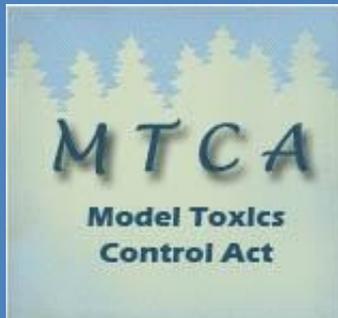


Proposed Changes to Periodic Reviews & Institutional Controls (Sections 420 & 440)

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Pete Kmet, P.E.

Toxics Cleanup Program
Policy & Technical Support Unit

pkme461@ecy.wa.gov

(360) 407-7199

Remedy Selection Requirements

- Seven Criteria

- Protect Human Health & Environment
- Comply with ARARs
- Comply with Cleanup Standards
- Provide for Compliance Monitoring
- Use Permanent Solutions to the Maximum Extent Possible
- Provide for a Reasonable Restoration Timeframe
- Consider Public Concerns



- Plus Remedy-Specific Requirements



What are Institutional Controls?

Measures taken to limit or prohibit activities or uses of real property that might interfere with remedy or result in exposure:

- Physical measures (fences)
- Limitations on activities or uses (“environmental covenant”)
- Educational programs

Affirmative obligations such as:

- Requirements for additional cleanup
- Maintenance requirements
- Periodic reporting
- Financial assurances

When are Institutional Controls Required?

- Concentrations remain above Methods A or B
- Method C is used to establish cleanup levels
- Industrial soil cleanup levels are used
- Groundwater cleanup level is based on non-potable use
- A conditional point of compliance is used
- When terrestrial ecological evaluation is based on certain site conditions (commercial/industrial property)
- When soil containment is used
- When otherwise required to protect HH & environment

Uniform Environmental Covenants Act (2007 Legislative Session)

- ❖ Provides structured process for establishing, amending, and terminating environmental covenants/deed restrictions that limit activities/use of real property as part of a cleanup
- ❖ Ensures covenants will “run with the land” and remain valid and enforceable, protected from invalidation under common law
- ❖ Requires Ecology to periodically review sites with environmental covenants for effectiveness



Periodic Reviews Status to Date

Location	# Sites with Institutional Controls	Sites with Completed Periodic Reviews	"Failed" Periodic Reviews*
CRO	70	34	5
ERO	50	25	0
NWRO	220	48	12
SWRO	129	43	6
Total	469	150	23 (15%)

*Categories of failures

- Institutional controls/remedy not implemented
- Remedy not protective
- Additional characterization needed to evaluate site

Periodic Review- Major Changes

- Includes VCP Sites: No longer optional (UECA). Other independent remedial action sites to be reviewed "as resources permit".
- New Trigger: 5 years starts
 - Upon recording of environmental covenant (UECA)
 - Upon implementation of alternative institutional control
 - If not recorded or implemented, when required
- Coordination with EPA: Ecology can rely on EPA's reviews.
- Enforcement Obligation: Ecology must take "any and all appropriate actions" (UECA).

Institutional Controls - Key Issues

- UECA Provisions: Should both required and optional UECA provisions be included? (many optional provisions are already in the MTCA rule)
- Sediments: Are there specific issues that need to be addressed with application of institutional controls to sediment cleanups?

Institutional Controls - Key Issues

- Off Property IC's: What has been the committee's experience with implementation of institutional controls for impacted properties not owned by PLPs? What rule changes are needed ("good faith effort")?
- Right of Ways: Should requirements for an alternative system for ROW's be specified to facilitate the approval process? (possible elements could include maps, permit system, 811 participation, training, ROW vacations)

Institutional Controls - Key Issues

- Financial assurances: Ecology believes the current requirements need to be strengthened given the current economic climate and bankruptcies.
 - What has been the committee experience with financial assurance mechanisms?
 - Are there practical considerations Ecology needs to consider in evaluating this issue?