



West Virginia Department of Environmental Protection
Leaking Underground Storage Tanks
2011 WV Brownfields Conference

LUST - UECA Lessons Learned



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The Three Faces of LUST



Underground Storage Tank System Release

Standard Enforcement Path

West Virginia Code
Chapter 22 Article 17
Underground Storage Tank Act
Sections 6 & 14

WV Legislative Rule
33 CSR 30
Section 2

Code of Federal Rules
40 CFR Part 280
Subpart F

Uniform Environmental Covenant Path

West Virginia Code
Chapter 22 Article 17
Underground Storage Tank Act
Sections 6 & 14

and

Chapter 22 Article 22B
Uniform Environmental Covenants Act
Section 2

WV Legislative Rule
33 CSR 30
Section 2

Code of Federal Rules
40 CFR Part 280
Subpart F

Voluntary Remediation Path

West Virginia Code
Chapter 22 Article 22
Voluntary Remediation &
Redevelopment Act
Sections 6 & 14

WV Legislative Rule
60 CSR 3
Section 3

Underground Storage Tank System Release

Standard Enforcement Path

Reference Guide
Corrective Action Guidance Document¹

Assess the extent of contamination of impacted media for the constituents associated with the release (BTEX, PAH, metals, etc.).
[Specific program data deliverables validated in general accordance with M1 and IM1 Levels³]

Uniform Environmental Covenant Path

Reference Guides
Voluntary Remediation Guidance Documents²

Assess the extent of contamination of impacted media for the constituents associated with the release (BTEX, PAH, metals, etc.).
[Validation required⁴ in general accordance with M3 and IM2 Levels or lower levels in accordance with EPA Region 3's Innovative Approaches to Data Validation³]

Voluntary Remediation Path

Reference Guides
Voluntary Remediation Guidance Documents²

Assess the extent of contamination of impacted media for the constituents associated with the release (BTEX, PAH, metals, etc.) **and** other constituents associated with the historical use of the property (e.g., glycol, PCBs, TCE, etc.)
[Validation required⁴ in general accordance with M3 and IM2 Levels or lower levels in accordance with EPA Region 3's Innovative Approaches to Data Validation³]

Standard Enforcement Path

Remediate impacted soil to WVDEP established guideline values and remediate ground water to drinking water standards (MCLs).



WVDEP issues a "No Further Action" (NFA) with no land use restrictions

Uniform Environmental Covenant Path

Remediate impacted soil and ground water to risk-based standards utilizing engineering and institutional controls as applicable.



WVDEP issues a "No Further Action" (NFA) with an appropriate environmental covenant recorded for land use restrictions.

Voluntary Remediation Path

Remediate impacted soil and ground water to risk-based standards utilizing engineering and institutional controls as applicable.



WVDEP issues a "Certificate of Completion" with an appropriate environmental covenant recorded for land use restrictions.


Bottom Line Differences

Standard Enforcement Path

No application fee

Lower validation & program-specific data deliverable package


No over-sight charges


 Remediation to unrestricted use

No monitoring or maintenance


Uniform Environmental Covenant Path

No application fee


 Higher level of data validation & CLP-like data deliverable package


 Over-sight charges
2½ times hourly rate of agency personnel (Project Manager, Risk Assessor, etc.)


Risk-based remediation with institutional &/or engineering controls

 Monitoring & maintenance of controls


Voluntary Remediation Path

 Application fee *
\$1000 - \$5000

 Higher level of data validation & CLP-like data deliverable package

 Over-sight charges *
2½ times hourly rate of agency personnel (Project Manager, Risk Assessor, etc.)

