

Requirements for Remedial Actions Rendering Properties “Unusable”

Draft – Deliberative

Version 1

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I. Purpose

Under Section 47g (1) of the Site Remediation Reform Act, the department may disapprove the selection of a remedial action for a site on which the proposed remedial action will render the property unusable for future redevelopment or for recreational use.

II. Scope of Guidance

A remediating party and/or a Licensed Site Remediation Professional shall make every effort to select a remedial action that does not preclude or substantially restrict the use of a site for future redevelopment or for recreational use.

In most instances, land use and planning decisions fall under local or regional authority. Consequently, a remediating party and/or a Licensed Site Remediation Professional must ensure that a proposed remedial action and the anticipated end-use are consistent with applicable local and/or regional zoning requirements. This includes sites that fall within, and are subject to, the requirements of a special resource or regional planning area such as the Highlands, Meadowlands, Palisades or Pinelands.

III. Definitions

The department considers remedial actions that may render the property unusable to include, but are not limited to:

- permanent fencing or barriers that preclude access;
- treatment systems (wells and associated plumbing) that occupy greater than 20% of the developable land;
- interred material, capping systems or containment systems that present structural challenges/ impediments for greater than 20% of the developable land;
- remedial actions that result in 30% or greater slope over 20% or more of the developable land;
- remaining levels of contamination that impose regulatory limitations on site reuse, such as PCB contamination as subject to the federal Toxic Substances Control Act, or radioactive materials;
- remaining physical hazards such as munitions and explosives of concern (MEC); and
- conditions that would result in an Immediate Environmental Concern (IEC) if the property is developed including, but not limited to, vapor intrusion issues that cannot be addressed with engineering controls, and acute contaminant concentrations.

IV. Procedures

A remediating party and/or a Licensed Site Remediation Professional proposing a remedial action that may render the property unusable shall:

- notify the department, and municipality and/or regional authority, as appropriate;

- participate in a public hearing to discuss the proposed remedial action should an elected or appointed official request a hearing;
- not proceed with the selected remedy without municipal and/or regional approval, as appropriate.

A remediating party and/or a Licensed Site Remediation Professional is only obligated to select a remedial action that is consistent with existing zoning requirements.

The department will:

- audit all remedial actions that render a property unusable for future redevelopment or recreational use;
- invalidate a Response Action Outcome that renders a property unusable for future redevelopment or recreational use without municipal or regional authority approval.

If the department invalidates a Response Action Outcome, the remediating party and/or Licensed Site Remediation Professional will be required to modify the remedial action as directed by the department.

The department may also disapprove or limit the duration of on-going or interim remedial actions that represent a significant impediment to redevelopment or recreational use.