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Restrictive Covenants/Underground Storage Tanks: ASTSWMO Workshop Presentation Addressing State Funded Michigan LUST Closures

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Mr. Kevin Schrems of the Michigan Department of Environmental Quality undertook a presentation at an Association of State and Territorial Solid Waste Management Officials ("ASTSWMO") workshop titled *State Funded LUST Closures in Michigan Using Restrictive Covenants* ("presentation").

The presentation was undertaken at an ASTSWMO workshop addressing LUST and state fund-financial responsibility held in late spring in Pittsburg, Pennsylvania.

Mr. Schrems' presentation addressed:

- Michigan's leaking underground storage tank program
- Institutional controls available for closure
- Triage Program
- Case studies

As an aside, a number of federal and state programs (including the remediation of UST petroleum releases) began using risk-based corrective action remediation standards a number of years ago that tailor cleanup levels according to site-specific factors. The various programs often take into account factors such as to what extent the site is accessible and/or the future land use. Often, superimposed on these various procedures are site-specific analyses as a requirement that the resulting standards be protective of human health and environment.

An agency's approval of site conditions will actually be based on a combination of acceptability under applicable screening levels and/or whether property uses are compatible with these conditions. Acceptability of a restrictive use may include the incorporation of enforceable institutional controls (i.e., deed restrictions, restrictive covenants or easements). Controls such as barriers (pavement in certain area, etc.) may also be specified.

Mr. Schrems' description of Michigan's leaking underground storage tank program noted two typical types of cleanups such as:

- Responsible party cleanups
- State-funded actions

Also noted are the regulatory requirements for owners/operators of USTs suffering a release to utilize consultants (meeting statutory qualifications) to address the releases and the auditing of selected assessment/closure reports.

A significant part of the presentation addressed institutional controls and the identification of options under Michigan Part 213 which include:

- Notice of corrective action
- Restrictive covenant
- Alternate mechanisms
- Ordinance that prohibits the use of ground water
- Local unit of government must notify the Department 30 days before adopting a modification or lapsing, or revocation
- Ordinance must be filed with the Registrar of Deeds as an ordinance affecting multiple properties

The statutory requirements for restrictive covenants were discussed such as:

- Survey and property description
- Restrict activities
- Grant access to the Michigan Department of Environmental Quality
- Allow state to enforce restrictions
- Describe general uses of property

A model template is noted to be available (but not required).

The presentation also addressed Michigan's LUST Triage Program whose objective is stated to be the improvement and knowledge about leaking underground storage tank sites across Michigan. The objectives of the Program include a better understanding of risks/potential risks and prioritization of orphan sites. Triage Program results in 2013-2015 are discussed and case examples are cited.

A copy of the presentation can be [downloaded here](#).