Response to Public Comments

Remediation Regulations – Public Hearing January 20, 2011

Numerous comments were received during the public comment period for the *Remediation Regulations*, as well as during the public hearing held on January 20, 2011. For organizational purposes, the Responses listed below are organized under the following sections:

I. Written Comments (including e-mails) – Arranged alphabetically by last name.
II. Comments Provided at the Public Hearing – Arranged by order received.
III. Comments Provided by RI DEM Staff – Arranged alphabetically by last name.

Prior to each response, a short summary of the specific comment has been re-stated. For a complete reading of the entire comment, please cross-reference the full text of the correspondence submitted, which are provided as an appendix to this response document.

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I. Written Comments Received (including e-mailed)

1. Jessica Lee Buhler, Public Affairs Liaison
Rhode Island Housing

Comment – Letter submitted that strongly supports the proposed changes in the regulations specific to addressing arsenic in soil.

Response – No specific response required.

2. Melissa J. Cannon, and David L. Espy
AECOM

Comment – Regarding why *Notification* in hard copy as well as electronic format is required?

Response – It is the Department's goal to eventually move more submissions from hard copy to electronic format. That transition, however, will take time. Electronic submissions are the future, and will ultimately enhance the public and consultant community's ability to conduct on-line file reviews, and review project plans and submittals in a more convenient manner.

The final format for electronic submittals is still being developed. It is the Department's intention to continue working with the public, consultants, and the regulated community to ensure the transition is as seamless as possible. Until such time as electronic submissions are formally required, the Department must still require paper submittals of plans and documents.

Comment – Regarding Sections 7.01D, and 7.07B, delineation of Environmental Justice Focus Areas.

Response – Environmental Justice Focus Areas were first defined by the Department in its '*July 2009 Final Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Properties*.' A map identifying these specific areas can be found on the RIDEM website.

Comment – Regarding Rule 7.07 C, the initial public meeting requirements for Environmental Justice areas.

Response **–** Section 7.07 C. Revised to address suggested language change, regarding one or more members of the community requesting a Performing Party hold community meetings. Language change incorporates minimum requirements listed in *RIGL 42-35-3(2) State Affairs and Government – Administrative Procedures*, specifically meetings being held when, "... requested

by twenty-five (25) persons, or by a governmental subdivision or agency, or by an association having not less than twenty-five (25) members".

Comment – Regarding Section 8.04C, the application fee for Method 3 risk assessments.

Response – A thorough review of a Method 3 risk assessment can be technically challenging, and often very time consuming, given the number of potential variables that make up the analysis. Previously these costs were absorbed by the Department and hence the taxpayer, whether conducted internally or out-sourced to one of the Department's technical assistance contractors. The initial $20,000 application fee is meant to compensate for these expenses, with the option of recouping additional costs should they begin to approach and/or exceed this figure. The application fee is not meant to discourage use of a Method 3 risk assessment, but is meant to appropriately compensate for the thorough review.

Comment – Section 8.04 C, additional concerns with use of Method 3 remedial objectives.

Response – If a Method 3 risk assessment is performed, and the criteria are reviewed and approved by the Department, the Method 3 results become the remedial objectives. If the basis of the Method 3 calculations, however, are alteration of the standard exposure scenario used for the Method 1 standard (i.e. changing or altering the time of exposure for example), or similar situation, the Contaminated-Site may still require institutional controls, typically in the form of an Environmental Land Use Restriction (ELUR) on the property, to "institutionalize" the risk scenario utilized.

3. Mr. Geoffrey Grove, President & CEO of Pilgrim Screw Corporation Chairman of the Board of RIMES

Comment – Letter opposes the proposed amendments to the regulations, specific to new burdens on small operating businesses from new environmental justice outreach requirements. Believes changes place an unfair and expensive burden on property owners, many of whom may have inherited a contamination problem. Further believes there will be certain, unintended consequences, including discouragement of economic development in these areas, and greater inclination of businesses to expand/build in "green fields" versus "brownfields", to avoid these potential costs and schedule uncertainty.

Requested specific citation of legal authority that permits DEM to require business owners to translate signs into languages other than English, rent meeting halls, and hire translators.

