



Department of Health
and Environment
Environmental Remediation

Healthy Kansans living in safe and
sustainable environments.

Our Mission: To protect and improve the health and environment of all Kansans.

Environmental Liability Release Program

Contaminated Property Redevelopment Act



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Contaminated Property Redevelopment Act

Certificate of Environmental Liability Release ("CELR")

- July 1, 2016
- Prospective purchasers of contaminated properties
- Municipalities, governmental entities, or lending institutions acquiring property through seizure, condemnation, foreclosure, or default
- State liability only

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CELR

Eligibility

1. Property **must be** contaminated
(exclusions: radon, lead-based paint or asbestos)
2. Applying entity is not the responsible party for the identified contamination



Both conditions shall be met in order to be considered for a CELR.

CELR Eligibility

Property Criteria

- ✓ Not Retroactive: property acquired after **July 1, 2016**
- ✓ Contaminated by a substance listed on the CERCLA (LB)
- ✓ Is not a residential property
- ✓ Is not a public property (i.e., owned by a state or local government)



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CELR Eligibility

Property Criteria

- ✓ If property is the contaminant **source** and is eligible for cleanup under the Kansas Storage Tank or Drycleaner Trust Funds, must be enrolled in the appropriate program.



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CELR Eligibility

Prospective Purchaser Criteria

- ✓ Does **not** currently own the property
 - CELR must be issued prior to taking ownership
- ✓ Has not exacerbated the contamination
- ✓ No direct or indirect familial relationship with the owner **or** the party responsible for the contamination
- ✓ No contractual, corporate or financial relationship with the owner **or** the party responsible for the contamination
 - Excludes that by which the property is conveyed or financed
- ✓ Has not provided **indemnification** or release of environmental liability to any other party
- ✓ Not the **subject** to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property

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CELR Eligibility

Current Owner Criteria

(governmental entity or financial institution)

- ✓ Acquired property through seizure, condemnation, foreclosure or default; or
- ✓ Governmental entity or local municipality (State of Kansas, county township, city, school district, etc.)
 - Did not know and could not have reasonably foreseen the threat of contamination; or
 - Did know of potential contamination and took reasonable steps to prevent exacerbation
- ✓ Has not exacerbated the contamination
- ✓ No direct or indirect familial relationship with the owner or the party responsible for the contamination

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CELR Eligibility

Current Owner Criteria Cont.

(governmental entity or financial institution)

- ✓ No contractual, corporate or financial relationship with the owner or the party responsible for the contamination
 - Excludes that by which the property is conveyed or financed
- ✓ Has not provided **indemnification** or release of environmental liability to any other party
- ✓ Not the **subject** to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property

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CELR Application



KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE APPLICATION

Please read each section carefully to ensure a complete and accurate response. Any incorrect or incomplete sections could result in processing delays or render the application void. The applicant must be able to demonstrate and provide the necessary documentation (Section 4) that contamination exists on the property. If this requirement cannot be met, please do not proceed with the application process.

Section 1. APPLICANT

Applicant Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			

The applicant as identified above ("APPLICANT"), hereby certifies to the State of Kansas that the APPLICANT is *[mark only one box]*

- a prospective purchaser
- the current owner (must be a governmental entity or financial institution)

of real property ("PROPERTY") located at the address identified below and seeks a Certificate of Environmental Liability Release ("CELR").

Property Address:		
City (or Township):	County:	Zip Code:
Tax Lot # or Parcel Identification #:		
Legal Description:		

Section 2. PROPERTY OWNERSHIP

If APPLICANT is the current owner, per Section 1, please check the following boxes *[mark all that apply]*:

- APPLICANT acquired the PROPERTY through seizure, condemnation, foreclosure or default.
Date of PROPERTY acquisition: _____
Please attach all documentation necessary for verification purposes.
- APPLICANT is the State of Kansas or subdivision thereof, a county, township, city, school district, or other political or taxing subdivision of the state.
- APPLICANT did not know and could not have reasonably foreseen the threat of contamination.
- APPLICANT knew of potential contamination on the PROPERTY and took reasonable steps to prevent the exacerbation of the identified contamination.

