

Technical Issues Subcommittee Meeting #2 Minutes

April 25, 2014 (9:30 AM – 12:30 PM)

Natural Resource Technology, 234 W. Florida Street, 5th Floor, Milwaukee
GoTo Meeting

ATTENDEES

GoTo Meeting: Stacey Goetz (AECOM), Jim Walden (DNR), Gary Edelstein (DNR)

Attended: Chris Valcheff, Jodie Poetter, Dan Buss, Liz, Harris Byers, Michael Prager, Steve Meer, Mick Skwarok, Ken Ebbott, Kate Juno, Karen Dettmer (Co-Chair), Roy Wittenberg, Scott Wilson (Co-Chair), Margaret Brunette, Frank Dombrowski, Tom Coogan

AGENDA ITEM #1: Introductions

Discussion: Roy gave an introduction of NRT's office location. The building was a former knitting factory in Milwaukee's Walkers Point. It's Leed certified building.

AGENDA ITEM #2: Sediment

Discussion: The sediment issue impacts a number of subcommittees, so we are going to combine our efforts with the Liability and Waterfront subcommittees. There is a meeting Tuesday, April 29th at 9am, which involves the co-chairs of the various subgroups, to discuss Sediments.

When does Dredged material become a waste, soil, etc.? How should it be managed? When can sediment be used as beneficially reused material; when does the Low hazard exemption come into play? How should we deal with jurisdiction issues (e.g., Great lakes, DNR (waste/RR), EPA, etc.)?

VPLE sites – Would need to look at the sediment.

Purchaser – due diligence, what gives them a level of comfort?

These are part of the issues this group is trying to tackle.

Action Item	Decision/Recommendation	Dissenting Opinions
Refer Sediment topic to joint subcommittees	Karen and Scott will participate in Sediments call April 29 th (9:00 AM)	

AGENDA ITEM #3: Vapor Intrusion

Discussion: Chris Valcheff drafted the vapor intrusion issue paper. Chris discussed the highlights of the drafted issue paper.

- Is VI a reportable release?
- How does/should DNR deal with closed sites?
- Will DNR reopen sites when RP doesn't control the site?
- Passive vs. active systems.
- Can BMPs be incorporated into code?

DNR's Jim Walden joined the meeting via GoTo Meeting, to answer VI related questions.

Comments: maybe add international building codes as possibly including BMPs.
Real Estate transactions can drive DNR decisions on VI.

The reopening of closed sites can be a thorny issue. Sites that were closed, but VI pathway was never assessed. DNR has reopened sites, but these have been the result of people sharing information with the DNR. New York and Minnesota have re-opened sites without prompting. DNR may start looking proactively at universe of closed sites

New ASTM Phase I Standard requires Vapor pathways to be addressed. Therefore, VI needs to be addressed.

Typically, chlorinated sites are more problematic than petroleum sites.

Vapor is a reportable release. If someone is looking at a site and there's been a release (gas), it's reportable.

If a sample was collected indoors, it is not necessarily a release unless there is an indication that the contaminant is coming from an environmental release.

Reporting is based on detection. If there's evidence of a release, it's reportable. Additional work may be needed to determine if the source is on-site or off-site.

Interpretation of the spill law, as it relates to reporting, varies considerably. Guidance is needed (e.g., Consultant takes sample of Sub-slab soil, if it's above XYZ, here's what you should do).

How are other states handling reporting? There are ~35 states that have reporting requirements. Not all states have a spill law like Wisconsin in which you have to report releases.

Not all chemicals are treated the same way. Some may have more of an imminent need for action.

Vapor Intrusion Partnership Initiative (VIPI): Jim Walden presented this new concept, which started as an internal discussion within DNR. There is a huge # of sites that no one has looked at, that have potential vapor issues. Jim reviewed a sampling of historic phone books and found about 2,000 different properties that were listed under cleaner ads in Wisconsin. It is likely that the actual number of properties is in the thousands. Not all of these are contaminated but many likely are. Other types of historic uses also can present a vapor risk but drycleaners are particularly problematic because of their location throughout cities.

Until now, most sites with a vapor issue have been discovered during property transactions. The VIPI would create a tool box of BMPs to help communities tackle this issue more systematically. The VIPI would create procedures that would address 1) creating a data base of sites that could be a source for vapor intrusion, 2) screening these sites to estimate risk, based on the historic use (for example for drycleaners – look at when did they operate, how long did they operate, what equipment did they use), and receptors (is the site residential, next to a sensitive population such as a daycare), 3) sampling strategies to screen higher risk sites, 4) outreach and notifications if a VI situation is found, and 5) ordinances or procedures to minimize vapor risks (for example, Connecticut has a voluntary approach to help child daycares avoid sites with hazardous chemicals). VIPI would address sites that are not just Brownfields.

