

DEP TRANSFORMATION PLAN

October 2010

INTRODUCTION

The Commissioner has prescribed the mission and goals of the Department in a vision statement. Additionally, the Commissioner has identified program specific priorities and transformation priorities. To achieve the objectives of the transformation priorities, all of us must be not only willing but also committed to making fundamental changes in how we function and in how we think about what we do daily.

This Transformation Plan is our roadmap to achieving these objectives. We need to act in a quick and bold fashion.

THE NEED FOR TRANSFORMATION

The Vision Statement (<http://www.nj.gov/dep/commissioner/vision.pdf>) clarifies our mission: the protection of New Jersey's air, waters, lands, natural and historic resources to ensure continued public benefit, while recognizing the inextricable link between our state's environmental health and economic well being.

To effectively carry out our mission, the DEP simply cannot continue to operate as we have. We face more challenges than ever. There are multiple factors impacting our ability to perform at the highest level. We are an organization whose mission has grown and matured over 30-plus years. The world has changed in a variety of ways during that time, yet many of our business processes have remained the same. The economic condition of New Jersey and the nation has greatly impacted our ability to function. We have significantly fewer staff and less money—and the potential exists for our resources to be reduced even further by budget constraints. This lack of resources hampers our ability to pursue our mission in the same way that we have in the past, and all of these factors demand that we reexamine our operations. We potentially face becoming an ineffective, or worse, an irrelevant organization if we do not improve our efficiency, demonstrate our value, and provide responsive customer service.

In addition to transforming the Department due to resource pressures and antiquated business practices, it is appropriate for us to re-evaluate past environmental policy and business decisions – are they truly beneficial from an environmental, economic and social perspective today? It is important for us to find the right balance that weighs all of these factors and provides for tough action when warranted, such as, rewarding good actors and singling out those who do not comply with our expectations and laws. Traditional prescriptive regulation cannot keep pace with the ever changing world in which we live. We need to focus on outcomes and science, ensuring that we are taking approaches that are risk-based and evaluate net environmental benefits. Lastly, we must identify key performance indicators that do not merely measure routine activities but focus on environmental outcomes, so the public can celebrate our successes.

Each Assistant Commissioner must work with key members of his or her team and under the direction of DEP's Transformation Team to implement this plan. We will meet our goals only if we focus on the transformation priorities as well as the specific program priorities articulated by the Commissioner (<http://www.nj.gov/dep/commissioner/priorities.pdf>).

TRANSFORMATION GOALS

A crucial component of transformation is changing how we utilize our resources to be more effective.

- We must eliminate unnecessary functions that are not critical to the Department's mission, and reallocate resources to functions that are mission critical.
- We must focus the Department's limited resources on the priorities that truly advance and fulfill our mission.
- In order to do so, all programs must identify and eliminate duplicative and otherwise unnecessary functions.
- We must thoroughly evaluate all of our business operations to identify ways to streamline functions, re-engineer business processes, and leverage technology. For example, by expanding the use of information technology wherever possible, we can eliminate administrative paperwork, share applications and other forms across multiple programs, and increase the number of electronic submittals Department-wide.
- We must enable ourselves to have greater flexibility with our regulations. Too often, we tie our own hands by adopting regulations that were developed using a one-size-fits-all approach.
- We need to be able to exercise our best professional judgment when circumstances are unique or when strict applications of regulations do not lead to net environmental benefits. Predictable standards based on science must apply, but so must common sense.
- We must be transparent in our actions and decisions.
- We must communicate in a manner that all constituents understand.
- We must consider the costs and benefits associated with our regulatory actions.
- We must evaluate the impacts of our policies and regulations on all our programs, the environment, public health, and other societal issues.

WHAT IS MISSION CRITICAL FOR DEP?

To achieve the goals of the Transformation, we must be able to distinguish between what is mission critical and what is not. Mission critical items for the DEP include:

- Providing environmental safety to the public
- Protecting and restoring the environmental and natural resources that are at risk
- Ensuring that our decisions result in a net-gain to the environment
- Supporting economic development of the State's economy

OUR APPROACH

In addition to strong leadership by the Commissioner, senior leadership team and Assistant Commissioners, all managers are being called upon to engage in a thorough analysis of their organizations and business processes. No program is exempt. The status quo is unacceptable. We

cannot work in a business-as-usual mode. We must reaffirm that each program's decision making process reflects the new vision for the DEP. Managers must identify and enact regulatory reforms that reflect the Executive Orders issued by Governor Christie.

Regulation reforms that streamline our work are key. As part of our transformation process, we may identify legislative amendments or new legislation that is necessary to achieve this goal, including the elimination of non-critical functions. The work we did on the Boards, Commissions and Councils under EO15 was a first step. And as noted in the transformation sessions of this past summer, it is imperative to actively include our staff in the transformation process. DEP staff possesses a wealth of knowledge that can help us identify problems and solutions. We also must vet our proposals for change with external stakeholders in order to better understand the impacts that changes will have on our constituents.

IMMEDIATE ACTION

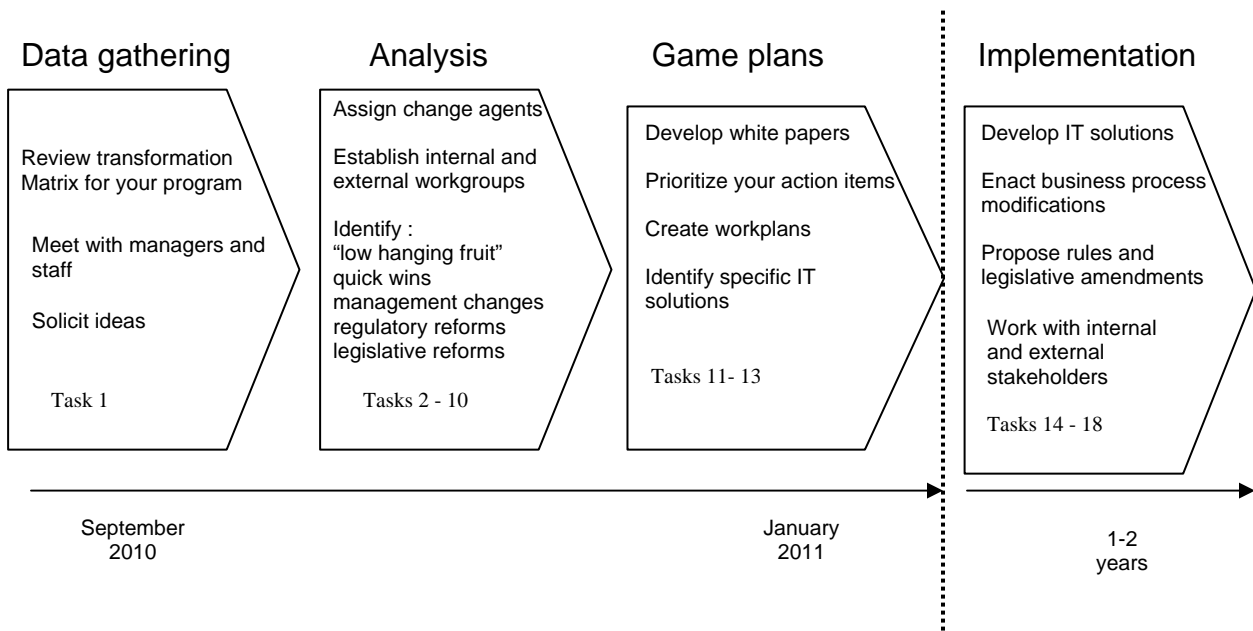
Our agency does not have the luxury of transforming over a 3 to 4 year time frame. It is incumbent upon all managers to begin to identify, today, the changes that can occur immediately. We must identify what administrative and non-mission critical tasks we can stop doing without a protracted internal or external stakeholder process. The managers and staff within DEP know where we expend resources that provide no net environmental benefit. (We can all point to tasks, paperwork, and processes that take up time that could be better spent on more substantive issues). Correcting these time-eating inefficiencies are "quick wins" that can be fixed with little to no involvement from senior management, and which do not require regulatory or legislative reforms. We all need to focus on identifying and eliminating or modifying these issues as soon as possible.

