

	Industry	Questions Asked by Attendee	Answer/Response
2			
FEE SIMPLE TITLE OWNER QUESTIONS			
4	Consulting	Q: What is a fee simple title ownership?	<p>"Fee simple" title ownership means an interest in land which is the broadest property interest allowed by law. (Black's Law Dictionary, Third Pocket Addition, 2006)</p> <p>A person who owns fee simple title to the property is the only person who has the authority to sell or encumber the property. An example would be the owner in fee simple title granting a road right-of-way (ROW) or utility easement across the property.</p>
5	Consulting	Q: Is the "fee simple title owner" the owner of the property that is the source of ROW contamination or the owner of the ROW (i.e. the LUG)?	In most cases, the "fee simple title owner" is a single entity. A local unit of government (LUG) may own the road ROW in "fee simple title." The property upon which a road ROW was granted (an easement) to a LUG may be owned by the source property owner in "fee simple title." Depending on the nature and extent of contamination, multiple persons may own in "fee simple title" property underlying the affected road ROW. In this case, the consent of all affected property owners is required.
6	Consulting	Q: "fee simple title owner"	Please see responses provided in #4, #5, #8, #10.
7	Consulting	Q: Can you give examples of fee simple title ownership? Are these the easement holders and/or utilities?	<p>Please see responses provided in #4, #5, #8, #10.</p> <p>In the context of a road ROW, an entity or utility that has an easement across property is not a fee simple title owner.</p>
8	Consulting	Q: Re: Fee simple title ownership, I'm unclear how there can be multiple parties with full ownership.	This alternate institutional control (AIC) may be used where the road ROW crosses multiple properties that are affected by the contamination. In this instance, consent of each property owner must be obtained where contamination exceeding risk based criteria comes to be located within the road ROW.
9		Q: Not clear what a fee simple title owner is (versus "regular" title holder).	Please see responses provided in #4, #5, #8, #10.
10		Q: If there is only 1 fee simple title owner, why are there 4 lines in Section 3?	There may be more than one property affected by contaminant migration from the source property; therefore, consent of all affected property owners within the road ROW where risks due to contamination are present must be acquired.
11	Other	Q: FYI Michigan Legislature defines fee title as absolute ownership which is not conditioned...in other words, no one else has the authority to sell or encumber the property.	Thank you for your reply.
12			
13	CONSTRUCTION/EXCAVATION QUESTIONS		
14	Consulting	Q: What is a "construction/excavation zone?"	"Construction/excavation zone" is the maximum depth of construction or excavation within the road ROW that is necessary for the LUG to maintain the road, the ROW and/or underground utility easements. This depth may vary from road to road or along the length of the road. This information may be obtained from the LUG who controls the road ROW.

15	Government - State & Local	Q: Give us a depth for excavation in construction zone, please	Please see response provided in #14.
16	Consulting	Q: If groundwater plume is below the construction zone/ excavation zone depth, do we need to fill out this form?	Yes.
17	Consulting	Q: You need to do more defining this "zone of work"...what you have said so far, is not helpful	Please see response provided in #14.
18	Transportation & Distribution	Q: Section 2, Item 5. Will this information be provided by the LUG? Seems like this would be a standard which MDOT would know, but maybe small LUGs would not. Could we just assume "Contamination present within ROW" and leave it at that?	The depth of the road ROW construction/excavation zone should be known or estimated by the LUG. For potential exposure considerations, permitting and bonding it would be appropriate to know the depth at which construction activities are likely to occur.
19		I was hoping this webinar would be more insight into when and where alternative controls (leaving contamination in the road right-of-way) could be used, when they couldn't, what regulations/requirements are for this. Not, how to read and interpret a form which is not even required by the department which has some flaws and cloudy areas. For one, the "construction excavation zone" should be defined by the department or at least some guidance given to the LUG for defining this area. Referring to it as "similar to the MDOT area" is not helpful and is not guidance from the department.	The Michigan Department of Environmental Quality (MDEQ) has the authority to approve an alternate institutional control under MCL 324.21310a(4) and MCL 324.20114d(5). The MDEQ has determined that the use of the Road ROW AIC is an appropriate alternate mechanism for situations where contamination above risk based criteria is present within a road ROW that is controlled by a LUG. Regarding the construction excavation zone, please see response provided in #14 addressing this issue.
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21	LUG RELATED QUESTIONS		
22		Not enough honest discussion of what happens to public entities when they allow contamination to remain on the ROW. MDEQ will hold THEM responsible for any contaminated soil or groundwater that needs disposal. Bonding is not nearly the panacea it's purported to be because there is political resistance by the RPs to being required to hold bonds for any length of time, which essentially converts the cost of any disposal, as well as worker safety issues, from the polluter to the taxpayer.	The MDEQ has determined that the use of this AIC is appropriate for situations where contamination above risk based criteria is present within a road ROW that is controlled by a LUG. The MDEQ believes that the information contained in this AIC is sufficient to allow the LUG to make an independent determination as to whether it is appropriate to require the liable owner or operator (O/O) to remove the contamination from the road ROW, or require a bond, license agreement, or other means to address concerns for the contamination at a later date. If the LUG is not responsible for an activity causing a release they will not be held responsible for remedial actions/corrective actions; however, whomever removes or relocates contaminated soil or groundwater must do so in accordance with applicable federal, state and local regulations.