Risk-based remediation with institutional &/or engineering controls

 Monitoring & maintenance of controls



west virginia department of environmental protection
division of land restoration

LUST UECA Process:

A Checklist for Licensed Remediation Specialists

Understanding the LUST UECA Program

- Pertains to OER's oversight of "regulated" Leaking Underground Storage Tank (LUST) related issues under the Uniform Environmental Covenant Act (UECA) process.
 - Sites with issues related to other regulatory programs:
 - Work through those regulatory programs; or
 - Enter the site into the Voluntary Remediation Program.
- The VRRRA Guidance Manual and processes outlined in it are to be followed in lieu of the Corrective Action Guidance Document in order to achieve "No Further Action" status.
 - The requirements for quality assurance/quality control are higher for risk-based closures than for sites meeting full remediation.
- The UECA agreement guides the process and report submittals for LUST UECA sites.
 - Submittals will differ from those of a typical LUST project.
- Property owners must agree to any potential property use restrictions, as well as sign the UECA agreement and (if required) environmental covenant.

Contacts for the LUST UECA Program

Patricia Hickman, Program Manager
131-A Peninsula Street
Wheeling, WV 26003
304-238-1220, ext. 3517
Patricia.A.Hickman@wv.gov

Contact a LUST Project Manager:

http://www.dep.wv.gov/dlr/er/lustmain/Documents/Lust%20Project%20Managers%20and%20Counties-9_8_2011.pdf

Before Entering the LUST UECA Process

- Decide if contamination migrated off-site:
 - Yes: Will affected property owners consider restrictions on the use of their properties?
 - Yes: These property owners will need to agree to necessary restrictions in writing.
 - No: Off-site impacts will require remediation to standard appropriate for unrestricted use.
- Verify that the property owner will agree to any potential property use restrictions, as well as sign the UECA agreement and (if required) environmental covenant.
- Determine whether the applicant or property owner will be responsible for future site inspection/monitoring.
- The LUST responsible party is required to fulfill the Public Participation requirements as mandated by 40 CFR 280.67.

LUST UECA Process Checklist

- Notify OER of intent to bring LUST project through UECA. Owner/LRS can request a meeting to discuss following the UECA process, submit a letter to express intent to do so, etc.
- Discuss UECA process (including property use restrictions) with property owner.
- Obtain property owner's consent.
- Submit a draft agreement (Microsoft Word) to OER.
 - Specify:
 - Applicant name.
 - Site owner name (if applicable).
 - Licensed Remediation Specialist name. If not included in the agreement, the LRS name must be submitted in writing prior to the start of work under the agreement.
 - Schedule for submittal of all documents necessary to bring the site to NFA.
 - Attach:
 - Copy of property deed.
 - Site map identifying property to be included in UECA.
- Discuss draft agreement with OER.
- Obtain signatures from the applicant and (if applicable) the property owner.
- Submit original signed UECA agreement to OER.
 - Send:
 - One to be retained on file by OER.
 - Additional for each party that desires an original signed copy.
 - Attach:
 - Information (person/location) on the billable party to be invoiced by OER. This may differ from the address for UECA correspondence.
- Incorporate any changes to the original agreement in modifications:
 - Adjusting for site or project circumstances; revising schedules; transitioning LRS; etc.

**AGREEMENT FOR
INVESTIGATION AND REMEDIATION ACTIVITIES
UNDER W.VA.CODE §22-17 & §22-22B**

1. The West Virginia Department of Environmental Protection (“WVDEP”), by its Secretary, Randy C. Huffman (“Secretary”) and _____ (“applicant”) hereby enter into this Remediation Agreement (“Agreement”), pursuant to the Underground Storage Tank Act, W.Va. Code §22-17-1 et seq. and the Uniform Environmental Covenants Act, W.Va. Code §22-22B-1et seq. (“UECA”), for the purpose of investigating and remediating the property located at _____, _____, _____ County, and is the subject of this Agreement (“the Site”).

2. The parties agree to the following terms and conditions as satisfying the requirements of the Underground Storage Tank Act (§22-17-1 et seq.) for the investigation and remediation of the subject site and that the site shall be remediated to risk-based standards via UECA.

3. The activities conducted by the applicant under this Agreement are subject to approval by WVDEP as provided herein. Applicant shall provide all necessary information for the Site. The activities conducted by the applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents.

