



Cleanup Legal Issues

Army Environmental Cleanup Conference

Decision Documents

Do's and Don'ts

Decision Documents – Do's

- Coordinate with AEC prior to the DD
 - Legal review by FS/CMS stage
- Correctly document regulator roles
 - NPL: EPA
 - Non-NPL: coordinate with State
 - RCRA corrective action at installation w/ *permitted* hazardous waste TSDF: State *if delegated*
 - RCRA corrective action at installation w/ *interim status* hazardous waste TSDF: EPA
 - Other (e.g., compliance cleanup, deviations due to an Order or FFA): depends

Decision Documents – Do's

- Correctly identify cleanup program (RCRA corrective action versus CERCLA), including:
 - the Constituents of Concern and their category (hazardous waste, hazardous constituents, hazardous substances, pollutant/contaminants)
 - Remedy selection criteria
- Identify if risks are unacceptable as $> 10^{-4}$ or HI > 1 for human health, or ecological risks
- Consult chapter 6.1 in Army DERP Management Guidance on Decision Documents

Decision Document –Don'ts

- Don't include a long list of potential ARARs. DD should identify maximum of 4 ARARs.
- Don't pursue removal or interim remedial actions unless special circumstance. Instead, seek final remedial actions.
- Don't distribute draft to regulators prior to internal Army coordination.
- Don't use screening levels as cleanup levels.
- Don't use residential risk/reuse unless appropriate.
- Don't have "5 year reviews" if RCRA cleanup.

Other Helpful Hints

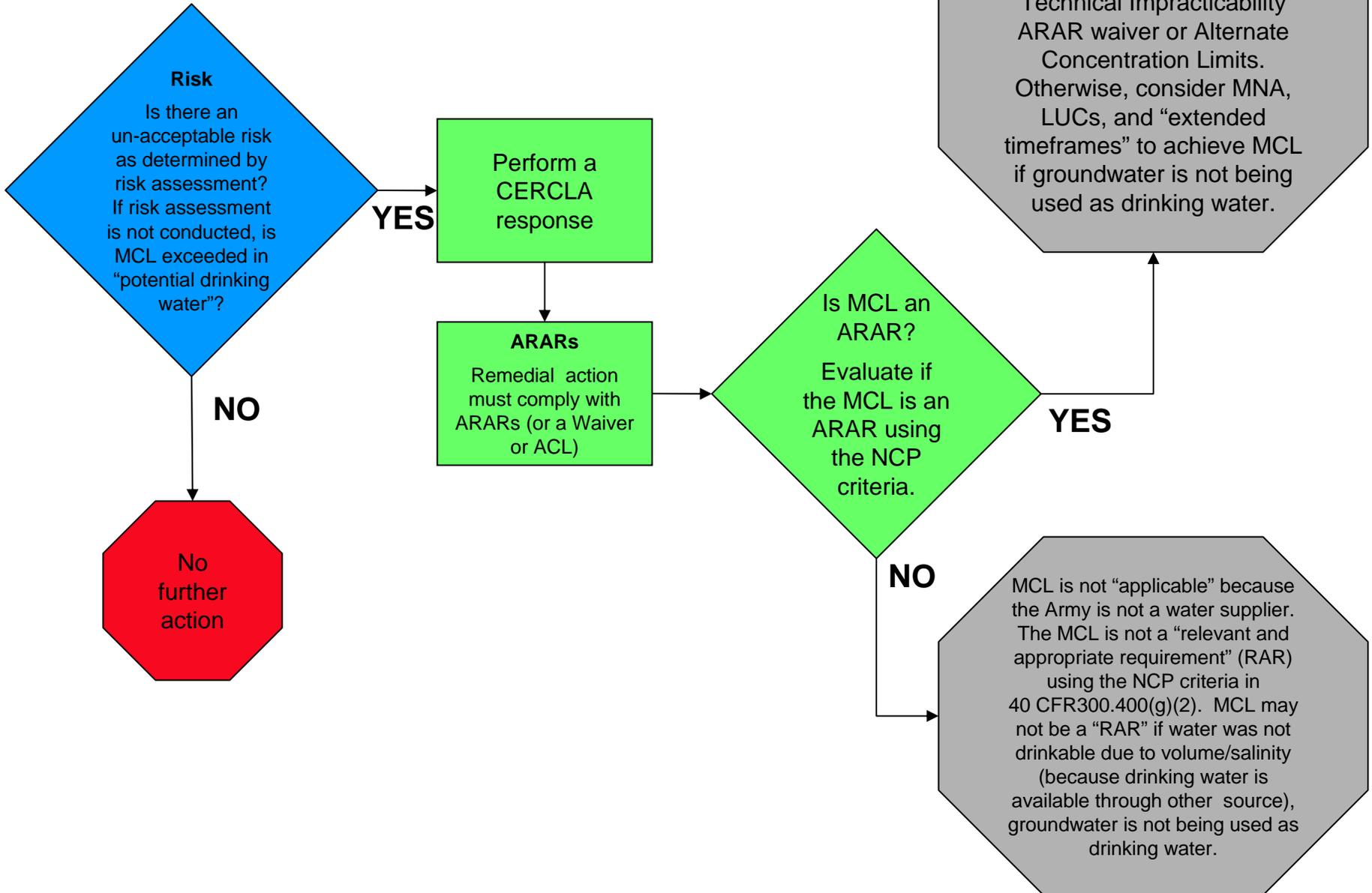
- Document meetings with regulators where decisions are made & get agreement that the decision was correctly captured.
- Establish professional and courteous relationships with your regulators.
- Consult with your environmental attorney.

Groundwater Cleanups & MCLs

Background Information

- Maximum Contaminant Levels (MCLs) are set under the Safe Drinking Water Act for drinking water suppliers.
- If remedial action is required under CERCLA, the response must attain Applicable or Relevant and Appropriate Requirements (ARARs) [or a waiver].
- CERCLA cleanup standards must address unacceptable risk and/or attain ARARs.
- Issue: If groundwater exceeds a MCL, should the MCL be used as the cleanup standard/ARAR?

MCLs and the CERCLA Process



Key Points

- Conduct a risk assessment to determine if unacceptable risk is present. Otherwise a MCL exceedance in “potential drinking water” may be used to determine unacceptable risk.
- Use the NCP criteria to evaluate whether a MCL is not an ARAR if groundwater is not being used as drinking water.
- Once a MCL is identified as an ARAR, our options are limited.
- Pursue the use of TI Waivers where appropriate.
- OSD is currently drafting groundwater cleanup guidance.