

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 26-2.082 No Further [Remedial] Corrective Action Determinations

Comment [n1]: PSTIF stated in their comments during 2009 public comment period that this rule is unnecessary.

PURPOSE: This rule explains when the department will make a no further [remedial] corrective 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.

(1) The department will make a determination that no further [remedial] corrective action is required at a site when the requirements of 10 CSR 26-2.070 through 10 CSR 26-2.082 are met to the satisfaction of the department.

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 contamination originated. This revised definition will necessitate the revision of other rule language for clarity and consistency.

(2) Owners and operators may request that the department make a determination of no further [remedial] corrective 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.

Comment [n3]: Long-term stewardship comes into play here because LTS is required when contaminants will be left in place at concentrations above residential standards, even if the current/future land use is non-residential.

(3) The department will make a determination of no further [remedial] corrective 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 all requirements of the approved corrective action plan have been satisfied, including implementation of approved long-term stewardship measures.

Comment [n4]: Long-term stewardship

(4) The department’s determination of no further [remedial] corrective action for a site and issuance of a no further [remedial] corrective action letter shall be contingent on each of 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, owners and operators 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.

Comment [n5]: Duration of monitoring to establish plume stability issue; addressed more specifically in 2.076(17)(C)

(B) If the maximum concentration of any chemical of concern in any sample used in developing a representative concentration exceeds ten (10) times the representative concentration of that chemical of concern for any exposure pathway, the owner or operator has conducted the evaluation required at 10 CSR 26-2.079(7) and any corrective action determined by the department or the owner or operator to be necessary based on that evaluation. [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 and is replaced with an accurately calculated representative concentration; or*
3. *Other explanation satisfactory to the department.]*

(C) Pursuant to 10 CSR 26-2.081, long-term stewardship is established if the concentration of any contaminant of concern exceeds applicable target levels for residential land use.

Comment [n6]: Long-term stewardship

(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.

(5) A determination of no further [remedial] corrective action for a site by the department will be documented in a letter provided to owners and operators and other such parties as may be appropriate.

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

1. A statement 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 as long as all applicable long-term stewardship requirements, if any, are met now and in the future;
2. 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;
3. 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;
4. A statement regarding applicable property use in light of remediation objectives and specification of any long-term stewardship requirements imposed as part of the remediation efforts;
5. A statement that, based upon a review of reports pertaining to the site that were submitted to the department, no further [remedial] corrective action is required regarding the specific release or releases at the site as long as continuing requirements, if any, of the approved corrective action plan are met now and in the future;
6. A statement, if relevant, prohibiting use of the site in a manner inconsistent with any activity and use limitation imposed as a result of the corrective action efforts without additional appropriate corrective action activities;

Comment [n7]: Long-term stewardship

Comment [n8]: Same as above

7. 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;

Comment [n9]: Same as above

8. A statement, if relevant, describing any denial of access to adjacent and nearby property and the property to which access was denied and any resulting limitations in conducting site characterization, risk assessment, or corrective action;

9. Notification that further information regarding the site can be obtained from the department through a request under the Missouri Sunshine Law (Chapter 610, RSMo.);

10. A standard department reservation of rights clause for previously unknown or changing site conditions; and

11. Notification that the determination of no further [remedial] corrective action may be voided for reasons listed in 10 CSR 26-2.082(7).

(6) No site with an activity and use limitation or other long-term stewardship requirements may be used in a manner inconsistent with such activity and use limitation or other requirements unless further evaluation demonstrates, or corrective action results in, 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.

Comment [n10]: Same as above

(7) The department may void a determination of no further [remedial] corrective 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 an activity and use limitation;

Comment [n11]: Same as above

2. Failure to adhere to any other applicable long-term stewardship measure or environmental limitation;

3. The failure of owners and operators 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, or to submit required documentation of recording within a deadline provided for in rule; or

6. Obtaining the determination of no further [remedial] corrective action by fraud or misrepresentation.

(B) The department may void the determination of no further [remedial] corrective action if information becomes available to indicate that contaminants, releases, or other site-specific conditions are present at a site and were not accounted for in the risk assessment and corrective action plan and pose or may pose a threat to human health, public welfare or the environment.

(C) If the department voids a determination of no further [remedial] corrective action, it may provide a letter to the party or parties to whom the no further [remedial] corrective action determination letter was originally provided and to other involved or affected parties explaining that the no further [remedial] corrective 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.

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

PUBLIC ENTITY COST: The proposed rule will cost public entities \$919,886 in the aggregate annually.

PRIVATE ENTITY COST: The proposed rule will not cost private entities more than \$500 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.