NJWEA

LSRP Program: Hands-On Experience

June 16, 2010

Status of Rules , Policy & Guidance Panel

Presentor:
Mark Fisher, The ELM Group, Inc.

SRRA Stakeholder Committees

- Request for volunteers (listserv Jan 27, 2010)
- Identification of Steering Committee and 4 Stakeholder Committees
- Created to insure success of SRRA/LSRP program through transparency of process and inclusion of all interested stakeholders in the regulatory and technical guidance development process

SRRA Stakeholder Committees

- Measures of Success
  - Develop performance metrics (as viewed separately by DEP, LSRPs, RPs, the public)
- Near Term Initiatives
  - Identify information gaps or training needs
- Revision to the Technical Requirements for Site Remediation (“Tech Regs”)
- Development of Technical Guidance

Technical Guidance

- Open stakeholder development process required under Section 14.c(3) Of SRRA:

  "The department shall provide interested parties the opportunity to participate in the development and review of technical guidelines issued for the remediation of contaminated sites."

Technical Guidance

- Committee Chair: Dave Sweeney
- Two full committee meetings held to date:
  - March 16, 2010
  - April 30, 2010
- LSRPA provided ‘White Paper’ topics of discussion for each meeting
- Future meetings will consist largely of working sessions by subcommittee stakeholder teams
- Periodic reconvene of full committee to discuss subcommittee progress, lessons learned, etc.

Technical Guidance

- March 16, 2010 Meeting:
  - Define objectives (what makes good guidance?)
  - Identify topics
  - Prioritize topics
- April 30, 2010 Meeting:
  - Finalize topic list
  - Finalize prioritization/grouping of topic areas
  - Establish teams
  - Insure representation by cross-section of interested stakeholders (DEP, RP, LSRPA, public agencies, other?)

Technical Guidance

- Subcommittee Topics:
  - Divided into 3 topic areas
    - Short Term/Priority Guidance Topics
    - Longer Term Guidance Topics
    - Tech Reg Support
- What makes good guidance?

Technical Guidance

- Short Term Guidance Topics (1st Draft Date)
  - Vapor Intrusion (3/2011)
  - Light Non-Aqueous Phase Liquid (LNAPL) (9/2010)
  - Receptor Evaluation (10/2010)
  - Presumptive Remedies (12/2010)
  - Immediate Environmental Concerns (IECs) (1/2011)
  - Clean Fill/Alternative Fill (11/2010)

Technical Guidance

- Longer Term Guidance Topics (1st Draft Date)
  - Historic Fill (10/2011)
  - Technical Impracticability (11/2010)
  - Natural Remediation (12/2010)
  - Conceptual Site Model (2/2011)
  - Analytical Methods (10/2010)
  - Ecological Investigation (3/2011)
  - Attainment of Remediation (3/2011)

Technical Guidance

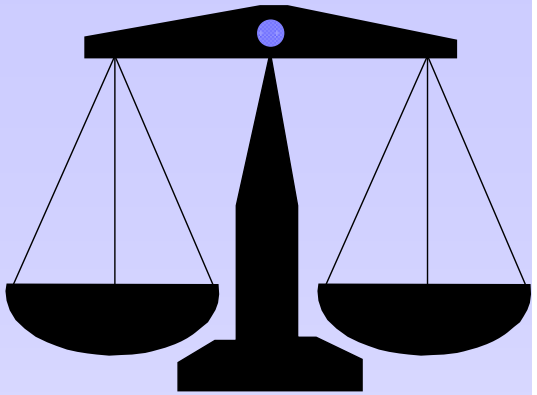
- Tech Reg Support
  - Revised Tech Regs will focus largely on site investigation/ remediation objectives
  - Prescriptive requirements will be removed from rule
  - Technical guidance to provide 'tool kit' to achieve objectives
  - Guidance topics (1st Draft Date):
    - Contaminated Soil Investigation/Remediation (3/2011)
      - Preliminary Assessment (PA)
      - Site Investigation (SI)
      - Remedial Investigation (RI)
    - Contaminated Ground Water Investigation/Remediation (3/2011)
      - Preliminary Assessment (PA)
      - Site Investigation (SI)
      - Remedial Investigation (RI)