Response – Both R.I.G.L. § 23-19.14-5 and an April 13, 2006 Superior Court Order in the matter of *Hartford Park Tenants Association, et als. V. RIDEM, et als.*, C.A. No. 99-3748, entitled "Remedy Directed Towards the Department of Environmental Management," mandate that RIDEM develop regulations to implement standards and practices to address environmental equity and public participation. After a lengthy and involved stakeholder process, the Department has determined that these proposed regulatory changes are the most appropriate and effective means of carrying out the mandates of R.I.G.L. § 23-19.14-5 and the 2006 Court Order.

Comment – Believes cost and impacts will be substantial on small businesses. Statement disputes findings of the Department's "Economic Impact & Regulatory Flexibility Memo", specific to the new EJ outreach requirements, which states*: "...Overall, costs for compliance with these administrative steps are expected to be minimal*."

Response – The intention of these amendments is to make the clean-up and redevelopment process go as smoothly as possible for the responsible party, developer, RIDEM and the community potentially impacted by such clean-up/redevelopment. For potentially "controversial" redevelopment projects, the open dialogue and communication called for by these amendments holds real potential to reduce friction between the responsible party/developer and community residents, thereby minimizing costly time delays. The Department believes it has an obligation to allow interested members of the public to actively and effectively participate in the site redevelopment process and understand how different development strategies will impact their communities.

Comment – As Chairman of the Board of RIMES, he questions whether stakeholder process adequately notified/involved operating small business representatives, or whether the committee adequately considered the consequences of proposed rules on small business community, particularly manufacturing, and also negative impacts on minority community by discouraging investment.

Response – The stakeholder process developed by the Department was intended to address the Superior Court Order of Judge Clifton, and resolve the on-going litigation involving the Springfield Street School in Providence, and involved representatives of the business and redevelopment community. That stakeholder process resulted in the draft regulation changes regarding Environmental Justice issues. Those proposed revisions are further subject to the public notice and hearing requirements, and public comment, as are any State regulatory changes, and as outlined under *RIGL 42-35-3(2) State Affairs and Government – Administrative Procedures.* Comments by RIMES, other businesses, and members of the public generally are being incorporated herein, and/or addressed as part of this Responsiveness Summary.

Comment – Believes requirements "trample on property rights", by imposing new burdens for development beyond compliance with zoning, and clean up.

Response – The Department believes the proposed amendments appropriately balance the rights of property owners, abutters and residents potentially impacted by a particular site clean-up project.

4. Mr. John Hartley, GZA Environmental

Comment – On Section 1.04 - Typographical error cited.

Response – Revision made.

Comment – On Section 3.12 Clean Soil – Appendix C does not prescribe analytical methods for the evaluation of radioactive materials and asbestos.

Response – The commenter is correct, that the Notification Form in Appendix C does not contain specific analytical methods for evaluating radioactive or asbestos materials. In addition to any jurisdictional authority of DEM, both said contaminants are also regulated by the RI Department of Health, as well as the federal counterparts including but not limited to the Federal Energy Commission. The intent of defining the term "Clean Soil", per 3.12 is to provide a workable definition of soil intuitively free of contaminants and any negative impacts, including any past solid waste disposal activities, and not to require and/or prescribe a definition listing all testing parameters to be required for each load of presumed clean dirt. Should the consultant, Responsible Party, or State have reasonable belief that soil has been impacted by asbestos or radioactive materials, testing utilized by these sister agencies may be mandated and prescribed. If said contaminants are found to be present, said soil would not meet the definition set forth by Rule 3.12.

Comment – On Section 3.18 Emergency and Short Term Response Action definition. Requests modification of definition to better reflect how this regulation is implemented.

Response – See response to comment below on revisions made to Section 6.00 below.

Comment – On Section 3.51, definition of Non-Aqueous Phase Liquid (NAPL).

Response – Definition revised and clarified to address comment.

Comment – On Section 3.68, definition of Residential Activity regarding "hospitals".

Response – Definition revised to address comment.

Comment – On Section 6.00 Emergency and Short Term Response.

Response – Section revised to address comment. Section also revised to include issuance of a No Further Action Letter, where applicable.

Comment – On Section 7.02 Site Investigation Work Plan.

Response – Section 7.02, as worded clearly states that *"...submittal of the Site Investigation Work Plan is voluntary."* No additional clarification appears necessary.

Comment – On Section 9.05 Limited Design Investigation. Comment recommends that rule be modified to indicate that a Performing Party may also elect to submit to the Department a proposed Limited Design Investigation.