Please provide details in the space provided on page 2 about the known conditions of the property at the time of acquisition and any actions that may have been performed to address any identified contamination. Please provide supporting documentation, if available, for KDHE consideration.

If APPLICANT is a prospective purchaser, per Section 1, provide the following PROPERTY ownership information.

Owner Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			
Anticipated Property Transfer/Closing Date:			

Section 3. CONFLICTS, AGREEMENTS, and INDEMNIFICATION

The APPLICANT affirms *[mark all that apply]*:

- no direct or indirect familial relationship with the current PROPERTY owner;
- no direct or indirect familial relationship with the party responsible for the contamination;
- no contractual, corporate, or financial relationship with the current PROPERTY owner or the party responsible for the contamination, other than that by which such APPLICANT'S interest in the PROPERTY was conveyed or financed;
- it has not entered into nor is the subject of any contracts, agreements, or orders with the intended purpose of performing investigation or remediation of contamination at the PROPERTY; and,
- it has not provided indemnification or release of environmental liability to any other party regarding contamination at the property.

[Not marking all of the boxes in Section 3 may render the APPLICANT ineligible for a CELR. Please provide an explanation in the space below for any unmarked boxes and provide supporting documentation for KDHE consideration].

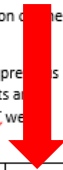
CELR Application

Section 4. CONTAMINATION AND DOCUMENTATION

Documentation of the presence of contamination at the PROPERTY is required to issue a CELR. Please indicate which of the below documents have been completed and will be provided to KDHE for consideration [mark all that apply].

- A current Phase I Environmental Site Assessment prepared on behalf of the APPLICANT
- A current Phase II Environmental Site Assessment prepared on behalf of the APPLICANT.
- Other Environmental Assessment Reports which document the presence of contamination on the PROPERTY or any other information to facilitate KDHE's review.

The APPLICANT must provide a list of all reports and other documents, including those referenced in previous sections, to be submitted to KDHE in support of this application. Please indicate whether such reports and documents are enclosed with this application or if the APPLICANT prefers to upload via KDHE MoveIT web portal.



Document Title (Attach additional list as needed)	Enclosed		MoveIT
	Hard Copy	CD, flash drive	

*KDHE will accept either hard copies or electronic copies (i.e., compact disc or flash drive) of the documents as attachments to this application. Alternatively, the APPLICANT may select to upload the documents via KDHE MoveIT web portal. If the APPLICANT selects the KDHE MoveIT option, following receipt of the application, KDHE will send an invite to the APPLICANT with instructions for uploading.

Section 5. SIGNATURE

By signing this document, the undersigned acknowledges they are the authority to sign this application and certifies that [please mark all that apply]:

- the applicant is not the party responsible for the contamination;
- the applicant has not caused nor exacerbated the contamination on the PROPERTY;
- the information provided herein is true, accurate, and complete to the best of the applicant's knowledge;
- the applicant agrees to provide immediate notification to KDHE BER in the event new information becomes available that may be contrary to that provided herein; and,
- upon receiving a CELR, the applicant agrees to adhere to the future obligations set forth in KDHE BER Policy No. BER-RS-058

Please note, this application will not be approved if any of the boxes in Section 6 remain unchecked.

The undersigned has enclosed the appropriate application fee (mark only one).

- Class I CELR Property \$700
- Class II CELR Property \$1,000
- Class III CELR Property \$2,000

Providing false, inaccurate, or incomplete information to BER or failing to provide updated information as required may render the Site ineligible to receive a CELR. Execution of this application form does not constitute a CELR, and the undersigned may terminate this application at any time by notifying KDHE BER.

