



Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 26 – Petroleum and Hazardous Substance Storage Tanks
Chapter 2 – Underground Storage Tanks – Technical Regulations

PROPOSED RULE

10 CSR 26-2.081 Long-Term Stewardship

Comment [n1]: Long-term stewardship issue; certain stakeholders oppose the rule in its entirety.

PURPOSE: This rule provides requirements and procedures for long-term stewardship to manage risks at sites where contamination in excess of applicable residential target levels will remain. The requirements in this rule accommodate situations where cleanup to higher levels is appropriate while ensuring that human health, public welfare, and the environment are protected by restricting changes in site conditions.

(1) (Reserved).

(2) Long-term stewardship measures shall be employed at any **property within a site** where, following completion of corrective action activities, concentrations of chemicals of concern in soil or groundwater exceed applicable target levels for residential land use.

Comment [n2]: Based on comments received, the Department intends to revise the definition of "site" to mean the property on which a tank is or was found and on which the contamination originated. This revised definition will necessitate the revision of other rule language for clarity and consistency.

(A) At a minimum, long-term stewardship measures must be designed to ensure disclosure so that appropriate information reaches current and future owners, operators and other users of the property or properties to which the measures apply. The information shall include the location and concentration of chemical(s) of concern on the property and a statement that, without further action, the property is suitable for non-residential uses only.

1. If the department agrees that the current and reasonably anticipated future use of a property is non-residential, and all representative concentrations of chemicals of concern on the property are above residential but below non-residential target levels, then the department shall require a non-enforceable informational long-term stewardship measure but shall not require an enforceable long-term stewardship measure for the property. Refer to section (6) of this rule for further information regarding informational long-term stewardship measures.

(B) An enforceable [*long-term stewardship measure*] **activity and use limitation** shall be used in the following circumstances:

1. Where reasonably foreseeable and otherwise lawful actions on a property could cause an exposure pathway to become complete (such as the construction of a building or the installation of a water well);
2. Where failure to adequately inspect or maintain an engineered control might allow an exposure pathway to become complete; or
3. Where the department or owners and operators otherwise determine that activity and use limitations are necessary to ensure remaining contaminants do not pose unacceptable risk.

(C) Any required long-term stewardship measures shall be maintained and shall ensure exposure pathways remain incomplete for the period of time during which chemical(s) of concern remain at a concentration(s) that could pose an unacceptable risk to human health, public welfare or the environment.

(D) Long-term stewardship measures shall be readily accessible, durable, reliable, and consistent with the risk posed by the chemical(s) of concern.

(3) Exception. Long-term stewardship is not required for a property containing an operating underground storage tank (UST) facility where, following the completion of corrective action activities, concentrations of one or more chemicals of concern on the property are below applicable non-residential risk-based target levels. Long-term stewardship measures will be required at the facility after the USTs have been permanently closed if residential target levels are not attained and the site is or may be used for purposes other than as an UST facility. If a release at an operating UST facility results in the migration of chemical(s) of concern onto a neighboring property, corrective action and/or long-term stewardship may be required with respect to the neighboring property in accordance with 10 CSR 26-2.079(3).

(4) To reduce risks posed by chemicals of concern to human health, public welfare, or the environment, with the approval of the department, owners and operators may use long-term stewardship measures as an alternative to, or in conjunction with, reducing concentrations of chemical(s) of concern in environmental media. Owners and operators may use one or more long-term stewardship measures to mitigate risk as part of a corrective action plan.

(5) Long-term stewardship measures shall be fully developed and proposed as part of the corrective action plan and shall be consistent with this rule and any other controls or limitations that are required by the department. The corrective action plan shall use one or more of the measures identified in sections (6) through (10) of this rule or other alternative measures if approved by the department.

(6) Deed notice or other informational device. A deed notice or other informational device may be applied as a long-term stewardship measure to convey information about conditions at and appropriate use of a property [*if the department determines such notification is appropriate*]. The deed notice or other informational device shall remain in-place, accessible and viable for the period of time that chemical(s) of concern may pose an unacceptable risk to human health, public welfare or the environment.

(A) A deed notice or other informational device may not be used to impose restrictions or obligations at a property. If such restrictions or obligations are necessary to ensure a condition of risk management, an enforceable long-term stewardship measure shall be applied instead of or in addition to the deed notice or other informational device.