Response – The current wording seems flexible in allowing Limited Design Investigations when required by the Director, or when included as part of the Remedial Action Work Plan. Permitting a Performing Party, by Rule, to submit a Limited Design Investigation, at their sole discretion, without any input by the Director, or outside the context of an overall remedy for the Contaminated-Site, may lead to fragmentation and/or delays with respect to the clean up of the site. The Department has been flexible in its interpretation of this Section provided progress is being made towards cleaning up a Contaminated-Site, and anticipates similar interpretations in the future. No additional clarification seems warranted.

5. John Langlois, Esq.
State of Rhode Island

Comment – The Regulations should better define "public use", as utilized under Rule 3.62, the definition of "Recreational Facility for Public Use", specifically how it relates to public versus private properties.

Response – Definition modified to clarify concern.

Comment – Suggests adding definition for "BFP Certificate."

Response – Definition 3.08, "Bona fide Prospective Purchaser" revised to clarify the Department's current practice of issuing "BFP Certificates" to qualifying parties.

6. Mr. Timothy O'Connor, PE
Vanasse Hangen Brustlin, Inc.

Comment #1 – Rule 7.01 C, and Rule 7.07, Suggests consistency with use of terms "site", and "Contaminated-Site"

Response – The defined term "Contaminated-Site" has been substituted for the term "site" in the sections identified for better clarification.

Comment #2 – Suggests capitalizing the term "release" throughout Rules, to reference definition in Rule 3.0.

Response – Comment accepted, and revisions made.

Comment #3 – Suggests including "Recreational Facility for Public Use" in the defined term for "Residential Activity"

Response – Comment accepted, and revisions made to Rule 3.68, definition of "Residential Activity".

Comment #4 – Suggests revisions to definition of "Residential Activity", to remove reference to "hospitals".

Response – Rule 3.68 revised to address comment.

Comment #5 – Suggests removing "school administration buildings" from the definition of a school.

Response – School buildings constructed by a school department often serve multiple purposes, and often change over time, based upon the ever changing requirements of the district. This definition ties directly into new public involvement requirements detailed later in the Rules, which permit greater public engagement in the clean up process for these types of sensitive, highly public construction projects. The definition therefore, shall remain the same, to include administration buildings.

Comment #6 – Suggests modification to Rule 6.01, regarding end point in Emergency and Short Term Response Actions.

Response – Rule 6.01 revised to address comment.

Comment #7 – Suggests revisions to Section 6.0 to cover Emergency or Short Term Response Actions.

Response – Section 6.0 revised to address comment.

Comment #8 – On Rule 7.01 C, regarding potential circular reference regarding the "All Appropriate Inquiry" requirements.

Response – Rule 7.01 C, imposes additional public notification and involvement requirements, which must be satisfied before the Department may formally commence review and/or approve of the Site Investigation Report. The steps required by this Section, may therefore impact on the project schedule for applicable re-uses, if not performed sequentially. For any location proposed for an applicable end use, which may be suspected of being contaminated based on its history, location, and/or past use, the new requirements should be commenced and implemented as soon as practical in the selection process, to avoid potential delays.

Comment #9 – Additional clarification suggested on Rule 7.01 C.

Response – See response to Comment #8 above. For sensitive reuses listed (i.e. Schools, Child-Care Facilities, and Recreational Facilities for Public Use), this Rule requires the public be notified and involved earlier in the process, for locations suspected of being contaminated. To avoid potential project delays, this involvement and public input should be front-loaded in the location selection process, before field work is completed and the draft Site Investigation Report submitted for Department review and approval. Failure to do so may result in re-mobilization, should additional field work be warranted and/or required.

Comment #10 – Suggests revising Rule 7.01 C, to focus on Recreational Facilities For Public Use that support Active Recreation.

Response – Suggested language changes accepted.

Comment #11 – Concerns with limiting construction related activities under Rule 7.07 A iii (a).

Response – One purpose of public involvement is to ascertain from the general public, any information that may assist with the scope and/or investigation of the Contaminated-Site, which may otherwise be unknown. Local residents may have first hand knowledge of historic uses of a property, past dumping activities, etc. Allowing construction activities during the period when this information is being sought and gathered pre-judges the public input and the scope of required investigation activities. For the limited sensitive re-uses identified, therefore, construction activities should be restricted.

