

CTDEP Remediation Division Roundtable Q&A Newsletter

No. 1
February 14, 2011

Presented below are CTDEP responses to selected written comments received by the Remediation Roundtable Committee during December 2010 and verbal comments presented at the Remediation Roundtable held on December 14, 2010. The comments below may have been edited for clarification purposes.

WRITTEN COMMENTS

Environmental Land Use Restrictions (ELURS)

Comment:

Is subordination to the ELUR or simply notification of an interest holder what is needed? Sometimes, I cannot obtain subordination from an interest holder until the ELUR language is finalized.

Response:

All interests in the land must be either subordinated or waived in accordance with section 22a-133o of the CGS. Notice to an easement holder is not sufficient.

To help the owner obtain any necessary subordination agreements, the CTDEP will notify the owner that the Division's review is complete and send a copy of the ELUR to the contact person for the owner's signature. This document may be used by the property owner when negotiating subordination agreements.

Subordination and other ELUR topics will be addressed in a future Roundtable.

General Permits

Comment:

Rather than a General Permit (GP) for each type of remedial additive, can CTDEP either set regulations or create a remedial additives GP which sets the criteria-performance criteria and constraints all remedial additives need to meet?

This would relieve CTDEP of having to issue a new GP for each new remedial additive, and encourage innovation and development of remedial additives.

Response:

A GP for with oxygen supplying compounds exists and is posted on the CTDEP Remediation Division web page at http://www.ct.gov/dep/cwp/view.asp?a=2715&Q=438236&depNav_GID=1626&depNav=/.

The Department is developing a suite of GPs to cover categories of activities, not specific chemistries. For example, a GP for in-situ reductive biological degradation will allow the injection of any chemistry that result in biological conditions that foster reductive destruction or conversion of target pollutants. The GP will authorize the activity in accordance with a plan to implement remedial activities to be approved (i.e., Approval of Registration). A similar GP will address in-situ direct chemical treatments such as the use of strong oxidizers.

Groundwater Monitoring Discontinuance Guidance

Comment:

Can guidance be developed to discuss the discontinuance of groundwater monitoring?

Response:

Please refer to the “Guidance for Groundwater Monitoring for Demonstrating Compliance with the Connecticut Remediation Standard Regulations,” dated March 17, 2006. This document is available at the CTDEP Remediation web page at http://www.ct.gov/dep/lib/dep/site_clean_up/guidance/gwm_guidance_for_demonstrating_compliance_with_ct_rsr.pdf.

Also, CTDEP is considering development of guidance targeting alternative groundwater monitoring plans.

Investigation and Remediation

Comment:

Costs for cleanup of a small site are increasing due to License Environmental Professional (LEP) requirements (Site Characterization Guidance Document, Reasonable Confidence Protocols, Completion of Investigation Report, etc.) The cost of cleanup can be greater than the value of the property. Could this be creating a new class of Brownfield sites by keeping people from starting to work on these sites because the bar is set too high?

Response:

Investigation and remediation approaches and cost issues will be explored in greater detail in future roundtable sessions. Such approaches at small sites may be a good topic for a Roundtable breakout workgroup to evaluate and share with the Roundtable.

DEP is currently developing the implementation details for a proposed Presumptive Remedy for Brownfields. The approach relies on capping the site as the major remedy and has two major components: 1) To develop criteria that would identify the settings and circumstances in which DEP would approve the approach so that when the details of a Brownfield redevelopment project are initially discussed among private parties, they will have confidence that capping would be an approach acceptable to DEP; and 2) the characterization of a site would be focused on demonstrating that the cap will be protective of human health and the environment. This characterization effort would be a more focused and less expensive approach than characterizing a site where the remedy selection is uncertain and the future development of the property is unknown. The desired result would be a less costly site investigation that yields a fully protective remedy.

Comment:

Develop a Question and Answer (Q&A) that also represents the CTDEP view of "acceptable practice," relative to guidance implementation.