CUSTOMER SERVICE

Lastly, we have already begun to invite managers and staff to participate in customer service training. As we roll out our formal comprehensive customer training series this month, Commissioner Martin will hold Assistant Commissioners personally accountable to ensure that they, their managers and their staff participate. The training will be multifaceted with the focus on ensuring continued improvements in providing excellent customer service by all staff. All staff will attend a one day interactive workshop focusing on understanding the basics of internal and external customer service, determining caller's needs, implementing conflict resolution, handling irate customers, learning key steps to a positive attitude, brainstorming on application of best practices and role-playing exercises demonstrating bad and good customer service. Additionally, managers will be required to participate in continuing education courses to be completed over an eight month period. Monthly meetings will be required for participants to discuss application of the online learning courses, share best practices and problem-solve implementation issues with peers.

#

NJDEP TRANSFORMATION PLAN



TASKS

1. Solicit input from managers and staff to identify program challenges, streamlining opportunities, cross-program issues, and IT possibilities. As appropriate, meet with individuals, organizational units or small workgroups to further flesh out issues. These sessions should be led by managers, but the selected managers do not have to have direct responsibilities for the programs or issues being discussed. Issues can be program-specific or broader, such as IT, procurement, how different programs affect each other, metrics, etc. The selected managers should invite staff and other managers to participate in roundtable discussions. Compile issues and suggestions using the shell matrix (Attachment 1).
 - **Assistant Commissioners and Directors**
 - **Complete process by 10/8/10**
2. Review issues submitted through the meetings in Task 1 above and issues submitted through the transformation process documented on the Transformation Matrix. The matrix will be provided to all Assistant Commissioners as quickly as they are categorized by program during September. (Deputy Commissioner responsible for this task)
 - **Assistant Commissioners and your upper managers**
 - **Complete process by 10/8/10**
3. September retreat: Review each program's AC Priorities and list of cross program issues. At the retreat, we will discuss program specific issues and cross-program issues on which DEP will focus and to which we will dedicate resources. Some transformation issues have already been identified as priorities and teams for these issues will be established as soon as possible. These issues are listed in Attachment 2, "Issues-Based Transformation Priorities"
 - **Senior Management Team**
 - **Held 9/29/10**
4. Retreat Follow-up: Identify the top issues on which you will focus immediately. Select issues that can be implemented immediately without extensive discussion or input from the Deputy Commissioner and/or Commissioner. In addition to your top 10 list, ensure you identify "quick wins" or "low hanging fruit" throughout the transformation process that can be implemented immediately without approval from the Commissioner. Again, everyone should be urged to thinking **boldly** with regards to their suggestions and maintain a sense of urgency so transformation occurs quickly. Select additional issues that will make effective changes to your operations but may take some time to develop and resolve. These issues will be referred to as the "AC Priorities". They must be recorded in the matrix. Each issue must be prioritized, assigned a lead change agent, and tracked for progress by each Assistant Commissioner.
 - **Assistant Commissioners and senior managers**
 - **Complete process by 10/13/10**

5. Retreat Follow-up: Identify managers to take ownership of each AC Priority issue. Identify potential change agents from your staff. Be certain not to focus on only the usual players within your organization, but look for individuals who have raised ideas or voiced concerns. Change agents may be identified through the process in Task 1 above, through the previous Transformation sessions, by those who have approached their managers, or by Deputy Commissioner recommendations.
 - **Assistant Commissioners**
 - **Complete process by 10/13/10**

6. Retreat Follow-up: Identify issues that require cross-program involvement or that impact the DEP as a whole. Forward a description of these issues and identify all impacted programs to Deputy Commissioner.
 - **Assistant Commissioners and senior managers**
 - **Complete by 10/18/10**

7. Select a lead manager to take ownership of the Transformation Priorities we have identified and appoint a mid-level manager or staff change agents to work with the manager. Identify and include internal change agents within and outside of your program. Provide a list of these teams to the Deputy Commissioner, with a write-up of the charge to each workgroup and deadline for completion of their evaluation.
 - **Assistant Commissioners**
 - **Provide by 10/13/10**

Assistant Commissioners will ensure that the Deputy Commissioner and/or her staff are made aware of all transformation meetings, copied on related correspondence and updated on a regular basis of the status of transformation actions. The Deputy Commissioner and/or her staff will try to participate on all teams established as Transformation Priorities to help facilitate open conversations between all internal and external stakeholders, and to keep the Administration's objectives in view. The Deputy Commissioner's Office can provide objective guidance since it is not bound by an individual program's history, practices or mandates. The Office can objectively explore inter-program issues, ensure stakeholders are given due opportunity to participate, and help you and your managers identify and analyze the issues.

8. Convene internal stakeholder meetings to flesh out issues, challenges, and potential solutions for each of the assigned Transformation Priorities. These meetings need to be free-flowing, unrestricted discussions that emphasize thinking outside the box, exploring all potential options and absolutely not relying on business as usual practices. Encourage changes to regulations, legislation, and use of discretion and best professional judgment. Use the matrix to further track the status, priorities, lead managers/change agents and progress.
 - **Lead Transformation Priority managers**
 - **Ongoing during the fall**

9. As workgroups complete evaluations and propose action for each of the Transformation Priorities, meet with Deputy Commissioner or her staff to review and

discuss next steps including setting up external stakeholder sessions. During these briefings, ensure you are also identifying quick wins that can be implemented immediately.

- **Assistant Commissioners or your upper management**
- **Ongoing, beginning the week of October 17**

10. Commence external stakeholder process. Solicit participants from outside of the DEP. Select a total of 20 to 30 participants representing various constituencies and **be sure to look beyond the regular pool of candidates**. Key change agents (both internal and external) should participate in these sessions. Convene external stakeholder sessions to flesh out issues and problems and recommend potential solutions for each of the assigned Transformation Priorities. Those recommended solutions may be managerial, regulatory or legislative in nature. Set the charge for the group to have open discussions and encourage free flow of ideas, concerns, etc. Establish reasonable deadlines for final white papers for each team. There is no prohibition to identifying additional related issues for DEP to further evaluate in this or another work group. The goal is to complete as many evaluations before January as possible, depending on the complexity of the issue, and with the understanding that some processes may take longer.

- **Assistant Commissioners**
- **Starting in October**

11. Organize a retreat **in January** to review the first round of draft white papers, including the associated recommendations. Re-evaluate priorities, the need for managerial changes, regulatory reforms and legislation.

- **Deputy Commissioner**
- **Semi annual beginning January 2011**

12. Provide Commissioner with comprehensive package of the changes implemented to date and next year's transformation priorities.

