



**Department of Energy & Environmental Protection  
Remediation Division  
Roundtable  
Q&A Newsletter  
Vol. 13 ~ January 31, 2014**

Presented below are the Department's responses to verbal comments presented at the Remediation Roundtable held on November 12, 2013. The comments and responses may have been edited for clarification purposes.

**SELECTED VERBAL COMMENTS FROM THE NOVEMBER 12, 2013  
ROUNDTABLE:**

**Municipal Brownfield Liability Relief (BLR) Program**

**Comment:** Will municipalities in this program have to comply with the Significant Environmental Hazard Program?

**Response:** *Yes, and we have met with municipalities about this issue. Controlling exposures to the hazard, for example by putting up fencing around the site, is the level of compliance we are talking about. Often this will be something that the municipality would do to secure the site anyway.*

**Comment:** Will there be a grant program to cover the costs?

**Response:** *There is no state grant program specific to this program; however there are numerous state and federal grants available to municipalities for investigation and remediation.*

**Comment:** Often for Brownfield assessment grants, EPA requires the party to apply for the voluntary remediation program. How does this affect the level of cleanup required?

**Response:** *If they get money from EPA to clean up the property, DECD or EPA does require that they enter the voluntary program, but that doesn't require them to complete the cleanup. With federal and state assistance it needs to be within the realm of a formal program, but it doesn't require the cleanup be completed. This is a liability shield program that provides some level of comfort and help to protect municipalities.*

**Comment:** Is the program strictly limited to redevelopment? Could it be used for land to be set aside for conservation use?

**Response:** *It was designed for redevelopment not for land the municipality would permanently own, based on the feedback we have heard from municipalities and developers. We could discuss expanding the program to cover conservation if that is what the municipalities' desire. This is one of many available protections to allow municipalities to be more engaged.*

### **Storm Water Construction General Permit**

**Comment:** Can the certifying Qualified Professional (QP) also be the inspecting QP?

**Response:** *Yes, the certifying QP can also perform the required inspections. Also for small projects, the design QP and review QP can be the same person.*

### **Groundwater Technical Impracticability (TI) Workgroup Report**

**Comment:** Is a Technical Impracticability Variance approval contingent on GW reclassification approval?

**Response:** *No, it is not contingent on the reclassification. The idea is that you will have defined the area where you exceed standards and will have evaluated the potential for receptors in that area to be at risk. The area mapped as exceeding standards will define the area where the requirements of the TI (such as no one is going to be using the groundwater) will apply.*

### **General Questions**

**Comment:** When will Wave 2 RSR amendments be adopted as final regulation?

**Response:** *No specific end date, however in terms of the overall transformation process, we will have to have the new RSR amendments in place. We will continue to roll out public discussion drafts asking for your feedback. The Risk Assessment Evaluation will also be a large part of determining the timing. We would like to have the benefit of that evaluation before finalizing a formal public hearing draft of the Wave 2 RSR amendments. Our hope is that the open communication will lead to a smarter, more informed process.*

**Comment:** Have you set a deadline for the RSR Wave 2 amendment comments?

**Response:** *We have not imposed a deadline yet because we are continuing to roll out the discussion documents, but when they are all out we will set a deadline.*

**Comment:** In August 2013, there was a draft document for self-implementing engineered controls released? Are we still waiting for these to be official? Are they likely to be approved?

**Response:** *That document was a discussion document for the RSR Wave 2 amendment proposals. To the extent that DEEP provided a discussion document for what may be self-implementing, in the future, if you submit an Engineered Control Application consistent with those concepts it is likely to be approved. The self-implementing proposal in the public discussion draft will require formal regulation amendments to be adopted.*

**Comment:** What is the difference between the Wave 1 and Wave 2 RSR amendment changes?

**Response:** *The Wave 1 RSR changes took effect June 27, 2013. Potential Wave 2 RSR changes are documented in the public discussion documents that have been released since July 2013 and propose the possible direction for future amendments to the RSRs, but are not currently regulation.*

### **Selected Written Questions**

**Comment:** The Storm Water Construction General Permit requires that the Qualified Professional needs to go out and inspect the implementation of the storm water plan within 90 days of the start of the construction. Often on remediation sites, the work (excavation) does not even take 90 days to complete. If the work takes less than 90 days, does the inspection still need to occur?