23	Government - State & Local	Is it expected that the LUG who agrees to the ROW AIC will be responsible to providing the information to those who want to do work in the ROW? We aren't concerned at all about how that information will be retained by the LUG and disseminated as needed?? Seems like the form should clearly indicate that it is not a DEQ requirement the LUG agree to leave contamination in the ROW or sign the form, that doing so is at their sole discretion AND that they can required additional information as they see fit.	Correct. In order for this AIC to be considered reliable in preventing exposures to regulated or hazardous substances that are present above risk based criteria the information provided with the Road Right-Of-Way Alternate Institutional Control must be conveyed to those who wish to do work within the road ROW. As stated during the webinar and in this Q/A format the acceptance of this AIC by a LUG is voluntary. If the LUG does not accept this AIC, then the party seeking to leave contamination within the road ROW must use a restrictive covenant or other alternate mechanism that must be approved by the MDEQ. The LUG at its descretion may require contaminated media to be removed from a road ROW that is under their control.
24	Government - State & Local	Q: From a Road Commission: Most county road rights-of-way are simple statutory highway by user, no specific easement, deed, or dedication by plat exists. The adjacent property owners have the fee title to the underlying ground. We would have no authority to require an adjacent fee owner to consent. If the owners do not consent, is the road commission forced to accept the risk on their behalf?	In the situation you describe, the road commission is not forced to accept the risk on behalf of the person who holds ownership in the adjacent property in fee simple title. The fee simple title holder to property is the only entity who can allow the property to be encumbered.
25	Real Estate	Q: Michigan Department of Transportation (MDOT) statement: the Road agency should be contacted for these question, NOT the LUG.	The MDEQ considers the local road agency that has control over the road ROW to be an agency of the LUG just as the MDOT is an agency of the State.
26	Government - State & Local	Q: Would it be acceptable for the LUG to submit the Alternate Institutional Control if they are unable to obtain the release of the underlying property owners consent?	The LUG is not the party who has the responsibility to submit the form. The form is to be submitted to the MDEQ by the party seeking to use this AIC. The party seeking to use the AIC must obtain consent of the underlying "fee simple title owner(s)" whose property is affected by the contamination proposed to be left within the road ROW.
27	Consulting	Q: May we use/submit this draft form as an alternative institutional control?	Yes, we will accept a completed AIC, but please understand the form is subject to change. We will notify participants when the form is finalized.
28	Consulting	Q: If closure relies on the institutional control and the road is later abandoned or relocated, what happens after the LUG notifies the DEQ?	Depending on the circumstances of the roadway abandonment/relocation this AIC may not continue to be a reliable institutional control. In that event, the MDEQ will notify the party relying on the AIC and inform them that the AIC no longer reliably restricts land or resources use and must be replaced with an institutional control acceptable to the MDEQ.
29	Consulting	Q: if the LUG just has an easement beneath your property, do you need this agreement, or can you only provide notice??	This AIC is only to be used when the easement is a road ROW across the subject property and contamination is present within the road ROW at concentrations above risk based criteria. All ROWs are easements, but not all easements are ROWs. For example, if the LUG has an easement across the subject property for the purpose of providing water or sewer services, then a restrictive covenant (RC) is the appropriate institutional control to use. The use of a RC requires the signature of all persons who have an easement through the contaminated portion of the property being restricted.

30	Transportation & Distribution	Q: To confirm, this is voluntary? Do we need to document if the LUG does not want to use this form?	The use of this AIC by a LUG is voluntary. If a LUG doesn't accept the use of this form, then another alternate mechanism acceptable to the MDEQ will be required to reliably restrict exposures to contaminants that are proposed to be left within the road ROW (e.g., restrictive covenant).
31	Government - State & Local	Q: Is the local governmental unit required to approve an institutional control when requested?	No. Acceptance of this AIC is at the discretion of the LUG. Depending on the conditions present within the road ROW, the LUG may require cleanup, or may approve the use of the AIC with conditions (e.g., require permit or bonding to address contamination in the road ROW).
32	Consulting	Q: Will this alternate form preclude use of traditional methods.	This AIC is available as one possible alternate mechanism that a party may rely on in lieu of a restrictive covenant.
33	Other	Q: Has this form been floated to and approved by any LUGs yet?	This webinar is the first presentation to LUGs regarding this AIC. The MDEQ is aware that a few LUGs are in the process of reviewing the form, and is currently unaware of any objections to its use.
34	Consulting	Q: What LUGs provided input on this draft form?	None, except for those who provided comment on this Q/A form. The MDEQ will consider any substantive input from LUGs to improve this AIC.
35	Energy, Chemical, Utilities	Q: Is the LUG able to require the submitter to provide financial assurance to the LUG that the submitter will cover any increased costs the LUG may incur in the future due to the presence of the contamination?	Yes. Please see response provided in #31.
36	Government - State & Local	Q: This may have been asked already. As a LUG who owns or has responsibility for a road, why would I want to agree to this institutional control?	This AIC was developed to facilitate the closure of contaminated sites and to provide a reliable mechanism to identify exposure risks in a consistent and complete manner. Institutional controls are only effective so long as those entities in control of the activities at a site are well informed of the exposure risks and are able to provide this information to any party that performs work within the affected ROW. Partnering with LUGs to assure the exposure risks within their communities are appropriately managed is fundamental for the protection of public health, safety, and welfare.
37	Consulting	Q: Does Part 201 and Part 213 as written actually require LUG approval to use an alternate institutional control for contamination under a road right of way?	No. However, as an owner of an interest in the property (grantee of a ROW) or as a "fee simple title owner", the LUG that controls the right of way must agree to leaving any contamination in place and determine how this will affect their rights and activities on the property. This is especially important since the ROW is being used as a mechanism by which exposure to contaminated media is to be prevented.
38	Consulting	Q: It would be nice what we might expect from LUG's as typical "Activities" in the ROW.	Other than for the express public purpose of providing a transportation corridor, typical activities that may be expected within a road ROW might be construction and maintenance of the road, utilities and sewer systems.
39	Consulting	Q: Can you give an example of a reliable mechanism a LUG would have to track the contamination and provide notification? (Section 5)	It is anticipated that a LUG could use a standard filing system, Geographic Information System (GIS), or other means to track the location(s) where the AIC has been accepted and provide this information to persons seeking to perform work within a road ROW. In addition, the MDEQ also maintains a GIS to track all acceptable Institutional Controls that are submitted to the MDEQ. Please follow this link to Michigan Environmental Mapper: http://www.mcgi.state.mi.us/environmentalmapper/

