



**Environmental Protection Rules**

**Chapter 35**

**INVESTIGATION AND REMEDIATION  
OF CONTAMINATED PROPERTIES RULE**

**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
WASTE MANAGEMENT AND PREVENTION  
DIVISION**

**Final Adopted Rule**

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **§ 35-101. AUTHORITY AND PURPOSE**

- (a) Authority. This rule is adopted by the Secretary of the Agency of Natural Resources pursuant to the authority granted by 10 V.S.A. chapters 47, 59, and 159.
- (b) Purpose. This rule is intended to protect public health and the environment by establishing procedures and requirements for conducting investigations and corrective actions at properties where a release of hazardous materials has occurred. This includes procedures for identifying hazardous material contamination to environmental media as well as requirements for source treatment, removal, containment, long-term monitoring, institutional controls, and site closure.

### **§ 35-102. RELEASE PROHIBITION; REPORTING; EMERGENCY RESPONSE**

- (a) Release prohibition. The release of hazardous materials into the surface or groundwater, or onto the land of the State is prohibited.
- (b) Releases and suspected releases. Any person required by 10 V.S.A. § 6617 shall immediately report any of the following releases or suspected releases:
  - (1) A release of hazardous material that exceeds two gallons.
  - (2) A release of hazardous material that is less than or equal to two gallons and poses a potential or actual threat to human health or the environment.
  - (3) A discharge of hazardous waste, or release of hazardous material that equals or exceeds its corresponding reportable quantity under CERCLA as specified under 40 CFR 302.4.
  - (4) Any detection of non-aqueous phase petroleum liquid (NAPL).
- (c) Notification of exceedances. Verbal notification within 24 hours of an exceedance of environmental media standard and written analytical results within five business days of the exceedance shall be provided to the Secretary under the following circumstances:
  - (1) When drinking water supply laboratory analytical results report an exceedance of the groundwater enforcement standards; and
  - (2) When indoor air quality laboratory analytical results report an exceedance of an indoor air standard.
  - (3) When there is an exceedance of an environmental media standard.
- (d) Reporting and notification under subsections (b) and (c) of this section must be directed to:

Monday through Friday, 7:45 AM to 4:30 PM; Waste Management & Prevention  
Division at (802) 828-1138.

At all other times including State holidays: Department of Public Safety Division of Emergency Management and Homeland Security at (800) 641-5005.

- (e) Notification of any earth disturbance work within an area of known contamination at an active or closed hazardous site must be made to the Secretary, and approval granted prior to work implementation.
- (f) Emergency response.
  - (1) Notwithstanding the site investigation and corrective action requirements of this rule, the Secretary may require or undertake an emergency response pursuant to 10 V.S.A. § 6615 when the Secretary determines that a release may cause an immediate and serious threat of harm to human health or the environment.
  - (2) When undertaking emergency responses pursuant to 10 V.S.A. § 1283, notification to the potentially responsible party (PRP) in advance of undertaking emergency response is not required, unless:
    - (A) The Secretary determines that there is need for additional investigation of the release to determine the impact to sensitive receptors and to human health and that it is appropriate for the PRP to conduct the investigation; or
    - (B) The Secretary determines that an additional response is necessary to address short-term impacts to sensitive receptors, impact to human health, and that it is appropriate for the PRP to conduct the additional response.
  - (3) The Secretary may direct the PRP to conduct a limited site investigation to determine if the release requires further site investigation or corrective action. As used in this subsection, “limited site investigation” means the steps the Secretary deems necessary to determine whether additional site investigation or corrective action is necessary to respond to the release of hazardous materials. In the event the PRP is unwilling, unable, or unknown, the Secretary may perform these actions and seek redress from the PRP at a later date as allowed by 10 V.S.A. § 1283.

**§ 35-103. SITE ACCESS**

Any person undertaking an activity pursuant to any requirement of this rule must obtain site access prior to engaging in any activity on the site, excluding emergency response actions conducted pursuant to § 35-102(f).

**§ 35-104. SEVERABILITY**

The provisions of any section of this rule are severable. If any provision of this rule is invalid or if any application of this rule to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**§ 35-105. SIGNATORIES**

All deliverables required by § 35-102 (emergency response; limited site investigation); § 35-304 (site investigation work plan), § 35-306 (site investigation report); § 35-503(response actions; releases of heating fuels; initial release investigation report); § 35-505 (additional site investigation); § 35-507(a) (response actions; releases of heating fuels; additional site characterization report); § 35-604 (evaluation of corrective action alternatives); § 35-606 (corrective action plan); § 35-608 (corrective action construction completion report); § 35-610 (corrective action performance monitoring and O&M); § 35-702 (long-term monitoring work plan); and § 35-704 (long-term monitoring; reporting) shall be prepared, signed, and certified by an environmental professional.

Deliverables shall be signed with the following certification:

“I certify under penalty of perjury that I am an environmental professional and that all content contained within this deliverable is to the best of my knowledge true and correct.”

**§ 35-106. DELIVERABLES**

All deliverables shall be submitted electronically via text searchable PDF. Paper copies are to be submitted only upon request of the Secretary. Raw data, field notes, billing records, time sheets, or any other supporting documentation used to create the deliverable shall be made available upon request by the Secretary, or as required in Subchapter 3.

**§ 35-107. HAZARDOUS MATERIAL LISTING**

Pursuant to 10 V.S.A. § 6602(16)(A)(iv) any chemical or substance listed in Appendix D is a hazardous material.

**§ 35-108. HISTORICAL FILL EXEMPTION**

The Secretary shall make a determination in writing that historical fill is present at a site and may exempt the historical fill from the site investigation and corrective action requirements of this rule. No exemption shall apply without the prior, written approval by the Secretary.

## SUBCHAPTER 2. DEFINITIONS

### § 35-201. DEFINITIONS

As used in this rule, terms shall have the following meanings:

- (1) “Aboveground storage tank” or “AST” system means the above-ground tank and all associated piping, vent and fill pipes, vent alarm and whistle, fuel filter and shut-off valves. For the purposes of these rules, mobile and semi-mobile skid tanks are not included.
- (2) “Agency” means the Vermont Agency of Natural Resources.
- (3) “Analysis” or “analyze” means to test for the presence of hazardous materials using a standard US Environmental Protection Agency (US EPA) method or an alternative approved by the Secretary.
- (4) “Area of contamination” means a defined area on a site where contaminated environmental media that is a hazardous waste has been generated by site remediation activities (e.g., excavated).
- (5) “Background” means the concentration of a substance or family of closely related substances present in environmental media due to geologic characteristics, naturally occurring processes, or anthropogenic nonpoint sources not influenced by site-related activities.
- (6) “Brownfield” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence, or perceived presence of, a hazardous material. “Brownfield” does not include any of the following:
  - (A) A facility that is the subject of a planned or ongoing removal action under CERCLA.
  - (B) A facility that is listed as a CERCLA site or is proposed for listing.
  - (C) A facility that is the subject of any State or federal administrative or court order under any of the following authorities:
    - (i) 33 U.S.C. § 1251 et seq. (federal Water Pollution Control Act) or 10 V.S.A. chapter 47 (water pollution control);
    - (ii) 15 U.S.C. § 2601 et seq. (Toxic Substances Control Act);
    - (iii) 42 U.S.C. § 300f et seq. (Safe Drinking Water Act) or 10 V.S.A. chapter 56 (public water supply).
  - (D) A facility that is subject to either of the following:
    - (i) corrective action under 42 U.S.C. § 6924(u) or 6928(h);
    - (ii) corrective action permit or order issued or modified to require the implementation of corrective measures.



- (E) A land disposal unit in regard to which both of the following apply:
    - (i) a closure notification under subtitle C of 42 U.S.C. § 6921 et seq. has been submitted;
    - (ii) closure requirements have been specified in a closure plan or permit.
  - (F) A facility that is subject to the jurisdiction, custody, or control of any instrumentality of the United States, except for land held in trust by the United States for an Indian tribe.
  - (G) A portion of a facility to which both the following apply:
    - (i) a release of polychlorinated biphenyls has occurred;
    - (ii) is subject to remediation under 15 U.S.C. § 2601 et seq. (Toxic Substances Control Act).
  - (H) A portion of a facility for which assistance for response activity has been obtained under subtitle I of 42 U.S.C. § 6991 et seq. (Solid Waste Disposal Act) from the Leaking Underground Storage Tank Trust Fund established under 26 U.S.C. § 9508.
- (7) “BRELLA” means the Vermont Brownfields Reuse and Environmental Liability Limitation Act.
- (8) “Compliance point” means:
- (A) the point of compliance as defined in the Vermont Groundwater Protection Rule and Strategy; and
  - (B) any point established in an approved corrective action plan established to evaluate a release’s impact on a sensitive receptor.
- (9) “Conceptual Site Model” or “CSM” is a written description of the physical, chemical, and biological processes that control the transport, migration, and actual and potential impacts of contamination (in soil, groundwater, soil gas, indoor air, sediment, or surface water) to sensitive receptors. CSM may include illustrations as appropriate.
- (10) “Contamination” or “Contaminated” means the presence of any hazardous material in soil, groundwater, soil gas, indoor air, sediment, surface water, or any other material at a concentration that has the potential to adversely affect human health or the environment. This term does not include naturally occurring substances at or below background levels.
- (11) “Development soil” means unconsolidated mineral and organic matter overlying bedrock that is contaminated solely by polycyclic aromatic hydrocarbons (PAHs), arsenic, or lead at concentrations which exceed Vermont Soil Standards and are not hazardous waste.
- (12) “Direct contact” means physical exposure to contaminants or naturally occurring compounds in environmental media including soil, groundwater, soil gas, indoor air, sediment,

or surface water via incidental ingestion, dermal contact, inhalation of vapors, or fugitive dust via a completed contact pathway.

- (13) “Environmental easement” means a legal restriction on a property that grants a real property interest to the State to enforce maintenance requirements, monitoring requirements, or land use restrictions.
- (14) “Engineered control” means any physical barrier, system, technology, or method that removes or reduces exposure to a hazardous material by sensitive receptors.
- (15) “Environmental media” means components of the environment including soil, groundwater, soil gas, indoor air, sediment, or surface water.
- (16) “Environmental media standards” means numeric or narrative criteria adopted by the Secretary to protect human health and the environment.
- (17) “Environmental professional” means a person who possesses the following education, training, and experience:
- (A) A license or certification by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental site work equivalent to that required by this rule and have the equivalent of three years of relevant fulltime experience;
  - (B) A baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering, geology, hydrogeology, or an applicable science and the equivalent of five years of relevant fulltime experience; or
  - (C) The equivalent of ten years of relevant fulltime experience in a discipline of engineering, geology, hydrogeology, or an applicable science.
- (18) “Emergency response” means a response action to a situation that may cause immediate and serious threat of harm to human health or the environment.
- (19) “Groundwater” means water below the land surface in a zone of saturation.
- (20) “Source protection area” means a surface and subsurface area from or through which contaminants are reasonably likely to reach a public water system source.
- (21) “Hazardous material”:
- (A) means all petroleum and toxic, corrosive, or other chemicals and related sludge included in any of the following:
    - (i) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability (CERCLA) Act of 1980;

- (ii) petroleum, including crude oil or any fraction thereof;
  - (iii) hazardous wastes as defined by the Vermont Hazardous Waste Management Regulations; or
  - (iv) a chemical or substance that, when released, poses a risk to human health or other living organisms and that is listed by the Secretary.
- (B) does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state, and local laws and regulations and according to manufacturer's instructions.
- (22) "Hazardous waste" means any waste subject to regulation as hazardous waste under the Vermont Hazardous Waste Management Regulations.
- (23) "Heating fuel" means heating oil, kerosene, or other dyed diesel fuel that is not used to propel a motor vehicle and which is typically used to heat a structure. Includes any blend of petroleum and biodiesel used to heat a structure.
- (24) "Historical fill" means non-native material deposited to raise the topographic elevation of the site, which, if contamination exists in such material, is not resultant from the land use or activities at the location of emplacement. Material is "historical fill" if, based on the weight of evidence the material is determined by the Secretary to meet the following criteria:
- (A) was emplaced before May 20, 1985 (the effective date of § 6615.V.S.A.);
  - (B) is not primarily composed of, construction and demolition debris, reworked soils, dredge spoils, coal, coal ash, wood ash or other solid waste material;
  - (C) was contaminated with metals, hydrocarbons, or polycyclic aromatic hydrocarbons where such contamination occurred prior to emplacement and exists at concentrations consistent with the pervasive use and release of such materials prior to 1985;
  - (D) does not contain oil or hazardous materials originating from operations or activities at the location of emplacement;
  - (E) is not and does not contain a generated hazardous waste;
  - (F) does not contain chemical production waste, manufacturing waste, or waste from processing of metal or mineral ores, residues, slag or tailings; and
  - (G) does not contain waste material disposed in a municipal solid waste dump, burning dump, landfill, waste lagoon or other waste disposal location.
- (25) "Impervious surface" means those fabricated surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

- (26) “Institutional controls” means non-engineered instruments, such as administrative and legal controls, that help minimize the potential for exposure to a hazardous material or protect the integrity of a remedy.
- (27) “Investigation-derived waste” means all waste generated during the site investigation or corrective action including, but not limited to, soil cuttings, groundwater, cleaning fluids and wash water, or disposable equipment.
- (28) “Land Use Restriction” means a restriction on the extent of the improvement, use, or access of land.
- (29) “Legal description of property” is a description that identifies the location, boundaries, and any existing easements on the property, also referred to as metes and bounds.
- (30) “Linear construction project” means construction and development activities that take place within a public or private roadway, railroad, utility line, or their respective rights-of-way where contamination is encountered.
- (31) “Long-term monitoring” means sampling and analysis of environmental media for contaminants of concern in accordance with an approved monitoring plan. The purpose of long-term monitoring is to demonstrate that the selected remedial method is protective of human health and the environment.
- (32) “Method detection limit” means the minimum concentration that can be quantified consistently and reliably using methods approved by US EPA or another method approved by the Secretary.
- (33) “Non-aqueous phase liquid” or “NAPL” means a liquid solution contaminant that does not dissolve in or easily mix with water, such as oil, gasoline, coal tar, or chlorinated solvents. A NAPL may be denser than water, sinking below the water table, or lighter than water, floating on the water table.
- (34) “Non-hazardous waste contaminated soil” means soils that are contaminated with hazardous materials at concentrations above the Residential Vermont Soil Standard or the Urban Background Standard that are not hazardous wastes under the Vermont Hazardous Waste Management Rule.
- (35) “Non-hazardous petroleum-contaminated soil” means soils that are contaminated with petroleum but meet the exemption requirements of the Vermont Hazardous Waste Management Regulations in § 7-203(p) and may be managed in accordance with this rule.
- (36) “Non-residential” means any property or portion thereof that is designated as non-residential by municipal zoning ordinance or has a restriction prohibiting residential use.
- (37) “Notice to the Land Record” means a notice on a property land record that informs individuals of the release of a hazardous material on a property and any steps necessary to address this release or residual contamination under the direction of the Secretary.

- (38) “Polyencapsulation” means action of managing of contaminated soil by stockpiling on plastic sheeting and enclosing the stockpile with plastic sheeting.
- (39) “Potable water supply” per 10 VSA Chapter 56 means the source, treatment, and conveyance equipment used to provide water used or intended to be used for human consumption, including drinking, washing, bathing, the preparation of food, or laundering. For the purposes of these Rules, water service lines are potable water supplies. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations and storage tanks or lavatories, that are located inside a building or structure and that are integral to the operation of a potable water system. This definition also does not include a potable water supply that is subject to regulation as a public water supply.
- (40) “Potentially Responsible Party” or “PRP” means any individual or organization that is potentially liable for a release of hazardous materials pursuant to 10 V.S.A. §6615.
- (41) “Public water system” means a public water system as defined in the Water Supply Rule.
- (42) “Receiving site” means a location approved by the Secretary where excavated development soils are disposed in accordance with this rule.
- (43) “Recognized environmental condition” means the presence or likely presence of a hazardous material at a property:
- (A) due to a release;
  - (B) under conditions indicative of a release to the environment; or
  - (C) under conditions that pose a material threat of a future release to the environment.
- (44) “Release” means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands in the State, or into waters outside the jurisdiction of the State when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the State. “Release” also means the intentional or unintentional action or omission resulting in the spilling, leaking emission, or disposal of polychlorinated biphenyls (PCBs) from building materials in public schools and approved and recognized independent schools that were constructed or renovated before 1980.
- (45) “Remediation” means any action that results in either a reduction of exposure to human health from contaminants, or a lessening of risk to a sensitive receptor.
- (46) “Residential” includes all locations used as or for residences as well as parks, playgrounds, schoolyards and childcare facilities.
- (47) “Residual contamination” means hazardous materials that remain in any environmental

media above screening values or standards after all required site investigation and correction action has been completed and that the Secretary has determined does not pose a threat to human health or the environment given the current condition or location of the hazardous materials.

