

PSTIF

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Subject: When and How to Use a Restrictive Covenant

Latest Leads on Missouri Tank Site Cleanups...

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LATEST LEADS

ON MISSOURI TANK SITE CLEANUPS

A newsletter for environmental professionals to keep you posted on developments of interest

When and How to Use a Restrictive Covenant

It's been two years since the DNR and PSTIF re-established clear guidelines on how to use a restrictive covenant as part of a corrective action plan for a petroleum tank release. A template and sample restrictions are available at http://www.pstif.org/apps/sample_deed_restriction_9513.pdf

Here are some tips for using this technique efficiently and effectively:

- Obtain agreement from the property owner *before* proposing a restrictive covenant;
- Clearly explain in your corrective action plan *what* exposures *on what properties* (or portions of properties) you intend to mitigate with one or more restrictive covenants and ask DNR to *approve your corrective action plan*;
- After DNR approves your CAP, enlist an attorney (or

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QUESTIONS?

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have your client enlist an attorney) to use one of the templates available on the PSTIF or DNR websites to prepare the covenant;

- Rely on the attorney to insert the property owner's name and legal description of the property or portion of the property, as appropriate;
- Take responsibility for drafting the actual restriction(s) and providing it to the attorney for insertion in the document;
- Submit a complete and final version of the restrictive covenant(s), *before filing with the county*, as part of your corrective action report and request for NFA.

www.pstif.org

CONTACT

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In this manner, you can avoid wasting time and paperwork corresponding with DNR about a "draft covenant," and DNR can respond to your corrective action report by indicating whether they concur with your conclusion that all risks have been adequately mitigated, including any concerns or questions they may have about the covenant(s).

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