



## REMEDIATION AND REDEVELOPMENT DIVISION POLICY AND PROCEDURE

### Review of Response Activity or Corrective Action Within a Wellhead Protection Area Relying on Land or Resource Use Restrictions Procedure RRD-38

Original Effective Date: February 10, 2020  
Review Date: October 20, 2020  
Distribution: All RRD Employees

#### **PURPOSE**

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The purpose of this policy is to formalize a process that incorporates coordination with drinking water staff into the Remediation and Redevelopment Division (RRD) decision making process for a site of environmental contamination regulated under Part 201, Environmental Remediation and Part 213, Leaking Underground Storage Tanks, of the Natural Resource and Environmental Protection Act, PA 451 of 1994, as amended (Part 201 and Part 213 of NREPA) when land or resources use restrictions are proposed restricting groundwater use as a remedy in mapped wellhead protection areas. The goal is to ensure that the groundwater resource being extracted by the public drinking water supply is not adversely impacted by hazardous substances from releases at Part 201 and Part 213 sites that are allowed to remain in place.

#### **DEFINITIONS**

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*Drinking Water Staff (DWS)* - Either or both of the following: EGLE staff (EGLE DWS), who regulate Type 1 Community Water Systems (CWS), and Local Health Department staff who regulate Type 2 Non-transient Non community water systems (External DWS).

*Land or Resources Use Restriction (LRUR)* – Any instrument allowed by Section 20121 or 21310a of NREPA that reduce or restrict exposure to hazardous substances, eliminate a potential exposure pathway, assure the effectiveness and integrity of containment or exposure barriers, provide for access, or otherwise assure the effectiveness and integrity of response activities undertaken at a property.

*Project Manager (PM)* - Any RRD staff responsible for receipt and review of a Closure Report (CR), Final Assessment Report (FAR), No Further Action Report (NFA Report), Response activity Plan, or other submittal that relies on a LRUR.

*“Report”* – For this purpose, collectively any of the submittals under Part 201 or Part 213 of NREPA that rely upon a LRUR to satisfy criteria.

*“Response Activity”* - Means those activities identified pursuant to MCL 324.20101(vv) and includes “corrective action” as defined at MCL 324.21302(h).

*Type 1 Community Water System (CWS)* – A public water supply that provides year-round service to not fewer than 15 living units or which regularly provides year-round service to not fewer than 25 residents. This definition includes water supplies in municipalities, apartments, nursing homes, and mobile home parks pursuant to MCL 325.1002(c).

*Type II Non-Transient/Non-Community Water System* – A noncommunity public water supply that serves not fewer than 25 of the same individuals on an average daily basis over 6 months per year. This definition includes water supplies in places of employment, schools, and day-care centers pursuant to MCL 325.1002(l).

*Water Supply Owner (WSO)* – The owner of a Type I Community Water System or Type II Non-Transient/Non-Community Water System

*Wellhead Protection Area (WHPA)* – The surface and subsurface area surrounding a water well or well field, which supplies a public water supply, and through which contaminants are reasonably likely to move toward and reach the water well or well field within a 10-year time of travel. The WHPA can be approved by the EGLE in accordance with the State of Michigan wellhead protection program, or a provisional delineation developed by the Michigan Groundwater Management Tool. For the purpose of implementing this policy, it does not include a Low Vulnerability Wellhead Protection Area as defined under the EGLE drinking water program and determined by EGLE DWS.

## **BACKGROUND**

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The objective of Michigan's environmental regulations is to protect public health, safety, welfare, and the environment. The cleanup statutes allow hazardous substances to remain in place if the exposure risks are addressed. LRURs are available tools provided for under Part 201 and Part 213 of the NREPA, to reduce or restrict unacceptable exposure to hazardous substances that remain on the property after response activities conclude. Reports for sites that do not meet Generic Residential Criteria may require one or more LRURs to prevent exposure to hazardous substances that remain on the property.

Michigan's Wellhead Protection Program (WHPP) was developed in response to 1986 amendments to the federal Safe Drinking Water Act. The purpose of Michigan's WHPP is to protect public water supply systems, which use ground water, from potential sources of contamination. Wellhead Protection Areas (WHPA) have been developed to identify the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. Allowing contamination to remain in place at a site of environmental contamination within a WHPA may be determined protective of public health at the property but may be inconsistent with the goal to protect the public water supply system. Therefore, the coordination between programs required by this procedure is necessary to determine the protection of public health for the remedy that allows the contamination to remain in place.

Proposed LRURs are evaluated during the Report review process. When a Report is received by the RRD, EGLE must abide by strict timeframes outlined in Part 201 or Part 213 to conduct the review\*. During this review period, all Reports are subject to the Remediation and Redevelopment Division Peer Review Procedure (RD-15) and the RRD Review Priorities Procedure (RRD-26).

