

Administrative Guidance 14 - Performance Verification Plans, Contingency Plans and Operations and Maintenance Plans

Document Section(s)	Issue	Stakeholder Comments/Recommendations	Ministry Response
General Comment	Responsibility for PVP	Who is responsible for a PVP should be amended to reflect the current site owner/operator as the responsible party, rather than the party responsible for remediation (i.e. If a site is sold, with the wording as is, the current responsible party who obtains the CoC would be forever responsible for the PVP).	Currently the <i>Environmental Management Act</i> requires that responsibility for maintaining a site into the future in accordance with the conditions in a CoC (e.g. PVP requirements) issued for the site lies with the individual (i.e. usually the responsible person for the site) who obtains the CoC for the site. Therefore, AG 14 correctly follows the legal requirements of the <i>Act</i> , and cannot be revised as suggested. Furthermore, while other legal mechanisms (e.g. Restrictive Land Title covenants and land use restriction contractual agreements) may be used to limit responsibility or liability between the individual who obtained the CoC for the site and a subsequent buyer of the site. AG14 cannot address these aspects related to the sale of sites for which CoCs have been issued. Rather AG14 must necessarily be limited to the ministry's requirements and expectations related to the: documentation execution and maintenance of PVP, contingency plans and ensure the conditions specified in a CoC issued for a site are in fact met, now and in the future, in order that the CoC remains valid.
General Comment	Page numbering	Page numbers should be included on all pages (of document)	Agreed all pages have now been numbered.
page 1	Need for PVP for scenario 4 or 5 site profile releases	(We) question the need for PVP's and AiP's in conjunction with Facility Upgrades (Scenario 4) and Redevelopment with change in Activity (Scenario 5).	If a risk assessment completed in support of a Scenario 4 or 5 release indicates that risk controls are required, there may be on-going monitoring or maintenance requirements to ensure the risk controls remain operational following site upgrade or redevelopment. Therefore, a PVP may be required. The requirement to maintain records related to a

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			<p>PVP would typically lie with the individual (i.e. usually the responsible person for the site) who obtains the CoC for the site. Again other legal tools (e.g. Restrictive Land Title covenants and land use restriction contractual agreements) may be used to limit responsibility or liability between the individual who obtained the CoC for the site and a subsequent buyer of the site in regard to who maintains the required PVP records.</p>
page 3	Need to maintain PVP records	<p>(We) request clarity on who is responsible for record keeping as required by the PVP. There is a condition that the responsible person or their agent will maintain any records required by the PVP. What happens if the property is sold? Can the new owner take responsibility for keeping the records of the PVP? This needs to be made crystal clear in the Guidance Document. Person cannot be held responsible for the maintenance of PCP records when they no longer have care, control and/or access to the site</p>	<p>The requirement to maintain records related to a PVP would typically lie with the individual (i.e. usually the responsible person for the site) who obtains the CoC for the site. Again other legal tools (e.g. Restrictive Land Title covenants and land use restriction contractual agreements) may be used to limit responsibility or liability between the individual who obtained the CoC for the site and a subsequent buyer of the site in regard to who maintains the required PVP records.</p>
page 3	Responsibility for carrying out a PVP	<p>The person responsible for remediating the site cannot bear the ultimate responsibility for the execution of the PVP after the site is sold. Persons cannot be held responsible for the execution of the PVP when they no longer have care, control and/or access to the site. (We) recommend that a mechanism must be in place to transfer this responsibility.</p>	<p>Currently the <i>Environmental Management Act</i> requires that responsibility for maintaining a site into the future in accordance with the conditions in a CoC (e.g. PVP requirements) issued for the site lies with the individual (i.e. usually the responsible person for the site) who obtains the CoC for the site. Furthermore, while other legal mechanisms (e.g. Restrictive Land Title covenants and land use restriction contractual agreements) may be used to limit responsibility or liability between the individual who obtained the CoC for the site and a subsequent buyer of the site. AG14 cannot address these aspects</p>

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			related to the sale of sites for which CoCs have been issued.
page 4	Responsibilities related to PVP contingency and operations and maintenance plans	See comments above (i.e. that responsible persons cannot be held responsible for contingency and operations and maintenance plans once the site is sold).	See ministry response to General Comment Responsibility for PVP above.
Table 1	Site Type 1B Need to maintain PVP records	See comments above (i.e. There is a condition that the responsible person or their agent will maintain any records required by the PVP. What happens if the property is sold? Can the new owner take responsibility for keeping the records of the PVP?)	See ministry response to Need to maintain PVP records above.
Table 1	Site Type 2 Fencing and use of signage as examples of institutional controls	Property owners fence sites and post them with signage (such as “no trespassing”) all the time. AG14 needs to clarify that just because site is fenced and/or has signage, this does not necessarily make it a Type 2 site. Similarly, property sellers might use contractual restrictions or land tile restrictions to limit the usage of their property after it is sold. Examples might be clauses to stop the use of the site for petroleum usage or for residential purposes. Again, this does not necessarily make the site a Type 2 site.	Type 2 and 3 sites are defined under Procedure 8 as follows: “ Type 1A, 1B, 2 or 3 site ” means a site at which one or more risk controls are present or implemented and which is associated with specific requirements for performance verification, operations and maintenance, and contingency plans, as well as record keeping and reporting.
Table 1	Site Type 3 Fencing and use of signage as examples of institutional controls	Property owners fence sites and post them with signage (such as “no trespassing”) all the time. AG14 needs to clarify that just because site is fenced and/or has signage, this does not necessarily make it a Type 3 site. Similarly, property sellers might use contractual restrictions or land tile restrictions to limit the usage of their property after it is sold. Examples might be clauses to stop the use of the site for petroleum usage or for residential purposes. Again, this does not necessarily make the site a Type 3 site.	Fencing and signage are provided in Table 1 as examples of common institutional controls which may be used at Type 2 or 3 sites. The requirement for a particular type or extent of fencing or particular wording on signage at a Type 2 or 3 site if specified in a PVP to control risk as a condition for a CoC issued for the site must be maintained in order that the CoC remains valid. Site owners may install fences

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			and signage for purposes other than use as an institutional control to control risk as a condition of a CoC. Unless a fence or sign installed by an owner acted to negate or otherwise alter the function of a fence or sign installed as an institutional control under a CoC, AG14 does not limit in any way such discretionary use of fences or signs at a site.
Appendix 2	Type 1B	Suggest inserting the words “are required” after “controls in the sentence “At type 1B sites, no institutional or engineering controls, but one or more intrinsic controls needs to be maintained to ensure that the risk-based standards continue to be met under current or future site circumstances and uses.”	Agreed, the sentence has been changed as suggested.
Appendix 2	Type 3, Case 1	The purpose of risk controls is to protect the residents in the case study, not to unduly alarm them. Points “g” and “h” are overkill, which would unduly alarm residents. The risk mitigation actions in point “f” are more than sufficient to be protective of the residents. <i>(We)</i> recommend that bullets “g” and “h” be removed.	The ministry agrees that in the absence of an immediate risk of <i>serious injury or death</i> should the active soil vapour collection system fail, point “h” is not needed and will be deleted from the example. However, point “g” will be retained as it is considered a prudent action to enhance protection of human health in the event the active soil vapour collection system failed with consequent immediate risks (albeit with unspecified severity) as currently stated in the Type 3 Case 1 example. Note that point “g” might be satisfied simply by posting vapour alarm evacuation routes in addition to, or as an augmentation of, typical fire alarm evacuation route notices within the high density residence.