

LAND RECYCLING & BROWNFIELDS REDEVELOPMENT LEGAL & REGULATORY FRAMEWORK

April 2016
Riverside CA



STRATEGIES FOR EFFECTIVE LAND RECYCLING PROJECTS & PROGRAMS

- Community: Obtain community leadership support, convene stakeholders, address concerns, incorporate plans
- Technical: Collect & analyze good information
- Regulatory: Coordinate with regulatory agencies; develop assessment, legal & acquisition strategies
- Financial: Obtain planning, site assessment & remediation funds – loans & grants
- Consider Federal & state programs for infrastructure & economic development

Seed funding & assistance to local government & communities are available through various programs.

TOPICS

- Brownfields and Land Recycling in Context
- Integrating Cleanup & Redevelopment
- Legal Framework
- Managing Risk in Property Transactions
- Due Diligence (Phase I & II Environmental Site Assessment)
- Cleanup Process
- Risk Management Strategy

GETTING THE RECORD STRAIGHT: DEFINITIONS & MYTHS

- **Brownfields**

Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant

- **Land recycling or reuse**

The reuse of abandoned, vacant, or underused properties for redevelopment

- **Not all sites which use brownfields funds are contaminated**

- **Brownfields funds can be used for land recycling**

COMMON BROWNFIELDS



REDEVELOPMENT BARRIERS

Description	Implication
Market Value Exceeds Cleanup Costs	Private Market Completes Cleanup & Redevelopment
Value Close to Covering Development & Cleanup Costs	Targeted Public Investment Can Make Project Feasible
Environmental Liability Far Exceeds Property Value	Requires Significant Public Investment or Market Change

Cost, Liability & Timing Uncertainty

INTEGRATING CLEANUP & REDEVELOPMENT

Redevelopment Assessment

- Infrastructure & Services
- Air, Water Quality, Congestion
- Natural Resources
- Market Analysis

