

Contaminated Property Release Closure Options

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Overview of Presentation

- ∅ Getting to Closure
- ∅ What is Restricted Closure
- ∅ Land or Resource Use Restriction Options
 - | Recent Amendments to Part 201
 - | Part 213 requirements and options
- ∅ Resources

Pathway to Closure

- ∅ The environmental remediation program authorizes the DEQ to set cleanup standards
 - | Consider how the contaminated land will be used in the future
- ∅ Michigan's cleanup standards are risk-based
 - | Reflect potential for human health or ecological risks from exposure to potentially harmful substances at contamination sites.
- ∅ If you are cleaning up a facility, you can choose an appropriate category of cleanup standard based on proposed land use.

Determine Cleanup Category Goal

Ø Unrestricted Residential

- | Acceptable for any use without restrictions
- | Contamination is below all residential criteria (no longer a facility or site)

Ø Restricted Residential

- | Resource use restrictions needed (e.g. prohibit installation of groundwater wells)

Ø Restricted Non-Residential

- | Restrict uses to those consistent with non-residential exposure assumptions
- | May also have other land use or resource use restrictions

Ø Site-Specific

- | Allows a specific use or relies on site-specific criteria
- | May have restrictions

Review and Document Zoning

- Ø Understanding current and future land uses is important when selecting protective remedial options
- Ø Current zoning of the property must be consistent with the categorical criteria being proposed
- Ø LUGs have authority to zone property, including zoning existing industrial/commercial property to residential property
- Ø Be aware of how zoning can affect a cleanup



Restricted Closure - Generally

- ∅ When concentrations of hazardous substances remain at a property above generic residential criteria, a land or resource use restriction (LRUR) may be used to address the remaining risk if:
 - | LRUR is reliable, enforceable, and protective, and
 - | Persons who own and use property are aware of and comply with restrictions contained in the LRUR to prevent unacceptable exposures.
- ∅ Restricted (limited) categories exist for circumstances that require restrictions on the use of property, such as
 - | Not allowing residential or institutional uses
 - | Protect integrity of remedy, such as exposure barriers (i.e., paving)
 - | Prohibitions on resource use (i.e., don't drink the groundwater) to keep people from being exposed to contamination now and in the future.

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

LRURs: What and Why?

- ∅ Manage risk by placing activity and use limitations on contaminated property/resources
 - | Reduce or restrict exposure to hazardous substances
 - | Assure the effectiveness and integrity of containment or exposure barriers
 - | Assure the effectiveness and integrity of response activities undertaken at the property
 - | Provide for access



Recent Amendments to Part 201

- ∅ Public Act 542 of 2014
 - | Effective January 15, 2015
- ∅ Consolidated Sections 20114c and 20114d into Section 20121
- ∅ Section 20121 now identifies other LRURs that were not previously specified
- ∅ Removes requirement to demonstrate imposing RC is impractical to select another LRUR

Land or Resource Use Restrictions

Expressed Options Under Part 201

- Ø Restrictive Covenant
- Ø Conservation Easement*
- Ø Court Order or Judicially Approved Settlement*

* Must meet same requirements of restrictive covenant

Ø Institutional Control

- | Local Ordinance or State Law

Ø Alternative Instrument

- | licenses and license agreements, contracts with local, state, or federal units of government, health codes and regulations, government permitting requirements

Part 201 – Restrictive Covenants

What Has Changed?

- ∅ Not required to use Department model
- ∅ Removed 21 day recording requirement
- ∅ Survey, scaled drawing, or another type of drawing is required only when a portion of a parcel is restricted.
 - ∅ Otherwise statute just requires a legal description.
- ∅ Summary of Activities – Can just reference a publicly accessible location to obtain information about the property
- ∅ No longer required to describe allowable uses of property, but must describe restricted uses

Part 201 – Restrictive Covenants

What Has Changed? *Continued*

- ∅ Authorized individual can sign for condominium or other commonly owned property
- ∅ Previous requirements now optional provisions
 - | Conveyance of Property Interest, Access, Enforcement of Restrictive Covenant
- ∅ RC may also contain additional provisions for:
 - | subordinating interests, obligating current and future owner to perform O&M and maintenance, limiting the RC to a specific duration or event, or including language typically in the NAI.
- ∅ Property address needed with submittal of RC to Dept.
- ∅ Memorializes certain (UECA) goals

Part 201 – Restrictive Covenants In A Nutshell

Required

- ∅ Legal description
 - ∅ Survey, scaled drawing & legal description, or other drawing if portion is restricted
 - ∅ Narrative of response activities or identification of public accessible repository
 - ∅ Description of activity and use limitations
 - ∅ Grant to department ability to enforce
 - ∅ Signature of property owner or person with express written consent
- ∅ Other provisions are optional

Department has draft model available as requested

Part 213 – Restrictive Covenants

- ∅ Statutory requirements remain unchanged
 - | Survey of the property is required
 - | RC must contain description of uses of the property
 - | Demonstration of impracticality to implement RCs is required prior to selecting an alternate mechanism
 - Senate Bill 717 would remove



Part 201 - Institutional Controls

- ∅ Local ordinances or State Laws and regulations
 - | Limit or prohibit use of contaminated groundwater
 - | Prohibit the raising of livestock
 - | Prohibit the development in certain locations, or restrict property to certain uses (Zoning Ordinance)



Part 201 - Institutional Controls

- Ø Under Part 201, a Local Ordinance must:
 - | Be published and maintained in the same manner as a zoning ordinance.
 - | Require the local unit of government to notify the department at least 30 days prior to adopting a modification to the ordinance or prior to lapsing or revocation of the ordinance.

Part 213 - Ordinance

- ∅ Under Part 213, a Local Ordinance must:
 - | Include a requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance
 - | Include a requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties

Part 201 – Alternative Instruments

- ∅ May be used with department approval, including, but not limited to:
 - | License and license agreements
 - | Contracts with local, state or federal units of government
 - | Health codes or regulations
 - | Government permitting requirements

Part 213 – Alternative Mechanisms

- ∅ Any land or resources use restriction identified under Part 201 that is not explicitly referenced in Part 213 will be considered as an alternate mechanism under Part 213, subject to approval by the department.



Resources for Locating LRURs

- ∅ County Register of Deeds Office
- ∅ Your DEQ District Office
- ∅ Michigan Department of Transportation
- ∅ County Health Department or County Road Commission
- ∅ Local Municipality's Department of Public Works or Planning Commission
- ∅ Owner/operator of contaminated property
- ∅ DEQ's Environmental Mapper
 - | <http://www.mcgi.state.mi.us/environmentalmapper/>



Planning and Implementing LRURs

- ∅ The DEQ wants to partner with you!
- ∅ LRURs should not only meet the needs of the specific site, but should meet the needs of the community
- ∅ A cooperative relationship should be established **early** between the DEQ, the entity performing response activities, and the local community



State-Wide Consistency

∅ Institutional Control Technical Assistance and Program Support Team

- | Developing guidance documents
- | Developing model documents and checklists
- | Developing a webpage for information access
- | Assist in the development of local ordinances
- | Performing outreach to local units of government and other interested groups

Coming Attraction

Local Road Right-of-Way IC



Questions?



Michigan Department of Environmental Quality

www.michigan.gov/deq
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