(B) The deed notice shall be recorded in the chain of title of the real property to which the deed notice pertains, be legally precise, contain summary information, and be written in language a lay person can understand. Recording shall be in accordance with the provisions of Section 59.310 Revised Statutes of Missouri. Once filed, the owner or operator shall submit to the department a copy of the notice as filed and as

stamped filed by the recorder's office. The deed notice shall include at least the following information:

1. Identification by common address and legal description of the property to which the deed notice applies;
2. The name of the property owner(s) and declaration of property ownership;
3. Contact information for the department and a statement that any information regarding the investigation, risk assessment, and corrective action performed on the property may be obtained from the department; [*and*]
4. A description of the type, concentration and location of petroleum-related contamination on the property;
5. An explanation and description of all corrective actions taken at the property, if any, and the cleanup target levels applied;
6. Identification of the exposure pathway or pathways of concern;
7. Identification and explanation of any and all other long-term stewardship measures affecting the property;
8. A statement that the property is suitable for non-residential use but is not suitable for residential use;
9. A statement using substantially the following language: "Any person may request in writing, at any time, that the Missouri Department of Natural Resources allow modification of this Deed Notice due to the performance of subsequent corrective actions, a change in conditions at the property, or the adoption of revised remediation standards;" and
10. One or more site maps showing:
 - A. The location and legal boundary of the property to which the deed notice pertains; and
 - B. The location of petroleum contamination on the property.

(C) With the approval of the department, owners and operators may use an informational device other than a deed notice as a long-term stewardship measure. To be approved, any such informational device must include, provide, and convey at least the information described at section (6)(B)1 – 8 of this rule and be at least as reliable, durable, and accessible as a deed notice.

1. **An owner or operator may record a No Further Corrective Action letter issued by the department in a property's chain of title as an informational long-term stewardship measure provided the owner or operator provides the department with a legal description of each property to which the letter applies and submits, within sixty (60) days of the date of the No Further Corrective Action letter, appropriate documentation to the department to prove that the letter was correctly recorded with the appropriate recorder's office.**

A. **Appropriate documentation shall include a copy of the No Further Corrective Action letter as recorded and stamped recorded by the recorder's office, the book and page number on which the letter appears, the date of recording, and a cover letter from the owner or operator attesting to the recordation of the letter.**

B. **If the owner or operator fails to submit appropriate documentation to the department within sixty (60) days of the date of the No Further Corrective Action letter, the department may deem the letter null and void. In such case, the department will so notify the owner or operator in writing.**

(7) Restrictive Covenant. A restrictive covenant may be used to impose restrictions or obligations needed to protect current or future users from environmental contamination present on a property. A restrictive covenant acceptable to the department as a long-term stewardship measure shall be durable, enforceable by the state, and run with the property.

(A) The restrictive covenant shall be recorded in accordance with the requirements of section 59.310 RSMo. in the chain of title of the property to which it applies. The restrictive covenant shall contain the elements described at section (6)(B)2 through 8 of this rule and the following:

1. Identification by common address and legal description of the property to which the restrictive covenant applies;
2. An explanation of the restrictions and obligations imposed by the restrictive covenant that apply to the property and the reason for their application;
3. Language instituting such restrictions and obligations, and granting access to the department or its designee to inspect the condition of the property, the integrity of controls, or other matters related to the contamination remaining on the property;
4. A statement that the restrictions and obligations apply to the current owners, occupants, and all heirs, successors, assigns, and lessees;
5. A statement that all restrictions and obligations apply in perpetuity, or until the department issues a new determination of no further *[remedial]* **corrective** action approving modification or removal of the restrictions and obligations, and the release or modification of the restrictive covenant issued by the department is filed in the chain of title for the property;
6. The dated, notarized signatures of the property owners or authorized agent; and
7. One or more scaled site maps showing:
 - A. The location and legal boundary of the property to which the restrictive covenant applies;
 - B. **All engineered features and monitoring points to which the restrictive covenant applies;** *[The estimated horizontal and vertical extent of*

concentrations of chemical(s) of concern in soil and/or groundwater to which the restrictive covenant applies;]

C. If applicable, specific areas within the property where specific activities or uses are restricted by the restrictive covenant (for example, areas where building construction is restricted or the installation of water wells is restricted);

D. **If determined to be necessary by the department, the estimated horizontal and vertical extent of concentrations of chemical(s) of concern in soil and/or groundwater to which the restrictive covenant applies;** [*All engineered features and monitoring points to which the restrictive covenant applies;*]

E. **If determined to be necessary by the department,** [*T*]the location of the contamination source, if known [*and relevant to the purposes of the restrictive covenant*]; and

F. **If determined to be necessary by the department,** [*T*]the direction(s) of groundwater movement in subsurface zone(s) affected by site-related chemical(s) of concern.

