



# How Remedies can adjust to Changing Redevelopment Plans

## Regulatory Framework

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# VAP Remedy Basics

- Defined in OAC 3745-300-01(A)(118);
- Designed to have the property achieve compliance with applicable standards;
- May require O&M;
- May have several components that operate separately or in conjunction;
- An activity and use restriction thru an Environment Covenant may be a component.



# Background on Remedies

- An NFA letter must show that all complete exposure pathways meet applicable standards or **have had a remedy implemented**.
- Complete exposure pathways include reasonably anticipated complete exposure pathways.
- All remedies needed to achieve applicable standards must be implemented **prior to the issuance of the NFA letter**. Remedies so implemented may **achieve** applicable standards in accordance with the rules **after** the NFA letter is issued.



## So... Remedies for pathways that do not yet exist??

- **Yes**, if the pathway is reasonably anticipated
- In some cases it may be easier to seek a CNS after the redevelopment/construction.
- In other cases an Activity and Use Limitation (AUL) in an Environmental Covenant is a useful way to handle pathways expected from redevelopment/construction.
- The remedy CAN change post CNS... So long as compliance with applicable standards is maintained



# Evolving Remedies

- A volunteer may submit an NFA and obtain a CNS that relies on a remedy they plan to change as future development occurs.
- Volunteers may replace any remedy with another, so long as the new remedy also meets applicable standards.
- Ohio EPA will grant CNS amendments to accommodate these situations.
- The property USE cannot change; if the use changes then a new NFA and CNS is required.
- Guidance for handling remedy changes: “post CNS compliance process” is available at <http://www.epa.ohio.gov/derr/volunt/volunt.aspx>



## Remedies and O&M Plans

- A commitment in an O&M plan to build a remedy needed for compliance with applicable standards is NOT acceptable.
- O&M plans serve two purposes:
  - To allow a constructed remedy time to “operate” to achieve applicable standards;
  - To allow for proper maintenance of an engineering control to ensure it continues to block (render incomplete) an otherwise complete exposure pathway.



## Other Remedy considerations: Contingencies

- *Contingent remedies* are distinguished from *contingency plans* within an O&M agreement, (reference OAC 3745-300-11(E)(1)(f)(iv)).
- Ohio EPA does not require or pre-approve remedies, contingency or otherwise.
- Ohio EPA only verifies remedies achieve applicable standards.
- Failed remedies need to be replaced; Ohio EPA does not approve selection of replacement remedies; we only verifies they achieve applicable standards.