Comment # 12 – Concern with Rule 8.04 regarding development of Method 3 Remedial Objectives.

Response – Suggested language accepted, relative to the Method 3 Remedial Objectives focusing on the "use" of said objectives. The application fee for review of a Method 3 risk assessment shall remain unchanged.

Comment #13 – Regarding clarifying applicability of Section 12, with respect to contaminant other than arsenic.

Response – Section 12.0 revised to clarify concern.

The investigation and remedial options permitted in Rule 12.0 apply only for addressing the contaminant arsenic. The following scenarios may also help clarify how Rule 12.0 may apply in certain situations:

- If there are other contaminants present within the same source area (after a full and accurate delineation), but not exceeding any applicable standards, then they are non-jurisdictional, and no additional remedy is required.

- If there are exceedances of other contaminants of concern (COC's) present on the same Contaminated-Site, but are located in source areas separate and distinct from the source area of arsenic, Rule 12.0 may be utilized to address the arsenic source area, with "All other exceedances and reportable contaminants of concern ... addressed as required elsewhere in these Regulations." Said required measures typically being more stringent.

- Should exceedances of other COC's exist and be co-mingled with arsenic in the same source area at a Contaminated-Site, then the more stringent measures required elsewhere in the Rules will be applicable to addressing all the contaminants, including arsenic.

The determining factor, therefore, being to closely evaluate for exceedances of other COC's within the same source area, as the arsenic, when determining if/how Rule 12.0 standards are applicable.

7. James J. Reed, Executive Director
Newport Housing Authority

Comment – Letter submitted that strongly supports the proposed changes in the regulations specific to addressing arsenic in soil.

Response – No response required.

Comment – Requested clarification on how the proposed revisions will apply and/or affect any Environmental Land Use Restrictions (ELUR's) previously recorded as institutional controls under the old regulatory requirements.

Response – As described in Rule 12.05, property owners of Contaminated-Sites involving just arsenic, with previously completed remedies involving an ELUR, that meet the source area criteria of 12.04 A, or 12.04 B, and meet the property use criteria of 12.06 A, or 12.06 B may comply with the new Owner Notification Requirements outlined in said section, in lieu of the former ELUR requirements provided:

1. They notify the Department in writing of their intention to do so,

2. They complete and file with the Department a new Post-Closure Report for the Contaminated-Site, in conformance with Rule 12.01 B v.

8. Amelia Rose, Director
Environmental Justice League of Rhode Island

Comment – None of the recommendations from the second, "hard-look" subcommittee were included in this round of proposed regulations.

Response – The set of 8 recommendations to which the letter refers *(Environmental Justice "Hard Look" Sub-Committee Final Recommendations as of September 2010)* were taken into consideration by the Department. Three (3) of the eight (8) recommendations were regulatory in nature and the remaining 5 were identified as policy/programmatic in nature which did not require regulatory amendments. Of the 3 regulatory recommendations, the Department is still evaluating the efficacy of those recommendations and how they may improve the Site Remediation regulatory process for Department staff, the public and performing parties. As is implied in the question/comment, future rounds of regulatory amendments may include further action on these points.

Comment – In section 3.20, the word "census tracks" is incorrect and should be "census track block groups."

Response – Section 3.20 revised to clarify concern. In addition, language was added to ensure the most recent and readily available United States Census data is utilized for the purposes of determining the location of these areas.

Comment – In Section 3.62, gymnasiums should be added to the list of constructed facilities.

Response – Gymnasiums are generally related to schools and school activities. Hence, they are included in the definition of school in 3.71 and not in 3.62. The definition therefore, shall remain the same.

Comment – In Section 7.01(D), signs posted at sites should also be written in a language other than English.

Response – Section 7.01(D) revised to clarify concern. The following language has been added – "When deemed appropriate, signs will be required to be posted in a language (or languages) other than English."

Comment – In Section 7.03(W), the Performing Party should submit a copy of the notices it sent to the public along with a list of persons to whom the notice was sent.

Response – The Department feels the language is sufficient as is. The language, therefore, shall remain the same. On any case, the Department may require the submission of information such as this to ensure compliance.

Comment – Section 7.07(A) should advise the public that that they can request public meetings, creation of document repository and a formal public involvement plan for the site, and where to get a copy of the Site Investigation report.

