

**UHOT Stakeholder Group Meeting
NJDEP Headquarters
November 15, 2010**

Attendees:

Greg Buzan – SSG-BARCO (LSRP/SSE)
John Donohue – Fuel Merchants Association of NJ
Jon Libourel – Brilliant Environmental Services (LSRP/SSE)
Tom Pitcherello – Department of Community Affairs, Division of Codes & Standards
Michael Russo – Whitman Company (SSE)
Bruce Shapiro – New Jersey Association of Realtors
Kathi Stetser – Roux Associates (LSRP/SSE)
David Caulfield – NJDEP, Bureau of Ground Water Pollution Abatement
Tessie Fields – NJDEP, Office of Community Relations
Gary Sanderson – NJDEP, Unregulated Heating Oil Tank Program
Brent Vonroth – NJDEP, Bureau of Northern Field Operations
Ken Kloo – NJDEP, Site Remediation Program

Stakeholder Group Process/Role:

DEP provided an overview of the Governor's stakeholder process and emphasized the role of stakeholders as representatives of the sector that they represent. DEP encouraged stakeholders to share information with their constituents and to solicit feedback and issues for discussion. Stakeholders were advised that although they would participate in developing the elements of the new rule, they would not participate in actually writing the rule itself.

Introductions:

Stakeholders introduced themselves, identified the stakeholder sector that they represent and their experience relative to unregulated heating oil tanks. Not present were Steven Manduca – NJ Manufacturers Insurance Company and Chris Dwyer – NJDEP, Bureau of Southern Field Operations.

Regulatory History:

DEP provided the regulatory history for unregulated tanks in New Jersey, including the 2000 and 2006 legislative changes to the New Jersey Underground Storage of Hazardous Substances Act, requiring individuals conducting various activities associated with an unregulated heating oil tank to be certified.

Rule Elements:

The specific elements of the rule were discussed in detail including:

Certification – Of some consideration of alternatives, DEP will continue to test for, issue and maintain, all certifications related to unregulated heating oil tanks, i.e., installation, closure, testing, corrosion protection and subsurface evaluation.

Remediation process – Because the Site Remediation Reform Act explicitly excludes unregulated heating oil tanks from many requirements, including the requirement to obtain and LSRP, and explicitly states that DEP will continue to issue NFA determinations for unregulated heating oil tanks, the DEP intends to continue to issue NFA determinations for all completed unregulated heating oil tank remediations, including those performed by an LSRP. This will enable the DEP to establish a single process for all unregulated heating oil tank remediations, rather than having one process for subsurface evaluators and another for LSRPs. This will also address issues that have recently arisen for several residential real estate transactions in which the attorneys are entirely unfamiliar with the Site Remediation Reform Act, the LSRP process and the Response Action Outcome (RAO).

The LSRP representative raised concerns about an LSRP's inability to issue RAOs for unregulated heating oil tanks. Stakeholders agreed to discuss the issue again at the next meeting.

Technical assistance from DEP - Stakeholders inquired as to whether DEP would continue to provide technical assistance to environmental professionals with non-routine issues. DEP agreed to continue to provide technical assistance to ensure that remediations are completed effectively, efficiently and in accordance with existing regulations and guidance.

Residential vs non-residential requirements – The requirements being considered for the unregulated heating oil tank rule are essentially identical for residential and non-residential unregulated heating oil tanks with the exception of the requirements for obtaining approval for a discharge to surface water, which is being investigated, and the requirement for an ecological investigation, from which residential tanks are currently exempt. Stakeholders agreed to discuss these issues again at the next meeting.

Initial investigation process – Stakeholders expressed an interest in seeing the development of a formal process for the initial investigation of tanks without a confirmed discharge that will remain in operation and for the investigation of tanks for in-place abandonment. Stakeholders discussed whether the process should be in regulation or guidance and, for tanks without a confirmed discharge, whether the responsibility should be with DCA or DEP. The issue will be discussed at the next meeting.

Prescriptive Process – DEP explained that unlike the new Technical Requirements for Site Remediation, which will be less prescriptive than previous versions, the unregulated heating oil tank rules will continue to provide specific, prescriptive requirements for investigation and remediation activities. Stakeholders agreed with this approach.

“Over-excavation” guidance – Stakeholders requested guidance for the practice of over-excavating to avoid subsequent mobilizations. The guidance was requested to address concerns relative to unnecessary remediation or inflating costs. The issue will be discussed at the next meeting.

Ground water investigation requirements – Stakeholders requested clarification as to the number of monitor wells required by the DEP for a ground water investigation. The issue will be discussed at the next meeting.

Vapor intrusion investigation trigger – DEP explained the recent policy decision regarding the ground water trigger for a vapor intrusion investigation. A vapor intrusion investigation would not be triggered by the presence of heating oil on or dissolved in ground water, but rather as a result of an exceedence of a vapor intrusion ground water trigger for a specific contaminant, e.g., benzene. Stakeholders inquired as to whether the sample could be collected from a well point rather than a permanent monitor well. DEP agreed to examine the issue and provide a response at the next meeting.

De minimis volumes of contaminated soil – Stakeholders inquired as to whether DEP was considering *de minimis* volumes of contaminated soil that would not require remediation. The issue will be discussed at the next meeting.

Certification of other environmental professionals’ data – Stakeholders sought assistance from DEP in addressing the issue of certifying data generated by another environmental professional, usually as a result of an insurance liability determination. The issue will be discussed at the next meeting.

Permits – Stakeholders raised the requested the ability to obtain On-Scene Coordinator (OSC) approval for non-residential unregulated heating oil tanks consistent with the practice for residential unregulated heating oil tanks. Currently, discharges to surface water for a non-residential unregulated heating oil tank require a NJPDES-DSW permit. The issue is being investigated.

Remediation standards – Stakeholders had no issue with the current 5,100 ppm residential soil standard for petroleum hydrocarbons, however, some stakeholders raised issue with the 8,000 ppm limit established by DEP for “free and residual product”, which must be remediated. The issue will be discussed further at the next meeting.

DEP oversight – All unregulated heating oil tanks cases will be processed through the Unregulated Heating Oil Tank Program and DEP will assign certain cases to the DEP Field Offices when additional oversight is warranted. Those conditions include requests for OSC approval, the presence of off-site ground water contamination or ground water contamination within 100 feet of a potable well, impacts to surface water or wetlands and the implementation of a non-permanent remedy.

Fees – DEP oversight fee will remain \$400 for all unregulated heating oil tanks cases regardless of the level of DEP involvement. There will be no billing for DEP oversight costs with the exception of Immediate Environmental Concern cases.

Enforcement – Stakeholders inquired as to whether DEP would be taking enforcement against homeowners relative to the mandatory and regulatory timeframes established in the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS). DEP is also considering incorporating the current Penalty Point System used in the Unregulated Heating Oil Tank Program as a means of alerting environmental professionals of performance issues prior to suspending a certification. These issues will be discussed at the next meeting.

Funding/grants – Grants will continue to be processed by the Bureau of Contracts and Fund Management in close cooperation with the Unregulated Heating Oil Tank Program.

Rule schedule:

Draft – February 2011

Proposal – May 2011

Adoption – May 2012

Future meetings and workgroups:

To be determined