
***DE/LEACH/ICPG
CSM WORKING GROUP 2/26-27/2014***

Note: Action Items for each slide from the 2/27/14 meeting are captured in the slide notes

ICR ROLE IN DUE DILIGENCE

- Pre-Purchase. The ICR is already considered to be part of AAI and is within the scope of existing DB searches.

Recommendation: No action is required

- Pre-Construction.

- The issue is appropriate vehicle for notice to potential excavators.
- Unrealistic to try to force the universe to the ICR; better solution is to integrate ICR into "Call before you Dig"
- Onus will be on excavator to make appropriate H&S plan and determination based on evaluation of data and existing contractual arrangements with owner (if any)

Recommendation:

- *FDEP to coordinate with "Call Before you Dig" on appropriate integration of ICR into that DB*
- *TBD - What about private utility locate services?*

DERIVATION OF ALTERNATIVE DIRECT EXPOSURE SCENARIOS

- Concern: Derivation of explicit number is likely to gravitate to most restrictive set of assumptions/numbers

- Policy Recommendation:
 - *Provide resources for regulated community to develop alternative exposure scenarios assumptions and offer examples (trespasser, recreator, irrigation scenario, etc.);*
 - *Develop a very limited set of alternative scenarios that are not likely to vary much as options (utility worker, landscape contractor, construction worker)*
 - *Implement a web-based or spreadsheet based ASCTL calculator (similar to the BaP Equivalent process) for use by the regulated community*
 - *Since no specific ACTLs will be "promulgated"; This should be able to be implemented via policy. If the CMF feels that specific scenarios should have ACTLs developed, then rulemaking would be appropriate.*

USE OF NAICS CODES TO DEFINE "RESIDENTIAL USE" IN DRC

- Concern: FDEP uses NAICS sector economic descriptions (not intended for this purpose) to define "non-residential uses"
 - but the actual conditions of exposure for most sectors are much less than what is considered residential/unrestricted use (30 yrs, 350 days/yr, age 1-31); and
 - the sectors are extremely broad, and there are hundreds of subsectors; review of all subsectors for "fit" with unrestricted use assumptions is not practical.
- Policy Recommendation: *Revise the ICPG to clarify that the use of NAICS sector descriptions to define restricted uses is not mandatory, and the RP can propose alternative descriptions for uses that are permitted or prohibited on the property that are consistent with the degree and nature of the cleanup conducted and actual conditions of exposure.*

ENGINEERING CONTROLS

- Concern: Use of 2' clean fill or an impermeable surface has been the only acceptable EC to for DE
 - Recommendation: *Develop guidance for alternative caps, such as use of materials other than soil, use of visual cues/barriers, vegetative cover*
 - Concern: PEs “reinvent the wheel” for each paved cap ECMP
 - Recommendation: *Develop template ECMP for asphalt or concrete cap.*
-

IMPLEMENT 11/1/13 CASPARY MEMO

Background/Concern:

- ❑ Most local ordinances do not prohibit installation of wells (WMD preemption issue) but most affirmatively require connection to municipal water for potable and/or irrigation
- ❑ Restrictions on installation of wells may exist based on recorded agreement between landowner and local government.

Recommendations:

- ❑ *Revise ICPG:*
 - ❑ *Limit applicability (at this time) to closure for groundwater impacts only*
 - ❑ *Require copies of local ordinance(s) in addition to "standard list"*
 - ❑ *Constructive and active notice still required*
 - ❑ *Provide alternative text for notices: "reliance on local ordinance that requires connection to municipal water"*
- ❑ *Develop Implementation Guidance Memo:*
 - ❑ *Where existing ICs do not prohibit well installation, use a weight of evidence approach to determining suitability of reliance for closure (factors such as: size/location of plume, location of existing improvements, nature and concentration of COCs, status of site development and existing infrastructure, potential for additional construction and impact of construction activities, location of existing irrigation wells (if any) relative to plume)*

LEACHABILITY

- Concern: LCTLs are generally interpreted as point not to exceed values and may result in overly restrictive results. LCTLs are only a “surrogate” for anticipated exceedances. As such, reliance on other equally reliable models or methods of predicting impacts should be considered.
- Recommendations:
 - *Clarify existing guidance as to applicability of LCTLs when no GW impacts are present (if this is only issue, can close under RMO I)*
 - *There must be some spatial consideration or averaging allowed when looking at soil concentrations > LCTLs (horizontally or vertically). (Implement this policy under existing fate and transport provisions of 62-780, RMO III)*
 - *Clarify that “1 year of data” means data must be collected from both representative high/low water table conditions (not necessarily 4 quarters of data)*
 - *Acknowledge that use of alternative models for leachability evaluation (to the SPLP or soil) is permitted [under 780.600(5)(c)(4)] and provide examples and references [e.g., EPA Method 1315, Leaching for Compacted Materials]*
 - *Provide guidance on alternative fate and transport models may be used for leachability calculation as alternative to SPLP (Vleach, csoil, vs2dt, DAF) (requires closure under RMO III)*
 - *For use with ISM or other multiple samples used to calculate a mass flux*
 - *Collect information from other states, and use this to develop guidance*

USE OF SURFACE WATER CTLs

- Concern: Where GW impacts are limited and discharge to fresh surface water with higher SW CTLs, RP should have option of applying Fresh Surface Water CTLs
- Recommendation: *Issue guidance clarifying ability to rely on SW GCTLs in lieu of GCTLs in certain enumerated cases*

SITE ASSESSMENT AND DELINEATION "REQUIREMENTS"

- Concern: Prescriptive site assessment under Chapter 62-780 may not always be needed to adequately characterize a Site. Alternative assessment techniques (ISM) and approaches to delineation should be allowed under the Rule.
- Policy Recommendation:
 - *Document flexibility allowed in by developing a fact sheet on potentially acceptable assessment/delineation techniques (possible issues: use of conceptual site model, delineation when use restriction or EC is contemplated; delineation to new PRA derived SCTL, use of ISM, ¼ acre req't for residential...)*
 - *Develop FDEP position on depth and horizons of soil that requires assessment for DE and Leachability under various sections of the Rules.*
- Rule Changes:
 - *Eliminate the requirement for a ¼ acre size for a residential EU;*
 - *Include ISM as acceptable site assessment technique.*

TECHNICAL IMPRACTIBILITY

- Concern: 376.30701(2)(i)(3) says FDEP “shall require source removal as a risk reduction measure if warranted and cost-effective” . However, 62-780 FAC throughout says that an SRCO cannot be issued if free product exists and “removal is not technologically feasible.” The Rule imposes a requirement for source removal that is broader than authorized by statute.
- *Policy Recommendation*:
 - *Clarify that the Department will consider cost as a criteria when evaluating the requirement for implementing a source removal remedy.*
- *Rule Changes*:
 - *Match Rule language to Statutory language.*