- (48) “Secretary” means the Secretary of the Vermont Agency of Natural Resources or the Secretary’s duly authorized representative.
- (49) “Sensitive receptor” means any natural or human-constructed feature that may be adversely affected by a hazardous material and includes public health, public water sources, potable water sources, groundwater, surface waters, wetlands, soils, sensitive ecological areas, outdoor and indoor air, and enclosed spaces such as basements, sewers, and subsurface utilities.
- (50) “Site” means the area where a release is known or suspected to have occurred, including the extent of contamination resulting from the release. A site may not be limited by legal property boundaries.
- (51) “Substantial completion” means:
- (A) the site is enrolled in the BRELLA program; and
  - (B) the property has a remediation system constructed in accordance with an approved corrective action plan; and
    - (i) the remediation system is operating as designed following implementation of corrective action;
    - (ii) the institutional controls for the property have not been finalized; or
    - (iii) long-term monitoring is necessary to determine whether remedial objectives are being achieved.
- (52) “Surface water” includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.
- (53) “Surface soil” means soil present at 0-18 inches below ground surface.
- (54) “Survey benchmark” means a feature on a site or nearby to which the surveyed elevation of all monitoring wells and site features are referenced.
- (55) “Suspected release” means when there is knowledge, information, or other evidence that a release has likely occurred. An exceedance of an environmental media standard shall be presumed to be a suspected release and shall be reported pursuant to § 35-102(c). Knowledge and information of a suspected release may include review of maintenance and operation records, land use history, or industry standard process details.

- (56) “Treatment” means any method, technique, or process designed to change the physical, chemical, or biological character or composition, or remove, any contaminant in environmental media.
- (57) “Underground Storage Tank” or “UST” shall be defined as set forth in the Vermont Underground Storage Tank Rule.
- (58) “Urban Background Area” means any area designated by the Secretary as shown in the ANR Atlas, for reuse of development soils containing polycyclic aromatic hydrocarbons or lead at concentrations that are below the applicable urban background values.
- (59) “US EPA” means United States Environmental Protection Agency.
- (60) “Vapor intrusion” means the migration of volatile or semi-volatile chemicals from contaminated environmental media or product into a building, subsurface conduit or structure.
- (61) “Vermont Groundwater Enforcement Standard” means standards adopted pursuant to Section 12-601 and contained in Appendix One of the Groundwater Protection Rule and Strategy.
- (62) “Volatile Organic Compound (VOC)” are volatile carbon containing compounds which have a high vapor pressure at room temperature or dissolve into water.
- (63) “Volatile Organic Compound (VOC) field screening instrument” means a photoionization detector, flame ionization detector, field portable gas chromatograph/mass spectrometer or another portable instrument approved by the Secretary to detect VOCs.
- (64) “Water table” means the top of the saturated zone where the fluid pressure equals the atmospheric pressure.

### **SUBCHAPTER 3. SITE INVESTIGATION**

#### **§ 35-301. APPLICABILITY AND REQUIREMENT TO PERFORM SITE INVESTIGATION**

- (a) This section applies to any release or suspected release that is not fully investigated pursuant to § 35-102 (emergency response), or Subchapter 5 (response action; heating fuel) of this rule.
- (b) A person who may be liable for the release or suspected release of a hazardous material as established in 10 V.S.A. § 6615 shall conduct a site investigation in accordance with the requirements of this chapter.

#### **§ 35-302. OBJECTIVES OF SITE INVESTIGATION**

Objectives of a site investigation are to:

- (a) Develop a Conceptual Site Model (CSM) in accordance with § 35-303;
- (b) Identify the source, degree, and spatial extent of contamination in all impacted or potentially impacted environmental media;
- (c) Identify pathways that are conveying or could convey hazardous materials to sensitive receptors;
- (d) Identify sensitive receptors that have been or may be impacted by the release;
- (e) Identify data gaps that must be addressed to refine the CSM or evaluate corrective action alternatives; and
- (f) Identify the need to conduct further investigation or corrective action based on the results of all site characterization data gathered to date.

#### **§ 35-303. CONCEPTUAL SITE MODEL**

- (a) A preliminary CSM shall be developed during the preparation of the site investigation work plan required by § 35-304. The CSM shall be further refined as new site data is collected.
- (b) The CSM is a tool to identify sources, receptors, and pathways associated with the site and should support scientific and technical decisions. A CSM is an iterative process of characterizing site contamination based on available site data and both historical and existing conditions. The CSM shall evaluate and present the data in a narrative format that depicts the fate and transport of site contaminants, addresses the threat or potential threat to human health and the environment from the site contaminants, and identifies data gaps.
- (c) The CSM shall identify the following or identify how the information will be obtained in the context of the site investigation:
  - (1) Source(s) of the release;



- (2) The location, depths, and characteristics of existing and former engineered structures, subsurface infrastructure, tanks, and containers, from which or through which the suspected contaminants may have been released, transported, or may impact a sensitive receptor;
- (3) Historical and current land uses and activities for the site and immediate surrounding area;
- (4) Sources and contaminants;
  - (A) Identify all potential hazardous materials and all potential and actual sources of a release;
  - (B) Identify, to the extent possible, the release date(s), location(s) known volume(s), and any prior remedial actions;
  - (C) Identify all hazardous material phases;
  - (D) Identify all hazardous material physical properties and the likely behavior (mobility, solubility, volatility, physical state, and persistence) of each chemical within environmental media;
  - (E) If known, an estimate of the amount of hazardous material mass on the site; and
  - (F) If known, an estimate of the volume of contaminated soil.
- (5) Identify the environmental media that is affected or threatened from the release.
- (6) Geology. A brief description of regional and site-specific soils and bedrock. Boring logs, well logs and groundwater confining layers shall be included, if available and not been previously submitted to the Secretary. If applicable, values for soil bulk density, porosity, fraction organic content, pH, and reduction-oxidation potential, shall be included. If available include geologic maps, fracture trace maps, geophysical data, and cross sections;
- (7) Hydrogeology. Describe regional and site-specific hydrogeology, horizontal and vertical groundwater flow gradients and direction, and an assessment of the potential for preferential pathways and multiple aquifers. If available, hydraulic conductivity, transmissivity, and other parameters shall be included;
- (8) Contaminant fate and transport. Describe the hazardous material distribution, transport mechanisms (leaching, volatilization, etc.), and migration pathways in all impacted and potentially impacted media., Describe the predicted migration of the contamination over time, and if available, the adsorption, desorption, absorption, and retardation of the hazardous material, and naturally occurring degradation processes.

If historical groundwater quality data has been collected, estimate the timeframe when groundwater enforcement standards will be met at compliance points.

- (9) Receptor study and evaluation. Identify all potentially threatened sensitive receptors and complete exposure pathways. A list of the names and addresses of impacted or threatened third parties shall be included, if applicable. Compare all measured concentrations of hazardous materials with applicable environmental media standards; and
- (10) If appropriate, a figure illustrating the site setting and key contaminant migration mechanisms and pathways, both complete and incomplete.

**§ 35-304. SITE INVESTIGATION WORK PLAN**

(a) General requirements.

- (1) A site investigation work plan shall be submitted to the Secretary no later than 30 days of the date the Secretary was notified of a release or upon request by the Secretary, unless the Secretary approves an alternative schedule.
- (2) A site investigation work plan shall be approved by the Secretary prior to the initiation of site work.

(b) Content requirements. A site investigation work plan shall include the following:

- (1) Site information. Table of names, addresses, email addresses, and phone numbers of the following:
  - (A) Property owner and operator; and
  - (B) Any Potentially Responsible Party who caused or may have caused a release of a hazardous material at the site.
- (2) Current land use and activities of the property.
- (3) Land uses and activities of properties adjacent to the site.
- (4) Site description. A physical and environmental description of the site.
- (5) Site characterization/data collection objectives and strategy. This strategy shall address known data gaps and include contaminant characterization methods per Subchapter 4, sampling locations and methods, and how this strategy will meet the site investigation objectives.
- (6) Identification of analytical methods.

- (7) A list of consultant standard operating procedures to be used during the site investigation, which shall be submitted to the Secretary upon request.
- (8) A CSM and a description on how the site investigation will gather information to further develop and refine the CSM.
- (9) A discussion of how investigation-derived waste will be managed, which shall be in accordance with § 35-611(c).
- (10) A quality assurance and quality control (QA/QC) plan. If field analytical methods are proposed, the Secretary may require that a subset of samples be analyzed at a fixed base laboratory. Additional QA/QC samples (e.g., field blanks) may be required by the Secretary depending on the complexity of the investigation or sampling methods used.
- (11) Maps. Unless otherwise required by the Secretary, a vicinity map in accordance with § 35-306(b)(14)(A) and a site map in accordance with § 35-306(b)(14)(B) showing proposed environmental media sampling locations shall be included.
- (12) Latitude/longitude of the site, in decimal degrees, as close as possible to the known or suspected release location or locations, referenced to the WGS1984 coordinate system (Mercator), with a minimum acceptable accuracy of plus-or-minus 15 feet.
- (13) Estimated costs, if requested by the Secretary.
- (14) A site investigation implementation schedule.
- (15) Signature. A site investigation work plan shall be signed by the environmental professional in accordance with § 35-104.

**§ 35-305. SITE INVESTIGATION WORK PLAN; SECRETARY REVIEW AND DETERMINATION**

- (a) The Secretary shall only approve, in writing, a site investigation work plan upon finding the investigation will meet the objectives of § 35-302.
- (b) A PRP shall implement an approved site investigation work plan no later than 60 days from the date of the Secretary's approval unless an alternate implementation timeline is approved by the Secretary.

**§ 35-306. SITE INVESTIGATION REPORT**

- (a) A site investigation report shall be submitted to the Secretary within 90 days of receipt of final laboratory data, or within an alternate schedule approved by the Secretary.
- (b) A site investigation report shall include the following:

- (1) Executive summary. A site investigation report shall include an executive summary of the site investigation. The summary shall consist of a concise overview of findings, conclusions, and recommendations based upon the data collected during the site investigation, without repeating the detailed presentation of data or information in the body of the report.
- (2) Site contact information. Table of names, addresses, email addresses, and phone numbers of the following:
  - (A) Property owner and operator.
  - (B) Any Potentially Responsible Party who caused or may have caused a release of a hazardous material at the site.
- (3) Current land use and activities of the property.
- (4) Land uses and activities of properties adjacent to the site.
- (5) Site description. A physical and environmental description of the site.
- (6) Latitude/longitude of the site, in decimal degrees, as close as possible to the known or suspected release location or locations, referenced to the WGS1984 coordinate system (Mercator), with a minimum acceptable accuracy of plus-or-minus 15 feet.
- (7) Property history. Past and present land use, waste storage or disposal areas, potential sources of contamination, and hazardous waste and hazardous materials disposal practices, including any associated EPA ID numbers. The property history section shall include a description of current and historical property uses in the surrounding area. A list of all recognized environmental conditions should be provided if an ASTM Phase I or Phase II Environmental Site Assessment has been completed. Presentation may include copies of historical maps (including Sanborn Fire Insurance Maps, town maps) and copies of town directories.
- (8) Site contaminant background. A description of all known releases of hazardous materials, including the following information:
  - (A) The date and a description of each release, if known, the discovery date of each release, the location of each release, and the PRP for each release.
  - (B) The date each release was reported to the Secretary.
  - (C) A description of response actions taken for each release.
  - (D) A list of any previous environmental investigations and reports (including Phase I Environmental Site Assessments) pertinent to the site relating to a release of hazardous materials, including a summary of findings.

- (E) A copy of any previous investigation or report relating to a release of hazardous materials, if not already on file with the Secretary.
  - (F) A list of governmental records reviewed relating to the site.
- (9) A CSM as detailed in § 35-303.
  - (10) Work plan protocol deviations. Any deviations from the approved work plan shall be identified and discussed.
  - (11) Sample-collection documentation. Documentation of the sample location, method of collection, and identification number.
  - (12) Contaminated media characterization. Analytical results from the Site Investigation and applicable prior investigations shall be tabulated and compared to the applicable environmental media standard in accordance with Subchapter 4, unless a site-specific risk assessment was conducted pursuant to § 35-306(b)(13) or a site-specific background study was performed in accordance with Appendix B (in which case the analytical results from the Site Investigation will be compared with these alternative values).
  - (13) As applicable, a site-specific risk assessment that includes use of chemical and endpoint specific toxicity values and site-specific exposure assumptions may be performed for both current and potential future site uses. A site-specific risk assessment shall follow standard U.S. E.P.A. risk assessment methodology to determine if an incremental lifetime cancer risk of  $10^{-6}$  or a hazard index of 1.0 is exceeded. The risk assessment shall be reviewed by the Vermont Department of Health.
  - (14) Maps. All maps shall include the location of the site, physical and environmental features, the Vermont Department of Environmental Conservation Hazardous Site number, legend, graphical scale bar, and a base map source reference. All maps shall be accurate and to scale. The following maps shall be included:
    - (A) Vicinity map. Prepared using the Vermont Agency of Natural Resources online Natural Resource Atlas as a base map including property boundary lines, surrounding land use, buildings, hazardous sites, hazardous materials sources, street names, drinking water sources, surface water bodies and any other sensitive receptors identified in § 35-303(c)(9) within 2,000 feet of the site. Alternative base maps and fewer map elements may be used if approved by the Secretary.
    - (B) Site map. A site investigation map shall include the following:
      - (i) Surface topography spot elevations or contours.

- (ii) Property boundary lines.
  - (iii) Flow direction of surface water bodies.
  - (iv) Environmental media sample locations.
  - (v) Contaminant source areas, including former or current tank locations, release areas, chemical storage or process areas, waste storage and disposal locations, or other areas as appropriate.
  - (vi) Engineered structures, including asphalt parking surfaces, concrete sidewalks, drainage ways, diversion ditches, drain tiles, manholes, lined areas, leachate collection systems, wastewater systems, sewer lines, floor drains, drywells, and public and potable water system components. .
  - (vii) Survey benchmark. A permanent and recoverable site feature shall be assigned as the site survey benchmark. The use of the top of monitoring well risers, road box covers, or concrete pads as a benchmark is prohibited.
- (C) Groundwater contour map. The groundwater contour map shall include all components of 35-306(b)(14)(B), the location of all monitoring points, and data collected to create groundwater elevation contours. Multiple maps may be needed to show groundwater flow in different aquifers. A groundwater contour map will not be required if the site investigation did not include the installation of groundwater monitoring wells.
- (D) Contaminant distribution map. A contaminant distribution map shall include all components of 35-306(b)(14)(B), the location of all monitoring points, and laboratory analytical result (including non-detect) for the monitoring point. As applicable, based on the site-specific geology and distribution of contaminants of concerns (i.e. exceeding a standard), isopleths shall be used to indicate the approximate location of compound-specific contaminant plumes that exceed the applicable environmental media standard. Multiple maps may be required to illustrate multiple contaminants or multiple aquifers. Maps solely depicting total contaminants (e.g., total VOCs) will not be accepted, unless otherwise approved by the Secretary. At sites where isopleth maps are not appropriate, contaminant concentrations shall be plotted on the maps adjacent to the sampling points.
- (15) Discussion. The discussion shall include a descriptive analysis of how the data gathered further refines the CSM, how the CSM has been updated, and how the site investigation objectives in § 35-302(a) have been met. The discussion shall also establish that the data collected are suitable to determine the existing and future exposure to sensitive receptors and, the need for further characterization. Only data

that meets quality assurance quality control (QA/QC) criteria will be accepted. A discussion of data which doesn't meet QA/QC criteria shall be included. The report shall evaluate if the data demonstrates that Vermont Groundwater Enforcement Standards (VGES) are met at compliance points, and if not, the estimated timeframe for meeting VGES at compliance points.

- (16) Data presentation. All collected data shall be organized in a narrative, tabular, and graphical form; data shall be presented on maps and cross sections when appropriate. All detected hazardous material concentrations shall be reported. Hazardous materials that are not detected shall be reported as less than the numerical detection limit. Detection limits shall be below the environmental media standards and shall be provided in tabular format with the analytical results. All laboratory data qualifications must be included in tabulated data presentations.
- (17) QA/QC sample results. Any deviations from QA/QC procedures or acceptable limits shall be identified and discussed. Only data that meets quality assurance quality control (QA/QC) criteria specified in the QA/QC Plan will be accepted.
- (18) Investigation-derived waste. All investigation-derived waste generated during the site investigation shall be managed in accordance with § 35-611(c). A discussion of how the investigation-derived waste was managed shall be included in the site investigation report.
- (19) Conclusions and recommendations. The site investigation report shall include a discussion of the findings of the investigation that substantiate the revised CSM and the risk that hazardous materials pose to identified sensitive receptors. Further, this section shall identify completed exposure pathways and data gaps. The report shall include recommendations for subsequent actions which may include the following options:
  - (A) Further investigation to define the scope and extent of contamination or risk to sensitive receptors; or to identify an appropriate corrective action;
  - (B) An evaluation of corrective action alternatives to support corrective action;
  - (C) Long-term monitoring in accordance with Subchapter 7;
  - (D) Implementation of institutional controls in accordance with Subchapter 9;
  - (E) Closure in accordance with Subchapter 10.
- (20) Signature and certification. A site investigation report shall be certified by the environmental professional that it was conducted in accordance with the approved workplan and signed in accordance with § 35-104.
- (21) Appendices.

