

Road Right-of-Way Restrictions for Contaminated Areas

Kevin Schrems
DEQ, Remediation and Redevelopment Division
517-284-6779
huden@michigan.gov

Road Map

- Institutional Controls 101
- Historical Options for ROWs
- Currently Available Option
- Collaboration and Outreach Efforts
- Senate Bill 717
- MS4 Compliance
- Examples

Restricted Closure - Generally

- Concentrations of hazardous substances remain above generic residential criteria
- Land or resource use restriction (LRUR) may be used to address the remaining risk if:
 - LRUR is protective, and
 - Persons who own and use property have knowledge

LRURs: What and Why?

- Place activity and use limitations on contaminated property or resources
 - Reduce or restrict exposure
 - Assure the effectiveness and integrity of containment or exposure barriers
 - Assure the effectiveness and integrity of response activities
 - Provide for access

Understand the Difference: ECs vs. LRURs

- **Engineering controls (Physical)**
 - vapor barriers, physical or hydraulic containment, asphalt/concrete, vapor mitigation fans, etc.
- LRURs (Paper / Legal)
 - “Institutional Controls” (EPA)
 - Protects integrity of EC or minimize potential for human exposure to contamination

Road Right-of-Way Contamination

Institutional Control History

- MDOT
 - 5-year construction permit
 - Notice of Environmental Conditions
 - Environmental License Agreement
- Local Roads
 - Road dedication letter
 - RRD Op Memo 6
 - Drinking water pathway only

DEQ alternate institutional control form

Form Overview

- Restrictions are not practical in ROW
- Addresses all exposure pathways
- Informs all affected property interests
- Provides information to ensure management of contamination is managed and exposure risks
 - When planning and performing construction projects, including worker safety and exposure control
 - Fosters completion of remedial/corrective actions

Status of Requests and Executed Forms

- LUGs that have executed the AIC

Collaboration/Outreach

- Ongoing collaboration
 - In person meetings, phone calls, emails
- Early 2015 Surveys
 - MPA members and consultants
 - Results – 6 responses/multiple LUGs
- LUGs
 - Survey posted on MML Inside 208 Blog
 - Results – 2 entities responded

Continued Collaboration and Outreach for LUGs

- Other educational materials:
 - MDOT License Agreements process
 - RRD's LUG outreach program
 - Help LUGs better understand Michigan's clean-up laws.

Senate Bill 717

- Introduced by Senator Casperson on 1/21/2016
- Passed by Senate on 4/12/2016
- Introduced in House and referred to Committee on Natural Resources
- Outlines two methods to leave contamination in place in a public highway
 - State (MDOT)
 - Local Units of Government (LUG)

Municipal Separate Storm Sewer Systems

- MDOT
 - Environmental license agreement w/conditions
 - Submit Closure Report within 1 year
 - DEQ determination that release is in compliance with GSI criteria
 - DEQ determination that residual contamination will likely attenuate
 - Acceptable plan to eliminate discharge
 - Environmental License Agreement application process
 - http://www.michigan.gov/mdot/0,4616,7-151-9623_26662_26679_27267_48606-306445--_00.html
 - Storm water assessment
 - http://www.michigan.gov/documents/mdot/stormwater_assessment_section_of_TSR_7-16-14_468514_7.pdf

Local Executed ROW AIC

- City of Cadillac - Former Total Station #9095
 - Agreement between MRP Properties and Cadillac

Part 213 Executed ROW AIC

- City of Adrian - Adrian Shell Station

One Final Note

- Agreement between Walters-Dimmick Petroleum, Inc. (WDP) and City of Adrian
 - Limited to Area of AIC
 - WDP will reimburse City for reasonable costs
 - City will notify WDP no less than 90 days
 - WDP has no responsibility to contamination not inferred to have originated from WDP
 - Contamination below RBSLs = agreement terminates

Questions?