



30 November 2010

Walter Avramenko
Colorado Department of Public Health and Environment
HMWMD-HWC-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Subject: Guidance for the Closure of Low threat Sites with Residual Ground Water Contamination
Policy for No Further Action Determination When Contamination Remains above the Colorado Ground Water Standards

Dear Mr. Avramenko:

Thank you for the opportunity to review the State of Colorado's Draft Guidance for the Closure of Low-Threat Sites with Residual Ground Water Contamination". As the Toxic's Chair for the Rocky Mountain Chapter of the Sierra Club, representing our approximately 20,000 Colorado members, I submit the following comments:

1. EPA submitted comments regarding this draft and concluded that CDPHE is in direct conflict with the ground water monitoring requirements of both the federal and state RCRA programs. EPA further states that the CDPHE policy would relieve owners or operators of facilities that have released hazardous waste of their responsibility to monitor groundwater. CDPHE states, "...factors were discussed within the Division and with outside parties leading to the development of this guidance". Clearly CDPHE must consult with EPA before proceeding further.
2. CDPHE has not demonstrated that the "environmental covenant" mechanism for controlling future land and water resource use at contaminated sites is working effectively to support this guidance. The Division did not provide any current list of possible sites to be considered as examples for this guidance. CDPHE stated they depend on their project managers to implement the covenants and controls. CDPHE guidance states, "It is the expectation of the Division that a party requesting no further action determination will perform the work needed to place the environmental covenant, restrictive notice or other Division approved institutional controls on the property" (page 12). What happens if the project manager does not follow through with the party required to submit a covenant etc.?
3. All groundwater should be considered for its impact to drinking water for future generations. "Contaminated ground water at Superfund sites have impacted surface water, drinking water aquifers and ecologically sensitive areas". This guidance does not bode well for future generations and monitoring must continue at all "no further action" sites.
4. RCRA and CERCLA programs should strive to restore ground water for beneficial use and prevent any further human exposure to contaminants. Enforcing Colorado Maximum Contaminant Levels in groundwater should be the rule. Once groundwater becomes contaminated it is difficult and expensive to clean up, if it can be done at all. The CDPHE should aggressively promote clean up, and

advances in technology may provide for adequate clean up. In addition, CDPHE should not forego deployment of the more prudent approaches to monitoring.

5. CDPHE mentions that a party must submit for Alternate Concentration Levels (ACL) or Technical Waivers when the party deems it appropriate. If ACL's or waivers are approved by the Division in these instances, are these sites considered "no further action" sites?
6. Monitoring should assure clean up goals are met and that site conditions have not changed. Do Colorado ground water regulations require groundwater monitoring under RCRA and CERCLA? How would the Division determine if "natural attenuation" is operable, without monitoring? CDPHE mentions reasonable timeframe for monitoring. What, exactly, is considered reasonable for different scenarios?
7. The following statement does not appear to be in the interest of the public good: ".....Those factors raise the question of whether the public good is served by requiring the expenditure of resources to actively cleanup low-threat sites". High quality ground water should be the foremost public good.
8. CDPHE's statement on page 12 requires clarification, "Owners with ground water plumes that have migrated beyond their property boundary have the added burden of needing to place institutional controls on all affected properties if their intent is to seek an NFA determination from the Division". Why did CDPHE use the verbage, "added burden" instead of simply stating "owners...boundary must place institutional controls..?" Some landowners consider protection of ground water necessity and a responsibility as opposed to a burden.
9. On page 14 CDPHE states, "if it is determined that if it is....economically infeasible to reasonably attain cleanup objectives after having taken all actions necessary to remediate the release, the responsible party has the option of continuing to monitor ground water quality on a periodic basis". Who determines what is "economically infeasible" and what is "reasonable," and what might be the parameters for these determinations? Please define, "periodic basis."
10. CDPHE states, "considering the long duration monitoring under this option....the Division may also require financial assurance to ensure that funding will be available for long-term remedial activities in the event the responsible party is no longer able to perform the required work..." Why is this warrantee not absolutely required for ensured funding? Why is the standard operating procedure for the purchase of a bond large enough to cover the cost of any potential cleanup, rather than "assurance," not a requirement for securing the public's long-term interest in clean ground water?

Thank you for this opportunity to comment. [The Sierra Club](#) looks forward to your response.

Sincerely,

Joan Seeman
Sierra Club/Rocky Mountain Chapter Toxics Chair

Cc:
Kirby Hughes, SC/RMC Groundwater Chair
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