- (A) Standard operating procedures. A list of consultant standard operating procedures (SOPs) that were used during site investigation. SOPs shall be provided to the Secretary upon request.
- (B) Monitoring well and soil boring logs. At a minimum, logs shall include a description and discussion of monitoring well, soil boring and test pit installation. Logs shall include well boring or test pit location with latitude and longitude. In addition, logs shall include the installation method, blow count data, elevation, total depth, depth to groundwater, soil or rock descriptions, well construction, hole backfill, or sealing information, odors noted, and field screening results.
- (C) Photographic documentation. Color images showing work performed at the site (UST closure, soil stockpiles, etc.) and pertinent site or vicinity features shall be included as an appendix. Each photographic presentation shall include the date and time, location, and orientation.
- (D) Field notes. Copies of the original field notes shall be attached as an appendix and the field notes shall contain the following minimum content: the date the work was performed, name of the person conducting the work, tasks completed, date, documentation of weather conditions, sampling timeline with locations, sampling logs, field monitoring results, and calibration information for each type of field analytical equipment.
- (E) Laboratory results. A copy of the laboratory results, chains of custody documentation, laboratory narrative (all laboratory QA/QC data including but not limited to method blank results, lab control sample recovery, and matrix spike/duplicate, surrogate recoveries), and all QA/QC data, as specified in the approved work plan shall be included.
- (F) Calculations. All calculations, such as contaminant mass or volume, travel and migration time, natural attenuation, Cumulative Risk Assessment, and groundwater gradients. If computer modeling is conducted, a reference to the model used, the data inputs, and data output package shall be included.
- (G) If a quantitative human health risk assessment is conducted, the full risk assessment report, including summary tables and electronic copies of calculating spreadsheets, shall be included.
- (H) Hydrogeologic cross sections, as appropriate to support the conceptual site model and effectively illustrate synthesized site information, or when requested by the Secretary.



**§ 35-307. REVIEW OF SITE INVESTIGATION REPORT**

- (a) The Secretary shall review the site investigation report for completeness with the requirements of § 35-306(b) and shall provide written notification to the PRP of one of the following determinations:
- (1) The site investigation has met the objectives of § 35-302, has adequately defined the degree and extent of contamination, and risks to sensitive receptors have been appropriately evaluated and are absent or have been adequately managed.
  - (2) The site investigation has not met the objectives of § 35-302 and/or has not adequately defined the scope and extent of contamination or risk to sensitive receptors. The PRP shall submit a supplemental site investigation work plan that meets the requirements of § 35-304(b) within 30 days of the Secretary's notification to address data gaps or other deficiencies identified by the Secretary.
  - (3) The site investigation report is incomplete. The site investigation report will be returned to the PRP for additional information and resubmittal within a timeframe established by the Secretary; or
  - (4) The site investigation has met the objectives of § 35-302 and has adequately defined the degree and extent of contamination but risks to sensitive receptors are present or have not been adequately managed. An evaluation of corrective action alternatives, soil management plan (SMP) or corrective action plan shall be completed in accordance with Subchapter 6. If requested by the Secretary, a work plan or cost estimate for an evaluation of corrective action alternatives (ECAA), SMP and/or corrective action plan (CAP) may be required.

## SUBCHAPTER 4. DATA EVALUATION

### § 35-401. EVALUATION OF ENVIRONMENTAL MEDIA LABORATORY ANALYTICAL RESULTS

- (a) **Applicability.** A PRP shall evaluate laboratory analytical data for samples collected from environmental media as part of site characterization or to document corrective action implementation and completion. Acceptable methods for data evaluation include direct comparison to environmental media standards and cumulative assessment of risk. Specific environmental data evaluation methods shall be utilized as provided in this Subchapter. If data is determined to be collected using inappropriate methods, the Secretary has the authority to reject the data and require resampling.
- (b) **Applicable standards comparison.** All analytical results shall be compared to the applicable standard as listed below. In the absence of an applicable standard, a PRP shall refer to the applicable and most current US EPA Regional Screening Level (RSL). Analytical results which are equal to or greater than the applicable standard shall be considered an exceedance of the standard. Any non-detect result for a contaminant of concern with a reporting limit (RL) that is greater than the applicable standard shall be considered a detected concentration equivalent to the RL.
- (1) **Soil analytical results.** All soil sample results shall be compared to the Vermont Soil Standards in Appendix A. Risk to public health must also be determined via applicable methods discussed in §35-401(c). Laboratory analytical results shall be compared to Vermont Residential Soil Standards unless the property is zoned for non-residential use only.
  - (2) **Groundwater analytical results.** All groundwater sample results shall be compared to the Vermont Groundwater Enforcement Standards. In cases where a vapor intrusion evaluation is being conducted, all detected compound concentrations shall also be compared to the Vapor Intrusion Standards (VISs) for groundwater provided in Appendix A.
  - (3) **Drinking water analytical results.** All private drinking water supply sample results shall be compared to the Vermont Groundwater Enforcement Standards or, when available, the Vermont Action Levels. All public drinking water supply sample results shall also be compared to the Maximum Contaminant Levels (MCLs).
  - (4) **Surface water analytical results.** All non-drinking water surface water sample results shall be compared to the Vermont Water Quality Standards.
  - (5) **Sediment analytical results.** All sediment sample results shall be compared to the Threshold Effect Concentration (TEC) and Probable Effects Concentration (PEC) provided in Appendix A.
  - (6) **Soil gas analytical results.** All soil gas sample results shall be compared to the Vapor Intrusion Standards (VIS) for soil gas provided in Appendix A of this rule.

- (7) Indoor air sample analytical results. All indoor air sample results attributable to a release shall be compared to the applicable Vermont Indoor Air Standards found in Appendix A. Risk to public health must also be determined via applicable methods discussed in §35-401(d).
  - (A) Regulatory Action Level (RAL): Cleanup value to be used when a release is detected from a source not associated with a school or building materials (i.e., a release to the environment has occurred, such as a transformer release, and is impacting indoor air.).
  - (B) School Action Level (SAL): Cleanup values to be used when a release is detected as part of an investigation taking place at public schools and approved and recognized independent schools.
- (c) The following methods shall be applied to determine risk to public health from soil contamination, as applicable:
  - (1) Method 1 Soil Screening employs a direct comparison of individual soil sample laboratory analytical results to the applicable Vermont Residential or Non-residential Soil Standards as follows:
    - (A) All detected contaminant concentrations shall be compared to the applicable Vermont Soil Standard (VSS).
    - (B) All laboratory results that are estimated shall be compared to the VSS using the value reported from the lab. Alternatively, the sample may be re-analyzed by a more sensitive laboratory method to lower the reporting limit to generate a value that is not estimated.
    - (C) Any non-detect result for contaminants of concern with an RL that exceeds the VSS shall be considered a detected concentration equivalent to the RL.
    - (D) If the sample was collected from a depth of 0 to 18 inches below ground surface and detected compound concentrations for contaminants of concern do not exceed any VSS, a Method 2 cumulative risk assessment for surface soils shall be performed.
  - (2) Method 2 Cumulative Risk Assessments (CRA) for surface soils. The Method 2 CRA determines if an incremental lifetime cancer risk (ILCR) of  $10^{-6}$  or a hazard index (HI) of 1.0 is exceeded based on direct contact. The risk is expressed as the total (summed) risk made up of each individual compound.
    - (A) Compounds with non-detect results shall not be included in the Method 2 CRA.

- (B) A Method 2 CRA shall be performed by following standard practice dictated by the Vermont Department of Health.
  - (3) Method 3 Site-Specific Risk Assessment. A PRP may elect to perform a site-specific risk assessment (SSRA). The Method 3 SSRA determines if an incremental lifetime cancer risk of  $10^{-6}$  or a hazard index of 1.0 is exceeded. The exposure assumptions and risk assessment shall be submitted and reviewed by the Agency and the Vermont Department of Health. If the result of the SSRA identifies a site specific cleanup value, that value will primarily apply to property where the release initially occurred. The site-specific cleanup value may apply to properties beyond where the initial release occurred only when appropriate institutional controls have been put in place and have been approved by the Secretary.
- (d) The following methods shall be applied to determine risk to public health from indoor air contamination, as applicable:
- (1) Method 1 Indoor Air Screening employs a direct comparison of detected indoor air analytical concentrations in each sample to the applicable Vermont Indoor Air Standards (VIAS) as follows:
    - (A) All detected analytical concentrations shall be compared to VIAS.
    - (B) All laboratory estimated concentrations shall be compared to VIAS.
    - (C) Any non-detect result for contaminants of concern where the MDL exceeds the VIAS shall be considered a detection above a standard.
    - (D) If detected analytical concentrations for contaminants of concern do not exceed the VIAS, a Method 2 cumulative risk assessment shall be performed.
  - (2) Method 2 CRA for indoor air.
    - (A) Compounds with non-detect results shall not be included in the Method 2 CRA.
    - (B) Method 2 CRA shall be performed by following standard practice dictated by the Vermont Department of Health.
  - (3) Method 3 SSRA. A PRP may elect to perform a site-specific risk assessment. The Method 3 SSRA determines if an incremental lifetime cancer risk of  $10^{-6}$  or a hazard index of 1.0 is exceeded. The exposure assumptions and risk assessment shall be submitted and reviewed by the Vermont Department of Health.
- (e) Data evaluation for specific contaminant classes:

- (1) When analyzing classes of contaminants such as dioxins, polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs), a toxicity equivalence factor (TEF) or relative potency factor (RPF) shall be applied to convert the reported concentration of each member of the group to a toxicity equivalence quotient (TEQ) relative to the toxicity of the index chemical for the group. The index chemical is assigned a TEF of 1. Total TEQ for a sample shall then be compared to the value for the index chemical.
- (2) Dioxins, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and polychlorinated biphenyls (PCBs) shall be reported as follows:
  - (A) Dioxins, furans, and dioxin-like PCBs. Soil and sediment results must be compared to (2,3,7,8) tetrachlorodibenzo-*p*-dioxin (TCDD) toxic equivalency as follows:
    - (i) Laboratory results must include the 2,3,7,8-TCDD TEFs employed, raw concentrations and TEQ values for each individual dioxin-like compound.
    - (ii) For dioxin-like compounds that are non-detect, a value equal to one half the reported MDL shall be used to calculate the TEQ.
    - (iii) The total TEQ per sample shall be reported.
  - (B) Carcinogenic polycyclic aromatic hydrocarbons (cPAHs). cPAHs shall be evaluated as follows:
    - (i) Soil analytical results for cPAHs shall be reported as benzo(*a*)pyrene TEQ.
    - (ii) For cPAH compounds that are non-detect, a value equal to one half the reported MDL shall be used for calculating the TEQ.
    - (iii) Sediment analytical results shall be compared to the individual PAH in Appendix A.
  - (C) Polychlorinated biphenyls (PCBs). Analytical results for PCBs shall be evaluated as follows:
    - (i) If results are analyzed as PCB Aroclors, analytical results shall be summed and used to express total PCBs and compared to the VSS, VGES, or VIS, as applicable.
    - (ii) If PCBs are reported as homologs, the sum of all homologs will be used as an estimate of total PCBs and shall be compared to the VSSs located in Appendix A, or appropriate groundwater enforcement standards or VISs. If PCBs are reported as congeners, dioxin-like congeners shall be segregated and assessed and included in estimates

of 2,3,7,8-TCDD TEQ, per the above section. Non-dioxin-like congeners shall be summed and compared to the VSS.

- (iii) If PCBs are included in a Method 2 CRA, PCB Aroclor and homolog concentrations shall be added to the concentration for PCBs. PCB congener data shall be separated as described above.
- (iv) The total PCBs will be evaluated for noncancer hazard based on the noncancer toxicity value of Aroclor 1254.

(f) Data quality assurance/quality control analytical results.

- (1) Depending on site-specific conditions and quality assurance/ quality control (QA/QC) objectives included in the QA/QC Plan, a trip blank, a method blank, and a duplicate sample may be required.
- (2) If field analytical methods are approved in the work plan, the Secretary may require that a subset of samples be analyzed at a fixed base laboratory.
- (3) Additional QA/QC samples (e.g., field blanks) may be required by the Secretary depending on the complexity of the investigation or sampling methods used.
- (4) Any deviations from QA/QC procedures or acceptable limits shall be identified.
- (5) Only data that meets quality assurance quality control (QA/QC) criteria specified in the QA/QC Plan will be accepted.

## **SUBCHAPTER 5. RESPONSE ACTIONS; RELEASES OF HEATING FUELS**

### **§ 35-501. APPLICABILITY**

This subchapter applies to the release of heating fuel from underground storage tanks or aboveground storage tanks used for storage of heating fuel. At the Secretary's discretion, responses to releases of heating fuel may be managed under Subchapter 3 (site investigation) or Subchapter 6 (corrective action) of this rule.

### **§ 35-502. INITIAL RELEASE INVESTIGATION**

- (a) Petroleum contaminated soil removal. Following approval from the Secretary, a PRP may remove petroleum contaminated soil in the area where a release of heating oil occurred. Removal shall occur until:
  - (1) VOC field screening instrument readings are below 10 parts per million by volume (ppmv) and no visual or olfactory evidence of contamination is present, or
  - (2) the water table or bedrock is encountered, or
  - (3) a predetermined volume as approved by the Secretary is achieved.
- (b) Petroleum contaminated soil treatment or disposal. Soil treatment or disposal shall be approved in writing by the Secretary and performed in accordance with Subchapter 8. If soil treatment is to occur in accordance with § 35-803(c)(2) or § 35-803(d)(2), a Soil Management Plan shall be required.
- (c) Post-excavation environmental media characterization. Discrete post-excavation soil samples shall be collected for laboratory analysis to document removal of contamination or to characterize soil contamination remaining in place. Groundwater sampling may be requested by the Secretary if groundwater is encountered in the excavation.
  - (1) Upon removal of all petroleum contaminated soil to the extent possible, collect and analyze discrete soil samples to demonstrate compliance with appropriate Standards.
  - (2) If removal of all petroleum contaminated soil is not possible due to physical constraints, the PRP shall collect and analyze a discrete sample of soil remaining in place from the area(s) determined to be the most contaminated based on VOC field screening instrument results.
- (d) Additional site investigation. If contaminated soil excavation is not feasible, additional site investigation in accordance with § 35-505 shall be required as directed by the Secretary. The Secretary shall have discretion to determine the feasibility of excavation of soil for purposes of this provision.

- (e) Bedrock. If soil excavation is performed following approval from the Secretary, the excavation shall be extended to the soil bedrock interface to determine if contaminated soil is present unless:
  - (1) the vertical extent of contaminated soil is delineated and determined to be adequately separated from the bedrock surface;
  - (2) the water table is encountered; or
  - (3) excavation to bedrock is physically impossible, a confining soil layer is present, or an alternate remedial approach is approved by the Secretary.
- (f) Drinking water. If a water supply source is located within 200 feet of the release, a sample shall be collected from this water supply for appropriate laboratory analysis.
- (g) Vapor intrusion. If any building is located within 30 feet of the release, indoor air shall be screened with a VOC field screening instrument.
- (h) Surface waters. If visual observations or VOC field screening instrument readings indicate that a release may have impacted surface water, the PRP shall immediately take measures to abate any continuing release to surface water and remove to the extent possible any heating fuel in the surface water.

**§ 35-503. INITIAL RELEASE INVESTIGATION REPORT**

- (a) Within 30 days of receipt of laboratory data, or upon an alternate timeframe approved in writing by the Secretary, a PRP shall provide the Secretary a report that contains the following:
  - (1) Site description, in accordance with § 35-306(b)(5).
  - (2) Property history, in accordance with § 35-306(b)(7).
  - (3) Results of contaminated environmental media characterization, in accordance with § 35-306(b)(12).
  - (4) Maps, in accordance with § 35-306(b)(14)(A) and 35-306(b)(14)(B).
  - (5) Data presentation, in accordance with § 35-306(b)(16).
  - (6) Conclusions and recommendations, in accordance with § 35-306(b)(19).
  - (7) Photographic documentation in accordance with § 35-306(b)(21)(C).
  - (8) Laboratory reports, in accordance with § 35-306(b)(21)(E).
  - (9) Waste disposal manifests, bill of lading, and weight slips as appropriate.



- (10) Recommendations for no further action, additional release characterization in accordance with § 35-305, or corrective action, as appropriate.

