

Heating Oil Guidance Stakeholder Meeting
Questions and Answers
11/18/2014

If decisions to remove saturated soils and recover free product are to be risk-based, how will consultants and contractors be able to make quick decisions in the field if saturated soils and free product are encountered?

If consultants/contractors need to implement a change in scope of work and necessarily need to understand the eligibility of any SOW change, they should reach back to the assigned case manager and consult with them – from the field if necessary. If consultants/contractors are not able to reach the case manager they should decide on the most appropriate course of action and document their rationale for the chosen course of action.

Concerning risk assessments – what is the mechanism that DEQ will use; where is the decision being made in the flowchart....when does it come into play, who does it, is it fund eligible?

Assessing risk should be a collaborative effort between the consultant/contractor and DEQ. Work authorized for the assessment of risk is typically reimbursable.

Concerning Section 5.4.7.1 of the proposed guidance, can language regarding notification of the local building official/fire marshal like this section be included elsewhere in the guidance? There are several other areas where we believe the local official would like to be notified.

DEQ will review the guidance and evaluate where notification of local officials might be added.

What is the dispute resolution process if a homeowner wishes to appeal a decision that would leave saturated soils or free product beneath their property when DEQ deems that no further action is required? A recommendation was made that DEQ set up panel comprised of both DEQ and Consultants/contractors. The panel would cross regional boundaries and hears appeals from consultants/homeowners on case decisions before costs are incurred. A fee could be charged to bring issues before the panel. It was mentioned that the Virginia Department of health has a sewage handling review board that is established by legislation.

The DEQ encourages property owners/consultants/contractors to follow informal lines of communication if at all possible; however, if informal communications do not result in satisfactory outcomes, the DEQ has a process for Early Dispute Resolution. Tank program release letters contain a reference to this process which can also be found at the following link under the description "Dispute Resolution".

<http://www.deq.virginia.gov/Programs/Enforcement/Laws,Regulations,Guidance.aspx>

Is shallow groundwater considered a receptor?

All subsurface contamination from a leaking petroleum tank is assessed based on the risk it poses, whether that contamination is in soil or groundwater. The fact that the shallow groundwater has been impacted by a petroleum release does not, by itself, mandate a specific course of action.

Section 5.4.3.2.4 of the Storage Tank Program Technical Manual contains the following statement:

“Releases from tanks or other containment systems commonly result in contamination of ground water. Once the source of contamination has been neutralized or eliminated, decisions regarding the necessity of and extent to which ground water must be remediated should be based upon a combination of risks and applicable remedial technologies. Ground water is not necessarily a receptor, but rather a medium through which constituents may migrate to a receptor.

When a potential receptor utilizes ground water as a source of potable water, DEQ will evaluate remedial options on the basis of preventing the receptor from being exposed to contaminated ground water via the ingestion pathway. Remedial endpoints must, therefore, be designed to prevent ingestion of contaminated water.”

This is the approach that the DEQ Storage Tank Program has utilized for at least 17 years. The policy that groundwater is not considered a receptor does not imply that groundwater contamination is never addressed. If groundwater contamination posed an unacceptable risk to a receptor and the receptor pathway could not be eliminated, groundwater remediation would likely be required.

Some Regions take leak notifications without attached analytical data while other regions will not. There needs to be consistency.

The DEQ is in the process of updating its environmental database. A key component of this database upgrade process is reduction of variations within a business process. DEQ will be looking at this issue during the database upgrade.

Regarding subdivisions that have older failing heating oil USTs: How, as a whole, is this not a great threat of an impact to the environment similar to a truck stop.

The tanks in a subdivision example given during the presentation was intended to convey a message that DEQ will not require all homeowners in the subdivision to check their tanks because of confirmed discharges from other tanks in the subdivision; DEQ does not have the authority to do so.

DEQ does not see a similarity between truck stops and heating oil tanks in subdivisions. A residence may use approximately 1000 gallons of heating oil in a given year; thus a subdivision of 250 houses may have a combined “throughput” of 250,000 gallons of oil per year. DEQ knows of truck stops in the Commonwealth that have a throughput in excess of 4.5 million gallons per month and many of the truck stops along the interstate highways have throughputs of over a million gallons per month and thus over 12 million gallons per year.

Is a scope of work for CAT 1 and CAT 2 heating oil cases going to remain the same as in the past?

DEQ has not altered the scopes of work for Category 1 and Category 2 sites in the guidance. We expect their continued use at many heating oil cases.

