Yes, LTS is another means of mitigating contamination left in-place. LTS also includes the situation you describe where maintenance is needed for an engineered barrier. Fortunately, we don't see a lot of those, as the follow-up, as you imply, can be a challenge.

Unfortunately, tank sites were exempted from the Missouri Environmental Covenants Act (MOECA); the covenants provided for by that law "run with the land" and automatically pass on to the new buyer. With the tanks exemption, a new covenant is needed when a property transfers; consequently, restrictive covenants include a requirement that the current owner notify DNR of a sale. If the owner does not, the new owner won't be bound by the restrictions and could take actions or use the property in a manner that would result in excessive human health risk, and DNR might never know of it. MOECA would have prevented that, or at least minimized the possibility of it occurring. The exemption leaves us only with a common law restrictive covenant, which has several important limitations.

Timothy Chibnall, ESIV
Hazardous Waste Program
(573) 522-1833 (phone)
(573) 751-7869 (fax)

From: Whittington, Robert (PSC) [mailto:rwhittington@pscnow.com]
Sent: Tuesday, February 15, 2011 12:50 PM
To: Chibnall, Tim
Subject: RE: LTS issues

So basically, LTS in the case of a non-residential situation is the same as requiring AULs to mitigate the contamination left in place……is that right ? If that's the case, I agree with everything you said. I have always viewed LTS as continued maintenance of a property to ensure the engineered barrier is in-tact. The owner/operator would be required to maintain the asphalt/concrete cap for instance. I think that is too much for the owner/operator to chew off. They would want resolution, not continued oversight. That is where I think there is a flaw in the LTS system, as is. Any maintenance of an AUL should be passed along to the new buyer, in the case of a property transaction.

Rob

From: Chibnall, Tim [mailto:tim.chibnall@dnr.mo.gov]
Sent: Tuesday, February 15, 2011 11:06 AM
To: Whittington, Robert (PSC)
Subject: RE: LTS issues

Rob:

Thanks for your input. I agree that the target levels applicable to a site should be met. However, I do not believe that doing so necessarily obviates the need for LTS. Let me

explain. Under RBCA, the residential target levels are protective of any land use. Non-residential target levels are conditionally protective; that is, they are protective provided the property in question continues to be used for non-residential purposes. The Department's responsibility in overseeing the RBCA process is to ensure contaminants at a site do not pose an unacceptable risk to human health or the environment for as long as the contaminants remain. When the contaminant levels remaining at a site are protective provided certain conditions are met, such as continued non-residential use, the Department has a responsibility to require that those conditions are met now and in the future and, if not met, that other actions (such as remediation) are taken to protect human health.

In my experience, most stakeholders will readily agree to place restrictions on groundwater use as a means to closing a site and avoiding a potentially complicated and lengthy cleanup. Likewise, we've had many stakeholders agree to require the installation of vapor barriers on all new structures as an alternative to cleaning up contamination that poses a vapor intrusion risk. In my mind, requiring LTS when land use is the variable in play is no different and is only logical. In fact, I think to not require LTS when land use is the variable would create an obvious inconsistency that the Department would be hard-pressed to defend.

For these reasons, the Department believes LTS of some sort should be required when a site is to be closed without first meeting residential cleanup standards. At present, for sites where land use is the only variable of concern, the Department is considering an on-line database populated with all sites and relevant site information as a potential alternative to a document recorded in a property deed. The database would not be an effective substitute for sites where certain restrictions or actions are needed to ensure human health protection, such as where groundwater use is restricted, a vapor barrier is required, or contamination is capped in-place. For these types of conditions, a Restrictive Covenant recorded in a property deed is needed.

These are my thoughts on the matter. Please let me know if you have questions or would like to discuss further.

Thanks,

Timothy Chibnall, ESIV
Hazardous Waste Program
(573) 522-1833 (phone)
(573) 751-7869 (fax)

From: Whittington, Robert (PSC) [mailto:rwhittington@pscnow.com]
Sent: Tuesday, February 15, 2011 7:53 AM
To: Chibnall, Tim
Subject: LTS issues

Regarding the LTS issue, personally (not PSC's comments – just mine) I think LTS overall is not effective as it is, because it is not being enforced, and Owners are not diligent in complying with LTS. Let me preface my next statements by saying that I am a little old fashioned when it comes to RBCA. My opinion - If a residential property is contaminated with levels that exceed the residential RBTLs, then it should be cleaned up to below residential levels, period. There should be no need for LTS.

In the case of a non-residential property, I think the sites contaminated above the non-residential SSTLs should be remediated to below those allowable levels, and an NFA awarded to that site/Owner. Again, I don't see the need for LTS. Am I missing something here? What are your thoughts ?

Rob Whittington

Rob Whittington, RG, CHMM
Project Manager
PSC Industrial Outsourcing, LP
210 West Sand Bank Road
Columbia, IL 62236
(618) 281-1523