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

Vol. 25, May 12, 2017

Presented below are the Department's responses to verbal comments made at the Remediation Roundtable held on March 28, 2017. The comments and responses may have been edited for clarification purposes.

SELECTED VERBAL COMMENTS FROM THE MARCH 28, 2017 ROUNDTABLE:

Property Transfer Act Compliance

Comment: Is there an order for items in the enforcement initiative? Such as a reminder letter before NOV, or could there be any order to compliance efforts?

Response: *Yes and no. A reminder letter is a letter DEEP may send before an action is due (such as a Verification). A NOV may be sent by DEEP after a deadline has passed. However, site-specific circumstances can escalate enforcement actions to any level, and in any sequence, the Department deems necessary.*

Comment: What is the procedure for the Compliance Initiative if there are multiple Certifying Parties?

Response: *Each Certifying Party is required under the Property Transfer Act to fulfill the obligations to which they certify. We are focusing on whichever Certifying Party is overdue for a due date. If there are multiple Certifying Parties, the fact that one Certifying Party is not overdue for their particular milestones does not lessen the need for other Certifying Parties to be in compliance*.

Sometimes there are private agreements for remediation between all the parties involved, but private agreements do not change statutory obligations for each Certifying Party.

Comment: It looks like the compliance effort is mainly for sites where there were forms filed after 2007; is there any effort for pre-2007 filings?

Response: *This particular initiative is focusing on sites filed after 2007. We also review and take action on older sites on a case-by-case basis.*

Comment: Since resources are stretched, it's easy to go through things in a certain bureaucratic way for schedule, but there are sites out there that will not be captured by that process that would have much worse environmental conditions than those that will be captured. Is there any way you can go after sites that are falling behind that have worse conditions than your typical site?

Response: *We always have and use enforcement options for high risk situations.*

This presentation was specifically about the Property Transfer Program initiative, focusing on the Form III Property Transfer Program filings. In general, to the extent we are able, we prioritize them if there is a current exposure, significant risk, receptors in the area, etc. For many of these sites, if they have only submitted an ECAF, we have limited knowledge.

Comment: I've run across sites that have had serious problems and have fallen off the radar and haven't had any attention for years without anything being done. So what about that?

Response: *If there is anything you have come across that needs immediate attention or has serious problems, please let us know. Anonymous tips are welcome.*

Comment: If you have a client who says "Why should I? What will happen to me? If I'm not high priority then why should I do something?" - What do you say to that?

Response: *That is why we are doing this initiative - so the culture changes and mindsets change. The statutory obligations for Certifying Parties set forth in the Property Transfer Program are not optional.*

Draft Monitored Natural Attenuation Guidance Concepts

Comment: Has the Department looked at EPA software to predict/model reaching compliance points? For example, for chlorinated solvents, BioChlor is widely accepted. This is analogous to using the 95% UCL.

Response: *Members of the MNA workgroup have done research into computer modeling software; however, they have not decided on a recommended approach. As part of finalizing the guidance we will look at the software that is out there.*

Comment: What can we do with sites that are slightly over groundwater standards but have no receptors at risk?

Response: *In the Wave 2 changes to the RSRs, there will be a variety of new options available to help sites reach groundwater compliance. For those sites where these options do not help, we now have staff focusing on reviewing sites for Technical Impracticability variances. Several have been in approved in the past few years and roughly twenty are in the review process. Guidance is available online. You may also contact Maurice Hamel at Maurice.Hamel@ct.gov if you think you have a site suitable for this type of variance.*

Comment: Is MNA set at 20 years or can a longer timeframe be accepted?

Response: *The guidance is still in draft form with the current suggestion of 20 years. The reasoning is that if your analysis indicates you cannot achieve compliance by the 20-year time frame, then your site is not a good candidate for MNA.*

Comment: What does one do with sites where the source is remediated, contamination is in the bedrock, MNA won't be achieved within 20 years, and perhaps there's wide-spread polluted fill, and the likelihood of getting down to criteria is impossible?

