



Michigan's Cleanup Program: What it Means for Local Health Departments

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Format / Outline

- Why are we here?
- Statutory Authorities for our programs
- What is a “cleanup”?
- Site Closure
- Land use/Resource use restrictions
- Role of the Local Regulator
- Who to Contact at DEQ
- Michigan Mapper



Quick Glossary:

- “Closure”: used generically to refer to a site of environmental contamination where cleanup obligations have been satisfied, to some degree
- “LUST”: Leaking Underground Storage Tank
- “Part 201”: Michigan’s “cleanup” statute, just recently amended
- “Part 213”: Michigan’s LUST statute
- “Receptor”: someone or something on the receiving end of harm stemming from a contaminated site
- “Release”: a release of fuel from a LUST or a release of hazardous substances to the environment
- “Restriction”: is a document recorded on the title that limits certain activities on a parcel of property; aka “Restrictive Covenant”
- “Site”: is a defined term in Part 213; however we’ll use it generically in this presentation to refer to a site of environmental contamination



In Michigan, there are:

- > 10,000 open confirmed releases from LUSTs
- > 12,000 closed LUST releases
- > 4,000 Part 201 sites
- Currently, there are about 400 Part 201 restrictions recorded and about 1700 Part 213 restrictions recorded
- Currently, 33 local ordinances designed to restrict groundwater

Remediation & Redevelopment Division (RRD)

- What we do
 - Part 201
 - Part 213
 - Brownfields
 - Superfund
- Superfund is the federal cleanup statute
- Brownfields = redevelopment, grants, loans



- **Part 201 – “*Environmental Remediation*”**
 - Release of hazardous substances to the environment
 - Industrial and commercial properties, roadside spills, historic landfills/open dumps, above ground storage tanks, etc.
 - Just recently amended





Part 201 – “Environmental Remediation”





Part 213 – LUST

- “*Leaking Underground Storage Tanks*”
 - Remediation of *underground storage tank releases (only)*
 - Gas stations and other facilities with underground storage tanks
 - Some USTs are unregulated under Part 213
 - Home Heating Oil Tanks, septic tanks, etc.
 - Some UST releases may be exempt from Part 213 regulations, but ARE regulated under Part 201



Part 213 – LUST



“Clean-up”

- Generically-used term: previously meant a complete removal of contamination
- Can be cost prohibitive
- Alternative:
 - Accomplish the same goal: mitigate or remove risks of exposure to environmental contamination.
 - Regulated community: Achieve “closure”, not necessarily total “clean up”
 - For regulated community, an endpoint to obligations
 - Seek ways to reduce risk without impractical expense

Closure

Essentially a combination of the application of cleanup criteria and/or exposure controls in order to achieve an acceptable risk reduction.



- **Two Types of Criteria**

- Residential
- Nonresidential
- Different cleanup criteria can be applied depending on land use (residential or non-residential)





Preventing Unacceptable Exposures

Engineering controls (Physical)

- vapor barriers, physical or hydraulic containment, asphalt/concrete, vapor mitigation fans, etc.

Institutional Controls (Paper / Legal) – “IC”

- Land use or resource use restrictions (restrictive covenant)
- Local Ordinances
- Under new amendments, other options



Scenario #1

“Closed” can mean:

- That all the contaminated soil and/or groundwater has been remediated or removed
- That no contamination remains

Scenario #2

“Closed” can mean:

- The contaminated soil and/or groundwater associated with the site that remains is below health-based “criteria”
- Residual level of contamination, but at levels that aren’t considered harmful to human/ecological health
- Obligations have been satisfied as far as the law is concerned

Scenario #3

“Closed” can also mean:

- Contamination has been left in place
- Can be done provided that the contamination is:
 - Controlled,
 - Defined and,
 - Land and resource use restrictions and/or engineering controls eliminate human or ecological exposures (i.e. exposure controls)



In order to determine whether a site is ready for closure, we ask questions:

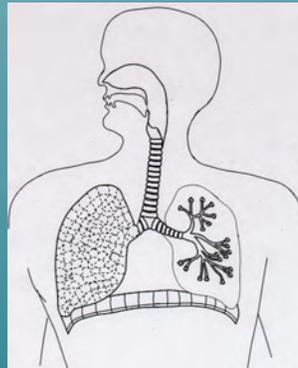
- What levels and types of contaminants remain, and in what “media” (soil, groundwater, etc.)?
- Is the contamination fully defined?
- Is the contamination still migrating?

Exposure risks:

- Groundwater



- Soil



- Air



- Flammability or explosion risk





Biggest Question – How can we address the identified exposure risks?



What is a Restrictive Covenant (RC)?