The application and associated fee should be submitted to:

Environmental Liability Release Program
 Attn: Long-term Stewardship Unit Chief
 KDHE Bureau of Environmental Remediation
 1000 SW Jackson, Suite 410
 Topeka, KS 66612-1367
 Phone: 785-296-1673

Name (print or type): _____ Title: _____

Signature: _____ Date: _____

.....

State of _____

County of _____

This instrument was acknowledged before me on [insert date] by [Name of property owner] whose identity was proved to me on the basis of satisfactory evidence.

Notary Public

Property Classifications

Class I - Prospective Purchasers - \$700

- Phase I ESA Report w/title search ←
- Phase II or other report to demonstrate contamination
- Straightforward ownership history in addition to current and historical operations being similar in nature
- Affirmation statements in Section 3 are all marked and require no explanation

Property Classifications

Class II - Prospective Purchasers or Current Owner - \$1,000

- Phase I ESA Report w/title search ←
- Assessment report to demonstrate contamination
- Applicant may be current owner (meet previous criteria)
- Ownership history slightly more complex but current and historical operations have been similar in nature
- Affirmation statements in Section 3 are all marked and require no explanation

Property Classifications

Class III - \$2,000

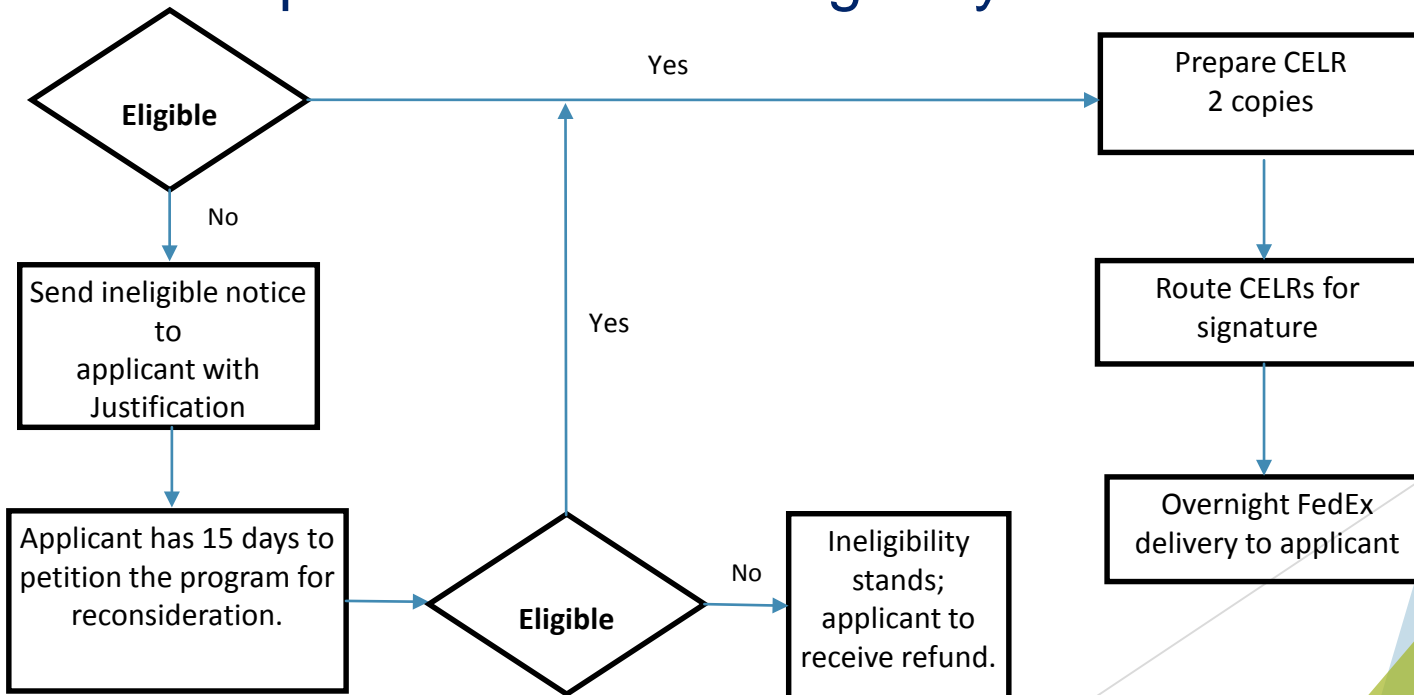
- No Phase I ESA Report
- Phase II or other report to demonstrate contamination onsite
- Applicant may be current owner (meets previous criteria)
- Complex ownership history an various facility uses and past operations
- Affirmation statements in Section 3 are all marked and require no explanation
- Property may contain multiple parcels