40	Legal	<p>Q: In Section 5, how are "current plans" to relocate or vacate defined? If the submitter is relying on the road right of way to prevent unacceptable exposure, what liability extends to the LUG by that reliance? What is a "reliable mechanism" to track the location. What type of notification of and to whom is notification required.</p>	<p>If the LUG is in the planning process of relocating or vacating the road at the time they are presented with this alternate mechanism, that would be "current" and the use of this alternate mechanism may not be appropriate if the contaminated area will no longer be within a road ROW controlled by the LUG.</p> <p>No liability for contamination extends to the LUG as result of authorizing the contamination to be left in-place within the LUG's road ROW.</p> <p>See above comments relating to reliable mechanisms.</p> <p>The expectation is that the LUG will provide notification of contamination that exists within the road ROW to parties seeking access to the affected road ROW for the purpose of performing subsurface work. Notification to these parties can be as simple as providing them with a copy of the form and supporting information through the LUG's permitting process.</p>
41	Legal	<p>Q: This seems to be a transfer of liability and duties from a polluter to a LUG. Why would a LUG be interested in participating in this program?</p>	<p>By signing the form, a LUG does not become liable for contamination at a facility resulting from a release or threat of release unless the LUG is responsible for an activity causing that release or threat of release. Please refer to other responses pertaining to why a LUG would be interested in this AIC. Please see response provided in #36.</p>
42	Government - State & Local	<p>Q: The statement that, "the LUG...has a reliable mechanism to track the location of the contamination" is not something a road agency can certify. I read this as a monitoring requirement going forward in the future. Is that the intent of this certification?</p>	<p>The MDEQ's intent is that the LUG will have a reliable mechanism to store/file this form, such that, when someone wishes to perform work within the road ROW, the LUG will be able to readily provide this information to the applicant.</p>
43		<p>I am not a LUG. This is where the presentation was lacking. As a LUG, why would I agree to the use this form?</p>	<p>Please see response provided in #36.</p>
44		<p>This form will streamline the approach for the Department. The form will most likely not be accepted by many LUGs unless they have been informed of this form and instructed or given some background knowledge on risk and exposure.</p>	<p>Please see responses provided in #36. The MDEQ will work with LUGs to educate or provide public outreach on the use of this AIC.</p>
45	Government - State & Local	<p>Q: For reconstructions of your typical County Road cross section (2-lane w/ ditches) to a fully improved street on a Section Line road with a statutory 66ft ROW, "Highway by User", how does the LUG acquire the release from the underlying property owner without being charged with an uncompensated taking?</p>	<p>Thank you for your question. However, this question is beyond the scope of this webinar and the MDEQ's statutory authority. Please consult with your legal department. The person (applicant) seeking to use the AIC is the party required to obtain consent of the underlying property owner. This is not the responsibility of the LUG.</p>