Response:

A Roundtable Q&A Newsletter will be developed periodically and posted on the CTDEP web page. CTDEP may also add information from the Roundtable Q&A Newsletter to the FAQs on the Remediation Division web page.

Feel free to bring your general questions regarding guidance to the Roundtable. If you have site specific questions please contact the CTDEP Remediation Division.

Remediation Standard Regulations

Comment:

Are the draft Remediation Standard Regulations going to be revisited?

Response:

Currently, there is no specific timetable to resume revisions.

Roundtable Procedures

Comment:

Perhaps when agenda is sent out (at least a few days in advance) give opportunity for attendees to submit their questions/comments on that topic to CTDEP in advance so CTDEP can prepare.

Response:

The agenda for each Roundtable will be posted prior to each meeting. Please sign up for the Roundtable List Serve. Feel free to submit your comments and suggestions at any time.

Comment:

A good start. Longer sessions may be the way to go.

Response:

At that this time, CTDEP believes that two hours is an appropriate length for this forum, we are considering breakout sessions, and CTDEP staff will be available after the meeting for follow up discussions.

Comment:

Do I need to "register" to attend the Remediation Roundtable?

Response:

No preregistration is needed and all are welcome. Please note seating capacity of the Phoenix Auditorium is approximately 170.

Comment:

Subcommittees may be needed because so many people attending with different concerns/agendas.

Response:

Yes. Topics for subcommittees will be generated in future meetings.

Transfer Law

Comment:

When submitting an Environmental Condition Assessment Form (ECAAF) and the receptor surveys are incomplete, the party should be given time to complete them in the course of Phase III activities. Oversight should not be CTDEP lead automatically.

Response:

Sites where receptor surveys are incomplete are not automatically retained as CTDEP lead. However, CTDEP does base its decision on whether to retain oversight based largely on the risk posed by a site to potential receptors. If the receptor survey is missing or incomplete and the site conditions are not well understood, it is more likely the CTDEP will retain oversight, at least until the receptor survey is completed.

Comment:

What are the requirements for sites that have entered the CT Transfer Act many years ago? How do current laws and regulations apply to these sites?

Response:

The requirements vary depending on the date of the filing for the transfer. If the general response below does not provide adequate guidance, contact the supervisor of the appropriate remediation district with a specific situation, or question.

For property transfer Form IIIs filed between 10/1/95 and 7/1/07, where DEP delegated oversight to a LEP, the certifying party was required to complete the investigation of the site within 2 years and initiate remediation within 3 years. However, the statute was silent on the reporting requirements to document these milestones. The 7/1/07 changes to the Property Transfer Law carried forward the timeframes for investigation and remediation, and required specific reports and transmittal forms to document completion of the milestones. For Form IIIs filed after 10/1/09, the law requires the Certifying Party to achieve a Verification or Interim Verification within 8 years of the Form III filing date.

The RSRs apply to all sites in the property transfer program.

Verifications

Comment:

There is an apparent trend at CTDEP to delegate CTDEP lead sites to an LEP when the sites near completion.

Response:

The delegation of sites is decided on a case-by-case basis. Once the issues that resulted in DEP retaining oversight have been addressed, the site may be suitable for delegation to a LEP.

Comment:

Establish a pre-verification meeting procedure for LEPs to discuss site-specific issues prior to verification.

Response:

LEPs are authorized and licensed to address a variety of challenges on contaminated sites. DEP has provided guidance for the investigation and remediation of sites, and has provided seminars to convey these guidance documents. Resultantly, DEP will consider meeting with LEPs prior to verification if unique and complex issues are problematic to complete an investigation, if the LEP has unique policy questions, or to discuss specific issues related to application of the RSRs.

Guidance Documents

Comment:

Can CTDEP provide a redlined version of the documents that were revised?

Response:

Redlined versions of the following revised guidance documents were posted on the CT Remediation Division web page: Site Characterization, Engineered Control, Data Quality Assessment and Data Usability Evaluation, ECAF Instructions, and Reasonable Confidence Protocol. A redline version of the ECAF form was not posted because the redlined version is very difficult to follow and it is much easier to compare the two documents directly.

