owner of such property of its intent to file a Notice, and the owner has the right to a hearing, which must be requested within 20 days of receipt of DEQ's notification of intent.

39. Pennsylvania

a. Pa. Stat. Ann. tit. 35, §6018.405 [Enacted in 1980].

Requires that grantor of property where hazardous waste has been or is presently being disposed of, so state in property description section of deed along with available information concerning extent of contamination.

Property description must be made part of deed for all future conveyances or transfers of subject property.

Pennsylvania Uniform Environmental Covenants Act provides that existing deed notices be converted to environmental covenants, and that new engineering or institutional controls be in the form of an environmental covenant under specified state laws (see below).

b. Pa. Stat. Ann. tit. 35 §6020.512 [Enacted in 1988].

Requires that grantor of property where hazardous substances have been or are presently being disposed of, so state in property description section of deed along with available information concerning extent of contamination.

Description also must include any response action undertaken. Also, if the site has been on the state's priority list, and is thereafter removed from the list by the state agency, that fact must be set forth on the deed.

Property description must be made part of deed for all future conveyances or transfers of subject property.

Pennsylvania Uniform Environmental Covenants Act provides that existing deed notices be converted to environmental covenants, and that new engineering or institutional controls be in the form of an environmental covenant under specified state laws (see below).

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c. Pa. Stat. Ann. tit. 35, §6026.305 [Enacted in 1995].

Under Pennsylvania's Brownfields law (see Brownfields materials below), deed notices are to be filed in accordance with laws outlined above.

d. Pa. Stat. Ann. tit. 27, §§6501 et seq. [Enacted in 2007, effective February 19, 2008].

Enacts the Uniform Environmental Covenants Act, aimed at assuring the institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – in each county in which any portion of the real property is located, and for the Pennsylvania DEP to establish and maintain a registry of all environmental covenants and any amendment or termination of those covenants.

Provides that within 60 months of the effective date of the law, instruments already in place establishing activity and use limitations under the state's Land Recycling Act or UST law must be converted to environmental covenants unless the conversion is waived by the DEP.

Also explicitly requires that unless waived by DEP, engineering controls or institutional controls under the Land Recycling Act or UST law be in the form of an environmental covenant. (See Brownfields materials below.)

Provides that deed acknowledgements under the state's Solid Waste Management Act and Hazardous Sites Cleanup Act may be satisfied by an environmental covenant.

40. Rhode Island

R.I. Gen. Laws §23-19.14-1 et seq. [Enacted in 1995; amended in 1997, 2002, 2004, 2006, 2008 and 2009].
Regulations: R.I. Envt'l Regs. DEM-DSR-01-93, §8.09 [Adopted in 1993, amended in 1996, 2002 (re-filed), and 2004].

The state Brownfield law refers to the availability of institutional controls but does not define them.

The state regulations require that all parties performing investigation or remediation must implement environmental use restrictions if hazardous substances will remain at concentrations greater than those allowed for residential land usage. The use restrictions must be memorialized in a recorded notice, known as an Environmental Land Usage Restriction, approved by the state.

The Environmental Land Usage Restriction runs with the land, and it requires that the owner notify the state prior to conveying an interest in the property.

The state Department of Environmental Management must also maintain public records of sites addressed under the state's site remediation and Brownfields program, specifying whether each site is suitable for unrestricted use and whether institutional controls have been implemented.

41. South Carolina

S.C. Code Ann. §44-56-750 [Enacted in 2000; amended in 2005 and 2008].

The state's Voluntary Cleanup Program, establishes the procedure for recording deed notices, restrictive covenants, or both for future land use at sites that do not require removal or remedy of all contamination or threatened contamination. The response action must be consistent with the proposed future use of the site and cannot contribute to or exacerbate the contamination or threatened contamination.

The restrictive covenant must be included in the certificate of completion and must be recorded with the register of deeds in the appropriate county. A restrictive covenant remains in effect until a complete remediation is accomplished for unrestricted use.

42. South Dakota

S.D. Codified Laws Ann. §34A-17-1 et seq. [Enacted in 2005].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

43. Tennessee

a. Tenn. Code Ann. §68-212-201 et seq. [Enacted in 1983; amended in 1990, 1994, 1995, 2001 and 2007].

Under state's Brownfield Program, the state may determine that land use restrictions are the appropriate remedial action and require a Notice of Land Use Restrictions to be filed in the register of deeds office in the appropriate county.

