

COUNTY OF OTTAWA

ORDINANCE 09-2

**CONTAMINATED GROUND USE ORDINANCE
of
OTTAWA COUNTY**

Article 1--AUTHORITY

Michigan counties have been delegated the right to adopt ordinances on topics over which they have jurisdiction. See MCL §46.11 et seq. MCL §333.2441 authorizes a County to enact regulations that are at least as stringent as state law on Health related issues. MCL §333.2451 authorizes a County to issue an order upon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department, specifying actions to be taken to avoid, correct, or remove the imminent danger. MCL §333.2455 empowers a County to order a property owner to "avoid, correct, or remove at the owner's expense" a condition which the "local health officer or director reasonably believes to be a nuisance, unsanitary condition or cause of illness."

Article 2--PURPOSE

The purpose of this Ordinance is to fulfill the above-described responsibilities of Ottawa County and to protect the public health, safety, and welfare through the imposition of restrictions on the use of contaminated ground within the County.

Article 3--DEFINITIONS

In addition to the adoption of the terms shall have the following terms shall have the meanings described in this Article:

- 3.1 **"Affected Area"** means an area within the County that the Board declares to contain contaminated ground and which has been the subject of an MDEQ approved environmental closure or clean up and can benefit from the Institutional Controls of this Ordinance.
- 3.2 **"Board"** means the Ottawa County Board of Commissioners.
- 3.3 **"Contaminated Ground"** means the soils and surface in which there is present, or may be present, materials that may exceed the residential clean up criteria established by the MDEQ by rule or operational memoranda pursuant to Part 201

of the Michigan Natural Resources and Environmental Protection Act, or its successors, being 1994 PA 451, as amended.

- 3.4 **“County”** means Ottawa County.
- 3.5 **“Environmental Closure or Clean-up Facility or Fixture”** means any improvement located within an Affected Area that is involved in the monitoring, closure or clean up of Contaminated Ground through an MDEQ approved closure, clean-up or monitoring plan, including but not limited to landfill or facility vents or caps; leachate or groundwater collection or treatment piping, equipment, buildings or other systems; and groundwater or gas monitoring wells, piping, equipment, buildings or other systems
- 3.6 **“Institutional Controls”** means the measures in this Ordinance to avoid, correct, or remove a condition that could directly or indirectly place individuals in the area at risk of unsanitary condition or illness due to interference with the remedy components of an MDEQ approved environmental closure or clean-up plan.
- 3.7 **“MDEQ”** means the Michigan Department of Environmental Quality or its successor.
- 3.8 **“Ordinance”** means this Contaminated Ground Use Ordinance.
- 3.9 **“Person”** means any individual or legal body corporate.
- 3.10 **“Sheriff”** means the elected Sheriff of the County, including any of his or her authorized and sworn deputies.

Article 4—PROHIBITION AND RESTRICTIONS

Except as provided in Article 6, no person shall violate and each person shall comply with the following restrictions within any Affected Area:

- 4.1 ***Physical access to restricted space.*** Except as provided in Article 6, no person shall enter or cause a physical object to enter a facility, area, zone or other space within an Affected Area that has been marked as a restricted Environmental Closure or Clean-up Fixture or Facility by signage, fencing or other access controls.
- 4.2 ***Interference with remedial facilities or fixtures.*** Except as provided in Article 6, no person shall access, tamper with, damage, adjust, alter, or otherwise interfere with the operation or capacity of any Environmental Closure or Clean-up Fixture or Facility within an Affected Area.

Article 5—DESIGNATION OF AFFECTED AREAS

The areas identified in Exhibit A, attached hereto, are found to be Affected Areas as of the date of the enactment of this Ordinance. By resolution, the Board may designate additional areas of the County as Affected Areas if it finds that there is a Contaminated Groundwater plume underlying or upgradient that justifies, requires, or warrants an application of the Prohibitions of this Ordinance. The Board may delist any Affected Area upon a resolution finding that Affected Area no longer contains a Contaminated Groundwater plume that justifies, requires or warrants an application of the Prohibition of this Ordinance. The County's Environmental Health Officer shall keep and maintain a list of all current, Affected Areas, which shall be subject to this Ordinance, and shall periodically file that list with the Ottawa County Clerk, who shall provide a copy of such list with every copy of the Ordinance that is disseminated.

