

ARS Process and Language

**John Donohue (Fuel Merchants Association of New Jersey) &
Elizabeth George-Cheniara (New Jersey Builders Association)**

Is Perception of These Statements The Same?

- UHOT site: Jones, 123 Main St.
 - 2-methylnaphthalene 10, contractor removes soil
 - RAR: “additional excavation was undertaken to remediate site to the “NJDEP Migration to Groundwater **Standard**”
- UHOT site: Smith, 124 Main St.
 - 2- methylnaphthalene 10, contractor uses SPLP guidance
 - RAR: “ the concentration of 2-methylnaphthalene on site exceeds the NJDEP migration to groundwater standard, Department guidance was utilized to develop an Alternate Remediation **Standard**”
- UHOT site: Your Name, 127 Main St.
 - 2- methylnaphthalene 10, contractor uses SPLP guidance
 - RAR: “2-methylnaphthalene was identified at concentration which exceeded the NJDEP migration to groundwater **screening level**; in accordance with the Department’s regulations, the SPLP guidance was followed and it was determined the concentration does not present a ground water quality concern.

- It is understood the Department envisions a changed ARS process to be in the new Remediation Standards Rule
- An ARS process for Migration to ground water and for vapor intrusion will be developed as well
- Will the ARS process for soil change?
- Current ARS would usually include a institutional control.

ARS Process

- Use of ARS for Soil may need to be expanded and guidance developed
- ARS for MtGW and VI needed
- ARS process set forth
 - Should be more simplistic, streamlined and cost-effective
 - Without detailed explanation
 - Should be allowed to proceed without DEP pre-approval
- What reviews are to be proposed
- Are changes to existing guidance for Soil Water Partition and SPLP proposed?

Concerns

- Screening levels work:
 - They are overly conservative by nature
 - They require investigator to determine if pathway exists or future impact is expected
 - Screening levels compel investigator to expand RI to affirm remediation is complete and protective
 - Allow Person Responsible for Conducting the Remediation (PRCR) to elect to use as a 'Standard'
- Standards (numeric) are rigid
 - Standards: "something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality"
 - Standards dictate a compliance point
 - Standards establish a minimum to be achieved
- Standards (numeric), published by the Department offer security from future liability when met

Concerns

- Alternate Standards: A Standard “other than the usual”
- LSRP develops alternate standard
 - Do they begin to assume liability?
 - Will they be willing to assume liability?
 - Does PRCR assume greater liability?
- DEP Policy decision: ARS or Screening Levels?
- LSRP resorts to ‘look up tables’
- Standards so stringent everything is an ARS
- If everything is an ARS- then don’t have standards

Alternate Remediation Standards Process

- Existing Process Addresses Residential Direct Contact
 - Results in Restricted NFA
 - Current Process Impractical and costly for smaller entities
 - Required Department Pre-Approval
 - Instances ARS Allowed cannot be restricted
- Department Approval affirms 'other than the usual' is protective
- Department Approval would offers reduced liability for PRCR and LSRP but...
 - Puts Department in 'Command and Control mode' and contrary to SRRA
- Will an ARS for MtGW or VI result in 'Restricted use' RAO?

Department Enforcement on Guidance

- If the driving force is truly ‘concern on guidance being unenforceable’ and
- The initiative is truly not a scheme to provide Department greater oversight (i.e. SRRRA approach)
- Then:
 - Include numbers in the rule as ‘screening levels’
 - Require LSRP evaluate if pathway exists by use of current guidance
 - Have RAO include site specific standards to which site was remediated

Impact on the RAO Permanence ?

Remediate to Standard



Remediate to Alternate Standard



ARS and RAO

- What is impact on the permanence of RAOs if many sites remediate to alternate standards?
- Will regulated parties and financial community (others: insurance) tend to view the RAO as 'conditional' or 'restricted' when a compliance point which is "other than normal" was used?
 - If developed for residential construction is the 'warranty of suitability for habitation' met or is it subject to challenge in the future.
- Will LSRP view standards as look up tables?
- How does LSRP and PRCR view potential of future liability if ARS?
- How does Department propose to make regulated community and financial community aware of the ARS option?

Standards vs. ARS

Standards vs. Screening Levels



New Tractor or Improved Version?



Existing Rule

- (b) This chapter does not establish the minimum impact to ground water soil remediation standards; these standards shall be developed on a site-by-site basis, pursuant to the Department's authority under N.J.S.A. 58:10B-12a and the Department's Soil Remediation Standards Guidance for Impact to Ground Water available at www.nj.gov/dep/srp/srra/regs/guidance.htm

Conceptual Narrative Standard

- This chapter establishes the minimum screening levels for the migration to ground water pathway. When the concentration of contaminants exceeds these minimum levels, the Person Responsible for Conducting the Remediation (PRCR) shall develop the remediation standard for the site in accordance with the procedures appended to this rule and the PRCR shall remediate to that standard in accordance with the Technical Requirements for Site Remediation.
- When the Person Responsible for Conducting the Remediation fails to establish a Remediation Standard for the site or fails to establish a Remediation Standard for the site in accordance with the Department's procedures or approved method, the established minimum screening levels shall become the Remediation Standard for the Site and the PRCR shall remediate to that standard.

Conceptual ARS

- If the Person Responsible for Conducting the Remediation varies from the Department's guidance in the development of the site specific standard, the PRCR shall provide the Department the rationale, the method used to determine the standard and the reasons the Department guidance was not applicable for the condition found on the site and comply with (cite rule) the procedures for development of an Alternate Remediation Standard.