Land use restriction may be enforced by any owner of the land, the Department of Environment and Conservation, any unit of local government having jurisdiction over the property, and any person eligible for liability protection under an agreement pursuant to the state Brownfield Program.

b. Rules of the Tenn. Dep't of Environment and Conservation. Ch. 0400-18-01 [Enacted in 2011].

Underground storage tank owners or operators may take interim remediation actions or risk management measures that may include, but are not limited to, establishing institutional controls that are memorialized with a Notice of Land Use Restrictions that must be filed in the register of deeds office in the appropriate county.

44. Texas

Tex. Health & Safety Code §361.753 [Enacted in 1997].
Regulations: Tex. Admin. Code tit. 30 §350.111 [Adopted in 1999; amended in 2007].

Under the state's Voluntary Cleanup Program ("VCP"), the state may condition issuance of certification of innocent owner/operator status on filing of institutional controls such as deed notices or restrictive covenants.

Regulations provide for the recording of VCP certificates of completion in the real property records of the county in which the property is located.

The state's Commission on Environmental Quality requires the use of institutional controls under its Risk Reduction Program where residual contamination is being left on site above prevailing standards.

Institutional controls are to be filed in the applicable county deed records.

45. U.S. Virgin Islands

a. V.I. Code Ann. tit. 28, §381 et seq. [Enacted in 2006].

New chapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of Environmental Covenant – specifying conditions, as well as activity and use restrictions and requirements – in each district in which any portion of the subject real property is located, and requires the Department of Planning and Natural Resources to establish and

maintain a registry of all covenants, and any amendments or terminations of the covenants, where the documents are to be filed.

b. V.I. Code Ann. tit. 12, §551 et. seq. [Enacted 2008; amended in 2009].

Under state's new Brownfields Act, V.I. Department of Planning and Natural Resources is to issue institutional controls limiting the uses of designated brownfield sites. Controls are to be recorded with the Office of Lieutenant Governor, Recorder of Deeds, as deed notices and are to run with the land.

46. Utah

a. Utah Code §19-8-102 [Enacted in 1997].
Regulations: Utah Admin. Code R.315-101-1 [Enacted in 2001; continued in 2006].

Under the Utah Voluntary Cleanup Program, the state may require institutional controls such as deed restrictions where contamination is to remain on site in excess of state standards. The required document must be recorded by the property owner with the county recorder.

b. Utah Code §§19-10-101 et seq. [Enacted in 2003; amended in 2006 and 2008].

Applies to institutional controls created before May 1, 2006.

Controls created on or after May 1, 2006 are subject to the Uniform Environmental Covenants Act (see below).

c. Utah Code §§57-25-101 et seq.[Enacted in 2006; amended in 2008].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of Environmental Covenant - specifying conditions, as well as activity and use restrictions and requirements - in county land records.

Applies to Environmental Covenants created on or after May 1, 2006.

Institutional controls created prior to May 1, 2006 remain subject to the Environmental Institutional Controls Act noted above.

47. Vermont

a. Vt. Stat. Ann. tit. 10, §6615a [Enacted in 1995; amended in 1997, 2001, 2003, 2005 and 2007; repealed in 2008].

Under section (h)(6) of the state's property cleanup and redevelopment program, the state could require that an eligible party restrict future use of land. The institutional control had to be filed with the clerk of the municipality with the restrictions specified on the certificate of completion issued by the state.

The Redevelopment of Contaminated Properties Program was repealed in 2008 and replaced by the state's new Brownfield Property Cleanup Program that includes specific deed restriction requirements (see immediately below).

b. Vt. Stat. Ann. tit. 10, §6641 et seq. [Enacted in 2008; §6641(5) amended in 2009].

Under the state's new Brownfield Property Cleanup Program enacted in 2008, deed restrictions must be recorded as to any limitations placed on the use of a property based on a risk-based exposure criteria used by the applicant in developing its corrective action plan, and must include prohibitions against physical changes to the property, any requirements for installation and maintenance of protective barriers to remaining contaminants, and restrictions on property uses that are inconsistent with or interfere with the corrective action plan.

The notice of approval must be filed in the land records of the municipality in which the property is located within 15 days of receipt of the approval.

Recording of the deed notice is a pre-condition to withdrawal from the brownfield program.

