

Minutes from the Individual Sewage Disposal System (ISDS) Task Force – Regulatory Working Group Meeting of February 13, 2001

The meeting was held in Conference Room 280, DEM Office of Water Resources, 235 Promenade Street and began at approximately 8:20 AM.

In attendance:

Russ Chateaufneuf, George Loomis, Rob Adler, Kendra Beaver, Alison Walsh, Tom D'Angelo, Sue Licardi, Tom Getz, Ernie Panciera, Deb Knauss

Review of minutes from January 31, 2001. It was requested that the minutes be modified to reflect that although RIBA agreed that the DEM proposal represented a compromise, they did not agree with it. The representatives of the building community present also indicated that they would be discussing the proposal with the RIBA Board of Directors and would get back to DEM with a position.

The minutes were modified as follows: “Both RIBA representatives and environmental advocates agreed that the proposal represents a good compromise of issues discussed at the last meeting, although RIBA representatives did not agree with it. The representatives of the building community present also indicated that they would be discussing the proposal with the RIBA Board of Directors and would get back to DEM with a position.”

It was requested that the minutes be corrected to show that the depth below the infiltrative surface specified in the Sand Filter Guidance Document is 18”, and not 18’.

The minutes were accepted with the above corrections.

Previously approved field data

The RIBA position on this issue is that the law should be adhered to, thus there should be no requirement of additional information on sites which have approved data from 1992 forward, and that if data are older than five years, it must be recertified. RIBA’s Board of Directors and Environmental Committee opine that DEM can not amend the rules to require a soil evaluation on a site with 1992 and forward approved field data without changing the law. Kendra remarked that she does not agree with the opinion and offered to meet with RIBA and DEM legal counsel to discuss the matter.

One person suggested that the recertification process may be modified to require that recertifications be submitted by a Class IV, perhaps, only if certain site conditions exist.

Russ stated that DEM is confident with the 1993 wet season data because it is the first year that additional wells were read by DEM and it was also a good wet season. He also stated that 1993 is the first year that electronic records were kept, as such, 1992 data are not easily evaluated, and that there may not be many 1992 sites outstanding. It was suggested that if that is the case, it should not be a significant issue for DEM to allow the 1992 data to be honored. The counter-point was made that for the same reason it should not be a significant issue for RIBA to support the requirement of the soil evaluation for sites which have field data approved in 1992.

It was stated that if 2 to 4-foot water tables were reevaluated by soil evaluation, they would probably be determined to have a deeper watertable than established by factored wet season readings, which are felt to be conservative. It was asked, if this occurred, would the deeper water table obtained via soil evaluation be honored. Russ stated that the Department believes that soil

evaluation is a better test and anticipates that as such, watertable elevations obtained via soil evaluation would supersede those obtained via wet season readings.

Russ stated that DEM legal counsel is looking at the law and considering the issue and that hopefully we will have a decision by the next meeting.

Leachfield sizing on the basis of soil characteristics

A subcommittee of the Regulatory Work Group, which included Mark Stolt and George Loomis of URI, Everett Stuart of NRCS, Scott Moorehead and DEM ISDS staff, met last week. The group decided that systems would be sized on the least permeable (as established by texture, structure and consistence) naturally occurring horizon within four feet of the bottom of the proposed system. Everett, George and Mark have scheduled a meeting to evaluate a proposed table of soil texture, structure and consistence and make sure that it accounts for all possible combinations.

Large Capacity Cesspools

The (Underground Injection Control) UIC Program at DEM which operates under the Safe Drinking Water Act regulates discharges into the ground. UIC authority includes large capacity septic systems and cesspools. EPA is requiring that all cesspools servicing 20 or more persons per day be removed by April 2005. DEM understands that EPA will be allowing states to define large capacity cesspools per their rules. DEM must therefore develop a definition of large capacity cesspool. Based upon flow rates, which have been revised for proposed amendment, this would be 1,050 gallons per day for residential use (10 bedrooms) and 2,000 gallons per day for commercial use.

It was noted that for residential use it may be more appropriate to calculate flow as (150 gpd for the first bedroom in each unit)(number of units)+100 gpd for each additional bedroom in a unit. This would increase the threshold for a residential large capacity cesspool from 1,050 gallons per day to 1,250 gallons per day, assuming five two-bedroom units. It was also stated that five or more units is considered a commercial property by MLS law and contractors registration law.

Challenges associated with this large capacity cesspool removal effort were discussed, specifically, identifying the systems, enforcement of the removal requirement, the ability of the private sector to meet the demand and the likelihood that many owners may wait until near the end of the deadline to act. The following suggestions were made for identification of these systems and management of the removal effort:

- Contacting municipalities (Russ stated that most of the large capacity cesspools DEM sees are municipally owned)
- Consulting DEM ISDS data to establish which systems have been replaced, thereby ruling them out
- Piggyback with the source water assessment work, which will proceed geographically, we could develop criteria for priority areas or critical locations.

There was discussion concerning financing for removal of large capacity cesspools, which included:

- Clean Water Finance Agency implementing more creative funding mechanisms
- Funding under the Community Septic System Loan Program (CSSLP). It was stated that CSSLP specifically prohibits funding commercial establishments. A change in the program to fund commercial properties may require a statute change or a regulation change.
- Loans with interest rates, which encourage early response; interest rate increases each successive year.

All Cesspools

Alison reported that in MA some towns define cesspools as failed systems and require replacement. It was also stated that in MA there is a certain amount of time following sale of the property, by which the failed system must be replaced and that there is a means-tested tax credit available for those who must replace failed systems. Interest was expressed in pursuing a tax credit in RI, which could involve a means test and possibly a residency requirement. It was noted that Representative Gene Garvey is reportedly working, with others, on a bill proposing an income tax credit for repair or replacement of ISDS. It was recommended that a representative of the realtors and of a lending institution (perhaps a bank and a mortgage lender) attend a meeting to discuss this issue.

- Risk-based approach - It was reported that South Kingstown is considering four management districts based on risk:
 1. Critical resource areas (state-defined or from the SWAP or the MANAGE model). These areas and cesspools in groundwater may have a sunset of, for example 2005 for cesspools to be replaced.
 2. The next tier of less risky situations would have 4 to 5 years beyond that.
 3. Lots of some minimum area, for example 5 acres, in low risk areas of the watershed would have a sunset of 15 years or longer.

All of the above categories could include an “or point of sale”.

4. Ultra low risk, for example five-acre zoning and deep soils, home occupied by elderly inhabitants, exclusively point of sale.

Based on discussion Russ summarized the points which appear to have group agreement concerning requiring replacement of cesspools:

- Risk based approach with deadlines associated with each risk category
- Means-tested tax credit to provide some relief for those who would have difficulty complying. Possibly have a residency requirement to qualify for the tax credit.
- If approach includes POS replacement of cesspools, allow some time interval after the sale to complete replacement.

There was discussion concerning cesspools and disclosure by realtors. One suggestion was in high-risk areas to require the time by which the cesspool must be removed, to be indicated on the disclosure form for realtors. It was stated that if the rule were to be changed to include a risk-based replacement strategy, a requirement for disclosure by realtors, would require a law change. It was stated that currently, it is required that cesspools be disclosed.

Meeting adjourned at approximately 10:20.

Next Meetings

Meetings will be held in Conference Room 280, DEM Office of Water Resources, 235 Promenade Street.

- Wednesday, February 28, 2001 8 AM to 10 AM
- Thursday, March 8, 2001 8 AM to 10:00 AM
- Wednesday, March 28, 2001 8 AM to 10:00 AM