When sites are located in the WHPA, consultation with relevant Drinking Water Staff needs to occur prior to and/or during the Peer Review. Timely communication between decision makers that regulate Part 201 and Part 213 sites of contamination and those that regulate and/or manage the WHPA is critical to ensure an informed decision is made within the statutory timeframes.

**POLICY**

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Work groups within RRD, EGLE DWS and external DWS will share information in a collaborative process when a site of contamination is located in a WHPA and a LRUR is proposed restricting groundwater use as a Response Activity under Part 201 or Part 213. The collaboration will occur during the review or audit of a Report, as necessary, to ensure that exposure risks to human health are prevented. \*\*

*\*When the RRD receives a Response Activity Plan or NFA Report, EGLE has 150 days to review the Report and respond to the submitter, unless it requires public participation. Then 180 days are allowed to complete the review. When the RRD receives a FAR or CR, the department has 90 days to determine whether to audit the Report. If the Report is audited, EGLE has 180 days from receipt of the Report to complete the review and respond. Extensions can be granted by mutual agreement.*

*\*\*This policy will also be applied in the event that an LRUR is submitted in advance of a Report, or as part of a separate submittal.*

*This policy may be applied to other EGLE programs that implement Part 201, or similar clean-up programs, including, but not limited to Part 31 Water Resources Protection, Part 111 Hazardous Waste Management, and Part 115 Solid Waste Management of NREPA.*

**PROCEDURE**

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**Procedure for Type I Community Water Systems (CWS):**

<b>Identification of a Report that Relies on LRUR in a WHPA</b>		
1	Project Manager (PM)	Within 30 days of receiving a Report that relies on a LRUR restricting groundwater use, the PM responsible for the review of the Report shall identify whether the proposed restriction is within a WHPA. Two EGLE mapping resources that are useful tools to identify WHPAs in the relevant geographic location are: RRDs Environmental Mapper; available at: <a href="http://web1.mcgi.state.mi.us/environmentalmapper/mcgi.aspx">http://web1.mcgi.state.mi.us/environmentalmapper/mcgi.aspx</a> , Office of Drinking Water and Municipal Assistance; Drinking Water GIS; available at: <a href="http://mcgiintra.mcgi.state.mi.us/dwgis/">http://mcgiintra.mcgi.state.mi.us/dwgis/</a> .

<b>Internal Consultation</b>		
2	Project Manager, EGLE Drinking Water Staff (DWS)	If the LRUR restricting groundwater use is in a WHPA, the Report shall be given a priority for review following both the RRD Peer Review Procedure and RRD Review Priorities Procedure. Prior to the RRD Peer Review, the PM will provide the EGLE DWS a copy of the Report, or if available, a copy of the complete the Peer Review document. The EGLE DWS will be given no less than 30 days to review the document and provide input on whether a decision to allow contamination to remain in place through the proposed LRUR will unacceptably threaten the drinking water supply. Pertinent details of the drinking water supply relative to contamination being left in place will also be provided by EGLE DWS. Consultation may include a meeting, phone conversation, e-mail exchange, and/or document sharing, as necessary. A meeting or phone conversation is strongly advised to encourage deliberative discussions and may help to expedite the review time. This process is a collaborative effort and staff will maintain an open line of communication between the separate work groups. Any written correspondence generated as part of the consult should be identified as pre-decisional/deliberative.
<b>Peer Review</b>		
3	Project Manager, EGLE DWS Field Manager or Superfund Unit Supervisors	EGLE DWS will be given the opportunity to participate in the Peer Review. The PM shall provide notification of the date and send an invitation to attend. The input of EGLE DWS will be thoroughly considered when RRD determines whether a proposal to leave contamination in place with a LRUR is protective of human health and in particular protective of the CWS well(s) in the WHPA.
<b>Management Consultation</b>		
4	Project Manager, EGLE DWS Field Managers or Superfund Unit Supervisors EGLE Management	If a circumstance arises where EGLE DWS do not agree that the proposal is protective of the CWS well(s), consultation with management will be sought to resolve the issue through (1) Section Managers, (2) Division Directors, and (3) EGLE Chief Deputy Director. When requesting the consultation, it is the responsibility of EGLE DWS to provide the technical justification as to why the proposed remedy is not protective of the water supply wells. The fact that that the proposal to leave contamination in place occurs within the WHPA does not in itself constitute evidence that the remedy is not protective.
<b>External Consultation and Peer Review</b>		
5	Project Manager, External DWS	Prior to the Peer review, the WSO shall be provided a copy of the Report, or complete Peer Review document if available, and will be given no less than 30 days to review and provide input on whether a decision to allow contamination to remain in place through the proposed LRUR will unacceptably threaten the drinking water supply. The written or verbal comments from the WSO shall be taken into consideration during the decision-making process. Any written correspondence generated as part of the consult should be identified as pre-decisional/deliberative. Ultimately, EGLE Staff make the final decision.