Technical Guidance

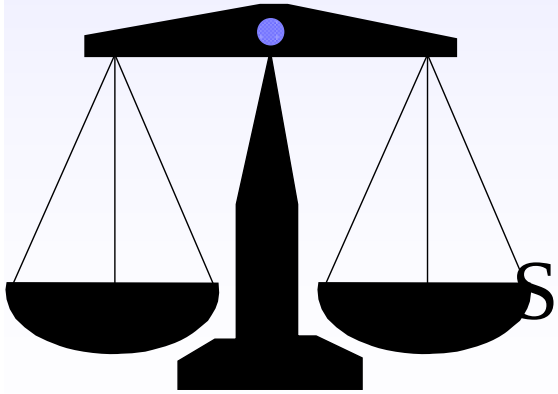
- What Makes Good Guidance:
  - Guidance should reflect state-of-the-practice approaches and methodologies within the industry and must be updated on a continuing basis to reflect new developments and applications in science and technology
  - Guidance should not outline or memorialize prescriptive steps but focus on outlining available methodologies, techniques and approaches to achieve objectives, while highlighting the circumstances in which they have been used

Technical Guidance

- What Makes Good Guidance:
  - Conclusions associated with specific technical approaches contained in guidance should not be provided as requirements, but as recommendations leading to alternate approaches
  - Guidance must not be used in place of promulgated standards or regulations
  - Scope/timelines) addressed by guidance documents should not exceed or be inconsistent with SRRA and/or promulgated regulations.



REGULATORY AND MANDATORY TIMEFRAMES

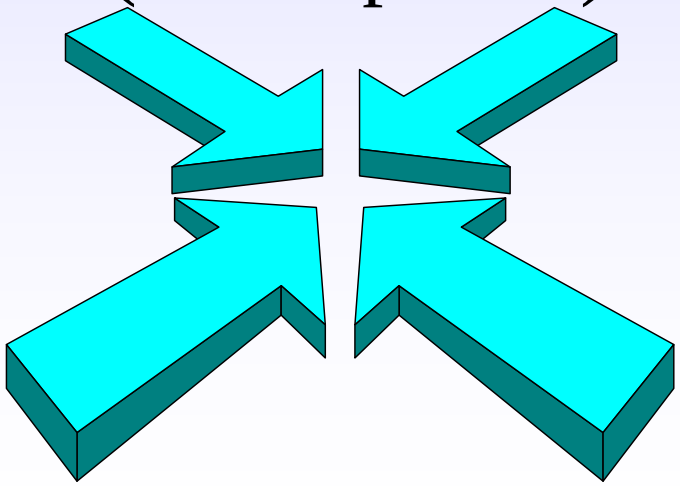


Mark J. Pedersen
Site Remediation Program

June 1, 2010

Regulatory Timeframes

- Are those timeframes provided in the Regulations that have been determined to be appropriate to complete the specific requirement. (Grace period)

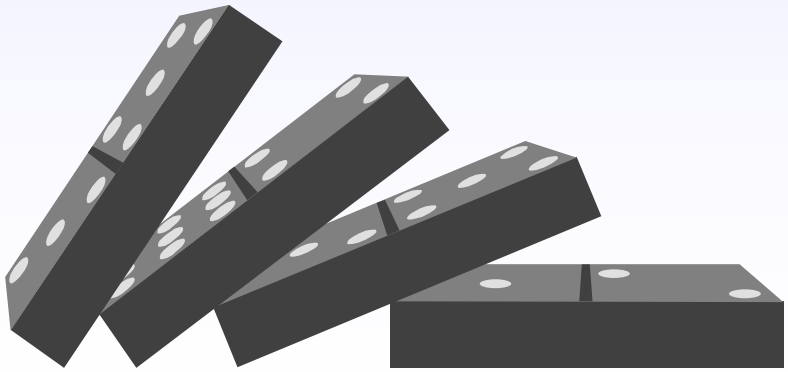


Mandatory Timeframes

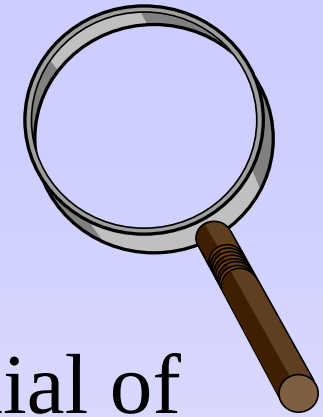
- Are those timeframes provided in the ARRCS rule that have been determined by the Department to be inappropriate to exceed (for certain specific requirements) with out appropriate justification.

Consequences

- Violation of Regulatory timeframes exposes responsible entity to enforcement actions and penalty exposure.
- Violation of Mandatory timeframes exposes responsible entity to “Direct Oversight.”



