

**CTDEP Remediation Division
Roundtable
Q&A Newsletter**

**Vol. 3
June 13, 2011**

Presented below are CTDEP responses to verbal comments presented at the Remediation Roundtable held on April 12, 2011 and selected written comments received by the Remediation Roundtable Committee during December 2010 through April 2011. The comments may have been edited for clarification purposes.

SELECTED VERBAL COMMENTS FROM THE APRIL 12, 2011 ROUNDTABLE:

Reasonable Confidence Protocols

Comment:

The RCP certification report from the laboratory often includes a narrative at the end. Do people submit just the narrative from the laboratory with the report, or do they submit additional analysis, a narrative, or checklist for CT DEP to evaluate? If you are receiving narratives, are you seeing generalized narratives for the whole set of data, narratives covering each sample, each round, etc.?

Response:

The entire laboratory report deliverable, which includes the narrative for the data included in the laboratory deliverable, should be included with the report that uses that data.

Comment:

Will CT DEP be adding any new methods to the RCPs, for example EPA Method 524.2?

Response:

CT DEP is looking at adding other methods to the RCPs, but does not anticipate adding EPA Method 524.2 since that method is a drinking water method that has robust QA/QC requirements.

Future Guidance Documents

General Response:

There was considerable discussion regarding developing guidance for a range of subjects. In an effort to prioritize the development of guidance documents, the Roundtable will be posting a survey on Survey Monkey asking interested parties to choose the guidance topics that are most important to them. When the survey is available, those people who are signed up for the Listserv will be notified. People may sign up for the Listserv by going to the Remediation Roundtable website (www.ct.gov/dep/remediationroundtable). A notice of the survey will also be posted on the Roundtable webpage.

Verification Audits

Comment:

How many verifications are audited?

Response:

Approximately 28 percent of the verifications submitted are audited, and this percentage has remained fairly consistent over time.

Comment:

Does “not audited” mean no further work was required at all?

Response:

Not audited means that the Verification was not selected for audit. The fact that the Commissioner does not audit a verification does not mean that the Commissioner is in concurrence with the opinions and conclusions of the LEP. It only means that the Commissioner has chosen not to do a technical review of the verification. The verification will stand on its own merit.

Often the issues which lead CT DEP to select a verification for audit are resolved during an audit meeting, and no additional work is required as a result of the audit.

Comment:

In deciding which verifications to audit, is it based on an initial review, is there bias toward auditing certain LEPs, or is the selection of which verifications to audit random?

Response:

A screening process is used to identify which verifications will be audited. In general, the determination to select a verification for an audit is based on an administrative review of the verification package for completeness, and either:

- 1. The Verification Report was screened and obvious red flags (significant data gaps or omissions) were identified;*
- 2. The site is of particular concern (i.e., environmental, economic, political sensitivities);*
- 3. The track record of the LEP (if a LEP has had significant issues with incomplete site characterization or mis-application of the RSRs in past audits, CT DEP may take a closer look at some subsequent verifications to assess how the issues from past audits have been addressed);*
- 4. Random Check and Balance for quality and representation; or*
- 5. Any other factor the Commissioner may determine to be appropriate.*

Comment:

I think it's the DEP's unofficial policy to try to determine if an audit is necessary within 90 days of receipt of the verification, but the statute provides that an audit may be performed within 3 years of the receipt of the verification. If there is no response within 3 three years, can it be assumed that CT DEP is in agreement with the verification? Regarding the review status, is there a no audit notice or does the verification just go to the file?

Response:

If the 3 year time period passes, there is no default approval, and the verification stands on its own merit. CT DEP's goal is to make the decision whether to audit within 90 days. In the case of a Final (site closure) verification, one of two response documents may be issued: either a No-Audit Letter or a Notice of Audit. Currently, DEP does not issue No-Audit Letters for Release Area, Interim, Portion, or Form IV Supporting verifications. If the Commissioner does not audit a "Final" verification within the statutory timeframe, this does not mean there is a default approval (please see response to previous question).