Future Use Vision

- Conceptual Site Plan
- Anticipated CEQA Impacts

Design

- Site Improvements
- Vertical

Community Involvement

Environmental Assessment

- Remedial Investigation

Analysis of Cleanup Options

- Feasibility Study

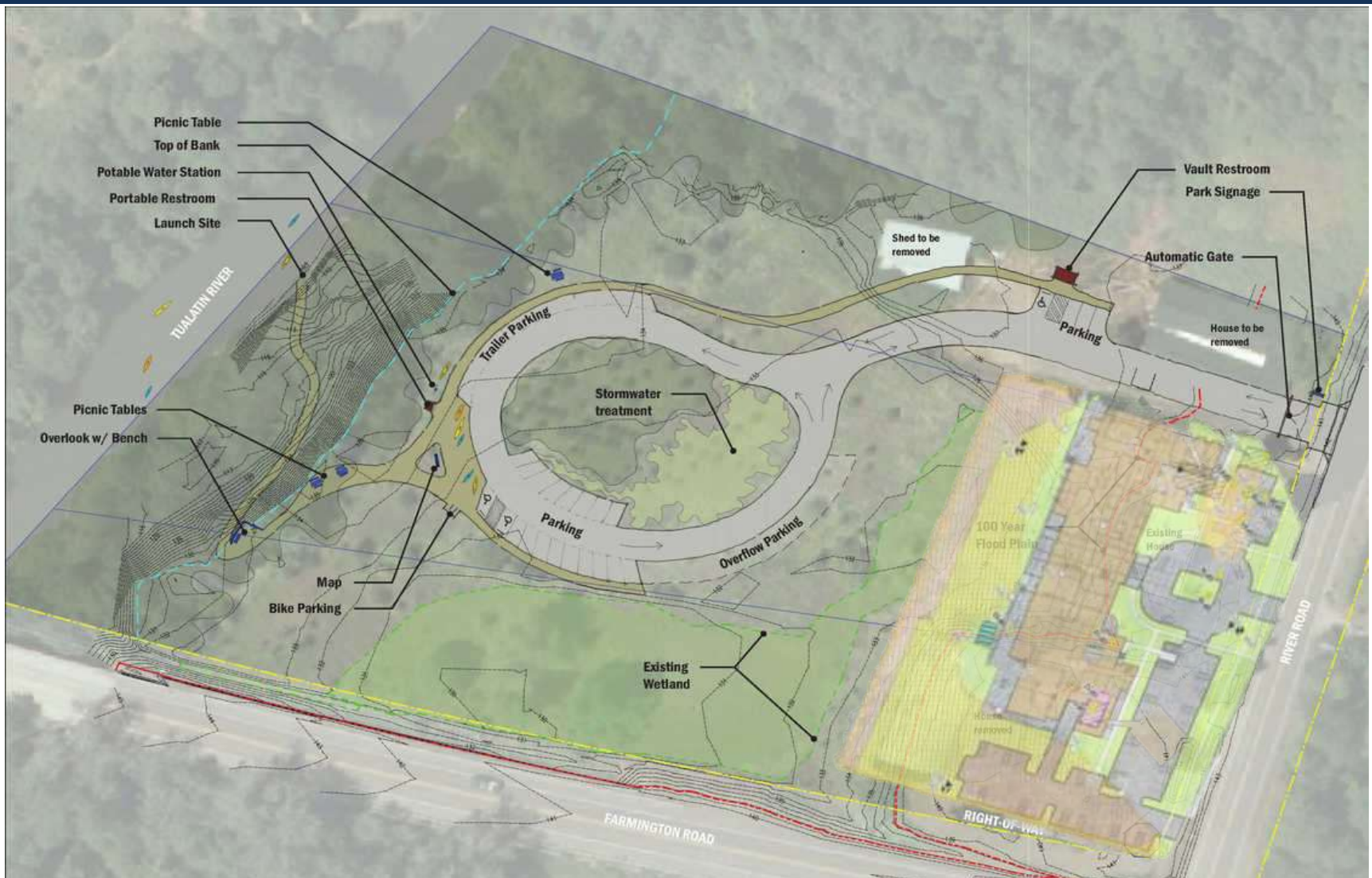
Cleanup Plan

Risk Management

INTEGRATING REMEDY & REDEVELOPMENT

- Future Use Drives the Cleanup
 - Unrestricted Standards
 - Industrial Standards
- Preventing Exposure vs. Clean
- Redevelopment can be the Remedy

INTEGRATING REMEDY & REDEVELOPMENT



MANAGING RISK IN PROPERTY TRANSACTIONS

STRUCTURE OF THE DEAL

- Due Diligence – Phase I/II etc.
 - Price Reduction
- Release & Indemnification
- Shared Risk / Cost Allocation
 - Environmental Insurance

ADMINISTRATIVE PATHWAY

- Consent Decree
- Voluntary Cleanup
- Local government tools

CLEANUP

- Dig & Haul
- Pump & Treat
- In Situ Treatment
- Capping
- Monitored Natural Attenuation

FUNDING

- State & Federal Grants
- Cost recovery
- Tax increment tools
- Historic Insurance Recovery
- Low Interest Loans
- Contribution Claims

LEGAL FRAMEWORK

- Superfund Law (CERCLA)
- CA State Laws
 - DTSC Statutes
 - State Water Board Statutes
- Liability: Owner, Operator, Arranger, Transporter
- Strict—Regardless of fault, lack of diligence or ignorance
- Joint & Several—All parties responsible for all costs
- Retroactive

LIABILITY DEFENSES

- Innocent Purchaser
 - Didn't cause or worsen contamination
 - Conducted due diligence
- Adjacent property owner
- Lenders
- Local government

PURPOSE OF A PHASE I ESA

- Liability Defense—All Appropriate Inquiry (AAI)
- Support go/no go decision making
- Lender requirement
- EPA and some state brownfield grants requirement

Not a requirement of DTSC or RWQCB

ELEMENTS OF A PHASE I ESA

- Environmental Records Review
- Review of Historical Land Use Sources
- Site Reconnaissance
- Interview
- Report



PHASE I ESA OUTCOMES

- Recognized Environmental Conditions
- Controlled Recognized Environmental Conditions
- Historical Recognized Environmental Conditions



TRANSACTIONAL DOCUMENT

- Phase I ESAs must be completed prior to closing
- Phase I ESAs are valid for 180 days
- Reliance—Typically conducted on behalf of buyer, or specifically identified in report

