

Arizona Revised Statutes

Title 49: The Environment

Article 4: Remediation Standards

49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

(b) The guidance levels in subdivision (a) modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. If, to comply with subsection A of this section, the owner of property has elected to remediate the property to nonresidential uses or has elected to use an institutional control or engineering control, the owner shall record in each county where the property is located a restrictive covenant that is labeled "declaration of environmental use restriction" pertaining to the area of the property necessary to protect the public health and the environment. The declaration of environmental use restriction shall limit by legal description:

1. The area of the property where the institutional control or engineering control shall be maintained.

2. The area of the property to be restricted to nonresidential use, if contamination remains on the property at or above either of the following:

(a) Predetermined risk based remediation standards for other than residential exposure assumptions.

(b) Concentrations resulting in a hazard index greater than one, indicating that there may exist an appreciable risk to human health from noncancer health effects, or a risk of carcinogenic health effects greater than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(1)(A)(2).

C. At the written request of the owner of property that is subject to a declaration of environmental use restriction, the director shall determine whether release of the declaration of environmental use restriction is appropriate. The director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of the declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. The director shall determine that release of a declaration of environmental use restriction is appropriate if the property has been remediated, without the use of institutional controls or engineering controls, to either:

1. Meet predetermined risk based remedial standards for residential exposure assumptions.

2. Present a risk based hazard index equal to or less than one from noncancer health effects and a risk estimate of carcinogenic health effects equal to or less than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(1)(A)(2).

D. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01 and a description of the purpose of the declaration of environmental use restriction.

E. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, inures to the benefit of the department and the state and is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.

2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.

3. A description of the environmental contaminants that were remediated.
4. A statement that more detailed information is available at the department including the address at which that information will be maintained.
5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.
6. The notarized signature of the owner of the property.

F. If institutional controls are used by the owner to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection E of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.
2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.
3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

G. If engineering controls are used by the owner to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection E of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.
2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.
3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.

H. When the declaration of environmental use restriction is recorded, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at

least once each calendar year. Within thirty days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.
2. States the nature and cost of all repairs made to the engineering control during the calendar year.
3. Includes current photographs of the engineering control.

I. The department may enter on the property at all reasonable times to assess the condition of each engineering control. If the department determines that repair or restoration of the engineering control is necessary to ensure the protection of public health or the environment, the department shall give notice to the owner. If the owner fails to initiate repair or restoration of the engineering control within sixty days of the notice or fails to complete the required repair or restoration within a reasonable time set by the department, the department may seek injunctive relief to compel the owner to repair or restore the engineering control or enter the property and repair or restore the engineering control at the department's expense. The director may recover from the owner all reasonable costs incurred in connection with the repair or restoration of the engineering control.

J. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction.

K. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

L. When the department enters on property pursuant to this section to verify that engineering controls are being maintained, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.
2. Allow the owner or an authorized representative of the owner to accompany the department representative.
3. Present photographic identification on entry of the property.
4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

49-158. Restrictions on property use; enforcement of engineering and institutional controls

A. Notwithstanding any other provisions of this title, if a remedial action, remediation or corrective action performed pursuant to this title or a response action performed pursuant to CERCLA as defined in section 49-201 includes an institutional control or an engineering control and the remedial action, remediation, corrective action or response action is not subject to section 49-152, the owner of the property on which the institutional control or engineering control is located shall record in each county where the property is located a restrictive covenant that is labeled "declaration of environmental use restriction". The declaration of environmental use restriction shall limit by legal description the area of the property necessary to protect public health and the environment where the institutional control or engineering control shall be maintained.

B. When recorded, an owner's declaration of environmental use restriction under subsection A of this section is a covenant that runs with and burdens the property, inures to the benefit of the department and the state and is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.
2. The date that remediation, remedial action, corrective action or response action was completed and a map of the area of the property that is subject to the declaration.
3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.
4. A statement that more detailed information is available at the department including the address at which that information will be maintained.
5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.
6. The notarized signature of the owner or owners of the property.

C. If institutional controls are used, the declaration of environmental use restriction, in addition to the information required by subsection B of this section, shall include the same elements required pursuant to section 49-152, subsection F.

D. If engineering controls are used, the declaration of environmental use restriction, in addition to the information required by subsection B of this section, shall include the same elements required pursuant to section 49-152, subsection G.

E. When a declaration of environmental use restriction is recorded, an owner shall pay to the department a fee established by rule. The owner shall follow the same requirements for institutional controls and engineering controls pursuant to section 49-152, subsection H.

F. The department may enter on the property at all reasonable times to assess the condition of each engineering control. The same requirements apply to the department and the owner as stated in section 49-152, subsection I.

G. The department shall adopt rules as necessary to implement this section.

H. When the department enters on property pursuant to this section to verify that engineering controls are being maintained, the department shall meet the same requirements pursuant to section 49-152, subsection L.

I. At the written request of the owner of property that is subject to a declaration of environmental use restriction recorded pursuant to subsection A of this section, the director shall determine whether release of the declaration of environmental use restriction is appropriate. The director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of a declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. Release by the director under this section is appropriate if maintenance of the institutional control or engineering control is no longer necessary to protect public health and the environment.

49-159. Institutional and engineering control fund; purpose

A. The institutional and engineering control fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Fees collected pursuant to section 49-152, subsection H.
2. Fees collected pursuant to section 49-158, subsection E.
3. Costs of repairing or restoring engineering controls that are recovered pursuant to section 49-152, subsection I.
4. Costs of repairing or restoring engineering controls that are recovered pursuant to section 49-158, subsection F.
5. Gifts, grants and donations.
6. Legislative appropriations.

B. Monies in the institutional and engineering control fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies in the institutional and engineering control fund shall be used for the following purposes:

1. For all reasonable and necessary costs to implement section 49-152, subsections B through L and section 49-158.
2. For the reasonable and necessary costs to administer the fund.
3. For the repair or restoration of engineering controls as provided by section 49-152, subsection I.
4. For the repair or restoration of engineering controls as provided by section 49-158, subsection F.