48. Virginia

a. Va. Code Ann. §10.1-1232 et seq. [Enacted in 2002].
Regulations: Va. Admin. Code tit. 9 §20-160-110 [Relevant section adopted in 2002].

Where use restrictions are approved by the Department of Environmental Quality in certifying satisfactory completion of remediation, the restriction must be attached to the deed with an explanation for the restriction, and must be recorded in the land records of the jurisdiction where the property is located.

b. Va. Code Ann. §10.1-1238 et seq. [Enacted in 2010].

New chapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires recording of Environmental Covenant – specifying conditions, as well as activity and use restrictions and requirements – in each locality in which any portion of the subject real property is located.

49. Washington

a. Wash. Rev. Code §70.105B.160 [Enacted in 1987; repealed in 1989].

Required notification on a deed that a release of a significant quantity of a hazardous substance had been found by the Department of Ecology.

Applied to public or private nonresidential real property.

Upon sale of the real property, seller had to provide buyer with a written statement describing any releases of a hazardous substance during the 20 years prior to sale.

Purchaser injured by seller's failure to notify was empowered to commence suit for damages.

Repealed in 1989.

b. Wash. Rev. Code Ann. §70.105D.030(1)(f) - (g) [Enacted in 1989; amended in 1994, 1997, 2001, 2002, 2007 and 2009].

Regulations: Wash. Admin. Code §173-340-440 [Adopted in 1991; amended in 1996 and 2001].

Statute allows the Department to issue orders or enter consent decrees that require environmental covenants to protect human health and the environment from a hazardous substance release or threatened release from a facility.

Regulations require that where residual contamination remains after a state-mandated cleanup action, and property use restrictions are imposed by the state, the restrictions must be described in a restrictive covenant executed and recorded by the property owner in the local registry of deeds.

c. Wash. Rev. Code Ann. §64.70.005 et seq. [Enacted in 2007].

Enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Effective January 1, 2007, requires recording of Environmental Covenant – specifying environmental conditions, as well as activity and use restrictions and requirements – as well as any amendment or termination of the covenant, in county records where any portion of the property is located, and establishment of a registry by the state's Department of

Ecology, where information about establishment, amendment or termination of such covenants is to be maintained.

50. West Virginia

a. W. Va. Code §22-18-21 [Enacted in 1981; recodified in 1994].
Regulations: W. Va. Envt'l. Health and Safety Regs. §33-20-12 [Adopted in 1982; amended in 1995, 2003 and 2008; recodified in 1996, 1998 and 2004].

Requires disclosure in a deed, lease or other similar instrument that real property was used for the treatment, storage or disposal of hazardous waste ("TSD"). The disclosure requirement applies only to a grantor or lessor who owned or had interest in the property during TSD period or has actual knowledge that the real property was used for such purpose at any time.

Requires notification in a deed or other document normally examined during a title search sufficient to alert a potential purchaser that the land has been used to manage hazardous wastes or that its use has been restricted.

Applies to hazardous waste sites.

Also requires grantee or lessee to disclose to grantor or lessor in writing at the time of conveyance or lease any intention to use or allow the real property to be used for TSD purposes, or to disclose same within thirty days prior to using or allowing the real property to be used for TSD purposes. Detailed disclosure required.

b. W. Va. Code §22-22-14 [Enacted in 1996].

Voluntary Remediation and Redevelopment Act provides for preparation and recording of land use covenants, setting forth all necessary deed restrictions, in the property records of the county where the remediation site is located.

Covenant must indicate whether residential or non-residential exposure standards were applied.

Covenant to contain provision relieving party that undertook remediation, and successors, from further liability to state so long as site complies with applicable standards.

c. W. Va. Code §§22-22B-1 et seq. [Enacted in 2005].

New subchapter enacts the Uniform Environmental Covenants Act, aimed at assuring that institutional and engineering controls are maintained and enforced over time where risk-based cleanups do not achieve unrestricted use standards.

Requires filing of Environmental Covenant - specifying environmental conditions, as well as activity and use restrictions and requirements - in either a special state registry or in local land records.

51. Wisconsin

Wis. Stat. Ann. §292.11 - 21 [Portions enacted in 1993, 1995, 1997 and 2005; portions amended in 1995, 1997, 1999, 2001, 2005, 2007, 2008 and 2009].
Regulations: Wis. Admin. Code NR §722.07 [Adopted in 1995].
Wis. Admin. Code NR §722.09 [Adopted in 1995, amended in 2002 and 2010].
Wis. Admin. Code NR §726.05 [Adopted in 1995, amended in 1996, 2001 and 2002].

