

***Response to comments from Kevin Perry
REGFORM
Received by email, March 28, 2005***

1. *Registered Geologists.* Regarding the issues related to the Geologist Registration Act, we request that the Draft Guidance be changed to eliminate requirements for a R.G. or P.E. to do field work. For example, on p. 6-26, section 6.12.1, the draft states that a registered geologist “must log.” We believe this is in conflict with the law that states that the work does not need to be performed by the R.G.; rather, the work can be done “under the supervision of” a R.G. or P.E.

Response: The guidance language will be revised to state that this type of work can be performed by or under the supervision of a Registered Geologist or P.E. trained in geology.

2. *Eco-Risk Karst Determinations.* We believe that the guidance should explicitly acknowledge that the function of determining proximity to karst features/topography that is accomplished by questions 7b and 7 of Checklist B does not always require a field determination. GSRAD staff at stakeholders meetings said advised us that consulting their maps was adequate for this determination. Specifically, the GSRAD MEGA database “caves layer” is ideal for making this determination.

Response: Appendix F, Ecological Risk Assessment, Level 1, Checklist B (next to last paragraph, first sentence) will be changed to read, “A professional opinion may be necessary to answer 7.a, 7.b, and Question 7.” With respect to a field determination, we will add the following sentence: “The determination of proximity to karst features/topography under questions 7b and 7 of Checklist B does not always require a field determination. However, in some cases, a field determination may be appropriate.”

3. *Soil Type Determinations.* On a related topic, we also request that the draft guidance be revised to make explicit that soil type determinations can also be made by visual classification of soil cores to confirm the accuracy of the geologic information in the MEGA database (i.e., “surface geology” data layer). [Note: This information is not in the current draft of the Guidance document; rather, it is in the 3/18/2005 Tanks guidance memo we assume will be incorporated in some fashion into this Guidance.]

Response: The definition of soil types has been developed in the Tanks Section and undergone its separate review. This document is currently being reviewed for inclusion in the Departmental MRBCA and will be included as an Appendix when final.

4. *Land Use.* We request that the draft guidance document be changed so that “future use” is returned to the language used by the stakeholder group: “reasonably anticipated future use.” “Reasonably anticipated future use” has particular meaning in USEPA guidance and it was meaningful to stakeholders. That meaning should be preserved.

If the Department is trying to create or enhance enforcement authorities, we believe existing enforcement authorities are well documented elsewhere and need not be expanded here.

Response: Several members of the Workgroup have requested that the Institutional Controls Subgroup be reconvened to more completely address issues related to institutional controls and long-term stewardship. The Subgroup has agreed to re-convene and plans to do so later this month. This issue will be discussed in the next meeting of the Institutional Controls Subgroup and is also on the list of topics to be discussed by the Workgroup on April 28, 2005.

5. *Ecological Risk Assessment at Default Target Level. Of the 16 tables in Appendix B, most, if not all, were missing page 9 of 9. We believe the missing COCs have been addressed in a recent (3/21/2005) email from J. Balkenbush. We would appreciate having more time to review these tables since they've only been available to us a few days.*

Response: All of the chemicals of concern that are related to petroleum products and in the Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks (Tanks MRBCA) are being addressed under a separate process by the Tanks Section. All information related to these chemicals in terms of chemical properties, toxicity values, and risk-based target levels is posted on the Tanks website and currently undergoing a review and comment process. These numerical values will be the same in both guidances.

6. *Long-Term Stewardship. We believe that stakeholder meetings were discontinued before this and related issues were adequately discussed for the development of a consensus position. We do not believe that these issues can be sufficiently resolved using this process of commenting on the draft guidance document. Therefore, we request that the stakeholder group be reconvened for the purpose of reaching consensus on LTS/AUL issues.*

We observe, for example, that Section 11 of the Draft guidance is predicated on the development and use of a tracking system. We believe that the institution of such a tracking system fails to take into consideration some of the realities of the real estate market, and may produce a result opposite to the one that we intended. We suggest that these references to a tracking system and/or similar registries be stricken from this document.

We also believe that annual reporting requirements should be stricken. We believe that restrictive covenants, recorded against the land, have proven to be well-understood and workable. There exists already a degree of comfort in Missouri for this type of LTS. We would like to see Section 11 revised to reflect this approach to LTS.