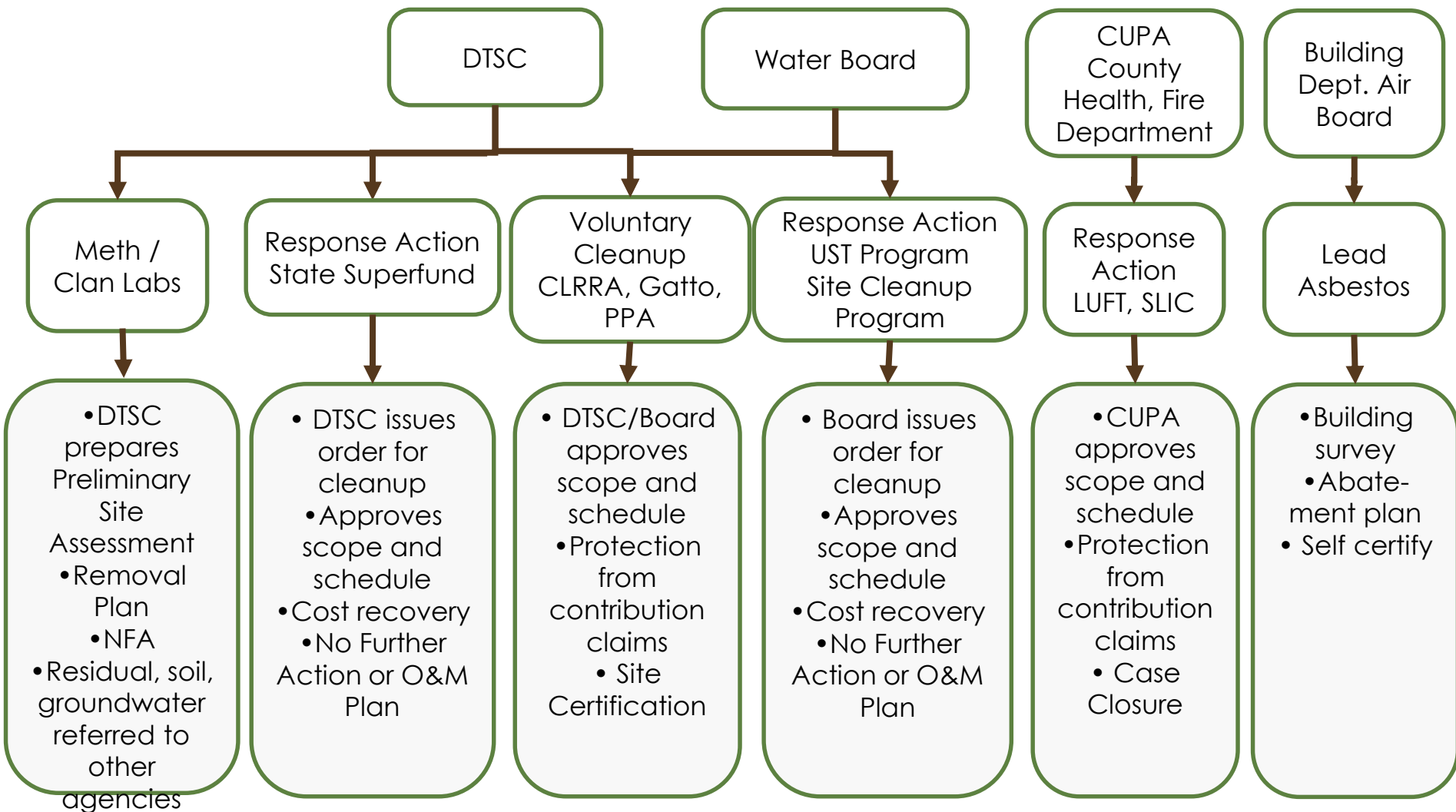
LEAD AGENCY SELECTION/DESIGNATION

- Contact a regulatory agency
- Request for lead agency oversight
- DTSC and the Water Board determine the Lead Agency
 - Under Memorandum of Agreement
 - Applies to all brownfields, with some exceptions
 - Allows local agency to oversee cleanup of a “simple” investigation or cleanup
 - DTSC or the Water Boards may concur with the local agency, or decide to bring the property in under State oversight

