



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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January 11, 2012

Mr. David R. Gillay and Mr. John M. Kyle III
11 South Meridian Street
Indianapolis, IN 46204-3535

Dear Mr. Gillay and Mr. Kyle:

Re: Comments on IDEM's Draft Remediation
Program Guide NDP Number: WASTE-0060

Thank you for your comments on the draft Non-rule Policy Document (NPD), "Remediation Program Guide" (RPG). IDEM staff have considered your comments and offer the following responses.

A. Transition Policy

We understand that you are concerned about the continuous updating of the default closure levels. As you mentioned in your comments, the levels you refer to are called screening levels in the pending Remediation Closure Guide (RCG). You asked that we confirm that our understanding of the current transition policy is the same as yours, and provided your understanding in four points.

- 1) IDEM agrees that in 2001 IDEM created a one-year transition period starting with the effective date of the RISC Guidance for the regulated community to choose either the prior guidance, like the Voluntary Remediation Program (VRP) Guidance (*the VRP Resource Guide*) which was published in 1996, or the new RISC guidance. After that one year, the person was to use the RISC Guidance.
- 2) IDEM agrees that IDEM provides certain program-specific milestones that establish the date used to determine the applicable guidance. The current draft Transition Policy set the milestone as the Voluntary Remediation Agreement (VRA). After considering your comments, IDEM decided that the Remediation Work Plan (RWP) is the more appropriate milestone. That revision will be incorporated into the January 2012 version of the RPG. The submittal of the work plan is the appropriate milestone for all programs since that is the date when the submitter presents its proposed remediation objectives to IDEM based on the current guidance in effect that it has opted to use (*where there is a choice*). Once the remediation objectives have been chosen and approved, IDEM continues to honor them until such time as the submitter requests to modify, update or proposes a new objective (*absent imminent and substantial risk to human health or the environment*). The objectives (*and the underlying science*) remain in effect because IDEM and the submitter have agreed upon them for a particular remedy at a specific time. Any time a new

objective is proposed, the guidance in effect at that time (*and the current underlying science*) will need to be used or the submitter will need to opt which guidance to use (*if it has a choice*).

- 3) IDEM agrees that IDEM's guidance includes not only the default closure level tables (*screening levels*), but also the underlying science (*physical and chemical parameters and toxicity values*) used to calculate the default closure levels.
 - a) You asked if IDEM agrees that: "Once you are 'grandfathered,' you are allowed to (a) use the published default closure levels that were in effect on your 'grandfathered date'." As stated above, the remediation objective that has been chosen and approved remains in effect, absent imminent and substantial risk to human health or the environment, until such time as the submitter of a previous plan requests to change the existing objective or a new objective that has not been previously addressed is proposed.
 - b) You asked if IDEM agrees that: "Once you are 'grandfathered,' you are allowed to ... (b) compute site-specific closure levels using the underlying science in the grandfathered default closure levels". ... Indiana law requires remediation objectives to be based on an assessment of the risks presently found on the site, taking into consideration measurable risks. The remediation objective that has been submitted is what is "grandfathered." If the submitter of a previous work plan requests a new remediation objective, then this constitutes a new proposal, using current science and a new decision to be made by IDEM. Also, where default levels did not exist at the time of the approval, or a relevant site specific risk assessment was not performed for consideration in the plan, then a remediation objective was never determined or approved. Therefore, new proposed site-specific levels must reflect current underlying science.
- 4) You asked if IDEM agrees that: "At some point ... IDEM began telling people, even if they were grandfathered, they could use subsequent default closure level tables ... and that they could selectively use the later default closure levels or the underlying science to calculate non-default, site specific closure levels... and that this election would not require the person to use all of the subsequent levels – e.g., you could select the grandfathered closure levels or certain 'new' default closure levels if the new default level was higher than the old level." In the RCG, as with the Risk Integrated System of Closure (RISC) Guidance, a party has the option to develop site-specific risk-based levels instead of using default values (*screening levels*). The "grandfathered" closure level has already been selected and remains in effect until IDEM is asked to review a remediation objective using new screening levels. IDEM believes that it should require changes to remediation objectives based on the most up-to-date underlying science. This is true whether the remediation objectives are higher or lower than the previous numbers. While IDEM believes it is not fair to reopen existing decisions as guidance changes (*absent imminent and substantial risk to human health or the environment*), changes in remediation objectives sought by the submitter of the new plan are by necessity associated with a new evaluation of risk. Therefore, when IDEM is presented with a new remediation objective it is appropriate that IDEM base its decision on current science.