We believe references to UECA, as on pp. 11-1 and 11-2, should be stricken from this draft document.

Response: As noted in an earlier response, these issues will be discussed with the Institutional Controls Subgroup in April.

7. *Dispute Resolution Process:* We believe that further discussion by the stakeholders group on this topic would be beneficial. In order to avoid as much dispute as possible, only actually affected parties should be provided the opportunity to comment on or request a review of a site-specific management plan. Therefore, the term “affected party” should be clearly defined in the guidance and associated regulation. If merely interested parties are allowed these opportunities, the process at any site could come to a halt by requested reviews and disputes filed solely to impede progress.

We believe that conference, conciliation and persuasion (CC&P) should be the first step in dispute resolution. Should a hearing ultimately be required, we believe those hearings and the decisions rendered should be rendered in an open forum.

Response: We recognize that the Workgroup has not specifically discussed “Appendix D, Procedure for Review of the Risk-Based Corrective Action Decisions,” as it is new to the guidance. This procedure will be on the agenda of the April 28 meeting.

With respect to this Appendix, please note that “Conference, conciliation and persuasion” is a concept associated with enforcement actions, and this informal dispute resolution process is not intended to have any association with enforcement. We hope that Appendix D is a viable beginning for informally working out disagreements with departmental decisions, but it needs to be clear that there is no actual or implied relationship between MRBCA and enforcement.

8. *Chemicals of Concern:* We like this section of the Draft Guidance. We appreciate the focus on identifying those chemicals of concern that will really drive risk and risk estimation. We offer no editions at this time.

Response: Thank you.

9. *Data Quality Management.* We are concerned that this section, as written, may hamper corrective action in Missouri. We believe that many non-RCRA and non-CERCLA sites in Missouri have been cleaned up without requiring QAPPs, as in Appendix K. If the intent is to require QAPPs like those required for RCRA & CERCLA for tanks or VCP sites, this could deter us from the goal which we seek: more right-sized clean-ups appropriate to the level of associated risk. We believe that “Federal-style” QAPPs are not now required for non-RCRA and non-CERCLA sites in Missouri. Possibly, further clarification of the requirement is all that is required here.

Response: The integrity of any data collection and analysis is essential to accurately assessing and managing risk, which is essential to meeting a balanced goal of facilitating development of contaminated sites and protecting human health, welfare, and the environment.

Good data collection and analysis is a common goal of the department, remediating parties, and private consulting firms and laboratories. We believe that it is in the best

interest of those private sector interests who perform good data quality management for the department to ensure that all private sector entities adhere to certain standards.

However, data quality management should not become a task that is unduly burdensome. To alleviate any unnecessary “paperwork” requirements of this task, the department is considering the use of checklists and standardized models of Data Quality Management Plans that could be adopted for specific site conditions. At the April 28 meeting, we plan to open discussion on this problem to identify mutually satisfactory solutions.

In addition, we believe that more time for review of this document is needed. We share the desire to have RBCA established and implemented in a predictable, transparent and timely way in Missouri. However, we are concerned about the introduction of the “Water Quality Standard” language to this Draft document. We do not know, at this time, the full extent of the impacts of what could be a significant change in this guidance. We request that the stakeholder group meet to address this issue, as well as the AUL issue mentioned above.

Response: This topic will be on the agenda at the April 28, 2005, meeting of the Risk-Based Remediation Rule Workgroup (Workgroup).

Also, we were very satisfied in our discussion with MDNR on the tanks RBCA guidance that the Department made a commitment to revisit issues pertinent to RBCA as the state of the science changed and inconsistencies or deficiencies in the technical guidance were revealed through implementation. For example, we believe that modeling and understanding the vapor intrusion pathway is in flux. We anticipate significant changes in policy and technical understanding to emerge shortly. MDNR has committed to revisiting that issue with us for tanks guidance when important conclusions or findings emerge. We request that a similar commitment to revisiting issues be made for this Guidance as well.

Response: The department will update the technical guidance as the science evolves and improves. Because the process of this Technical Guidance will be promulgated as rules, the department will continue to work with the MRBCA Rules Subgroup to incorporate language to this effect into the rules.