



The LSRPA, particularly the Regulatory Outreach Committee (ROC) and Risk Management and Loss Prevention Committee (RM&LMC), is extensively involved in the ongoing SRRA Stakeholder process. For the past year, this has included participation in all public meetings of the NJ Site Remediation Professional Licensing Board (and the preparation of minutes for review by the membership), and hands-on involvement in all of the various Stakeholder Teams created by the NJDEP to facilitate the successful implementation of SRRA and the LSRP program, including: (1) Development of guidance documents, (2) Revision of the Technical Requirements for Site Remediation (Tech Regs), (3) Development of “Measures of Success” metrics, and (4) Identification of short-term training and administrative support needs. As part of our involvement in these teams, particularly guidance document preparation and Tech Reg revision, the Association has identified a series of technical and policy issues that we believe are not being fully addressed within the current stakeholder framework, and require additional, long-term dialogue with the Department achieve resolution. These issues are summarized in the attached paper “Top NJDEP-ROC Stakeholder Technical Guidance Committee Issues”. Please review and feel free to contact the Association with additional comments or feedback regarding these important topics (stephen.posten@amec.com and mfisher@elminc.com)

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Top NJDEP-ROC Stakeholder Technical Guidance Committee Issues

Licensing Board

The need for a true stakeholder process with the Licensing Board is critical.

The proposed Board audit procedure remains problematic, in terms of the breadth of non-relevant questions asked in the audit questionnaire, and the depth of investigation of documentation, which appears to be duplicative of NJDEPs responsibility.

The LSRPA believes the only workable Board procedure is to audit the record of submissions by an LSRP, and develop pertinent questions or interviews based on any irregularities observed in the record. For example, the lack of a RE submittal, inconsistencies between the timing of project submittals, DEP technical review, LSRP dismissal, etc. Problematic responses to any of these questions could result in the actual need for document review, but we believe this process would allow for a straightforward determination of whether an LSRP was appropriately moving through the process. We believe this gets to the Board’s requirement to “audit annually the submissions”, with “appropriateness of conduct” determined through the follow-on information requests or interviews.

Guidance Documents

The draft guidance documents issued to-date vary greatly from those that are truly guidance (for example CSM and MNA) to those that are prescriptive (for example, Alternative/Clean Fill). The guidance documents need to be consistent in that they should help shape the technical concepts/options that will ultimately define the standard of care in support of professional judgment. Any guidance that uses the word "shall" should be supported by a regulatory citation; otherwise it's effectively regulation, not guidance.

Policy Issues

LSRPA is strongly opposed to any policy that would require prior notification to NJDEP of the planned use of a variance from TRSR or guidance during the remedial process.

Perimeter site air monitoring guidance: where did this come from?

What is the status/objective of Len Romino's internal "operational facility" committee? Will this address issues like property boundary point of compliance as a means to defer cleanup where there is no impact to human or ecological receptors?

There is virtually no practical basis for requiring the sampling of soil for compliance with direct contact SCC below the water table. Aside from the fact that the accuracy and precision of such data are compromised by the saturated nature of the soil, the potential for lifetime chronic exposure to such material is essentially zero. Where contamination exists below the water table, compliance should be driven by the GWQS. Sampling of soil below the water table should be limited to: (1) characterization of the "smear zone" where one is documented to exist, (2) derivation of contaminant distribution coefficients (as necessary for the development of a ground water remedy), and (3) characterization of soils or sediments where the seasonally high water table is at ground surface.

Impact to Groundwater Pathway

Having the Point of Compliance for ground water set at the source drives requirements for both overly conservative IGW soil criteria and in many cases requires soil and/or or ground water remediation when no human health or sensitive environmental receptors are impacted or threatened. Furthermore, the resulting overly conservative IGW criteria are not practical to apply to soil reuse policies.

For example, for the SESOIL/AT123D Option for the IGW Pathway, the requirement to demonstrate meeting GWQS within 5 years at Compliance Point 1 does not take into account remedy protectiveness. This requirement will drive remediation on many sites where the use of SESOIL/ AT123D is the only current available option to demonstrate that remaining soil impacts should not have to be remediated. In many cases, one can rely on Compliance Point 2 to demonstrate that a plume is not growing to demonstrate that a remedy is protective.

NJDEP's position that ground water must be protected in all cases and that stable/slowly shrinking plumes are not considered an acceptable end point is also inconsistent with the mandate of SRRA to evaluate remedies based on their effectiveness at ensuring protection of human health and the environment.

The LSRPA believes that identification of a property boundary point of compliance for industrial land use is essential to the practical implementation of the SESOIL/AT123D Option for the IGW Pathway.