Where remedial actions will result in residual contamination remaining on site, the resulting use restrictions must be recorded. In addition, the Department of Natural Resources maintains a database, available to the public, listing sites with residual contamination.

52. Wyoming

a. Wyo. Stat. Ann. §35-11-1609 [Enacted in 2000].

Under the state's Voluntary Remediation Program, an owner petitioning the state to employ long term land use controls or restrictions must schedule a public hearing and publish notice of a petition and the hearing in a newspaper once a week for four consecutive weeks. After the pubic hearing, the state then considers whether to approve or deny the petition to establish a use control area.

b. Wyo. Stat. Ann. §35-11-1607 [Enacted in 2000].

Provides that where a property owner has obtained a use control area designation for a site (see subsection a. above), owner and Wyoming DEQ may enter into a remedy agreement that includes long-term restrictions on the use of the site.

DEQ requires a suitable bond or other other evidence of financial assurance to assure performance and maintenance of engineering controls and monitoring activities.

Person who receivs remedy agreement must record a copy in the office of the county with the deed for the site and file a copy in the office of the county clerk within ten days after the date the remedy agreement is signed.

Use restrictions and other terms and conditions of the remedy agreement are deemed to run with the land and be binding upon successors in interest.

Note: The Uniform Environmental Covenants Act

In 2003, the National Conference of Commissioners on Uniform State Laws approved a new uniform law to seek consistency in the manner in which the states impose and enforce environmental use restrictions and institutional controls, and the manner in which those controls and restrictions are publicly recorded. The Uniform Environmental Covenants Act provides for a single type of instrument, entitled an Environmental Covenant, to guide rights and obligations of affected parties and governmental authorities.

To date, twenty-three states have adopted the Act: Alabama, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, Washington, Virginia and West Virginia. The District of Columbia and the U.S Virgin Islands have also adopted the Act.

II. General Notification Laws and Regulations

1. United States

42 U.S.C. §6924 (RCRA §3004) (1976).
40 C.F.R. §264.119(b)(l) (1980).

Requires notification on a deed or other document normally examined during a title search sufficient to alert a potential purchaser that the land has been used to manage hazardous waste.

Notification must include any restrictions which may apply and a survey plat which identifies the type, location and quantity of wastes kept at the facility.

Applies to hazardous waste facilities in states which have not implemented a federally authorized state hazardous waste program.

Penalties for failure to place a notation on a deed include civil penalties of up to $25,000.

States with identical provisions:

a. Alabama*

Ala. Code §22-30-9 (1978).
Ala. Admin. Code r. 335-14-5-.07 (1986).

b. Alaska

Alaska Stat. §46.03.299 (1981).
Alaska Admin. Code tit. 18, §62.410 (1987).

c. Arizona*

Ariz. Rev. Stat. Ann. §49-922 (1983).
Ariz. Admin. Code §18-8-264 (1984).

d. Arkansas*

Ark. Code Ann. §8-7-209 (1979).
Ark. Dep't of Envtl. Quality, Reg. 23, §264.119 (1994, 2003).

e. California*

Cal. Health & Safety Code §25159 (1982).
Cal. Code Regs. tit. 22, §66264.119 (1991).

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f. **Colorado***

Colo. Rev. Stat. §25-15-208 (1981).
6 Colo. Code Regs. 1007-3 §264.119 (1983).

g. **Connecticut***

Conn. Gen. Stat. §22a-116(d) (1980).
Conn. Hazardous Waste Management Reg. §22a-449(c)-104(a) (1981).

h. **Delaware***

Del. Code Ann. tit. 7, §6305 (1980).
Code of Del. Regs. 7-1000-1302 §264.119 (1980).

i. **District of Columbia***

D.C. Code Ann. §8-1305 (1978, recodified in 2001).
D.C. Mun. Regs. tit. 20, §4264 (2000).

j. **Florida***

Fla. Stat. Ann. §403.704 (1974).
Fla. Admin. Code Ann. r. 62-730.180 (1993).

k. **Georgia***

Ga. Code Ann. §12-8-64 (1979).
Ga. Comp. R. & Regs. 391-3-11-.10 (1994).

l. **Hawaii***

Haw. Rev. Stat. §342J-34 (1989).
Haw. Admin. Rules §11-264-119 (1994).

