

LEAKING HEATING OIL TANKS CLEANUP PROGRAM STAKEHOLDER GROUP MEETING

MEETING NOTES STAKEHOLDER MEETING – AUGUST 3, 2015 DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

The following members of the stakeholder group attended the meeting:

Lindsay Trittippoe; Penn Staples; Cindy Davis, David Beahm, - Garry Moore - alternate for John Pollard, John Butcher, John Diehl, George Peyton- alternate for Mike O'Connor, Lance Gregory; James Golden, Betty Lamp, and Anthony Moore (arrived after the meeting started). Keith Cannon was unable to attend the meeting.

Welcome and Introductions (Angie Jenkins):

Angie Jenkins, DEQ Policy Director, welcomed the stakeholders to the meeting and discussed some general meeting logistics and stakeholder meeting guidelines. Angie Jenkins will be serving as meeting facilitator for this stakeholder group. Melissa Porterfield took notes for the group. Ms. Jenkins asked for introductions from all stakeholders in attendance.

Ms. Jenkins noted that the General Assembly had directed DEQ to convene this group of stakeholders to advise the Department regarding current guidance and policy governing the cleanup of petroleum releases. The review will examine if the Department's current guidance is being applied uniformly across regional offices; the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation; and the appropriate deductibles.

Guidance and Regional Consistency Overview

James Golden, DEQ Director of Operations, presented information to the group concerning the role of guidance in regulatory programs. Guidance is not law or regulation. Guidance may include specific requirements or may have options listed that program staff can use depending on the specifics of the case. He discussed how central office communicates with regional staff and central office receives data from regions concerning cases. This interaction helps to maintain consistency throughout the program. During his presentation he used the analogy of guidance being similar to guardrails on a roadway. The guidance is intended to allow some professional judgment to be used when evaluating cases. There are numerous differences that need to be considered when evaluating the risk a leaking tank may pose to human health and the environment. Mr. Golden presented a hypothetical case concerning removal of an unregulated home heating oil tank and how five DEQ regional offices indicated they would respond to the case. Some regions would classify the case as a category 1 site and require additional soil sampling and/or well samples and others would classify the site as a category 2 immediately. He indicated that the responses received from regional offices were all within the parameters of the current

guidance or “between the guardrails”. Included in Mr. Golden’s presentation were statistics concerning remediation case reopeners (i.e. how many closed cases are then later re-opened for additional evaluation or clean-up). The data show that approximately 0.8% of over 20,000 home heating oil tank cleanups are reopened later compared to 1.8% for federally regulated tanks.

Group Discussions (Angie Jenkins)

Much discussion took place surrounding the issue of tank cleanup cases. The following are issues expressed by the members of the group:

- Should all tanks be treated the same?
- How do you assess the risk?
- Is free product impact to groundwater always a problem?
- If saturated soils are present, should you assess impacts to groundwater?
- Should home heating oil tanks be regulated?

Is guidance being applied uniformly across regions?

The group attempted to reach consensus concerning the first item posed to the group from the Virginia General Assembly- Is guidance being applied uniformly across regions? There was a difference of opinion concerning the answer to this question among stakeholders and no consensus was reached on this issue. The following represents the various views from stakeholders concerning the answer to this question:

- The answer to the question should be yes or no.
- The answer provided should be more than a yes or no answer. It should provide an explanation of the answer to the question.
- The answer is “no” - DEQ is not applying guidance uniformly.
- The answer is “no” since all 5 DEQ regions presented with a hypothetical situation did not use the exact “uniform” process and place the cleanup in the same category (either all category 1 or category 2).
- The answer is “yes” since all 5 DEQ regions presented with a hypothetical situation did provide answers that were within the parameters of the guidance. (stayed within the guardrails)

The group tried to reach consensus on this issue and members provided the following statements (and variations of these statements) when attempting to answer the first issue concerning whether guidance is being applied uniformly among regions.

