



August 20, 2013

Mr. David Lamb
Director, Hazardous Waste Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

RE: Proposed Changes to Missouri Risk-Based Corrective Actions

Dear Mr. Lamb:

As a representative of Wallis Companies (Wallis), I am pleased to provide this comment letter regarding the proposed changes to the Missouri Risk-Based Corrective Actions (RBCA) Rules and Guidance Document for underground storage tanks.

Overall, I have no major concerns with what the new rules or guidance document contain. I believe the DNR, PSTIF and MCPA put forth a great effort to collaborate and compromise on a streamlined document that will hopefully make the RBCA process less cumbersome and help facilitate site closures. While this latest version may not be perfect, it is clearly an improvement over what we had simply based on the consolidation and elimination of redundancy and useless requirements.

That being said, I do have a few comments on the requirements contained in Section 6.1.1.2 (Determination of Reasonably Anticipated Land Use (RAFU)) and, more importantly, the administration of this particular section by DNR project managers.

My comments center on the addition of interviews with current property owners as a factor for consideration when determining future land use in the absence of definitive, long-term development plans. It is not that I am strongly opposed to this addition, but rather I disagree with the disproportionate amount of weight given to this factor by project managers for several reasons. First, the future plans of the property owner are not the "end all" for future land use determination. While they are the property owner, often they are still subject to requirements of planning and zoning and other local regulations or deed restrictions that might dictate what their property can and cannot be used for. Second, in an ideal situation, all adjacent property owners would be educated on petroleum remediation projects and receptive to the risk-based corrective actions process without seeing an opportunity for personal gain. However, this is rarely the case. Similar to obtaining access agreements, I have personally encountered attempts at extortion from adjacent property owners when trying to

document future land use. Furthermore is the ever-present potential for frivolous litigation when no legitimate risk to human health or the environment is present. It is also often the case that a document signed by the property owner or a verbal interview conducted with the owner is not an enforceable, legal instrument should land use trends change in the future. Again, let me reiterate—I am not opposed to this addition and I believe it should be considered when available. However, I also believe all other factors indicating the most *reasonably* anticipated future use should be considered with increased weight in the absence of a current owner interview.

Lastly, although the new guidance document has not been accepted by the Hazardous Waste Commission, it should be noted that some project managers have been requiring (not simply requesting) this information for some time now. I agree that the decision of future land use should be made by the DNR based on the available information and good professional judgment; however, I believe more value should be given to the information that is presented by consultants. The consultants that work on behalf of owners are also certified professionals and DNR should understand that they all have costs and risks associated with reports they sign and the information and conclusions contained therein. In several instances that I can think of, the DNR project manager(s) have muddled the issue of future land use with their own subjectivity. Specifically on one example, the overwhelmingly strong weight of evidence documentation presented to justify non-residential RAFU did not satisfy the particular project manager for an off-site Waffle House. The project manager decided to contact the Waffle House directly and inquire as to the future plans of the property. In this instance, the manager of the Waffle House was interviewed and indicated non-residential future use. Ultimately, the right decision was made and non-residential land use was agreed to by DNR and our consultant; however, not only was this an inappropriate method for evaluating our consultant's information, it is alarming that the project manager put more trust and value into the information provided by the Waffle House manager than our professional consultant.

In my opinion, the "risk" in risk based corrective actions not only refers to the risks evaluated relative to human health and the environment but it also refers to the risk involved in making the best, most educated decisions about the future based on the knowledge and factual information we have in the present rather than speculation and "what ifs".

Thank you for your time and consideration in this matter.

Sincerely,



Donnie Greenwalt
Environmental Compliance Manager
Wallis Companies