46	Government - State & Local	Q: For earlier question, the LUG is granted statutory ROW by the Michigan legislature, we do not acquire it. However per your requirement, we would need the underlying property owner's consent. Therefore, taking another "stick" from thier bundle of rights would need to be compensated or do you rely on the LUG to enforce your responsibility to remove or abate the contamination in the public ROW as part of construction?	This AIC is to be completed by the party seeking its use. It is the responsibility of the party proposing this AIC, not the LUG, to obtain consent of all fee simple title owners whose property is affected by the contaminants within the road ROW. Because the LUG controls activities within the road ROW, the use of the information contained in the form can provide a basis for requiring a license agreement or bonding from the liable party for any abatement of contaminated media located within the road ROW that may require removal and disposal during road construction activities.
47	Government - State & Local	As you answer questions you might want to revisit the one about whether the contaminated soil and/or groundwater can be put back in the excavation. Need to clarify it may be able to be returned and still be in compliance with Part 213 and/ Part 201, but the LUG may not allow them to put it back in or it may not be suitable to put back in for the underlying utilities or it may be contributing to an illicit discharge and may not be allowed to be put back for the LUG to comply with their MS4 requirements.	The decision to place soil back in place upon completion of ROW work depends upon the situation unless mobile Non Aqueous Phase Liquid (NAPL) is present and may cause exacerbation during contaminated soil or groundwater staging. Contaminated soil must be handled in accordance with MCL 324.20120c or MCL 324.21304b. We cannot envision a situation where water extracted during dewatering activities would be returned to an excavation within a ROW following completion of work. Contaminated groundwater extracted during ROW work activities must be handled and discharged in accordance with local, state, and federal regulations.
48	GRAMMATICAL		
49	Legal	Q: Can you please change LUG to LGU. We are not a LUG or a SLUG.	"Local Unit of Government" is a term defined by statute under Part 201 [MCL 324.20101(1)(cc)] and Part 213 [MCL 324.21302(o)].
50	Consulting	Q: Utilites references should be "subsurface" only, right?	Thank you for the input and we will take this into consideration.
51	Government - State & Local	In Section 1 I found "IC" used, which I believe is the abbreviation being used for institutional control but nowhere on the document does it reference institutional control that I could find.	Thank you for the input and we will take this into consideration.
52			
53	MISCELLANEOUS QUESTIONS		
54	Legal	Q: What assistant AG is the legal adviser for this project?	To avoid unnecessary contact with the Attorney General's Office, we do not provide the name in this forum. If you desire to confer with staff from the Attorney General's Office, please contact Mr. Kevin Schrems at (517)284-5149 at your convenience.
55	Consulting	Q: Why is Section 4 necessary? Why not include this language in Section 3?	Section 4 is necessary because this form is relied upon for the basis for concluding that the corrective actions/remedial actions have been completed for the purpose of submitting a Closure Report or No Further Action (NFA) Report; therefore, the signature of the person or consultant submitting the form is necessary. See MCL 324.21312a(1)(c) and MCL 324.20114d(6). Section 3 is reserved for the signature of person(s) who may own property in fee simple title that is located within the affected road ROW.
56	Consulting	Q: Is the draft form available on the DEQ website?	Not at this time. Until this AIC is finalized, please contact Kevin Schrems at schremsk@michigan.gov for a copy of the draft AIC.
57		Q: When do you plan on having this form finalized?	The MDEQ hopes to have a final form in April 2014.
58		Q: When can we start using this form?	You may start to use the form now. Please be advised the form use is subject to approval from the LUG. Please contact Kevin Schrems at schremsk@michigan.gov for a copy of the draft AIC.

59	Consulting	Q: When will these forms be finalized?	Please see response provided in #57.
60	Consulting	Q: What about CEHs for Geologists?	Please follow this link for the certificate: http://www.michigan.gov/documents/deq/RoadRightofWay-WebinarCertificate_442665_7.pdf
61	Energy, Chemical, Utilities	Q: Are all of these locations available through a GIS application?	Please see response provided in #39. Whenever a fully executed institutional control is submitted to the MDEQ, the MDEQ will enter the AIC into its GIS format.
62		Q: Marked up version of document received with suggested formatting changes and additional questions.	Your suggested formatting changes were considered and incorporated where appropriate. Your other questions are answered in response to questions posed by the webinar participants.
63	Government - State & Local	Q: What is the shift in DEQ policy to create this form?	There is no shift in policy to create this form. The MDEQ has identified a need for a uniform AIC to address situations where contaminated soil and/or groundwater underlying a road ROW is proposed to be left in place. Section 20114d(5)(a) of Part 201 and Section 21310a(4) of Part 213 provide the MDEQ with the statutory authority to approve an alternate mechanism. Given the number of LUGs within Michigan, the MDEQ determined that a simple, standardized AIC would aid in the implementation of the Part 201 and Part 213 programs.
64	Consulting	Q: are we no longer requesting the reference numbers directly from Ron Smedley?	The AIC will contain the most current contact information to obtain a MDEQ reference number. While Ron Smedley is not specifically listed as the contact person, he may be the individual who issues such number or will refer requesters to the appropriate staff and he may be contacted at (517) 284-5153, or smedleyr@michigan.gov .
65	Consulting	Q: Have the DEQ PMs been trained on the use of this form and/or are they participating in this call? I anticipate LUGS will have a lot of questions and might require assistance.	Yes, MDEQ project managers participated in this call, and there will be ongoing training and public outreach, as needed.
66	Consulting	Q: Will slides be made available as well as webinar?	Yes, the slides and a recording of the webinar are available on the MDEQ Webinars page.
67	Legal	Q: Please explain Q 5.	Not sure which Q 5 you are referring to. Hopefully the answers provided in the response above have answered your question(s).
68	Consulting	Q: Will this document be going through a public comment period?	Yes. This webinar and comment period is considered the public comment period.
69		What is the target approval date for this form? February 2014?	The MDEQ hopes to have a final version of the form available in April 2014.
70	Consulting	Q: Will there be an outreach program by the MDEQ to local communities on this type of IC?	As needs are identified or requested, the MDEQ will provide outreach to local communities regarding the information and use of this AIC.
71	Consulting	Q: Example: During construction of a utility line, contamination is found or suspected. At this point in time, no testing has been performed and little information is known. Is this the correct time to submit the form, or should the MDEQ be contacted, remedial actions planned, and then submit the form.	No. The completed AIC is meant to be submitted with the Final Assessment Report (FAR), Closure Reports, or No Further Action (NFA) Report when the delineation of contamination indicates that contaminants exceeding risk based criteria have been released into media within a road ROW. If contamination from an unknown source is suspected/discovered by an easement holder in a road ROW during road or utility repair/construction, the MDEQ should be notified within 24 hours of discovery. See MCL 324.20114(3).