Response – At the time this notice is given to the public, it has yet to be determined if the site falls under the direct jurisdiction of the Department. Hence, the Department feels it is ill-advised to inform the public of these items because they may not be available to them if the site does not exceed the contaminant criteria. The language, therefore, shall remain the same.

Comment – RIGL § 23-19.14-5(a)(4)(iv) authorized DEM to issue regulations regarding schools, day care facilities, etc. to establish standards on several matters that DEM did not address in the proposed regulations such as reporting the results of the AAI investigation, how to notify the public about the required public meeting, how to conduct the required public meeting, and the time period to submit the required report to the Department.

Response –

1) Concerning the AAI report, Section 7.07Aiii of the regulations clearly states that the results of the AAI must be submitted to the Department as part of its reporting requirement. The Department feels the language is sufficient. The language, therefore, shall remain the same.
2) Concerning "how to notify the public about the required public meeting", the Department agrees that additional specifics are warranted here in the same manner public meetings are addressed elsewhere in the Regulations. As such, the following language has been added to 7.07Aiii: *"public notice of the meeting shall be provided to all abutting property owners, tenants, easement holders and the municipality."*
3) Concerning "how to conduct the required public meeting", the Department agrees that additional specifics are warranted here in the same manner that Community Meetings are addressed elsewhere in the Regulations (see section 7.07(C)). As such, the following language has been added to 7.07Aiii: "*the*

public meeting shall be conducted in a manner consistent with the requirements in Section 7.07(C) regarding Community Meetings."

4) Concerning "the time period to submit the required report to the Department", the Department agrees that additional specifics are warranted here in the same manner that Community Meetings are addressed elsewhere in the Regulations (see section 7.07(C)). As such, the following language has been added to 7.07Aiii: *"in both hard copy and electronic format (as specified by the Department) within 72 hours of the meeting."*

Comment – In 7.07(B), it is unclear "when" a performing party has to submit a fact sheet and communications plan to DEM. Also, fact sheets and communication plans should be submitted when site is proposed for reuse as a school, daycare facility and recreation area in advance of the public meeting, and should be distributed at the meeting.

Response – The Department agrees that the timing of the submittal of the fact sheet and communication plan to the Department should be clarified. As such, the following statement has been inserted into Section 7.07(B) "*Said materials shall be submitted to the Department prior to the commencement of the public notice specified in Section 7.07(A)."*

Concerning, the creation of fact sheets for when a site is proposed for reuse as a school, daycare facility or recreation area, it is up to the performing party or person proposing such reuse to determine the need for such a fact sheet. If the site is in an Environmental Justice Focus Area, then the fact sheet is already required in accordance with 7.07(B) and as stipulated in the Letter of Responsibility (LOR) issued by the Department. If the site is not in an Environmental Justice Focus area, the Department can, in accordance with 7.07(B), require the creation of said fact sheet if the Department has identified a heightened level of community concern. The Department feels the language is sufficient. The language, therefore, shall remain the same.

Comment – In 7.07(C), it is unclear to whom such a request for a community meeting should be made.

Response – Language has been added to clarify to whom such a request for a meeting should be made. The request should be made in writing to the Performing Party and the Department.

Comment – How does the community know they can request a meeting under 7.07(C)?

Response – It is the Department's goal to make sure residents and officials impacted by Contaminated-Sites are made aware of this new opportunity. The Department will include standard language about this opportunity to request a

meeting in the fact sheets and other communication documents it creates, and will encourage performing parties to do the same.

Comment – What about child care concerns as addressed in the EJ Policy?

Response – The EJ Policy from 2009 addresses issues of child care during public meeting as something to "potentially" be offered or considered. The Department at this point in time is not mandating that child care be offered. This does not, however, preclude an individual from asking the Performing Party for such services.

Comment – In 7.07(C)(1), the language could be improved by having the sentence read " Identify the main issues *of concern* to the community….".

Response – The Department agrees and the change has been incorporated.

Comment – Until now, DEM has created document repositories, not the Performing Party. What if the Performing Party lacks capacity to create and maintain a document repository? What if they don't have a website to post documents electronically? DEM should be responsible for creation of the repositories. DEM should not have discretion on whether or not to order a Performing Party to establish a document repository when a member of the public requests that one be established.