- **Deputy Commissioner and Assistant Commissioners**
- **March 31,2011**

13. Continue to address the issues identified in Attachments 2 and 3. These activities will occur concurrently with those actions needed to address the Transformation Priorities. The use of internal change agents and establishment of external stakeholder meetings must be incorporated into the process and draft white papers must be prepared. Reporting to the Commissioner on these issues should be an ongoing process during staff meetings and one-on-one sessions.

- **Assistant Commissioners**
- **Ongoing**

14. Set up transformation meetings with staff to ensure transparency in our process and continued input.

- **Deputy Commissioner**
- **Semi annual beginning March 2011**

15. Continue to address the issues identified in Task 1 and the Transformation Matrix. Utilize internal and external stakeholders, whenever reasonable, to thoroughly examine all aspects of the issues and potential solutions. Teams may be small and work product volume and complexity will be based on complexity of the issue. Maintain a running list of all items raised, evaluated, prioritized and worked on utilizing the matrix.
 - **All Managers**
 - **Submit updated matrix to Deputy Commissioner on April 1 and October 1 of each year.**

16. Continue to identify issues that can be tackled relatively quickly, as well as longer term.
 - **All Assistant Commissioners, Directors, Managers and staff**
 - **Ongoing**

17. Continuously identify organization changes and resource demands so Assistant Commissioners or Commissioner can position resources to maximize completion of our core mission.
 - **Managers**
 - **Ongoing**

18. Use an internal and external stakeholder process for any rules being developed or amended. The development of the stakeholder teams must follow a process similar to that established for Transformation Priorities. All rule development priorities must be consistent with Transformation Priorities.
 - **Assistant Commissioners**
 - **Ongoing**

CONTINUOUS PROCESS IMPROVEMENT

Transformation is not a one-time process nor a stagnant matrix, but rather an ongoing method.

We must continue to assess and reassess our processes, functions and activities with the goal of furthering our critical mission.

The Deputy Commissioner's Transformation Team will expand and update the Transformation information on the Intranet to highlight actions, successes and challenges, and will hold update meetings in the Public Hearing Room in Trenton and at locations around the State to ensure effective continued communication.

| REF | Program | Resources | ISSUE | | | PROJ | | |
|---|---|--------------------|--|--|--|-----------------|---------------|-------------|
| L=Legislative P=Policy R=Regulatory | Identify the program to which the associated problem/solution applies | Lead Change Agents | Problem Completely state in detail underlying issue & constraints. | Solution Based on the provided bullet, develop the solution with projected outcomes and resultant benefits | Action Identify deliverables, critical milestones, staff/resources & required timelines. | Priority | Status | Lead |
| | | | | | | | | |
| | | | | | | | | |

Program Process Transformation Priorities – September 2010

Priorities to be reviewed, discussed, and subject to change through collaboration with Senior Management

- Strategic plan and sustainable Funding for Natural and Historic Resources. This team needs to include discussions with internal and external stakeholders, including nonprofits, business community and State agencies.
Lead: Amy Cradic, Lou Valente
DCO Lead: Irene Kropp
Products: 1. Quick win revenue solutions by November 2010
2. Draft long-term sustainable funding options paper by March 2011
3. Implementation plan for each selected option by August 2011

- Identification and modification/elimination of other State agencies' business practices that adversely impact DEP's ability to make logical and non-wasteful operational decisions. Example: streamlining procurement practices and associated impacts on all DEP programs, especially field operations.
Lead: Magdalena Padilla
DCO Lead: Irene Kropp
Products: 1. Letter to Treasurer by October 8, 2010
2. Quick win solutions for priority procurement issues by January 2011
3. Recommendation letter with long-term solutions by March 2011

- Identification of DEP Cross Program issues, where we work at cross program purposes and do not focus on the global environmental gain. Examples: Land Use and its impact on F&W, P&F, and SRP.
Lead: Deputy Commissioner's Office
Products: 1. List of Cross agency issues that require action by January 2011
2. Development of internal teams by February 2011
3. Recommendations by September 2011

- Enforcement. Interface/interaction with associated partnering programs. Evaluate priorities geared toward focus on true environmental impacts vs. statutory and federal mandates, penalties and settlement authority, interaction with DOL, and process to use new ADR office going forward.
Lead: Wolf Skacel
DCO Lead: Ray Bukowski
Products: 1. Catalog current interactions between enforcement and other programs and identify weaknesses by December 2010
2. Catalogue mandates by program, evaluate relative environmental impact and begin discussions to prioritize by February, 2011
3. Develop model to analyze enforcement response to noncompliant entities based on relative harm, conduct and deterrence by February 2011

- Communications. Establish a network of communication professionals within the programs to coordinate with the Office of Communications in order to facilitate better internal and external messaging and leveraging of programmatic events and activities and initiatives.
 - Lead: Angelene Taccini
 - DCO Lead: Janice Brogle
 - Products:
 1. Establish and formalize the communications committee in order to create this network by November 2010.
 2. Draft stakeholder engagement manual with procedures to implement an effective stakeholder process by October 2010
 3. Establish a Department-wide SOP for outreach and press by November 2010
 4. Establish a framework/procedures for coordination between and among programs and the Office of Communications by November 2010
 5. Develop a pilot program for live chat capabilities by December 2010
 6. Use Landuse as a pilot example of improved website function modeled after SRP SRRA/LSRP project by November 2010
 7. Further identify pilot priority areas for website development by January 2011

- Customer Service: In order to ensure that all DEP employees are cognizant of the types and levels of need of all of the Department's constituencies, all DEP staff will be mandated to attend customer service training. Whether the constituents who reach out to the DEP are individuals, organizations, local governments or businesses and whether they are coming to the DEP for permits, approvals or other services, each one is a valued customer that must be treated in a professional and courteous manner. Phone calls need to be returned and questions need to be answered continuously and consistently.
 - Lead: Debbie Ewalt and Bette Sovinee
 - DCO lead: Irene Kropp
 - Products:
 1. Training of Managers and Support Staff to effect immediate improvements in customer service delivery as part of programmatic improvements/transformation October-December 2010
 2. Training of all DEP staff by July 2010
 3. Ongoing Audio Conferences for managers
 - September 10, 2010 Tactics that WOW Customers
 - September 28, 2010 Teaching Employees to have a Great Attitude
 4. Instituting Customer Service awareness campaign: "NJDEP Earning Our Customer's Trust Every Day."
 - Posters throughout agency
 - DEPNET site for employees to share best practices across programs

- Linear Construction projects. SRP is working with DOT, Transit, the Turnpike and multiple utility companies to identify how to provide guidance on these unique projects

to regulated entities. Most DEP rules are geared toward developers and regulated companies, rarely considering the impact to fast moving linear construction projects. This existing team could be expanded to evaluate how to provide flexibility, guidance and future rule amendment/legislation to accommodate critical infrastructure projects.

Lead: Scott Brubaker

DCO Lead: Ray Bukowski

- Products:
1. Identify and work through cross program issues by January 2011
 2. Identify and streamline redundant reviews across program lines by January 2011
 3. Evaluate need for rule revisions by February 2011

- Office of Permit Coordination. Ensure overall success of the newly re-established Office of Permit Coordination. Integration and coordination of OPC with all regulatory programs is critical to ensure the greatest net gain possible from any/all applications.