(B) A copy of the recorded restrictive covenant that references the book and page of recording shall be submitted to the department as part of the corrective action plan completion report.

(C) The use of a property shall be consistent with the terms of the restrictive covenant imposed on the property unless the department approves a change in the terms of the restrictive covenant. In such case, documentation of the change shall be recorded in the chain of title of the property and a copy of the materials recorded provided to the department program under which the restrictive covenant was first imposed.

(8) Ordinances and supporting memoranda of agreement. An ordinance adopted by a local government may be used as a land use control or, if the ordinance is applicable to a specific exposure pathway, to prevent exposures via that pathway. In either case, the ordinance may be used only if it is supported by a memorandum of agreement between the local government and the department.

(9) Engineered controls. Engineered controls or barriers, including access controls, may be used as a long-term stewardship measure as part of the corrective action plan to prevent direct human or environmental exposure to contaminants. An engineered control or barrier may be used only if a restrictive covenant as described in section (7) of this rule is applied to the property to ensure long-term monitoring and maintenance of the engineered control or barrier. Inspection, maintenance and integrity certification requirements for the engineered control or barrier shall be included in the corrective action plan and restrictive covenant. The corrective action plan and the restrictive covenant shall include contingencies to address temporary breaches of an engineered control or barrier. Absent such a provision, temporary breaches of the control or barrier, unless caused by an unanticipated act of nature, are prohibited unless approved by the department. Any breach caused by an unanticipated act of nature shall be repaired in a timely manner.

(10) Well location and construction restriction rules, including but not limited to those in 10 CSR 23-3, may be used as a long-term stewardship measure to the extent that they restrict access to certain groundwaters and prevent exposure to contaminants.

(11) Applicability. Owners and operators shall use long-term stewardship measures that are appropriate for the exposure pathway or condition the measures are intended to address as part of the corrective action plan, with approval by the department, in accordance with the following provisions.

(A) Groundwater domestic use pathway. If following completion of corrective action activities concentrations of chemical(s) of concern exceed target levels applicable to the groundwater domestic use pathway and the pathway is complete under current or future conditions, one or more of the following long-term stewardship measures shall be used:

1. A restrictive covenant;
2. A local ordinance and supporting memorandum of agreement;
3. An engineered control including monitoring, maintenance, and periodic integrity certification accompanied by a restrictive covenant; or
4. Well location and construction requirements in 10 CSR 23-3.

(B) Vapor intrusion pathway. If following the completion of corrective action activities concentrations of chemical(s) of concern exceed target levels applicable to the indoor inhalation of vapor emissions from soil or groundwater exposure pathway for the future land use the department has determined applies to the property in accordance with 10 CSR 26-2.075(9)(A) and the pathway is complete under current or future conditions, one or more of the following long-term stewardship measures shall be used:

1. A restrictive covenant; or
2. An engineered control including monitoring, maintenance, and periodic integrity certification accompanied by a restrictive covenant.

(C) Other exposure pathways. For any other complete exposure pathway for which, following the completion of corrective action activities, concentrations of chemicals of concern exceed applicable target levels for the future land use the department has determined applies to the property in accordance with 10 CSR 26-2.075(9)(A), owners and operators may manage related risk, in whole or in part, through the application of specific long-term stewardship measures if approved by the department. All such measures shall be proposed as part of the corrective action plan.

(D) Regardless of the exposure pathway, even where not required by the department, owners and operators may utilize a deed notice or other informational device or a restrictive covenant as an additional precaution at their discretion. If an owner or operator intends to use a deed notice or other informational device, a restrictive covenant, or any other additional long-term stewardship method or measure, the owner or operator may propose such as part of the corrective action plan.

AUTHORITY: 319.109 and 319.137 RSMo Supp. 2007. Original rule filed February 13, 2009.

PUBLIC ENTITY COST: This proposed rule will cost public entities \$3,161,527 in the aggregate.

PRIVATE ENTITY COST: The proposed rule will cost private entities \$141,974 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:30 a.m. on August 20, 2009, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on August 27, 2009. Faxed or emailed correspondence will not be accepted. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.