Response – The Department feels it is appropriate to request of the Performing Party that they create and maintain the repository (electronic or hard copy) as part of their cleanup responsibilities. The Department does not have the capacity to create a repository for every site in its Site Remediation Program. Not every site will require a repository and sometimes the creation of a repository is not the best way to meet the needs of an individual seeking information. If the Performing Party lacks the capacity to create an electronic repository, then a hard-copy repository will be allowed or the Department *may* create such an electronic repository.

Comment – There should be more detail about how to request a Public Involvement Plan, the process for DEM's review/approval, and the required elements. Also, under the EJ Policy DEM can order the performing party to prepare a public involvement plan – that should be made part of the regulations.

Response – The requirement for a formal Public Involvement Plan (PIP) is entirely new in this round of regulatory amendments. We are aware of the extreme level of specificity laid out in similar regulations in place in Massachusetts. The Department intends to produce an easy-to follow guidance document which will lay out what is expected of all parties involved in the execution of a PIP. We feel this will be of more use to responsible parties and residents alike. The Department maintains the right to order the creation of a PIP

when 25+ residents ask for one – this will help ensure that PIPs are appropriately used and the Department's response for more information is proportionate to the actual level of interest in a particular site.

9. Robert Vanderslice, PhD
Rhode Island Department of Health

Comment – Letter submitted that supports the proposed changes in the regulations specific to addressing arsenic in soil.

Specifically, letter of support states *"....These proposed changes ensure protection of the public health. They are consistent with the evaluation conducted by the Agency for Toxic Substances and Disease Registry assessment of the acute and chronic systems toxicity of arsenic. These changes also address the public health concerns associated with situations in which lifetime cancer risk guidelines are exceeded by naturally occurring concentrations of a chemical*."

Response - No specific response required.

II. Comments Provided at the Public Hearing – January 20, 2011

(Comments in the order they were received)

Written Comments

1. Jessica Lee Buhler, Public Affairs Liaison
Rhode Island Housing

Comment – Letter dated January 20, 2011 submitted again.

Response – See response provided above.

Transcript Comments

2. Mr. Greg Garrett
Providence, R.I.

Comment – We are very concerned that the Conceptual Site Model approach is not reflected in these regulations. We feel it is a very useful tool for both communities and the people actually doing the investigations.

Response – The Department does not disagree that the Conceptual Site Model approach is a useful tool. We understand that other states employ this approach. The Department feels it needs to spend more time examining how it could be incorporated into the existing regulatory framework. The RI Society of Environmental Professionals has committed to work with the Department on this task. No specific date for when this review will be finished has been established.

3. Amelia Rose, Director
Environmental Justice League of Rhode Island

Comment – General comment in support of most of the changes made in the regulations to address issues of environmental justice. Indicated she would be submitting more specific comments in writing (see detailed comments/responses above). Asked why the Conceptual Site Model (CSM) approach was not included in the regulations.

Response – As indicated above, the Department feels it needs to spend more time examining how CSM could be incorporated into the existing regulatory framework. The RI Society of Environmental Professionals has committed to work with the Department on this task. No specific date for when this review will be finished has been established. All regulatory amendments are subject to open discussion and the Department welcomes everyone's future input as the Department fleshes out how the CSM approach could be further addressed via regulation.

4. Mr. John Chambers
Fuss & O'Neill Consultants

Comment – On the Public Involvement Plan component of the regulations, the language and content need to be "fleshed out" some more.

Response – The requirement for a formal Public Involvement Plan (PIP) is entirely new in this round of regulatory amendments. We are aware of the extreme level of specificity laid out in similar regulations in place in Massachusetts. The Department intends to produce an easy-to-follow guidance document which will lay out what is expected of all parties involved in the execution of a PIP.

Comment – On the Conceptual Site Model approach, the language suggested by the sub-committee was quite straightforward. It could be incorporated while at the same time RISEP is developing a guidance document that would accompany it.

Response – As indicated above, the Department feels it needs to spend more time examining how CSM could be incorporated into the existing regulatory framework. The RI Society of Environmental Professionals has committed to work with the Department on this task. No specific date for when this review will be finished has been established. The Department in no way disputes the merit of this approach – it merely needs more examination and attention before formally incorporated into future regulatory amendments.

5. Mr. Steve Fischbach
Rhode Island Legal Services

No comments offered on the specific provisions of the regulations that are now out for public comment. Commented on procedural and legal matters which were not the subject of the hearing.