Article 6—EXCEPTIONS

A person shall not held in violation of the prohibitions of Article 4 under one or more of the following circumstances:

- 6.1 *Authorized Access for Inspection, Maintenance, Repair or Improvement.* An authorized agent or contractor of the owner or operator of an Environmental Closure or Clean-up Fixture or Facility within an Affected Area property or an authorized agent of the MDEQ, United States EPA or Ottawa County Health Department acting in their official capacities may access an Environmental Closure or Clean-up Fixture or Facility for purposes of inspection, maintenance, repair or improvement.
- 6.2 *Public Emergencies.* A police, fire, or licensed contractor may access an Environmental Closure or Clean-up Fixture or Facility in an Affected Area in the event of a public emergency, but only if for the limited purpose of securing, stabilizing or protecting the Fixture or Facility and/or public health and only if the Environmental Health Officer so authorizes either before, during or immediately after the access and written notice is provided to the MDEQ.

Article 7--ENFORCEMENT & REMEDIES

- 7.1 *Administration.* The County's Environmental Health Officer shall make the determinations required under this Ordinance, shall enforce the provisions of the Ordinance, and may request assistance from the Sheriff's Department and Prosecutor.
- 7.2 *Appearance Ticket.* If the County's Environmental Health Officer or Sheriff

determines that there is probable cause that this Ordinance has been violated, he or she is authorized to issue and serve an Appearance Ticket upon a person or entity violating the Plan or this Ordinance. The Appearance Ticket shall direct the recipient to appear in the appropriate District Court within Ottawa County on a specified date to respond to the alleged violation.

7.3 *Civil and Criminal Penalties.* Enforcement may be accomplished by civil action and/or criminal prosecution, along with any other remedies provided by law. Any responsible party shall be guilty of a misdemeanor if proven to have violated the provisions of this Ordinance and may, upon conviction, be punished by imprisonment in the County jail for not more than ninety (90) days, or by fine of not more than five hundred (\$500) and the cost of prosecution, or by a fine and imprisonment at the discretion of the Court. The imposition of any sentence shall not exempt the Responsible Party from compliance with the requirements of this Ordinance nor from liability for civil penalties or other civil proceedings to enforce this Ordinance or abate the violation. Continued violation of this Ordinance is hereby declared a nuisance per se.

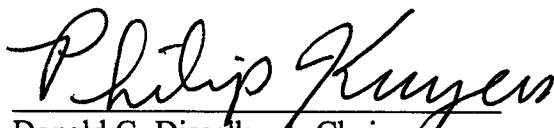
7.4 *Register of Deeds and County Clerk.* A copy of this Ordinance shall be filed with the register of deeds as an ordinance affecting multiple properties, and a copy of this Ordinance shall be on file with the County Clerk.

Article 8--SEVERABILITY AND MODIFICATION

The Ordinance and the various articles, sections and clauses thereof, are hereby declared to be severable. In any part, sentence, paragraph, section, clause or work is adjudged unconstitutional or invalid for any reason, by any Court of competent jurisdiction, such invalidity shall not affect the remaining portions of applications of this Ordinance which can be given effect with out the invalid portion or application, provided such remaining portions are not determined by the Court to be inoperable. The MDEQ, or its successor, shall be notified at lest thirty (30) days prior to modification or rescission of this Ordinance.

ORDINANCE ADOPTED: January 27, 2009

ORDINANCE EFFECTIVE: March 1, 2009


Donald G. Disselkoen, Chairperson,
Ottawa County Board of Commissioners



Daniel C. Krueger, Ottawa County Clerk

EXHIBIT A

(1) PARK TOWNSHIP SITE

Generally, this Site is bordered by Riley Street to the North, 160th Avenue to the East, Lakewood Boulevard to the South and Lake Michigan to the West, and includes the Southwest Landfill and extends to the vertical extent of the upper aquifer, which is between 10 and 100 feet. See Map attached hereto as A-1.

The particular area subject to the Ordinance may be described as: "commencing from a point approximately 900 feet south of Riley Street and 700 feet west of 160th Avenue, thence south 1,800 feet, thence southwest 1,200 feet, thence southwesterly 2,500 feet to a point on James Street Approximately 2,000 feet east of 168th Avenue, thence Southwest 2,200 feet to a point on 168th Avenue approximately 1,100 feet south of James Street, thence westerly 2,700 feet to a point on Lakeshore Drive approximately 1,4000 feet south of James Street, thence west 1,000 feet to Lake Michigan, thence north 3,400 feet, thence east 1,000 feet to a point on Lakeshore Drive approximately 1,00 feet north of James Street, thence northeast 2,800 feet to a point on 168th Avenue approximately 2,600 feet north of James Street, thence northeast 3,2000 feet, thence east 1,900 feet to the point of the beginning."