Jeanne Schlaufman
DEQ, Remediation and Redevelopment Division
586-3823, schlaufmanj1@michigan.gov

Due Care for Owners & Operators of Contaminated Property

Due Care

- Allow for the safe use of contaminated property while protecting the public health, safety, and welfare
- Applies to all current owners and operators of "contaminated property"
  - Contaminated property is property that has contamination above the concentrations protective for residential use
- Liable and non-liable owners and operators

Due Care Obligations:

- Section 20107a(1) and Section 21304c(1)
  a. Prevent exacerbation of existing contamination
  b. Prevent or mitigate unacceptable exposures to the existing contamination
  c. Take reasonable precautions against the foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions
- Section 20107a(1) and Section 21304c(1) cont:
  d. Provide reasonable cooperation, assistance, and access to persons authorized to conduct response activities
  e. Comply with land or resource use restrictions relied on in connection with the response activities
  f. Do not impede the effectiveness or integrity of any land or resource use restrictions

Due Care Notifications

- Notice of Migration
- Notice of Abandoned or Discarded Containers
- Notice to Fire Department if have flammable or explosive conditions
- Notice to easement holders if conditions would cause unacceptable exposure to person working in easement

Limited Exemptions

- Local Unit of Government (LUG)
  - LUG acquired title involuntarily or by virtue of its governmental function
  - property was transferred to LUG from the state or LUG that is not liable
  - LUG holds easement or utility franchise for transportation, utility or public right-of-way
  - LUG isn't liable and leases the property to a non-liable party
- Owner/Operator of property where the only contaminant source is off-site and migrating onto the property
- Owner/Operator holding an easement or utility franchise for the purpose of providing goods and services, or for access
- Owner/Operator of severed subsurface mineral rights
- From requirements a, b, and c ONLY

LUG Exception to Exemption

- Express Public Purpose
  - State or LUG invites public onto the property
    - Parks, municipal office buildings, DPW buildings, schools, etc.
    - Not property acquired for redevelopment purposes and public is not invited onto the property
  - All due care obligations apply (a-f)

Prevent Unacceptable Exposures

- Evaluate for the human exposure pathways that are occurring
  - Groundwater
    - Drinking water,
    - Vaporization to indoor air or ambient air,
    - Groundwater surface water interface ONLY if there is a human exposure
  - Soil
    - Direct contact with soil,
    - Vaporization to indoor air or ambient air,
    - Inhalation of soil particulates
    - Protection of drinking water or other complete groundwater pathways

Prevent Unacceptable Exposures

- Evaluate existing data
  - Determine if exposure exists
  - Determine if additional data is needed to evaluate risk
  - Determine if presumptive measures can/will be used instead of collecting additional data
- Do not need investigation to define entire extent of contamination
  - only the investigation needed to evaluate pathways

  and determine if unacceptable human exposures exists

Prevent Unacceptable Exposures

- Are Response Activities Needed?
  - Are there presumptive measures already in place?
    - Protective barrier over contaminated soils
  - What mitigation or preventative measures are needed?
    - Provide alternative water supply
    - Install protective barriers
  - Only applicable while this person owns/operates
    - Do not need deed restrictions, permanent remedies
- Implementation of Response Activities

On-Going Obligations

- Monitoring and Inspections
  - Monitor effectiveness and integrity of any measures that prevent or mitigate an unacceptable exposure
  - May be visual, collection of data, record of system operating, etc.
  - Frequency is as often as needed depending on the severity of the risk, reliability of the measure
- Re-evaluate as property use changes or conditions change

Documentation of Due Care

- Documentation of Implemented Response Activities
  - Are on-going operation, maintenance, monitoring and inspection needed?
  - What mitigation or preventative measures are needed?
    - Provide alternative water supply
    - Install protective barriers
  - Only applicable while this person owns/operates
    - Do not need deed restrictions, permanent remedies
- Implementation of Response Activities

DDCC

- Documentation of Due Care Compliance (DDCC)
  - Evaluation of obligations
  - Evaluation of exposure pathways
  - Determination of unacceptable risk
  - Determination of needed actions
  - Implementation of necessary actions, including notifications
  - Effectiveness of the actions

DEQ Review?

- Documentation Not Required to be Submitted
  - Required to have available within 8 months of becoming the owner or operator
- DEQ Review is Not Required
  - Must provide to DEQ if requested
- DEQ Review can be Requested
  - Sections 20114g and 21323n allow a person to request DEQ review of their DDCC

DEQ Review Timeframes

- 45 business days
  - From the date of submittal of sufficient information
  - May be less dependent on district and staff workload
- DEQ Response Options
  - Approve
  - Approve with Conditions
  - Deny

DEQ's Due Care web page: www.michigan.gov/bea