CHEAT SHEET: FEDERAL STATE & LOCAL PROCESS

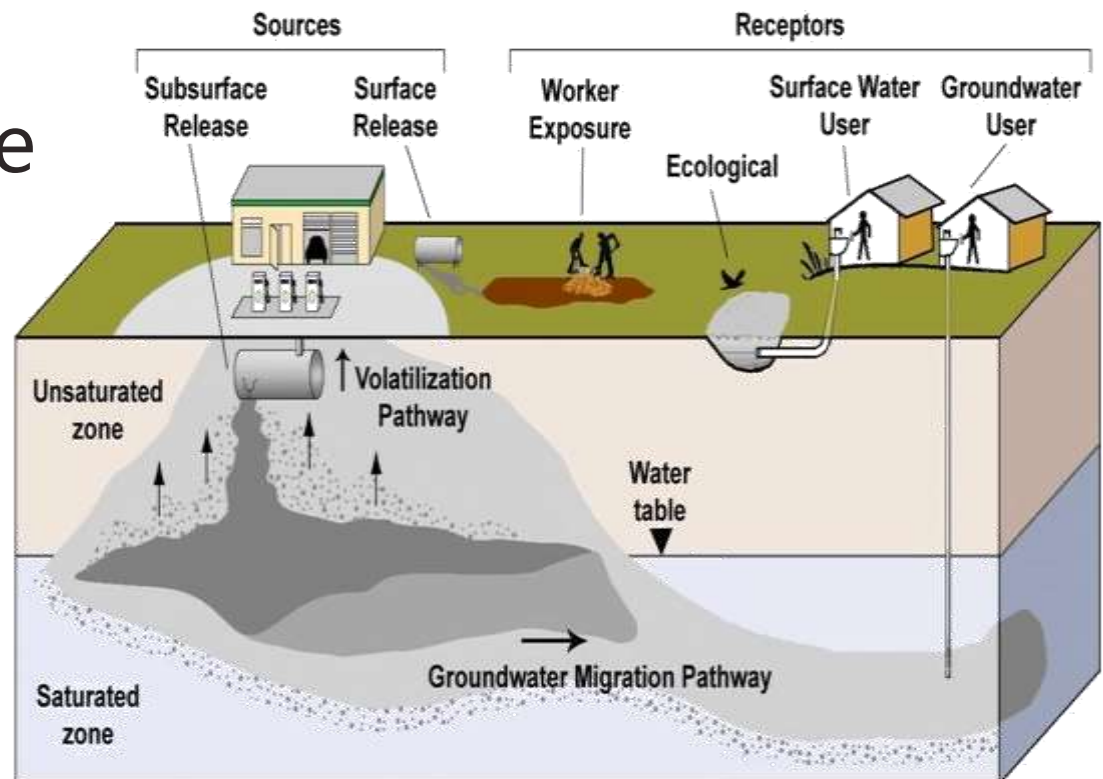
EPA	DTSC	RWQCB	CUPA/County
Phase I Environmental Site assessment	Same, or Preliminary Endangerment Assessment		
Phase II Environmental Site Assessment	Remedial Investigation; Health Risk Assessment	Site characterization report	Site characterization report
Analysis of Brownfield Cleanup Alternatives (ABCA)	Feasibility study; Engineering Evaluation	Alternatives analysis	Alternatives analysis
Cleanup Plan	Removal Action Workplan (RAW), Remedial Action Plan (RAP)	Cleanup & Abatement Plan	RAP, Response plan
Other terms			
Quality Assurance Project Plan	Sampling Analysis Plan	Risk Assessment	Treatability study
Fate and Transport Study	Confirmation sampling	Land Use Control	Institutional Control

ADMINISTRATIVE PATHWAYS



PHASE II ESA

- Sampling and data analysis to evaluate Recommended Environmental Conditions
- Assess exposure pathways and cleanup scenarios




"TYPICAL" REMEDIATION PROCESS

Remedial Investigation - Define extent of impacts



Feasibility Study - Evaluate cleanup options



Cleanup Action Plan - Memorialize preferred option



Remedial Design - Plans and specifications



Implementation - Construction

REMEDIAL INVESTIGATION

- Purpose—To characterize the nature and extent of contamination sufficiently to develop and evaluating cleanup action alternatives
- Iterative process of sampling and data gap analysis
- DQOs!

