

Due Care in Practice: Compliance Insights from EGLE Pilot Projects

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Michigan Department of Environment,
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What is due care?

- ❖ Legal obligation of owners and operators of property with known contamination on site
 - *NREPA Sections 20107a and 21304c*
 - *Due Care Obligations Guide (2/2026)*
- ❖ Prevent exacerbation
- ❖ Protect public health and safety
 - Prevent human exposure and fire/explosion hazards
 - Notify EGLE and others
- ❖ Cooperate with response actions
 - Provide reasonable access
 - Comply with restrictions

Identifying exposure risks



A complete **exposure pathway** consists of:

- ❖ Source
- ❖ Media and transport mechanism
- ❖ Point of exposure
- ❖ Route of exposure
- ❖ Receptor (human)

Addressing exposures

Remediation

Remove or destroy
the contaminants

- ❖ Excavation
- ❖ Treatment

Engineering Controls (ECs)

Mitigate exposure
using physical
methods

- ❖ Vapor Mitigation Systems
- ❖ Direct Contact Cover

Institutional Controls (ICs)

Reduce risk using
rules and practices

- ❖ Land and Resource Use
Restrictions (LRURs)

Types of Due Care Protections

and how to keep them working

Vapor Mitigation Systems

- ❖ Passive barriers use polymer liners to limit the entry of vapors into a building



Vapor Mitigation Systems

- ❖ Active systems use
 - fans and piping to vent sub-slab vapors outdoors, or
 - air exchanges to prevent vapor accumulation



Vapor Mitigation Systems

❖ Potential failure modes:

- Incomplete or inadequate commissioning: system not achieving adequate vacuum
- Penetration of slab/liner materials
- Mechanical failure
- Unit turned off (noise complaints, power outages, tenant concerns with utility bills)
- Lack of ongoing OM&M to replace worn out components

Direct Contact Cover

- ❖ Direct contact exposure barriers installed to prevent contact with contaminated soil
 - Clean fill over demarcation fabric
 - Buildings, pavements



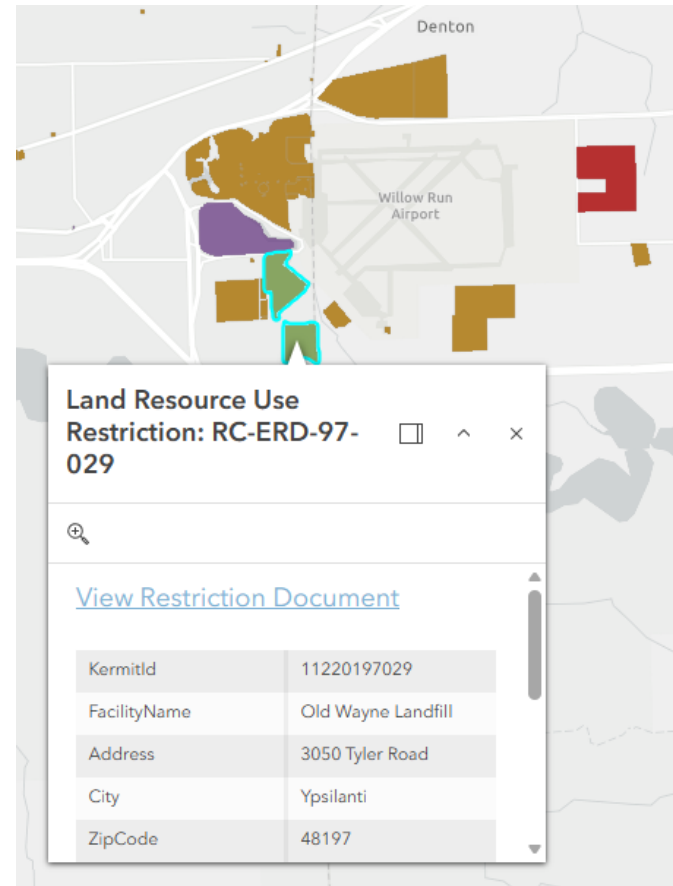
Direct Contact Cover

❖ Potential failure modes:

- Imported fill not sampled to verify it's clean
- Erosion/surface wear/dead vegetation
- Structural disintegration (demarcation fabric life)
- Barrier penetration (landscaping contractor or tenant)
- Utility trenching for repairs or new installations
- Trees/vegetation overgrowth causes penetration or degradation
- Lack of ongoing OM&M to identify and repair damage