m. **Idaho***

Idaho Code §39-4405 (1983).
Idaho Admin. Code §58.01.05.008 (1989).
Idaho Admin. Code §58.01.06.013 (2003).
(Applies to closure of Tier III Non-Municipal Solid Waste Management Facilities.)

n. **Illinois***

415 Ill. Comp. Stat. §§5/21(m), 5/39(g) (1980).
Ill. Admin. Code tit. 35, §724.219 (1987).

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o. **Indiana***

Ind. Code §§13-22-2-6, -2-7, -3-3, -3-6 (1981).
329 Ind. Admin. Code 3.1-9-1 (1992).

p. **Iowa**

Iowa Code Ann. §455B.481 (1987). (1989, rescinded 2012).
Iowa Admin. Code r. 567-141.5(455B) (1989).

Under rescinded code section, certification of closure had to be performed by the owner or operator and by an independent professional land surveyor registered in Iowa.

Preparation and certification of the required survey plat had to be performed by an independent professional land surveyor registered in Iowa.

As of March 2013, Iowa has not re-adopted 40 C.F.R. Part 264. EPA Region 7 is currently administering the RCRA Part C program in Iowa.

q. **Kansas***

Kan. Stat. Ann. §65-3431 (1981).
Kan. Admin. Regs. §28-31-8(c) (1982).

r. **Kentucky***

Ky. Rev. Stat. Ann. §224.46-580(17) (1968).
401 Ky. Admin. Regs. §34:070(10)(2) (1980).

s. **Louisiana***

La. Rev. Stat. Ann. §30:2180 (1979).
La. Admin. Code tit. 33, Part V, §3525 (1979).
La. Admin. Code tit. 33, Part V, §4393 (1984).
La. Rev. Stat. Ann. §30:2286(D) (1995).

t. **Maine***

Me. Rev. Stat. Ann. tit. 38, §1304 (1973), §1319-S (1981).
Code of Maine Rules, Dep't of Envtl. Protection, Standards for Hazardous Waste Facilities, 06-096, ch. 854, §6(C)(15) (1994).
Code of Maine Rules, Dep't of Envtl. Protection, 06-096, ch. 695 §5(D).

u. **Maryland***

Md. Code Ann., Envir. §7-208 (1982).
Md. Code Regs. 26.13.05.07(I) (1981).

v. **Massachusetts***

Mass. Gen. Laws ch. 21C, §4 (1979).
Mass. Regs. Code tit. 310, §30.594 (1982).

w. **Michigan***

Mich. Comp. Laws Ann. §324.11107 (1994).
Mich. Admin. Code r. 299.9613 (1981).

x. **Minnesota***

Minn. Stat. Ann. §115B.16 (1983).
Minn. R. 7045.0494, .0496 (1984).

y. **Mississippi***

Miss. Code Ann. § 17-17-27(1) (1974).
Miss. Dep't of Envtl. Quality, Hazardous Waste Mgmt. Regs. pt. 264 (1987).

z. **Missouri***

Mo. Ann. Stat. §260.370 (1977).
Mo. Code Regs. tit. 10, §25-7.264(G) (1978).

Incorporates 40 C.F.R. §264.116 to .119. In addition, the owner or operator must submit a notarized statement to the state agency certifying that the owner or operator has recorded the notation.

aa. **Montana***

Mont. Code Ann. §75-10-405 (1981).
Mont. Admin.R. 17.53.801 (2001).

bb. **Nebraska***

Neb. Rev. Stat. §81-1505 (1971).
Neb. Admin. R. & Regs. tit. 128, ch. 21, §§001, 007 (1982).

cc. **Nevada***

Nev. Rev. Stat. §459.490 (1981).
Nev. Admin. Code ch. 444, §8632 (1987).

dd. **New Hampshire***

N.H. Rev. Stat. Ann. §147-A:3 (1981).
N.H. Code Admin. R. Env-Wm 708.02 (1981).

ee. **New Jersey***

N.J. Stat. Ann. §13:1E-6 (1970).
N.J. Admin. Code 7:26G-8.1 (1996).

ff. **New Mexico***

N.M. Stat. Ann. §74-4-4 (1977).
N.M. Envtl. Protection, Hazardous Waste Mgmt. Regs. tit. 20, Ch. 4, Part 1, §500 (1995).