Direct Oversight

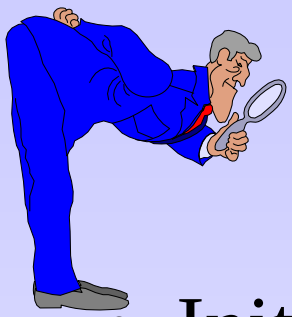


- Requires Department approval or denial of all documents
- Feasibility Study
- Remedial Action selected by Department
- Remediation Trust Fund
- Department controls disbursements
- Simultaneous submissions to Department and RP

Comparison

	Regulatory Timeframe	Mandatory Timeframe
• Receptor Evaluation	9 months	1 year
• IEC source control	9 months	1 year
• LNAPL	9 months	1 year
• PA/SI or UST SIR*	9 months	1 year

* no known discharge



Receptor Evaluation Timeframes

- Initiate upon knowledge of a Discharge
- Complete- 9 months or 11/26/10 which ever is later - Initial RE
- GW: 3 months -well search

  4 months - sample

  2 weeks- if <standard, submit (from receipt of results)

  2 weeks - if >standard (IEC)

  Step out

Receptor Evaluation Timeframes Cont.

- VI: 2 months - ID structures

  5 months - sample

  2 weeks - if <standard, submit data (DEP and DHSS)

  2 weeks - if >standard (IEC)

  Step out

Receptor Evaluation Timeframes Cont.

- Any sampling > standard or screening criteria follow IEC Regulation and Guidance, and

- 14 days- Step out delineation and/or sampling

LNAPL

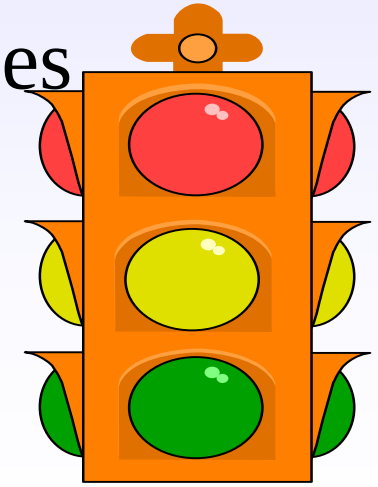
- 2 months- after March 1, 2010 or from Id, which ever is later, initiate recovery and notify(form)
- 9 months- complete source delineation and submit report and form

PA/SI and SIR

- Timing of submittal per licensing requirements for child care
- 3 months or 6/1/10 whichever is later - Clean PA
- 9 months or 11/26/10 whichever is later - PA/SI or SIR

Extension of Mandatory and Regulatory Timeframes

- Mandatory “shalls” in statute
- Some regulatory will be deemed approved if you certify you meet specific conditions in rule
- Extensions for regulatory can not result in non-compliance with Mandatory Timeframes
- DEP can always deny the extension
- Others need DEP prior approval



Remediation Funding Source(s)

- In amount equal to or greater than the estimated cost of remediation, **INCLUDING** the Department's fees, oversight costs, and the estimated cost to operate, maintain and inspect engineering controls unless these cost are covered under an approved Remedial Action Permit.
- RFS MUST be submitted WITH a Remediation Certification.
- **New** RFS Type: Letter of Credit – boiler plate available on web site.
- Self Guarantee Changes:

  *only accepting audited financial statements with an unqualified opinion; and

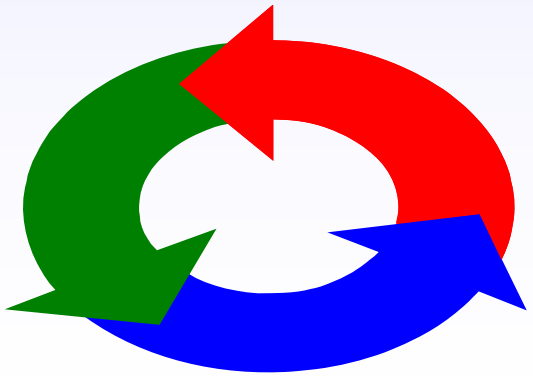
  *Parent company may Self Guarantee for wholly owned subsidiary.
- Parties subject to Direct Oversight may only post a Remediation Trust Fund.
- **ANNUAL** Remediation cost review will be required to be submitted every 365 calendar days from the date the RFS submitted and the RFS increased or decreased.
- Remedial Action Permits will be required to post financial assurance in an amount equal to or greater than the cost of to operate, maintain, and inspect all engineering controls that are part of the permit. Acceptable financial assurance: Letter of Credit, Line of Credit, Remediation Trust Fund and Environmental Insurance Policy. NO Self Guarantee. NO annual 1% surcharge on financial assurances.