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Processing Timeline

15 business days to make determination following receipt of complete application

- KDHE will send notice within 3 to 5 days
- Complete review and eligibility determination



Certificate Holder

Future Obligations

- ✓ Provide reasonable access for future environmental investigation and remediation by KDHE or other party performing activities under KDHE oversight;
- ✓ Cannot exacerbate or otherwise increase risk posed by contamination associated with the property or interfere with a department-approved remedy on the property;
- ✓ Comply with all requirements specified in any environmental use control agreements or risk management plans established for the property;
- ✓ Provide notification to KDHE within 30 days of sale or transfer of the property to which the Certificate Holder is a party; and,
- ✓ Disclose the CELR to any future purchasers of the property, until such time as the cleanup levels for unrestricted use have been attained at the property.

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Certificate Holder Not in Compliance

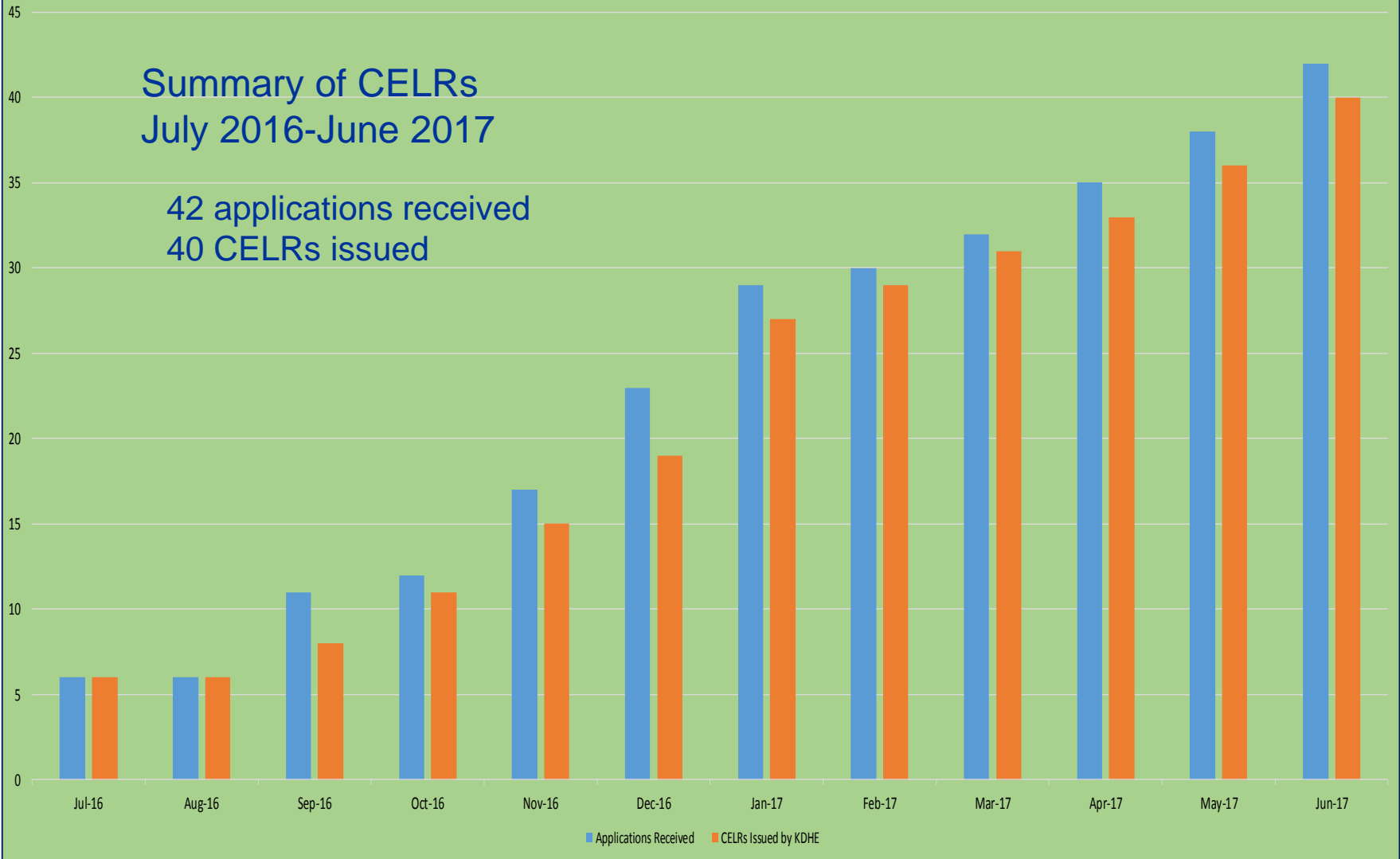
- KDHE to provide written notice advising of the conditions/requirements not being met and provide direction and establish a deadline for getting back into compliance
- Certificate Holder will have up to 30 days, or less when more immediate actions are required, to correct non-compliance issues.
- KDHE may revoke the CELR

