

**Date: July 19, 2016**

## **Administrative Procedures Guidance – Response to Comments from External Reviewers**

Comments and associated responses are organized by the sections in the guidance to which the comments refer. As much as practical, the responses are intended to explain the N.C. Department of Environmental Quality's (NC DEQ) interpretation of the guidance and its intended application. If changes to the Administrative Procedures Guidance were made in response to the comments received, such changes will be noted in the response. Each comment's source is identified in parentheses at the end of each comment, and commenters are listed at the end.

### **General**

1. We strongly suggest that all materials produced by DEQ as guidance or information for landowners and neighbors whose land has been contaminated be fair and unbiased (N.C. Conservation Network, or NCCN).

*Response: Comment noted. The intention of the statute is to provide a means for remediating contamination while ensuring protection of health and property rights. The Contaminated Property publication and the Administrative Procedures Guidance document have been developed in collaboration with staff from multiple disciplines and agencies. By involving a variety of stakeholders in the review process, it is NC DEQ's aim to produce well-balanced guidance and educational materials for the regulated community and the public.*

2. All materials and procedures produced by DEQ should reflect that the landowner is the impacted party whose property has been contaminated. Remediators are not unbiased parties. To avoid intimidation and predatory dealing, the materials given to landowners and neighbors should be unbiased and provided by DEQ or a third party environmental consultant who is funded - but not managed - by the remediating party. (NCCN)

*Response: The statutes place responsibility on remediating parties for gaining consent and providing information to NC DEQ and to the public, and they place responsibility on the department to provide oversight and approval at appropriate steps in the process. NC DEQ's intent is to ensure that accurate and appropriate information is communicated to property owners and that their rights are protected. The Notice of Intent to Remediate (NOIR) directs interested parties to view relevant documents on the NC DEQ's website. Additional instructions have been added to Step 6 and to the NOIR instructions to direct remediating parties to coordinate with NC DEQ on developing the NOIR.*

### **Step 2, 1<sup>st</sup> Bullet: Delineation to Unrestricted Use**

3. This [*delineation to unrestricted use levels*] may not be possible if off-site access is not obtained, such as bankrupt or absentee property owners. Please consider the use of model projections of a delineation where off-site access is prohibited or unattainable. (American Council of Engineering Companies, or ACEC)

*Response: We recognize that off-site access will not be granted at each property where access is requested. The expectation is that the best available data will be used to determine the extent of contamination. When access is not granted and other means of delineation must be relied on, attempts to gain access should be documented to justify the methods used to define the extent of contamination. The remediating party is responsible for demonstrating that the lines of evidence used to delineate the extent of contamination are technically sound and adequate to define where controls are needed to eliminate current or reasonably anticipated future risk. The Administrative Procedures Guidance has been amended to clarify the expectation for plume delineation. The forthcoming technical guidance will address plume delineation in more detail. It is important to note that if property access is denied or unattainable, consent to use risk-based remediation standards is still required for all affected properties.*

4. The first bullet states that the applicant must delineate the plume down to unrestricted use levels before he can develop a risk-based approach. We believe that in many circumstances such a detailed delineation of the contaminant plume is not necessary to assess whether or not a risk-based cleanup is appropriate for the site. We believe that the applicant should be required to identify how the property will be used in the future, secure enough information to identify the risks associated with that use, and then develop use restrictions to manage those risks. (N.C. Manufacturers Alliance, or NCMA)

The proposed approach is inconsistent with other risk-based approaches in use in the Division (specifically the UST and Brownfields programs), and appears to be simply the approach currently used in the existing IHSB program with a RBCA component tagged on at the end. That is not what the legislature intended. To the contrary, the legislation was developed to allow for reasonably prompt and cost-effective remediation of contaminated industrial sites. NCMA believes that it is unnecessary to provide a complete delineation of the plume in order to do that under a risk-based scheme. (NCMA)

