



**Department of Energy and Environmental Protection  
Remediation Division  
Roundtable  
Q&A Newsletter  
Vol. 11 ~ August 1, 2013**

Presented below are the Department's responses to verbal comments presented at the Remediation Roundtable held on May 14, 2013 as well as selected written comments received by the Remediation Roundtable Committee. The comments and responses may have been edited for clarification purposes.

**SELECTED VERBAL COMMENTS FROM THE MAY 14, 2013 ROUNDTABLE:**

**Update on Bill 1082**

**During this past legislative session, key provisions of Former Bill 1082 were amended after the presentation on Former Bill 1082 at May 14<sup>th</sup> Roundtable. These revisions, as well as additional provisions, were joined into [Bill 6651](#). Bill 6651 was subsequently passed by the House and Senate. A summary about the sections in Bill 6651 is provided below:**

- §§1-27 - reorganizes DECD grant, loan, and related brownfield statutes
- §28 - sets forth DEEP's risk assessment evaluation process, to be completed by October 2014
- §29 – states that DEEP is to include shorter audit timeframes in unified program regulations, adopted after July 2014
- §30 - creates new Municipal Liability Protection, so cities/towns and related entities can assemble brownfields to facilitate reuse and cleanup, without fear of liability for past contaminant releases
- §§31-32 - amends existing Significant Environmental Hazard Notification statute, amendments effective July 2015
- §§33-36 - creates new Deed Notice tool (“Activity and Use Limitation”) in existing ELUR statute

**Comment:** Are you pleased with the Legislative outcome for Bill 1082? Has there been good communication back and forth?

**Response:** *Yes, there have been robust discussions, and we are pleased with how things have been handled to date.*

**Comment:** It appears that there are a number of additions and changes since the bill has gone through the Environment Committee without an opportunity to provide further comment. Is this something that occurs often? Any thought on holding off a vote or providing a corrected bill until next year, so we can all have the ability to comment on the changes?

**Response:** *Legislation has their own set of rules and procedures once a bill has been presented. This situation is not different than what has happened in the past with other bills. At this time, the Legislature continues to work with us on possible changes and thus the reason we are sharing possible updates within this presentation. We are always willing to accept comments from the public; however, ultimately the Department does not have control over what happens to the Bill.*

**Comment:** How do these changes get into the final proposed Bill 1082?

**Response:** *Legislators have an opportunity to make changes until the final vote. DEEP will remain in contact with various legislators to help make those changes to the final bill.*

**Comment:** There is apprehension on some of the Deed Notice provisions included in Bill 1082. Are there any internal discussions on making changes to that section of the bill?

**Response:** *Yes, the Department has been in contact with the real estate division of the CT Bar Association regarding their concerns and ideas on how to address those concerns. Those proposed changes are in review with the CT Bar, and the Department is waiting for their response before moving any changes forward.*

### **RCRA and Solid Waste Stewardship Permits**

**Comment:** Is the Stewardship Permit one that is held in perpetuity and reopened if you want to modify it?

**Response:** *Yes. The permit lasts for ten years or less and can be renewed. It can be permanent, if that is helpful. An example of one held in perpetuity would be a landfill with a ten-year permit that is renewed at the end of each permit duration, but if the remedy changes so that institutional and engineering controls are no longer needed, then the permit could be terminated. It is meant to be an institutional mechanism that makes sure that the remedy remains effective and that documents that remediation is complete with controls that will be in place or are in place and are maintained. Permits can be transferred to new owners.*

**Comment:** Can this permit be used to resolve old consent orders?

**Response:** *In RCRA or solid waste scenarios, yes, we have closed orders and turned them into a permit.*

**Comment:** Can this approach be used to resolve remediation obligations at properties other than Solid Waste Disposal Areas or RCRA facilities?

**Response:** *In terms of applicability for remedies used at other types of properties in the future, this type of permit is a good idea, though it is not currently being used. It may be possible to develop use of stewardship permits for broader use once we confirm statutory applicability.*

### **Proposed Beneficial Soil Use Regulations**

**Comment:** Under the proposed regulations did you consider a category for like to like reuse for farm land containing pesticides?

