

**Title 10 – DEPARTMENT OF NATURAL RESOURCES**  
**Division 20 – Clean Water Commission**  
**Chapter 10 – Underground Storage Tanks – Technical Regulations**

**PROPOSED RULE**

*PURPOSE: This rule explains when the department will make a no further remedial action determination, conditions applicable to such determination, content of the no further remedial action determination letter, and conditions under which the department may void such determination.*

**10 CSR 20-10.082 No Further Action Determinations**

(1) The department will make a determination that no further remedial action is required at a site when the requirements of 10 CSR 20-10.070 through 10 CSR 20-10.082 are met to the satisfaction of the department.

(2) The remediating party may request that the department make a determination of no further remedial action for a site when a risk assessment has been performed and the results approved by the department and, if a corrective action plan is required, the approved corrective action plan has been successfully implemented.

(3) The department will make a determination of no further action for the site if the concentrations of chemicals of concern on the site do not pose an unacceptable level of risk to human health, public welfare and the environment for the current and reasonably anticipated future land use and that all requirements of the approved corrective action plan have been satisfied, including all applicable long-term stewardship requirements.

(4) The department's determination of no further remedial action for a site shall be contingent on the following conditions being met for a site:

(A) If relevant, the groundwater solute plume is stable or decreasing. If this condition is not satisfied, the remediating party shall continue groundwater monitoring on a schedule approved by the department until the plume is demonstrably stable, take actions to hasten stabilization of the solute plume, or conduct further evaluation to demonstrate that the lack of demonstrated solute plume stability will not result in excessive risk.

(B) The maximum concentration of any chemical of concern in any sample used in developing a representative concentration is less than ten times the representative concentration of that chemical of concern for any exposure pathway. This condition can be met if the high concentration can be explained by any of the following, appropriate action is taken to address the condition, and the department approves the risk assessment with this explanation:

1. The maximum concentration is an outlier;
2. The representative concentration was inaccurately calculated; or
3. Other explanation satisfactory to the department.

(C) Pursuant to 10 CSR 20-10.081, long-term stewardship is established if the concentration of any contaminant of concern exceeds target levels for residential land use.

(D) There are no ecological concerns at the site, as determined by completion of the ecological risk assessment or confirmation that the maximum or representative concentrations of chemicals of concern are below levels protective of ecological receptors or. This condition can be met if an unacceptable ecological risk can be managed through actions recommended in the corrective action plan and approved by the department.

(5) A determination of no further remedial action for a site by the department will be documented in a letter provided to the remediating party and other such parties as may be appropriate. The letter will state that, based on the information available, the concentrations of chemicals of concern on the site do not pose an unacceptable level of risk to human health, public welfare and the environment for the current and reasonably anticipated future land use and provided that all applicable long-term stewardship requirements remain in place.

(A) The department will include all of the following in the letter:

1. An acknowledgement that the requirements of the corrective action plan were satisfied, including reference to the administrative record supporting completion of the site work, and acknowledging continuing requirements of the corrective action plan, if any;
2. The property use level of remediation objectives specifying any long-term stewardship requirements imposed as part of the remediation efforts;
3. A statement that the department's determination of no further remedial action signifies a release from further responsibilities under applicable laws and regulations in implementing the approved corrective action plan, other than any continuing requirements of the corrective action plan, and that the site does not present unacceptable risks to human health, public welfare and the environment based upon currently known information;
4. The prohibition against the use of the site in a manner inconsistent with any use limitation imposed as a result of the corrective action efforts without additional appropriate corrective action activities;
5. A description of any preventive, engineered or institutional controls or monitoring, including long-term monitoring of wells, required in the approved corrective action plan or a reference identifying where corrective action plan information can be found;
6. A statement, if relevant, regarding the denial of access to adjacent and nearby property and the property to which access was denied;
7. The obligation to record the letter in the chain of title for each affected property within the site;

8. Notification that further information regarding the site can be obtained from the department through a request under the Missouri Sunshine Law (Chapter 610, RSMo.);
  9. A standard department reservation of rights clause for previously unknown or changing site conditions;
  10. Notification that the determination of no further remedial action may be voided for reasons listed in 10 CSR 20-10.082(7); and
  11. A description of the site by legal description, by reference to a plat showing the boundaries, or by other means the department determines sufficient to identify site location, any of which may be an attachment to the letter.
- (6) No site with activity or use limitations or other long-term stewardship requirements may be used in a manner inconsistent with such limitations or requirements unless further evaluation or corrective action documents the attainment of objectives appropriate for the new land use or activity. If the department approves modified long-term stewardship requirements, an updated letter reflecting the new site conditions and requirements may be obtained and recorded as described above.
- (7) The department may void a determination of no further remedial action if site use and activities are not managed in full compliance with the approved corrective action plan.
- (A) Specific acts or omissions that may result in voiding of the determination include and are not limited to:
1. Failure to adhere to the terms of a durable land use limitation;
  2. Failure to adhere to any other applicable institutional controls, land use restrictions, or other environmental limitation;
  3. Failure of the owner, operator, remediating party, or any subsequent transferee to operate and maintain preventive or engineered controls, to comply with any monitoring plan, or to disturb the site contrary to the established limitations;
  4. Disturbance or removal of contamination that has been left in place if such disturbance or removal is not in accordance with the corrective action plan;
  5. Failure to comply with the recording requirements or to complete them in a timely manner;
  6. Obtaining the determination of no further remedial action by fraud or misrepresentation; and
  7. Subsequent discovery of contaminants, releases, or other site specific conditions not identified as part of the investigative or corrective action activities and which pose a threat to human health, public welfare or the environment.
- (B) The department may void the determination of no further remedial action if information becomes available to indicate that contamination not accounted for in the risk assessment and corrective action plan is present at the site at levels which may threaten human health or the environment.

(C) If the department voids a determination of no further remedial action, it may provide a letter to the party or parties to whom the no further remedial action determination letter was originally provided and to other involved or affected parties explaining that the no further remedial action determination is void and why, place a notice to that effect in the chain of title, pursue enforcement action, declare an environmental emergency, or take other actions to protect human health, public welfare or the environment.