

**Title 10 – DEPARTMENT OF NATURAL RESOURCES**  
**Division 20 – Clean Water Commission**  
**Chapter 10 – Underground Storage Tanks – Technical Regulations**

**PROPOSED RULE**

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

**10 CSR 20-10.081 Long-Term Stewardship**

(1) Definitions. The following definitions apply to terms used in this rule.

(A) Engineered control: an engineered and constructed physical mechanism to prevent direct human or environmental exposure to chemicals of concern. Examples include surface and subsurface barriers and vapor collection and control systems.

(B) Long-term stewardship measure: legal or physical restrictions or limitations on the use of or access to all or one or more parts of a site or facility to eliminate or minimize potential exposures to chemicals of concern or to prevent activities that could result in exposure or interfere with the effectiveness of a corrective action.

(C) Underground storage tank facility: a facility that has or had one or more petroleum underground storage tanks, as defined in Section 319.100, RSMo.

(2) Long-term stewardship measures shall be employed at any site where concentrations of chemicals of concern in soil or groundwater exceed risk-based target levels for residential exposure or light non-aqueous phase liquid (LNAPL) will remain in place following the cessation of removal activities. Long term stewardship shall be maintained for the period of time that chemicals of concern or LNAPL may pose an unacceptable risk to human health, public welfare or the environment.

(A) Long-term stewardship measures shall guarantee that exposure pathways remain incomplete for the period of time that there are concentrations of chemicals of concern remaining that could pose an unacceptable risk to human health, public welfare or the environment.

(B) Long-term stewardship measures shall be readily accessible, durable, reliable, enforceable, and consistent with the risk posed by the chemicals of concern. A durable activity and land use limitation, Letters of Completion, and any additional requirements of the authority under which remediation is being performed shall apply to the property.

(3) Exception. Long-term stewardship is not required at an operating UST facility where a petroleum release is cleaned up to non-residential risk-based target levels. Long-term stewardship measures may be required at the facility after the USTs have been permanently closed and the site is or will be used for purposes other than as an UST facility.

(4) With the approval of the department, responsible parties may use long-term stewardship measures as an alternative to reducing concentrations of chemicals of concern in environmental media at a site. The remediating party 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 if needed and appropriate. Long-term stewardship measures 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 (5) through (9) of this rule or other alternative measures if approved by the department.

(6) Durable activity and land use limitation. A durable activity and land use limitation may be used to impose land use and activity limitations or requirements needed to protect current or future users from environmental contamination present on a property. A durable activity and land use limitation acceptable to the department as a long-term stewardship measure shall be enforceable by the state and run with the property.

(A) The durable activity and land use limitation shall be recorded in the chain of title of the property to which it applies by the office of the recorder for the county, or city if not within a county, in which the property is located and contain the following elements:

1. Name of the property owners and declaration of property ownership;
2. Identification by common address and legal description of the property to which the durable activity and land use limitation applies;
3. Contact information for the department and program under which the remediation was conducted and a reference to the authority under which the remediation was conducted;
4. A statement of the cleanup standards that were achieved at the property;
5. A statement of the reason for the application of activity and land use limitations and requirements relative to protecting human health, public welfare and the environment from soil, groundwater, and/or other environmental contamination;
6. Language instituting such activity and land use limitations or requirements, 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;
7. A statement that the conditions, limitations, restrictions or requirements apply to the current owners, occupants, and all heirs, successors, assigns, and lessees;
8. A statement that the limitations or requirements apply in perpetuity or until the department issues a new determination of no further remedial action approving modification or removal of the limitations or requirements, and a release or modification of the activity and land use limitation is filed in the chain of title for the property;

9. Scaled site maps showing:
  - A. The location and legal boundary of the property to which the durable activity and land use limitation applies;
  - B. The estimated horizontal and vertical extent of concentrations of chemicals of concern in soil and/or groundwater to which the durable activity and land use limitation applies;
  - C. Any engineered features or monitoring points to which the durable activity and land use limitation applies;
  - D. The location of the contamination source, if known and relevant to the purposes of the activity and land use limitation; and
  - E. The direction(s) of groundwater movement in subsurface zone(s) affected by site-related chemicals of concern.
10. A statement that any information regarding the investigation, risk assessment, and corrective action performed on the property may be obtained from the department; and
11. The dated, notarized signatures of the property owners or authorized agent.
  - (B) A copy of the recorded durable activity and land use limitation 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 durable activity and land use limitation imposed on the property unless the department approves a change in the terms of the durable activity and land use limitation. 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 program under which the durable activity and land use limitation was first imposed.
- (7) Ordinances and supporting memoranda of agreement. An ordinance adopted by a local government may be used as a land use control if it is supported by a memorandum of agreement between the local government and the department.
- (8) 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. A durable activity and land use limitation shall also be required to ensure long-term monitoring and maintenance of the engineered control or barrier. Inspection, maintenance and integrity certification requirements shall be included in the corrective action plan and durable activity and land use limitation.
  - (A) The corrective action plan shall include contingencies to address temporary breaches of an engineered control. Absent such a provision, temporary breaches of the control, 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.