Compliance with Restrictions

- ❖ **Restrictive covenants** are legal instruments used to impose land use or resource restrictions
- ❖ Placed with consent of property owner
- ❖ Recorded with the county register of deeds
- ❖ “Runs with the land”
- ❖ View in RIDE Mapper >>



Restrictive Covenants

❖ Purpose:

- Inform people about contamination on the property
- Facilitates long-term compliance with restrictions that protect public health
- Assigns responsibility for maintenance of engineering controls over time



**Restrictive
Covenants
only work if
property owners
and operators
are aware of
them!**

Current status in Michigan

- ❖ Over 3,957 Recorded Restrictive Covenants
 - Part 201: 778
 - Part 213: 2,988
 - Other: 191
- ❖ Unknown number of engineering controls
- ❖ EGLE has no formal long-term monitoring program for ECs or ICs
- ❖ Owners/operators must document compliance upon request

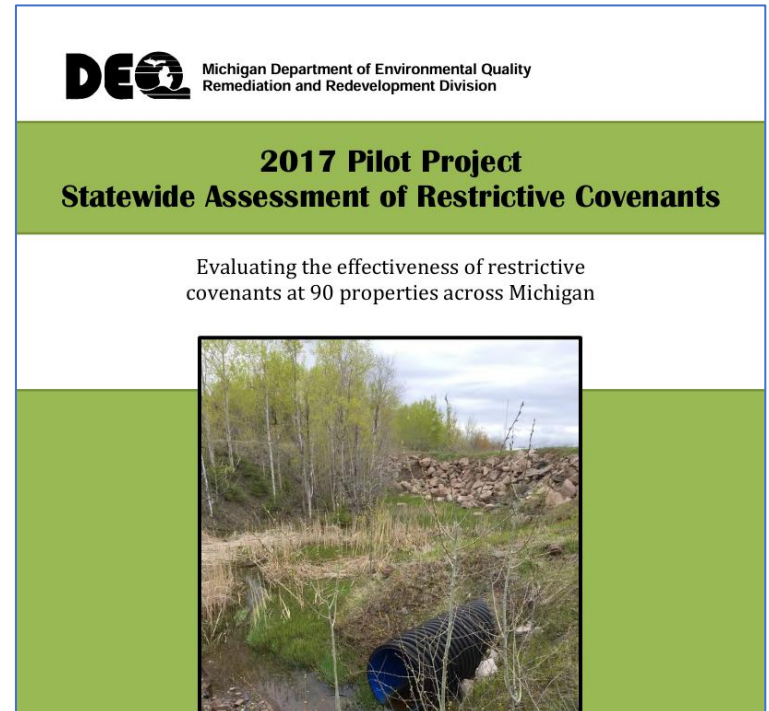
**To protect public health and safety,
it's important that ECs work and ICs are followed!**

EGLE Pilot Projects

- LRUR Assessment Pilot Projects
- Due Care (Engineering Controls) Inspection Pilot

LRUR Assessment Pilot Projects

- ❖ EPA 128a Grant awarded annually since 2017
 - Requires EGLE to track effectiveness of LRURs
- ❖ Objectives:
 - Were RCs correctly filed?
 - If properties changed hands, were conditions of the RCs communicated to new owners or lessees?
 - Are conditions of the RCs being met?