*Response: In order to determine which properties need to be restricted (and what those restrictions should be) one needs to understand the extent of contamination. Media is considered "contaminated" when it exceeds an unrestricted use level, so the standard of care in defining the extent of contamination is to determine where the contaminants exceed unrestricted use levels. The expectation is that remediating parties will use reliable lines of evidence to support their interpretation of where contamination is and where it isn't. The most defensible line of evidence is data from reproducible collection points such as monitoring wells. Other lines of evidence that support the interpretation of the extent of contamination, such as modeling, are acceptable, provided that the use of these methods is technically sound and appropriate for the site. The Administrative Procedures Guidance has been amended to clarify the expectation for plume delineation.*

## **Step 2, 2<sup>nd</sup> Bullet: Off-site Concentrations & Plume Stability**

5. The extent and/or magnitude of residual contaminant concentrations in the off-site plume can vary due to statistical variation and/or heterogeneity. Heterogeneity is inherent at all sites in the matrix and plume. There will also be statistical variation in the analytical data. Maybe a statistical range of plume expansion and/or contaminant-concentration increases can be established as acceptable, and plume-size increases and/or concentrations exceeding this range would trigger an evaluation or action. (Duncklee & Dunham, or D&D)

*Response: The technical guidance being generated by NC DEQ will address plume stability in more detail. The expectation in the early phase of implementing risk-based procedures is that remediating*

*parties will need to have sufficient data to support their understanding of aquifer heterogeneity and contaminant behavior to reasonably predict its movement. The Administrative Procedures Guidance has been amended to clarify the expectation for plume stability.*

6. The second bullet under Step 2 requires that an applicant must perform any testing necessary “to demonstrative with reasonable assurance that contamination will *neither expand in extent nor increase in concentration* on ‘off-site property’ . . .” (emphasis added). As you know, contaminant plumes rarely are totally stagnant and contaminant levels in any particular well may increase or decrease from one sampling event to the next. This is particularly common in risk-based remediation projects involving natural attenuation. We note that in the proposed fee calculation example included in Appendix C, the agency seems to acknowledge that contaminant plumes tend to migrate. Thus, we feel that the agency should only require that the applicant provide sufficient information to demonstrate that the contaminant levels and movement of the plume do not pose a threat to receptors located on the host site or on the adjacent site, and that the plume will not migrate off either site at concentration levels that exceed unrestricted use standards. If the agency interprets the statute in a manner that does not allow for an increase in the extent of the plume, then very few sites will qualify for risk-based remediation. (NCMA)

*Response: The Regulatory Reform Bill can be read to be inconsistent when it discusses plume stability. GS 130A-310.73A(a)(2) states that “...site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained.” – implying further migration is unacceptable. However, GS 130A-310.71(e) states that notices are required for each “contaminated site or contaminated off-site property where any contamination has or will in the future exceed unrestricted use standards.” – implying that limited future migration is acceptable. Our current interpretation is that sufficient information be provided to demonstrate (i) that the plume will not extend onto additional properties beyond those already impacted or anticipated to be impacted, (ii) that the plume will not extend beyond properties not yet impacted but where controls are granted and are in place, and (iii) that the land-use controls proposed for each affected property will be protective of the range of concentration fluctuations that may occur in a natural system. The Administrative Procedures Guidance has been amended to clarify the expectation for plume stability. The forthcoming Technical Guidance will address plume stability in more detail.*

## **Step 2, 3<sup>rd</sup> Bullet: Ecological Risk Assessment**

7. What guidance or standard will be used to perform the ecological assessment? (ACEC)

*Response: The forthcoming Technical Guidance will address ecological risk assessment in more detail. No change to the Administrative Procedures Guidance at this time.*

## **Step 2, 4<sup>th</sup> Bullet: Definition of “Risk”**

8. This GS section quotes “and the risk that the contamination poses to public health, safety, and welfare and to the environment” Is “risk” defined by EPA standard through a risk assessment or will the Toxicologists at DEQ determine “risks”? (ACEC)