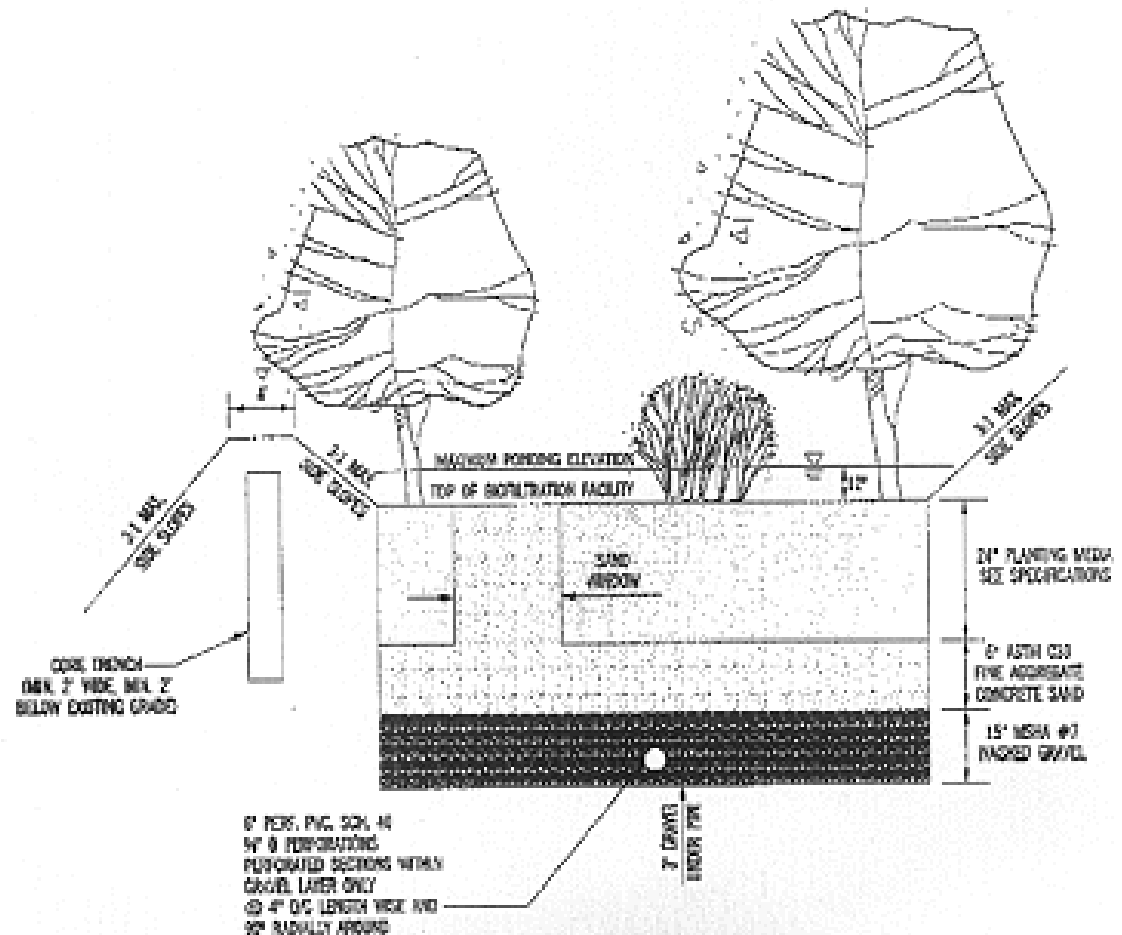


FEASIBILITY STUDY

- Purpose: To develop and evaluate cleanup action alternatives to enable a cleanup action to be selected for the site
- Threshold Requirements
- Protect human health & environment: Human and Eco-Risk Assessment
- Comply with cleanup standards & laws
- Other Evaluation Criteria
- Protectiveness
- Permanence
- Public Concerns

CLEANUP ACTION PLAN

- Purpose—To outline the preferred cleanup approach
- Engineering Design Report
- Plan Set & Specifications
- Integrate with construction and redevelopment



REMEDY IMPLEMENTATION