Lead: Scott Brubaker

DCO Lead: Irene Kropp

- Products:
1. Identify and work through cross program issues and redundant review by January 2011
 2. Evaluate program structure and clarify administrative role by December 2010
 3. Work on outreach, training, and communication to instill customer service consistent with Vision – immediate and ongoing

- Personnel/Resource Allocation. The Department needs to re-allocate resources in order to attain its vision. Human Resources are our most critical resource. Staff need the opportunity for mobility and professional/career development. Human Resources needs to explore removing title variants, either as a pilot, voluntary process or permanently, as well as work with CSC to make the job specifications be realigned to the basic job functions in DEP.

Lead: Deb Ewalt

DCO Lead: Irene Kropp

- Products:
1. Meeting with CSC and Governor's Employee Relations Office in October 2010
 2. Evaluation of those requesting lateral mobility transfers in October 2010
 3. Final decision on variants with CSC, Governor's office by May 2011
 4. Implementation of final decision by December 2011

- Regulatory Reform. External and internal stakeholders have identified the need for true reform of the regulatory process for many years, most notably in the last transition reports. The regulatory process is cumbersome, resource intensive, and time consuming. We cannot respond quickly and efficiently to identified needs for rule changes. No effective measures have ever been taken to address this administrative process. DEP must address internal processes and then act as a pilot for the state in identifying APA reforms. Additionally, our rules are prescriptive, not outcome based, and inflexible. DEP must ensure that our regulations truly protect the environment, are science based and further

the critical missions of the DEP. DEP must ensure all future rules reflect accurate cost/benefit analyses and provide flexibility so we can ensure that our natural resources that are at risk are protected.

Lead: Ray Cantor

DCO Lead: Janice Brogle

- Products:
1. Comprehensive evaluation of the DEP rule process by November 2010
 2. Recommendations to the Commissioner by January 2011
 3. Comprehensive review of APA process by January 2011
 4. Recommendations to the Governor by February 2011

- Municipal Finance and Construction/Environmental Infrastructure Trust. Review the programs to ensure that business processes are streamlined, the interface between the 2 entities are greatly improved and harmonic, there is no duplication of work or policy and we improve the ability to finance qualified projects in an expedited manner.

Lead: John Plonski

DCO Lead: Janice Brogle

- Products:
1. Develop plan to manage overlapping FY10/11 and FY11/12 financing programs by November 2010
 2. Conduct internal and external stakeholder meetings to evaluate program structure and business process by February, 2011
 3. Identify any regulatory or legislative changes and begin implementing process changes by March 2011

- Sustainability: A steering committee of approximately 12 internal stakeholders will be formed to identify opportunities to promote the application of sustainability science and to incorporate sustainability goals in best management practices both internally and externally. The committee will work with internal and external stakeholders as appropriate. The committee will utilize already existing SAGE workgroup for internal outreach.

Lead: Michele Siekerka and Ben Witherell

DCO Lead: Ray Bukowski

- Products:
1. Review of prior sustainability reports and meeting with SAGE and internal workgroups to outline existing work.
 2. Outline of internal goals
 3. Outline of external goals
 4. Roadmap for integrating sustainability thinking to achieve internal and external goals

- Land Use Regulation. This program is repeatedly the criticism of a host of external, internal DEP and other State agency stakeholders. It is noted as being unresponsive, cumbersome, antiquated, overreaching and expensive due to fees, engineering costs and project overruns. All concerns point to the number one complaint, which is an impediment to economic growth, not due to preservation of resources but rather due to antiquated administrative/technical processes that include no flexibility. Program regulations are too complex and prescriptive. Some regulations are overreaching and

overlapping, resulting in programs that face permitting and enforcement conflicts within DEP itself. This often results in confusion on behalf of the regulated community, as they cannot predict what is expected of them in order to comply with our regulations.

Lead: Marilyn Lennon

DCO Lead: Ray Bukowski

Products:

1. Evaluation of existing business processes and elimination of redundant and/or non-mission critical functions by January 2011
2. Expand use of IT, development of e-permits, NJEMs, reporting capability. Ongoing
3. Analyze, propose and address regulations toward mission critical functions and to facilitate transformed business practices including IT.
4. Evaluate need for legislation to accomplish transformation goals by February 2011
5. Pursue critical hire and/or re-allocation of Department resources to achieve critical goals. Particular need for IT support/management, rule writers, and permit evaluators by December 2011.

- Air Quality Regulation. This program is criticized by external, internal DEP and other State agency stakeholders as being more stringent than federal regulations, overreaching, over-regulating and expensive due to fees. Program regulations are too complex and prescriptive. Some regulations are overreaching and overlapping, resulting in programs that face permitting and enforcement conflicts within DEP itself. This often results in confusion on behalf of the regulated community, as they cannot predict what is expected of them in order to comply with our regulations.

Lead: Nancy Wittenberg

DCO Lead: Ray Bukowski

Products:

1. Evaluate the current structure of the Title V program. Analyze options for redesigning permits, work-flow process evaluation, and EPA oversight with stakeholders by February 2011.
2. Evaluate the applicability standards of APCA by February 2011
3. Examine fee structure by February 2011

- Solid Waste Regulation. This program is criticized by both external and internal stakeholders for being outdated. The issues associated with the regulation of solid and hazardous waste have changed significantly since the inception of the program with little change in how waste is regulated. Program regulations are too complex and prescriptive. Some regulations are overreaching and overlapping, resulting in programs that face permitting and enforcement conflicts within DEP itself. This often results in confusion on behalf of the regulated community, as they cannot predict what is expected of them in order to comply with our regulations.

Lead: Nancy Wittenberg

DCO Lead: Irene Kropp

Products:

1. Evaluate the current structure of the Solid and Hazardous Waste and recycling programs. Analyze program responsibilities to identify mission critical components, expanded options for reuse of

construction and industrial waste materials, landfill closure options, appropriateness of program components based on current law by February 2011

2. Identify regulatory and legislative reforms by April 2011
3. Identify opportunities for expansion of e-permitting by July 2011

- Natural and Historic Resources. The economic and environmental benefits to the State related to the tourism and quality of life benefits are significant and must be sustained and quantified.

Lead: Amy Cradic

DCO Lead: Janice Brogle – P&F, SHPO

Ray Bukowski - F&W, E&C

Products: 1. Identify top 10 NHR challenges that require immediate attention prior to next budget cycle by March 2010.

2. Identify non-mission critical functions that can be eliminated by March 2010

3. Identify ways to begin to use NJEMS to assist in data management for all NHR

- Bureau of Tidelands Management. This program is forced to work with an archaic process which results in extremely lengthy processes. Numerous efforts are already underway to streamline the process. Focus must be made to utilize IT.

Lead: Kenneth Ratzman

DCO Lead: Irene Kropp

Products: 1. Continue integration of Tidelands into NJEMS for increased productivity and reporting. Expand functionality by February 2011

2. Continue to prioritize grants and eliminate redundant and time consuming administrative reviews by December 2011

3. Pursue critical hires/re-allocation of resources for Tidelands.

Particular need for financial managers, IT support, and evaluate need for appraisers by February 2011

- Water Quality. The NJPDES process is criticized by both external and internal stakeholders for the excessive time and cost to process permits, duplicative federal standards, high fees and complicated rules. Many program regulations are too complex and prescriptive. Some regulations are overreaching and overlapping, resulting in programs that face permitting and enforcement conflicts within DEP itself. This often results in confusion on behalf of the regulated community, as they cannot predict what is expected of them in order to comply with our regulations.