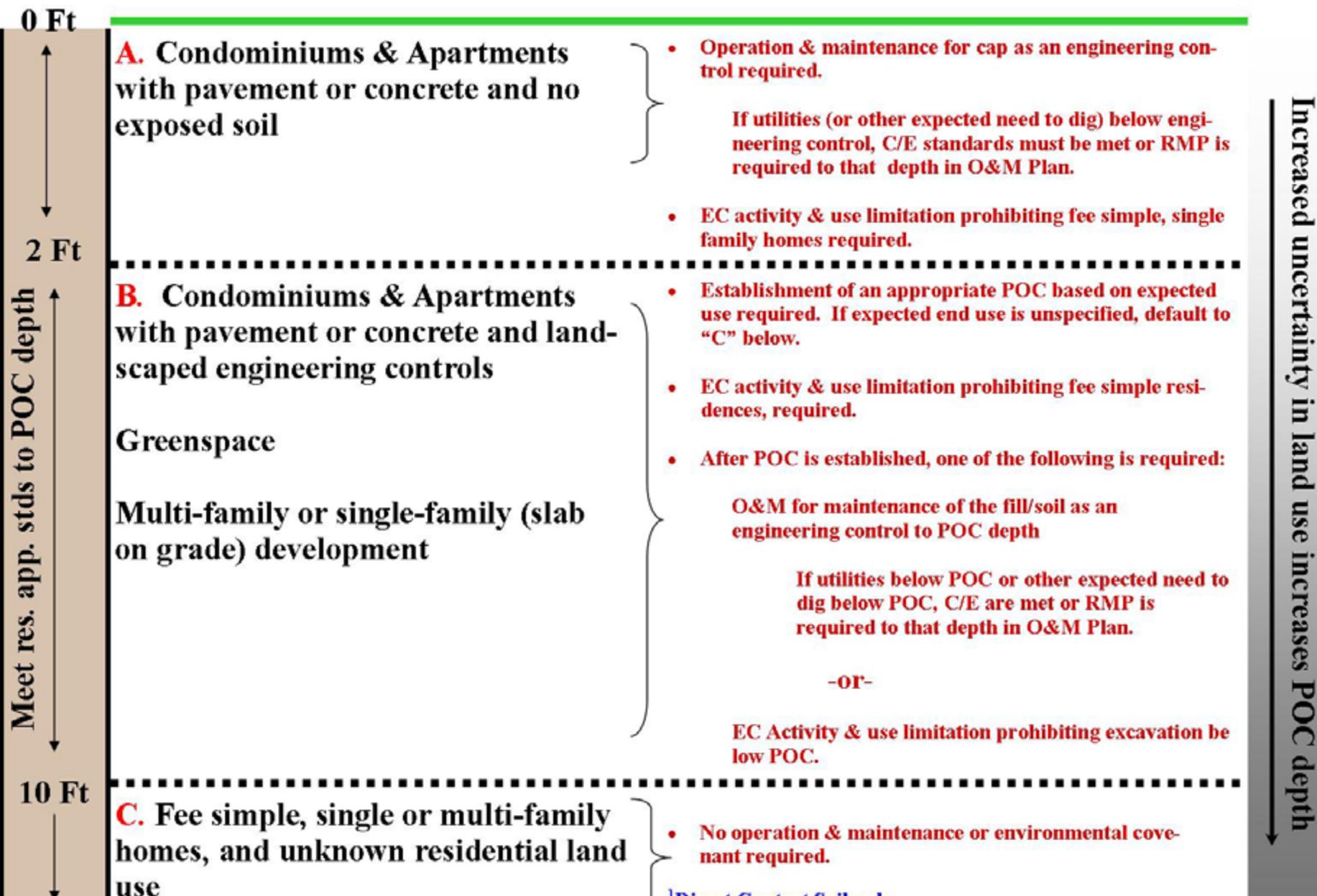
# Remedy Technical Assistance

- A volunteer is always free to seek TA from the Agency regarding the viability or likelihood that a potential remedy will result in compliance with applicable standards.
- A volunteer may also seek advice as to what remedial technology might work best at a given site.
- The remedy choice is **always** the volunteer's. The Agency only verifies if applicable standards have been achieved.

# Restricted Residential



# Point of Compliance<sup>1</sup>





## Post CNS Remedy Challenge: Sub-parceling

- Some NFA letters are written for a single parcel/property that is divided into sub parcels and sold after the CNS.
- This can have a variety impacts on the obligations necessary to maintain the CNS.
- Risk assessment assumptions, O&M obligations, and EC co-dependency with the are parcels are a few.



# Post CNS Remedy Challenge: Risk Assessment Assumptions

- A Property specific Risk assessment is a valid method to show that a property meets applicable standards – no complete exposure pathway is can be reasonably expected to result in an unacceptable exposure.
- The exposure assumptions used to support the risk assessment may not account for the sub –division of the property. This can change the expected exposure factors.
- These assumptions are not always obvious to a property owner.
- Any redevelopment of a property with a CNS based on a PSRA should consider the impact of the development on the PSRA assumptions



# Post CNS Remedy Challenge: Co-dependent O&M obligations

- An O&M plan is often necessary for engineering controls that are relied upon as a remedy for an otherwise complete exposure pathway.
- The O&M obligations are typically undertaken by the property owner.
- Sub-division of the property may require several different owners to comply with the O&M plan, or may leave one entity responsible for compliance of several properties that they do not own.
- If redevelopment plans include subparceling of a property that relies upon a remedy with an O&M plan, care should be taken to think thru how the O&M obligations will be met, and by whom, after the property is redeveloped.
- The O&M plan and agreement can be rewritten after the CNS is granted to account to changes in the way the property is used.



# Post CNS Remedy Challenge: Use restriction in an EC

- An AUL in an EC is a valid way to address an otherwise complete exposure pathway.
- Compliance with the EC is required for the CNS to remain in effect.
- Sub –division of the property may require several different owners to comply with the EC, and may leave one entity dependent upon the compliance of another to keep the CNS in effect.
- A violation of an EC is not curable – a violation of an EC typically results in an automatic voidance of the CNS.
- The scope of the EC should take into account development plans.
- The EC CAN be rewritten after the CNS is granted to account to changes in the way the property is used.