

**CVP/SRAG-SRP MEETING
FEBRUARY 12, 2013
ACTION ITEM RESPONSES**

1. Outstanding "pending RAOs" - invalidation

Issue: The issue raised is that the Department is preparing to send letters to Responsible Entities (RE) and their LSRPs, informing them that Response Action Outcomes (RAOs) issued by the LSRP are going to be invalidated. There are outstanding administrative issues with the RAO, and the RE/LSRP have been contacted numerous times by the Department and asked to correct these errors. To date, the LSRP has not corrected the errors, and therefore the RAO is going to be invalidated.

Response: The administrative issues identified by the Department in the RAO letters relate to the following:

1. Inaccurate Scope of Remediation (i.e., Scope of Remediation includes an area of concern (AOC) that was not investigated/remediated)
2. Inaccurate Lot and Block number
3. Incorrect ISRA Trigger Number
4. Not identifying the incident(s) being addressed by the RAO
5. Missing forms for documents associated with the RAO (i.e., missing Site Investigation, Remediation Investigation, Remedial Action Workplan, and/or Remedial Action Report Form)

While deemed administrative in nature, these administrative issues are misleading to a third party (N.J.A.C. 7:26C-6.4(a)8 and 9). Please note that the rule requires that administrative errors identified by the Department as part of the inspection and review process are required to be corrected within 30 days (N.J.A.C. 7:26C-6.4(e)).

Department staff have been working with the LSRP to correct these administrative issues. Records indicate that in a few of these cases, several phone calls have been made to get the LSRP to respond. Some of these cases have been waiting for action from an LSRP for more than 90 days.

As a matter of policy, moving forward, for RAOs that are administratively and/or technically deficient, the Department will conduct the "7-day phone call task" with the LSRP who issued/submitted the RAO. At the end of seven (7) days, if a response is not received from the LSRP, a "30 day comment letter" will be issued certified mail to the Responsible Entity and the LSRP. If no response is received after 30 days, then invalidation and board referral will proceed.

2. Impact to Ground Water Soil Standards Committee - addition of Responsible Party member to committee

Issue: Through the LSRP Interested Party Steering Committee, stakeholders had requested input on the Impact to Ground Water Soil Standards Committee, which is currently updating existing technical guidance, as well as developing new/additional technical guidance. The Department agreed, and two LSRPs were added to the Committee. Stakeholders are now requesting that a third person, representing responsible parties, be added to the Committee.

Response: The primary role of the soil impact to ground water committee is to evaluate current technical guidance in relation to recommendations made by the Science Advisory Board concerning the soil impact to ground water exposure pathway and associated technical guidances. The committee is not addressing policy issues. As such, with the addition of two individuals who have technical expertise in this area who represent outside stakeholders, there does not appear to be the need to include additional stakeholders to the committee.

When the Department initiates rulemaking activities associated with the readoption of the Remediation Standards (N.J.A.C. 7:26D), there will be an opportunity for additional stakeholder input concerning the soil impact to ground water exposure pathway.

3. New Vapor Intrusion (VI) Screening Levels - “what should RPs be doing”

Issue: The Department recently updated various Vapor Intrusion Screening Levels (VISLs) based on changes in toxicity factors reported by the USEPA. Through the LSRP Interested Party Steering Committee, a stakeholder group was formed that included Department personnel and stakeholders, to develop a phase-in process for use of these new VISLs. At the CVP/SRAG-SRP meeting, it was asked what actions should responsible entities be taking during this phase-in period.

Response: With the release of the new VISLs, it is important that the implementation of the VISLs is properly followed. The Department has prepared a series of technical guidances to assist the responsible entities, LSRPs, and the Department (the “investigator”) to implement the use of the new VISLs. The January 30, 2013 listserv announcement on these changes issued by the Department can be found at http://www.state.nj.us/dep/srp/srra/listserv_archives/2013/20130130_srra.html.

The new VISLs are provided on the Department’s Vapor Intrusion Pathway website at the following link (http://www.nj.gov/dep/srp/guidance/vaporintrusion/visl_comparison_table.pdf). Please note that the January 2013 VISLs have recently been updated to remove 2-methylnaphthalene. The new tables are dated March 2013. **This update does NOT change the timeframes for implementing the VISLs.**

To further assist the investigator, a Comparison Table of the old (March 2007) and new (March 2013) VISLs are included in the Department’s VI Pathway website at http://www.nj.gov/dep/srp/guidance/vaporintrusion/visl_comparison_table.pdf.