Lead: John Plonski

DCO Lead: Janice Brogle

Products: 1. Evaluate the current structure of the NJPDES program. Analyze program responsibilities to identify mission critical components and options for redesigning permits, work-flow process evaluation and EPA oversight with stakeholders by February 2011.

2. Identify regulatory and legislative reforms by April 2011.

Immediate Program-Specific Transformation Priorities – September 2010

The following priorities were identified during the gubernatorial election and/or by external stakeholders. External/internal stakeholder teams are already in place.

1. License Site Remediation Professional and Site Remediation Reform Implementation: A steering committee of approximately 25 external stakeholders has been established to ensure success of the new LSRP program, plus four workgroups with multiple subcommittees that will focus on 1. near term priorities (to ensure success), 2. measures of success, 3. completely revamping the regulations for technical compliance and 4. the development of new technical guidance documents.
Lead: David Sweeney and David Haymes
Products: 1. Mandatory timeframe rule adopted by February 2011
2. New ARRCS rule adopted by May 2012
3. First Board meeting – Pending confirmation by Senate
4. Technical Requirements for Site Remediation Rule adopted by May 2012
5. Revision of other rules to conform with ARRCS and Tech Regs by May 2012
6. Guidance Documents completion dates are staggered between October 2010 and April 2011
2. C1 waterways. Evaluating the science behind the criteria for developing C1 water bodies and determining the number of C1 streams in New Jersey, including an assessment of the need to include new C1 waterways.
Lead: John Plonski and Leslie McGeorge
Products: 1. Conduct internal stakeholder meeting and finalize recommendations by November 2010
2. Start external stakeholder meetings in October 2010
3. Prioritize actions needed, including any amendments to rule, to address internal and external recommendations, with anticipated start dates for actions.
3. Public access. Evaluating methods of providing tangible and reasonable public access through a more cooperative approach with all stakeholders, most notably for municipalities who better understand the needs of their community.
Lead: Marilyn Lennon and Ray Cantor
Products: 1. Rule proposal publication in October, 2010
2. Public hearings in fall of 2010
3. Development of municipal access plans
4. Rule adoption by early 2011
4. Highlands. Evaluating the science and policies behind past regulatory and legislative decisions, identifying changes that may be needed to better address issues of concern.
Lead: Marilyn Lennon and Ray Cantor

Products: 1. Recommendations to Governor by November 2010

5. Barnegat Bay. Evaluating impacts to the bay and potential regulatory and legislative solutions to address documented impacts. Continuation of on-going stakeholder process with integration of transformational objectives and concepts identified moving forward, including a recommended plan for the Oyster Creek (Exelon) cooling tower issue. The Department will issue a Barnegat Bay plan this fall.

Lead: Nancy Wittenberg & Kerry Kirk-Pflugh

Products: 1. Policy plan drafted by November 1, 2010

6. Water Quality Management Planning. Evaluating the science behind previously approved regulations and better methods of ensuring growth occurs in areas of New Jersey that truly benefits New Jersey, environmentally and economically.

Lead: Marilyn Lennon & Ray Cantor

Products: 1. Stakeholder meeting completed in October 2010

2. Public meetings in each county by April 2011

3. Re-examination of WQMP rules commencing in concert with State planning process

7. Leases and Concessions Team. The interagency workgroup will finalize a report of recommendations regarding management and valuation of private uses of State lands (leases, easements, concessions, etc...) and formulas to ensure fair and consistent compensations for conveying that right for private use. The lease formulas will be part of a broader effort of coordination between agencies/programs to provide external stakeholders with clear, efficient, and straightforward process for the permitting, public hearing, leasing and mitigation requirements for large linear projects.

Lead Ben Witherell

Products: 1. Draft plan submitted September 20, 2010

2. Final plan for leases by end of November 2010

3. Overall plan for streamlining the permitting, leasing and mitigation for large linear projects is due January 2011

8. Hazardous Discharge Site Remediation Fund team. HDSRF funding is used for public and private entities to investigate and remediate discharges in an effort to promote brownfield redevelopment. Due to unprecedented demands on the HDSRF resulting from the economic downturn, the DEP has been forced to default to the priorities dictated by the HDSRF enabling legislation.

DEP is working with the New Jersey Economic Development Authority and other stakeholders to consider legislative, regulatory and policy changes needed to ensure the fund remains viable, is available to the greatest number of applicants, and the residents of the state realize the greatest return on the investment of these valuable public dollars. Recommendations will be made to the Governor's Office this fall.

Lead: Ken Kloo

Products: 1. DEP and EDA immediately identified, agreed to and

implemented several policy changes

2. Stakeholder process, including environmental professionals, developers, lenders, attorneys, and representatives of municipal and county government, convened August 9, 2010 to discuss potential legislative, regulatory and policy changes
 3. Recommendations resulting from the stakeholder process will be made to the Governor's Office this fall.
9. Diesel Retrofit for State Construction Contracts: Determine the best approach and implement a program to accelerate the retrofit of diesel engines across the state. Recommendations will be made to the Governor this fall.
- Lead: Nancy Wittenberg
- Products: 1. Draft policy, legislation and/or executive order by November 1, 2010.

Deputy Commissioner Office
Transformation Leads by Assistant Commissioner/Program Area

| Area | AC | DCO Lead |
|--|-------------------|---------------|
| Sustainable Funding | Amy Cardic | Irene Kropp |
| Parks and Forestry State Historic Preservation Office | Amy Cradic | Janice Brogle |
| Fish and Wildlife Engineering and Construction | Amy Cradic | Ray Bukowski |
| Land Use Regulation | Marilyn Lennon | Ray Bukowski |
| Site Remediation | Dave Sweeney | Janice Brogle |
| Compliance and Enforcement | Wolf Skacel | Ray Bukowski |
| Air Quality Permitting | Nancy Wittenberg | Ray Bukowski |
| Environmental Safety and Health Climate and Energy | Nancy Wittenberg | Janice Brogle |
| Solid Waste | Nancy Wittenberg | Irene Kropp |
| Water Resource Management | John Plonski | Janice Brogle |
| Management and Budget | Magdalena Padilla | Irene Kropp |
| Regulatory Reform | Ray Cantor | Janice Brogle |

Irene Kropp: Irene.Kropp@dep.state.nj.us

Janice Brogle: Janice.Brogle@dep.state.nj.us

Ray Bukowski: Ray.Bukowski@dep.state.nj.us

Format for all Transformation White Papers

Topic:

Description of Issue:

Clearly articulate the issues and problems investigated by the workgroup. Since some workgroups are dealing with very broad issues (for example, natural and Historic Resources), it will be necessary to break down the issues into more specific subgroups. Each subgroup may require a separate white paper.

DEP's Current Authority:

Reference and explain statutory authority that impacts specific issue.

Background:

Provide detailed description of why the issue became a problem.

Stakeholder comments:

Synopsis of stakeholder positions and recommendations.

See attached example created during the inception of the Site Remediation reform process.

Example of a White Paper from SRP's 2007 Stakeholder Process

Note: This is an document that was developed and finalized through SRP's previous stakeholder process and is only provided as an example for internal and external stakeholder in the development of future DEP white papers.

Topic: Addressing Backlogs

Description of Issue:

The Department's goal is to ensure timely and effective remediation of contaminated sites in order to protect both the residents of New Jersey and our natural resources. A variety of factors, such as the number and types of cases, noncooperation of the remediating party and increasing program demands and responsibilities deter us from meeting this goal.

