



**Department of Energy and Environmental Protection  
Remediation Division  
Roundtable  
Q&A Newsletter  
Vol. 6 ~ January 12, 2012**

Presented below are the Department's responses to verbal comments presented at the Remediation Roundtable held on November 8, 2011 and selected written comments received by the Remediation Roundtable Committee from December 2010 through December 2011. The comments and responses may have been edited for clarification purposes.

**SELECTED VERBAL COMMENTS FROM THE NOVEMBER 8, 2011 ROUNDTABLE:**

**Macky McCleary, Deputy Commissioner of Environmental Quality**

**Comment:**

Can you tell us a little bit about your background prior to DEEP?

**Response:**

*I had been with McKinsey & Co., a global management consulting firm, since 2006. In that time I worked on transformational efforts for a wide variety of clients, including several major international cities, to help prioritize operational improvements that they can make to reduce greenhouse gas emissions. I also recently managed a team that developed a long-term economic and environmental sustainability plan for a regional government organization in the Mid-Atlantic States. The plan featured initiatives to address water conservation, sewage, solid waste disposal, and increasing the use of alternative energy.*

*Prior to joining McKinsey, I was the co-founder and president of EmPower CES, a start-up clean energy and green building development company. EmPower was built around a commitment to energy independence and environmental stewardship – an approach in synch with the vision of DEEP – and the company remains in business marketing clean energy products and services to homeowners, businesses and institutions.*

*I have also been involved in community affairs – playing an active role in statewide political campaigns in neighboring Rhode Island and serving on several boards and commissions. I was previously a member of the U.S. Green Building Council's Long Island Chapter. Some current activities include serving as the Vice-Chair of the Board at the Providence Plan, an organization working to improve the economic and social well-being of that city, and as an Advisory Board member of the World Child Project, a non-profit group assisting vulnerable children in the world's poorest regions.*

*Note: Macky holds both a BA and a MA from the Yale School of Architecture and earlier in his career worked as an architect.*

**Comment:**

Do you have specific ideas about how to revitalize Brownfields in Connecticut?

**Response:**

*I believe it should be a regional approach, not only addressing Brownfields in Connecticut but throughout New England. I want to work cooperatively with the other New England states and EPA Region 1 to develop more consistency in our approach and to give the region a competitive advantage, much like the consistency that the European Union is trying to achieve or even the Pacific Northwest of the United States. The Comprehensive Evaluation and Transformation process that is on-going is what we should be doing and should help toward that end.*

**Comment:**

Do you feel that Connecticut is bounded by EPA Region 1? Connecticut does have interaction with New York.

**Response:**

*No, I do not feel we are bounded by Region 1. Other Regions and states can offer good ideas.*

**Brownfield Public Act 11-141, Section 17**

**Comment:**

Under this new Brownfield Remediation and Revitalization Program (Section 17 of Public Act 11-141), must on-site releases be cleaned up to the Remediation Standard Regulation (RSR) standards?

**Response:**

*Yes.*

**Comment:**

What involvement does DEEP have if a site is accepted to the new “Section 17” program, other than for the discretionary audit at the conclusion of site remediation?

**Response:**

*DEEP consults with DECD on applications to enter the program; process and a renders a decision on any variances requested pursuant to the RSRs; and monitors compliance with the statutory schedule for investigation, RAP and Verification/interim Verification.*

**Comment:**

When a site is in the new “Section 17” Brownfield Program, do subsequent owners have to go through the same application process to get liability protection?

**Response:**

*No, subsequent owners will not be part of the competitive quarterly application process. They will have to contact DECD to obtain the continued liability protection. This mechanism will be established by DECD, and DECD will be able to provide further details.*

**Comprehensive Evaluation and Transformation**

**Comment:**

How detailed will the December 15, 2011 proposal be in comparison to what will be submitted to the Legislature in February 2012?

