

STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

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COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

POLICY FOR A "NO FURTHER ACTION" DETERMINATION WHEN CONTAMINATION REMAINS ABOVE THE COLORADO GROUND WATER STANDARDS

The attached policy describes the criteria that will be used by the Colorado Department of Public Health & Environment, Hazardous Materials and Waste Management Division (the "Division"), in making a determination that no further active remediation and/or ground water monitoring is necessary at contaminated sites where ground water contamination in excess of the Colorado Ground Water Standards remains.

August 13, 2010 Version

Gary Baughman
Division Director

Date

INTRODUCTION

For sites with ground water contamination in excess of the Colorado Ground Water Standards (CGWS), the Division has discretion to determine whether no further active remediation and/or no further ground water monitoring are necessary. However, the Division's discretion does not circumvent or replace compliance with the Colorado Water Quality Control Commission's Regulation No. 41 (5 CCR 1002-41).

The Division will use the attached checklist as the basis for evaluating sites that have requested a "No Further Action" determination. If a "No Further Action" determination is granted, the checklist will be put into the site's file. Regardless of the criteria listed on the checklist, the Division retains complete discretion to decide if no further active remediation, monitoring and/or site closure is warranted at the site. The Division has prepared a guidance document, *Guidance for the Closure of Low Threat Sites with Residual Ground Water Contamination*, which intended to be used when implementing this policy.

OTHER CONSIDERATIONS

- A "No Further Action" determination under a remedial program does not preclude the State from seeking damages related to injury of the water or other natural resources under common law and CERCLA (i.e., natural resource damages).
- The Division's decision to accept natural attenuation with no further monitoring as the final determination for site closure is based on the information known to the Division at the time that the determination was made. The Division's determination may change based upon receipt of additional information, such as information not previously provided or new information not presented to the Division at the time the determination was made.
- The Division has the discretion to require the site owner/operator to conduct additional sampling and/or remediation if: the owner/operator wishes to change the site use to uses not covered by the institutional controls; the land use on other nearby affected properties changes; the site in question is modified in a way that will impact the ongoing natural attenuation process, or; other sources of potential contamination are discovered at the site in the future.

**HAZARDOUS MATERIALS & WASTE MANAGEMENT DIVISION
“NO FURTHER ACTION” DETERMINATION CHECKLIST**

Site EPA ID#: _____ (if applicable)
Site Owner: _____
Site Operator/type of use: _____
Site Address: _____

For sites with contamination in ground water at concentrations in excess of either the Colorado Ground Water Standards (CGWS) or health-based remediation goals approved by the Division in the absence of a CGWS, the Division has the discretion to determine whether no further monitoring and/or no further active remediation are necessary. However, at a minimum, all of the following will be evaluated by the Division:

- The source area has been remediated to the extent practicable and is no longer acting as a source.
- The plume size is decreasing in all dimensions.
- The concentrations of contaminants in the plume are decreasing.
- The contaminants are demonstrated to be naturally attenuating throughout the plume and the affected ground water will meet standards within a reasonable period of time.
- Concentration trends are not dependent on the continued operation and maintenance of active remediation systems or containment systems.
- No unacceptable exposure to contaminants in ground water is occurring or is likely to occur.
- There are no existing or reasonably anticipated exposures through cross-media transfer, including:
 - volatilization into buildings
 - hydraulic connections to surface water or other aquifers
 - agricultural or other non-domestic uses
- There are no ground water uses downgradient of the site that would be threatened by the plume.
- There is no discharge to surface water in excess of surface water standards¹.
- An environmental covenant, restrictive notice, or other land use restriction is placed on the affected portions of properties²
 - Date of environmental covenant or equivalent control document _____
 - Type of control document _____
 - Link or reference to control document _____
- Public notice on the “No Action Determination” has been satisfied as required and as necessary.
- Review Board concurrence³

Member	_____	Date	_____
Member	_____	Date	_____
Member	_____	Date	_____

Comments: _____

Project Manager: _____ Date: _____

¹ A NPDES permit from the Water Quality Control Division is required for any such discharge
² Environmental covenants and restrictive notices are not required for “No Further Action” determinations (aka “No Action” determination) on Voluntary Clean-Up Program (VCUP) sites. (C.R.S. 25-15-101(4.5)(a-h) identifies which environmental remediation projects require a covenant or restrictive notice if unrestricted use cannot be achieved)
³ The Review Board consists of Unit Leaders from the Remediation, Solid Waste and RCRA Corrective Action Programs. Concurrence for this determination must come from at least three Review Board members, with one member being outside the program evaluating a proposal for no further action.