



Department of
Environmental
Conservation

Lessons Learned

How to Keep Your COC on Track

April 19, 2016

DO...

- Aim to save time at every stage of project, not just at COC crunch time
- Anticipate problems and be proactive
 - Bring issues to DEC project manager's attention early so they can be resolved
- Use the templates!!
- Respond to inquiries promptly, but...

DON'T...

- Data Dump
 - Don't respond to inquiries by burying PM in data - **provide analysis**
- Assume all problems come up at COC time
 - For example...

Change of Use

- Any activity that could **potentially increase exposure** to contamination
- Recent examples
 - Parties
 - Film shoots
 - New occupants/change in type of occupancy
 - Building demolition



Off-Site Waste Disposal Issues

- Waste disposal categories should be specified in RAWP
- RCRA listed waste **stays a listed waste!**
 - Can't "TCLP" it away
 - Can apply for "contained-in" determination, but it is NOT AUTOMATIC

Off-Site Waste Disposal Issues (con'td)

- Historic fill is solid waste
 - Historic fill **CANNOT** be sent to Part 360-16 Registration Facility
 - Soil exceeding unrestricted SCOs **CANNOT** be sent to Part 360-16 Registration facility without approval
 - Several recent COCs in jeopardy
 - Significant fines levied

PE / QEP Oversight of Field Activities

Part 375-1.6(a)(3):

“During all field activities conducted under a Department approved work plan, the remedial party shall have a qualified environmental professional, meeting the requirements set forth in 375-1.2(ak), on site to supervise the activities undertaken.”

PE / QEP Oversight of Field Activities (cont'd)

- Failure to provide complete field oversight of construction, investigation or remediation activities by a subcontractor is a violation of Part 375
- Cannot certify the RIR or FER if there was a gap in oversight

On-Site and Off-Site Responsibilities

- Volunteer
 - On-site RI
 - **Sufficient** off-site data to support Qualitative Exposure Assessment
 - On-site remedy
 - Prevent further off-site migration
- Participant
 - On-site and off-site RI
 - On-site and off-site remedy
 - **No COC until on-site and off-site remedies are complete**



Demonstrating Effectiveness of Remedy

- Treatment remedies (ISCO, AS/SVE, etc.)
 - Monitoring data showing contaminant trend must be included in FER
- How long / how much data?
 - Depends what is specified in RAWP (e.g., quarterly sampling)
 - At least one round of sampling after treatment starts
 - Must show that that remedy is effective before COC can be issued
 - **SMP must provide decision framework for additional treatment as needed**

“Conditional” Track 1 COC

- Track 1 SCOs met, but...
 - Groundwater standards not met, and/or...
 - Soil vapor mitigation required
- Can still achieve Track 1 COC
- How??

“Conditional” Track 1 COC (cont’d)

- Part 375-3.8(e)(1)(iv):

“The remedial program may include the use of short-term institutional or engineering controls” for media other than soil.

- **Short-term** = 5 years or less from date of COC
- COC will require easement/SMP
 - Caveats that easement/SMP will not be extinguished if RAOs not met within 5 years

“Conditional” Track 1 COC (cont’d)

- If active remedial system/treatment can be suspended within 5 years of COC, easement/SMP are extinguished
- BE PROACTIVE – don’t wait until year 4 to do additional treatment
- If not, reverts to Track 2 or 4
- Tax credit implications?
 - Talk to NYS Taxation & Finance

Block/Lot Changes

- Lot mergers, adding condo lot designations, etc.
- Must be completed before COC is issued
 - COC will list the lots subject to the liability release
 - If lot designations have changed since the BCA was executed, an amendment will be required
- Allow sufficient lead time for BCA amendments to be processed

Submittal Deadlines

- When submitting draft SMP and FER be sure to include ALL ATTACHMENTS
- Failure to submit complete draft will mean deadline has not been met
- Last minute BCA Amendments
- Failure to meet deadlines may put COC in jeopardy

Thank You

Jane O'Connell
Chief, Superfund and
Brownfield Cleanup Section
Region 2

jane.oconnell@dec.ny.gov
(718) 482-4599

Connect with us:

Facebook: www.facebook.com/NYSDEC

Twitter: twitter.com/NYSDEC

Flickr: www.flickr.com/photos/nysdec



Department of
Environmental
Conservation