**Response:**

*The December submittal will present the vision for a transformed cleanup program and the overall concept for the new program. In advance of the start of the Legislative Session in February, DEEP will have a detailed legislative proposal that will be based upon the stakeholder process, including comments on the December 15, 2011 Report to the Governor and General Assembly.*

**Comment:**

Will the new legislative proposal completely supersede the Property Transfer Act?

**Response:**

*Throughout this Evaluation process many stakeholders have raised their concerns with the effectiveness and efficiency of the Property Transfer Act. This 1985 Act, which has been modified 20 times and in every year but two since 1995, has reduced risk, but needs much more than a minor adjustment.*

**Comment:**

Besides issuing the draft report, will you consider presenting the report at meetings such as this where people can ask questions?

**Response:**

*We anticipate having two public meetings to discuss this between now and February. The first date is set for January 10. The second date has not been set at this time, pending the availability of either the Commissioner or Deputy Commissioner, or both.*

**Comment:**

Will comments you received on the reports be posted?

**Response:**

*We have received many comments, some regarding the report, some regarding the vision, and others that were more general. Comments we received will be summarized and discussed in the December 15, 2011 Report. This Report, like all documents related to this process, will be posted on the [Transformation website](#) for public input.*

**Comment:**

Do you intend to meet with both the House and Senate chairs of the Environment and Commerce Committees?

**Response:**

*Yes, we plan to meet with both to discuss the findings of the Evaluation report from the Department's point of view.*

**Comment:**

When DEEP submits the proposed legislation, will a single bill be submitted to both committees, or will there be two bills, one at each committee?

**Response:**

*As is Legislative practice, DEEP will submit one bill.*

**Proposed Changes to the RSRs**

**Comment:**

The changes to the RSRs you presented are positive. Do they need to go to the legislature for approval? What is the timing for the new ETPH/EPH/VPH criteria? When DEEP finishes its review, how soon will it be available to the public?

**Response:**

*Yes, the changes will have to go through the normal regulatory approval process, including review by the Governor's Office and Office of Policy and Management (OPM) and a public hearing and comment period. All of this may take at least 6 months. The last step is review by the legislature's Regulatory Review Committee.*

**Comment:**

Are the revisions to the RSRs independent of the Comprehensive Evaluation and Transformation process?

**Response:**

*These changes are designed to work with other initiatives that are being put forward.*

**Comment:**

When will the proposed 2008 criteria be available to the public?

**Response:**

*The draft 2008 criteria are not regulations as of yet, so use of these criteria is optional. The criteria are not available on the Department's website at this time; however, questions regarding the use of these criteria may be directed to the Remediation Division contact [craig.bobrowiecki@ct.gov](mailto:craig.bobrowiecki@ct.gov).*

**Comment:**

Are the draft 2008 criteria currently available for site-specific use upon request?

**Response:**

*Yes, you may request approval for use of these criteria under an Additional Polluting Substance or Alternative Criteria request, as appropriate.*

**Comment:**

Do you plan to set a transition period for using the draft 2008 criteria?

**Response:**

The proposed revisions to the RSRs do not contain proposed criteria other than lead, ETPH, and APH/EPH/VPH. The proposed lead criteria will be the criteria recommended by EPA. A transition period will apply for lead because criteria for lead were included in the 1996 RSRs. Conversely, ETPH, APH, EPH, and VPH did not previously have criteria in the 1996 RSRs, so there would be no criteria to transition from. However, the proposed RSRs package will go

through the normal legislative approval process, and therefore, those who wish to request to obtain Departmental approval of criteria prior to legislative changes taking affect, may do so.

**Comment:**

Is PMC for EPH/VPH determined by a leaching or total analysis?

**Response:**

*Compliance with the pollutant mobility criteria for EPH/VPH may be determined by both leaching analysis (by SPLP/TCLP) and total analysis using the VPH and EPH methods.*

**Comment:**

For Additional Polluting Substances criteria, can the volatilization criteria from the draft 2008 RSRs and the 2003 Volatilization Criteria be used?

