

**BUREAU OF CORRECTIVE ACTIONS
NOTIFICATION REQUIREMENTS GUIDANCE
FOR SOIL EXCAVATION DURING
INITIAL ABATEMENT OR WORKPLAN CHANGES IN SCOPE
January 2009**

Purpose

This document provides Nevada Division of Environmental Protection (NDEP) Bureau of Corrective Actions (BCA) guidance on when regulatory concurrence is required for excavation during initial abatement or excavation that changes the scope of a workplan. This guidance is intended to assist Certified Environmental Managers (CEMs) meet the requirements of the Leaking Underground Storage Tank (LUST), Remediation, and State of Nevada Petroleum Fund (Fund) programs and reduce regulatory delays, denied reimbursement, and conflict with responsible parties. This document only addresses soil excavation.

Definitions

Nonremedial activity means construction or demolition activity conducted under the assumption that contaminated soil and groundwater will not be encountered. Nonremedial activity includes underground storage tank system removal.

Remedial activities mean activity to remove or mitigate exposure to contaminated soil.

Initial Abatement means (1) action necessary to mitigate and potential hazards to public health from exposure to contaminated soils and (2) remedial activity of limited duration or effort level that can be conducted with on-site equipment.

Workplan Change in Scope means remedial activity that exceeds the extent, magnitude, scope, or type of task given regulatory concurrence in a workplan.

Issue

During some cleanup projects with BCA oversight, there has been confusion regarding what level of effort meets or exceeds initial abatement and when excavation activity requires additional regulatory concurrence. Exceeding regulatory authority often results in delays in processing submissions to the Fund. In one recent case, although regulatory concurrence was given to “chase contamination” with additional excavation, the responsible party (RP) objected to the increased costs of excavation. The CEM was able to satisfactorily resolve the situation; however, the resolution took a tense month of additional time and effort communicating with the RP, regulatory case officer, and Fund staff and obtaining the necessary signature for reimbursement of the unanticipated excavation. Better communication would have prevented this situation.

Initial Abatement and Workplan Changes in Scope

BCA recognizes soil excavation as a potentially effective remedial technique during initial abatement and as part of ongoing remedial efforts.

1) Regulatory concurrence is not needed if:

- (a) contaminated soil is encountered during a non-remedial activity and
- (b) the total volume of stockpiled contaminated soil will be able to be removed from the site with the equipment already mobilized on-site, excluding transferrable trailer loader(s), to make one off-site disposal trip. Such a limited cleanup effort falls under the scope of initial abatement of public health hazards.

- 2) Regulatory concurrence is needed if the total stockpiled volume of contaminated soils to be removed off-site for disposal requires remobilization (i.e. repeated trips with mobilized equipment), use of transferrable trailer loader(s), or additional equipment mobilization to the site.
- 3) Regulatory concurrence is needed if concurrence was previously given for a workplan that has changed in scope and requires remobilization or additional mobilization of equipment to the site.
- 4) CEMs should report suspected releases to RPs and the NDEP if the contaminant volume and concentration meet reporting threshold, as per Nevada Administrative Code 459.9729 1(d) and 1(e) – CEM Standards of practice
- 5) BCA encourages CEMs to inform RPs of all changes in work scope.
- 6) When a workplan changes in scope occurs, the Fund requires:
 - a) documentation that the RP approved the new or modified workplan
 - b) new bids when a workplan change in scope may result in cost savings
 - c) Not-to-Exceed-Proposals (NTEPs) Change Orders or new NTEPs.
- 7) Bids are not required by the Fund for soil disposal in northern Nevada at the Lockwood Regional Landfill (landfill) or Nevada Thermal Services (NTS) facilities located in Sparks, NV. This is because the landfill is the lower cost option for lower contaminated waste and NTS being the sole provider of higher contaminated waste treatment. Transportation costs are the same to these two facilities located a few miles apart. This policy is subject to change if the providers or their scope of services changes.

Procedures to Obtain Regulatory Concurrence

Communication with BCA regulators may take the form of electronic mail (e-mail) messages. Telephone message are also acceptable if documented in a record of communication.

Communication of changes in scope by CEMs to RPs is encouraged to ensure that the all parties have a mutual understanding of the time, effort, and goals of each phase of a remediation project.

The Fund requires documentation of regulatory concurrence for all remedial activities including changes in scope as part of reimbursement packages of cleanup projects covered under the Fund.

The Fund will not require bids for reimbursement of soil disposal costs in northern Nevada at the landfill or NTS facilities. Soil analytical data and justification that the landfill rejected the material must be provided to rationalize reimbursement of expenses from the higher cost NTS facility. Otherwise the Fund will reimburse the landfill's lower disposal rate per cubic yard of soil.