

**UHOT Stakeholder Group Meeting
NJDEP Headquarters
December 17, 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
Chris Dwyer – NJDEP, Bureau of Southern Field Operations
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

Absent: Steven Manduca – NJ Manufacturers Insurance Company

Having received no response from the designated insurance sector representative, the stakeholders unanimously agreed to seek an alternate. Melody Warraner, High Point Insurance, was recommended, and will be contacted to solicit her interest in participating.

Minutes: The minutes of the November 15, 2010 UHOT Stakeholder Group meeting were reviewed and accepted with minor edits.

Agenda: The agenda for the December 12, 2010 UHOT Stakeholder Group meeting was reviewed and accepted with some additions to the agenda.

LSRP process: Stakeholders resumed discussion regarding the issuance of a Response Action Outcome (RAO) for an unregulated heating oil tank. After a detailed explanation of the new UHOT Program administrative process and a lengthy discussion, stakeholders generally agreed that DEP should continue to issue all NFAs for unregulated heating oil tanks, including those remediated under the direction of an LSRP, with the exception of cases subject to other regulatory authority (i.e., ISRA or UST rules) or when the LSRP issues an entire site RAO. One LSRP stakeholder disagreed with this position, and requested an opportunity to evaluate the potential implications of the decision.

The real estate representative stressed the importance of a easily accessible and detailed webpage to ensure that those involved in real estate transactions would have access to guidance and understand the process to facilitate real estate transactions involving an unregulated heating oil tank.

Investigation of tanks that will remain in operation: Stakeholders agreed to exclude this issue from the UHOT rule and address the issue through the development/revision of homeowner guidance.

Investigation of tanks for in-place abandonment: Stakeholders agreed to exclude this issue from the UHOT rule and address the issue through the development/revision of guidance under the jurisdiction of DCA.

“Over-excavation” guidance: Stakeholders resumed discussion regarding 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. DEP will attempt to develop draft language for inclusion in the rule to address this issue.

Ground water investigation requirements: Stakeholders resumed discussion as to the number of monitor wells required by the DEP for a ground water investigation. An LSRP/SSE representative suggested there were three conditions that needed to be addressed in the rule:

- contamination had migrated to ground water
- contamination had migrated to bedrock
- contamination was in close proximity to ground water (unconsolidated formation)

This discussion will continue at the next meeting.

LSRP/SSE representatives also expressed the need to a strategy to address low-level groundwater contamination. Stakeholders agreed, after some discussion, that the options were to either excavate additional contaminated soil or conduct a formal ground water investigation.

Stakeholders agreed that potable well sampling was required if a sample exceeds the Ground Water Remediation Standard. LSRP/SSE representatives questioned whether testing pursuant to the Potable Well Testing Act (PWTWA) could satisfy the potable well sampling requirement, and, after some discussion, it was agreed that samples collected pursuant to the PWTWA would not satisfy the requirements because the analytical methods for the PWTWA were less rigorous. Further discussion was required, however, to clarify the potable well sampling requirements (in terms of distance from impacted area) and how to sample the potable well.

Vapor intrusion investigation trigger: Stakeholders resumed discussion as to whether the ground water sample could be collected from a well point rather than a permanent monitor well. DEP acknowledged that either a well point or a permanent monitor well were acceptable.

***De minimis* volumes of contaminated soil:** Stakeholders resumed discussion as to whether DEP was considering *de minimis* volumes of contaminated soil that would not require remediation. DEP will evaluate this issue and provide guidance at a future meeting.

Certification of other environmental professionals' data: Stakeholders resumed discussion regarding the issue of certifying data generated by another environmental professional, usually as a result of an insurance liability determination. Stakeholders agreed that the data is the property of the homeowner, and including a rule provision requiring environmental professionals to certify all data generated during remediation activities would address the issue. The issue will be discussed further at the next meeting.

An LSRP representative raised the issue as to whether an LSRP was required to provide on-site supervision of all remediation activities. Discussion was deferred to the next meeting.

OSC approvals for non-residential tanks: Stakeholders resumed discussion regarding 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 by DEP.

Ecological investigation: Stakeholders resumed discussion regarding the requirement for an ecological investigation for non-residential unregulated heating oil tanks, from which residential tanks are currently exempt. DEP agreed to consistently apply the “residential” exemption for “non-residential” tanks. Tanks that do not meet the unregulated heating oil tank definition would continue to adhere to the requirements prescribed by the Technical Requirements for Site Remediation.

Remediation standards - 8,000 ppm limit for “free and residual product”: Stakeholders agreed to defer discussion of the 8,000 ppm limit established by DEP for “free and residual product”, which must be remediated, to the next meeting.

Enforcement of mandatory and regulatory timeframes: Stakeholders resumed discussion 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). The Site Remediation Reform Act and the ARRCS rule exclude unregulated heating oil tanks from the mandatory timeframes. Although regulatory timeframes do apply to unregulated heating oil tanks, DEP does have enforcement discretion, and would exercise its enforcement authority only when necessary.

Non-UHOT related contaminants: The issue of how to address contamination detected but unrelated to an unregulated heating oil tank was discussed briefly, but deferred to the next meeting.

Penalty point system: Stakeholders agreed to defer discussion concerning DEP’s intention to adopt 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.

Rule schedule:

Draft – February 2011

Proposal – May 2011

Adoption – May 2012

Future meetings and workgroups: A workgroup was formed to assist DCA with the development/revision of guidance documents for the investigation of tanks for in-place abandonment. The workgroup consists of Tom Pitcherello, Greg Buzan, John Donohue and Chris Dwyer.