72	Consulting	Can you provide a list of stakeholder's who participated in the development of the Road ROW Alternate IC form?	The AIC was developed internally at the MDEQ and stakeholder input was sought through the webinar and this Q&A.
73		The webinar was essentially the speaker reading through a form which is not required and there was no guidance into regulations or requirements for leaving contamination in the right-of-way.	Thank you for the input and we will take this into consideration.
74		It will be uniform, but I anticipate most smaller, less sophisticated LUGs will be hesitant to sign. Also, Road Dedication letters are pretty easy and straight forward. This form has the potential to make it unnecessarily uncomplicated for some situations.	Thank you for the input and we will take this into consideration.
75			
76	TECHNICAL		
77	Consulting	Q: for Part 213 Sites will Section 2 Question 3 always be yes? Unless excavated residual NAPL will always remain.	No. There may not always be residual NAPL present as the NAPL may have been released on-site and the dissolved phase contaminants have migrated into the road ROW.
78	Consulting	Q: Section2 Q9 What about other exposure risks?	The exposure risks and language identified in Section 9 are for example purposes. The submitter of the form is to identify all exposure risks present within the road ROW. The MDEQ may add other examples.
79	Consulting	Q: 9.a should reference "receptors", and their potential to be exposed, not just exacerbation.	Thank you for the input and we will take this into consideration.
80	Consulting	Q: Question 3., in Section 2; shouldn't residual be split from mobile...seems to me it should;	When it comes to restrictions, the MDEQ views the restrictions for mobile and residual NAPL in the same manner. For the road ROW and utility workers, residual or mobile NAPL present different risk management scenarios.
81	Consulting	Q: Shouldn't Section4., Media Contaminated, include VI media, i.e., soil gas (vapors)?..	Yes. While the MDEQ does not anticipate construction of buildings/basements within a road ROW, the VI pathway should be evaluated as part of site characterization and the extent of the vapor plume identified on the site diagram. Case specific situations may apply depending on the site location and the LUG's policies regarding construction within or immediately adjacent to a road ROW. Soil gas may present MiOSHA/OSHA inhalation hazards to workers performing subsurface work within a road ROW.
82	Consulting	Q: just a suggestion - on Section 2.3, it might help to have separate boxes for residual, mobile and migrating NAPL.	Residual and mobile NAPL are treated the same for Institutional Controls. Migrating NAPL is unacceptable for closures as migrating NAPL must be addressed in the remedial action/corrective action activities at the facility.
83	Government - State & Local	Q: Can contaminated H2o and soil be put back in place upon completion of ROW work?	The decision to place soil back in place upon completion of ROW work depends upon the situation unless mobile NAPL is present and may cause exacerbation during contaminated soil or groundwater staging. Contaminated soil must be handled in accordance with MCL 324.20120c or MCL 324.21304b. We cannot envision a situation where water extracted during dewatering activities would be returned to an excavation within a ROW following completion of work. Contaminated groundwater extracted during ROW work activities must be handled and discharged in accordance with local, state and federal regulations.

84	Consulting	Q: Why not ask for soil gas plume extent, similar to asking for gw flow direction	Please see response provided in #81.
85	Consulting	Q: Why no box for sanitary sewer?	The presence of a sanitary sewer and other utilities will be identified in the scaled drawing to be provided in Section 2, Item #10.
86	Consulting	Q: I've seen horizontal ROW dimensions from a LUG, but I've never seen vertical ROW dimensions from a LUG (i.e. Question 5 in Section 2). Is it something that can truly be obtained?	Perhaps, the availability of this information may vary from LUG to LUG.
87	Consulting	Q: Who is responsible for future soil/groundwater disposal costs?	The party responsible for the contamination should be responsible for future soil/groundwater disposal costs. One of the benefits for the LUG in using this AIC is that the information required to be submitted will allow the LUG to determine whether a licensing agreement and/or bond will be required to address contamination within the road ROW at a future date.
88	Consulting	Q: If all petroleum releases are considered LNAPL releases, wouldn't the answer to question 3 always be yes if there is contamination related to the petroleum release in the right of way?	Not always. NAPL may be present on-site, but may not always be present within the road ROW. An example: NAPL present on-site in the groundwater, but a dissolved phase plume with concentrations of contaminants above risk based criteria migrating into the road ROW. NAPL should be managed pursuant to Part 213 and Risk-Based Corrective Action (RBCA).
89	Consulting	Q: Will other example language be developed for consensus on activity language for section 9?	As a need is identified, the MDEQ will add additional language. Submitters may use language similar to the language contained in the restrictive covenant model documents to describe the identified exposure risk(s) present.
90	Consulting	Q: Why is storm sewer information needed?	Operators of storm sewers subject to Municipal Separate Storm Sewer System requirements (MS4s) can include municipalities and local sewer districts, state and federal departments of transportation, public universities, public hospitals, military bases, and correctional facilities. If contamination migrates into the storm sewer and the LUG, tribal government, or other authority has a MS4 permit, the approved permit may be affected by contamination entering the storm sewer.
91	Consulting	Q: Why is groundwater direction needed?	The complete characterization of the nature and extent of contamination is crucial to determining the appropriateness and adequacy of institutional controls to prevent and manage exposure risks.
92	Government - State & Local	Section 2 - #4 should be #3 – identify the contaminated media, if you check soil contamination, then check residual/mobile NAPL – YES. The question as to whether you will always have residual NAPL should have been answered as Yes, unless they make a specific determination that NAPL is not present. If no groundwater issue and NAPL isn't present then they probably don't need the ROW AIC.	Please see responses provided in #88. There may be other exposure risks for which this form is required.
93			
94	MDOT/DEQ MOU		
95	Government - State & Local	Q: Is the Memorandum of Understanding between MDOT and MDEQ available for public review?	Yes. Please contact Mr. Kevin Schrems at 517-284-5149 or schremsk@michigan.gov for a copy of the document.