LRUR Assessment Pilot Projects

2017: 90 Random Sites

2018: 45 State-Funded Sites

2019: Groundwater Ordinances in 32 Counties

2020: 42 Oakland County Sites

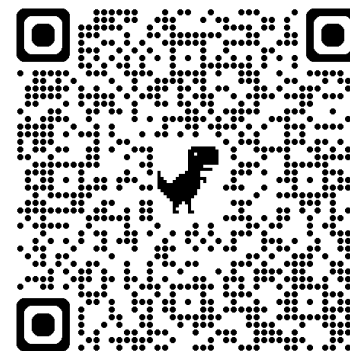
2021: 40 Kent & Genesee County Sites

2022: 47 Washtenaw County & Gaylord District Sites

2023: 82 Kalamazoo District Part 201 Sites

2024: 94 Kalamazoo District Part 213 Sites

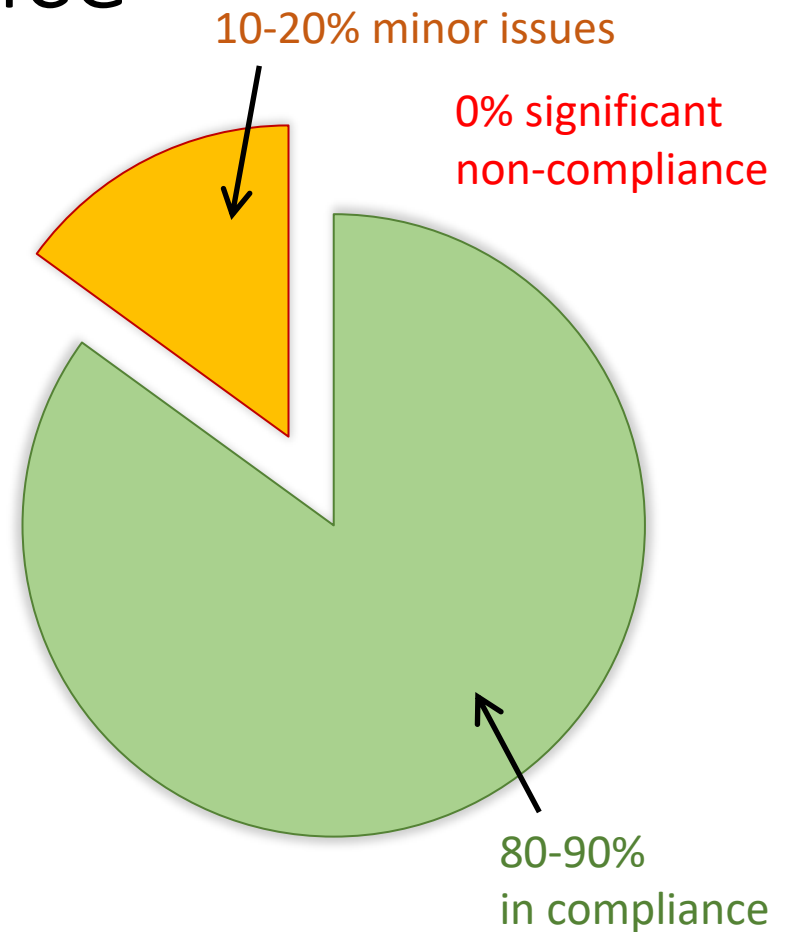
2026: ~35 Landfill/Dump Sites



See reports under
“Other Information
and Resources”

