

**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      Activity and Use Limitations and Engineered Controls**

*PURPOSE: This rule provides requirements and procedures for the use of activity and use limitations and engineered controls to address actual and contingent risks associated with chemicals of concern that will remain on a property affected by a release from a storage tank system after the department has issued a no further action letter for the site.*

(1) Owners and operators shall use one or more of the activity and use limitations provided for in this rule when one or more chemicals of concern from a storage tank release will, after the department issues a No Further Action letter for the release, remain in-place at concentrations that exceed the risk-based or site-specific target levels applicable to the property on which the chemicals of concern are found.

(2) When required, activity and use limitations shall:

(A) Be fully developed and proposed as part of the corrective action plan;

(B) Assure that the exposure pathway(s) remain incomplete for as long as chemicals of concern remain on the property at concentrations that could pose unacceptable risk to human health or the environment; and

(C) Be readily accessible, durable, reliable, enforceable, and consistent with the risk posed by the chemicals of concern.

(3) Owners and operators may use engineered controls or barriers, including access controls, to prevent exposures to chemicals of concern. Engineered controls or barriers shall be proposed in the corrective action plan and must be accompanied by a restrictive covenant meeting the provisions of section (4) of this rule;

(A) A restrictive covenant is not required when the engineered control is a permanent street, highway, or other similarly durable structure not specifically constructed or installed to mitigate risk associated with chemicals of concern associated with the release but having that effect.

(B) Inspection, maintenance and integrity certification requirements are required for each engineered control or barrier, except those specified at subsection (3)(A) of this rule, and shall be included in the corrective action plan and restrictive covenant.

(4) Restrictive Covenants. Owners and operators may use a restrictive covenant to impose restrictions or obligations to protect current or future users of a property from chemicals of concern present on the property. The restrictive covenant shall be durable, enforceable by the department, and run with the property;

(A) Owners and operators shall use the model restrictive covenant found in Appendix A of this rule unless the department provides written approval for the use of a different model restrictive covenant.

(B) The restrictive covenant shall be recorded in the chain of title of the property to which it applies in accordance with the requirements of 59.310 RSMo.

(C) The restrictive covenant shall contain at least the following information:

1. Identification by common address and legal description of the property to which the restrictive covenant applies;
2. The name of the property owner(s) and declaration of property ownership;
3. Contact information for the department and a statement that information regarding the investigation, risk assessment, and corrective action performed on the property may be obtained from the department;
4. A description of the type, concentration, and location of chemicals of concern remaining on the property;
5. An explanation and description of all relevant corrective actions taken at the property, if any, and the cleanup target levels applied;
6. If one or more engineered controls or barriers have been constructed or installed at the property to prevent exposure to chemicals of concern, the covenant must identify each engineered control or barrier, explain its purpose and location, and prescribe specific inspection and maintenance activities that apply to each control or barrier and a schedule for such activities;
7. Identification of the exposure pathway(s) of concern;
8. Identification and explanation of any and all other activity and use limitations affecting the property, if any;
9. If applicable, a statement that the property is not suitable for residential use but is suitable for non-residential use;
10. An explanation of the restrictions and obligations imposed by the restrictive covenant that apply to the property and the reason for their application;
11. 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, if any, or other matters related to the chemicals of concern remaining on the property;
12. A statement that the restrictions and obligations apply to the current owners and occupants and all heirs, successors, assigns, and lessees;
13. A statement that all restrictions and obligations apply in perpetuity or until the department issues a new determination 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;
14. The notarized and dated signatures of:
  - A. The property owner(s) or authorized agent(s); and
  - B. The department;
15. One or more scaled maps as exhibits to the restrictive covenant showing:

A. The location and legal boundary of the property to which the restrictive covenant applies;

B. If applicable, all engineered controls or barriers and monitoring points 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;

D. If determined to be necessary by the department, the estimated horizontal and vertical extent of chemicals of concern in soil and/or groundwater to which the restrictive covenant pertains;

E. If known and determined to be necessary by the department, the location of the source of the chemicals of concern on the property; and

F. If determined to be necessary by the department, the direction(s) of groundwater flow in the subsurface affected by site-related chemicals of concern.

(D) Owners and operators shall submit a copy of the recorded restrictive covenant that references the book and page number(s) of recording as part of the corrective action plan completion report required at 10 CSR 26-2.079(13).