4. This Agreement shall apply to and be binding upon the applicant, its successors and assigns. By entering into this Agreement, the applicant neither admits nor denies liability.

5. All work to be performed by the applicant pursuant to this Agreement for remediation to risk-based standards via UECA shall be under the direction and supervision of a licensed remediation specialist, and the applicant has designated _____, LRS # _____ for the project. *(optional language, Prior to the initiation of Site work, the applicant shall notify WVDEP, in writing, regarding the name and title of the licensed remediation specialist).*

6. The applicant shall submit the following work plans or reports in accordance with the following schedule to complete the remediation activities:

[List of work plans and/or reports and associated schedules to be submitted]

7. When additional or modified work plans or reports are necessary as a follow-up to this initial agreement, the applicant shall submit the subsequent work plans, reports (including final reports), and schedules in accordance with a modification to this Agreement.

8. Upon completion of the work contemplated by all work plans for remediation to risk-based standards via UECA, the applicant shall submit to the Secretary the final report prepared by the licensed remediation specialist. The final report shall include all information necessary to verify that all work contemplated by the work plan has been completed and all information required by the rules.

9. Documents, reports, and other correspondence to be submitted under this Agreement, may be sent by certified U.S. mail, return receipt requested, hand-delivery, overnight mail, or by courier service.

Documents should be submitted to WVDEP at the following addresses:

(Insert name of project manager)	and	WVDEP, DLR
WVDEP, DLR		Office of Environmental Remediation
Office of Environmental Remediation		601 57 th Street, SE
		Charleston, WV 25304
_____, WV _____		
Phone No. (304) 926-0499, ext. _____		Phone No. (304) 926-0499, ext. 1351

Documents to be submitted to the applicant should be sent to:

_____	_____
_____	_____
_____	_____
Attn: _____	Attn: _____
Phone No. _____	Phone No. _____

10. The applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with Quality Assurance Project Plan approved for use by WVDEP throughout any work plan sample collection and analysis activities under this Agreement, unless WVDEP agrees otherwise. All UECA sampling and analyses shall incorporate laboratory data validation utilizing Standard EPA protocols (e.g., Contract Laboratory Protocol or SW-846) and conducted in accordance with EPA Region 3 Modifications to the National Functional Guidelines and EPA Region 3's Innovative Approaches to Data Validation (June 1995).

11. The applicant shall provide the WVDEP project manager with reasonable advance notice of all sampling and analysis as detailed in the work plan. To provide quality assurance and maintain quality control, the applicant shall:

- a) Use laboratories certified by WVDEP;
- b) Ensure that all sampling and analyses are performed according to US EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by WVDEP; and
- c) Ensure that any laboratories used by the applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with US EPA guidance documents. As part of such a program, and upon request by WVDEP, such laboratories shall perform analyses of samples provided by WVDEP to demonstrate the quality of analytical data for each such laboratory.

12. At the request of WVDEP, the applicant shall permit an authorized representative of WVDEP to take samples of wastes, soils, air, surface water and groundwater at the Site. For each sample taken, the authorized representative shall provide the applicant a receipt describing the sample obtained and, if requested, a portion of each sample equal in weight or volume to the portion retained.

13. Upon presentation of proper credentials, authorized representatives of the WVDEP shall be provided access by the applicant to the Site and other areas where work is to be performed under this Agreement, at all reasonable times. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or regulation.

14. The WVDEP reserves the right to withdraw its approval of the work plan at any time during the implementation of the work plan if:

- a) WVDEP determines that the applicant has failed to substantially comply with the terms and conditions of this Agreement or the work plan;
- b) Applicant declines to implement the work plan after being notified of its approval by the WVDEP; or
- c) WVDEP determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.

15. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with implementation of this Agreement at 2½ times the hourly rate of the employees assigned to the site, plus the actual and direct expenses of such employees, as well as contractor costs noted in paragraph 16 below. WVDEP shall periodically send an accounting of the employees' time charged to this site to the applicant and applicant shall pay said amount within 60 days of receipt of the accounting.

