

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.21310a Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including, but not limited to, the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow this state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated substances may be restricted by a means other than a restrictive covenant in a manner that protects against exposure to regulated substances as defined by the RBSLs and SSTLs, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, any of the following:

(a) Compliance with an ordinance, state law, or rule that limits or prohibits the use of contaminated groundwater above the RBSLs or SSTLs identified in the corrective action plan, prohibits the raising of livestock, prohibits development in certain locations, or restricts property to certain uses. An ordinance under this subdivision shall be filed with the register of deeds on the affected property or shall be filed as an ordinance affecting multiple properties. An ordinance adopted after the effective date of the 2016 amendatory act that amended this section shall include a requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A license or license agreement with the state transportation department if regulated substances are proposed to be left in place within a public highway owned or controlled by the state transportation department. The license or license agreement may include a financial mechanism in an amount calculated to reflect the reasonably estimated increased cost of any activity anticipated to be performed as described in the

most recently adopted state 5-year program, that has the potential to disturb or expose the environmental contamination left in place within the public highway, including, but not limited to, 1 of the following:

- (i) A bond executed by a surety authorized to do business in this state.
- (ii) Insurance coverage, as evidenced by a proof of insurance.
- (iii) Eligibility under the underground storage tank cleanup fund created in section 21506b.
- (iv) A letter of credit.
- (v) A corporate guarantee.
- (vi) Self-insurance meeting a financial test approved by the state transportation department.

(c) If the state transportation department fails or refuses to grant a license or enter into a license agreement within 120 days after submission of a request to issue a license or enter into a license agreement, and for public highways owned or controlled by a county road commission or a local unit of government, reliance on the existence of a public highway, if the owner or operator that is liable under section 21323a does all of the following:

(i) Provides the department and the person that owns or operates the public highway with the following information related to the release and site:

(A) The site name, address, and facility identification number, and the name and contact information of the person relying on the alternative mechanism.

(B) Identification of the department district office with jurisdiction over the site.

(C) The name of the affected public highway and the nearest intersection.

(D) Identification of known or suspected contaminants.

(E) A statement that residual or mobile NAPL is or is not present at the affected public highway.

(F) The media affected, including depth of contaminated soil, depth of groundwater, and predominate groundwater flow direction.

(G) A scale drawing of the portion of the public highway subject to the alternate mechanism that depicts the area impacted by regulated substances and the location of utilities in the impacted area, including storm water systems and municipal separate storm water systems.

(H) Identification of all ownership and possessory or use property interests related to the public highway and whether they are affected by the contamination and whether they have received notification of the existing conditions as part of a corrective action plan or pursuant to the due care requirements under section 21304c.

(I) Identification of exposure risks from drinking water, direct contact, groundwater, soil excavation, or relocation.

(ii) Confirms that there are no current plans to relocate, vacate, or abandon the public highway.

(iii) Either provides a certification to the person that owns or operates the public highway that any contamination present as a result of the release from the underground storage tank system does not enter a storm sewer system or provides all information necessary to clearly identify the nature and extent of the contamination that enters or has the potential to enter the storm sewer system.

(4) A person that applies for a permit issued by a county road commission or a local unit of government to excavate, bore, drill, or perform any other intrusive activity within a public highway or right-of-way of a public highway shall identify whether the proposed work will take place within an area being relied upon as an alternative institutional control.

(5) Reliance on a public highway as an alternative mechanism under subsection (3)(b) does not affect an owner's or operator's liability under section 21323a or impose liability for corrective action or any other obligation on the state transportation department, a county road commission, or a local unit of government. Information provided pursuant to section 21310a(3) or (4) to the person that owns or operates a public highway does not create an estoppel, obligation, or liability on the person that owns or operates the public highway. The use of a public highway as an alternative mechanism does not limit or restrict any right or duty of the state transportation department, a county road commission, or a local unit of government to operate, maintain, repair, reconstruct, enlarge, relocate, abandon, vacate, or otherwise exercise its jurisdiction over any public highway or public highway right-of-way or any part thereof, or to permit any utilities or others to use any public highway or public highway right-of-way, or any part thereof.

(6) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

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