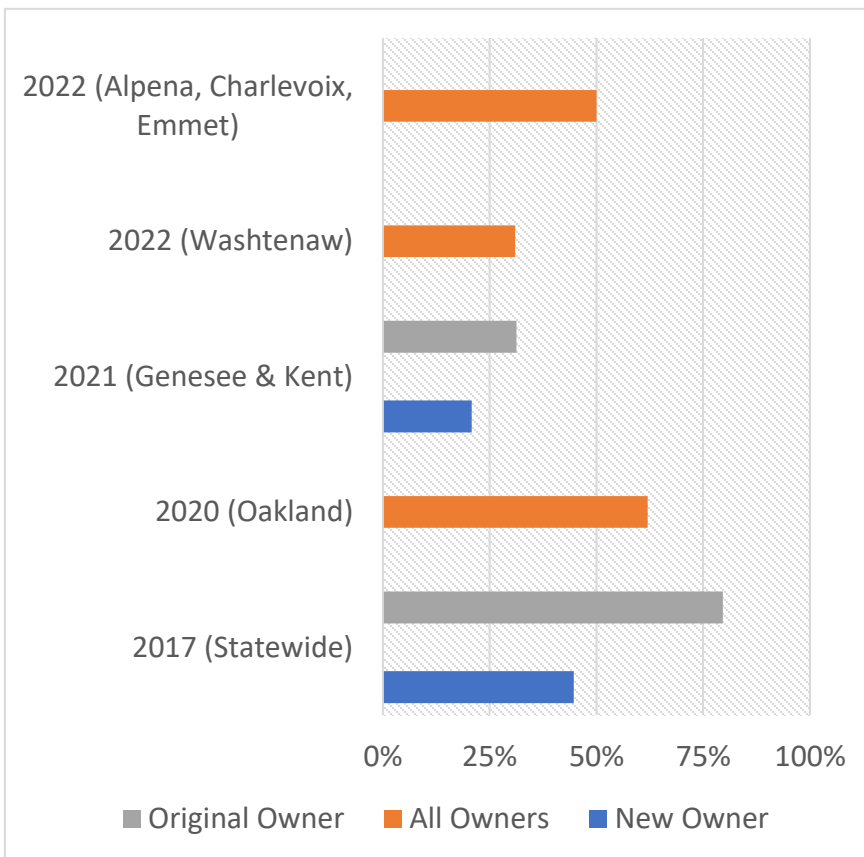
Findings: Compliance

- ❖ Consistent results across multiple study years
- ❖ Successful redevelopment can occur with RCs in place
- ❖ **RCs are generally protective over time**



Findings: Awareness

- ❖ 50% of sites had a new owner (Oakland County, 2020)
- ❖ Minority of new owners conducted a BEA
 - 50% in Genesee & Kent, 2021
 - 31% in Washtenaw, 2022
- ❖ 72% local government staff awareness of groundwater ordinances
- ❖ **Greatest risk to long-term protectiveness**



Findings: Response Rate

- ❖ ~25% response rate to self-audit requests
- ❖ Self-audit method is efficient
- ❖ Receiving self-audit request from EGLE increased awareness
- ❖ Hybrid model is most scalable long-term monitoring approach
 - Self-audits
 - Staff outreach
- ❖ RIDE database has a LRUR module in development



Due Care (EC) Inspection Pilot

- ❖ \$25,000 contract awarded to AKT Peerless in 2024
 - Identify candidate sites and obtain access
 - Visit sites, review documentation, and inspect systems
 - Provide compliance assistance as needed
- ❖ Objectives:
 - **Are ECs functioning as designed?**
 - **Are ECs still appropriate for conditions?**
 - **Are owners/operators able to maintain ECs?**

Progress

- ❖ 4 site visits completed to date (paused in 2025)
- ❖ Site selection based on:
 - Mitigation of VIAP or Direct Contact pathways
 - Installations 5+ years old
 - No ongoing response actions / EGLE not currently engaged
- ❖ Using the following data sources:
 - DDCCs (optional)
 - Brownfield-funded sites
 - RIDE keyword search
- ❖ **Goal: Clarify next steps for owner/operator**

We are happy to help!
Contact me to
nominate your site!

Common Goals

❖ External:

- Educate owners, operators, and the public about due care obligations
- Improve compliance with due care obligations

❖ Internal:

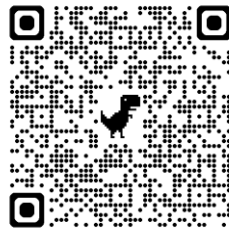
- Meet EPA funding requirements
- Identify sites that require continued staff attention
- Establish foundations of a monitoring program

Check Your Compliance

Self-evaluation of due care compliance

Resources

❖ [Due Care Obligations Guide](#)



❖ [Restrictive Covenant Guide](#)



❖ [EGLE's Due Care webpage](#)



❖ Join the EC Pilot

❖ Compliance Checklist
(under development)



Preview of the Compliance Checklist

Due Care Self-Audit Checklist

Review Date: _____

*This checklist is provided by EGLE's Remediation and Redevelopment Division as a **compliance-assistance tool** to help property owners and operators review facility/site conditions and understand due care obligations.*

*Completion of this form is **not** proof of compliance with environmental statutes, rules, or other continuing obligations. Owners and operators are responsible for meeting all applicable due care requirements and for maintaining documentation that demonstrates compliance, regardless of the results of this checklist.*

*If desired, a formal compliance determination may be obtained from EGLE by submitting a **Documentation of Due Care Compliance (DDCC)** report.*

- Facility/Site Information
- Exposure Pathway Evaluation
- Notices
- VIAP Mitigation
- Direct Contact Pathway Mitigation
- Continuing Obligations

Questions?



For technical assistance,
please contact EGLE-RRD:

- ❖ Specialist
 - Martha Thompson
- ❖ Technical Support Section
 - Ashley Lesser
 - Nick Swiger
- ❖ District Office Staff
 - Look up PM in RIDE