**Response**

*These criteria can be used on a site-specific basis with approval from DEEP. For Additional Polluting Substances (for which there are no 1996 established criteria), you can request to use criteria off either list but not pick and choose from both lists, unless the 2008 list has criteria that the 2003 list does not have. Further details are available on the [Remediation's website](#).*

**Comment:**

Are the criteria for ETPH risk-based criteria?

**Response:**

*ETPH criteria are not risk-based. However, the criteria for EPH/VPH will be risk-based.*

**Comment:**

For EPH/VPH, what criteria should we use now?

**Response:**

*Craig Bobrowiecki of the DEEP Remediation Division can provide you with DEEP-recommended APS criteria, which you may request for site-specific use. Craig can be contacted at [craig.bobrowiecki@ct.gov](mailto:craig.bobrowiecki@ct.gov).*

**Comment:**

Are there any solutions for compliance with DEC where soil contains asphalt fragments and ETPH, but no VOCs? In the case of a parking lot, ETPH in soil often exceeds DEC, but there has not been a real release. It is very expensive to remove all of the soil or put down an engineered control. PMC was exempted for polluted fills, but why not for DEC?

**Response:**

*Asphalt fragments are part of polluted fill exemption which states that you don't have to comply with PMC if certain conditions are met. You still need to address DEC. The proposed RSR revisions would allow the fill polluted with asphalt fragments to be rendered inaccessible by covering it with pavement.*

**Significant Environmental Hazards: Notification and Follow Up Actions**

**Comment:**

For evaluating threats to potable wells, you said that the overburden investigation is generally not helpful to DEEP because typical wells in Connecticut are 200-300 feet deep in bedrock. We don't normally characterize 200-300 feet down into bedrock. Are you saying that we should draw a 500-foot radius around the site and evaluate all wells, regardless if some are upgradient from the site?

**Response:**

*Yes, unless you have good information on groundwater flow in bedrock with respect to drinking water wells. If you are on a steep slope and know flow and fracture orientation, then this is not necessary. However, most often you don't know these details. Because of the complexity of flow patterns in the bedrock aquifer, it cannot be determined that the "upgradient" wells, relative to overburden flow directions, are not potentially impacted. Bedrock fractures can contribute some portion of flow to any well within a conservative contribution radius of several hundred feet.*

**Comment:**

Can you link your database to the State website for public use so that PDFs of Significant Environmental Hazard documents can be viewed over the Internet?

**Response:**

*Electronic copies of notifications, acknowledgements, approvals, memos, and certifications are now available for review on the computers in DEEP's public file room. We do not have capability to make this information available on the website at this time; however, this is a goal we are working towards for the future.*

## **Urban Fill Workgroup Update**

The Urban Fill Workgroup has been soliciting questions and comments on an ongoing basis via the Department's website and the Roundtable forum. The Workgroup intends to continue addressing all feedback received and expects to make recommendations to the DEEP on a streamlined process for characterizing and remediating with Urban Fill this winter in support of a guidance document. Updates will be provided at a future Roundtable event.

### **SELECTED WRITTEN COMMENTS**

#### **Comment: (12/22/10)**

DEP policy concerning an "Engineered Control Light" variance under the RSRs appears to be implemented differently depending on the staff person involved. For example, different thicknesses of cover are being allowed and the approvals have been granted under various sections of the RSRs. The DEP guidance document on this topic does not explain these variations in the DEP approvals.

#### **Response:**

*The term "Engineered Control Light" refers to an approach being used to address soils polluted in excess of direct exposure criteria but below the pollutant mobility criteria. This option is used to provide flexibility beyond the default approach allowed by the use of just an ELUR to render these soils inaccessible.*

*The question points out the fact that different types of engineered controls have been required at various times for seemingly similar settings. In recognition of the variability in the review and approval process for Engineered Controls over time, the Department evaluated the entire process in a LEAN event in 2007. A process was implemented for improving internal consistency in the handling of future applications for this variance. This was followed by the issuance of the Engineered Control Guidance Document in February 2009, which was revised in November 2010, as well as a standardized two part application form.*