There are more than 18,000 active cases in Site Remediation. Approximately 12,000 cases are being remediated under a regulatory program such as the Industrial Site Recovery Act (ISRA) or Underground Storage Tanks (UST). The Voluntary Cleanup Program (VCP) accounts for 6,000 cases of which approximately 4000 are homeowner UST removals. Included in these numbers are cases which have been issued conditional No Further Action letters (NFAs) and as a result require ongoing monitoring by Department staff pursuant to the biennial certification requirement. Although the number of cases requiring Department oversight increases every year, Site Remediation's work force has not significantly changed since FY1998. The Site Remediation Program has been tasked with additional responsibilities over the years due to a variety of factors, including new legislation; demands from financial institutions for documentation of assurances on unregulated sites or activities; having to address environmental issues that carry a low risk and are not directly regulated but are portrayed otherwise by the media; and the demands of complying with the Open Public Records Act (OPRA). The Site Remediation Program has had to allocate more than 34,000 hours to respond to greater than 45,000 requests for information in a five year period.

The average FTE (Full Time Equivalent equal to a person year) for the Site Remediation Program based on time coded over the past nine years is 505, ranging from 491 to 515. Of these FTE, 250 to 300 are case managers responsible for reviewing remediation documents submitted by the regulated community and developers. Providing support to these case managers are 90 technical support staff comprised of scientists and geologists. Whereas approximately 4000 new cases enter the program each year, only 3500 or so cases receive NFAs. Most of these NFAs are associated with homeowner UST cases, UST cases with soil contamination only, UST and ISRA initial notice cases and specific Areas of Concern (AOC) NFAs.

As the number of cases in-house grows each year, the Department is unable to provide remedial action work plan approvals and NFAs in a timely manner, which is frustrating to Department staff and managers, remediating parties, local community activists, environmental groups, developers and local officials. At this point in time, the Department's inability to approve and issue documents in a timely manner is an impediment to the progress of the remediation of a site. It is imperative, therefore, that mechanisms be identified to resolve the issue of a growing

backlog in the Site Remediation Program. As part of any resolution, the Department must assess and evaluate how cases are processed.

Because of the strong environmental legislative history in New Jersey, the Department regulates more facilities and types of discharges than other states. For example, under the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6, the Department is required to issue a negative

Example White Paper

declaration, approve a remedial action work or remediation agreement and/or issue a no further action letter for any industrial establishment planning to close or transfer ownership of operations. Under the UST program, the Department regulates the installation, modification, monitoring and testing of underground storage tanks and oversees the cleanup associated with any leaking tank. The Department also processes loans and grants for the upgrade, closure or remediation associated with regulated or unregulated tanks and assistance in the remediation of brownfield sites. In 2007, the Department received 178 applications for 113 projects and approved more than \$39 million from the Hazardous Discharge Site Remediation Fund (HDSRF) and received 666 applications and approved more than \$7.8 million from the UST fund.

DEP's Current Authority:

The Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq., regulates all discharges of hazardous substances without regard to who was responsible for the discharge. That is, the requirements of the Spill Act apply equally to industrial facilities and homeowners. Further, unlike other states, there is no diminimus discharge limit at which the requirements of the Spill Act do not apply. The Spill Act provides that the Department may allow a responsible party to remediate a contaminated site.

The Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A. 58:10B-1 et seq., provides that the Department may issue a NFA letter to a person responsible for conducting the remediation upon a finding that, based upon Department evaluation of the historical use of a particular site or any other investigation or remediation performed by the person that the Department deems necessary, the contamination has been remediated in accordance with applicable Department remediation regulations. The NFA establishes compliance with the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Underground Storage Tank rules, N.J.A.C 7:14B, an Administrative Consent Order or a Judicial Order. The Brownfield Act also establishes the Hazardous Discharge Site Remediation Fund. Moneys in the fund provide financial assistance or grants to persons who cannot establish a remediation funding source for the full amount of a remediation.

The Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6, requires that an owner or operator of an industrial establishment planning to close operations or transfer ownership of operations obtain a cleanup plan approval before the transfer or upon the closing of the property and establish a funding source for the cleanup. Any remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department. ISRA requires owners or operators of an industrial establishment planning to close or transfer ownership or operations to notify the Department. After submittal of the notice, the industrial establishment must obtain an approved negative declaration, remedial action workplan, no further action letter, or remediation agreement from the Department.

The Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21) established the Underground Storage Tank program to provide for the registration, installation and modification as well as and the systematic testing and monitoring of underground storage tanks to detect discharges. Amendments to the Underground Storage Tank Act, (N.J.S.A. 58:10A-37.1) established the program to provide loans and grants to eligible owners and operators of regulated and non-regulated petroleum underground storage tanks (UST). Funding is provided to help

Example White Paper

finance project costs for the upgrade and closure of regulated underground storage tanks and remediation of discharges from regulated and non-regulated underground storage tanks. Further, persons who provide services on regulated and non-regulated USTs must be certified by the Department pursuant N.J.S.A. 58:24.1 et seq.

To meet the environmental requirements of the Department of Children and Families regulations, child care facilities must obtain a No Further Action Letter from the Department before a license to operate can be issued or renewed.

Background:

A No Further Action letter (NFA) is a determination by the Department that based upon an evaluation of the historical use of a site, or an area of the site, and any action deemed necessary by the Department, any discharged contaminants present at the site have been remediated in accordance with applicable remediation regulations. NFAs were traditionally provided by the Department to confirm that a remediation was appropriately completed. Amendments to the Spill Act in 1993 provides that a person who purchases a property after 1993 is not liable under the Act if that person establishes that they had no reason to know that any hazardous substance had been discharged. In order to meet this criterion, the Act requires that a potential purchaser of a property perform a preliminary assessment and site investigation in accordance with Department regulations. Potential purchasers conduct the investigation and request an NFA from the Department to confirm the results and protect themselves from future liabilities. As a result of this amendment, NFAs are not only requested when a discharge has occurred and a site subsequently remediated, but also when no documented discharge has occurred. Further, NFAs are now being requested for both regulated and unregulated activities.

In order to obtain an NFA, a person responsible for conducting the remediation must submit documentation to the Department for its review establishing either that there is no contamination at the site or that the contamination at the site has been remediated in accordance with the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The NFA is necessary as evidence that the site does not pose a threat to public health and the environment. Throughout the years, market pressure has led to parties requesting NFAs in order to complete financial or real estate transactions. This is especially true of homeowners with unregulated heating oil tank systems. Often lending institutions require a NFA indicating that there is no contamination at the home before they approve a mortgage. These NFAs are being requested regardless of whether a site is contaminated or not. Simply the existence of a tank on a property drives the request for a NFA. NFAs are being required even when there will be no mortgage because of perceived liability issues. Therefore, obtaining a NFA becomes necessary to sell a home. Due to the caseload in the Department, it can take from six to 12 months to issue an NFA for these cases and in many instances delay the real estate transaction accordingly. The case

managers who are processing NFAs for homeowners so that real estate transactions can proceed, are the same case managers processing documents for commercial, industrial or brownfield sites. These transactional NFAs are greatly increasing the cases requiring Department action and compounding the Department's backlog.