*Response: The expectation is that the remediating party will perform the risk assessment which will be reviewed by NC DEQ. The risk assessment will evaluate risks from all impacted media and relevant exposure pathways considering current and reasonably anticipated future property uses. The risk assessment will be the basis for calculating cleanup goals when remediation is required and for determining which restrictions are needed to ensure protection of human health in the future. The forthcoming Technical Guidance will address risk assessment in more detail. No proposed change to the Administrative Procedures Guidance at this time.*

## **Step 2, Last sentence: Predicting Migration**

9. Good addition. Allows for modeled projections of fate/transport of contaminants. (ACEC)

*Response: Although modeled projections of contaminant fate and transport can be used, notable trends in historic monitoring data are more reliable for estimating future plume behavior.*

## **Step 3, General**

10. If a State or local land-use control is utilized in accordance with 130A-310.71(a)(9), does the off-site owner need to provide written consent, or do they just need to be notified that this policy is being used? (ACEC)

*Response: Consent to use other state or local controls for off-site properties is required under G.S. 130A-310.71(e)*

11. The guidance suggests that it is best to secure permission from neighboring landowners prior to expending funds on the development of a remedial action plan. Although we acknowledge the desirability of getting permission in advance of major expenditures, we fully expect that most neighbors will want to see what the remediation activities entail, and in particular, what land use or other restrictions will need to be imposed on their property before they agree to grant the required permission. Of course, in most situations, considerable work will need to be completed before remediation details and necessary land use constraints are fully understood. (NCMA)

*Response: Understood. Remediating parties will need sufficient data to determine which properties are affected and at what concentrations in order to evaluate their remedial options. If that data suggests that a risk-based approach is technically viable, then consent from the affected off-site property owners is the logical next step. NC DEQ acknowledges the challenge of gaining consent from affected off-site property owners prior to NC DEQ approval of a risk-based remedy, but the challenge is manageable if sufficient site assessment information is obtained in order to develop predictable remediation plans. No proposed change to the Administrative Procedures Guidance at this time.*

12. ...that landowners be protected from entering into a binding agreement until the risk-based remediation plan is finalized. (NCCN)

Landowners must not be locked in prematurely in the risk-based remediation process - especially if DEQ has not had the time to conduct a full investigation of any remedial investigation reports. Landowners should be able to rescind their approval of the risk-based remediation plan if they object to

a material aspect of the content of the land use restrictions or of the companion survey plat. They should always have the opportunity to negotiate or provide final approval of the content in the land use control instrument before it is recorded in the chain of title. (NCCN)

We recognize that this places the risk on the remediating party and that the landowner may change their mind at a point deemed inconvenient by the remediator. This is appropriate because the landowner is the impacted party whose land is in a different state than before the contamination by the remediating party occurred. Acting in a manner that places undue burden on landowners and gives deference to the remediating party would be inappropriate and unfair. (NCCN)

*Response: NC DEQ's intent is to ensure that appropriate information is communicated to property owners and that their rights are protected. The state agency agrees that property owners have the right to deny, accept, or negotiate the terms of any proposed limitations on the use of their property. Contractual agreements between remediating parties and off-site property owners are outside the jurisdiction of the agency, however, NC DEQ is responsible for ensuring that the proposed remedy is technically sound, that appropriate (i.e., neutral) educational materials are provided, and that questions or concerns are properly addressed. No proposed change to the Administrative Procedures Guidance at this time.*

### **Step 3, 2<sup>nd</sup> Paragraph, 3<sup>rd</sup> Sentence: Inclusion of Right-of-Ways**

13. For publically owned properties for the State of North Carolina (Highways/roads, Game Lands, Waters of the State), who will need to sign this? (ACEC)

*Response: In most cases, the N.C. Department of Transportation (NC DOT) owns or controls roadway property, and the N.C. Department of Administration (NC DOA) manages properties for state owned facilities (other than roadways). No proposed change to the Administrative Procedures Guidance at this time.*