ETPH/EPH/VPH

Comment:

If a LEP has a verification ready to be submitted except that the use of the ETPH methodology needs to be approved, what should the LEP do?

Response:

The Commissioner's approval of a request to use Extractable Total Petroleum Hydrocarbons (ETPH) as an additional polluting substance (APS) must be completed prior to verification. Until the new ETPH approval form is published on the CT DEP website, you can send a letter requesting the use of the ETPH methodology and the draft ETPH criteria. These criteria are already on the CT DEP website. If you have any particular questions, please contact the appropriate district supervisor.

Comment:

It seems that the use of EPH/VPH rather than ETPH may make a large impact on determining compliance for a lot of projects. Developing criteria for the use of EPH/VPH in CT should be a priority.

Response:

Proposed criteria for EPH/VPH were developed for the draft amendments to the RSRs in 2008. CT DEP is currently working with the CT Department of Public Health to prepare an application form to request use of the EPH and VPH methods and the associated criteria as APS. The form will include optional criteria and is anticipated to be completed in the near future. If one chooses to use this form and associated criteria, no additional documentation/support will be needed other than the form. Until this new approval form is published, you can obtain the draft criteria from the appropriate district supervisor and send a letter to the DEP case manager or district supervisor requesting the use of the EPH and VPH methodology and the draft criteria as APS.

Parties may also request approval of different criteria for EPH/VPH, but will need to submit technical support to back up the request.

Comment:

With ETPH there is a lot of noise around the detection limit at some sites. You can often get detections with ETPH that were all non-detects with EPH.

Response:

Detections of ETPH at low concentrations can be a result of the “noise” of the laboratory instruments. In these situations, EPH/VPH can be more useful to evaluate the presence or absence of petroleum products.

Comment:

What VPH or EPH method(s) would you use for diesel fuel and other types of fuels and oils?

Response:

The CT DEP is currently developing guidance on the VPH, EPH and ETPH analytical methods. This guidance will include information regarding the selection of the appropriate methods to use when characterizing releases of petroleum products. The guidance document titled “Characterizing Risks Posed by Petroleum Contaminated Sites: Implementation of the MA DEP VPH/EPH Approach,” Final Policy, Policy #WSC-02-411, published by the Massachusetts Department of Environmental Protection (the “MA Guidance”) presents information regarding the selection of analytical procedures and detailed information on the methods. It is important to consider the age of the release and be conservative in your approach when selecting analytical methods. A summary of the approach presented in the MA Guidance is presented below.

The following scenarios should include analysis using VPH and EPH including the associated target compounds and MTBE:

- *Fresh releases of #2 fuel/diesel*
- *Jet Fuels JP-4 and JP-8*
- *Waste Crankcase oil*
- *Unknown oils*

The following scenarios should include analysis using VPH including the associated target compounds and MTBE:

- *Gasoline*

The following scenarios should include analysis using EPH including the associated target compounds:

- *Weathered Diesel/ #2 oil (Note 1)*
- *#3 - #6 Fuel Oil (Note 1)*
- *Hydraulic Oil (Note 1)*
- *Mineral/ Dielectric oils (Note 1)*
- *Jet Fuel Jet A/ Kerosene (Note 1)*

Note 1: If the spill is potentially impacting a water supply, VPH testing should be included.

General Note: Analysis for additives and other analytes should be included as appropriate. Please see the MA Guidance for additional information.

It is important to remember the VPH and EPH methods are gas chromatography methods, and, in some cases, use of gas chromatography/mass spectrograph methods may be appropriate for the analysis of target compounds.

Comment:

Once DPH has proposed criteria, it would be helpful for DEP to publish the methodology used by DPH. The numbers are very different than EPA and MA numbers, and it would be helpful to know where the numbers come from.

Response:

CT DEP anticipates publishing this information with the recommended criteria.

