

8/2016

Tier 2 Institutional Controls
Public Rights of Way/ Sewer Installation
Suggested Language

As explained in the DNR's Tier 2 Site Cleanup Report Guidance:

Public rights-of-way located within the soil plume are also considered potential receptor points of exposure. Adequate documentation that no potential exists for sewer installation in the impacted public rights-of-way may serve as a sufficient institutional control for these areas (e.g. written acknowledgement regarding plans for development from the municipality responsible for sanitary sewer construction, etc.) The DNR will review documentation and determine on a case-by-case basis whether there is a potential for sanitary sewer installation in the contaminated right-of-way. Guidance at 3-24.

Recently DNR has been asked to provide suggested language to include in a letter from a municipality that would qualify as an adequate institutional control in the situation referenced above. While every case will be different and will be decided on the specific facts of the given case, the language below has been used in previous environmental covenants and institutional control letters from municipalities:

"The area of concern addressed by this letter is [description of contamination plume location including map.]

The city of _____, Iowa currently has no plans to construct a sanitary sewer line in the area of concern. Should the City of _____, Iowa (the "City") or any other party decide to install a sanitary sewer line within the area of concern, it will notify the Department of Natural Resources UST Program and the Waste Water Engineering Program prior to commencing any actual construction work. The City or any other party installing a new sanitary sewer within the area of concern must comply with all regulations in place at the time of the proposed construction, as directed by the Department, intended to ensure that installation and operation of the new sewer line will not impact human health or the environment."

Note that letters from a municipality must be on official stationery and must be signed by an official with the legal authority to represent the municipality.

Finally, consultants and CGPs are strongly encouraged to provide draft language in any institutional control document to DNR for review prior to the letter being signed.