The Summary of the Implementation Strategy for the new VISLs is given both as a document (http://www.nj.gov/dep/srp/guidance/vaporintrusion/visl_implementation_strategy.pdf) and as a flow chart (http://www.nj.gov/dep/srp/guidance/vaporintrusion/visl_implementation_flowchart.pdf).

Based on the scenarios provided in the Implementation Strategy, determine the appropriate action required for your sites. The investigator has up to 90 days to evaluate all existing site conditions and data using the new VISLs. The 90-day review period terminates on April 16, 2013.

4. New Vapor Intrusion (VI) Screening Levels - “gasoline exclusion”

Issue: Regarding VI investigations involving discharges of gasoline, the Department has developed exclusion criteria only where the benzene concentration exceeds the Department’s ground water screening level (GWSL). Exceedances of the Department’s GWSL by other gasoline constituents do not have to be evaluated under this alternative approach provided the benzene exceedance exists. One of the changes that has occurred with the implementation of the new VISL is that indoor air screening level (IASL) for ethylbenzene, a contaminant associated with gasoline, decreased substantially. Stakeholders are concerned whether the “gasoline exclusion” will still apply, or it will now be required to investigate gasoline discharges for ethylbenzene during the vapor intrusion investigation.

Response: Gasoline discharges constitute a significant portion of the petroleum-related VI investigations in New Jersey. If benzene does NOT exceed the Department’s GWSL, the gasoline exclusion criteria can NOT be utilized and any exceedances by other gasoline-related contaminants (such as ethylbenzene) shall follow the provisions of the Technical Requirements for Site Remediation (Technical Requirements, N.J.A.C. 7:26E) and the revised Vapor Intrusion Screening Levels.

5. Remediation Funding Source (RFS) - more frequent disbursements

Issue: The Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules allow for disbursements of funds from a Remediation Funding Source (RFS) on a quarterly basis (see N.J.A.C. 7:26C-5.12). The issue was raised whether RFS funds could be disbursed on a more frequent basis.

Response: If a person responsible for conducting the remediation at a site with RFS fails to complete the remediation of the site, the Department will pull the RFS funds and put them into a Department account. If a third party wants to complete the remediation of the site using the RFS funds, that person can only do so if the cost to complete the remediation is equal to or less than the amount in the RFS. The implementing statutes are silent as to how often someone can draw down on RFS. The rules addressing RFS disbursement have always provided for the quarterly disbursement of funds. To allow for more unlimited disbursements would place an unnecessary administrative burden on the Department. This requirement is currently promulgated in ARRCS rules at N.J.A.C. 7:26C-5.12. The Department does not see a need to amend this requirement at this time since pursuant to ARRCS, the LSRP can request disbursement of both costs incurred and to be incurred (see N.J.A.C. 7:26C-5.12(a)3).

6. Historic Fill/Financial Assurance - post presentation to website

Issue: A presentation regarding Financial Assurance (FA) requirements for historic fill, as well as general information regarding FA, was given at the meeting. The handout was not available; several attendees requested that the documentation be provided.

Response: All documentation from the February 12, 2013 CVP/SRAG-SRP meeting, including a version of this document, has been posted on the Department's website: http://www.nj.gov/dep/srp/srra/stakeholder/cvp_srag/index.html.

7. Fast-tracking PI Number generation - what is the process

Issue: Stakeholders commented that there are instances where they are attempting to use the Online portal to submit information (Annual Remediation Fee Form and the LSRP Notification of Retention and Dismissal Form), or are trying to issue a Response Action Outcome, but cannot do so because they do not have a correct PI Number. It was requested that the Department provide instructions for how to "fast-track" creation of a PI Number.

Response: First, it must be noted that PI Numbers cannot be created based on a phone call with Department staff (specifically, SRP-Bureau of Case Assignment and Initial Notice; BCAIN). Rather, it is necessary to submit either a (a) Confirmed Discharge Notification (CDN) form, (b) General Information Notice (GIN), or (c) UST Facility Certification Questionnaire. See below regarding due diligence.

If it is believed that the form was already submitted, the Responsible Entity/LSRP can contact BCAIN and efforts will be made to expedite the processing of the form. If the form cannot be found, BCAIN will request that an electronic copy (PDF) be sent.

Due Diligence: If an investigation of a property is being conducted for due diligence purposes and the LSRP will be issuing an RAO please contact BCAIN.