<b>Post Peer Review Actions</b>		
6	Project Manager Field Manager or Superfund Unit Supervisors	If the Report is <b>approved</b> with the LRUR, the LRUR is forwarded with a copy of the Approval Letter to the subject Local Health Department and WSO for consideration of well placement in the future. If multiple LRURs are relied upon in the Report, all LRURs are forwarded.
		If the Report is <b>denied</b> , the deficiencies will be documented in the RRD-District Peer Review Form and the Denial letter that is sent to the Report submitter. EGLE DWS and the WSO will be copied on the correspondence.
<b>Appeals</b>		
7	Project Manager, EGLE DWS, EGLE Management	If the Report is denied because the LRUR is not protective of the CWS and the person appeals the decision to the Response Activity Review Panel or files a Contested Case, the EGLE DWS, PM, and managers will participate in the review or hearing. The WSO may be invited to participate when applicable.

**Procedure for Type II Non-transient/Non-community water systems:**

<b>Identification of the WHPA</b>		
1	Project Manager	Within 30 days of receiving a Report that relies on a LRUR restricting groundwater use, the PM responsible for the review of the Report shall identify whether a proposed restriction is within a WHPA. Two EGLE mapping resources that are useful tools to identify WHPAs in the relevant geographic location are: RRDs Environmental Mapper; available at: <a href="http://web1.mcgi.state.mi.us/environmentalmapper/mcqi.aspx">http://web1.mcgi.state.mi.us/environmentalmapper/mcqi.aspx</a> , Office of Drinking Water and Municipal Assistance; Drinking Water GIS; available at: <a href="http://mcqiintra.mcgi.state.mi.us/dwgis/">http://mcqiintra.mcgi.state.mi.us/dwgis/</a> .
<b>External Consultation and Peer Review</b>		
2	Project Manager External DWS	If the LRUR utilizing a groundwater restriction is in a WHPA, the Report shall be given a priority for review in keeping with the RRD Peer Review Procedure and RRD Review Priorities Procedure. Prior to the Peer Review, the PM will consult the relevant External DWS and provide them a copy of the Report, or the completed Peer Review document, if requested. Consultation may also include a meeting, phone conversation, e-mail exchange, and/or document sharing, as necessary. A meeting or phone conversation is strongly advised to encourage deliberative discussion and may help to expedite the review time. This process is be a collaborative effort and staff will maintain an open line of communication between the separate work groups. The list of contacts at each local health department can be found at this link: <a href="http://www.michigan.gov/degwaterwellconstruction">www.michigan.gov/degwaterwellconstruction</a> .

<b>The Peer Review Procedure</b>		
3	Project Manager External DWS Field Manager or Superfund Unit Supervisor	The External DWS shall be given no less than 30 days to review and provide input on whether a decision to allow contamination to remain in place through the proposed LRUR will unacceptably threaten the drinking water supply. The written or verbal comments from the External DWS shall be taken into consideration during the decision-making process. Any written correspondence generated as part of the consult should be identified as pre-decisional/deliberative. Ultimately, EGLE Staff make the final decision.
<b>Post Peer Review Actions</b>		
4	Project Manager Field Manager or Superfund Unit Supervisor	<p>If the Report is <b>approved</b> with the LRUR, the LRUR shall be forwarded with a copy of the Approval Letter to External DWS for consideration of well placement in the future. If multiple LRURs are relied upon in the Report, all LRURs are forwarded.</p> <p>If the Report is <b>denied</b>, the deficiencies will be documented in the RRD-District Peer Review Form and the Denial letter that is sent to the Report submitter. The relevant Drinking Water Staff are copied on the correspondence.</p>
<b>Appeals</b>		
5	Project Manager, EGLE Management	If the Report is denied and the requesting party appeals the decision to the Response Activity Review Panel or files a Contested Case, the EGLE DWS (if applicable), PM, and managers will participate in the review or hearing. External DWS participation will be requested, when applicable.

**APPROVING AUTHORITY**

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DIVISION DIRECTOR APPROVAL:

Mike Neller, Director  
Remediation and Redevelopment Division

**HISTORY**

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Policy No.	Action	Date	Title
RRD-38	Original	02/10/2020	Review of Response Activity or Corrective Action in WHPA Relying on LRUR
RRD-38	Review	10/20/2020	Review of Response Activity or Corrective Action Within a Wellhead Protection Area Relying on Land or Resource Use Restrictions Procedure RRD-38

## **CONTACT/UPDATE RESPONSIBILITY**

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Any questions or concerns regarding this policy and procedure should be directed to [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov).

*An EGLE policy and procedure cannot establish regulatory requirements for parties outside of EGLE. This document provides direction to EGLE staff regarding the implementation of rules and laws administered by EGLE. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law. EGLE staff shall follow the directions contained in this document.*