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From: David Reusswig [dreusswig@groundwatersciences.com]
Sent: Tuesday, March 30, 2010 3:20 PM
To: EP, RegComments
Subject: Comments to Proposed MTBE Standard and UECA Regulations

To Whom It May Concern:

My comments to the proposed MTBE Standard and UECA Regulations are as follows.

Proposed MTBE Standard:

Comment #1: My position on this issue is the same as the PCPG's: The proposed groundwater MSCs for MTBE of 190 ug/L (residential) and 960 ug/L (non-residential) should be implemented. The PaDEP's decision to keep the current standard of 20 ug/L, which is based solely on EPA's odor threshold, is selectively and arbitrarily disregarding the procedures that were used by the PaDEP to determine MSCs for all other constituents. As a result, the PaDEP is selectively and arbitrarily disregarding the specific intent embodied in Act 2 to calculate risk-based cleanup standards protective of human health and the environment. In my experiences at sites where there are detectable (i.e., above the laboratory detection limits or PQLs) levels of MTBE but the levels are below the SHS of 20 ug/L, although these concentrations are considered protective of human health and the environmental by being below the SHS, it is the need to remove potential liability issues and deter lawsuits, and not the actual MTBE concentration, that drives my clients to still put a treatment system on the homeowners water supply well, and this would still be the case if the standard was changed to 190/960 ug/L, particularly if concentrations were below these numbers yet above the odor threshold of 20 ug/L.

Proposed UECA Regulations:

Comment #1: I oppose the requirement that a draft environmental covenant should be prepared and submitted at the RAP or Cleanup Plan stage. In my opinion, this is too early in the corrective action process to have to prepare an environmental covenant as this will undoubtedly waste time and money since the covenant will likely need to be revised or may not even be needed later if the standard is changed. I agree that if an environmental covenant is expected to be sought to obtain a RfL at the time a RAP is submitted, then a list of potential property owners for whom a covenant would be sought, as well as a description of the type of activity and use limitations (AULs) and engineering controls that would be expected to be included in the covenant, should be required as part of the RAP or CP. Starting this process early in the corrective action process is helpful, but even if the owner finds out two months prior to submitting the RACR that an off-site property owner will not allow an environmental covenant be placed on the deed to his/her property, then a waiver should be granted for the property by the PaDEP and a requirement to conduct periodic assessment to ensure that the any AULs and engineering controls remain in place should be included as part of the post-remedial care plan which would be in perpetuity unless the SHS is demonstrated for the site sometime in the future. Although there would not be an environmental covenant that goes with the deed in these cases, if the property were being sold, the owner and realtor have a legal obligation to disclose any known contamination at the property and so the prospective buyer would find out about the AUL's or engineering controls through the disclosure process and not as a result of the deed/title search.

Comment #2: Also, it is my opinion that the only reporting requirement placed on the property owner to report to the PaDEP that the AULs and engineering controls remain in place should be at the time the property is sold or transferred to another party, if there is an environmental covenant placed on the deed to that property. If the property owner violates the covenant and removes an engineering control or drills a private well when not allowed to, then this will be eventually noticed through the sale of the property or through any PaDEP inspection/enforcement process the PaDEP should develop and carry out. If the PaDEP waives the requirement for an environmental covenant based on the property owner's denial, then periodic assessment of that property should be required as part of the post-remedial care plan and the periodic reporting requirement should be covered under and part of the post-remedial care plan for the site which would be in perpetuity unless the SHS is demonstrated for the site sometime in the future. Although there would not be an environmental covenant that goes with the deed in these cases, if the property were being sold, the owner and realtor have a legal obligation to disclose any known contamination at the property and so the prospective buyer would find out about the AUL's or engineering controls through the disclosure process (or if it is a commercial property through a Phase I ESA) and not as a result of the deed/title search.

Comment #3: I also feel that an automatic waiver of an environmental covenant in the form of only an institutional control (prohibiting installation of private water supply wells) on either a railroad property that includes only the railroad tracks and the railroads right-of-way AND a PennDOT right-of-way for situations where groundwater contamination has migrated beneath these properties, since it is extremely unlikely that any private wells would be or have ever been drilled on these properties.

Thank you for your consideration.

Sincerely,

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