16. WVDEP agrees to allow the applicant to review and comment on the scope of work and associated cost estimates for outside contractors prior to WVDEP's authorization of the said contractor to proceed with the associated work. WVDEP will strive where possible to use cost effective and qualified outside contractor(s). "Outside contractors" are defined as individuals, partnerships or corporations paid by WVDEP to assist in the oversight of the activities under this agreement (e.g., risk assessment), but shall not include WVDEP employees. Cost estimates and invoices from outside contractors shall be submitted to the applicant within two (2) weeks from the date the WVDEP receives the cost estimate or invoice. The applicant shall raise any and all objections regarding cost estimates or invoiced work to the WVDEP within two (2) weeks from the date the applicant receives the forwarded estimates/invoice(s) from the WVDEP or within two (2) weeks of the receipt by the applicant of any back-up documentation of the said cost estimates/invoices which is contained in WVDEP files and requested by the applicant, whichever shall last occur.

17. Reimbursement checks for the noted WVDEP costs should be made payable to the West Virginia Department of Environmental Protection and mailed along with the invoice stub stating the site name and address to: West Virginia Department of Environmental Protection (Treasure/RPD), PO Box 681, Charleston, WV 25323.

18. The applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure, that is, circumstances beyond its reasonable control which could not have been overcome by due diligence. The applicant shall notify WVDEP by telephone within three (3) working days and by writing no later than seven (7) working days after any event, which the applicant contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the applicant to minimize the delay, and the timetable by which these measures will be implemented. The applicant shall have the burden of demonstrating that the event is a force majeure. The decision

of whether an event is a force majeure shall be made by the WVDEP. If a delay is attributable to a force majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

19. Applicant agrees to indemnify and save and hold the State of West Virginia, its agencies, departments, agents, and employees, harmless from and all claims or causes of action arising from, or on account of, acts or omissions of the applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.

20. The effective date of this Agreement shall be the date on which the applicant receives the notice that this Agreement has been signed by the Secretary of WVDEP.

21. This agreement may be amended by mutual agreement of WVDEP and the applicant. Amendments shall be in writing and shall be effective when the applicant receives notice that the amendment has been signed by the Secretary of WVDEP.

22. If the Secretary determines that there is an imminent threat to the public, the Secretary may unilaterally modify or amend this Agreement.

23. Nothing in this Agreement shall restrict the State of West Virginia from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

24. The parties agree that restrictions will be required on the future use of the Site. Once such restrictions have been determined, an appropriate Uniform Environmental Covenant will be prepared and recorded for the Site.

24. This Agreement will be governed by the laws of the State of West Virginia.

APPLICANT

Printed Name: _____

Title: _____

Signature: _____

Date: _____

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Printed Name: _____

Title: _____

Signature: _____

Date: _____

If applicant is not owner of the Site

_____, as owner of the Site referenced in the above Agreement, hereby acknowledges that said Agreement requires the imposition of an environmental land use covenant and, in consideration of the benefits accruing to the Site from said Agreement, I hereby agree to the imposition of such environmental covenant and agree to cooperate in the execution and filing of such environmental covenant.

Owner (Signature)

Date

Owner (Printed)

facility_name	project_manager_name
Southern States Martinsburg Petroleum	Carr, Twila
Farm Fresh Store # 14	Gaston, James
Quiet Dell Chevron	Ramanan, Pasupathy
WVDOH Randolph County HDQT	Ramanan, Pasupathy
Speedway SuperAmerica #9771	Dempsey, John
Chevron # 123000	Sutphin, Mike
Sellaro's Service Station	Ramanan, Pasupathy
RSD # 124	Dempsey, John
Exxon SS # 2-5600	Ramanan, Pasupathy
Baisden Ashland	Dempsey, John
One Stop #516 (Exxon #2-9814)	Dempsey, John

Just like an
albatross



It's taken some time to take flight