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Summary of CELRs July 2016-June 2017

42 applications received
40 CELRs issued



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Questions



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Environmental Use Control vs Risk Management Program

EUC vs RMP



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Environmental Use Control & Risk Management Program

Similarities

- ▶ Tools in long-term stewardship toolbox
- ▶ Allow sites to reach a “resolved” status w/conditions or restrictions
- ▶ “Post-closure” monitoring, inspections
- ▶ Extent of contamination has been defined & source area addressed
- ▶ Application process
- ▶ Enforceable agreements with KDHE
- ▶ One-time payment fee to KDHE



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Risk Management Program

Risk Management Program Act

K.S.A. 65-34,176 – Mechanism for the long-term care & management of low-risk, low-priority sites unable to meet requirements for unrestricted site closure or no further action.

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Risk Management Program

Eligibility



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- ▶ All current complete exposure pathways addressed.
- ▶ Eligibility is determined by the respective in consultation with RMP program staff, notification & submittal of application



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Risk Management Program

Application Package

- ▶ Application form
- ▶ Site Location & RMP Boundary Map – clearly identifies the site, associated source area(s), contaminant plume(s) boundary, & area within a site to which the RMP applies.
- ▶ Proof of Notification & Acknowledgement – written notification to all property owners within the RMP boundary & documented proof that said owners received notification.
 - ▶ signed Consent for Access to Property forms
- ▶ Risk Management Plan
- ▶ Signature Page

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Risk Management Program

Risk Management Plan

- ▶ Summary of historical & current site conditions, remedial actions, current & reasonably anticipated future uses
- ▶ Maps – source area & plume extent map, potentiometric, groundwater isoconcentration for identified contaminants
- ▶ Monitoring, inspection, or maintenance activities and frequency
- ▶ Plans for routine owner/occupant notification & verification and updating existing receptor surveys

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Risk Management Program

Risk Management Plan, cont.

