



Guidance on Incorporation of Planned Property Use into Site Decisions

a Fact Sheet prepared by the Site Response Section
of the Minnesota Pollution Control Agency

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The nature of decision-making regarding how to investigate, evaluate and remediate environmental contamination at Superfund sites, “Brownfield” properties, and other contaminated sites is evolving. In response to these changes, the Minnesota Pollution Control Agency’s (MPCA) Site Response Section (SRS) staff are developing a manual that outlines a risk-based approach to decision making during site investigation and remedy selection. The Risk-Based Site Evaluation Manual (the Manual) will provide a tiered process for making decisions by evaluating risks to public health and the environment at sites under the Superfund and Voluntary Investigation and Cleanup (VIC) Programs. Each tier requires increasing amounts of site-specific data collection and analysis. This Guidance on Incorporation of Planned Property Use (Property Use Guidance Document) is a working draft chapter from the Manual under development. Decisions on ground water use will be presented in a separate document.

The purpose of this Property Use Guidance Document is to summarize how planned property use may be incorporated into the investigation and cleanup decision-making process at Superfund and VIC Program sites as required by state Superfund law. Planned use of the property will be taken into consideration when setting cleanup standards and selecting response actions. Because local governments generally have primary jurisdiction and responsibility in making property use decisions the involvement of local governments and input from owners and affected citizens will be imperative in identifying planned property use.

“Property use” means the activities that occur on a property. Risk on or near the property is determined by receptors exposed to the contamination at the property. Knowing the planned use of contaminated property, and nearby property that may be affected, is important when reasonably estimating potential risk posed by the site contamination and selecting the appropriate remedial actions. When it is determined that residual contamination will remain on-site as part of a remedial action, institutional controls may be used, if necessary, to ensure that the remedy remains protective of public health and the environment. Exposure to contamination can be reduced or controlled by: 1) decreasing contaminant levels; 2) reducing the volume of the contamination; 3) reducing the mobility of the contamination; and/or 4) restricting and controlling activities or access by possible receptors on the property or surrounding properties.

Institutional controls are one method whereby exposure to contamination can be controlled as part of a remedial action. The purpose of incorporating an institutional control in a MPCA approved response action is to: 1) assure that response actions remain protective of public health and the environment by limiting uses or activities on the property that could result in exposure to hazardous substances that remain on the property after response actions are completed; 2) serve as a mechanism to notify appropriate parties (e.g., local units of government, prospective purchaser, lenders, tenants, etc.) of the presence of residual contamination and accompanying controls; and/or 3) ensure long-term mitigation measures or monitoring requirements (e.g., engineering controls) are carried out and maintained. In developing remedial actions that include institutional controls, the following issues need to be evaluated: 1) the type of institutional control to be used; 2) the effectiveness of the institutional control; and 3) the authority, capability and willingness of the appropriate entity (or entities) to implement, maintain and monitor the institutional control.

A variety of institutional controls exist. The institutional control recommended depends on the type of receptor and the potential for exposure to the residual contamination. This draft document provides guidance on the use of institutional controls within MPCA authority to require or seek, i.e., real property notification/affidavits, contractual agreements (including consent orders), easements and environmental restrictive covenants. Guidance regarding application of other types of institutional controls is not provided in this document because they are not within MPCA authority to require or seek and are enforced by other agencies, units of governments or other entities. If the entity responsible for the other institutional controls agrees to implement and maintain the institutional control to ensure the protectiveness of the remedy they can be considered as alternatives to the institutional controls within MPCA authority.

Institutional controls should be considered measures that enhance or assure the integrity of response actions. Institutional controls, as defined and applied in the state Superfund law, are not themselves considered remedial or cleanup actions but can be a factor to consider in making a “no further action” decision. Institutional controls will not be used as the sole method of addressing a release if there are response actions that are cost-effective and technically feasible. The MPCA will continue in its preference for measures that eliminate or reduce the need for use restrictions and long-term monitoring/maintenance activities. General guidance on the application of the institutional controls within MPCA authority to require or seek is summarized in the following *simplified* table.

[Note: for a more detailed table see ATTACHMENT 2 of this Working Draft Document]

Property Use	Residual Soil Contamination	Institutional Control (s)
Residential or Unrestricted Commercial	Meets residential criteria. Remotely accessible contaminant levels may be allowed to exceed residential criteria if cross media contamination is not of concern.	None or Real property notification/affidavit. Easement if monitoring is required.
Industrial or Restricted Commercial	Meets industrial/restricted commercial criteria. Remotely accessible depth may exceed criteria if cross media contamination is not of concern.	Real property notification/affidavit. Easement if monitoring is required.
	Residual contaminant concentration or accessibility vary based on site-specific considerations.	Environmental restrictive covenant
Recreational	Meets recreational criteria. Remotely accessible depth may be allowed to exceed criteria if cross media contamination is not of concern.	Real property notification/affidavit. Easement if monitoring is required.
	Residual contaminant concentration or accessibility vary based on site-specific considerations.	Environmental restrictive covenant

Note: Ecological, special property uses (e.g., food production) and cross media transfer (e.g., leaching to ground water, surface water impacts, soil vapor) issues are not addressed as part of this table.

Remotely accessible generally means one of the following conditions: 1) contamination located at a depth of greater than twelve (12) feet below the ground surface; or 2) contamination completely covered by an existing building or other permanent structure which does not have earthen floors. Note: Site specific conditions may influence contamination accessibility determinations.

Draft Document Availability

All draft guidelines are to be used with assistance from Minnesota Pollution Control Agency staff assigned to a specific site. Draft sections of the site evaluation manual will be available for public comment as they are completed. A photocopy fee of approximately \$0.20 per page will be charged for pages in excess of 20. To receive copies of the current and future documents or to be placed on a mailing list to receive notices regarding the guidance development efforts please send written requests to:

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Written comments regarding the guidelines may be sent to the *SRS Guidance Coordination Team* at the same address.