IDEM will change language on page 11 of the pending RPG which says: "Approved remediation work plans and site remediation objectives will not be re-opened merely because..." IDEM will remove the words "remediation work plans and." This is to alleviate concerns that any change in the remediation work plan (such as a change in technology) will trigger the need to use the newer guidance (including screening levels, underlying science, etc.).

B. General Comments

1. You commented that IDEM does not appear to have followed a mandate that IDEM evaluate the potential economic impact of its policy. IDEM is required by statute to present to the board and make available to the public all material relied upon by the department in the development of the proposed policy or statement, including, if applicable, economic impact data. IDEM did not utilize or rely upon any economic impact data in the development of the RPG.
2. IDEM agrees it would have been helpful to have released the draft RPG contemporaneously with the draft RCG. The revised drafts of both documents will be available for public review on January 6, 2012, prior to being presented to the Solid Waste Management Board in February 2012.
3. The RCG will include screening level tables that are based upon the U.S. EPA unified tables as modified by IDEM policy adjustments (such as cancer target risk 10^{-5}). Consistent with the EPA unified tables, there will not be tables for commercial/industrial groundwater direct contact (ingestion) or commercial/industrial soil migration to groundwater. Industrial/commercial values for these pathways are not meaningful since restrictions must be placed on any groundwater that does not meet residential direct contact levels.

For the purposes of sites eligible to proceed under the ICP, State Cleanup will use the commercial/ industrial tables published in the RCG for sites using the optional ICP process if future land use is commercial/industrial. If a ground water pathway level is necessary to determine a commercial/industrial remediation objective, the ICP will utilize a multiplier of 10 times the residential screening level for each contaminant of concern as a closure goal for commercial/industrial sites. This provides a clear, transparent and uniform goal for lower priority State Cleanup sites proceeding under the ICP to achieve closure. If exposure control (ERC/ERO) across the plume area is attainable, and the highest contaminant concentration does not exceed 10 times the residential groundwater pathway screening level, the site may continue within the ICP. The ICP Guidance will be updated with regard to the screening levels and will provide examples of how multipliers may be used. A party that does not wish to participate in the ICP can enter the Voluntary Remediation Program.

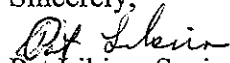
4. IDEM has formed an Underground Storage Tank Branch that will contain the Leaking Underground Storage Tank Program, the Underground Storage Tank Program, and the Excess Liability Trust Fund Program. This is a change in organizational structure. The programs are not being changed, nor are the processes described in the program guide. The RPG will be revised to reflect the new structure. There will be some reorganizing of IDEM websites. Unfortunately, it is not unusual for website addresses to change after a document is published, and website addresses can be edited as changes occur.

Mr. David R. Gillay and Mr. John M. Kyle III

5. The disclaimer that you requested is stated in the Non-Rule Policy document. This five-page document is available on the IDEM web site, www.IN.gov/idem/4694.htm, by clicking on the NPD ID number "Waste-0060 [PDF]."

Thank you for your comments. If you would like to discuss these issues further please contact me at (317)234-0357 or by email at plikins@idem.IN.gov.

Sincerely,



Pat Likins, Senior Technical Advisor
Remediation Services Branch
Office of Land Quality

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