**§ 35-504. RESPONSE TO REPORT**

- (a) The Secretary shall respond, in writing, to the investigation and reporting required by this section and shall provide written notification to the PRP of one of the following determinations:
  - (1) No further action is required;
  - (2) No further action is required following placement of a NTLR against the property deed;
  - (3) An additional site investigation in accordance with § 35-505 is required;
  - (4) A site investigation in accordance with Subchapter 3 or corrective action in accordance with Subchapter 6 is required; or
  - (5) The report is incomplete and will be returned to the PRP for revision and resubmission.

**§ 35-505. ADDITIONAL SITE INVESTIGATION**

- (a) If required by the Secretary under § 35-504 of this subchapter, a PRP shall prepare an additional site investigation work plan and provide it to the Secretary for review and approval prior to implementation.
- (b) An additional site investigation work plan shall include:
  - (1) Soil borings. Soil borings shall be advanced to characterize the degree and extent of petroleum impacts to soil and evaluate risk to groundwater. Soil borings shall be advanced:
    - (A) within the former UST location or AST release (if this/these area(s) have not been adequately characterized under § 35-502); and
    - (B) until VOC field screening instrument readings are below 10 ppmv and there is no visual and olfactory evidence of contamination for at least five consecutive feet, or other such depth as is required by the Secretary.
  - (2) Soil analysis. If required by the Secretary, soil samples shall be collected for laboratory analysis from each boring:
    - (A) at the water table or the deepest point of the boring if soil screening results from a VOC field instrument are non-detect throughout the soil boring,  
or

- (B) from the location of the highest VOC field instrument reading if contamination is present.
- (3) Groundwater monitoring wells. If VOC field screening instrument results exceed 10 ppmv and/or there is visual and olfactory evidence of contamination in any boring at or within five feet of the water table, the PRP shall install monitoring wells to determine the extent of impacts to groundwater and groundwater flow direction and shall collect groundwater samples for laboratory analysis.
- (4) Surface water and sediment. If applicable, representative samples shall be collected for laboratory analysis to determine whether there are exceedances of environmental media standards in surface water and sediment.

**§ 35-506. ADDITIONAL SITE INVESTIGATION WORK PLAN; APPROVAL AND IMPLEMENTATION**

- (a) The Secretary shall approve, in writing, an additional site investigation work plan if the work plan is designed to adequately characterize the degree and extent of the release and provides sufficient information to evaluate the impact of the release on any sensitive receptor.
- (b) A PRP shall implement the approved additional site investigation work plan within 30 days of the date of the approval or within an alternate timeframe approved by the Secretary. The work plan shall be implemented under the supervision of an environmental professional.
- (c) Any deviations to the approved work plan dictated by site conditions during site investigation implementation shall be approved by the Secretary prior to the change.

**§ 35-507. ADDITIONAL SITE INVESTIGATION REPORT SUBMISSION AND REVIEW**

- (a) An additional site investigation report shall be submitted within 90 days of receipt of laboratory data or in accordance with an alternate schedule approved by the Secretary. The additional site investigation report shall include the elements of a site investigation report in § 35-306(b) that were approved by the Secretary per § 35-506(a).
- (b) Upon review of the additional site investigation report, the Secretary shall, in writing, notify the PRP of one of the following conclusions:
  - (1) The additional site investigation has adequately defined the degree and extent of contamination and risks to sensitive receptors have been appropriately managed. No further action will be required following proper decommissioning of any monitoring wells or other remedial equipment.
  - (2) The additional site investigation has not adequately defined the degree and extent of contamination and the PRP is required to conduct additional investigation of the site in accordance with Subchapter 3.

- (3) The additional site investigation has adequately defined the degree and extent of contamination but risks to sensitive receptors have not been mitigated, and the PRP shall develop an evaluation of corrective action alternatives or corrective action plan in accordance with Subchapter 6 of this rule.
- (4) The additional site investigation has adequately defined the degree and extent of contamination exceeding applicable environmental media standards and risks to sensitive receptors have been appropriately managed. An institutional control will be required in accordance with Subchapter 9.
- (5) The additional site investigation report is inadequate and requires revisions. The Secretary shall identify the inadequacies, and the PRP shall submit a revised report and any additional information within 30 days or an alternate schedule approved by the Secretary.

## **SUBCHAPTER 6 CORRECTIVE ACTION**

### **§ 35-601. APPLICABILITY**

Except as exempted in § 35-602 of this section, a PRP shall initiate corrective action upon a finding by the Secretary that a site investigation has adequately defined the extent of contamination but risks to sensitive receptors have not been appropriately managed. Corrective action may also be initiated as an interim or partial measure to address specific site concerns or to mitigate risk to sensitive receptors while additional site characterization is performed.

### **§ 35-602. EXEMPTIONS**

- (a) The following are exempt from the requirements of § 35-604, § 35-606, § 35-608, and § 35-610 in this Subchapter:
- (1) An emergency response performed pursuant to § 35-102 of this rule.
  - (2) A response action to address the release of heating fuels pursuant to Subchapter 5 of this rule.
  - (3) Following approval from the Secretary, removal of petroleum-contaminated soils during the closure or replacement of an underground storage tank.
  - (4) Management of contaminated soils under an approved soil management plan per Section § 35-804 of this rule.
- (b) A PRP shall not be required to conduct corrective action in accordance with this Subchapter upon demonstration to the Secretary that:
- (1) There are no exceedances of any applicable Vermont Groundwater Enforcement Standards or Vermont Action Levels at drinking water sources, vapor intrusion is not occurring and there are no other impacts that may present a threat to human health or the environment;
  - (2) Groundwater contamination is confined to the same property where the release occurred;
  - (3) Contamination will not migrate beyond compliance points at concentrations exceeding standards, given the current data that is available, and concentrations are stable or declining;
  - (4) The hazardous material release is limited to soil only, and is able to be addressed through removal and disposal of a limited amount of contaminated material with a Soil Management Plan prepared in accordance with § 35-804;
  - (5) There are no direct contact threats; and

- (6) The proposed institutional control plan, as provided in a site investigation report or other document, meets the requirements of Subchapter 9 of this rule.

**§ 35-603. OBJECTIVES OF CORRECTIVE ACTION**

- (a) Corrective actions shall be designed to mitigate the impact of hazardous materials to sensitive receptors to the maximum extent practicable by implementing the following approaches, in order of priority:
  - (1) Treatment of environmental media to the maximum extent practicable, or to levels where the risk may be managed via engineered controls or institutional controls;
  - (2) Removal and proper disposal of environmental media impacted by hazardous materials;
  - (3) Use of engineered and other controls to contain hazardous materials and to mitigate impacts to environmental media and sensitive receptors; and
  - (4) Use of institutional controls to mitigate exposure to sensitive receptors.

**§ 35-604. EVALUATION OF CORRECTIVE ACTION ALTERNATIVES**

- (a) Evaluation required. At sites that are not exempt in accordance with § 35-602 or subsection (b) of this section, the PRP shall evaluate corrective action alternatives prior to submitting a corrective action plan to the Secretary. If pilot testing or additional data collection is necessary as part of the evaluation, a work plan shall be submitted for approval by the Secretary.
- (b) Exemption. A PRP may submit a corrective action plan without conducting an evaluation of corrective action alternatives pursuant to this section, provided all the following have been demonstrated to the satisfaction of the Secretary:
  - (1) The site investigation report demonstrates that there are no impacts to drinking water sources and vapor intrusion is not occurring.
  - (2) For impacted groundwater, the site investigation report demonstrates that the groundwater contamination meets Vermont Groundwater Enforcement Standards at established compliance points or will meet VGES at established compliance points within ten years.
  - (3) Any direct contact threats to sensitive receptors can be addressed through removal of a limited amount of source material or capping with an engineered barrier.
  - (4) A corrective action plan will document that the proposed remedy, with respect to the hazardous material in question, has been utilized at other sites and has been demonstrated to be reliable, cost effective, and effective in addressing remediation of the hazardous material.

- (5) For development soil receiving sites, all requirements in § 35-805(d) have been met, and a corrective action plan which addresses potential direct contact with development soils by the public, including capping and land use restrictions, has been approved by the Secretary.
- (c) Identification of corrective action alternatives. The PRP shall identify corrective action alternatives that will eliminate exposure pathways to sensitive receptors. The number and type of alternatives to be evaluated shall be determined by the scope, characteristics, and complexity of the problem being addressed. At each site, at least the following alternatives shall be considered:
- (1) A minimum of two alternatives that reduce the toxicity, mobility, or volume of the hazardous materials released to the extent feasible. These alternatives shall minimize the need for long-term management at the site; and
  - (2) An alternative that involves little or no treatment, but controls impacts to sensitive receptors through engineered controls, containment, long-term monitoring, and institutional controls.
- (d) Evaluation of corrective action alternatives (ECAA). For each proposed corrective action alternative, the PRP shall evaluate and document the following:
- (1) Overall protection of human health and the environment. Alternatives shall be assessed to determine whether they can adequately protect human health and the environment, by either eliminating, reducing, or controlling exposures to levels established by the corrective action objectives consistent with § 35-603.
  - (2) Compliance with legal requirements. Alternatives shall be evaluated to determine whether the PRP can obtain all federal, state, and local permits for the proposed alternative as well as describe how the alternative will meet those regulatory requirements.
  - (3) Long-term effectiveness and permanence. Adequacy and reliability of the proposed alternative such as containment systems and institutional controls that are necessary to manage treatment residuals and untreated waste. This factor addresses the uncertainties and risks associated with long-term management of the remedy. The resilience of the alternative must be evaluated in light of reasonably foreseeable changing climate conditions (e.g., increased frequency and intensity of flooding and/or extreme weather events, etc.).
  - (4) Land use restrictions. alternatives shall identify whether and what type of institutional controls are required following implementation of the corrective action.
  - (5) Reduction of toxicity, mobility, or volume through treatment. The degree to which alternatives reduce toxicity, mobility, or volume shall be assessed, including how treatment is used to address the principal threats posed by the site. Factors that shall be considered include the following:

- (A) The treatment or recycling processes the alternatives employ and materials they will treat;
  - (B) The amount of hazardous materials that will be destroyed, treated, or recycled;
  - (C) The degree of expected reduction in toxicity, mobility, or volume of the hazardous materials due to treatment or recycling and the specification of which reduction(s) are occurring;
  - (D) The degree to which rebound of contaminants may occur;
  - (E) The type and quantity of residual contamination that will remain following treatment, considering the toxicity, mobility, propensity to bioaccumulate, and persistence of such hazardous materials and their constituents; and
  - (F) The degree to which treatment reduces the inherent hazards posed by principal threats at the site.
- (6) Short-term effectiveness. The short-term impacts of alternatives shall be assessed by considering the following:
- (A) Short-term risks that might be posed to sensitive receptors during implementation of an alternative;
  - (B) Potential impacts to workers during corrective action and the effectiveness and reliability of protective measures; and
  - (C) Potential environmental impacts of the corrective action and the effectiveness and reliability of mitigation measures during implementation.
- (7) Feasibility. The relative degree of difficulty in implementing the alternatives shall be assessed by considering the following:
- (A) Technical feasibility, including uncertainty associated with construction and operation of a corrective action, the reliability of the technology, ease of undertaking additional corrective actions, and the ability to monitor the corrective action's effectiveness;
  - (B) Administrative feasibility, including activities needed to coordinate with other offices and agencies and the need to obtain any necessary approvals and permits; and
  - (C) Availability of services and materials, including the adequate off-site treatment, storage capacity, and disposal capacity and services; the availability of necessary equipment and subcontractors, and any necessary additional resources.

- (8) Schedule for implementation of each alternative, including projected duration for achieving site remedial goals.
  - (9) Cost. The types of costs that shall be assessed include the following:
    - (A) Capital costs;
    - (B) Annual operation and maintenance (O&M) costs;
    - (C) Costs to implement land use restrictions; and
    - (D) Net present value of capital and O&M costs.
  - (10) Environmental impact and sustainability. Include a discussion of waste generation and disposal requirements, as well as a discussion of methods to implement best management practices to reduce the environmental impact of the proposed remedies in accordance with US EPA guidance or ASTM Standard Guide for Greener Cleanups.
  - (11) Community acceptance. This assessment includes determining which components of the alternatives interested persons in the community may support, have reservations about, or oppose. The Secretary may require a public comment period and informational meeting on the alternatives or consider community acceptance in the context of public input on the corrective action plan.
- (e) Required elements. The PRP shall provide the Secretary with an ECAA report that contains the following:
- (1) An executive summary of the corrective action alternatives considered, including the recommended alternative, based on criteria in subsection (d) of this section.
  - (2) Objective and goals of the corrective action effort.
  - (3) A detailed evaluation of the criteria established under subsection (d) of this section for each remedial option selected under subsection (c) of this section.
  - (4) A detailed justification for the selected remedy.
  - (5) Tabulated results and a narrative discussion of any pilot testing completed during the evaluation.
  - (6) A proposal for any site-specific background standards that the PRP proposes to apply to the site in accordance with Appendix B of this rule.
  - (7) A proposal for any waiver that the PRP proposes to apply to the site in accordance with Appendix C of this rule.



- (8) A proposal for additional pilot testing or data collection to refine the remedial design for the selected remedy.

**§ 35-605. SECRETARY EVALUATION OF CORRECTIVE ACTION ALTERNATIVES**

- (a) The Secretary shall evaluate each corrective action alternative presented in the evaluation of corrective action alternative report utilizing the criteria of § 35-604(d).
- (b) The Secretary shall provide a written response to the PRP that:
  - (1) Approves the corrective action alternative recommended in the report;
  - (2) Approves an alternate alternative that was considered but not recommended;
  - (3) Requires additional alternatives to be evaluated;
  - (4) Requires additional information, justification, analysis, pilot testing, or data collection to support further evaluation of the alternatives reviewed as a part of the report; or
  - (5) The report is inadequate and will be returned to the PRP and the environmental professional for revisions.
- (c) The PRP shall, within 30 days of the Secretary's response or within an alternate schedule approved by the Secretary), provide the Secretary with a response to any comment provided by the Secretary including a revised evaluation of corrective action alternatives or a corrective action plan for the selected alternative.

**§ 35-606. CORRECTIVE ACTION PLAN**

- (a) Except as exempted in § 35-602 of this section, a PRP shall submit a corrective action plan to address impacts or risks to sensitive receptors that are not managed.
- (b) A corrective action plan shall include the following:
  - (1) Executive summary. An executive summary that includes a description of the contamination, a review of the results of the investigation, remediation and remedial objectives, a summary of the alternatives considered, a description of the chosen corrective action technology, a statement of site operations and monitoring activities, and an estimate of the duration of the remedial action.
  - (2) Site history and updated Conceptual Site Model.

- (3) Public notice; parcel map. A list of the persons who will receive notice under § 35-607(b)(1), including contact names, addresses, email addresses, and phone numbers. A parcel boundary map shall be included showing all such parcels.
- (4) Performance standards, to include the following:
  - (A) A discussion of how the corrective action achieves the corrective action objectives identified in § 35-603.
  - (B) A list of environmental media standards that apply to the site.
  - (C) A map identifying the compliance points that will be used to monitor compliance with the environmental media standards.
  - (D) A narrative explanation as to why these compliance points were chosen.
  - (E) A narrative explanation as to how any corrective action will ensure that there are no completed pathways that would result in an impact to a sensitive receptor.
  - (F) An estimate of the contaminant mass or volume and expected removal rates.
  - (G) Identify performance standards for demonstrating substantial completion of the corrective action for sites receiving a Certificate of Completion.
  - (H) Estimated duration of active remediation and transition to long-term monitoring or site closure.
- (5) Permits. A list of all local, state, and federal permits required for the project, and the contacts necessary to obtain these permits and a demonstration of compliance with all local, state, and federal rules and regulation.
- (6) Remedial construction plan. Any corrective action involving construction of a treatment system or engineered system, including a cap, containment system, or any other control that requires an engineered design, shall include the following:
  - (A) Detailed plans and specifications of the corrective action remedial design and related calculations.
  - (B) Tabulated results and narrative discussion of any additional analysis or pilot testing performed.
  - (C) A Vermont licensed professional engineer's signature of review of the remedial system design.

- (7) Waste management; contaminated soil plan. A discussion of any waste material that will be generated by the corrective action, including a hazardous waste determination. If managing contaminated soil, the plan shall also include a plan for managing contaminated soil in accordance with Subchapter 8 and § 35-611.
- (8) Implementation schedule. An implementation schedule that contains milestones for implementing the corrective action and dates for when those milestones will be reached. The schedule shall include proposed deliverables including the corrective action construction completion report and initial performance monitoring or operation and maintenance reporting, as applicable.
- (9) Corrective action operation and maintenance plan. The plan shall describe the following:
  - (A) A description of how any engineered solution will be monitored and maintained to ensure that it continues to operate as designed.
  - (B) A discussion of the performance monitoring and data collection strategy during active remediation.
  - (C) A description of how any land use restrictions will be monitored and maintained with institutional controls.
  - (D) As requested by the Secretary, a cost estimate for the implementation of the corrective action maintenance plan and a financial responsibility instrument to assure the implementation of the corrective action operation and maintenance plan. Financial assurance under this rule shall be accomplished in the same manner as financial assurance under 40 C.F.R. Part 264 Subpart H.
  - (E) A discussion of the operation and maintenance of any active remedial option after its construction until it attains the corrective action objectives established in § 35-603.
  - (F) A discussion of how any treatment system will be deconstructed or decommissioned once remedial objectives have been met.
- (10) Institutional control plan. The corrective action plan shall include an institutional control plan in accordance with § 35-901, unless the Secretary determines that no residual contamination remains in exceedance of any applicable environmental media standards.
- (11) Long-term monitoring plan. Where long-term monitoring is the remedy or will be required following the completion of corrective action, a long-term monitoring work plan in accordance with § 35-702 will be required.