96		Q: Why different policy (this form vs Env Licence) for MDOT and other ROWs?	The MDOT has its own process for leaving contamination within a road ROW owned or controlled by the MDOT. The MDOT and the MDEQ have a Memorandum of Understanding (MOU) that accepts the MDOT's procedure as an AIC. It is impractical for the MDEQ to enter into a similar MOU with each and every LUG within the State of Michigan.
97		Q: How is the road dedication different than the MDOT Env Licence Agreement in actual risk control?	<p>As an institutional control related to actual risk management there is little difference between this AIC and the MDOT Environmental License Agreement, with the exception of the licensing, permitting, or bonding requirements that may be imposed by the various LUGs.</p> <p>This AIC was developed to provide adequate and consistent information to LUGs to enable appropriate decisions regarding soil and/or groundwater proposed to be left in-place within a road ROW under control of a LUG(s).</p> <p>This AIC will provide LUGs with the information necessary for the LUGs to determine whether to require a license agreement, bonding, or other requirements necessary to address contaminated media in a road ROW under their jurisdiction.</p>
98	Consulting	Q: Could you comment as to why MDOT is excepted from the IC requirements but LUGs etc are included?	The MDOT has its own process for leaving contamination within a road ROW owned or controlled by the MDOT. The MDOT and the MDEQ have a MOU that accepts the MDOT's procedure as an AIC. It is impractical for the MDEQ to enter into a similar MOU with each and every LUG within the State of Michigan. This AIC was developed to provide the same information to LUGs to assist in managing exposure risks in similar fashion to the MDOT process.
99			
100		SURVEY QUESTIONS	
101	Consulting	Q: A survey and permanent markers are not necessary for placing a restriction on the ROW, correct? Can a simple description of the restricted area suffice or do you need a legal description of the restricted ROW area?	The MDEQ is not requiring a survey and permanent markers for placing a restriction on the ROW when using this form; however, a LUG may require a survey and permanent markers. The MDEQ anticipates that the information provided by this form, specifically Section 2, Item No. 10 will suffice to describe the area of contamination.
102	Consulting	Q: No legal/professional survey needed?	No. The MDEQ is not requiring a legal survey as a condition of the use of this AIC. A survey may be conducted and voluntarily submitted with the AIC. Also, there may be situations where the use of a restrictive covenant for contamination in a road ROW is appropriate or preferred, and under this circumstance a survey is required.
103			
104	NOTICE/EASEMENT HOLDER QUESTIONS		

105	Transportation & Distribution	Q: Where is your authority to require a road agency to notify DEQ of any abandonment? I do not recall DEQ being notified of a proposed abandonment in our abandonment statute.	<p>Assuming that you are referring to MCL 224.18, there is no authority under this section to require a road agency to notify the MDEQ prior to road abandonment. We have modified the statement in Section 5 of the form to say "the LUG, tribal government, or other authority 'agrees' to notify."</p> <p>Under the authority of MCL 324.20114d(5) and MCL 324.21310a(4), the MDEQ has developed this form as an appropriate alternate institutional control mechanism for situations where soil and/or groundwater contamination is present within a road ROW. To ensure the reliability of the effectiveness and integrity of the AIC, the MDEQ must be notified of the abandonment of the road, such that the MDEQ can take actions necessary to replace the institutional control.</p> <p>The use of this form by a LUG is voluntary.</p>
106	Consulting	Q: Is EQP4003 Notice to Impacted Parties of Corrective Action the correct notification for all parties involved (LUG, utilities)?	Yes, Form EQP4003 "Notice to Impacted Parties of Corrective Action" is the appropriate form for notification under Part 213. For facilities regulated pursuant to Part 201, the appropriate notice would be the "Notice of Migration of Contamination" (Form EQP4482). These notifications are separate and distinct from this alternate institutional control mechanism.
107	Consulting	Q: What is the motivation for easement holders to sign this document and agree to the terms? Does every easement holder within the ROW have to sign the form in order to use this IC?	<p>Owners of property that underly a road ROW easement must consent to the use of any institutional control that would place restrictions on their property.</p> <p>Easement holders, unless it is the LUG, do not sign this alternate mechanism; however, the alternate mechanism instructs the submitter to notify each affected easement holder of contamination in the ROW so that, if and when the easement holder performs work, they understand and can manage any exposure risks.</p> <p>The appropriate means of notifying the public directly impacted by the release would be the "Notice to Impacted Parties" (Form EQP4003) required under MCL 324.21309a(3). For facilities regulated pursuant to Part 201, the appropriate notice would be the "Notice of Migration of Contamination" (Form EQP4482)</p>
108	Transportation & Distribution	Q: How complicated do you think the process to confirm the type of easement will be? Methods of determination?	Section 2, Item No. 7 has been modified. The MDEQ does not expect that confirmation of easement holders will be any more burden than already required by statute. Determination of easement holders in interest may be obtained by interviewing the LUG and performing a title search.
109	Consulting	Q: In question 7, by notification of existing conditions...are you referring to a Notice of Migration?	No. We meant the notification requirements as part of the Corrective Action Plan (MCL 324.21309a(3)) or pursuant to due care (R 299.1013(6)).
110	Government - State & Local	In Section 2, #7, if someone answers No (impacted parties have not been notified) then what?? Is there a standard way impacted parties are to be notified?	<p>If impacted parties have not been notified then the MDEQ cannot accept this alternate mechanism, and cannot approve site/facility closure.</p> <p>The appropriate means of notifying the public directly impacted by the release would be the "Notice to Impacted Parties" (Form EQP4003) required under MCL 324.21309a(3). For facilities regulated pursuant to Part 201, the appropriate notice would be the "Notice of Migration of Contamination" (Form EQP4482).</p>

