



RBCR Focus Session 7

New Remedy Solutions: Presented March 25th

1. **On Managed Multifamily, what about gardening in raised beds. This doesn't involve digging in underlying soil. How would that be handled in an EUR?**

The regulations specify prohibition on digging into soil for the purpose of, but not limited to, gardening. Therefore, using contained raised beds consisting of another source of clean soil could be allowed.

2. **Why was there a need to define historically impacted materials, if it really just refers to polluted materials managed with Permit by Rule?**

"Historically" impacted material is defined as polluted material that will be managed using the HIM permit by rule because it is not prudent to remove. Polluted material is material that was deposited in a location before it was deemed illegal to do so (i.e., prior to permitting requirements).

3. **If EURs are necessary for multifamily or passive rec, can you explain how this is beneficial or better than what we had before (basically I/C)?**

This type of EUR is much easier to achieve, as you don't need subordination agreements for utility ROWs. An I/C ELUR would not work for a residential use property.

4. **The permit by rule requires an affidavit of fact that is attached to property records-is this no longer true?**

Yes, an affidavit of facts is required.

5. **The slides say that Passive Rec cannot be used for PCBs > RDEC (1 ppm), but the PCB criteria in the regulations is listed as 1.1 ppm. Is that a typo?**

DEEP acknowledges that was a miscommunication when drafting the regulations and calculating the new passive recreation criteria. The PCB criteria provided in Appendix 12 is incorrect. To comply with Federal standards the PCB concentration must be $\leq$ 1 ppm

6. Can you repeat /expand the statement that subordination agreements are not required for EUR filings using MMF?

A MMF restriction will likely require less subordinations. Interests with the ability to use the site for unrestricted residential use would need to subordinate, and in most cases this only includes mortgages.

7. Can you leave historically impacted material at the surface using permit by rule without covering with clean material, grass, pavement, etc. to prevent exposure?

Yes.

8. Can a “permit by rule” be used on a verified/closed Site, which could allow an ELUR to be removed from the land records?

Yes, if all conditions are met for the permit by rule and it adequately replaces the rationale for the EUR.

9. When cleaning up a release within 6 months or one year of the release to eliminate need to enter Tier program or report to CTDEEP does post remediation GW monitoring, which typically takes a year or more not count towards the 6 month or 1 year timeframe?

Yes. Under 22a-134tt-6(f)(5), there is an exemption from having to pay tiering fees when the only reason that a release is not cleaned up within 1 year from the date of discovery is due to compliance monitoring, so long as the soil impacted by the release has met RBCR standards.

10. Can the Permit by Rule - HIM be used for sites that are proceeding to closure under the CTA?

If a site that is being cleaned up under the property transfer program discovers polluted material that is not prudent to remove, then after notification to DEEP of intent to use the permit by rule as a means of demonstrating compliance for the site.

11. Is a LEP required to do the 5-year inspections? Or just the property owner?

A LEP is not needed for 5-year inspections for HIM or inaccessible soil.

12. For the conditional exemption for dredged material, are there concentration limits, or limits on placing impacted dredged material on top of cleaner upland areas?

The conditional exemption for dredged material (22a-134tt-9(k)) requires that the project has a permit (either Dam Safety or LWRD permit) to remove the sediment and manage the material on the upland. While there are not concentration limits on the dredged material, impacted dredged sediment to be placed on top of cleaner/unimpacted soil is not allowed.

- 13. If polluted dredged material is used on a site, it may be true that any leachate will eventually impact the waterbody from which it came, but it will also impact groundwater, perhaps above the governing groundwater numerical criteria. This is especially concerning for impacts to bottom sediments that did not originate from groundwater inflow, but surface water inflow. What provisions address this concern?**

The locations of private and public water supply wells within area of the proposed dredged material reuse location are taken into consideration during review of the Dam Safety/LWRD permit application. Sediment dredged from a marine environment cannot be relocated within 200 feet of a water supply well.

- 14. For LEP calculated risk-based DEC you referenced the Site Characterization Guidance Document as the standard for site-wide investigation. Hasn't that been replaced by the Release Characterization Guidance?**

See definition (99) for "parcel-wide investigation" which states that "...an investigation of an entire parcel of land conducted pursuant to the site characterization guidance document published by the commissioner on the department's internet website, or by another method consistent with prevailing standards and guidelines approved in writing by the commissioner" Since the SCGD has been replaced by the RCG, the RCG would fall under "by another method...in writing by the Commissioner."

- 15. For LEP-calculated DEC, doesn't combined risk effectively apply to 10 or more carcinogenic compounds (not 2 or more) since each one individually is capped at 10-6?**

That's correct. The subcommittee report recommended a cumulative excess lifetime cancer risk of 10-5 for exposure to multiple carcinogens and a cancer risk of 10-6 for individual carcinogens. The regulations specified "2 or more carcinogens" based on the subcommittee's recommendations.

- 16. For contamination that has migrated-what if the upgradient boundary concentration at the time the plume was identified is less than the down-gradient plume boundary (on the site that wants to use the provision)? This assumes that a previous slug crossed the property boundary and the concentrations at the boundary have decreased. Does the property that was impacted by off-site pollution still need to remediate to the upgradient boundary concentration?**

The LEP would need to present a CSM with adequate groundwater data that supports the theory that a slug of contamination migrated onto the property and documents the concentrations that migrated onto the property. The use of the Conditional Exemption for existing releases that have migrated (22a-134tt-7(e)) also requires that all exposure pathways to impacted groundwater on the property have been broken or mitigated.

- 17. So with many of the MMF DEC criteria now lower, in some cases far lower, than the default ResDEC, will DEEP/DPH be looking to modify (lower) the default ResDEC based on the latest toxicology data?**

Not at this time.

- 18. How do you use the alternative exposure calculator results, where in the RBCRs is this referenced?**

Under 22a-134tt-9(d), this provision requires Commissioner approval.

- 19. Does a "permit by rule" have to be removed or suspended to allow disturbance in the future?**

It depends on the type and purpose of the "disturbance". For example, if using inaccessible soil and the disturbance is replacing a parking lot, that is allowed under the permit by rule as long as the polluted soil is managed appropriately. Another example is if the disturbance is more involved than typical maintenance and/or the building/parking lot is removed then the permit by rule would no longer be applicable. If using HIM permit by rule, then the parcel would need to be maintained for I/C activity and HIM cannot be relocated. Alternatively, if the material is relocated from the parcel and/or the parcel use changes, then the permit by rule would no longer be applicable.

- 20. For HIM, the regs seem to indicate that only SERs need to be rendered inaccessible to use the Permit by Rule approach i.e., HIM w/ concentrations greater than applicable DEC but less than SER does not need to be rendered inaccessible if using the Permit by Rule**

Yes