- DEQ has acknowledged that some regional personnel in some regional offices have taken a more liberal interpretation of the agency’s guidelines in approving closures for releases of petroleum from home heating oil tanks than some other regional offices. DEQ reports that it is continuing efforts to ensure consistency.
- No, DEQ is not applying the department’s present guidance uniformly across regional offices.
- No, the present guidance is not being applied uniformly. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.
- The question of whether or not the guidance is being applied uniformly is not an easy one. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.

- Determining whether the present guidance is applied uniformly is difficult due to the latitude allowed in the guidance. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.
- No, present guidance allows regional offices to exercise professional judgment, which by its nature allows different outcomes. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.

The group failed to reach consensus on whether guidance is being applied uniformly across regional offices. The meaning of the word “uniformly” generated discussion among members. Some stakeholders believe that the term “uniformly” would mean that regional staff when presented with specific information would always arrive at the exact same conclusion. Others interpreted this term to mean that as long as the regional staff made decisions consistent with the guidance, that the guidance was being applied “uniformly” across the state. No consensus was reached as to the meaning of the word “uniformly”.

Adequacy of the Department’s guidance with respect to the Commonwealth’s groundwater protection regulations and the Department’s technical regulations regarding petroleum spill remediation

The group discussed the current guidance. The following statements were made during the discussion:

- DEQ guidance suggests that groundwater is not always a receptor, but is described as a potential medium to receptors and it was suggested that groundwater should always be considered a receptor.
- How much contamination is okay to remain?
- Concern was expressed with respect to potential contamination of shallow aquifers from home heating oil tanks then leading to surface water contamination
- Suggestion to always require the owner to remove the leaking home heating oil tanks
- Should you allow the site to be closed without removing all contamination?
- Should home heating oil tanks be regulated tanks?
- If home heating oil tanks are not regulated tanks and the group is not going to suggest regulation of these tanks, then perhaps the focus of the group should be on whether the guidance is adequate with respect to the technical regulations.

The group did not come to any conclusion or consensus concerning the adequacy of the Department’s guidance with respect to the Commonwealth’s groundwater protection regulations and the Department’s technical regulations regarding petroleum spill remediation.

Tank Data Spreadsheet

At the July 15th meeting, stakeholders inquired about the availability of data concerning heating oil tank case closures by DEQ’s Northern Regional Office. DEQ staff provided the group with a spreadsheet containing information on closed cases in the Northern Virginia Regional Office. Due to the large amount of data provided, the group decided to review the information after the meeting and to send any questions about specific cases to Ms. Porterfield well in advance of the September 3rd meeting so that DEQ staff could pull the case files and be prepared to discuss specific cases at the September 3rd meeting.

Map of Heating Oil Cases/ Income demographics

As a follow-up to a request from stakeholders during the July 15th meeting, DEQ staff provided stakeholders with a map that illustrates the number of heating oil tanks closed, by county with corresponding poverty rate information. The poverty rate was obtained through U.S. census data.

Action Items

At the suggestion of one of the stakeholders, stakeholders were asked to provide suggestions for specific changes to the current guidance and submit those ideas to Ms. Porterfield well in advance of the September 3rd meeting. Ms. Porterfield was asked to then compile a list of all such proposals and distribute the list to stakeholders prior to the September 3rd meeting.

Stakeholders are also to send any questions about specific cases from the tank data spreadsheet for the Northern Regional Office to Ms. Porterfield well in advance of the September 3rd meeting so that DEQ staff can be prepared to discuss specific cases at the September 3rd meeting.

Ms. Jenkins reminded the group that September 3rd is the group's last meeting date.

Meeting Adjourned

The meeting was adjourned at 4:30 PM.

Next Stakeholder Meeting

The next meeting of the Leaking Heating Oil Tank Cleanup Program Stakeholder group is scheduled to begin at 10:00 am on September 3, 2015 in DEQ's Central Office (2nd floor).