14. Also, we fully expect that there will be many, many sites where the adjacent property owner from which permission must be obtained will be the North Carolina Department of Transportation (DOT) or a local unit of government who owns the adjacent transportation corridor. Instead of individual applicants attempting to negotiate agreements with DOT, we would request that DEQ work with DOT to develop a memorandum of agreement that would set out the circumstances under which DOT would grant the necessary consent to an applicant for a risk-based cleanup. We believe that in the long term, agency resources (for both DOT and DEQ) would be significantly reduced if such an agreement could be consummated between DOT and DEQ. (NCMA)

Also, although it may prove more challenging to develop such an agreement with local governments, we believe that DEQ, in consultation with the League of Municipalities and the Association of County Commissioners, could be very helpful and influential in developing a model agreement for use by local governments. We therefore request that DEQ approach those two (2) organizations to determine the viability of such a model agreement. (NCMA)

*Response: NC DEQ agrees that this may constitute a significant workload and recognizes the benefits of having a consistent approach with regard to gaining consent and final approval of land-use restrictions*

*(LURs) that apply to DOT right-of-ways (ROWs), DOT owned property, as well as municipal ROWs and municipally owned property. Based on preliminary discussions, NC DOT is willing to work with remediating parties and NC DEQ on site specific cases to establish procedures that will be used as templates for future negotiations. No proposed change to the Administrative Procedures Guidance at this time.*

### **Step 3, 2<sup>nd</sup> Paragraph, 4<sup>th</sup> Sentence: Plume Stability**

15. How will this be determined? Through modelling or sampling? With an NFA [No Further Action], there won't be additional sampling. There are certain scenarios where an increase in contaminant concentrations may not present additional risk. For example, fate & transport of a contaminant over a period of time may show an increase in contaminant concentration at a certain point in the plume, before natural attenuation kicks in and decreased the concentration. Another example, if active remediation stops, the modelled concentration may increase but may remain below the allowable risk level. (ACEC)

*Response: The expectation in the early phase of implementing risk-based procedures is that remediating parties will need to have sufficient data to support their understanding of aquifer heterogeneity and contaminant behavior to reasonably predict its movement. The most defensible line of evidence is data from reproducible collection points such as monitoring wells. Other lines of evidence that support the interpretation of the extent of contamination, such as modeling, are acceptable, provided that the use of these methods is technically sound and appropriate for the site. The Administrative Procedures Guidance has been amended to clarify the expectation for plume stability. The technical guidance being generated by NC DEQ will address plume stability in more detail.*

### **Step 3, 3<sup>rd</sup> Paragraph, 3<sup>rd</sup> Sentence: Owner rescinding Approval**

16. This would be troublesome to many Responsible Parties. If they are going to go through this process, the risk of an owner rescinding their approval may be too great to justify the risk-based approach. 130A-310.73A(a)(2) does not include anything that allows the owner to rescind once they give written consent. (ACEC)

*Response: Noted. While the statement that owners can rescind their approval is accurate, it is at the same time incomplete in that it does not address third-party agreements between a remediating party and an off-site property owner. In the case of third-party agreements, affected property owners and remediating parties should negotiate the terms or consequences of terminating the agreement. The Administrative Procedures Guidance has been amended to be consistent with the Property Owner Permission Form in Appendix A of the guidance.*

### **Step 4, General: NOIR to Adjoining Property Owners**

17. Step 4 requires that “all owners of land adjoining contaminated parcels” must be given notice of a risk-based remedy. Why would an applicant need to give notice to owners of up-gradient property to which the contamination could never migrate? (NCMA)

*Response: Notice to adjoining landowners is required under G.S. 130A-310.70, which states that “... the person who proposes to remediate a site under this part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining*

*landowners.” Statutes of other cleanup programs include similar provisions. No proposed change to the Administrative Procedures Guidance at this time.*