**Response:** *That concept was considered; however, the Department has not developed that concept any further since it does not appear to be a high priority item that occurs often. Further input from the public on this issue would be welcomed.*

**Comment:** Are brick and concrete included in your definition or just soil?

**Response:** *The Department is still working on the reuse options for brick and concrete. They would be separate from soil.*

**Comment:** If soil has asphalt in it would it be considered asphalt or soil and at what level? What are the reuse options?

**Response:** *Asphalt can be reused as asphalt or in asphalt production. This includes soils that have asphalt substances being reused in asphalt pavement structures or in asphalt production. For soils that have asphalt-type substances, there are reuse options as soil - for example, in transportation corridors where there are like substances already present, with a concentration capped at the RSR Industrial/Commercial DEC and the GB PMC.*

**Comment:** Are there any asphalt recycling facilities in CT?

**Response:** *While there are facilities that recycle asphalt, these are not registered or permitted under solid waste authorities. The Department would like to get some registered as exempt recyclers and this information posted on the website so that all available options are known to people with material that could be used in the*

*asphalt production process. This way when people have material that they would like to offer for recycling, there is a simple list of locations willing to recycle the material.*

**Comment:** The proposed regulations appear to be defining a solid waste as those polluted soils above a certain criteria. Currently some remedial action plans call for consolidating polluted soil or allowing polluted soil to remain under a building. Do we risk creating a landfill on site if the soil is used under the building?

**Response:** *Soil itself is not solid waste, although solid waste by definition is something that has been discarded, so sometimes it gets confusing when there is excess soil at a property or soil that contains substances above default numeric cleanup criteria. The important thing is that this really comes down to whether or not the material is allowed to remain in place as part of a final remedy. If remediation includes on-site management of soils, then the remedial action plan would identify how this approach achieves protection of human health and the environment. If the property is not in a remediation program, then the question is really whether the polluted soil contains contamination at a level that indicates that there has been a release that requires remediation. If so, a remedial action plan would need to address this, either through removal or by determining how to effectively manage the soil on-site with an appropriate remedy.*

### **95% UCL Workgroup Report Out**

**Comment:** Will there be guidance included on how to determine the release area?

**Response:** *Yes, further guidance on defining a release area from which it is appropriate to generate a 95% UCL data set is included in the proposed document. Ensuring that the data set is representative of a well-defined release area is important when using a 95% UCL to demonstrate compliance with the RSR criteria.*

**Comment:** Will the guidance recommend sampling on a grid system?

**Response:** *The workgroup's intention is to not go into how to develop the sampling plan for use with the 95% UCL; however, we identify three-dimensional and temporal attributes as being a necessary consideration.*

## **Transformation RSR Amendments**

**Comment:** Will alternative direct exposure criteria for soils be considered in the transformation?

**Response:** Yes, the Department is considering incorporating the concept that if land is used for recreational use, a different direct exposure criteria (DEC) could be applicable. Currently, there are only two soil use categories; residential and industrial/commercial. Adding recreational DEC will allow for more flexibility with future land use needs. Another concept the Department is considering is separating recreational DEC into active and passive recreational use to promote additional flexibility.

**Comment:** Will there be anything in the new package regarding pesticides in soil and how we deal with them?

**Response:** *Pesticides have been discussed at length; however, the Department has not determined where that will be appropriately addressed; either through statute changes or RSRs.*

## **SELECTED WRITTEN COMMENTS**

**Comment:** Will the use of an alternative PMC in an area of alternate GWPC be available?

**Response:** *The soil must be remediated to the default RSRs so a potential situation does not develop where groundwater that already does not meet the GWPC may be additionally impacted and not attenuate in a sufficient timeframe. Given that goal, it is being taken under consideration and discussion to allow the use of alternative PMC for substances that are not used for comparison to alternative GWPC.*

**Comment:** A groundwater plume in a GB area from a Number 2 Heating Oil release was characterized using the ETPH, 8260, and 8270 Methods. The analytical results indicated that the results from the ETPH method exceeded the Additional Polluting Substances (APS) volatilization criteria. Since the results of the ETPH Method measures the C9 to C36 range of hydrocarbons as a single result, are there other methods available which allow for cleanups to be based on the risk of the substances present?

**Response:** *Yes, the EPH and VPH Methods produce results which allow for cleanups to be based on the risk of the substances present. These methods will promote more appropriate risk management, where a spill from a peanut oil release (less toxic, less risk) is not treated in the same manner as a waste oil spill (more toxic, more risk).*