The IGWSSL FAQ:

- The FAQ contains apparent technical errors, is an inappropriate format for policy, and was developed without stakeholder input; for example, the statement that

- The statement that the DIGW SRC are often used to determine if a groundwater investigation is required is inappropriate without supporting studies;
- NJDEP has limited the practical application of the use of the distribution coefficient calculated from site-specific SPLP data by limiting the extrapolation of the relationship to the highest concentration sample (rather than the result obtained by application of the soil-water partition equation using the site-specific K_d). The technical basis for this is extremely unclear; for example, EPA guidance acknowledges a direct linear partition coefficient relationship at very low solute concentrations, which is the range under investigation at sites with residual soil contamination (EPA 402-R-99-004A: "Understanding Variation in Partition Coefficient Values"; 1999). At the very least, this constraint should not be applied where: (1) constituent/inorganic concentrations are within the range of documented background conditions (e.g., USGS Professional Paper 1270 (1984), and the series of reports on ambient metals concentrations in New Jersey soils prepared by BEM systems for the NJDEP in 1997, 1998 and 2002); or (2) within the range of reported literature K_d values for similar soil, pH, etc. conditions (e.g., EPA, 1999).
- NJDEP has limited the practical application of the SESOIL model by constraining the flexibility built-in to the code to address real-world conditions (for example, limiting the amount of soil layering that can be simulated by the model).

LNAPL

Continuing the stakeholder process following completion of the IRM guidance is necessary to further address final LNAPL remediation and endpoints. This includes helping DEP better define what is acceptable for removal of LNAPL to the 'maximum extent practicable'? For example, the tech regs and the language around 'free product' as a solid or semi-solid is not technically sound. While the tech reg requirements for removal of all free product (or contain where impracticable) is consistent with the federal policy, the DEP has stretched this to address solids. What solid product is, and why it must be removed, is not defined anywhere, but appears to reflect a conservative mindset of DEP, and one that confuses the issue of LNAPL and conflicts with soil remediation standards.

Also, need to address the policy underlying IRM guidance that requires LNAPL mass removal.....just for mass removal sake: what is basis? There is a need for additional flexibility in addressing both LNAPL and IGW soil impacts when there are no threatened or impacted receptors. Same issue here with "residual product" as a barrier to completion of remediation and transition to LTM.

Soil - Direct Contact Pathway

Sampling and analysis of soils below the water table should not be required as a compliance metric; below the water table, the compliance metric should be GWQS. Sampling of soil below the water table should be considered an optional exercise that may be necessary to define contaminant soil-water partitioning in support of remedial design.

Vapor Intrusion

- The current Rapid Action Levels used to determine an IEC are based on a residential exposure scenario; this does not consider industrial/commercial use nor does it consider an educational use scenario (e.g., shorter duration exposures).
- The VI Guidance policy on the use of the OSHA PELs as the applicable industrial/commercial criteria should include the use of PELs for all VOCs in any industrial setting where OSHA monitoring is conducted.
- If an IEC was mandated by using the previous IASLs, something now termed as a vapor concern, there is no guidance for what to do with the old cases.

Remedial Action Permits

RFS requirements for non-permanent remedies with engineering controls should not be required for qualified innocent purchasers who purchase a site after May 9, 2009. In addition, RFS requirements for 'responsible parties' should be less onerous. Many smaller businesses that are actively pursuing remediation will be threatened by the current requirements for calculating costs based on a 30 yr. life cycle. Allowance should be made for rfs cost estimates to be made for engineering controls based on 6 years. This allows ample time to update based on the biennial certification process.

UHOT Program

An LSRP should be able to close an unregulated UST case with an RAO, and not have to abide by the overly stringent regulations being developed under the UHOT program effort and request an NFA from the Department.

Ecological Risk Assessment

Requirements for Ecological Risk Assessment for Historic Fill impacts

Presumptive Remedies

The presumptive remedies established by NJDEP should not be included in detail in the TRSR, but should be referenced as guidance. As a regulation, this limits the LSRP's use of professional judgment.

Forms

An LSRP should be permitted to withdraw from a case without the requirement to obtain the signature of the person responsible for conducting the remediation. Existing forms to provide for a change in the LSRP require the signature of the person responsible for conducting the remediation and should be modified to provide for "withdrawal by the LSRP."

Day Care Centers/ Schools

There needs to be some coordination between NJDEP and DHSS relative to the indoor air requirements on day care centers and schools. DHSS has created its own program and it is starting to push more and more centers to do indoor air with a licensed contractor and DHSS is very vague on requirements and standards.

The NJDHSS Indoor Environmental Health licensing for should include/exempt the LSRP from the separate application and its \$2,000 fee.

Guidance is needed for application of the Preliminary Assessment to Daycare/Schools as well as the PA-lite when it comes to alternative and clean fill. NJDEP should clarify what these documents are and what diligence must be completed to meet whatever standard they are setting. The PA Guidance was developed for when an RP is seeking a site-wide RAO for an industrial establishment that triggered ISRA or for any property where a site wide RAO is desired. The PA Guidance does not include interior sampling (asbestos or lead-based paint nor does it include indoor air sampling as part of the PA). It also does not indicate what steps can be skipped if it's only being done for clean alternative fill.

The Child Care and Educational Facilities Unit requires the submission of a PA that include more information than specified by the current TRSR and the draft guidance, e.g. a radius search for off-site contaminated sites, CEAs, and CKEs. We are told there is a draft guidance document that has not been reviewed outside the unit; however, that document has issues with the provisions of the Madden legislation.

Laboratory Certification

Issue of requiring full laboratory certification for “analyze immediately” parameters, when the application is solely for the observation of indicator parameter stabilization during low flow ground water purging and sampling activities. In such cases, manufacturer calibration specifications should be sufficient.