- (12) Redevelopment and reuse plan. If applicable, the corrective action plan shall include the redevelopment and reuse plan for the property following implementation of the corrective action. Changes or modifications to this plan may require an amendment to the corrective action plan to ensure that sensitive receptors are not adversely impacted.
- (13) Quality Assurance and Quality Control (QA/QC) Plan. The corrective action plan shall contain the following:
  - (A) A list of the Standard Operating Procedures (SOPs) appropriate to the technologies being proposed for the corrective action. The SOPs shall be provided to the Secretary upon request.
  - (B) A Quality Assurance/Quality Control Plan. What methods will be employed to ensure the validity and accuracy of the data and technologies implemented.
- (14) Cost estimate.
  - (A) Applicability. A corrective action plan shall include a cost estimate if State or federal funding will be utilized, if the project is enrolled in the BRELLEA program, or if requested by the Secretary.
  - (B) Contents. A cost estimate shall be broken down by task, materials, labor costs, sub-contractor costs, and equipment costs. Estimates for sub-contractors shall also be itemized into labor, materials, and equipment costs when available. The cost estimate shall contain a separate itemized cost estimate for CAP implementation and system operations and maintenance (O&M).
- (15) An updated set of maps as per § 35-306(b)(14).
- (16) Tabular, time series summaries of contaminant concentrations in environmental media in accordance with § 35-306(b)(16).
- (17) Cross-sections of the contaminated zone depicting well or boring depths, soil stratigraphy, recent soil contaminant concentrations, and recent water levels as appropriate to site-specific conditions.
- (18) A list of all proposed contractors and sub-contractors, including contacts, addresses, email addresses, and phone numbers.

**§ 35-607. CORRECTIVE ACTION PLAN REVIEW; PUBLIC NOTICE; FINAL DECISION**

- (a) Review of draft corrective action plan. The Secretary shall approve a proposed corrective action plan upon finding:

- (1) The corrective action plan demonstrates that the proposed corrective action meets the criteria of § 35-603 and § 35-606, and that the proposed corrective action either:
    - (A) Ensures that no sensitive receptor will be adversely impacted by the corrective action; or
    - (B) That the corrective action is an interim measure that addresses a portion of the release and that further corrective action is planned to ensure that no sensitive receptor will be adversely impacted.
  - (2) The applicable requirements of 10 V.S.A. chapter 170 (Type 2) (pertaining to public notice) have been satisfied.
- (b) Public notice of administratively complete draft corrective action plan.
- (1) Upon a determination by the Secretary that the corrective action plan is administratively complete, a PRP shall provide notice of the draft corrective action plan to all property owners impacted by the release and to all impacted adjoining property owners on a form provided by the Secretary.
  - (2) The applicant shall provide signed certification to the Secretary that all adjoining property owners have been notified of the corrective action plan.
  - (3) The Secretary will post a copy of the draft corrective action plan electronically on the Environmental Notice Bulletin for public comment in accordance with 10 V.S.A. chapter 170.
- (c) The Secretary will approve the draft corrective action plan upon a finding that the requirements of § 35-607(a) have been met. The Secretary shall provide notice, in writing, to the potentially responsible party and other interested parties of the final corrective action plan approval.
- (d) Corrective action plan. The corrective action plan shall be implemented within 90 days of the approval or in accordance with a schedule approved by the Secretary.
- (e) The PRP shall notify the Secretary of amendments to a corrective action plan. The Secretary shall approve the amendment prior to implementation.
- (1) Major amendments. All amendments that change the remedial approach or design of the corrective action plan and necessitate technical review shall be noticed in the same manner as required by subsection (b) of this section.
  - (2) Minor amendments. All amendments that do not change the approved remedial design and are not administrative amendments are not subject to subsection (b) of this section.

- (3) Administrative amendments. All amendments that correct typographical errors, changes the name or mailing address of an individual, or makes other similar changes to a plan that do not require technical review or the imposition of new conditions or requirements shall not require review under 10 V.S.A. chapter 170.

**§ 35-608. CORRECTIVE ACTION CONSTRUCTION COMPLETION REPORT**

- (a) A corrective action construction completion report shall be submitted within 90 days of completing the construction of any remedy, as applicable, or in accordance with the schedule approved in the corrective action plan.
- (b) A corrective action construction completion report shall include the following elements, as applicable:
  - (1) Corrective action objectives, and how the work performed has met the objectives and mitigated or remediated impacts to sensitive receptors.
  - (2) Description of work performed including data collection.
  - (3) Description of remedial system installed.
  - (4) Description of any field-based minor amendments to the corrective action and a justification for them.
  - (5) Site plans reflecting post-CAP implementation conditions.
  - (6) Mechanical system layout and list of major components with serial numbers.
  - (7) Piping, control, and instrumentation diagrams along with any modifications to the corrective action operations and maintenance plan for the installed system.
  - (8) Photo documentation, including:
    - (A) contamination encountered during the corrective action;
    - (B) the installed remedy; and
    - (C) the site before and after implementation of the CAP.
  - (9) Initial remedial system operation data, including:
    - (A) Flow rate;
    - (B) Pressure or vacuum radius of influence;
    - (C) Contaminant removal rates; and

- (D) Treatment system influent and effluent sample results.
- (10) Injection program specifications, including:
  - (A) Reagent mixing data;
  - (B) Flow rates and pressures;
  - (C) Volume of injected material;
  - (D) Amendment distribution; and
  - (E) Initial post-injection data.
- (11) Documentation that the site has been stabilized, physical hazards have been minimized, restored to the restoration plan included in the approved corrective plan;
- (12) Recovery or injection well boring logs;
- (13) Copies of all federal, state, and local permits;
- (14) Waste disposal manifests and bills of lading;
- (15) Applicable inspection results including building, zoning, plumbing, and electrical;
- (16) Recommendations for additional work; and
- (17) A certification that the activities were performed in accordance with the corrective action plan.

**§ 35-609. REVIEW AND FINAL DECISION OF CORRECTIVE ACTION CONSTRUCTION COMPLETION REPORT**

- (a) The Secretary shall review a corrective action construction completion report and determine whether the corrective action conforms to the CAP approved by the Secretary. The Secretary will respond, in writing, that either:
  - (1) The corrective action conforms to the CAP;
  - (2) The corrective action does not conform to the CAP and that additional work is required to bring the corrective action into compliance with the CAP; or
  - (3) The corrective action is not functioning as designed and additional investigation is required to determine the cause, to develop an effective remedy, or to implement additional corrective action at the site.

**§ 35-610. CORRECTIVE ACTION PERFORMANCE MONITORING AND O&M**

- (a) In accordance with the schedule approved by Secretary, periodic performance monitoring and O&M reports shall be submitted to the Secretary.
- (b) As applicable, performance monitoring or O&M reports shall include a recommendation for:
  - (1) continued performance monitoring or O&M;
  - (2) discontinuance of corrective action due to poor system performance;
  - (3) modifications to the approved corrective action plan; or
  - (4) cessation of corrective action when the objectives specified in § 35-603 have been met.
- (c) The Secretary shall provide a written response to the PRP in response to recommendations outlined in the report.

**§ 35-611. SITE GENERATED WASTES**

- (a) Unless approved by the Secretary for management in an Area of Contamination, site generated hazardous waste shall be managed in accordance with the Vermont Hazardous Waste Management Regulations.
- (b) The Secretary may allow for the on-site remediation of a site contaminated with a hazardous material without requiring hazardous waste certification and permitting provided such activity is conducted in accordance with an approved corrective action plan and approved by the Vermont Hazardous Materials Program..
- (c) Investigation derived wastes shall be managed and disposed as follows:
  - (1) If a hazardous waste, in accordance with the Vermont Hazardous Waste Management Regulations.
  - (2) If the waste contains polychlorinated biphenyls (PCBs) in excess of 50 parts per million (ppm), it shall be managed in accordance with the Toxic Substance Control Act (TSCA). Such waste also shall be managed as a hazardous waste in accordance with the Vermont Hazardous Waste Management Regulations (VT01 hazardous waste code). If PCBs are present at concentrations below 50 ppm, the waste may also be subject to management under TSCA.
  - (3) If the waste does not meet the criteria of subdivisions (c)(1) or (c)(2) of this subsection, the waste shall be disposed of:
    - (A) in accordance with the Solid Waste Management Rules, or



- (B) under a waste management plan approved as a part of the site investigation work plan, provided no investigation-derived waste containing a hazardous material above an environmental standard is transported off the site.
- (4) Purge water generated from groundwater monitoring, well development, and sampling shall be managed in a way that is environmentally compatible with the type and concentration of the suspected or known contaminant in the aquifer. Purge water may only be released on the ground surface in the area where it was removed if it is demonstrated that the contaminant plume is not exacerbated and that an uncontaminated area will not be contaminated by releasing the purge water on the ground.

## **SUBCHAPTER 7 LONG-TERM MONITORING**

### **§ 35-701. APPLICABILITY**

All required long-term monitoring shall be performed in accordance with this subchapter. Long-term monitoring of environmental media shall be conducted to evaluate the effectiveness of the remedial goals outlined in the corrective action plan or the site investigation objectives outlined in the site investigation report and until the site meets the conditions for Subchapter 10 (site closure), or as required by the Secretary.

### **§ 35-702. LONG-TERM MONITORING WORK PLAN**

- (a) A PRP shall submit an initial long-term monitoring work plan within 30 days of receiving Secretary approval of a CAP where long-term monitoring is a remedy or will be required following the completion of corrective action. Subsequent long-term monitoring work plans may be required as requested by the Secretary.
- (b) The long-term monitoring work plan must include a brief description of the purpose of the monitoring event, and how it meets the remedial or site investigation objectives. It must also include a statement indicating it reflects what was approved in the long-term monitoring report, SI report, or CACCR. A table must be included with proposed costs, if approval is required by the Secretary.
- (c) A long-term monitoring workplan shall be approved by the Secretary prior to the initiation of monitoring work.

### **§ 35-703. GENERAL REQUIREMENTS FOR LONG-TERM MONITORING**

- (a) Monitoring shall be conducted in accordance with an approved CAP, or as approved by the Secretary prior to July 27, 2017 if the site investigation has demonstrated that all requirements presented in § 35-304(b) are met. Any change to the plan shall be approved by the Secretary in writing.
- (b) The Secretary shall be notified immediately if a change in site conditions affect the performance of an approved work plan. The Secretary may require revisions to the monitoring work plan based on site condition changes.

### **§ 35-704. REPORTING**

- (a) A long-term monitoring report shall be submitted on an annual basis, or on a schedule approved by the Secretary.
- (b) Except as provided by subsection (c) of this section, the long-term monitoring report, including analytical results, shall be submitted to the Secretary no later than 45 days from the receipt of analytical results from the laboratory or within an alternate schedule approved by the Secretary.

- (c) In the following circumstances, results shall be reported as indicated:
- (1) Drinking water supply laboratory analytical results which report an exceedance of the groundwater enforcement standards shall be submitted verbally within 24 hours and written analytical results shall be provided to the Secretary within five business days thereafter.
  - (2) Indoor air quality laboratory analytical results that report an exceedance of an indoor air standard shall be submitted verbally within 24 hours and written analytical results shall be provided to the Secretary within five business days thereafter.
- (d) A long-term monitoring report shall include the following, as applicable:
- (1) Updated executive summary. Brief summary of findings, conclusions, and recommendations based upon the data collected during the monitoring event.
  - (2) An updated CSM in accordance with § 35-303.
  - (3) Contaminated media characterization in accordance with § 35-306(b)(12).
  - (4) Updated site maps in accordance with § 35-306(b)(14).
  - (5) Documentation of the sample location and method in accordance with the consultant's standard operating procedures (SOP). Justification for deviations from the SOPs shall be described.
  - (6) A discussion of first-time detections of contaminant concentrations or NAPL in any monitoring point. Also, include a discussion of significant changes in concentrations in any monitoring point if applicable.
  - (7) Any deviations from the approved work plan shall be identified and justified.
  - (8) Discussion. A descriptive analysis of how the data gathered supports the CSM, and whether the corrective action or site investigation objectives continue to be achieved. The discussion must also establish that the data collected are suitable to determine the risk posed by the hazardous materials, the need for further characterization, and the potential remedial actions. Only data that passes Quality Assurance/Quality Control criteria will be acceptable.
  - (9) Data presentation. All collected data shall be organized in narrative, tabular, and graphical form, and shall include all historical site data, unless deemed unnecessary by the Secretary. Graphs of hazardous material concentration versus time; including results from discontinued monitoring locations if necessary to support the conclusions in the report. All detected hazardous material concentrations shall be reported. Hazardous materials that are not detected shall be reported as less than the numerical detection limit. Detection limits shall be below the environmental media standards

and shall be provided in tabular format with the analytical results. All laboratory data qualifications must be included in tabulated data presentations.

- (10) Data used in spreadsheets or models shall be submitted if requested by the Secretary.
  - (11) NAPL recovery results, when applicable.
  - (12) VOC field screening results from contaminated stockpiled soils in tabular format, with a map showing the locations of the screened samples and the stockpile location in reference to other pertinent physical features including buildings, roadways, and surface water bodies.
  - (13) A description of the current site conditions, condition of the monitoring network, remediation system, soil stockpile, any maintenance activities conducted since the last monitoring event, and any required maintenance that must be completed with a schedule to complete the work.
  - (14) Observable changes in site and neighboring property conditions which may affect site management. These changes may include change in property use, change in property occupancy, water supply changes, and construction.
  - (15) Compliance with any institutional controls developed as part of the response to contamination.
  - (16) Documentation of the handling of any investigation-derived waste, which shall be dealt with in accordance with § 35-611(c).
  - (17) Conclusions and Recommendations. A discussion of the findings of the investigation that substantiate the revised CSM, and, specifically, the risk hazardous materials pose to identified receptors, completed exposure pathways, the identification of data gaps, potentially appropriate corrective actions, proposed monitoring frequency, and need for further investigation, additional corrective action, or site closure.
  - (18) Signature and Certification. The report shall be signed by an environmental professional and certified in accordance with § 35-104.
- (e) If required by the Secretary, interim data transmittals shall be used to submit results of monitoring events between long-term monitoring reports. Interim data transmittals shall include:
- (1) Contaminated media characterization in accordance with § 35-306(b)(12);
  - (2) Updated site maps in accordance with § 35-306(b)(14);
  - (3) Laboratory analytical reports; and
  - (4) If applicable;

- (A) NAPL recovery results; and
- (B) Photographic documentation.

**§ 35-705. SECRETARY REVIEW OF LONG-TERM MONITORING REPORT**

- (a) The Secretary shall review the long-term monitoring report for completeness and shall provide written notification to the RPP that:
  - (1) The long-term monitoring report demonstrates that the site has met the corrective action objectives and the site can be closed in accordance with Subchapter 10;
  - (2) Long-term monitoring shall continue at the sampling locations and monitoring frequency established in the site investigation or corrective action plan, or at an alternate frequency based on site conditions as approved by the Secretary; or
  - (3) Additional site investigation or corrective action is required.

## **SUBCHAPTER 8 CONTAMINATED SOIL**

### **§ 35-801. APPLICABILITY**

- (a) The following soils containing hazardous materials at concentrations exceeding the applicable Vermont Soil Standards shall be managed in accordance with this section:
  - (1) Non-hazardous waste contaminated soils.
  - (2) Development soils.
  - (3) Petroleum contaminated soils that are exempted from management under VHWMR § 7-203(p).

### **§ 35-802. EXEMPTIONS**

- (a) Petroleum contaminated soils that have been approved to be excavated and then backfilled into a tank grave during an UST closure or replacement are exempt from management under this Subchapter. These soils may require future site investigation or corrective action.
- (b) Petroleum contaminated soils excavated during an emergency response or UST closure or replacement are exempt from § 35-803(a) unless required by the Secretary.