*One of the inconsistencies which was resolved was clearly specifying which section of the RSRs would be referenced in the approval of the so called "Engineered Control Light." According to the language in section 133k-2(f)(2)(B)(i) of the RSRs, not all Engineered Controls are required to include a low permeability cap. Specifically, subsection (aa) of that section refers to an Engineered Control being constructed to physically isolate polluted soil and to minimize the migration of liquids through soil. However subsection (bb) refers to an "engineered cap" as having a permeability less than  $10^{-6}$  cm/sec, using wording which infers that such a cap need not be part of every Engineered Control.*

*The Department believes this RSR language allows the use this variance to the default ELUR approach. Revisions to the RSRs have been drafted and are being proposed to make this language more clear.*

**Comment: (4/14/11)**

In future final verifications where the Form IV (supporting) has already been accepted, can we tailor the final report to just address groundwater monitoring compliance? It would be very beneficial for us not to have to recreate all the previous stuff if only groundwater monitoring results are remaining to be reviewed.

**Response:**

*The current Verification Report Guidance Document addresses this issue. An LEP only needs to provide enough 'set-up' information to provide the proper context for the "Final Form IV Verification", such as Site Information, Environmental Setting, recap of what the outstanding actions were at the time of the Supporting Form IV Verification, and the details of how final compliance with the RSRs has been achieved (completion of the MNA and/or post-remediation monitoring, and/or recordation of the ELUR).*

**Comment: (9/13/11)**

It was requested that the common problems in Verifications be included as a future agenda topic.

**Response:**

*The outstanding issues that prompt a rejection of a verification are being tracked. DEEP intends to evaluate the commonality of problems, why specific areas of site characterization or application of specific RSR provisions are problematic, then draft either a brief fact-sheet or short guidance on how to avoid such problems.*

**Comment: (2/8/11)**

Regarding multiple filings and Certifying Parties, how is liability determined and what if there are access issues?

**Response:**

*Every certifying party has a statutory requirement to comply with the Property Transfer Law. If Party A certifies a Form III, then later sells and Party B certifies a Form III, Party A remains obligated to comply with the law, and Party B also becomes obligated to comply with the law. If Party B then sells property to Party C, and C certifies a Form III, Party A, B, and C have legal obligations to investigate and remediate. DEEP understands that there may be contractual arrangements between parties on who will retain or take over the lead in the continuing investigation and/or remediation of the site, but all parties are legally obligated.*

*Additionally, the Property Transfer Law was modified in July 2011 (PA 11-141) to address this concern of multiple Certifying Parties to some degree. The Property Transfer Law now allows a Certifying Party to submit a verification that all releases at the property, at the time of transfer or completion of a Phase II (whichever is later) have been remediated. Therefore, liability for releases that occur subsequent to one of the two milestones are no longer associated with the seller.*

**Comment: (12/14/10)**

Clarify that sediment characterization and remediation (if necessary) is required by statute and regulation.

**Response:**

*The Transfer Act requires remediation, which is defined to include containment, removal or abatement of "pollution, potential sources of pollution and substances in soil or sediment." Also, sites subject to RCRA Corrective Action are required under RCRA to address any ecological risk, including in sediment. For other properties/businesses that are in a remedial program where remediation must be completed in accordance with the RSRs, Section 22a-133k-2(i) of the RSRs under the heading of "additional remediation of soil" states in part that, if the Commissioner determines there is a potential ecological risk, he may require that an ecological risk assessment be conducted in accordance with EPA/630/R-92/001, February 1992, "Framework For Ecological Risk Assessment" and that additional remediation be conducted to mitigate any risks identified in such assessment. Furthermore, (2) at any location at which polluted soil has eroded into a surface-water body, the Commissioner may require that the effect of such polluted soil on aquatic life be assessed and that remediation to protect or restore aquatic life and surface water quality from the effects of such polluted soils be undertaken. Many parties elect to characterize/remediate (if needed) releases into sediments upfront, rather than wait (towards the end of their cleanup process) for the Department to discover a sediment issue and direct the party to go back and characterize and/or remediate.*