

Handout:

- Hypo 1:

- Site A (site of A Chemical) and Site B (site of B Chemical) are adjacent to each other and using LSRPs. Each installs offsite wells on Site C. Based on data and their own interpretations of groundwater flow and geology each LSRP (Ms. Alpha and Ms. Beta) concludes that the source of the CVOC contaminants on site C, on which operates D Manufacturing, is the other site A or B. Although their conclusions differ, each is prepared to issue an RAO.

- What if only Ms. Beta knows about the conflict with Ms. Alpha's work and conclusions. NJDEP doesn't know. Need Ms. Beta do anything?

- What if neither know. NJDEP doesn't know. But because of later work, one or both later find out? Must anything be done?

- Hypo 2:

- Same as Hypo 1. But a new LSRP (Mr. Gamma) for the real estate owner of Site C and a new ISRA trigger spots the conflict in file reviews, but concludes that Ms. Beta was right, not that it matters to him (Remember: whichever is right, source is offsite as to C.). He is prepared to issue an RAO for Site C. Does he need to discuss the conflict?

- Hypo 3:

- Same as Hypo 1. But a new consultant (Mr. Delta), who happens to be an LSRP but was not retained as such, conducts a Phase I and preliminary assessment for a Bank planning a loan to A Chemical operating on site A. In doing so he identifies the conflict between the two prior RAOs. Clearly both cannot be right, he believes; on hasty review he thinks it likely Ms. Alpha was wrong and therefore the RAO for site A may be wrong (but he is not sure). He and his client (the Bank) decide it does not matter to them. There is an RAO for the site, the borrower is a good customer and the loan will be made. Does Mr. Delta need to do anything about the seeming conflict between the other two LSRPs or the potentially flawed RAO? Would it matter if Mr. Delta retained as its LSRP by A Chemical for a potential sale of the business (D Manufacturing) for whom he identifies the conflict in two RAOs, but before he finishes writing and filing any report he is dismissed?

- Hypo 4:

- ISRA is triggered first at a part of Site O (the part leased to O Chemical) by the sale of O Chemical for which Ms. Omega is retained as LSRP and then by the sale of all the real estate of Site O at which both O Chemical and Z Chemical are tenants. Ms. Zeta is retained and obtains a remediation in progress waiver as to O Chemical but proceeds as to the balance of Site O for Z Chemical. Her investigation finds what she believes are real flaws in Ms. Omega's groundwater work and conclusions and at odds with her own planned findings for O Chemical's leasehold. She discusses her concerns with Ms. Omega briefly, who is insulted by the claim of error and refuses to alter her approach and conclusions. How should Ms. Zeta proceed given that neither LSRP has yet issued an RAO?