### **§ 35-803. NON-HAZARDOUS WASTE CONTAMINATED SOIL**

- (a) Approval of management. All management of contaminated soils under this Subchapter shall be pre-approved by the Secretary.
- (b) VHWMR petroleum-contaminated soils. Petroleum contaminated soils are not hazardous in accordance with the Vermont Hazardous Waste Regulations.
- (c) On-site soil management and treatment.
  - (1) Soil stockpiling. Non-hazardous waste contaminated soils may be stockpiled on the site where the release occurred in accordance with this section.
    - (A) Non-hazardous waste, non-petroleum soils may be temporarily stockpiled for up to 90 days. Stockpiling may not occur between December 1<sup>st</sup> and April 1<sup>st</sup>, unless under an alternate schedule or work plan that is approved by the Secretary. A Management of Non-Hazardous Contaminated Soil Request Form shall be submitted and approved by the Secretary.
    - (B) On-site soil stockpiles shall meet the following criteria:
      - (i) Soils shall be completely contained or encapsulated within a polyethylene plastic liner, which shall be a minimum thickness of 6 mils

or another containment method determined by the Secretary to be at least as effective in isolating the soils from impacting the environment.

- (ii) The integrity of the polyethylene liner shall be maintained throughout stockpiling.
- (iii) No additional soils may be added to the existing soil stockpile, unless first approved by the Secretary.
- (iv) Soils shall be monitored at a frequency approved by the Secretary to ensure the integrity of the encapsulated soil pile.
- (v) Unless otherwise approved by the Secretary, the location of the stockpiled soils shall be in an area where:
  - (I) There are no sources for public water systems or potable water supplies within a minimum 300-foot radius. This limit may need to be extended if water supply sources are shown to be hydraulically downgradient;
  - (II) There are no sensitive environments, including a stream, river, lake, pond, state or federally listed threatened or endangered species or habitat, wetland, floodplain, Class I or II groundwater, residence, property boundary, or other similar areas, within 100 feet of the treatment location;
  - (III) The location is not within zone one or two of a source protection area for a public drinking water system served by groundwater.
- (vi) Public access to the location where soils are stockpiled shall be prohibited through posting no-trespassing signs and other appropriate means as approved by the Secretary;
- (vii) If the landowner of the property where soils are to be stockpiled is different from the soil generator, written approval from the landowner that also grants access to the Secretary has been obtained before stockpiling begins;
- (viii) The location where soils are stockpiled shall be depicted on the site map;
- (ix) Failure to adequately maintain soil may require additional investigation and corrective action as a new release as required by the Secretary.

(2) Soil treatment.

- (A) Polyencapsulation. Non-hazardous waste petroleum contaminated soils may be treated on-site by polyencapsulation following approval from the Secretary. Such treatment shall be subject to the following requirements:
  - (i) The soils shall remain polyencapsulated onsite until vapor levels are non-detectable (less than 1.0 parts per million by volume (ppmv) headspace) using a VOC field screening instrument, and there is no olfactory or visual evidence of contamination.
  - (ii) Aerating the soil pile to accelerate remediation is prohibited.
  - (iii) Soils shall be periodically monitored at a frequency approved by the Secretary to track the rate of biodegradation using a VOC field screening instrument and to ensure the integrity of the encapsulated soil pile.
  - (iv) Amendments shall be added to the soil stockpile only upon approval by the Secretary.
- (B) Thin-spreading. Thin-spreading of non-hazardous waste petroleum contaminated soils shall be approved by the Secretary. Such treatment shall be subject to the following requirements:
  - (i) Vapor levels are less than 1.0 ppmv in discrete soil samples when measured with a VOC field screening instrument;
  - (ii) Soils contain no olfactory or visual evidence of contamination;
  - (iii) Confirmatory lab samples as required by the approved corrective action or soil management plan;
  - (iv) Results of laboratory analysis shall be below Vermont Residential Soil Standards;
  - (v) Thin-spreading shall be in an area that complies with § 35-803(c)(1)(B)(v).
- (3) Additional treatment. Additional on-site treatment options for non-hazardous waste contaminated soils are only allowable following approval from the Secretary.
- (4) On-site soil capping. Non-hazardous waste contaminated soil may be capped on the property where the release occurred and within the area of contamination, provided all the following have been demonstrated:
  - (A) Capped soils shall be located above the seasonal high-water table.



- (B) An engineered soil cap shall be installed to eliminate contact risk. The engineered soil cap shall be:
  - (i) If not covered by an impervious surface, a minimum of 18” thick; or
  - (ii) If covered by an impervious surface, 6” thick of fill or sub-base material under the impervious surface.
  - (iii) Alternate cap thicknesses may be utilized, provided additional institutional controls are placed on the property to ensure protection of human health and the environment, and approval is granted by the Secretary.
  - (iv) Clearly marked with a material that distinguishes the divide between the non-hazardous contaminated soils and the clean backfill.
- (C) An institutional control plan has been approved by the Secretary.
- (d) Off-site soil management and treatment.
  - (1) Off-site stockpiling or treatment of non-hazardous waste contaminated soil. The off-site stockpiling of soil under this section shall be approved by the Secretary prior to the shipment off-site. In addition to meeting the requirements of § 35-803(c)(1)(A) and § 35-803(c)(1)(B) the following are required:
    - (A) PRP shall provide the Secretary with the following:
      - (i) the contaminant concentrations and amount of soil that is to be transported to the off-site location;
      - (ii) an ANR Atlas-generated map, including the latitude and longitude, in decimal degrees, of the exact location where the soil will be stockpiled referenced to the WGS1984 coordinate system (Mercator), with a minimum acceptable accuracy of plus-or-minus 15 feet; and
      - (iii) A completed Management of Non-Hazardous Contaminated Soil Request Form.
    - (B) The municipality in which the soil will be stockpiled or treated shall be notified in writing of the soil stockpile or treatment location. If applicable, local permits have been obtained. All required local permits must be obtained prior to off-site management, or a demonstration made that no local permits are required.

- (2) Off-site disposal. Non-hazardous waste contaminated soil may be treated or disposed at an off-site location. This soil may be shipped to one of the following locations following approval by the Secretary:
  - (A) An in-state or out of state solid waste disposal facility;
  - (B) An in-state or out of state treatment facility; or
  - (C) For development soils, a location that meets the requirements of § 35-805(c).

**§ 35-804. SOIL MANAGEMENT PLANS**

- (a) Applicability. A soil management plan may be required by the Secretary in the following instances:
  - (1) When soil management is necessary prior to meeting the objectives of Subchapter 3.
  - (2) The site is exempt from corrective action in accordance with § 35-602, and a project is being conducted where contaminated soil may be encountered or generated.
  - (3) The site has received a Site Management Activity Completed designation or Certificate of Completion that includes a land use restriction in a designated area. A project is being conducted in the designated area where residual contamination may be encountered.
  - (4) A public works or linear construction project is being proposed where contaminated soil may be encountered or generated.
  - (5) A construction or redevelopment project is being conducted by an impacted third party who is not a PRP under 10 V.S.A. § 6615 and contaminated soil may be encountered.
  - (6) A construction or redevelopment project is being conducted in an area with historical fill.
  - (7) When source removal is determined to be feasible during UST system upgrades or removals.
- (b) Plan content requirements. A soil management plan shall include the following:
  - (1) Description of project.
  - (2) Goals and objectives.
  - (3) Description of contamination (source, type, volume, area) to be encountered during the project, including groundwater.

- (4) A discussion of any waste material that will be generated by the project.
  - (5) A plan for managing contaminated soil in accordance with § 35-803, and if applicable, a plan for managing contaminated groundwater.
  - (6) Description of environmental oversight to be performed during construction.
  - (7) Soil stockpile inspection frequency.
  - (8) Project schedule.
  - (9) Description of how the site will be restored upon project completion.
  - (10) An updated set of maps per § 35-306(b)(14) or as otherwise directed by the Secretary.
  - (11) List of contractors and contact information.
- (c) Plan approval. A soil management plan shall be approved by the Secretary prior to implementation. The Secretary shall only approve, in writing, a soil management plan upon finding:
- (1) The plan meets the requirements in § 35-804(b). Additional site investigation and corrective action may be required.
  - (2) The planned construction or redevelopment project/activity will not worsen any existing contamination on the site, or cause impacts to receptors.
- (d) Completion report. Following implementation of the soil management plan the PRP shall, within 90 days of completion, provide documentation to the Secretary demonstrating that the work has been completed in accordance with § 35-804(b). If soils were transported off-site, the PRP shall also provide disposal documentation including waste manifest and bill of lading.

**§ 35-805. DEVELOPMENT SOILS**

- (a) Applicability. Soils exhibiting concentrations of contaminants limited to lead, arsenic, and/or PAHs in exceedance of Vermont Soil Standards may be managed in accordance with this section upon approval by the Secretary.
- (b) Sampling work plan; content requirements. A person who proposes to manage development soils shall develop and submit a sampling work plan that includes the following:
  - (1) Soil sample collection methods shall consist of one of the following:
    - (A) Discrete sampling methodology in a grid pattern, which shall be appropriately scaled in order to cover the entire proposed area of excavation, and sample points shall be co-located in areas of concern;

- (B) Application of Incremental Sampling Methodology consistent with the Interstate Technology and Regulatory Council's (ITRC) Incremental Sampling Methodology; or
  - (C) Other soil characterization methods, as approved by the Secretary.
- (2) If soil is proposed to be disposed of in accordance with § 35-806(c)(1), or § 35-806(d) soil samples must include Synthetic Precipitation Leaching Procedure (EPA Method 1312) (SPLP) to determine if there is a potential for contaminants to impact groundwater. Samples for SPLP analysis shall be taken from the soils most likely to leach contaminants and from the most impacted soil locations based on laboratory analysis, field screening, and visual and olfactory evidence.
- (c) Disposal of development soils. Upon approval by the Secretary, these soils may be disposed at:
- (1) A categorical solid waste facility that is permitted to receive development soils;
  - (2) A solid waste facility for use as alternate daily cover; or
  - (3) An approved receiving site that meets the requirements of subsection (d) of this section.
- (d) Receiving site.
- (1) Work plan. Prior to receiving development soils, a work plan for sampling of the receiving site shall be submitted for approval which includes the following:
    - (A) Soil sample collection methods which shall consist of one of the following methods:
      - (i) Discrete sampling methodology in a grid pattern. The sampling grid shall be appropriately scaled in order to cover the entire area proposed for deposition of development soils and shall include information regarding seasonal groundwater elevations determined through subsurface characterization; or
      - (ii) Application of Incremental Sampling Methodology consistent with ITRC Incremental Sampling Methodology and shall include information regarding seasonal groundwater elevations determined through subsurface characterization.
    - (B) The address of the proposed receiving site location and the GIS coordinates of the area where the development soils are proposed to be disposed.
  - (2) General requirements. The following shall apply to management of development soils at a receiving site:

- (A) A receiving site shall meet the siting requirements established in § 35-803(c)(1)(B)(v).
- (B) The receiving site shall have concentrations of arsenic, lead, and PAHs that are equal to or greater than the concentrations of the development soils proposed to be received.
- (C) Receiving sites that have concentrations of hazardous materials in exceedance of residential soil standards will be required to conduct a site investigation in accordance with Subchapter 3.
- (D) The receiving site has an approved institutional control plan in accordance with § 35-901 that addresses potential direct contact with development soils by the public, including appropriate capping and establishment of land use restrictions.

## SUBCHAPTER 9. INSTITUTIONAL CONTROLS

### § 35-901. INSTITUTIONAL CONTROL PLAN

- (a) Purpose. The purpose of an institutional control plan is to identify a series of actions or restrictions to ensure the protection of human health and the environment.
- (b) Acceptable alternate institutional controls. In addition to the institutional controls identified in § 35-902 and § 35-903, the following institutional controls may be acceptable when included as a part of an institutional control plan approved by the Secretary:
  - (1) Zoning ordinances. Zoning ordinances that place restrictions on uses of an area where the property is located may be considered as a part of an institutional control plan, e.g., zoning an area for non-residential use only or limiting subsurface excavation. Institutional control plans shall address how reporting on zoning ordinances will take place to ensure that future modifications to ordinances or bylaws do not allow land use to adversely affect human health or the environment.
  - (2) Water ordinances. Water ordinances that require all property owners to be connected to a public community water supply when service is available may be an acceptable institutional control for groundwater use restrictions. Institutional control plans shall address how reporting on water ordinances will take place to ensure that future modifications to ordinances or bylaws to ensure compliance with land use restrictions.
  - (3) Groundwater reclassification. Groundwater reclassifications may be an acceptable institutional control for groundwater use restrictions.
  - (4) Judicially approved controls. Judicial controls may be an acceptable institutional control. The institutional control plan shall identify how the judicially approved controls will allow the control to survive changes to property ownership or other transfers of the property.
  - (5) Any other control approved by the Secretary as a part of the institutional control plan.
- (c) Institutional control plan requirements. The PRP shall submit an institutional control plan to the Secretary for approval. The plan may be included as part of a report, corrective action plan, or as a standalone deliverable. The plan shall include the following:
  - (1) Description of all residual contamination that remains on the property;
  - (2) Description of appropriate restrictions to ensure that exposure pathways are not created by uses or activities that take place on the property;
  - (3) Description of the control or controls that adequately address the land use restrictions identified in subsection (c)(2) of this section; and

- (4) Description of a means to ensure that the controls continue to be effective until the contamination no longer poses an unacceptable impact to human health or the environment.
- (d) Approval of institutional control plan. The Secretary shall review and approve the institutional control plan provided that it complies with the requirements of § 35-901(c).

**§ 35-902. NOTICE TO THE LAND RECORDS**

- (a) Purpose. The purpose of a Notice to the Land Records is to inform present and future property owners of the presence of residual contamination at the property, and applicable land use restrictions.
- (b) Applicability. A Notice to the Land Records is an acceptable institutional control when:
  - (1) Corrective actions have addressed exposure pathways to sensitive receptors, but residual contamination above applicable environmental media standards may be present on site, or
  - (2) Contamination has been identified during the site investigation, and it is determined necessary to ensure current and future landowners are informed of the presence of contamination.
- (c) Required elements. All notices to the land record shall contain:
  - (1) A brief description of the release of hazardous materials;
  - (2) A brief description of any corrective action that took place on the site;
  - (3) What residual hazardous materials remain on the site above applicable media standards and the location of those hazardous materials;
  - (4) A description of the necessary land use restriction(s) to ensure that no further exposure to hazardous materials can occur; and
  - (5) The following language shall be included:

“If a person fails to follow the land use restrictions contained within this notice the person may be liable for further site investigation, remediation, and penalties pursuant to the Vermont Waste Management Act, 10 V.S.A. chapter 159.”
- (d) Filing. A PRP shall file a notice to the land records within one week of approval by the Secretary. The PRP shall provide a copy to the Secretary, including the recorder stamp, date of recording, book, and page number, of the recorded notice to the land record within 10 days of its recording.

**§ 35-903. ENVIRONMENTAL EASEMENT**

- (a) Purpose. The purpose of an environmental easement is to place legally enforceable land use restrictions on a property to prevent exposure to any hazardous material left on the property and to ensure the protectiveness of any corrective action at the property.
- (b) Applicability. The Secretary may require the use of an environmental easement in the following situations:
  - (1) When long-term maintenance or monitoring of the corrective action, engineered remedy or land use restrictions are required to prevent contamination from posing a risk to human health or the environment;
  - (2) When land use restrictions will include restrictions for residential property use;
  - (3) When active remedial infrastructure must remain in place in order to prevent a risk to human health or the environment;
  - (4) When a Technical Impracticality (TI) Waiver has been granted by the Secretary in accordance with Appendix C; or
  - (5) When groundwater contamination remains or is projected to remain at the site above the Vermont Groundwater Enforcement Standards at a compliance point in accordance with the timeline established in the Vermont Groundwater Protection Rule and Strategy.
- (c) Required elements. The following shall be included in an environmental easement:
  - (1) A legal description of the site property;
  - (2) A description of the release, corrective action, and statement of the need for an environmental easement on the property;
  - (3) A grant of access to the Agency of Natural Resources to the property for any reason related to the purpose of the easement, including monitoring of the site, monitoring of the land use restriction, planning future corrective action;
  - (4) Restrictions on future uses of the property or portions of the property to prevent receptors from being exposed to any residual contamination that remains on the property and to ensure the effectiveness of any corrective action;
  - (5) A process for enforcing the terms of the easement; and
  - (6) A map including the most recent parcel boundary survey that depicts the area of the parcel to which the restrictions apply.



- (d) Approval. The Secretary shall review and approve the environmental easement upon demonstration that easement complies with the requirements of § 35-903(c).
- (e) Filing. A PRP shall file an approved environmental easement and all exhibits within one week of its approval by the Secretary and shall provide a copy to the Secretary, including the recorder stamp, book, and page number, of the recorded environmental easement on within one week of its recording.