Dept. of Health Services has participated in this discussion with DNR.

DHS is looking at grant opportunities (EPA grant – parallel work – 3 pilot communities – triage sites, mapping),

DNR recognizes the importance of the VI issue. There are a limited amount of resources available currently to tackle this issue. **Recommendation: seek financial support (work with financial subcommittee).**

Outreach is needed.

Is DNR/DHS looking for outside help, considering how big of an issue this is? There will be a need for stakeholder involvement. In particular, feedback will be sought during the piloting phase – on BMPs, financial resources needed. This could be an ideal research project for a graduate student(s).

Recommendation: Inclusion of VIPI language in report would be helpful.

DERF – add something in report regarding the importance of this funding. The financial subcommittee is looking at this. DERF deadline for inclusion has passed; no new sites are allowed in, but more money may be needed for sites already in the program.

Action Item	Decision/Recommendation	Dissenting Opinions
Subgroup discussed additions to the issue paper.	Add Vapor Intrusion Partnership Initiative information to the issue paper and the subgroups recommended support for the expansion of this initiative.	
Scott/Karen: follow up with Financial subgroups Chairs.	Let the Financial subgroup know that the technical subgroup supports additional funding for DERF and VI.	

AGENDA ITEM #4: Management of Building Materials Contaminated with PCBs

DNR's Gary Edelstein joined the meeting via GoTo Meeting.

Roy went through the issues. Discussion of MOA – one cleanup program. How do we get building materials included in MOA?

DNR Guidance document – one paragraph that addresses building materials. Concrete on the floor of old structure/foundation of old transformer – that gets sampled. Piece of equipment above concrete, is this handled as TSCA waste?

Multiple building materials (paints, caulking, etc.).

Non-authorized use.

Future liability concerns. Example, discrete or composite samples for reuse. What happens years down the road, and sample comes in over 50. Is everyone on same page during remediation?

A Point of contact within DNR would be helpful, to provide comments on strategies being implemented at a Remediation site. Better communication stream between RP/Consultant, EPA and DNR. Right now, there's little involvement by DNR. Consultant is working with EPA.

Deed restriction (EPA TSCA) vs. GIS Registry (DNR). School parking lot (EPA low occupancy) vs. DNR looking at same property as high occupancy.

NR 700 #'s are specific to soil. Concrete material would be regulated by DNR Waste Program once management is necessary.

Building material that is causing or can cause a discharge. Gary stated that the guidance could address this.

Reused at the site as fill. Regulated by Waste Program.

Closure letters – soil being left behind, standard warning is any future excavation of contaminated soil left behind would be regulated as a waste and the generator would need to determine later if this is hazardous waste for proper management.

Point of contact: RR PM could lead a team that includes staff from DNR Waste Program/Storm water Program. This occurs now with some redevelopments.

Draft revisions to the Guidance document

1. Added additional information on sites where proposal is to manage PCB contaminated soil (TSCA risk based approach), rather than self-implementing approach. DNR in lead with EPA involvement, the guidance states what information EPA is looking for.
2. Revised attachment 5 to provide greater detail on how to analyze for PCBs. Identify concerns for what people are sampling for.

Communication process: Historic vs. new site. Historic – EPA was made aware of these sites. Newer sites (e.g., spill, phase I is submitted – notification of discharge) – DNR notifies EPA. RP is required to notify EPA if there's PCB contamination. The agencies will classify as Type A, B or C site.

Type C site, DNR will let RP know that they could do a coordinated approval. The RP would submit a letter to EPA to request that approval process.

Type A, complicated site with no coordinated approval. Must follow EPA and DNR procedures separately.

Type B – DNR site (soil contamination below 50 ppm).

DNR will extend the comment period for receiving comments on DNR's guidance document. The revised comment period will begin on May 19th. Comments will be due after 28 business days.

Guidance Document, EPA, DNR hesitation to re-open MOA – what should we do? Guidance on how to assess building material and how that fits into MOA. Gary will include comments today in his write up of comments to guidance.

What is the Solid Waste Program role? Low hazardous waste exemption, reuse of building material.