### **Step 5: Application Fee Credit for REC Sites**

18. The application fee calculation instructions provided in Appendix C call for a base fee of \$5000 per acre of contamination. Adjustments to the base fee are included when contamination has not migrated to adjacent property, when no further active or passive remediation is required outside of land use controls, and when the remediation project is being managed through the Registered Environmental Consultant (REC) Program. (NCMA)

We feel that the deductions proposed are appropriate in the case of sites where contamination has not migrated to adjacent property, and where no further active or passive remediation is required (i.e., \$500 per acre for each deduction). However, we have significant concerns about the proposed flat fee deduction of \$2500 for sites which use a REC. Although the fee would seem somewhat appropriate in the case of the 2-acre contaminant plume cited in the example case in Appendix C (i.e., a 25% reduction in fees for use of a REC), consider the same example but with a 10-acre contaminant plume. In the 10-acre example the total fee would be  $\$50,000 - \$5000 + \$5000 - \$2500 = \$47,500$ . Thus, in this example the use of a REC results in a 5% reduction in the total fee. (NCMA)

The legislation directs DEQ to “develop reforms to expand the role, and otherwise enhance the use of, registered environmental consultants...” Use of REC’s should substantially reduce the administrative review and oversight burdens on the department, and the fee schedule should reflect as much. We therefore recommend that the adjustment to the fee for use of a REC be established as a percentage (i.e., 25%) , instead of as a base fee amount. So, in the case of the 10-ac example cited above, the total fee paid by the applicant would be  $\$50,000 - \$5000 + \$5000 - \$12,500 = \$37,500$ . (NCMA)

*Response: Acknowledged. NC DEQ agrees with the need to further incentivize participation of sites managed under RECs. The Administrative Procedures Guidance, Appendix C has been amended to adjust the fee structure to include reductions on a percentage basis for sites exceeding 2 acres.*

### **Step 6, 1<sup>st</sup> Paragraph: Ecological Risk Assessment**

19. Is there a NC guidance document for ecological assessments? Are the processes referenced in EPA’s Ecological Risk Assessment guidance the default? (ACEC)

*Response: The forthcoming Technical Guidance will address ecological risk assessment in more detail. In the meantime, remediating parties should consult with the relevant regulatory program regarding ecological risk assessment. No change to the Administrative Procedures Guidance at this time.*

### **Step 6, 1<sup>st</sup> Paragraph, 3<sup>rd</sup> Sentence: Expansion of REC Program**

20. Are REC’s now allowed to implement RBCA for IHSB sites only, or for other sites too? (ACEC)

*Response: The petroleum Underground Storage Tank (UST) Section is evaluating the use of the REC concept to manage releases from non-commercial USTs, other petroleum releases from Above-Ground Storage Tanks (ASTs) and other non-UST sources. Expanding the use of RECs to some or all of the*

*above types of sites would require the adoption of additional rules to those currently governing petroleum cleanups. Such rules could be slightly modified versions of the current rules governing cleanups at hazardous substance release sites under the Inactive Hazardous Sites Act. No proposed change to the Administrative Procedures Guidance at this time.*

#### **Step 6, 2<sup>nd</sup> Paragraph, 1<sup>st</sup> Sentence: DEQ Approval**

21. How does this tie into the REC/RSM's determination for a selected remedy? Under the REC program, will DEQ review and approve remedial investigation reports and RAP as if the site were a state-lead site? (ACEC)

*Response: Risk-based remediation proposals will go through NC DEQ, regardless of which program the site is managed under – including REC sites where RSMs are responsible for ensuring compliance with all requirements. Under the existing REC rules, a remedy involving containment (e.g., where contamination exceeding unrestricted use levels will remain in place) requires department concurrence prior to implementation. No proposed changes to the Administrative Procedures Guidance at this time.*

