



CVP/SRAG

**Free-Residual Product
Issues**

December 3, 2014





The Questions

“When does the existence of free or residual product at a site require a Deed Notice? For example, if there remains free product at depth in the saturated zone of a site, is a deed notice ever required? If so and removal of free product is impossible, does that mean the site can never get an RAO if the owner will not grant a deed notice?”





No Deed Notice, Yes CEA

The short answer is that for product at or below the water table, a Classification Exception Area (CEA) is required, not a Deed Notice; so the ownership issue should not come into play, the Department issues the CEA.





The Long Answer...

There is an obligation to address free product:

Free Product: Defined in N.J.A.C. 7:26E-1.8

Action: N.J.A.C. 7:26E-5.1(e), provides that free and/or residual product determined to be present at a site shall be treated or removed **when practicable**, or contained when treatment or removal are not practicable.





The Long Answer...

What you will end up with is a Remedial Action (RA) Permit (RAP), checking the Technical Impracticability (TI) box, you will be explaining how you arrived at a TI determination and how you plan to ensure the protectiveness of this **Remedial Action.**





Key Concept

TI No Action





Threshold Criteria for TI

Has the responsible person...

- Appropriately managed the site so that remaining contaminants do not pose a threat to public health, safety and the environment





Assessing Whether an Action or Proposed Action is Technically Impracticable

- Identify the applicable Remediation Standards
- Spatial extent where the TI determination will apply
- Up to date Conceptual Site Model (CSM)
- Evaluate the remediation potential
- Estimate the costs
- Any additional information to support the TI evaluation





Technical Impracticability Determination Evidence

Technical factors

- Evaluate remedial alternatives in a phased approach using site characterization, and remedy performance data
- Is the information already gathered to make the determination?
- Does additional data need to be gathered?





Technical Impracticability Determination Process

- Use the TI guidance
- When in doubt
 - Request a Technical Consultation
 - Meet with experienced DEP staff to ask site specific technical questions
 - http://www.state.nj.us/dep/srp/srra/technical_consultation/





Regulatory Obligations

- A RAP is required (N.J.A.C. 7:26C-7) when the TI determination involves the use of and engineering or institutional control
- The effectiveness of the RA must be monitored
- When the remedial action includes the use of an engineering or institutional control
 - Biennial certifications of the continued protectiveness of a remedial action must be submitted
 - Financial assurance must be posted when an engineering control is used





Ground Water Monitoring & the RAP

- The ground water monitoring associated with a TI determination must safeguard any potential receptors in accordance with Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5
- The monitoring schedule is included in the RAP application by the Licensed Site Remediation Professional in the **Ground Water Monitoring Plan Spreadsheet**
- The Department will include the ground water monitoring requirements for the ongoing protectiveness of the remedy in the Remedial Action Permit





Post Technical Impracticability Determination Management

- Post TI review of the remedial action should be conducted at least every 5 years or as stipulated in the RAP
- The Department may request that the TI determination be re-evaluated
 - Permittee fails to comply with RAP
 - TI evaluation is determined to be incorrect through fraud, material misrepresentation, or failure to provide material information
 - Changes in one or more components of the CSM that would indicate the potential for adverse impacts on one or more receptors





Termination of Technical Impracticability Determination

- The process for terminating a TI determination is the termination or modification of the RAP as appropriate, examples:
 - Standards have been met within the TI area
 - New technology or other remedial actions has been identified that can address the contaminants
 - Site conditions now allow for implementation of a remedial action





Contacts and Questions

TI Guidance Document - Tom O'Neill
tom.o'neill@dep.nj.gov 609-292-2150

Technical Consultation

http://www.nj.gov/dep/srp/srra/technical_consultation/

Questions?