(9) Well location and construction restrictions may be used as a long-term stewardship measure to the extent that they restrict access to certain groundwaters and prevent exposure to contaminants. Rules delineating special areas and setting out requirements for wells in those areas are contained in 10 CSR 23-3.100. Rules prescribing well installation standards for certain regions in Missouri are contained in 10 CSR 23-3.090.

(10) Deed notice. A deed notice may be applied as a long-term stewardship measure for the source property or a neighboring property to the extent the notice conveys important information about a site if such notification is appropriate. Deed notices shall not be used as a primary long-term stewardship measure to control risks associated with specific pathways.

(A) The deed notice shall be recorded in the chain of title of the real property to which the deed notice pertains by the office of the recorder for the county, or city if not within a county, in which the property is located, be legally precise and written in language a lay person can understand, and include the following information:

1. A description of the type, concentration and location of contamination on the property;
2. Identification of the exposure pathway or pathways of concern;
3. An explanation as to where further information regarding the investigation, risk assessment, and corrective action at the site can be found; and
4. A reference to, or inclusion or description of, the no further remedial action letter issued by the department and any conditions or qualifications of issuance.

(B) A document with the following language may be filed as a deed notice in the chain of title of a property if approved by the department:

NOTICE OF ACCEPTABLE LAND USE(S) FOR UNDERGROUND  
STORAGE TANK SITE

Owner of Record: *(Landowner's Name)*

Site Description: *(Site Name and Legal Description)*

The above-described real property, owned by *(Landowner's Name)* and located in the City of *(City Name)*, County of *(County Name)*, State of Missouri, is the site of an underground storage tank which was *(Removed/Closed)* on *(Date)*. The site cleanup was accepted as complete by the Missouri Department of Natural Resources on *(Date)*, in accordance with the applicable requirements of Title 10, Division 20, Chapter 10 of the Code of State Regulations which were in effect at the time of cleanup. The contaminant levels remaining on the site are suitable for *(Residential/Non-Residential/Other specified)* use.

In witness whereof I hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*(Office)*  
\_\_\_\_\_

(Name)

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(Title)

1. No person may substantially change the manner in which a site with a document filed in the chain of title under this section is used without the prior written approval of the department.

A. Requests for approval of change in use of real property must be submitted in writing to the department no less than sixty (60) days prior to the planned change in use of real property. In the event the department does not respond within sixty (60) days after the request is received, the request will be considered to be approved as submitted.

B. The department will evaluate the request to determine whether the change in use of real property is likely to result in increased exposure of persons or the environment or spread of contamination.

C. If the change in use of real property is not likely to result in increased exposure of persons or the environment or spread of contamination, the director or his designee shall provide written approval.

2. When the department finds that a site which has had a document filed in the chain of title under this section has been further cleaned up to residential target levels or chemicals of concern no longer pose an unacceptable risk, the department shall direct the responsible party to file a second document in the chain of title. The document shall include the language in subsection (9)(B) of this rule, and shall describe the land uses for which the new contaminant levels are suitable. [NEED LEGAL OPINION AS TO THE ENFORCEABILITY OF THE FOREGOING AND, BY THAT, WHETHER TO KEEP THE HIGHLIGHTED LANGUAGE]

(11) Applicability. The remediating party 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 concentrations of chemicals 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 durable activity and land use limitation;
  2. A local ordinance and supporting memoranda of agreement;
  3. An engineering control including monitoring, maintenance, and periodic integrity certification accompanied by a durable activity and land use limitation;
- or
4. Well location and construction restrictions.

(B) Vapor intrusion pathway. If concentrations of chemicals of concern exceed target levels applicable to indoor inhalation of vapor emissions from soil or groundwater 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 durable activity and land use limitation; or
2. An engineering control including monitoring, maintenance, and periodic integrity certification accompanied by a durable activity and land use limitation.

(C) Other exposure pathways. For any other complete exposure pathway for which concentrations of chemicals of concern exceed applicable target levels, the remediating party may managed related risk, in whole or in part, through the application of specific long-term stewardship measures if and as approved by the department. All such measures contemplated by the remediating party shall be proposed in the corrective action plan.

(D) Regardless of the exposure pathway, a deed notice may be used as an additional precaution at the discretion of the remediating party. If the remediating party intends to use a deed notice or other additional long-term stewardship method or measure, the remediating party may propose such as part of the corrective action plan.