



In the next
Carlson Report:

*Beyond the NFR:
Issues & Opinions*

The No Further Remediation Letter

"Clean Hands, Clean Land"

When kids wash their hands, they know they're not clean until Mom says so. It's quite similar in the environmental business. A contaminated property is not clean until the Illinois EPA says so—until they issue a "No Further Remediation" letter.

These so-called "clean letters" have played an important role in facilitating real estate transactions. They tell interested parties that a property has been investigated for environmental problems. They also provide government reassurance that there is no known threat to human health or the environment.

Since 1995, the Illinois EPA has issued over 450 NFR letters for contaminated sites such as dry cleaners, steel plants, and even a firing range to name a few. Another 550 sites are actively participating in the Site Remediation Program (SRP), the first step towards getting a letter.

All told, more than 3,600 acres have been cleaned up and returned to productive use. Almost 60% of these properties are located in Cook County.

TACO Brings Choice in Cleanup Strategies

Before 1995, the Illinois EPA applied the same set of cleanup objectives to each contaminated property regardless of the site history or its intended future use. This "one size fits all" approach was not always efficient, entirely necessary, or economically prudent.

To its credit, the Illinois EPA successfully campaigned for cleanup standards that took into account the risk of exposure as well as the treatment or removal of contaminated

materials. This new approach is called the Tiered Approach to Corrective Action Objectives or TACO.

Under TACO, the site owner chooses the optimal remediation plan by selecting some combination of three distinct risk management/cleanup strategies:

- **Treatment or removal** of the contamination.
- **Institutional controls** that regulate property use to control exposure to contaminants. Examples include environmental land use restrictions, groundwater restrictions, worker cautions, and well drilling prohibitions.
- **Engineered barriers** such as a parking lot or building foundation that will protect people from contamination.

The actual choice of cleanup strategies is subject to several factors:

Ultimate use of the site: Residential use involves potentially increased exposure to environmental risk as opposed to commercial use. Hence, the remediation objective will be more stringent for residential use.

Configuration of buildings and parking lots: Buildings and parking lots can act as barriers to minimize exposure to contaminated soils. Therefore, these soils may not have to be treated or removed.

Drinking water sources: Reliance on drinking water from Lake Michigan minimizes the risk of exposure to contaminated ground water. Additionally, ordinances that restrict ground water use by private individuals offer further protection.

Getting Your NFR

At the heart of the new cleanup program is the No Further Remediation letter that the Illinois EPA issues to the Remediation Applicant and the property owner stating no

(Continued on back page)

more cleanup work needs to be done. The statutory language reads:

The Agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under this Act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under this Act, so long as the site is utilized in accordance with the terms of the NFR letter. (Environmental Protection Act, Title XVII).

Six Steps to Getting an NFR:

- 1. Filing an application.** Just about anyone with real estate and \$500 can apply to enter the Site Remediation Program. See the Illinois EPA web page for details and exceptions.
- 2. The Site Investigation Report.** You must conduct a thorough investigation of the site to identify types and quantities of contaminants and document the results in this report.
- 3. The Remedial Objectives Report.** This report outlines your TACO analysis to set site-specific cleanup objectives.
- 4. The Remedial Action Plan.** This identifies the proposed cleanup strategy and steps to implement it.
- 5. The Remedial Action Completion Report.** Once you've spent your money on the cleanup, you must show the Illinois EPA that you did what you said you would do.
- 6. The NFR Assessment and Filing.** Within 45 days after the receipt of an NFR letter, the Remediation Applicant must record the NFR letter with the County Recorder and pay any outstanding fees owed to the Illinois EPA.

Keys to Success

The Illinois EPA reports that it usually takes about 5 to 10 months from the time of initial filing to the final issuance of the NFR letter. However, some sites require even less time and others have dragged on for more than a year.

Because the NFR process depends on so many factors (both business and environmental), the Illinois EPA cautions that citing an average length of time for getting an NFR would not be a fair representation for most sites.

Regardless, to keep projects on track, participants will want to keep in mind the following keys to NFR success.

Work with Site Owners: The SRP is not a cookie cutter program. TACO is extremely flexible, and it allows site owners a real opportunity to tailor a cleanup to specific business goals. This does involve tradeoffs and long-term commitments. Therefore, it is crucial that business goals be well understood up front so that the proper cleanup choices can be made.

Work with the Illinois EPA: The Project Manager in the Illinois EPA's Site Remediation Program is the critical decision maker in the NFR process. This person must be comfortable that: (1) the contamination has been identified and quantified, and (2) each potential risk has been addressed.

Get to know your Project Manager. Treat this person as a true collaborator and keep him/her continually informed about all significant developments at the site. Open and honest communication from the beginning will save time and money in the long run.

For more information about the NFR letter and the Site Remediation Program, visit the Illinois EPA web page at www.epa.il.us/land/site-remediation/index.html. Or contact either:

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Beyond the NFR

Let's say you've received an NFR. Congratulations. Now what? Maybe you are wondering what the NFR does not cover? Or maybe you are curious how the NFR will impact your real estate transaction?

In the next issue of The Carlson Report, we will explore these questions and more. If you have NFR stories to share or other comments, please call or email **Rich Carlson at 312/899-0614 or rcarlson@carlsonenv.com**.

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