

567—137.11(455H) No further action classification.

137.11(1) Eligibility. An enrolled site shall be eligible to obtain a no further action classification, when the department determines the participant has met all compliance standards of this chapter applicable to the affected area and the hazardous substances actually identified and evaluated such that no further response action is required other than maintenance of institutional or technological controls or certain specified continuing site activities. Upon request of a participant or a protected party and compliance with applicable standards, the department will issue a no further action letter to each protected party requesting it.

A no further action classification may be conditioned upon the continued maintenance and effectiveness of any applicable institutional or technological control in accordance with rule 137.7(455H).

137.11(2) No further action certificate. A no further action letter shall be in a form recordable in the county real estate records as provided in Iowa Code chapter 558 and consistent with the model forms developed by the department. The no further action letter may be recorded as provided by law.

137.11(3) No further action certificates conditioned on institutional and technological controls. A no further action certificate conditioned upon the continuing effectiveness and maintenance of institutional and technological controls or other continuing requirements must be recorded with the consent of the fee titleholder for each parcel of affected property subject to the controls and for parcels of property for which prevention of exposure is dependent upon the continuing effectiveness and maintenance of the controls. If a participant is not able to record the no further action letter on a parcel within the affected area due to objections of the fee titleholder or other legal restraints, this alone shall not be a basis for denying or rescinding the no further action classification or the certificate or the legal protections attendant to the no further action classification. Any modification or termination of institutional and technological controls shall be noted in an amended no further action certificate and shall be recorded as to any property subject to an earlier recorded certificate or institutional control. If a no further action certificate is required to be recorded, the no further action classification is not effective until the document is recorded with the county recorder.

137.11(4) Scope of liability protection. Upon issuance of the no further action letter by the department, the liability protection provisions contained in Iowa Code Supplement chapter 455H, subchapter 3, apply. The scope of the no further action classification and the scope of liability protection extend only to that area of affected property as defined by actual and modeled contaminant data and the specific environmental condition for which a regulatory standard has been met and approved by a no further action classification. The scope of protection corresponds to the scope of the site assessment conducted by the participant, the exposure pathways actually evaluated by the assessment report and reviewed by the department, and the hazardous substances identified in that assessment for which compliance with a department-approved standard has been achieved. Liability protection does not apply to releases, sources of contamination, hazardous substances or other environmental conditions not expressly addressed in the participant's site assessment, response action or specifically referenced in the no further action certificate.

The no further action classification and certificate shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

137.11(5) Reopener and reclassification conditions.

a. The department shall have grounds to reopen and rescind a no further action classification and consider reclassification of the affected area if specified conditions of the no further action classification and certificate are not maintained, or if institutional or technological controls fail to meet their intended purpose or are determined to be ineffective and unenforceable. If the conditions upon which the no further action classification was issued cannot be corrected or reinstated, the department may rescind the classification. The effect of termination is to put all parties in the same position as if the no further action letter had not been issued.

b. If a no further action certificate is issued without conditions or technological and institutional controls and conditions should arise which might require further corrective action, the department may require further response action by a participant or protected party only as provided in Iowa Code Supplement section 455H.301. The department may require further response action against a statutorily responsible party who is not a participant or a protected party. If the participant was a person having control over a hazardous substance, as defined in Iowa Code section 455B.381, at the time of the release, a no further action certificate may provide or the department may require further response action to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as defined above, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.