

LEAKING HEATING OIL TANKS CLEANUP PROGRAM STAKEHOLDER GROUP MEETING

MEETING NOTES STAKEHOLDER MEETING – JULY 15, 2015 DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

The following members of the stakeholder group attended the meeting:

John Butcher, Anthony Moore, Cindy Davis (only able to attend morning portion), David Beahm (arrived after meeting started), John Pollard, John Diehl, Keith Cannon, Lindsay Trittipoe, Mike O'Connor, Penn Staples, James Golden, and Betty Lamp. Lance Gregory 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. Stakeholders were provided with a copy of an excerpt from the budget bill that directed the Department to form this workgroup.

Leaking Heating Oil Tanks Cleanup Program Overview

James Barnett presented information concerning the statutory and regulatory framework of the Underground Storage Tank (UST) program. He reviewed the requirements of Articles 9, 10, and 11 which set forth the statutory requirements for tanks and oil spills regulated under these articles. He also provided an overview of the guidance the agency has developed for the Petroleum Program. Agency guidance is available to the public through the DEQ website and the Virginia Regulatory Town Hall websites.

In addition to DEQ's regulations, tanks also are regulated by the statewide building and fire codes. The codes contain requirements for proper installation, operation, and abandonment or removal of all tanks storing flammable and combustible materials, including petroleum storage tanks. DEQ's UST and AST regulations are incorporated by reference into the building code, adding additional requirements for regulated tanks and facilities.

Marybeth Glaser presented information on the Virginia Petroleum Storage Tank Fund (Fund). She reviewed the purpose of the Fund, funding sources, and past Fund revenues and expenditures. She also explained delayed payments from the Fund.

Presentations will be distributed to the group after the meeting.

Objectives/Group Discussions (Angie Jenkins)

The General Assembly asked DEQ to examine the following:

- If guidance is being applied uniformly across regions
- Adequacy of guidance with respect to groundwater protection regulations and technical regulations for petroleum spill remediation
- Homeowner deductible

Ms. Jenkins asked the group for their thoughts concerning these topics.

Some stakeholders expressed concern that there was a lack of consistency concerning how different regional offices were operating the program in their region. One stakeholder stated they had heard that the Northern Virginia Regional Office had been given permission to deviate from the published guidance when conducting case closures for home heating oil tank cleanups. DEQ staff indicated that permission has not been granted to deviate from published guidance. DEQ requested stakeholders with concerns with guidance not being followed to provide specific details and data concerning those specific cases to DEQ central office staff so the details concerning these cases can be examined. Stakeholders stated the following issues with guidance not being applied uniformly:

- allowing contaminated soils to remain
- a thorough risk assessment not being performed
- not addressing free product (free product should not remain, investigate depth to product, check groundwater for contamination)

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

- The applicability of the State Water Control Board's antidegradation policy (9VAC25-280-10) to tank cleanups.
- To what level does a site need to be remediated to in order to be eligible to be closed?
- What would be the impact on the Fund if case closure practices were changed?
- Product should always be removed from a leaking tank.
- Should the tank always be removed?
- Should there be more investigation to assess the risk posed by soils under the tank?
- Should angled borings be conducted or is it cheaper to remove the tank?
- Are environmental problems being caused by the current tank closure process? For example, are cases being re-opened to address contamination or are contaminated water supply wells being detected near closed heating oil tank cleanup cases.

- Are the risk-based cleanups appropriate, or should the agency require cleanups to meet groundwater standards, or should we be requiring cleanups to be below federal maximum contaminant levels (MCLs)? Should the Fund be used to pay for cleanups below MCLs?
- What does the law require concerning the remediation of these heating oil tank leaks?
- Should there be identical cleanup standards for heating oil tanks and Underground Storage Tanks (USTs?)
- Should groundwater be considered a receptor when establishing risk-based cleanup goals? If not, how is this consistent with the antidegradation regulation?

Ms. Jenkins reminded the group that the creation of a stakeholder group is the creation of a public body. All meetings of the group are public meetings. This means that any meeting among 3 or more members of the group where they will be discussing matters within the scope of the group must be noticed as a public meeting. There is a statutory requirement to announce all meetings on the Virginia Regulatory Town Hall website and Commonwealth Calendar. In addition to the statutory requirement, Executive Order 17 (2014) requires notices of meetings and agendas for public meetings to be posted on the Town Hall website 7 days in advance of a meeting, except in the case of an emergency meeting. Also, notice is to be included on the Department's web page. Ms. Jenkins also suggested to the group that any information that group members would like to share with the group should be sent to Melissa Porterfield to share with the group and the group should not use the "Reply All" function on e-mail as such e-mail correspondence and replies among group members may also constitute a meeting subject to public notice and other requirements.

Consensus item

Consensus was reached on one item at the meeting. The group reached consensus on the following: The Virginia Petroleum Storage Tank Fund should only be used for the purposes in Article 10 of Chapter 3.1 of title 62.1 of the Code of Virginia.

Action Items

The following information will be provided to stakeholders by DEQ:

- Copy of the presentations from today's meeting concerning the tank program
- A link to the antidegradation language mentioned by stakeholders at today's meeting
- A link to the DEQ draft guidance concerning heating oil tanks that was discussed with stakeholders at a meeting in November 2014 and the related presentation on the draft guidance.

The group requested that the following information be provided, if available:

- Information on the number of unregistered heating oil tanks (DEQ does not have this information since heating oil tanks (for consumption on the premises where stored) are not regulated by DEQ and thus not required to be registered - a trade association may be able to provide this estimate)
- Data on homeowner deductibles and demographic information on those heating oil tank owners impacted
- Information on how the tax collected by DMV that is used as the funding source was broken out by the type of fuel, specifically how they distinguish between heating oil and off-road diesel

(DEQ does not have this information- information on funds collected is reported to DEQ from DMV)

- Information (specifically requested for NVRO) on number of closures occurring and their associated parts per million (ppm) of contamination remaining, and what level of closure is occurring.
- Any analysis of the impact on raising homeowner deductibles, including how those unable to pay the deductible would be handled, an analysis of the marketplace, e.g. the impact a higher deductible would have on the identification of leaking tanks (would they continue to be identified or would they just be left in place?)

Meeting Adjourned

The meeting was adjourned at 4:05 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 August 3, 2015 in DEQ's Central Office (2nd floor).