22. The document does not appear to directly address sites where historical investigation and perhaps remediation has been done voluntarily and not through any remedial program. Step 6 appears to deal with this somewhat by requiring submission of all reports. The party then has permission to proceed with issuance of a NOIR “if DEQ has no comments on the information provided.” However, there is no timetable included for DEQ review. Many other state permitting programs (which this process is at least similar to) have statutorily imposed deadlines for a decision by the agency. We feel that DEQ should establish a time frame for its review. (NCMA)

*Response: Sites that are not in a regulatory program, but where assessment and remediation work has been completed and documented, may be eligible to use the risk-based approach. The statutes (G.S. 130A-310.71) require the department to review and approve proposed remedial action plans. To do this effectively, all information supporting the remedy selection will need to be submitted to NC DEQ for review. The department will take into consideration the suggestion to establish a review time. However, the complexity of a site, the volume of information provided, and the workload of the staff will be factors in determining the turn-around time for review of each risk-based remediation proposal. The Administrative Procedures Guidance has been amended to encourage remediating parties to work with NC DEQ in developing the NOIR.*

#### **Step 7, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence: Calculating Risk-based Standards for Each Medium**

23. There is some confusion among regulated parties about the provision under Step 7 that states that “The remedial action plan must include a proposal of alternate risk-based remediation standards developed for each medium...” Some folks are interpreting this statement to require development of numeric ACLs [alternate concentration limits]. Although there are clearly circumstances which would warrant development of ACLs, there are also a host of circumstances where development of ACLs would not be warranted. (NCMA)

*Response: G.S. 130A-310.68(b) stipulates that “Site-specific remediation standards shall be developed for each medium as provided in this subsection....” In practice, it is anticipated that remediating parties*



*will conduct a risk evaluation for contaminant levels remaining at a site to determine if contamination in any media poses an unacceptable risk. The results of that risk evaluation will then dictate what media needs to be cleaned up, and the remediating parties will calculate what those levels should be in order to be protective. Alternatively, if contaminant concentrations are stable and there are currently no unacceptable risks and future risks are managed with appropriate controls, then site specific remediation standards may be considered to be met. Managing current and future risks will naturally involve business decisions balancing the cost of remediation and the practicality of gaining consent for LURs for the affected properties. To address this comment, the Administrative Procedures Guidance has been amended to delete the term “alternate” and to include a statement indicating that site-specific remediation standards will usually be calculated based on results from a risk evaluation.*

### **Step 8, 3<sup>rd</sup> sentence: Notice to any Additional Parties**

24. There is also some confusion about the public notice requirements. As we understand the statute, public notice of the Remedial Action Plan (RAP) must be provided to the adjoining property owners and local governments with taxing or land use jurisdiction, as well as to any others required by the respective remediation program’s notice requirements. But the text of Step 8 also refers to “any additional parties who have expressed interest in the environmental activities at the site...” Unless those concerns have been expressed directly to the applicant, how would the applicant know to include those individuals in the public notice of the RAP? Such notice does not seem to be required by the statute? (NCMA)

*Response: Notice to other interested parties is part of most public notice requirements for remedial action plans (e.g., GS 130A-310.4(c)(2) for the Inactive Hazardous Sites Program), so this provides consistency among NC DEQ cleanup programs. Interested parties are typically parties that have asked the department to include them on notices related to a specific site. When developing the Notice of Intent to Remediate (NOIR), remediating parties should seek concurrence from NC DEQ on the content of the NOIR and the associated mailing list. The Administrative Procedures Guidance has been amended to clarify that the mailing list will need to be verified by NC DEQ prior to posting the NOIR.*

### **Step 9: Suggested Edits, and Need for Re-opener.**

25. “...that any land-use restrictions have thus far been certified on an annual basis, and that, assuming continued compliance with relevant requirements, the remediation standards have been attained.” The 2 edits in this sentence are about the fact that, when you’re talking about addressing contamination on a risk-based basis, you’re talking about an ongoing duty to comply with LURs and to certify that compliance and the continued recordation of the LURs. (Bryan Brice Attorneys, or BBA)