ELUR / Universal Covenant

Comment:

It seems that consideration of the use of Uniform Environmental Covenants in Connecticut would be appropriate.

Response:

The Uniform Environmental Covenant process is partly based upon CT DEP's ELUR process. We have been and will continue to look at the processes used by other states to determine if there is anything that would be beneficial for Connecticut to adopt and/or change. We welcome specific suggestions.

SELECTED WRITTEN COMMENTS

Comment - December 22, 2010:

The Site Characterization Guidance Document (SCGD) was changed from Ecologic Risk Assessment to Ecological Considerations. What is the significance of this change? Is it required or not? I am finding it very difficult to estimate potential liabilities and tell clients what they need to do to address this issue even before this change to the SCGD.

Response:

The primary purpose of the revision was to separate the concept of determining contaminant fate and transport as distinct from an ecological risk assessment (which itself can range from a screening-level to a full technical risk assessment). Determining fate and transport is included in a complete investigation.

Whether ecological risk exists and at what level, and whether it needs to be addressed by a remedy, is subject to the RSR language (Section 22a-133k-2(i)) in that the Commissioner may determine on a site-by-site basis that an Ecological Risk Assessment (ERA) is required. This determination is based on the potential risk to receptors and extent of contamination. A party may on its own initiative evaluate ecological risk instead of waiting for DEP to find and comment on appropriate situations, especially where releases have more obviously come to be located in sensitive ecological areas such as sediments. Also, the revised language in the SCGD includes the recommendation that ERAs be conducted in consultation with CT DEP to resolve issues that may arise out of a risk to receptors in advance of a verification. CT DEP will be providing resources to help guide parties through the process of ecological risk assessment.

Comment - December 22, 2010:

What is CT DEP's decision-making process regarding property transfer filings and exclusions to the Transfer Act?

Response:

All property transfer Form I-IV filings go through an administrative review process for completeness. DEP does not determine if a submitted filing was necessary (e.g., whether the transfer met one of the many exemptions and therefore should not have been filed). If a Form I, II or IV is inappropriate, incomplete, or invalid, the Certifying Party will be notified. If there are questions regarding specific exemptions, please contact the Remediation Division (860) 424-3705.

Additionally, a flow chart for the Property Transfer Program exists on the Remediation Division website and is linked at the bottom at the Property Transfer Program fact sheet. http://www.ct.gov/dep/cwp/view.asp?a=2715&q=325006&depNav_GID=1626

Comment - December 22, 2010:

What are the background statistics for Property Transfer filings - How many Form I's, Form II's, and Form IV's have been submitted, how many were rejected, and why? How many Form III's have been submitted?

Response:

The Property Transfer Program was instituted in 1986, and the institution of the LEP program and ECAFs occurred on 10/1/95. The following approximate statistics include complete filings submitted to CT DEP from the institution of the program through 12/31/10 and are broken down into pre- and post-10/1/95 filings.

- Form I: A total of 1991 filed.*
- 1115 were filed pre-ECAF/LEP program*
 - 876 were filed post-ECAF/LEP program*
 - 55 re-filed a Form III due to insufficient documentation to support the Form I*
- Form II: A total of 294 filed.*
- 165 filed pre-ECAF/LEP program*
 - 129 filed post ECAF/LEP program*
 - 21 re-filed a Form III due to insufficient documentation to support the Form II or to validate Verification that supported the filing of the Form II*
- Form IV: A total of 208 filed.*
- 34 re-filed a Form III due to insufficient documentation to support the Form IV*
- Form III: A total of 3325 filed.*
- 800 filed pre-ECAF/LEP program*
 - 2525 filed post-ECAF/LEP program*

Comment - December 22, 2010:

The Illinois DEP has an approach to approve the clean-up of individual AOCs. This dovetails into the concern that the cost of investigation [of an entire site] creates 'Brownfields'. DEP needs to shorten the amount of time for AOC remediation approval. There needs to be a light at the end of the tunnel.