It would be helpful if DEQ could provide more explanation in the guidance concerning the use of the trucking codes, i.e. when it is appropriate to authorize M-Codes vs. T-Code

The DEQ acknowledged that the use of the soil hauling T-codes may not be appropriate for residential heating oil tank remediation scenarios where soil volumes are small. DEQ will evaluate the current guidance language pertaining to soil hauling code use.

How is 13,000+ saturated soils three feet from a basement not a threat to human health?

DEQ did not say that soil concentrations of 13,000 ppm next to a basement are not a risk. Risks to any structure posed by saturated soils would need to be evaluated.

For CAT 1 cases where tanks need to be cleaned, will time be authorized for minor excavation to access the UST to clean the tank since removing fluids from a fill port or vent line never result in total fluids removal?

DEQ acknowledged that pumping fluids from a UST via the fill pipe or vent pipe does not result in 100% removal of fluids. DEQ is not aware that this has ever been identified as a significant issue. DEQ is not aware of any instances where residual fluids have caused subsequently impacts. It should be noted that cleaning a tank is considered a tank closure activity and therefore not eligible for reimbursement.

Under the proposed guidance more liability is assigned to homeowners. Is DEQ going to give more information to tank owners? Will DEQ provide additional education to homeowners...especially the 80-year old homeowner who is not internet savvy.

The DEQ maintains information concerning heating oil tanks on their website:
<http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/CleanupActivities/HomeHeatingOilTanks.aspx>

The Virginia Petroleum, Convenience and Grocery Association also maintains information on their website including a Virginia Guide to Heating Oil Storage Tanks: <http://www.vpcga.com/files/VPCGA-TankBro2012.pdf>

The National Oilheat Research Alliance (NORA) maintains a consumer oil heat website that contains information home heating oil tanks: <http://oilheatamerica.com/index.mv?screen=home>

DEQ acknowledges that on-line information may not be readily available to those who do not have internet access or who are not internet-savvy; as such, DEQ recognizes the value of contractor, consultants, and oil jobbers in providing information to heating oil tank owners.

How is DEQ going to address a tank owner's inability to pay when a tank owner is determined to be negligent...especially when the Consultant responds to an emergency situation?

The DEQ tank program takes a fairly narrow view with respect to negligence determinations, i.e. the program rarely rules that a home heating oil tank owner was negligent – thus barring eligibility for reimbursement of any necessary corrective actions. That being said, if a consultant/contractor responds to an emergency situation, the DEQ assumes that the consultant/contractor has some contractual agreement in place whereby the tank owner is financially liable to the contractor/consultant for work performed.

How will DEQ allow for appeals of case decisions regarding the release, i.e. determination of NFA, CAT 1, or CAT 2?

See the earlier question concerning dispute resolution.

How many heating oil tanks are still in service?

DEQ does not regulate heating oil tanks and therefore does not have a good way to estimate the number of heating oil tanks still in service within the Commonwealth.

How will these proposed guidance changes impact the FUND? How much will be saved with implementation?

The guidance relies on the best profession judgment of each case manager while working with the consultant/contractor. The DEQ tank program does not have a way to gauge the impact the proposed guidance will have on scopes of work and subsequent impact to reimbursements.

When will the changes be implemented?

The DEQ Tank Program has a goal of incorporating this proposed guidance into the next edition of the Storage Tank Program Technical Manual and issuing the updated manual in early 2015.

With respect to risk assessments, is the Tank Program's approach to risk different than other DEQ programs?

The Storage Tank Program uses the same numerical risk thresholds (e.g. excess lifetime cancer risk of one-in-one million) as do other programs within the agency. The major point of departure is that the Storage Tank Program only considers risks to present and known future receptors.

Several consultants expressed concern regarding the subjectivity of negligence calls, especially for catastrophic releases after working hours when the DEQ is not available to call.

It was noted that the vast majority of tank releases are not deemed negligent, and that is not expected to change. The presentation noted the fact that DEQ has no authority to direct home heating oil tank owners to mitigate a dangerous "accident waiting to happen". In such a case, the agency may advise the owner in writing what it recommends should be done to prevent a catastrophic release. Should a tank owner fail to follow through on the recommendation and subsequently have a catastrophic release, he or she may be denied fund access.

There was discussion concerning homeowner's insurance companies that have cancelled or not insured homes due to the presence of an abandoned or in-use heating oil tank. DEQ was aware that this was occurring sporadically. DEQ acknowledged that lending institutions, real estate transactions, and insurance companies might place requirements on tank owners to perform work that is not necessary from an environmental risk perspective. As such, the cost of such requirements would be borne by the tank owner.