gg. **New York***

N.Y. Envtl. Conserv. Law §27-0918 (1972, 1982).
N.Y. Comp. Codes R. & Regs. tit. 6, §373-2.7(i)(2) (1987, 1995).

hh. **North Carolina***

N.C. Gen. Stat. §130A-294 (1983).
15A N.C. Admin. Code 13A.0109(h) (1980).
N.C. Gen. Stat. §143-215.85A (1997).

ii. **North Dakota***

N.D. Cent. Code §23-20.3-03 (1981).
N.D. Admin. Code §33-24-05-68 (1984).

jj. **Ohio***

Ohio Rev. Code Ann. §3734.12(D)(8) (1967).
Ohio Admin. Code 3745-55-19 (1983).

kk. **Oklahoma***

Okla. Stat. Ann. tit. 27A §2-7-105 (1976).
Okla. Admin. Code §252:515-25-36 (1993 and 1995, recodified in 2003).

ll. **Oregon***

Or. Rev. Stat. §466.015 (1971).
Or. Admin. R. 340-100-0002 (1985).
Or. Rev. Stat. §§466.360 to .375 (1985).

mm. **Pennsylvania***

35 Pa. Stat. Ann. §6018.104 (1980).
25 Pa. Code §264a.1 (1999).

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nn. **Rhode Island***

R.I. Gen. Laws §23-19.1-6 (1978).
Code of Rhode Island Rules, Dep't of Envtl. Mgmt., Hazardous Waste Mgmt., 12-030-003, §2.2(B) (1984).
R.I. Envt'l Regs. DEM OWM-HW10-01, §15.8(U) (1984).
R.I. Gen. Laws §5-20.8-1 et seq. (1992).

oo. **South Carolina***

S.C. Code Ann. §30-5-36 (1980).
S.C. Code Regs. 61-79.264.119(b) (1984).

pp. **South Dakota***

S.D. Codified Laws Ann. §34A-11-9 (1983).
S.D. Admin. R. 74:28:25:01 (1984).

qq. **Tennessee***

Tenn. Code Ann. §68-212-107 (1977).
Tenn. Comp. R. & Regs. 0400-12-01-.06 (1981, renumbered 2012).

rr. **Texas***

Tex. Health & Safety Code Ann. §361.017 (1989).
Tex. Admin. Code tit. 30, §335.152 (1986).

ss. **Utah***

Utah Code Ann. §19-6-105 (1979).
Utah Admin. Code r. 315-8-7 (1992).

tt. **Vermont***

Vt. Stat. Ann. tit. 10, §6608(d) (1977).
Code of Vt. Rules 12-032-001. §7-104 (1998).

uu. **Virginia***

Va. Code Ann. §10.1-1402 (1986).
9 Va. Code Ann. §20-80-260 (1993)
(Applies to construction/demolition/debris landfills.)
9 Va. Code Ann. §20-80-270 (1993)
(Applies to non-hazardous industrial waste landfills.)
9 Va. Code Ann. §20-80-640 (1993)
(Applies to facilities that accepted asbestos-containing materials).
9 Va. Admin. Code 20-60-315 (1999).
9 Va. Admin. Code 20-60-264 (1999).

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vv. **Washington***

Wash. Rev. Code §70.105.130 (1980).
Wash. Admin. Code §173-303-610(10) (1982).

ww. **West Virginia***

W. Va. Code §22-18-6 (1981, 1994).
W. Va. Code R. §33-20-12 (1995).
W. Va. Code Reg. §33-20-7.2 (1995).

xx. **Wisconsin***

Wis. Stat. Ann. §291.05(6) (1977).
Wis. Admin. Code §NR 664.0119 (2006).

yy. **Wyoming***

Wyo. Stat. §35-11-503 (1973).
Wyo. Dep't of Envtl. Quality, Hazardous Waste Mgmt. Rules and Regs., Ch. 10, §7(j) (1995).

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*State hazardous waste program has been granted final authorization by EPA. Balance of states listed alphabetically also have notification provisions identical to the federal requirements, but their entire hazardous waste programs have not received final EPA authorization.

Dates next to statutory references indicate initial dates of enactment.

Dates next to regulation references indicate effective dates of the initial regulations.

99 Wood Avenue South, Woodbridge, NJ 07095 | 732.549.5600 / 75 Livingston Avenue, Roseland, NJ 07068 | 973.535.1600