Response:

This comment addresses the difference between laws targeting cleanup of specific releases versus laws targeting investigation/cleanup of properties as a whole. In Connecticut, there are laws that target release areas, other laws that target entire sites, and still other laws that allow the party performing the cleanup to choose to clean up either a single release or all releases on the property as a whole. Section 22a-133x of Connecticut General Statutes (CGS) provides the opportunity for applicable parties to verify the remediation of either a "Release Area" or all releases on a property. The Property Transfer statute (CGS Section 22a-134a) is a site-wide cleanup statute, though it provides the opportunity to verify the remediation of a "Portion" of an

establishment at a time. The Property Transfer statute also provides (for filings after 10/2009) the opportunity for an “interim verification” to demonstrate that a site has achieved compliance with the RSRs, except for ongoing groundwater remediation activities.

The topics of a release-based system versus a property-based system, as well as how to shorten the timeframe for a party to complete a cleanup, and how to define endpoints, are excellent topics which DEP anticipates will be evaluated during the comprehensive evaluation of CT cleanup programs, which will begin this summer 2011. As part of the evaluation, DEP intends to investigate other states’ cleanup programs.

Comment - December 14, 2010:

Could CT DEP provide a flow chart that can be made available to responsible parties and potentially responsible parties, showing them that there is a route to verification/closure?

Response:

There is a flow chart located on the CT DEPs Remediation website under the Property Transfer Program. The link is located at the bottom of the Property Transfer Program fact sheet. http://www.ct.gov/dep/cwp/view.asp?a=2715&q=325006&depNav_GID=1626

Comment - December 14, 2010:

It is too difficult to get credit for LEP courses that are not already approved.

Response:

The current process allows anyone, not just a course provider, to request course approval. This can happen before attending a seminar or conference so that the person knows what CEC will be credited. The rules for course approval are governed by the regulations and follow the procedures outlined on the [LEP Board website](#). Additionally, [LEP Board meetings](#) are open to the public and issues may be brought to the Board’s attention in this venue.

Comment - December 22, 2010:

In the ECAF, the Part VIII table should have a separate column to report the maximum concentration for each media.

Response:

The table has been revised (11/4/10) overall to focus on necessary information for the Commissioner to determine LEP oversight. Additionally, only maximum concentrations are requested on the Contaminants in the Environment table in the ECAF.

Comment - December 21, 2010:

On the ELUR Application form, I would suggest combining tables IV and V of the Subordination Waiver Request Form and generate a form that actually allows the user to input data to the form. The cells in the current form do not work.

Response:

The Subordination Request Form is a draft document. This document is being revised to address this issue and other comments. Currently, there are both Word and PDF versions posted on line. The Word form's cells accept information. The PDF form is not fillable. Specifically, the subordination tables to which you refer, Section E, Parts III and IV of this form, are fillable in the Word version. The directions also indicate that if more space is needed, the applicant should include this information on a separate sheet of paper in the same format.

Comment – February 8, 2011:

Why isn't the Hazardous Waste Manifest Database kept current for establishment determination?

Response:

The staff of the Waste Engineering & Enforcement Division (W.E.E.D.) have lost over half of their data entry staff over the past few years. This has pushed the data entry lag time for hazardous waste manifests from 5 months out to over 2 years. W.E.E.D. is currently entering manifests for shipments that occurred in 2008. The last complete year available in the published database is 2007.

To help address this issue, W.E.E.D. initiated a LEAN Project and held a one week Kaizen event during the week of May 16, 2011. The event included DEP staff and participation from an outside stakeholder familiar with Property Transfer Act filings. As a result, an implementation plan was developed which includes various web-based tools to streamline the response process. A test version of the revised manifest database is anticipated to be made available in June, 2011.

In addition, a federal electronic manifest clearinghouse to receive, process and publish all manifest data is still anticipated. When authorized by the US Congress, this will eliminate the need for states to individually receive, process, and publish manifest data and at the same time, provide a cost savings to industry. These electronic documents are to be made available 30 days after shipment.