SRP GUIDANCE ON DEVELOPING ANNUAL REMEDIATION FEES

June 1, 2010

Annual Remediation Fee

- is the fee paid to the Department on an annual basis pursuant to NJAC 7:26C 3.2, that is based on the number of Contaminated Areas of Concern and Contaminated Media Additives at any given site, area of concern or discrete discharge

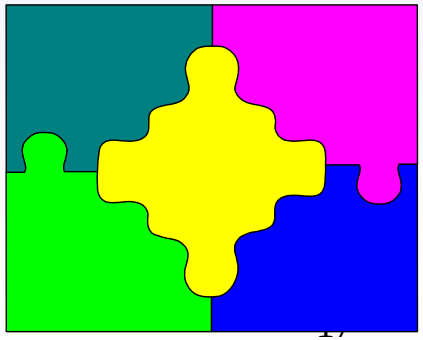


Contaminated Areas of Concern

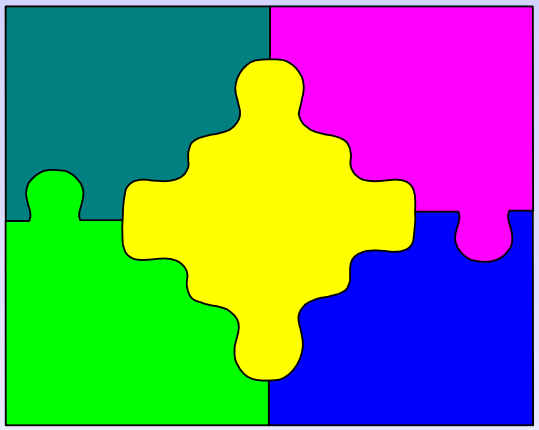
- the number of Areas of Concern, pursuant to 7:26E-1, at a contaminated site, where contamination has been confirmed to have impacted soil, shall each constitute a separate unit.

Contaminated Media Additive

- are those impacted environmental media at the site (ground water, surface water, or sediment) that are contamination from any area of concern or site operations. The specific media impacted shall be counted as a discrete fee additive for each media impacted.



Contaminated Media Additives



- Ground Water
- Surface Water Discharge
- Sediment
- Contaminated above the applicable standard from any AOC, or site operations and it has <u>not</u> been demonstrated that the contamination is solely from an off site source.

Developing the Annual fee
Fee Category + Media

- Fee Category I cases: no contamination or single Contaminate AOC (soils only,) Historic Fill.
- Fee Category II cases:2-10 Contaminated AOC (Reg. UST System, excluding reg. heating oil tanks for onsite consumption)
- Fee Category III cases:11-20 Contaminated AOC (Landfill)
- Fee Category IV cases: >20 Contaminated AOC

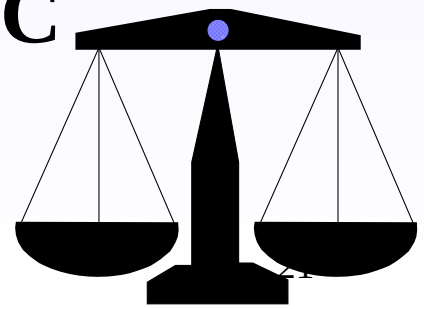
Annual Fee Amounts

- Fee Category I cases - $450.00
- Fee Category II cases - $900.00
- Fee Category III cases- $5,000.00
- Fee Category IV cases- $9,500.00

- Contam. Media Additive- $1,400.00/media

Annual vs. Permit Fees

- **NOTE: If a RAO has been issued for all Area(s) of Concern and impacted media and the remaining remediation is being conduced under a Permit, the remediating party will not be required to pay future annual fees, only the existing permit fees as established in NJAC 7:26C-4.2.**



Permit Fees

	SOIL	GROUND WATER
Permit Application Fee	$550.00	$750.00
Permit Modification Fee	$550.00	$750.00
Permit Transfer Fee	$ 100.00	$100.00
Permit Termination Fee	$550.00	$750.00
Annual Permit fees:		
Limited Restricted Use	$100.00 (DN only)	$250.00 (Nat. Rem.)
Restricted Use	$250.00 (DN & Cap)	$750.00 (All others)