*Response: Suggested edits noted and incorporated.*

26. Additionally, no one should have a permanent exemption from liability for contamination. Remediators should be held liable if, years after the remediation, there is a new scientific discovery about the threat of a particular contaminant. The state should retain the ability to re-open a remediation case at any point they deem necessary. (NCCN)

*Response: The Statute amendments do not provide a permanent exemption from liability. Any NFAs issued by DEQ may be re-opened in the event that new information becomes available or site conditions*

*change such that the risk-based remediation is no longer protective, or if the LURs are violated. No proposed change to the Administrative Procedures Guidance at this time.*

**Appendix A, Consent Instructions, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence: Consent Subject to Withdrawal**

27. Should be more specific, for example, they can't withdraw after the LURs have already been recorded. Should the wording in consent form be used here? E.g. "will have the opportunity to negotiate or provide final approval of the content of those instruments." (D&D)

*Response: Noted. The instructions in Appendix A of the Administrative Procedures Guidance have been amended to be consistent with the permission form.*

**Appendix A, Consent Instructions, 2<sup>nd</sup> paragraph, 3<sup>rd</sup> sentence: ROWs**

28. If a groundwater plume has migrated off-site and under a road, this parcel of land could be extensive. How would you apply LURs to the deed for this property? Some additional guidance on LURs on right-of-ways, streets, etc. would be helpful. (D&D)

*Response: Noted. See responses to items #13 and #14.*

**Appendix B, NOIR Template, 1<sup>st</sup> sentence: Suggested Edit**

29. Suggested edit: "...using site-specific risk-based cleanup standards." (ACEC)

*Response: Suggested edit noted and incorporated.*

**Appendix C, Fee Calculation Instructions, Appl Fee, 2<sup>nd</sup> sentence: Application Fee**

30. Is this fee refundable, or somehow pro-rated if RBCA is rejected by DEQ? What happens if the off-site owner rescinds approval at the last minute? (ACEC)

*Response: The application fee is intended to cover NC DEQ's costs for review of the risk-based cleanup proposal. NC DEQ does not anticipate refunding application fees for proposals that are rejected, or for proposals that are approved but can't be implemented based on withdrawal of consent. In both cases, NC DEQ will have expended the application fee to perform the review and oversight of the risk-based cleanup proposal.*

**Appendix C, Fee Calculation Worksheet: Application Fee**

31. \$2,500 is not a significant incentive and is not calculated proportionately like the other fees. The RP being in the REC program greatly reduces the burden on the department and this flat-rate discount does not reflect this. Generally, a large site with more complex site conditions demands a greater amount of time and resources from the department for direct oversight. However, this REC flat-rate discount would not proportionately reflect the complexities of a site remedy for a large site with a large plume, and therefore would not proportionately reflect the potential additional costs accrued by the department if the RP [responsible party] was not enrolled in the REC program. This flat-rate discount should be changed

to a percentage applied to total fees or should be calculated per acre as the other fees are calculated. (D&D)

I agree with the comment made during the conference call that the fee structure of the REC program actually acts as a disincentive for sites to be cleaned up. Would be more logical to maximize incentive by discounting fees for sites in the REC program while applying fees to the hundreds of sites not in the REC/direct oversight programs (these inactive, and in some aspects uncontrolled sites, pose a significant potential threat to public health and the environment). (D&D)

*Response: Acknowledged. NC DEQ agrees with the need to further incentivize participation of sites managed under RECs. The Administrative Procedures Guidance, Appendix C has been amended to adjust the fee structure to include reductions on a percentage basis for sites exceeding 2 acres.*

Comments Received from:

American Council of Engineering Companies (ACEC) – Joe Starr  
Duncklee & Dunham (D&D) – Dave Duncklee  
Bryan Brice Attorneys (BBA) – Rob Gelblum  
NC Manufacturers Alliance (NCMA) – Preston Howard  
NC Conservation Network (NCCN) – Jamie Cole