**§ 35-904. LAND USE RESTRICTIONS WITHIN A CERTIFICATE OF COMPLETION**

- (a) Purpose. The Secretary may establish land use restrictions within a certificate of completion upon closure of a site enrolled in BRELLA pursuant 10 V.S.A. Chapter 159. The purpose of these restrictions is to ensure the ongoing effectiveness of response actions taken at the site.
- (b) Applicability. The Secretary may restrict future uses of a property as a part of a certificate of completion in any of the following situations:
  - (1) When long-term maintenance or monitoring of the corrective action or land use restrictions are required to ensure a risk to human health or the environment will not occur;
  - (2) When land use restrictions will include constraints regarding residential property use;
  - (3) When active remedial infrastructure must remain in place in order to prevent contamination from posing a risk to human health or the environment;
  - (4) When a Technical Impracticality (TI) Waiver has been granted by the Secretary in accordance with Appendix C; or
  - (5) When groundwater contamination remains or is projected to remain at the site above the Vermont Groundwater Enforcement Standards at a compliance point in accordance with the timeline established in the Vermont Groundwater Protection Rule and Strategy.
- (c) Required elements. A certificate shall include the following items:
  - (1) A legal description of the site property;
  - (2) A description of the release, corrective action, and statement of the need for land use restrictions on the property;
  - (3) Restrictions on future uses of the property or portions of the property to prevent receptors from being exposed to any residual contamination that remains on the property and to ensure the effectiveness of any corrective action; and
  - (4) A map including the most recent parcel boundary survey that depicts the area of the parcel to which the restrictions apply.

- (d) Recording. The PRP shall record a certificate of completion and all supporting documentation and exhibits with the land records of the municipality or municipalities in which the site is located. Such recording shall be made within one week of the date of issuance of the certificate of completion. Within one week of the date of recording, the PRP shall provide a copy of the recorded and stamped certificate of completion and all recorded documents to the Secretary, which includes the book and page number of where those documents were recorded.

## **SUBCHAPTER 10. SITE CLOSURE**

### **§ 35-1001. SITE MANAGEMENT ACTIVITIES COMPLETE**

- (a) Purpose. A Site Management Activities Complete (SMAC) designation may be issued to signify that, based on current information, no additional work related to a release is required.
- (b) Eligibility. A PRP shall submit a request for a SMAC designation that summarizes the site investigation and corrective action undertaken at the site and that demonstrates all the following, as applicable:
  - (1) Each source area that was removed, remediated, or adequately controlled.
  - (2) Hazardous material data trends collected from site-specific environmental media demonstrate that contaminant concentrations are stable, falling, or are not detectable.
  - (3) Groundwater enforcement standards as adopted in the Groundwater Protection Rule and Strategy have been met at compliance points established for the site.
  - (4) No hazardous materials associated with the site are present in drinking water supplies at concentrations in excess of Vermont's groundwater quality standards (Vermont Groundwater Enforcement Standards or Vermont Action Levels, when one is available), or impacts are limited to a public drinking water supply on the same property where the release occurred and impacts to receptors have been addressed in accordance with this Rule and required long term monitoring is being managed by another authorized program within the Agency.
  - (5) Corrective action at the site has been completed.
  - (6) Soil standards have been met at compliance points or, if soil standards have not been met, then a corrective action plan has been implemented as well as approved institutional controls and land use restrictions, as necessary.
  - (7) Vermont Water Quality Standards have been achieved at all surface water compliance points established for the site.
  - (8) Sediment remediation has been completed or was not required.
  - (9) Migration of hazardous materials from soil to groundwater is not occurring at a concentration which will result in an exceedance of the Vermont Groundwater Enforcement Standards beyond compliance points.
  - (10) No completed vapor intrusion pathway exists.
  - (11) Vapor intrusion standards have been met at compliance points.
  - (12) The site has been properly closed following the corrective action, including:

- (A) All groundwater monitoring wells have been properly closed in accordance with the Vermont Water Supply Rule or an alternate plan has been approved by the Secretary for maintaining the monitoring wells. The Secretary shall be notified of the closure of the monitoring wells.
  - (B) Abandoned water supply wells have been properly closed in accordance with the Vermont Water Supply Rule.
  - (C) All site remedial infrastructure or monitoring points have been closed in a manner to prevent impacts to the environment or human health.
  - (D) Excavated contaminated soils have been properly treated or disposed of in accordance with § 35-803, § 35-611, or § 35-804.
- (13) Any outstanding or overdue balances owed to the State (e.g., Petroleum Cleanup fund “PCF” deferred deductible, PCF cost recovery, Environmental Contingency Fund (ECF) cost recovery, UST loan, settlement agreements, penalties, fines, natural resources damage assessments, taxes, unpaid child support, etc.) have been paid to the satisfaction of the State.
  - (14) Injection wells and floor drains have been closed in accordance with the Underground Injection Control Rule, as appropriate.
  - (15) All engineered controls and inspection plans are in place and copies have been provided to the Secretary.
  - (16) All institutional controls are in place and copies have been provided to the Secretary, unless the only required institutional control is recordation of the SMAC designation.
  - (17) A site map showing properly decommissioned monitoring points, original source area(s), remediated area(s) and the approximate extents of residual contamination has been provided to the Secretary.
  - (18) All documentation required by this rule has been submitted to and approved by the Secretary.
- (c) Issuance of SMAC designation. The Secretary shall issue a SMAC designation for the site upon compliance with the requirements of subsection (b) of this section. The Secretary may issue a SMAC designation upon his or her own discretion upon a demonstration that the requirements of subsection (b) are met.
  - (d) SMAC as notice to the land records. A copy of the SMAC designation shall be recorded in municipal land records in the municipality where the site is located.

- (1) The PRP shall within 10 days of recording provide to the Secretary a copy of the recorded SMAC letter with the recorder's stamp, recording date, Book and Page number(s).
  - (2) SMAC letters shall include a copy of the site map showing properly decommissioned monitoring points, original source area(s), remediated area(s) and the approximate extents of residual contamination.
- (e) Effect on liability. A SMAC designation shall not release the PRP(s) from any past or future liability associated with an identified release or a release discovered after such designation. A SMAC designation does not prevent the Secretary from requiring further assessment of the site pursuant to subsection (f) of this section.
- (f) Reopening of SMAC designation. The Secretary may require additional investigation or remediation of a designated site upon finding any of the following:
- (1) Previous remediation activities were inadequate;
  - (2) New information is discovered regarding the time, extent, amount, type, or nature of materials released;
  - (3) New information is discovered regarding the migration of the hazardous materials, health effects of the hazardous materials, or site conditions;
  - (4) The Secretary identifies errors or omissions in any of the investigation, or corrective action plan, or their associated implementation;
  - (5) A new hazardous material is listed or identified that requires a response by the PRP;
  - (6) Additional release(s) occur;
  - (7) A condition of the SMAC designation was not completed;
  - (8) A requirement of the institutional control plan or necessary reporting was not followed;  
or
  - (9) Any other condition that presents a threat of unreasonable exposure to humans or the environment from a hazardous material that was released from the site.

**§ 35-1002. CERTIFICATE OF COMPLETION**

- (a) Eligibility for Certificate of Completion. A PRP may receive a certificate of completion pursuant to this section if the following have been established:
- (1) The PRP meets the eligibility requirements identified in 10 V.S.A. § 6645, and has been accepted into the BRELLA program;

- (2) The Secretary determines that all work required pursuant to 10 V.S.A. Chapter 159, Subchapter 3 has been completed; and
  - (3) The Secretary determines that the requirements of this section have been met.
- (b) Request; review. A PRP may request the Secretary issue a certificate of completion by filing an application in the same manner as required by § 35-1001(b). The Secretary shall review a request for a certificate of completion in the same manner as § 35-1001(b).
- (c) Substantial completion. A PRP may request that the Secretary issue a certificate of completion based upon substantial completion of the corrective action. A certificate of completion shall only be issued to persons who entered the BRELLA program as a prospective purchaser, and only upon determination by the Secretary that one of the following bases exists at the time the application:
- (1) that long-term monitoring is a component of the corrective action, but the long-term monitoring has not been completed; or
  - (2) institutional controls are required but have not yet been recorded at the time of the request.
- (d) Failure to comply with conditions for a certificate of completion. Any protections provided by a certificate of completion shall be contingent upon the PRP's compliance with conditions identified by the Secretary. Failure to comply with such conditions shall nullify any such protections or other terms of a certificate.

**SUBCHAPTER 11. REQUESTS FOR REIMBURSEMENT FOR MUNICIPAL WATER LINE EXTENSIONS FROM THE ENVIRONMENTAL CONTINGENCY FUNDS**

**§ 35-1101. REIMBURSEMENT OF MUNICIPALITIES TO PROVIDE ALTERNATE WATER SUPPLIES**

- (a) Applicability. This section shall apply when:
  - (1) There has been a release of a hazardous material;
  - (2) The construction or expansion of or connection to a municipal water line eliminates a sensitive receptor's exposure to a hazardous material; and
  - (3) The work is performed by a municipality and meets the requirements of this section.
- (b) Source of funds. Reimbursements shall be made from the Contingency Fund established pursuant to 10 V.S.A. § 1283.
- (c) Prohibition on Reimbursement.
  - (1) Reimbursements from the Contingency Fund shall be limited to the caps established in 10 V.S.A. § 1283(b) or an amount established by the Secretary taking into consideration the current fund balance and known and estimated future obligations on the fund, whichever is lesser.
  - (2) Where there is a potentially responsible party who has refused to reimburse a municipality for the extension of a municipal water line, the Secretary may condition reimbursement on the successful recovery of funds from that responsible party.
- (d) Requirements for reimbursement.
  - (1) The municipality has applied for all necessary permits required for the project, including public drinking water supply permits.
  - (2) Municipality must submit cost estimate for review and approval by the Secretary for all work proposed for reimbursement. If an evaluation of corrective action alternatives, including cost effectiveness compared to water treatment or well replacement, has not been completed prior to the final design of a municipal water line extension, the Secretary may require such an analysis prior to approval of the preliminary approval or prior to the construction of the water line extension.
  - (3) Prior to bidding on a construction project that may encounter contaminated media an environmental professional shall, at a minimum, provide the Secretary with the following:

- (A) Identify any land uses that may have resulted in the release of hazardous materials on the route of the municipal water line extension. Identification shall be confined to a review of records at the Agency and municipal records.
  - (B) If sampling is necessary, submit a plan to conduct limited sampling to estimate the costs associated with management of contaminated soil and groundwater when installing the municipal water line.
  - (C) Soil management plan. This plan shall include work procedures, treatment, and disposal locations for contaminated soil encountered during the construction process. Contaminated soils shall be backfilled during construction unless it is clearly documented that the soils are geotechnically unsuitable or cannot be replaced within the excavation. Contaminated soils to be backfilled, shall be placed at the bottom of the trench with at least 18" of uncontaminated soil used for closing the trench.
  - (D) Groundwater management plan. If contaminated groundwater is expected to be encountered, the municipality shall have an environmental professional develop a plan for the treatment of contaminated groundwater. Treatment methods may include re-injection through an infiltration basin, filtration through activated carbon, air stripping, pumping to fractionation tanks, or disposal to a wastewater treatment plant (with appropriate permission from the plant owner and Wastewater Management Division).
- (e) Approval of pre-bid preliminary investigation. Prior to implementing any work proposed for reimbursement, the Secretary shall approve the pre-bid preliminary investigation. The Secretary may require additional investigation and work as a part of the approval. The Secretary may disprove any cost associated with a request provided there is a reasonable basis for the disapproval. If an evaluation of corrective action alternatives has not been completed prior to the construction of a municipal water line extension, the Secretary may require such an analysis prior to approval of the pre-bid preliminary investigation.
- (f) Final reimbursement request. As a part of any request for reimbursement, a municipality shall provide the Secretary, at a minimum, the following information:
- (1) The results of any investigation, sampling, and field work that took place as a part of the investigation.
  - (2) Receipts for any waste discovered and disposed during the municipal water line extension.
  - (3) Documentation, such as as-builts and certificate of completions, that the constructed municipal water line extension was constructed per the applicable permit requirements.



- (4) The amount requested for reimbursement, including detailed supporting information such as contracts to perform work, detailed invoices from contractors, and other similar information.
  - (5) The Secretary may require additional documentation to support the request for reimbursement.
- (g) Approval of final reimbursement request. Prior to reimbursing a municipality for the extension of a municipal water line the Secretary shall approve the final reimbursement request. The Secretary may require additional documentation to support the request for reimbursement. The Secretary may disprove any cost associated with a request provided there is a reasonable basis for the disapproval.

**APPENDIX A. ENVIRONMENTAL MEDIA STANDARDS**

**§-APX-A1 Soil Standards**

**§-APX-A2 Vapor Intrusion Standards**

**§-APX-A3 Vapor Intrusion Standards – Polychlorinated Biphenyls**

**§-APX-A4 Sediment Standards**

§ 35-APX-A1. SOIL STANDARDS

Analyte	CAS Number	Vermont Soil Standards (TR=1E-06, HQ=1.0)		Background (mg/kg)	
		Resident Soil (mg/kg)	Non-Resident Soil (mg/kg)	Urban (mg/kg)	Non-Urban (mg/kg)
Acetochlor	34256-82-1	1,216	14,362		
Acetone	67-64-1	63,079	816,169		
Alachlor	15972-60-8	5.0	30		
Aldrin	309-00-2	0.02	0.10		
Aluminum	7429-90-5	72,507	941,748		
Antimony	7440-36-0	29	319		
Arsenic, Inorganic	7440-38-2			16 <sup>(g)</sup>	16 <sup>(g)</sup>
Barium	7440-39-3	11,247	127,382		
Benomyl	17804-35-2	116	701		
Benzene	71-43-2	0.70	4.2		
Benzo[a]pyrene(a)	50-32-8	0.07	1.54	0.58 <sup>(f)</sup>	
Beryllium	7440-41-7	35	289		
Bis(2-chloro-1-methylethyl) ether	108-60-1	2,804	36,274		
Boron	7440-42-8	14,650	195,698		
Bromate	15541-45-4	0.54	3.3		
Bromochloromethane	74-97-5	193	597		
Bromoxynil	1689-84-5	2.7	16		
Butylbenzene, n-	104-51-8	3,504	45,343		
Butylbenzene, sec-	135-98-8	7,009	90,685		
Butylbenzene, tert-	98-06-6	7,009	90,685		
Cadmium (food)	7440-43-9	6.9	87		
Carbaryl	63-25-2	317	1,915		
Carbon Disulfide	75-15-0	608	661		
Carbon Tetrachloride	56-23-5	0.37	2.2		
Chlorobenzene	108-90-7	267	676		
Chromium(III), Insoluble Salts	16065-83-1	40,223	360,223		
Chromium(VI)	18540-29-9	0.09	1.7		
Cobalt	7440-48-4	22	291		

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Analyte	CAS Number	Vermont Soil Standards (TR=1E-06, HQ=1.0)		Background (mg/kg)	
		Resident Soil (mg/kg)	Non-Resident Soil (mg/kg)	Urban (mg/kg)	Non-Urban (mg/kg)
Copper	7440-50-8	10,407	139,231		
Bis(2-ethylhexyl)phthalate	117-81-7	20	120		
Dibromochloropropane	96-12-8	0.01	0.06		
Dibromoethane, 1,2-	106-93-4	0.02	0.14		
Dichloroethane, 1,1-	75-34-3	2.1	13		
Dichloroethane, 1,2-	107-06-2	0.29	1.7		
Dichloroethylene, 1,2-cis-	156-59-2	77	352		
Dichloroethylene, 1,2-trans-	156-60-5	108	296		
Dichloropropane, 1,2-	78-87-5	1.5	9.1		
Dioxane, 1,4-	123-91-1	2.8	17		
Ethylbenzene	100-41-4	3.7	22		
Fluoranthene	206-44-0	2,301	26,371		
Fluorene	86-73-7	2,301	26,371		
Hexafluoropropylene oxide dimer acid (HFPO-DA)	13252-13-6	0.23	3		
Hexachlorobenzene	118-74-1	0.13	0.69		
Hexahydro-1,3,5-trinitro-1,3,5-	121-82-4	4.6	28		
Iron	7439-89-6	51,302	686,351		
Isopropylbenzene (cumene)	98-82-8	256	264		
Lead and Compounds(b)	7439-92-1			111 <sup>(f)</sup>	41 <sup>(b)</sup>
Manganese (Non-diet)	7439-96-5	1,118	11,350		
Mercury (elemental)	7439-97-6	3.1	3.1		
Methyl Ethyl Ketone (2-Butanone)	78-93-3	16,952	26,991		
Methyl tert-Butyl Ether (MTBE)	1634-04-4	27	165		
Molybdenum	7439-98-7	366	4900		
Naphthalene	91-20-3	1.2	7.2		
Nickel	7440-02-0	940	9,707		
Octahydro-1,3,5,7-tetranitro-1,3,5,7- tetrazocine	2691-41-0	3,698	49,834		

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Analyte	CAS Number	Vermont Soil Standards (TR=1E-06, HQ=1.0)		Background (mg/kg)	
		Resident Soil (mg/kg)	Non-Resident Soil (mg/kg)	Urban (mg/kg)	Non-Urban (mg/kg)
Pentachlorophenol	87-86-5	0.48	2.9		
Pentaerythritol tetranitrate (PETN)	78-11-5	65	390		
Perchlorate	14797-73-0	51	686		
Perfluorobutane sulfonic acid	375-73-5	18	215		
Perfluorohexane sulfonic acid	355-46-4	1.2	14		
Perfluorononanoic acid (PFNA)	375-95-1	0.18	2.2		
Perfluorooctane sulfonic acid	1763-23-1	0.12	1.4		
Perfluorooctanic Acid (PFOA)	335-67-1	0.18	2.2		
Polychlorinated Biphenyls (high risk)	1336-36-3	0.11	0.68 <sup>(c)</sup>		
Propoxur (Baygon)	114-26-1	79	476		
Propyl benzene, n-	103-65-1	253	261		
Selenium	7782-49-2	366	4,900		
Silver	7440-22-4	237	2,483		
Tetrachlorodibenzo-p-dioxin, 2,3,7,8- (TCDD)	1746-01-6	0.00000258	0.0000157		
Tetrachloroethane, 1,1,1,2-	630-20-6	1.3	7.91		
Tetrachloroethylene	127-18-4	2.4	14		
Thallium (soluble Thallium)	7440-28-0*	0.73	9.8		
Toluene	108-88-3	705	798		
Trichloroethylene	79-01-6	1.9	6.5		

**Notes:**

1. mg/kg = milligrams per kilogram
2. In the absence of a compound in the table above, a PRP shall refer to the applicable and most current U.S. EPA Regional Screening Level.

