Missouri Department of Natural Resources' Response to Comments from REGFORM
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REGFORM Comment #1. Negotiations with EPA on scope of MRBCA. We see absolutely no reason to limit the scope of the MRBCA program. We support the efforts of MDNR to develop a program that will be used at every site in Missouri where a remedial effort is undertaken. We understand that MDNR will continue to negotiate with EPA on an MOA regarding the scope of the proposed RBCA rule and that there may be a need to review/assess not only the VCP/Brownfields MOA but possibly RCRA/CA MOA and CERCLA MOA as well. It is clear that U.S. EPA is taking a national interest in this issue. It is also clear that EPA has overtly left other stakeholders out of these discussions.

While the internal review proceeds, MDNR has indicated that it will accommodate EPA and will not apply the new MRBCA rule to National Priority List (NPL) sites. We further understand that State-led Superfund sites may use the MRBCA rule as long as these sites are NOT on the NPL. RCRA sites are more difficult to sort out. U.S. EPA apparently has an internal workgroup looking at this issue and how to delineate RCRA sites between what it calls "high" priority and "low" priority. The low priority sites are likely to be acceptable to EPA to be handled by the MRBCA. This is confusing and unnecessary. REGFORM recommends that MDNR stay the course in its negotiations with EPA. We want all sites to be handled through MRBCA.

The litmus test for a sound state program is NOT some abstract national consistency programmed in Washington, D.C., but whether or not the Missouri program protects public health and the environment. If Missouri or any state program handles these issues smarter and more efficiently, it should be commended. And as long as public health and the environment are protected, then U.S. EPA has no legitimate concern. A one-size-fits-all approach is not only the hobgoblin of small minds, but completely ignores the notion that states are the laboratory for innovation.

DNR Response: Thank you for your support. At this time, the USEPA has stated that its intention is not to finalize any Memorandum of Agreement until after the rule has been finalized.

REGFORM Comment #2. Exposure Variables. We strongly support the Department's position and rationale that the construction worker soil ingestion rate should be dropped to 40-50 mg/day from the previously specified 100 mg/day. In addition, we respectfully request that the Department review the final document to be certain that exposure rates for construction workers are consistent with the discussion and consensus process of the stakeholder work group.

DNR Response: Thank you for bringing this issue to our attention, which was discussed in our letter to the USEPA of December 16, 2005. To be consistent with the discussion in that letter, the department will adjust the construction worker soil ingestion rate to 49 mg/day.

REGFORM Comment # 3. Revised Chemical Analysis. At the request of EPA, MDNR adopted RAGS Part E, and made changes in the calculation for some 30 chemicals. As a result, there will be changes to the Default Target Levels (DTLs) especially for non-volatiles as well as some changes to the Tier 1 Risk-Based Target Levels (RBTLs). According to your consultant, where dermal contact becomes the clean-up driver (as with PCB), the Risk-based Target Level will be higher. REGFORM respectfully reserves judgment on the use of RAGS Part E until other constituents are analyzed. If it turns out that RAGS Part E causes cleanup numbers to spiral out of reality, then we would need to revisit the usefulness, accuracy, and utility of RAGS Part E.

DNR Response: Your comment is noted.

REGFORM Comment #4. Data Quality Management. The Department has indicated that it will develop a generic quality assurance plan for use at VCP sites. We respectfully request that the Department present such draft to this stakeholder group or a smaller interested subgroup (including REGFORM) for input.

DNR Response: The department has developed a generic quality assurance plan that has been used successfully at Voluntary Cleanup sites. The generic QAPP is located at the following link: http://www.dnr.mo.gov/env/hwp/qapp/index.htm. We have received no specific comments on the generic QAPP to date, and it will be included in the MRBCA guidance by reference.

REGFORM Comment #5. Long-term Stewardship. REGFORM supports the concept of long-term stewardship even while recognizing that the term is not well defined. We firmly believe that Section 11 of the Guidance and Appendix J must maintain an appropriate degree of flexibility. Stewardship is key, but every site is unique and must be treated as such. "Layers" of redundancy are not necessary for every site and may serve to drive up ancillary costs without commensurate benefit. We are also wary of the use of a "tracking system" given our state's experience with the ill-named "Abandoned and Uncontrolled Sites" registry. We will work closely with the state to determine whether or not there is an appropriate use of such a tracking system and how it should be implemented. Our goal should be to protect prospective owners of remediated property without undermining the value of the real estate.

DNR Response: The department shares the interest in making long-term stewardship flexible to the extent needed to both protect human health and the environment, and to meet other goals of site owners and others involved in site remediation. The department agrees that layers of controls may not be needed in many situations, provided sufficient control over any remaining contamination is maintained to prevent elevated risk and to respond to any threats that would elevate a site's risk over the time span during which contaminants exceed unrestricted use criteria.

The department welcomes input on how the tracking system can serve as a marketing tool for remediated sites rather than a list of sites to be avoided.

REGFORM Comment #6. Administrative Issues. REGFORM respectfully recommends that a MRBCA subgroup working with legal counsel to MDNR and the Missouri Office of Attorney General be convened to further discuss the issue of Guidance Document versus Rulemaking. There is no easy answer. REGFORM is concerned that we not put the program or particular sites at risk by under inclusion. Concomitantly, REGFORM understands that some level of flexibility is also desired. We believe that the first "cut" on this separation should come from the Department and then quickly be reviewed by a MRBCA subgroup. REGFORM will participate in such an effort.

DNR Response: The MRBCA Rule subgroup considered this question previously and may revisit it as the rule proceeds. The department agrees the rule will need to cover necessary aspects of the remediation process while leaving allowances for changing methodologies and values for specific criteria. Both the Attorney General's Office and REGFORM are members of the subgroup, and the department appreciates their continued participation.