- ▶ Process for evaluating RMP effectiveness -including redefining RMP area and establishing conditions under which RMP activities may cease
- ▶ Soil Management Plans, Operation & Maintenance Plans, long-term groundwater monitoring plans, standard operating procedures (SOPs) for routine activities, etc, as applicable
- ▶ Reporting format and frequency

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Risk Management Program

Risk Management Plan Agreement (RMPA)

Following approval of the Risk Management Plan, KDHE will draft a RMPA

- ▶ Establish
- ▶ May be approved
- ▶ Can be necessary (Plan)
- ▶ If site becomes available warranting additional actions beyond a RMP, the executed RMPA does not absolve a party from the environmental liabilities associated with the site under state & federal law.



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Risk Management Program Classification & Funding

Classification based on:

- ▶ Setting (urban vs rural) & RMP area
- ▶ Contaminant(s) of concern
- ▶ Affected/threatened media
- ▶ Monitoring/inspection frequency

Funding is based on this classification plus KDHE oversight costs

- ▶ One-time payment

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Risk Management Program

Classification & Funding

	Site Setting & Affected Area		Affected or Threatened Media					Contaminants of Concern		Monitoring Frequency (years)			
	Urban (acres)	Rural (mile)	Soil	GW	Soil & GW	SW &/or SED	IA	Single COC	Multiple COCs	5	3	2	1
Class I	NA	NA	X					X	X	X			
Class II	≤ 10	≤ 0.25	X	X	X			X		X			
Class III	≤ 20	≤ 0.5	X	X	X			X	X	X	X		
Class IV	≤ 20	≤ 0.75	X	X	X	X		X	X	X	X	X	
Class V	> 20	> 0.75	X	X	X	X	X	X	X		X	X	X

Notes:

NA-not applicable; COC-Contaminants of Concern; GW-Groundwater; IA-Indoor Air; SED-Sediment; SW-Surface Water

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Comparison EUC vs RMP

EUC

- ▶ Owner authorization
- ▶ Owner responsible
 - ▶ Noncompliance enforcement
 - ▶ Inspections (OR KDHE)
- ▶ Legal survey/description
- ▶ Land use restrictions
 - ▶ Standard, KDHE-developed



RMP

- ▶ Operation notification
- ▶ Participant responsible
 - ▶ Enforcement on participant actions/implementation
- ▶ Boundary
- ▶ Components
 - ▶ Developed by participant, approved by KDHE

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Comparison

EUC vs RMP

EUC

- ▶ EUCA guarantees access
- ▶ Recorded with property deed
 - ▶ Transfers with each property transaction
- ▶ No monetary penalties
- ▶ May be established any time

RMP

- ▶ Negotiates access (consent form)
- ▶ Kept on file at KDHE
 - ▶ Must amend RMPA to transfer
- ▶ \$500 per day
- ▶ Established following cleanup

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Scenarios

Site #1

- ▶ Investigations have shown soil & groundwater VOC impacts are delineated and limited to the property.
- ▶ Residual soil impacts, exceeding RSKs, remain following removal
- ▶ Monitoring of groundwater indicates stable, not migrating, concentrations remain above RSKs.

- ❖ Which is more appropriate? EUC or RMP?
- ❖ Possible restrictions? If contaminant is nitrate?

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Scenarios

Site #2

- ▶ Investigations have shown soil impacts were limited to the property; however, groundwater plume extended offsite and NAPL is present in source wells.
- ▶ Remediation addressed some soil impacts, still exceed RSKs. Analysis indicates remaining NAPL is residual (nonrecoverable) and years of semiannual groundwater monitoring indicates dissolved plume is stable, though exceeding RSKs.
- ▶ Groundwater is non-potable, site is in an industrial area
- ❖ EUC or RMP?
- ❖ Possible plan components? Restrictions?

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Scenarios

Site #3

- ▶ Investigations shows soil contamination straddles what is now the property boundary between the Site and upgradient adjacent property (different landowners). No groundwater is present.
- ▶ Remediation has addressed a majority of the impacts on Site; however, there is a large building on the adjacent property preventing further remediation of the soil and the adjacent property owner has been less than cooperative
- ❖ EUC or RMP?
- ❖ Possible classification or components?

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