- Document recorded with the deed that legally restricts land and/or resource use
- Describes and restricts uses of the property.
- Example:
 - Contaminated industrial property may be deed-restricted to prevent residential use
 - Contaminated property may be deed-restricted to disallow groundwater withdrawal



Restrictive Covenants

- Deed-restrict activities that may result in exposures
 - Potable well installation (groundwater withdrawals), installation/maintenance of exposure barriers, excavation or earth-moving activities
- Deed-restrict activities that may interfere with the remedy
 - Example - Sometimes soil excavation or landscaping is restricted if the soil acts as an exposure barrier



More About Restrictive Covenants

- Once recorded at the Register of Deeds, “runs with the land”
- Under 201 (only), previously included a survey and property description; survey/map no longer required if the whole parcel will be restricted, just legal description required. No change with LUST sites – survey still required.
- Under 201 (only), Summary of Response Activities no longer required to be in the restrictive covenant – may refer to a “viewing location” to find information on site background.
- A restrictive covenant is enforceable by the DEQ
 - Closure may be deemed void if restrictions are violated
- If the person seeking closure is NOT the owner of the property, he/she must obtain express written permission from the property owner before recording a restriction.



Local Ordinances

- Local unit of government (“LUG”) – i.e. Cities, Counties, Townships
- Restrict the use of groundwater or an aquifer to prevent unacceptable exposures
- DEQ works closely with LUGS and parties proposing ordinances. If you have questions, please contact us.
- New amendments to 201 also allow for use of ordinance for prohibiting the raising of livestock, prohibit development in certain locations or restrict property to certain uses.



New Amendments to 201/”Other” IC’s:

Allow for other Institutional Controls to be used to restrict exposure, including:

- state laws and regulations that prohibit the use of contaminated groundwater
- “alternate instruments”, with DEQ approval, including licenses, contracts with local, state or federal units of government, health codes or regulations
- because of the “alternate mechanism” language in 213, the above will most likely be considered for LUST/213 sites, as well.
- Amendments are new, and how they will be applied is to be determined on a site by site basis.



Permitting Activities

- What do you need to know?
- Where can you go for information?
 - Are there “red flags”?
 - Call the local District DEQ office
- Sometimes potential issues are obvious, sometimes not





Helpful tools:

- *Unfortunately, there isn't currently a single database or map that tells you what risks may be associated with a certain permitting activity*
 - *Michigan Environmental Mapper*
 - *Local Unit of Government / Zoning Authority*
 - *Local DEQ District Office*
 - *RRD Project Managers*



STATE OF MICHIGAN WEBSITES FOR CONTAMINATION INFORMATION

Water Withdrawal and Contamination Investigation Unit:

www.michigan.gov/deg

Click on "Water", then "Drinking Water", then "Contamination Investigation". Users can retrieve "Replacement Well Construction and Well Abandonment Specifications", and "Water Quality (arsenic, nitrate, VOC) Maps by County".

Michigan Environmental Mapper:

www.mcqi.state.mi.us/environmentalmapper/

Part 201 Facilities:

<https://secure1.state.mi.us/FacilitiesInventoryQueries/>

Storage Tank Information Database (SID):

<http://www.deq.state.mi.us/sid-web/>

Part 117 Septage Application Sites:

www.mcqi.state.mi.us/miswims

Part 615 Oil & Gas Wells:

www.michigan.gov/deg

Click on "Land", then "Oil, Gas, and Minerals", there are several map options available on this page.

Part 111 Hazardous Waste Sites:

www.deq.state.mi.us/wdspj

Part 115 Landfills:

www.michigan.gov/deg

Click on "Waste", then "Solid Waste", then "Solid Waste Facilities".

Part 31 Groundwater Discharge Sites:

www.mcqi.state.mi.us/miswims



Michigan Environmental Mapper

- **What:** The Michigan Environmental Mapper allows you to view sites of contamination and underground storage tank sites.
 - Should not be confused with “MapImageViewer”
 - Can display the sites based on search criteria by city, county, MDEQ district, and Michigan legislative district
 - Can view sites within a certain distance of a location
 - Sites are “points” on the map ∴ the radius tool may not be accurate
- **Where:** <http://www.mcgi.state.mi.us/environmentalmapper/>
<http://www.mcgi.state.mi.us/environmentalmapper/>



Questions?

- Contact your Southeast MI DEQ RRD District Office:
 - Kevin Wojciechowski, 517-780-7839
 - WojciechowskiK@michigan.gov
 - Cheryl Wilson, Assistant District Supervisor
 - 586-753-3820
 - wilsonc3@michigan.gov



Thank you for your time.