(5) Ordinances and supporting memoranda of agreement. Owners and operators may, with the approval of the department, use an ordinance and supporting memorandum of agreement as an activity and use limitation for the groundwater domestic use exposure pathway if it prohibits the installation of water supply wells and requires the closure of any existing private wells, but does not expressly prohibit the installation of public potable supply wells and require the closure of such wells owned and operated by units of local government that are a party to the memorandum of agreement.

(A) Owners and operators must obtain the approval of the department to use a local ordinance and memorandum of agreement as an activity and use limitation. In requesting the department's approval, owners and operators shall submit at least the following to the department:

1. A copy of the ordinance certified by an official of the unit of local government representative of the area in which the site is located that it is a true and accurate copy of the ordinance;

2. A scaled map(s) delineating the area and extent of chemicals of concern associated with the release in groundwater at concentrations above the applicable target levels;

3. A scaled map(s) delineating the boundaries of all properties under which groundwater is located that contains chemicals of concern associated with the release at concentrations above the applicable target levels and information identifying the current owner(s) of each property identified on the map;

4. Documentation that the owners of the properties identified under subsection (5)(A)3 of this rule have been notified regarding the contamination in accordance with the requirements of 10 CSR 26-2.080(1); and

5. A supporting memorandum of agreement between the department and the local government that enacted the ordinance. The memorandum of agreement must include at least the following:

A. Identification of the authority of the local government to enter into the memorandum of agreement;

B. Identification of the legal boundaries, or equivalent, of the area to which the ordinance is applicable;

C. A commitment by the local government to notify the department in writing of any variance requests or proposed ordinance changes at least sixty (60) days prior to the date the local government is scheduled to take action on the request or proposed change;

D. A commitment by the local government to maintain a list of all storage tank release and closure sites within the area to which the ordinance applies that have received no further action letters from the department under the risk-based corrective action process provided for in 10 CSR 26-2.075 through 10 CSR 26-2.082;

E. The commitment of the local government to enforce the ordinance;

F. A provision that allows departmental access to information necessary to monitor adherence to the requirements in subsections (5)(A)5.C, D, and E of this rule;

G. If applicable, the terms of any commitment by the local government to reimburse the department for periodic review of the local ordinance and actions relating to it, and for any actions taken by the department to address increased risks that arise from actions taken by the local government on or related to the ordinance; and

H. The dated and notarized signature of the representative(s) of local government authorized to enter into the memorandum of agreement on behalf of the local government and the signature of the department.

(6) Well location and construction rules. Owners and operators may use existing well location and construction rules in 10 CSR 23-3 as an activity and use limitation to the extent that the rules restrict access to certain groundwater and prevent exposure to contaminants.

(7) For the groundwater domestic use pathway, the activity and use limitation must consist of at least one of the following:

(A) A restrictive covenant meeting the provisions of section (4) of this rule;

(B) A local ordinance and memorandum of agreement between the local government body and the department in accordance with section (5) of this rule;

(C) A substantial and durable engineered control or barrier meeting the requirements of section (3) of this rule and that is designed and expected to remain in place and functional for at least as long as one or more chemicals of concern potentially pose unacceptable risk;

(D) Well location and construction requirements in 10 CSR 23-3; or

(E) An alternative engineering or activity and use limitation approved by the department.

(8) No site or affected off-site property with an activity and use limitation 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 activity and use limitations, the department will provide owners and operators with an updated letter reflecting the new site conditions and requirements.

(9) For the vapor intrusion pathway, the activity and use limitation must consist of at least one of the following:

(A) A restrictive covenant meeting the provisions of section (4) of this rule;

(B) A substantial and durable engineered control or barrier meeting the requirements of section (3) of this rule and that is designed and expected to remain in place and functional for at least as long as one or more chemicals of concern potentially pose unacceptable risk;

(C) An alternative engineered control or activity and use limitation approved by the department.

(10) For other exposure pathways, any proposed engineered control or activity and use limitation must be included in the corrective action plan and approved by the department.

(11) Regardless of the exposure pathway and even when 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.

(12) Owners and operators shall ensure that all information submitted to the department in accordance with 10 CSR 26-2.050 through 10 CSR 26-2.081 is complete and accurate. The department will make certain site information for each tank site readily available to the public via an electronic on-line database.

*Authority: 319.109 and 319.137 RSMo Supp. 2007.*

**Appendix A**  
Model Restrictive Covenant