Response: *Technical Impracticability (TI) is an option. We recognize that those circumstances are an issue, there are a number of things in the proposed Wave 2 RSRs that can simplify issues regarding wide-spread polluted fill and the existing Technical Impracticability variance. We're trying to make the hurdles lower.*

Comment: It is the public's understanding that only two TIs have been processed, so how could we justify the cost?

Response: *DEEP has approved 6 or 7 TIs, and about another 20 are in the queue at various stages. First, it is critical to give us pertinent documents so we know no one is going to be harmed. It's much less expensive to define the extent of a plume. If there are no receptors, a good site history, and you can show you cleaned up and performed source removal, so no one will be impacted, we can do some prescreening to see if a TI would be available to the site.*

This will help achieve closure at sites that have been around for 30 years. Interim Verification might be applicable for these sites too.

Concurrence Memo for Vapor Intrusion ITRC Guidance

Comment: ITRC's 2007 guidance had included the use of Tedlar bags as an acceptable method for collection of vapor samples, rather than restricting sampling to only Summa canisters. Does DEEP have a policy on use of Tedlar bags?

Response: *The Department does not have a policy about the use of Tedlar bags, but the Department does have policies related to the representativeness of the data used to demonstrate compliance with the RSRs, including the use of the Reasonable Confidence Protocol (RCP) analytical methods. If a sample collected using a Tedlar bag can meet the RCP requirements and, after a Data Quality Assessment (DQA) and Data Usability Evaluation (DUE), is determined to be representative and meets appropriate Data Quality Objectives (DQOs), it can be used.*

Comment: Is the Department considering concurrence for recent ITRC guidance for Petroleum Vapor Intrusion as separate concurrence because of bioattenuation?

Response: *Yes, it will be separate. This will take a bit longer because we need consensus between different bureaus – the Leaking Underground Storage Tank group needs to be involved in the process, but it is on our to-do list.*

Comment: Please clarify what defines a passive system. If you have a vapor mitigation system with membrane and crushed stone and you vent to the roof top, is that considered passive or active?

Response: *Such as system would be considered to be passive because it is not actively drawing the vapors out from beneath the building slab with a fan. The purpose of mentioning that vapor barriers are not acceptable as a sole mitigation measure in the concurrence memo is that the Department wants a mitigation system to be more than just a barrier which will eventually be penetrated by the vapors accumulating behind it. There needs to be a pathway for those accumulated vapors to be vented from beneath the barrier, whether actively or passively.*

Communication with the Lab During the DQA/DUE Process

Comment: Why is the Department talking about this and why, as a lawyer, should I be thinking about this? What are the problems that we need to be aware of to get through the program so that our client doesn't get in trouble?

Response: *This new guidance is provided as training to ensure that LEPs and laboratories are communicating with each other to make sure that the data being generated meets the needs of a project and that potential deficiencies in the data quality are properly evaluated. This provides certainty in the data and confidence in the conclusions reached using that data.*

Comment: Is this issue coming up during review of data during audit? When/how are you going to see something that captures your attention?

Response: *Reasonable Confidence Protocols have been in place for 10 years now. Any time a LEP presents data in a report, the report should include assessment of DQA and DUE. The LEP would need to make sure that DQA/DUE discussion is in any reporting of results and any issues that the laboratory has reported have been addressed. If the lab reports an anomaly to one of the seven standard laboratory QA/QC questions, the LEP should explain what that means, including what it means for using data to draw conclusions that ultimately will lead to a site verification. It is the LEPs' responsibility to make sure conclusions they are reaching are based on good, valid, representative data.*

The Department has seen data that is questionable, and there is a lack of confidence when issuing a final approval or audit on a site. This workgroup's goal is to find out what may be problematic with the system and how to develop protocols to catch these issues early on. One thing the Department has determined is the importance of LEPs communicating with the lab often, so when the final report is submitted, all parties can have confidence in that data and nothing went wrong along the way.

For example, if there is bias early on in a project based upon analytical data it can have an effect later on during verification. Every step along the way it is important to be aware of bias; sometimes the laboratory reporting limit is above acceptable concentrations for clean-up, so this data would not be useful for verification purposes.