



Standard Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls¹

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INTRODUCTION

Valuable property, which is, or is perceived to be, environmentally impacted, remains idle throughout the fifty states because fears of liability and corrective action costs deter potential developers, purchasers, and lenders. In response, many states have adopted voluntary corrective action or brownfields programs that utilize risk-based corrective action principles. One element of these programs may be activity and use limitations to achieve either an “acceptable risk” or a “no significant risk” level. For example, an owner/operator who volunteers to remediate a site to meet an industrial or commercial use standard may do so in exchange for a restrictive covenant that limits the use of the site to industrial or commercial purposes only. Activity and use limitations should be considered an integral part of the remedial action selection process. The user may determine, based upon post-remedial action land use, or based upon the deficiencies in available activity and use limitations, that an activity and use limitation is not feasible for the site. The most effective use of activity and use limitations as part of a federal, state, tribal or local remediation program requires careful consideration of many factors, including effectiveness, amenability to integration with property redevelopment plans, implementability, technical practicability, cost prohibitiveness, long-term reliability, acceptability to stakeholders, and cost effectiveness. While this guidance is most likely to be applied where risk-based corrective actions are conducted, use of activity and use limitations is not restricted to risk-based applications. Both institutional and engineering controls may be employed as elements of a remedial action that is based on concentration level, background, or other non-risk-based approaches.

1. Scope

1.1 This guide covers information for incorporating activity and use limitations that are protective of human health and the environment into federal, state, tribal or local remediation programs using a risk-based approach to corrective action. Activity and use limitations should be considered early in the site assessment and remedial action selection process, and should be considered an integral part of remedial action selection. In the event that an appropriate activity and use limitation cannot be found, the user may need to revisit the initial remedial action selection decision.

1.2 This guide does not mandate any one particular type of activity and use limitation but merely serves to help users identify, implement and maintain the types of activity and use

limitations that may be appropriate in programs using a risk-based decision-making approach.

1.3 This guide identifies screening and balancing criteria that should be applied in determining whether any particular activity and use limitation may be appropriate. This guide identifies the need to develop long-term monitoring and stewardship plans to ensure the long-term reliability and enforceability of activity and use limitations. This guide explains the purpose of activity and use limitations in the remedial action process and the types of activity and use limitations that are most commonly available.

1.4 This guide describes the process for evaluating potentially applicable activity and use limitations and using screening and balancing criteria to select one or more activity and use limitations for a specific site. The guide also describes some “best practices” from a transactional, stakeholder involvement, and long-term stewardship perspective. The guide also emphasizes the importance of considering the need for, and potential

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