**Response:** *Yes, an inspection is still required. The permit just says that the inspection must be sometime within the first 90 days. If the schedule is less than 90 days, arrangements will need to be made to perform the inspection during that time period. **Keep in mind that the permit doesn't apply for private projects (locally approvable as defined in the permit) until they exceed 5 acres of disturbance. For public projects (locally exempt), the threshold is 1 acre.***

**Comment:** In instances where remediation of the source is not necessary, how should the requirement for four quarters of monitoring after remediation is completed be applied?

**Response:** *Regardless if the source of a release requires remediation, if groundwater has been impacted, compliance monitoring is required. If after an adequate investigation of groundwater has been completed, the LEP can determine that the groundwater has not been impacted, then compliance monitoring is not required.*

**Comment:** Has the post-remedial monitoring requirement been eliminated so that 4 quarters of monitoring is no longer required?

**Response:** *Post-remedial monitoring is not in the new RSR language. However, the concept of monitoring groundwater after remediation has been completed has been incorporated within the reframed requirement for compliance monitoring. Essentially, all samples used to determine compliance must be representative of stable post-remedial conditions*

*The RSRs require understanding by the LEP that the plume is stable and no longer affected by the remediation or other transient effects associated with it before compliance can be demonstrated. The RSRs also require that the seasonality of the plume be understood, which is why quarterly sampling is required, although it need not be 4 consecutive quarters but rather completed within a two year time frame.*

**Comment:** Can the LEP pick the four pass quarters over two years to use in order demonstrate compliance?

**Response:** *The intent was to allow for a busted round, such as an inaccessible well during one quarter. Rather than having to re-initiate the monitoring program from the beginning, this provision would allow for someone to just duplicate the missing round. For instance, the January 2013 round was missed because the well could not be located, etc. Rather than start from scratch, the RP could just collect one more round in January 2014.*

*If the scenario is one in which concentrations in a particular well were alternating between pass and fail by quarter, it may suggest that the groundwater setting is not stable as required and further sampling may be warranted. The LEP will be expected to provide any rationale for this scenario.*

**Comment:** Do 100% of compliance monitoring quarters need to meet RSRs?

**Response:** *The RSRs do not specifically prohibit exceedances in some round during that two year period. The burden would be on the LEP to justify why they could conclude that groundwater had in fact been adequately remediated, which would be a driver for most sites to not be signed-off if there were continued exceedances. At a minimum there must be four “pass” quarters, covering all four seasons, within a two year period.*

**Comment:** If post-remedial groundwater monitoring started under the old RSRs, would it need to continue now that the RSRs no longer require it?

**Response:** *Not specifically, but as discussed on previous answers. You still need to show that groundwater monitoring has demonstrated all the conditions specified in Section 22a-133k-3(g) (1) of the RSRs and that it meets the specific requirements for demonstrating compliance specified in Section 22a-133k-3(g)(2). In other words, the post-remediation monitoring data may still be applied to the groundwater monitoring requirements of the amended RSRs.*

**Comment:** The ELUR regulations, 22a-133q, prohibit disturbance of an Engineered Control without DEEP approval. Are there provisions that allow the State to hold anyone who unlawfully damages an Engineered Control liable for the cost of repair and restoration or, if that’s not possible, remediation?

It would be good if private parties could enforce this requirement, too. For example, if one tenant in a multitenant building owned by an absentee foreign conglomerate damages the EC, then other tenants should be able to sue the tenant who caused the harm for damages and/or injunctive relief without requiring DEEP actions.

**Response:** *Under 22a-133p, the Attorney General at the request of the DEEP Commissioner is empowered to enforce the ELUR. This statute would be used to either **forbid the action that would cause the violation of the ELUR or to require actions such as repairs, restoration and remediation caused by the violation of the ELUR.***

*The ELUR statute does not provide for a third party to file a private suit to enforce the ELUR, however, § 22a-133p(c) provides a right to any other person to intervene as a matter of right in any enforcement action instituted by the DEEP Commissioner. The owner of the property does have other civil options available to seek damages from any person who damages the engineered control, i.e. negligence, trespass. However, a neighboring tenant may not depending upon the specific facts.*