111	Government - State & Local	<p>Section 2 - #7 – it would seem to me that an affected easement holder should be provided with the same information as the LUG. The 213 notice to impacted parties doesn't require any information about the degree of contamination, extent, location, etc. The 201 NoM contains a little more information and is required to contain a map, but that isn't typical and only provides limited information – may not provide any information about the contamination in the actual ROW because it has to do with contamination that is migrating off-site, not that has migrated and what exists on the off-site property (ROW in this case).</p>	<p>As stated in #110 the easment holder will have received notification of the contamination, and when the easement holders performs work within the road ROW, this information should be available from the LUG, as well as the MDEQ.</p>
112			
113		ROAD DEDICATION LETTER QUESTIONS	
114	Consulting	<p>I attended your December 17, 2013 webinar where a draft Road Right-of-Way Alternate Institutional Control (IC) Form was introduced. At the conclusion of the webinar you indicated that comments to the form and policy would be accepted. I am providing the following comments.</p> <p>I agree the draft form should prove useful in working with local units of government (LUGs) to establish an alternate IC for roads where both soil and groundwater impact above criteria exists. I have no comments on the language and requested information in Sections 1 through 5 of the form.</p> <p>I do have serious concerns regarding the MDEQ's intent to eliminate use of Road Dedication Letters as an IC for roads where the only underlying impact is groundwater exceeding drinking water criteria (DWC). The instructions on the cover page of the draft IC form states "This Form replaces the Road Dedication Letter, which is no longer accepted as an approved institutional control." During the webinar it was stated that eliminating the Road Dedication Letter option solely in favor of the proposed IC form would "streamline" the process. I have to disagree. The existing policy provided in OpMemo 6 for roads with groundwater exceeding DWC is simple, practical, and straightforward. Requiring the proposed draft IC form would only add complexity to what was a simple process.</p>	<p>Thank you for your comments. There are a number of reasons why the MDEQ decided to create the AIC form. These reasons include, but are not limited to:</p> <ol style="list-style-type: none"> 1) LUGs have expressed concern that the Road Dedication Letter (RDL) does not adequately identify the risk(s) associated with contamination that is proposed to remain within a ROW under their control; 2) The current draft form of the RDL does not contain adequate information to be used as an alternate institutional control to address anything other than the drinking water pathway within a ROW; and 3) The RDL does not identify all exposure pathways that may be present as a result of the presence of soil and groundwater contamination. <p>To address these concerns, the MDEQ has developed this alternate mechanism that, when properly implemented, will reliably do the following:</p> <ol style="list-style-type: none"> 1) Provide consistent and adequate information for the LUG to make informed decisions whether to accept and manage risks due to contamination present within a road ROW; 2) Provide information regarding ALL contaminated media and exposure pathways that may be present within a road ROW. 3) Provide the LUG and others with information necessary when planning and performing construction projects, including worker safety and exposure control. This information can be used by the LUG to determine whether additional information is needed for issuing permits, license agreements and/or financial bonding for the affected area within the road ROW; and 4) Identify the LUG's role in managing exposure risks, but does not itself cause the LUG to be liable under Part 201 or Part 213. <p>The use of the MDEQ AIC form is not mandatory. Parties seeking to use an alternate institutional control may propose an alternate format. The MDEQ may approve of an alternate institutional control mechanism as long as it contains all of the information provided for in the MDEQ AIC.</p>

115	Consulting	<p>Of greatest concern is that eliminating Road Dedication Letters creates a “moving target”. There are many existing sites and facilities where dedication letters were obtained years ago or are planned to be obtained. In some cases the dedication letters were submitted in a FAR or closure report (denied for other reasons), or have been held until remediation or risk for the entire site/facility could be addressed. Now at this late stage, on sites that are years or decades old, O/Os must revise their strategy, throw out an IC that they have already obtained, and start over again, at added cost to the project without added benefit.</p> <p>At a minimum, I encourage the MDEQ to continue to accept dedication letters for existing sites/facilities. I also believe dedication letters would still have a place on new release sites. For example, a dedication letter should be more than sufficient to address groundwater impact where the water table is 80 feet below ground surface where no road/utility maintenance activities would encounter it. In fact a dedication letter in this circumstance would address groundwater impact exceeding any generic criteria.</p>	<p>The MDEQ does not intend to rescind RDLs for sites where the RDL was used as an alternate institutional control for a Remedial Action Plan, FAR or Closure Report that received MDEQ approval.</p> <p>For sites or facilities where approval of a No Further Action Report, FAR, or Closure Report has not been obtained from the MDEQ, then the MDEQ AIC may be used. If a different form of alternate institutional control is proposed to be used for contamination in a road ROW, then that proposal must include all the information required by the MDEQ AIC. Any proposed alternate institutional control must consider all affected property owners whose property underlies the contaminated portion of the road ROW and must include their consent, as necessary.</p> <p>Please see answer to related question 114 above.</p>
116	Government - State & Local	<p>Once the form is complete, with all necessary signatures and supporting documents, what review and approval will be provided by MDEQ? Will MDEQ scrutinize the information submitted to ensure that the use of this alternate institutional control mechanism for a particular site is acceptable?</p>	<p>Yes. The MDEQ will review the AIC upon: 1) a request by the party seeking the use of the AIC; 2) submittal of a FAR or Closure Report required under Part 213; or 3) submittal of a No Further Action Report submitted pursuant to Part 201.</p>
117	Government - State & Local	<p>Once the Road Right-of-Way Alternate Institutional Control is accepted and the site is considered closed, will the LUG be allowed to revoke the alternate institutional control mechanism, at anytime, in the event that the actions/non-actions of the party proposing the IC lead to a change in conditions that breach the agreement with the LUG?</p>	<p>Yes. The MDEQ will modify Section 5 to reflect this concern.</p>
118	Consulting	<p>Q: You indicated that the intent is to use this to replace the Road Dedication Letter. Will the DEQ still accept the Road Dedication Letter until the majority of LUGs understand and are using this form? If a LUG will not agree to this form, will a Road Dedication Letter still be acceptable for drinking water?</p>	<p>No. As stated in the answer to question 115, the MDEQ will only accept RDLs for sites/facilities where a Remedial Action Plan, FAR or Closure Report has received approval from the MDEQ. The MDEQ may approve other alternate institutional control mechanism provided that those alternate institutional mechanisms contain all the information required by the MDEQ AIC. Any proposed alternate institutional control must consider all affected property owners whose property underlies the contaminated portion of the road ROW and must include their consent, as necessary.</p>