(a) Benzo(a)pyrene cancer-based resident value applicable to benzo(a)pyrene itself and to total benzo(a)pyrene toxic equivalents [B(a)PTE]. Benzo(a)pyrene noncancer-based value applicable only to benzo(a)pyrene itself.

(b) The Vermont Department of Health used EPA's IEUBK software and Adult Lead Model to find the soil concentration that would result in 95% probability that no exposed child (or fetus) would exceed the BII <3 µg/dL. Vermont DEC conducted a soil background study and determined the rural background level of lead is 41 mg/kg. Because the soil concentration that would result in a 95% probability that no exposed child (or fetus) would exceed the BII <3 µg/dL is less than the Vermont background level, the background level is recommended.

(c) PFAS - RSV and CSV are based on direct contact with soil and do not present concentrations protective for other

potential exposure pathways such as leaching from soil to groundwater.

(d) PCBs- sum of all PCBs not to exceed 1.1E-01 mg/kg (IRIS high risk and persistence cancer toxicity values used in cancer assessment; oral reference dose for Aroclor 1254 used in noncancer assessment).

(e) Trimethyl benzenes -Sum of the three isomers not to exceed applicable resident or non-resident values, based on the most conservative value derived for an individual isomer.

(f) Urban Background Standards apply to sample locations located within an Urban Background Area.

(g) The Vermont Department of Environmental Conservation has adopted 16 mg/kg as the statewide arsenic background threshold.

§ 35-APX-A2. VAPOR INTRUSION STANDARDS

		Indoor Air Standards (TR=1E-06, HQ=1.0)		Vapor Intrusion Standards - Sub-slab Soil Gas		Vapor Intrusion Screening - Groundwater	
Analyte	CAS Number	Resident (µg/m <sup>3</sup> )	Non-resident (µg/m <sup>3</sup> )	Resident (µg/m <sup>3</sup> )	Non-resident (µg/m <sup>3</sup> )	Resident (µg/L)	Non-resident (µg/L)
Benzene	71-43-2	0.13	1.05	4.3	35	0.92	7.4
Carbon Tetrachloride	56-23-5	0.17	1.36	5.7	45	0.24	1.9
Chloroethane	75-00-3	10,000.00	35,040.00	330,000	1,200,000	31,000	110,000
Dichloroethane, 1,1-	75-34-3	0.63	5.11	21	170	4.2	34
Dichloroethylene, 1,1-	75-35-4	200.00	700.80	6,700	23,000	270	950
Ethylbenzene	100-41-4	0.40	3.27	13	110	2.2	19
Mercury (elemental)	7439-97-6	0.30	0.3(a)	10	10	2.0	2.0
Methylene Chloride	75-09-2	60.34	817.60	2,000	27,000	680	9,300
Naphthalene	91-20-3	0.262 <sup>(b)</sup>	0.262 <sup>(b)</sup>	1.0 <sup>(f)</sup>	8 <sup>(f)</sup>	3.5 <sup>(f)</sup>	28 <sup>(f)</sup>
Tetrachloroethylene	127-18-4	0.63	5.11	21	170	1.5	12
Trichloroethylene	79-01-6	0.20	0.7 <sup>(c)</sup>	6.7	23	0.82	2.9
Trimethylbenzene, 1,2,3-	526-73-8	60 <sup>(d)</sup>	210.24 <sup>(d)</sup>	2000 <sup>(d)</sup>	7000 <sup>(d)</sup>	790	2,800
Trimethylbenzene, 1,2,4-	95-63-6					470	1,700
Trimethylbenzene, 1,3,5-	108-67-8					330	1,200
Vinyl Chloride	75-01-4	0.11	1.86 <sup>(e)</sup>	3.7	62	0.13	2.2

**Notes:**

µg/m<sup>3</sup> = micrograms per cubic meter

µg/L = micrograms per liter

1. The VI Values for soil gas and groundwater were calculated from the indoor air standards using the USEPA Vapor Intrusion Screening Level Calculator. The shallow soil gas concentration is the target indoor air concentration divided by the generic attenuation factor for soil gas. Target groundwater concentrations were calculated based on an ambient groundwater temperature of 15° C.
- (a) Due to the developmental toxicity associated with mercury exposure, the reference concentration is used as the nonresidential air value without adjusting for the exposure period.
- (b) The indoor air values have been adjusted from the risk based values (0.03/0.24) to reflect the laboratory method detection limit value.
- (c) Due to the nature and severity of the non-cancer endpoint (fetal cardiac malformations) that may be associated with a brief window of susceptibility, there is significant uncertainty regarding the exposure period of concern. Thus, a target hazard quotient of 0.1 was used in the calculation of noncancer values.
- (d) Sum of the three isomers should not exceed applicable resident or non-resident values.
- (e) Inhalation Unit Risk of 4.4E06 (µg/m<sup>3</sup>)-1 based on continuous lifetime exposure during adulthood used to develop cancer based value for non- residential indoor air.
- (f) Calculated using residential and non-residential risk based values (0.03/0.24).

§ 35-APX-A3. VAPOR INTRUSION STANDARDS - POLYCHLORINATED BIPHENYLS

		Indoor Air Standards (TR=1E-06, HQ=1.0)	School Action Levels		
Analyte	CAS Number	Regulatory Action Level* (µg/m3)	Pre-Kindergarten (µg/m3)	Kindergarten to Grade 6 (µg/m3)	Grade 7 to Adult (µg/m3)
Polychlorinated Biphenyls (high risk)	1336-36-3	0.0225	0.03	0.06	0.100

\* Regulatory Action Level (RAL) for residential and non-residential releases and reporting with respect to PCBs in indoor air. This RAL does not apply to a corrective action taking place in a school pursuant to the School Action Levels issued by the Vermont Department of Health and adopted by the Agency of Natural Resources.



§ 35-APX-A4. SEDIMENT STANDARDS

Recommended Sediment Quality Guidelines for the Protection of Aquatic Biota in Freshwater Ecosystems*			
Analyte	TEC	PEC	Notes
<b>Metals (in mg/kg - ppm DW)</b>			
Arsenic	9.79	33	1,2
Cadmium	0.99	4.98	1,2
Chromium	43.4	111	1,2
Copper	31.6	149	1,2
Lead	35.8	128	1,2
Mercury	0.18	1.06	1,2,4
Nickel	22.7	48.6	1,2
Zinc	121	459	1,2
<b>Polycyclic Aromatic Hydrocarbons (in µg/kg - ppb DW)</b>			
Anthracene	57.2	845	1,3
Fluorene	77.4	536	1,3
Naphthalene	176	561	1,3
Phenanthrene	204	1,170	1,3
Benz(a)anthracene	108	1,050	1,3
Benzo(a)pyrene	150	1,450	1,3,4
Chrysene	166	1,290	1,3
Dibenz(a,h)anthracene	33		1,3
Fluoranthene	423	2,230	1,3
Pyrene	195	1,520	1,3
Total PAHs	1,610	22,800	1,3
<b>Polychlorinated Biphenyls (in µg/kg - ppb DW)</b>			
Total PCBs	59.8	676	1,3,4
<b>Organochlorine Pesticides (in µg/kg - ppb DW)</b>			
Chlordane	3.24	17.6	1,3,4
Dieldrin	1.9	61.8	1,3,4
Sum DDD	4.88	28	1,3,4
Sum DDE	3.16	31.3	1,3,4
Sum DDT	4.16	62.9	1,3,4
Total DDTs	5.28	572	1,3,4
Endrin	2.22	207	1,3
Heptachlor Epoxide	2.47	16	1,3
Lindane (gamma-BHC)	2.37	4.99	1,3

**Notes:**

**TEC** = Threshold Effect Concentration, **PEC** = Probable Effects Concentration, **DW** = dry weight

\*An exceedance of the TEC or PEC does not necessarily indicate a release to the environment has occurred.

1. Consensus-Based Sediment Quality Guidelines (SQGs) from: MacDonald D.D., Ingersoll C.G. and Berger T.A. 2000. Development and Evaluation of Consensus-Based Sediment Quality Guidelines for Freshwater Ecosystems. Archives of Environmental Contamination and Toxicology 39(1). 20-31.
2. SQGs for metals are based on bulk (unsorted) sediment concentrations. Concentrations of metals in sediments can be normalized on percent fines for the purpose of inter-site comparisons but not for comparisons to these SQGs.
3. The SQGs for organics are derived from samples normalized to 1 percent total organic carbon (TOC) in the sediment. The SQGs presented here are based on an assumed TOC of 1 percent. If site specific data show organic carbon content to be significantly different from 1 percent, concentrations should be normalized to 1 percent TOC (divide the site concentration by the percent

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TOC) prior to comparison with the SQGs in this table. If non site-specific TOC data are available, assume 1 percent TOC.

4. Included on USEPA's list of important persistent, bioaccumulative, toxic compounds (PBTs).

**APPENDIX B. ESTABLISHMENT OF BACKGROUND CONCENTRATIONS**

**§ 35-APX-B1. ESTABLISHMENT OF SITE-SPECIFIC BACKGROUND LEVELS**

- (a) Purpose. A PRP may conduct a site-specific background study when there is reason to believe that the concentration of a hazardous material at a site is due to geologic characteristics, naturally occurring processes, or anthropogenic nonpoint sources not influenced by site-related activities. An approved site-specific background concentration will take the place of an adopted environmental media standard.
- (b) Background study work plan. A background study work plan must be prepared by an environmental professional that will produce data representative of background conditions in the vicinity of the site or at an area of the site not impacted by site-related activities. The work plan shall identify, at a minimum, the following:
  - (1) The objectives of the background study including a description of the environmental media and contaminants of concern to be tested.
  - (2) A description of the proposed background reference area that will be sampled and justification for selection of background sample locations based on the CSM, including other nearby sources of contamination.
  - (3) Background study sampling strategy, which shall include either sampling using an incremental sampling method or the number of discrete samples that will be sampled to establish a statistically defensible data set that will substantiate the validity of the background concentrations;
  - (4) As appropriate, the location and depth of samples, which shall be selected so as to be geologically and geochemically similar to the area of interest and to be unaffected by current and historic activities at the site, including by being hydrogeologically upgradient of such activities if possible;
  - (5) As appropriate, the number and frequency of the samples to be taken from monitoring points and any existing sources of data for the media for which a background standard is proposed, including water for potable water supplies, public water sources, or non-potable wells or springs;
  - (6) The sampling methodology;
  - (7) The contaminants of concern to be analyzed in the samples that are collected;
  - (8) The analytical methods to be used in conducting the sample analysis;
  - (9) Identification of whether relevant data obtained prior to the approval of the background study plan will be used as data points and, if so, the sampling date, location, method of analysis for each of the samples to be used; and

- (10) A quality assurance/quality control plan for sample collection, testing, and analysis.
- (c) Review of work plan. The information required by subsection (b) of this section may be included in a site investigation work plan submitted under Subchapter 3. The Secretary may request additional information from an applicant when the Secretary determines that the work plan may not provide data representative of the background conditions at and around the area of interest.
- (d) Report on background study. Following the Secretary's approval of the background study work plan and the completion of sampling, a report must be prepared and included in a site investigation report or as a separate document, and must meet the requirements of § 35-306(b) and includes the following:
  - (1) All sampling results and data collected pursuant to the approved work plan.
  - (2) An analysis of all data collected pursuant to the approved work plan.
  - (3) Any discrepancies between the approved work plan and the sampling completed for the background reference area.
  - (4) A proposed background concentration of all substances for which the person seeks to establish site-specific background standard and a justification for each concentration. The justification may include statistical analysis.
  - (5) Additional information the Secretary determines is necessary to approve or deny the proposed site-specific background concentrations.
- (e) Site specific standard. Following submission of the background study findings, the Secretary shall approve or deny the proposed background concentrations or may establish alternative background concentrations based on the background study report.

## APPENDIX C. SITE MANAGEMENT WAIVERS

### § 35-APX-C1. TECHNICAL IMPRACTICALITY.

- (a) Purpose. A technical impracticality (TI) waiver is a mechanism to manage risks to human health and the environment in situations where there is no readily available technology to complete remediation and achieve compliance with the applicable environmental media standards within a reasonable timeframe. A TI waiver does not waive the requirements to delineate the nature and extent of the release of pollutants, to remediate continuing sources of pollution, or to address potential risks to receptors.
- (b) Applicability. A TI waiver may be considered as a part of § 35-903. TI waivers may be considered for any of the following:
  - (1) The Secretary determines that there are non-aqueous phase liquids that cannot be contained or removed.
  - (2) The Secretary determines that there is only one response action for the activity and it cannot obtain other necessary permits.
  - (3) The Secretary determines that remediation has taken place to reduce in concentration hazardous materials in groundwater and the plume has been controlled to the extent practical based on an evaluation of reliable and innovative technologies.
  - (4) The Secretary determines that achieving compliance with the applicable criteria is technically impracticable as determined using Directive No. 9234.2-25 issued September 1993 by the U.S. Environmental Protection Agency's Office of Solid Waste and Emergency Response.
- (c) Prohibition. A TI waiver is prohibited in situations where the Secretary determines that active remediation is necessary to control the migration of a plume or materially reduce the concentration of a hazardous material.
- (d) Technical impracticality waiver documentation. A proposal for a TI waiver may be included in the site investigation report prepared under § 35-306 or may be submitted following the site investigation report as a separate document. The proposal must include the following materials:
  - (1) The environmental standard or standards for which a waiver is being requested.
  - (2) The proposed TI zone for purposes of implementing the waiver that documents the following:
    - (A) The plume is not increasing in size or concentration in a manner which would alter the risk assumptions associated with the TI waiver request or the extent of the TI Zone.

- (B) The plume is not increasing at compliance points at the TI Zone boundary.
- (3) Documentation that all necessary permits have been applied for, made best efforts to obtain, and were denied.
- (4) Documentation that the site has been adequately characterized including the nature and three-dimensional extent of the contamination.
- (5) Any potential changes in contaminant concentrations will not pose a risk to human health or the environment.
- (6) Documentation that potential exposure pathways threatening human health and the environment from polluted groundwater have been identified and appropriately managed.
- (7) Documentation that all data gaps have been identified and evaluated for significance (a significant data gap would be one that limits the ability to formulate a single scientifically defensible interpretation of environmental conditions or potential risks, or that may affect the choice of remedial approach).
- (8) An evaluation showing the remedial restoration times using active remedial treatments. All assumptions and the degree of uncertainty associated with any model shall be thoroughly discussed.
- (9) An evaluation showing natural attenuation, based on monitoring subsequent to source remediation, has shown that groundwater will not achieve remedial criteria within a reasonable timeframe. All assumptions and the degree of uncertainty associated with any model shall be thoroughly discussed.
- (10) An estimate of the cost of remedial alternatives. Cost estimates shall include the present worth of construction, operation, and maintenance costs.
- (11) An evaluation of implementing remediation alternatives for plume containment or for reduction of the concentration of hazardous materials in the plume.

**APPENDIX D. HAZARDOUS MATERIALS LISTING**

**§ 35-APX-D1 HAZARDOUS MATERIALS LISTING**

Pursuant to 10 V.S.A. § 6602(16)(A)(iv) any chemical or substance listed in the following table is a hazardous material.

<b>CAS Number</b>	<b>Chemical Name</b>
335-67-1	perfluorooctanic acid (PFOA)
1763-23-1	perfluoro-octane sulfonic acid (PFOS)
355-46-4	perfluorohexane sulfonic acid (PFHxS)
375-85-9	perfluoroheptanoic acid (PFHpA)
375-95-1	perfluorononanoic acid (PFNA)
375-73-5	perfluorobutane sulfonate (PFBS)