Department of Energy & Environmental Protection
Remediation Division
Roundtable
Q&A Newsletter

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Presented below are the Department's responses to verbal comments made at the Remediation Roundtable held on December 8, 2015. The comments and responses may have been edited for clarification purposes.

SELECTED VERBAL COMMENTS FROM THE DECEMBER 8, 2015 ROUNDTABLE:

Wave 2 RSRs Draft Language on Selected Topics

Groundwater

Comment: For the 80% Pollutant Mobility Criteria exemption, does "majority of the pollution that is subject to infiltration" mean 51% or more?

Response: *Yes, we are trying to make sure there is not a hot spot under the building that could leach if the building is removed in the future.*

Public Notice

Comment: For the public notice amendments, will projects that are currently operating under a remedial action plan need to provide re-notification if the regulations go into effect with the proposed changes?

Response: *It is anticipated that remediation that is delayed for a long period of time (two years) after the initial public notice or situations where there is a new RAP submitted for the site would be subject to an additional public notice for the continued work or for the new remedy.*

Comment: For notification of abutters, is that within 200 feet of the property line, rather than 200 feet of the release area?

Response: *Yes, the proposed change is intended to include 200 feet from the property line in order to include abutters across the street, for example.*

Pesticides

Comment: How would we know if pesticides were applied using accepted practices at the time of use?

Response: *One could determine this by evaluating if concentrations are typical for that type of property use. For example, a dumping area or mixing shed would likely contain higher concentrations than a typical application out in an open field.*

PMC Exemption: Wide Spread Polluted Fill

Comment: What is the rationale for requiring 10 acres for widespread polluted fill?

Response: *10 acres is the proposed threshold for use of the self-implementing option. The rationale is that it is widespread enough that remediation is not an option. If smaller, a variance from the Commissioner is still an option. The 10 acres would apply to the entire filled area both on-site and off-site.*

Comment: For Wide Spread Polluted Fill, if you propose to add in non- coastal sources would that just be limited to dredging material along a river or harbor?

Response: *No, the proposal is to include any inland area where the fill is widespread enough that remediation of just a portion of it would not improve water quality, or the size of the area is too large where removing or capping would not be a remedial option.*

Comment: Would the widespread polluted fill be more approvable with less or more area?

Response: *That is more of a question of how large the area of fill is, so if you have 1 of 10 acres of the fill on your property, it would be allowable under the self-implementing option.*

Up-gradient Policy

Comment: Under the Upgradient Policy language proposed to be added to the RSRs, would free product migrating onto a property require cleanup by the owner of that property?

Response: *Yes.*

Comment: Why would NAPL and dissolved contaminants be handled differently when it comes to the upgradient policy?

Response: *They would be addressed differently because leaving NAPL as an ongoing source equates to leaving soil with leachable levels of pollutants in place and calling a site complete. This would not allowable under the RSRs. In comparison, when the upgradient source of pollution is cleaned up, the dissolved plume emanating from the NAPL release will eventually attenuate.*

Comment: Will DEEP intercede to require action to be taken by the party responsible for the free product impacting a down gradient property?

Response: *We currently do try and intercede on many sites. However, since the presence of NAPL means that there is still an on-going source of pollution, the downgradient site cannot be closed as completed. In addition to any action that DEEP may take against an up-gradient source, the downgradient landowner may also be able to take a legal action. Risk assessment is important in this situation to make sure no one is drinking pollution and there is no vapor hazard.*

Comment: Has there been any consideration of amending the statutes to improve the downgradient property owner's ability to sue the up-gradient party that caused or controls the source of pollution?

Response: *Not at this time, however, it is a good idea.*

Volatilization Criteria

Comment: For Volatilization Criteria, why are you proposing the increase of distance from 15 to 30 feet?

Response: *For many contaminants, distance is only a time factor, not an attenuation factor. Since chlorinated solvents do not attenuate, increasing the distance will ensure we are being protective in those situations. This change has been proposed since 2003 and is consistent with what is being done in many other states, including what is recommended by EPA.*

Comment: Regarding the proposed 30-foot rule for volatilization, are you now saying that the criteria applies in a 30-foot perimeter from a building?

Response: *Essentially, yes. The intention of the addition of a lateral component to the 30' applicability distance is to address concerns regarding the potential for a complete vapor intrusion pathway into a nearby building. The Volatilization Criteria would continue to apply to all groundwater that is within 30 feet of the ground surface.*

Common Verification Form Issues

Comment: If we are only checking 1 of 3 boxes on the verification forms, why do we need to put the date in for all three boxes?

Response: *The dates are relevant because they provide the timeline for appropriate application of the verification. By statute, a Form III verification may be applied to all releases existing at the parcel at the date the Form III was filed or to all releases existing at the parcel at the time of a complete Phase II investigation, whichever is later. The verification form requires both dates so the proper application of the verification can be identified up front.*

We acknowledge that if the date the verification is rendered is checked for the applicable date of compliance, the dates of the Form III filing and the date of the Phase II completion are not as relevant; however, requiring all three dates with this scenario simplifies the verification form. All three dates must be entered, but only check one box for the date to which the verification applies.

Comment: Is the information gathered on the verification forms being databased in any way?

Response: *Our current database tracks the administrative data only.*

Comment: This would seem to lend itself to an online form.

Response: *We agree and are working toward that goal. This would also assist in achieving our goal for other data management/tracking of the use of specific RSR provisions.*

A Case Study in Green Remediation: Pharmacia-Upjohn, North

Comment: Did you use a geo synthetic clay liner (GCL) to create the freshwater wetland?

Response: *Several portions of the property where the creation of freshwater inland wetlands were desired and were capped with a GCL that was designed to be a minimum of one-foot higher than the seasonally high water table. The GCL is essentially a lined wetland area that is hydraulically isolated from underlying groundwater.*

Comment: What cleanup level did you use for PCBs?

Response: *A Risk-Based Cleanup Approach was used across the property, with PCBs being managed in NAPL via in-situ thermal remediation, while residual PCBs across the*

site were managed under TSCA's PCB Risk Based Disposal Approval (i.e., 40 CFR 761.61(c)). The NAPL areas had PCBs that reached concentrations as high as 4-5% PCBs prior to treatment. Following an in-situ thermal remediation pilot study of NAPL, PCBs were reduced to concentrations of about 200 ppm. The residual PCBs that remain across the site that exceed the RSRs are beneath engineered protective covers (i.e. , caps). Custodial care over the long term will continue through the combination of ELURs and engineering controls.

Comment: Did corporate takeovers play into the 1995 change in approach to this site?

Response: *That made some difference, but the citizen advocacy panel, proactive public outreach, and seeking to find a property reuse that was compatible with the site-wide remedy seemed to make the biggest difference.*

Comment: Did you have to dewater to install the cutoff wall?

Response: *The hydraulic barrier wall was constructed using a deep soil mix construction approach that did not require the trench to be dewatered.*

Comment: What is the permeability of the wall?

Response: *Permeability was mostly between 10^{-8} to 10^{-7}.*