Example White Paper

In addition to transactional NFA requests, the Department's Voluntary Cleanup Program (VCP) and growing interest in brownfields redevelopment have contributed to a significant increase in cases. Under the VCP, a party conducting a cleanup enters into a Memorandum of Agreement with the Department to establish the scope of cleanup activities. Such activities could range from a preliminary assessment and site investigation to determine if contamination exists at a site, to remedial actions necessary to clean up the site.

The demands on a case manager are greater than just reviewing and approving documents. Case managers assist responsible parties or potential purchasers of properties in determining how properties can be used in the future. They also provide the technical support for the UST and HDSRF funding program. Case managers arrange and attend public meetings, provide community relations with regular outreach, respond to press inquiries and OPRA requests and maintain data in the Department tracking system so that information is readily available to not only Department personnel but to the public. These are all tasks that are necessary but take away from the review and processing of documents.

Lastly, for a variety of reasons, many cases required to undergo remediation under ISRA, UST, CERCLA and RCRA have been slow to exit the system as remediated sites with NFAs. This may be due to a variety of factors. A recalcitrant responsible party can delay the completion of a remediation for years, or even decades. The ecological concerns of a site or adjacent areas, such as wetlands or waterbodies, can contribute to the complexity of a case. As the complexity of a site increases, so too does the complexity of the submittal and the subsequent review and approval of documents. The media impacted by contamination or the type of contaminant can also contribute to the complexity and duration of a case. A case that only impacts soils can be remediated faster than one impacting groundwater. For a complex case, the process of delineating contamination can take years and the actual remediation can take decades. A case can remain with the Department for years after an implemented remediation while the long-term effectiveness of the remedy is ascertained. For example, a groundwater recovery system must be inspected on a regular basis to ensure that the flow is being captured and the contaminant concentrations are reducing and approaching the standards. As the number of cases continuing to come in to the Department is combined with the number of active cases, it is apparent that the Department will never have sufficient resources to inspect and monitor all the sites. Therefore, it is imperative that an effective self-reporting system be maintained.

Historically, the Department has treated all cases the same. That is, a homeowner and a large industrial facility are both subject to the same investigative requirements and techniques. While the Department acknowledges that the same final standard needs to be applied to these cases, the path to achieve these standards should vary depending on the site. It is not always necessary for the Department to prescribe every step in the cleanup process in order to achieve the desired

outcome. For example, the Department has recently proposed under subchapter 16 that based on impacts to receptors, it is appropriate to allow certified contractors to perform work on homeowner underground storage tanks that do not pose any impact to any off-site receptors. Certified contractors will perform the remedial work and certify that the work has been performed in accordance with the Department's rules and regulations. The Department will issue

Example White Paper

a No Further Action/Covenant Not to Sue (NFA/CNS) for the completed remedial work. The Department plans to audit of the contractors to ensure the work is properly completed.

Stakeholder comments:

The Department presented seven options to address workload relief:

- Increase staffing. Staff could potentially be funded by higher fees for those who wish to pay for guaranteed Department review times (e.g. 30-60 day review times for all documents)
- Expand delegation to County Environmental Health Agencies (CEHA)
- Eliminate the need for DEP staff to work on homeowner cases through Cleanup Star program, an UST certification program, CEHA delegation, or other options.
- Expand Cleanup Star to handle additional lower risk cases
- Establish a Licensed Site Professional program similar to Massachusetts (LSP)
- Begin to use in-house contractors similar to EPA and other states
- Cease reviews on submittals that are not explicitly required by statute (NFA's for sites that have no history of contamination, homeowner UST removals).

Increase Staffing: Although there was strong support from some stakeholders for hiring the number of new staff required to address workload relief, it was noted that such an action would be difficult considering New Jersey's existing budget problems. DEP estimates 1000 new staff would be needed to ensure a 60-day turnaround on all submittals. That is not to say that limited additional staffing could not be considered. One stakeholder recommended converting the technical support staff (technical coordinators and geologists) to case managers.

Another stakeholder stated that the Site Remediation Program is "critically understaffed" and noted that staffing has been essentially flat for many years due to early retirement and retirement surges, work week reductions, and hiring freezes preventing backfilling of lost positions. They suggested such fixes as lifting the hiring freeze and increasing staffing, particularly for those positions that are "self-funded through fees or fines". They also suggested reducing the case backlogs through overtime projects, better prioritizing of sites by environmental and health considerations, and creating more realistic deadlines (not 60 days as stated earlier). Funding considerations included offering expedited reviews for a higher fee and increasing enforcement, legal action and fees to recoup costs to the Site Remediation Program.

Delegation to CEHAs: The Department noted that the option of further delegation of oversight of certain cases to CEHA agencies was not a promising alternative as many counties have similarly limited resources and Departmental funding is not available to fund additional CEHA

obligations. It was noted that some counties currently have delegation agreements with the Department for homeowner UST cases but the level of funding the Department provides does not adequately cover the county's cost.

Homeowner Cases: The Department discussed a proposal for addressing the number of homeowner cases it reviews. The New Jersey Underground Storage of Hazardous Substances

Example White Paper

Act at N.J.S.A. 58:10A-24.3 requires the Department to establish and conduct examinations to certify persons as qualified to perform services on regulated and unregulated USTs. The department has developed a process using the UST certification regulations along with changes to both the Oversight and Technical rules to expedite the review of certain low risk cases. The Department has drafted rules for proposal in the New Jersey Register in the summer of 2008 to establish a certification program for unregulated heating oil tank systems (mostly homeowner tanks) consistent with the statute. The proposal will require all homeowners to use a contractor certified by the Department to conduct remediation of their tank in order to get a NFA letter from the Department. Remediation of the majority of homeowner cases is straightforward and these sites pose minimal risk to public health and the environment. As such, upon certification by the environmental contractor, these cases will receive an NFA. The Department will conduct the appropriate audits to ensure compliance with the regulations and protection of human health and the environment. Those cases that impact receptors will continue to receive direct Department oversight. Eliminating the majority of homeowner cases from direct Department oversight will free up case managers to focus on higher priority cases. Once the rules are issued, the Department anticipates that 90% of the unregulated tank cases will be processed using the expedited procedures. It is anticipated that the processing time will be reduced from an average of six to twelve months to approximately 2 weeks.

Establish a License Site Professional Program (LSP): In 1991, the Massachusetts Department of Environmental Protection (MADEP) was faced with a tremendous backlog of cases needing remediation, and suspected that there were many more sites that had yet to be identified and were potentially more dangerous than the sites currently in the system. Less than 24% of the known sites were in the process of being assessed or cleaned up and of those, less than 54% were priority sites. The cleanups were proceeding slowly and less contaminated sites failed to move at all. Environmentalists were concerned that too few sites were being investigated and remediated and that there was no comprehensive site discovery program; the business community was frustrated by delays or inability to obtain the necessary MADEP approvals; and the MADEP was overwhelmed by inadequate resources to allow the agency to identify, assess, and remediate the number of sites mandated by law. In response, reforms were instituted in 1993 to improve the efficiency and effectiveness of the program.

One major piece of the reform was the creation of the Licensed Site Professional (LSP) program. The LSP program established a licensing process for individuals and business firms engaged in the practice of remediating contaminated sites. The law required the use of a LSP to oversee the assessment and remediation of most contaminated sites. LSPs are hired by property owners and other responsible parties to oversee the assessment and cleanup of contamination and ensure that

these actions are performed in compliance with the standards. The LSP gathers and evaluates information and recommends a remedy. The recommendations are contained in a written opinion signed by both the LSP and responsible party. Most opinions do not require MADEP approval for cleanup to proceed. Once a cleanup is completed, the LSP submits a final opinion to the MADEP stating that the property has been remediated in accordance with the standards.

