

APPENDIX D

**PROCEDURE FOR REVIEW OF RISK-BASED CORRECTIVE ACTION
(RBCA) DECISIONS**

Introduction

With the advent of this new RBCA guidance in Missouri, occasions for questions and differences between the department, owners, consultants and others over site-specific decisions will occur. Most differences will likely be resolved at the Project Manager level. This procedure lays out a process for resolving differences that cannot be resolved between the Project Manager and the remediating party. To be effective, the review process must be thorough, impartial and timely.

Who may request a RBCA Review?

The remediating party directly affected by a RBCA decision may request a review.

What decisions may be reviewed?

Any written decision of the Project Manager, including those transmitted via e-mail, regarding the applicability of the Missouri RBCA guidance or rules to a specific site being addressed under those rules or guidance. Likely areas of review will be decisions related to site characterization work plans and reports, site conceptual model/risk assessment reports, corrective action work plans and reports, activity and use limitations and long-term stewardship.

Evaluation by Unit Chief

Where the final decision in question is made by a Project Manager at the “staff” level, the remediating party (Requester) shall contact the Project Manager’s immediate supervisor and request an evaluation of the matter, before initiating a written request for a RBCA Review. The process for this may be any that is mutually agreeable to all parties. For example, a phone conference between the Requester and the Unit Chief, with or without the Project Manager, may serve to resolve the issue. When contacted for an evaluation, the Unit Chief must make every effort to address the matter and render a decision in a timely fashion. The Unit Chief will convey the decision to the remediating party in written form.

Requesting a RBCA Review

If the Requester feels that the response from the Unit Chief is not satisfactory or timely, or if the decision in question is made by a Project Manager at the Unit Chief level, the Requester may initiate a RBCA Review. This review is initiated by submitting the relevant information on the attached form “Request for RBCA Review” or through some other means that provides the same information. The request shall include a written summary of the matter and include supporting documentation as needed, or refer to such

documentation that may be in the department's files. When using supporting documentation, the Requester shall point to the specific pages, sections or items that are relevant. The request must be submitted in writing or via e-mail.

The request shall go first to the Section Chief over the Project Manager who rendered the decision in question. The Section Chief may either attempt to resolve the matter through the RBCA Review Process or may refer the matter immediately to the Program Director. The Section Chief may solicit the review and input of other section chiefs. If referring immediately to the program director, the Section Chief shall do so within three working days of receipt.

If the Requester does not agree with the findings of the Section Chief, the Requester may ask in writing or by e-mail that the Program Director review the matter.

The RBCA Review Process

The Reviewer (Section Chief or Program Director) shall review the file and impartially consider the relevant facts. The Reviewer shall discuss the substance of the Request for Review with the Requester at a mutually acceptable time and manner. The Requester may bring technical consultants and the Reviewer may include the Project Manager and other technical staff. Attorneys or other legal staff shall not participate, either for the Requester or the department, except by mutual agreement of all parties. The reviewer shall carefully and without partiality to department staff consider the facts and viewpoints of both sides and make every effort to take into account the meaning and intent of the written RBCA guidance.

The Reviewer shall provide a written decision summarizing the issue under review, the relevant facts of the decision, the rationale behind the decision and any information or considerations outside of the specific situation that were used in making the decision.

The Requester shall not unreasonably expand the original scope of the request except by mutual agreement, until the program has issued a final decision on the original request.

The decision of the Program Director is a final decision and may be appealed. Any decision made within the Hazardous Waste Program (HWP) may be appealed to the Hazardous Waste Management Commission.

Any written decision shall be retained in the HWP file for the site as a public record under the Sunshine Law. The HWP shall maintain a compendium of review decisions made under this process. The compendium shall be updated regularly and posted to the department's web site, and shall serve as a reference document when the RBCA guidance and rules are updated.

RBCA Review Process vs. Formal Appeal

This appendix describes an informal and voluntary review process. It is provided as a means of both working through differences between the department and the remediating party without time-consuming and expensive litigation. It is also a means for the department to review substantial decisions for relevance to other sites and to provide consistency in decision-making.

This informal review process does not substitute for or replace the formal appeal process to the Hazardous Waste Management Commission under 640.010 RSMo, in which an appeal is treated as a contested case. It does not substitute for administrative or judicial dispute resolution procedures available under applicable federal laws and regulations.

Timeframes

A Requester must file a Request for RBCA Review within ninety (90) days of the original decision except in the case of a “clean letter” or “no further remedial action letter,” in which case the Requester must file the request within thirty (30) days. The Section Chief will respond with a final decision within forty-five (45) days of receipt of the request.

If the Requester disagrees with the Section Chief’s decision, he or she may request a review by the Program Director within sixty (60) days of the Section Chief’s decision.

The Program Director as Executive Director will respond with a final decision within forty-five (45) days of receipt of the request.

These timeframes may be extended by mutual agreement of all parties.

Request for Review of RBCA Decision

R e q u e s t e r I n f o	Requester Contact Info _____	Date of Request _____
	Address _____	
	Telephone Number _____	
	Name of Site _____	Date Received by HWP _____
	Address of Site _____	
Summary of Issue (To be Completed by the Requester; Use extra pages, attachments as necessary)		
I hereby request a RBCA review of this matter by the Hazardous Waste Program		
Requester Signature _____		Date _____
S e c t i o n C h i e f	Section Chief: Summary of Findings and Comments (Use additional pages as necessary)	
S.C. Signature _____		Date _____
P r o g r a m D i r e c t o r	Program Director: Findings and Comments (Use additional pages as necessary)	
P.D. Signature _____		Date _____