119	Consulting	Q: It was just discussed that the Road Dedication Letters were acceptable, but there is a comment in the instructions of the Road ROW Alternate IC that says that they won't be allowed any longer. Is this true?	Please see responses in 115 and 118 above.
120	Consulting	Q: The last sentence of the first paragraph in the instructions states "This Form replaces the Road Dedication Letter, which is no longer accepted as an approved institutional control." I have had discussions with the MDEQ where they have stated it is not necessary to use this form, but additional review will be required to ensure an alternate format meets the requirements. These two statements seem to contradict each other. So, is there a transition or grace period for implementing this new form? Will the MDEQ still consider alternate formats?	Please see responses in 115 and 118 above.
121	Consulting	Q: If the only criteria exceeded in a right-of-way is drinking water criteria, will this form be necessary?	This AIC or other proposed alternate institutional control mechanism can be used as long as all the information required by the MDEQ AIC is provided as described in responses #115 and #118.
122			
123	SUBMISSION/SIGNATURE/DEFINITION QUESTIONS		
124	Consulting	Q: In section 4, can the submitter be a consultant/contractor, or does it need to be the "owner" of the contamination/impacts?	The signature in Section 4 of the AIC can be that of the O/O as defined by Part 201 or Part 213, or the qualified consultant working on behalf of the O/O.
125	Legal	Q: What is considered an "other authority? Would "other" authority include a Land Bank?	"Other authority" is a generic term for all other public entities not including a LUG or tribal government that owns or controls the ROW (e.g., Mackinaw Bridge Authority or a public university). If the Land Bank owns or controls the ROW, then it may be considered an "other authority."
126	Legal	Q: Can/must the form be filed with the register of deeds and who has authority to file it?	There is no requirement that this AIC must be filed with the register of deeds. However, there are no restrictions preventing this AIC to be filed with the register of deeds so long as it meets the filing requirements.
127	Consulting	Q: Section 4? submitter signature. Is this to be signed by owner/operator were release occurred or consultant	Please see response provided in #124.
128	Consulting	Q: Under section 1 name of party proposing ROW IC - would this be the owner/operator of property were release occurred or consultant?	This would be the name of the person/legal entity that is relying on the AIC as a response activity/corrective action for their release. (e.g., ABC Petroleum, LLC). This would not be the consultant.

129		<p>Q: If the roadway falls within an environmental groundwater use ordinance then use of this form is not necessary, right?</p>	<p>The answer depends on site specific information.</p> <p>If the only exposure pathway that is present is the drinking water pathway AND the adoption of the ordinance or amendment to the ordinance which creates a groundwater use restriction area is a direct result of a release from the site/facility seeking to use the ordinance as the AIC, then the answer is YES.</p> <p>If the adoption of the ordinance or amendment to the ordinance which creates a groundwater use restriction area is a direct result of a release from another unrelated site/facility, then the answer is NO.</p> <p>If the road ROW is controlled by an entity other than the municipality that adopted the ordinance (e.g., county road commission or MDOT), then the use of this AIC or MDOT License Agreement may still be required by the entity that controls the road ROW.</p>
130	Government - State & Local	<p>Q: What about railroad crossings? Would they fall under another authority?</p>	<p>Yes, this AIC may be used for railroad ROWs that are not under the control of the MDOT or as otherwise accepted by the railroad that owns or controls the railway.</p>
131	Government - State & Local	<p>Section 1 – Submitter is considered who? The Liable/Responsible Party? Hopefully the answer is yes and not the consultant?</p>	<p>Please see response provided in #124 and #128.</p>
132	Government - State & Local	<p>So, if the submitter is the Liable/Responsible Party, then don't they sign Section 4? If we want someone who will attest to the accuracy of the statements in the document and all attachments (while I think the L/R Party should know) then maybe you need a separate section for the consultant who prepared the AIC to sign? If I don't have the L/R Party signing the form at all, how do I know the L/R Party even knows this is part of his closure – especially if the LUG involved doesn't ask for anything beyond the form?</p>	<p>Since this AIC is used as the basis for showing that response activities under Part 201 and corrective action activities under Part 213 are complete, MCL 324.20114d(6) and MCL 324.21312a(1)(c) provides for signed affidavits from the person submitting the reports and the consultant who prepared the reports; therefore, your concerns should be addressed.</p>