**SELECTED VERBAL COMMENTS FROM THE
12/14/2010 ROUNDTABLE**

Potable Water LEAN

Comment:

Could the contaminated well database be made accessible to the public?

Response:

Yes, although some privacy concerns still need to be addressed.

ELUR LEAN

Comment:

To help avoid letters of administrative deficiency, could you include the checklist that is used for the review?

Response:

The ELUR checklists for administrative and other types of review are posted on the CTDEP Remediation Division ELUR web page. DEP staff also use these checklists in their review of the ELUR for administrative completeness.

Comment:

How big would a deficiency need to be for DEP to generate an Administrative Deficiency letter? Example: Environmental Land Use Restriction is or is not capitalized would be kicked back before.

Response:

If any items are missing from the "ELUR Application Checklist" posted on the CTDEP ELUR webpage, a Notice of Administrative Deficiency will be issued. The purpose of the administrative review is to check to see if any of the documents required or requested are missing and whether there have been any format changes to the Declaration.

Comment:

While it is appreciated that the webpage is being used for updates, will we need to check it every day to make sure we are using the most recent updates?

Response:

DEP E-Alerts will be sent out whenever there is any substantive change. You can sign up for those E-Alerts on the CTDEP website on the left-hand side of the page.

Guidance Documents - Revised Site Characterization Guidance Document (SCGD)

Comment:

What date were the most recent changes to the SCGD made?

Response:

The revised document was posted on the website on December 10, 2010 (an E-Alert was sent).

Comment:

If there is a reasonable difference of opinion that keeps coming up, could it be discussed/referred to some forum? LEPs need a format to discuss the differences of opinion.

Response:

There are a variety of potential forums. The Remediation Roundtable is the forum for general questions. You could always request a meeting to discuss the different opinions. As with any decision, a LEP needs to provide his/her rationale so that anyone can understand his/her logic and thought process.

Comment:

How many Technical Impracticability approvals have there been?

Response:

Two have been completed and another two are in progress. Guidance will be forthcoming.

Comment:

Does the SCGD apply only for sites that are being verified? And what if a site is not in a Remediation program?

Response:

The SCGD can be used for any site, but should be used for all sites that may come into a Remediation program at some point. For statutory programs that require “prevailing standards and guidelines,” the SCGD is included in those “prevailing standards and guidelines.”

Guidance Documents - Revised ECAF

Comment:

I have some difficulty using the revised ECAF posted on the website. The Word format is not easy to use.

Response:

DEP concurs. MS Word has limitations on filling in tables. You can always call and we will try to accommodate a specific change.

Public Participation

Comment:

Do the staff that perform reviews under the UST program use the SCGD?

Response:

Yes, the UST program uses the SCGD.

Comment:

Can Criteria for Additional Polluting Substances and Alternative Criteria be used without requesting approval?

Response:

For all additional polluting substances Commissioner approval is required. For specific direction, refer to RSRs Section 22a-133k-2(b)(4) for direct exposure, 22a-133k-2(c)(5) for pollutant mobility, and 22a-133k-3(h) for ground-water protection.

For alternative criteria for direct exposure and pollutant mobility, Commissioner approval is required (refer to RSRs Section 22a-133k-2(d)(1)).

Alternative surface water protection criteria may come about in two ways:

1) through calculating a criterion for a substance listed in Appendix D of the Water Quality Standards using the 7Q10 and the average daily discharge of the polluted groundwater plume, which is self-implementing (refer to RSRs Section 22a-133k-3(b)(3)(A)); or

2) through approval by the Commissioner (refer to RSRs Section 22a-133k-3(b)(3)(B)).

Alternative criteria for ground water and soil vapor requires Commissioner approval (refer to RSRs Section 22a-133k-3(c)(4)).

This newsletter is designed to answer general questions and provide basic information. You should refer to the appropriate statutes and regulations for the specific regulatory language pertaining to the different Remediation Programs. It is your responsibility to obtain and comply with all required statutes and regulations.