No specific response required.

III. Comments Provided by RI DEM Staff

1. Jeff Crawford
Office of Waste Management

Comment #1 – Page 2, Rule 1.04

Response – EJ requirements are applicable in EJ Focus Areas.

Comment #2 – Page 5, P2, comment on Remedial Agreements

Response – Language of section revised accordingly.

Comment #3 – Page 11, Rules 3.42, and 3.44 regarding ILOC's and LOC's.

Response – Rule 3.44 revised to address institutional controls.

Comment #4 – Page 15, Rule 3.68

Response – The term" Recreational Facility for Public use" added for clarification.

Comment # 5 – Page 16, B – Remove old reference to "Settlement Agreement"

Response – The term "Remedial Agreement" substituted.

Comment #6 – Page 17, question on standards applicable to "higher educational" facilities.

Response – Clean up of Contaminated-Sites located on property owned and/or operated at higher educational facilities shall be determined based upon the specific activities most reasonably associated with the specific parcel or area of concern. Areas involving dormitories, residences, or apartments, and recreational facilities for public use, would clearly need to meet the definition of "Residential Activity". Higher educational institutions may similarly have some areas that may more clearly meet the definition of commercial activities. The clean up objectives must therefore be determined based upon the anticipated end use, and the associated risk exposure anticipated.

Comment #7 – Page 27 – D(2), Concerned that signs could be up for years, based on the requirement.

Response – Rule 7.01 D. 2, Revised section to incorporate a twelve month posting period limit.

Comment #8 – Page 32, Rule 7.07, Comment on public involvement.

Response – Public Involvement in Environmental Justice Areas shall be as required under Rule 7.07, with Community Meetings as specified under Rule 7.07 C. See also certain modifications and/or revisions to draft Rule 7.07.

Comment # 9 – Page 33, Concern with construction work commencing prior to issuance of the RAL, or OA.

Response – No additional language revisions deemed needed.

Comment #10 – Page 33, Requests clarification on the definition of a "communications plan".

Response – The proposed communications plan to be developed under Rule 7.07 B. should explain how the Performing Party intends "...to effectively disseminate the information in the community around the Contaminated-Site. Information to be provided to the community shall include, at a minimum, the final approved site specific fact sheet and informational materials about the Department and the Department's Site Remediation and Brownfields program, which will be provided by the Department. When appropriate, such materials will be required to be provided in a language (or languages) other than English." The exact terms and details of a communications plan may vary from site to site, depending on the community surrounding the Contaminated-Site at issue.

Comment # 11 – Page 34, How long does the Performing Party need to maintain the electronic repository?

Response – Rule 7.07 D. 3, specifies the requirements for maintaining the repository, specifically, "The Performing Party shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Performing Party may close the repository when either an Interim Letter of Compliance or final Letter of Compliance is issued for the site, or, after petitioning the Department, if the Department determines that there is no longer a need to maintain the repository in the community." The requirements for "...an electronic repository in lieu of or in addition to a repository located in the community" shall be the same.

Comment #12 – Page 35, What is the definition of a "Public Involvement Plan" ?

Response – Section wording revised to clarify requirements of the Public Involvement Plan. The Public Involvement Plan must address all relevant and applicable requirements of Rule 7.07 A, B, C, and D.

Comment # 13 – Page 39, soil objective for TPH ?

Response – The soil objective for TPH shall be as defined per the Section.

Comment #14 – Page 57, Table 3, regarding addition of footnote reference to federal standard.

Response – Groundwater standard for arsenic, per Table 3, as stated.

Comment # 15 – Page 63, Section 8.07 regarding UCL's

Response – UCL's are as defined, no additional clarification warranted.

Comment # 16 – Appendix G – ELUR, Regarding removal of references to "Settlement Agreements"

Response – Appendix G – substituted the term "Remedial Agreement" in for "Settlement Agreement".

2. Cynthia Gianfrancesco
Office of Waste Management

Comment – Typo identified in Rule 3.07

Response – Typo corrected.

3. Ernie Panciera, Groundwater
Water Resources

Comment – Issues identified relating to consistency between the *Remediation Regulations*, and the currently promulgated *Groundwater Quality Rules*.

Response – Language and clarification issues identified accepted.

APPENDIX

Copies of letters and comments submitted during public comment period.