Example White Paper

A board, independent of the MADEP, is responsible for granting, denying, suspending and revoking a professional's license and issuing penalties against the LSP. The board also works with the MADEP to establish the requirements and credentials necessary for an individual or business firm to obtain a license. A license is obtained based on education, experience and passing an examination on applicable regulations and standards. In order to maintain a license, the LSP must meet and maintain professional standards set by the Board. The Board is authorized to take action against LSPs whose work fails to meet the standards.

The MADEP is required to annually audit at least 20% of all completed sites. The level of the audit is dependent on the complexity of the cleanup.

If such a program were adopted in New Jersey, the Department could identify the types of cases that a LSP can oversee. Delegating the responsibility to oversee the remediation of contaminated sites to a LSP would allow the Department to focus its limited resources on the highest priority and most complex cases; dedicate its resources to enforcement; and audit the LSP submittals. All agreed that creation of a LSP program will take significant time, 2-3 years. Legislation would be needed to provide authority for such a program. In addition, the time necessary to create a licensing board and develop a testing program would be lengthy. Some stakeholders supported the LSP program with the provision that the Department have proper oversight and auditing of the licensed professionals.

The environmental community and union representatives do not favor a LSP program. Concerns ranged from "privatization" to potential collusion between consultants and remediating parties. Additionally noted was the fact that this work was inherently governmental and should not be delegated to third parties. Individuals representing other associations and organizations were split in their support for a program exactly like Massachusetts and thought more discussion about detail would be necessary before support could be provided. Some did express agreement for licensing of consultants. In general, the development community was in favor of the Department remaining the entity that issued NFA's.

Use of In-house Contractors: The option to use in-house contractors to review documents was not discussed in detail at the stakeholder meetings. The Department is further evaluating the use of in-house contractors in a support role to alleviate backlogs. Many environmental regulatory agencies, including those in Delaware and Pennsylvania, as well as the USEPA have expanded their resources through the use of remedial action contracts. These contracts provide manpower that has the same technical capabilities as agency staff to assist the agency in performing its work. Contractors can be tasked with reviewing technical data, summarizing issues or concerns and providing recommended actions to agency personnel; thereby, freeing up agency personnel

to concentrate on priority work.

As stated earlier, one stakeholder strongly opposes "privatization" and "outsourcing" such as contracting support services with outside contractors that perform "parallel" work continued to be conducted by DEP employees. The stakeholder believes the program's level of control is undermined by using outside experts. Second, the Stakeholder suggests it would be more costly

Example White Paper

to the State to utilize contractors that build in benefits and overhead to the price of their work than it would be to hire additional staff. Third, they state that the DEP could be taking an enforcement action against a party using the same consultant we have now hired to represent the Department.

NFAs: The option to refuse to review requests for NFAs not required by the Department was not discussed in detail at the stakeholder meetings. One stakeholder did comment that they were surprised to learn that the program issues NFAs on sites that have no discharge and believed we should better educate the appropriate parties that the NFA is unnecessary in these cases.

In addition to regulatory and legislative solutions, stakeholders discussed policy changes to address the problem. The regulated community noted that the delineation phase of site remediation takes an inordinate amount of time. The concern articulated was that case managers apply the Technical Requirements for Site Remediation too conservatively, requiring data that may not be necessary in making decisions to delineate the contamination at a site. The regulated community and the Department agreed that case managers should apply the Technical Requirements for Site Remediation in a reasonable manner, considering site-specific conditions. Further, the regulated community suggested the use of a performance-based rather than a prescriptive regulatory model for determining the remediation requirements at a site. This could save time and money by allowing persons responsible for conducting the remediation to have less contact with Department case managers. This would take into consideration the differences in site conditions, and not require a "cookie cutter" approach to site remediations. For example, the compliance points at a site could be based on site use and the presence of receptors. The regulated community also suggested that a performance-based system would need a stronger enforcement model in order to keep parties motivated to do things correctly. (see Performance vs. Prescriptive white paper.)

Other States:

Massachusetts:

The Massachusetts DEP (MADEP) uses LSPs to oversee the cleanup of most contaminated sites. An LSP is an environmental scientist or engineer experienced in performing site cleanups. A board independent of the MADEP licenses LSPs. A license is obtained based on education, experience and passing an examination on applicable regulations and standards. In order to maintain a license, the LSP must meet and maintain professional standards set by the Board. The Board is authorized to take action against LSPs whose work fails to meet the standards.

LSPs are hired by property owners and other responsible parties and oversee the assessment and cleanup of contamination and ensure that these actions are performed in compliance with the standards. The LSP gathers and evaluates information and recommends a remedy. The recommendations are contained in a written opinion signed by both the LSP and responsible party. Most opinions do not require DEP approval for cleanup to proceed. Once a cleanup is completed, the LSP submits a final opinion to the MADEP stating that the property has been remediated in accordance with the standards.

Example White Paper

The MADEP is required to annually audit at least 20% of all completed sites. The level of the audit is dependent on the complexity of the cleanup.

Connecticut:

The Connecticut DEP (CTDEP) also uses Licensed Environmental Professionals (LEP) to oversee the cleanup of contaminated sites. The licensure and issuance, re-issuance, and suspension or revocation of licenses of LEPs is conducted by a board established within the CTDEP. The LEP can verify that an investigation has been conducted and a remediation has been completed in accordance with the standards for an established category of cases.

The authorizing legislation allows the CTDEP to conduct an audit of any action authorized by law to be performed by an LEP. The LEP Verification Audit Program has been established to ensure that the "verifications" of the LEP are based on an appropriate understanding of the environmental conditions of the site and that the verification is in compliance with all applicable statutes and regulations.

Illinois:

The Illinois IEPA (IEPA) requires that all remediation site activities be conducted by or under the supervision of an Illinois licensed professional engineer (LPE). All plans and reports submitted for review and evaluation must also be prepared by or under the supervision of a LPE. The IEPA must approve or disapprove any report submitted.

The responsible party may elect to contract with a Review and Evaluation Licensed Professional Engineer (RELPE) to perform review and evaluation services on behalf of and under the supervision of the IEPA. The responsible party must provide the IEPA with any terms and conditions of a contract with a RELPE prior to entering into the contract. At a minimum, the contract must provide that the RELPE will submit any plans or reports directly to the IEPA, take directions for work assignments from the IEPA, and perform assigned work on behalf of the IEPA. In addition, the contract must set forth the scope of work for which the responsible party has engaged the RELPE, the effective date of the contract and the costs incurred by the RELPE shall be paid directly to the RELPE by the responsible party.

Reasonable costs incurred by the IEPA for oversight of the RELPE and its review and evaluation services must be paid by the responsible party directly to the IEPA in accordance with the terms of the review and evaluation services agreement. Project documents submitted for review on behalf of the responsible party may be submitted concurrently to both the IEPA and the RELPE,

but all subsequent communications, telephone calls, meetings, etc. must be coordinated with the assigned IEPA project manager. The RELPE's review/evaluation notes, comments, etc., must be addressed to the IEPA for final approval, prior to communication back to the responsible party.

In no event shall the RELPE acting on behalf of the IEPA be an employee of the responsible party or the owner or operator of the remediation site or be an employee of any other person the responsible party has contracted to provide services relative to the remediation site.