Exceptions/Additions to Annual Fee

- IEC portion of case - Direct Bill + Annual Fee
- Entire case in Direct Oversight or has a case manager - Direct Bill NO Annual fee
- Portion of case in Direct oversight-Direct bill + Annual fee

NJWEA SEMINAR
LSRP Program: Hands-On Experience

Technical Requirements for Site Remediation
Status of Readoption

Barry Frasco - NJDEP

June 16, 2010

Existing Regulations

The Technical Requirements for Site Remediation (Tech Regs) were amended as part of the interim rule package adoption

- Conducted pursuant to Section 29 of the Site Remediation Reform Act
- Effective on filing with the Office of Administrative Law (11/4/09)
- Published in NJ Register (12/7/09)

These interim rules remain in effect for 18 months (expire May 2011)

Rulemaking Plan of Action
Adoption of the Interim Rule

Propose readoption of interim rule with minor changes by November 2010

Process will follow the Administrative Procedures Act

- Will include rule summary, impact statements, and public comment period
- Upon filing of proposal, the expiration date of the existing rule will be extended 6 months (November 2011)

Adoption of rule by November 2011

This is a stop gap measure and is not the rule making process that will be discussed in the remainder of this presentation

Rulemaking Plan of Action Adoption of the "New" Tech Regs

- This activity is separate from but concurrent with the interim rule proposal/adoption process
- Complete overhaul of the Tech Regs with upfront stakeholder input
- Proposal in the New Jersey Register by May 2011 pursuant to the Administrative Procedures Act
- Adoption by May 2012
- Coincides with the conversion of all cases within the Site Remediation Program to the LSRP process

Primary Goal of the Site Remediation Program

Ensure success of the Site Remediation Reform Act and the Licensed Site Professional Program (LSRP) program

How?

One component:

Involvement of interested parties/stakeholders in the regulatory process in a transparent manner

Stakeholder Process

Establishment of a steering committee and four standing committees represented by a variety of stakeholder interests

One of the standing committees:

Technical Requirements for Site Remediation (Tech Regs)

Tech Regs Committee

Purpose:

- Provide input to the Department in the revision of the Tech Regs

Committee of 50+ members

To date: two meetings have been held (3/16 and 4/27)

Initial meetings discussed how the rule should be structured

Tech Regs Committee

Committee agreement that:

- Use the Tech Regs to iterate remedial phase objectives that include actions needed to be completed and timeframes to accomplish.
- Focus on the end product – Is the remedy protective?
- Primary focus is not process
- Keep current structure of PA, SI, RI, RA

Tech Regs Committee

Other items discussed

- New Subchapter for requirements that effect all remedial phases: IECs, Receptor Evaluations, IRMs, etc.
- New Subchapter for reporting requirements
  - Idea is to make reporting requirements as similar as possible for all phases of remediation, including types of tables, maps, figures
- "Categoricals" – i.e., tanks, linear construction, others?
- Conceptual Site Model (CSM)

Technical Regulations versus Technical Guidance

The "what" (goals, objectives) will be in the Technical Requirements for Site Remediation

- Example: goal of site investigation is to determine whether contamination is present at site at concentrations above regulatory concern
- these requirements will be enforceable
- Department enforces against responsible party, not LSRP
- will be enforceable against the person conducting the remediation

Technical Regulations versus Technical Guidance

The "how" will be in Technical Guidance which will contain the actual "nuts and bolts" of how to perform investigation

- requirements will not be enforceable
- will be used by the LSRP as part of "Best Professional Judgment" in overseeing the remediation
- LSRP Board will determine whether LSRP followed best professional judgment and determine whether action should be taken against LSRP

Technical Regulations versus Technical Guidance

As a result of the "what" versus "how" approach:

- some requirements currently in Tech Regs will be moved into guidance documents
- some requirements currently in guidance documents will be moved into Tech Regs

Current Activities

An internal (DEP) Tech Rule Workgroup has been established

- Dr. Barry Frasco
- David Sweeney
- David Haymes
- William Hose
- Suzanne Shannon

Current Activities

Workgroup plan of action:

- go through each subchapter of the Tech Regs and mark sections as "rule" or "guidance“
  - idea is to determine what needs to stay in Tech Regs (“what” must be done) and what can go in guidance (“how” something may be conducted based on best professional judgment)
- go through the Tech Regs in its entirety, see what is considered "rule" and then determine how to best organize rule as a whole

Current Activities

Workgroup plan of action:

- present current status on a regular basis to the Tech Regs committee (next meeting scheduled for late June)
- Solicit input from committee
- Develop formal rule proposal