The guidance should address where building material management may overlap with issues RR or Waste regulate, such as contaminated building material left in place, material in poor condition that can or does cause a discharge to environmental media and re-disposal (use as fill) of contaminated building material.

Gary is in the process of working on a separate proposed guidance document addressing lead, PAHs, PCBs and fill material at Remediation sites. This should be ready for public comment in late summer.

Action Item	Decision/Recommendation	Dissenting Opinions
With DNR extending the deadline for comments on the revised guidance document, subgroup members should		

submit their comments by 28 business days after the guidance is posted.		

Note: The following agenda items were discussed, but there was a limited amount of time and Therefore, the topics were not addressed in great detail.

Agenda Item #5: Background Levels of Contaminants (e.g., Lead, PAHs)

Arsenic background level report included lead information. What was the cost?

Funding: Gary E. noted that funding for conducting a state-wide sampling plan to collect and analyze PAH samples (background levels) is badly needed. Questions on sampling and analysis issues and the PAH background issue should be directed to DNR staff, Judy Fassbender and Resty Pelayo.

How PMs/Consultants can provide information and make decisions. Current background level guidance is needed. Sites with wide-spread common contaminants. NAR without full reference, use professional judgment?

What if consultants supplied sampling data voluntarily to DNR?

- Ambiguous fill – guidance will address fill at sites (common and wide-spread). If it’s a Waste – building on an abandon landfill protocol would most likely be used. PMs use judgment on how to handle.
- Proposed Guidance will not address sampling protocols.
- Proposed Guidance will be shared with Waste Program, but they are not going to be co-authors.
- Proposed Guidance will only address soil and fill left in place, other guidance will address materials when “picked up” (managed).
- Proposed Guidance will discuss regulatory path to get to NAR without additional samples.

Scott mentioned that EPRI is good possible source of funding to conduct a State wide PAH background sample study.

Agenda Item #6: Presumptive Remedies; Guidance on Historic Fill Sites

What constitutes waste? The proposed guidance will address this.

Development on an abandon landfill site – RR Program will oversee this.

Move fill (low hazardous exemption) from one location to another. This falls under the Waste Program jurisdiction. DNR can clarify this!

What’s fill, what’s soil, waste? A level of judgment is needed.

Known release at a site. RAP stating release will be handled, as well as build on abandon landfill.

Any thought on one submittal for this type of example (NR 700 fill sites)? It takes a certain expertise to review these – the issues are different, so separate submittals are needed.

Discussion revolved around separation of the application process so that development upon licensed and unlicensed landfills is handled by the Solid Waste Department while the application process for development upon other types of “fill” will be managed by the R&R Bureau.

Agenda Item #7: Negotiate Waiver to USEPA Deed Restriction Requirement for Closed Sites Listed in BRRTS

When DNR required deed restriction in the past, as well as when EPA required deed restriction in the past - How do we handle these now? Groundwater restrictions. When restrictions no longer apply there's a procedure for stating this on the deed.

What is the frequency of this issue coming up? It's fairly rare.

DNR will check on first issue.???

Action Item	Decision/Recommendation	Dissenting Opinions
Comments regarding this issue paper are due to Karen by May 5 th .	Keep this issue paper and bring it forward to the larger Brownfields Study Group.	

Agenda Item #8: Urban Agriculture Standards and Best Management Practices

Karen discussed the various issues:

- Residual environmental impacts due to concentrations greater than WDNR RCLs.
- Should there be an incentive to sample your soil (knowledge) vs. regulatory barrier that discourages sampling.
- What issues should we work on?
- People want to know what's in their soil.
- Risk of knowing vs. risk of exposure.
- Focus on Brownfield sites?
- Consistency – e.g., make sure DHS/DNR language is the same (e.g., screening levels)
- Spill law applicability is one of the key issues?
- Guidance is needed – educational materials. Advice/direction to gardeners that want to sample, why they should sample, what will happen when they sample, etc.
- Guidelines for Brownfield properties.

Action Item	Decision/Recommendation	Dissenting Opinions
Add WI Safe Garden Soils Workgroup information to the issue paper.		
Determine in a smaller group which items are to be included in BFGS paper. Some issues are not considered Brownfield issues by the group (Karen/Liz/Harris)		

Next steps

- Add sponsor name to issue papers.
- Deadline for comments on papers is May 5th.

NEXT MEETING

Date: May 9, 2014

Time: 9:30 AM – 12:30 PM

Location or Call-in Info:

NRT, 234 W. Florida Street, Milwaukee