

**Site Remediation Reform
Stakeholders Meeting
February 20, 2007**

Stewart Abrams	The Shaw Group	Jorge Berkowitz	Langan Engineering
David Brogan	NJ Business & Industry Assn.	Buddy Bealer	Am. Petrol. Council - NJ Chapter
Valorie Caffee	NJ Work Env. Council	Joseph Della Faye	Ironbound Community Corp.
Eric DeGesero	Fuel Merchants Assn.	Michael Egenton	NJ Chamber of Commerce
Kevil Duhon	Senate Democratic Office	Phil Gennace	NJ Office of Legislative Services
Kelly Francis	Camden County NAACP	Judy Horowitz	NJ Office of Legislative Services
Wayne Howitz	NJDEP SRWM	Mary Kelvy	NJDEP
Bryan Ianni	NJDEP SRWM	Irene Kropp	NJDEP SRWM
George Klein	NJDEP SRWM	William Muzychko	Trenton BEST Committee
Doug O'Malley	Environment NJ	David Pringle	Clean Water Organization
Ed Putnam	NJDEP SRWM	Andrew Robins	NJ Builders Association
Len Romino	NJDEP SRWM	Tony Russo	NJ Chemistry Council
Steven Senior	Riker, Danzig	Judy Shaw	NJDEP SRWM
Mark Smith	Smith Pizzutillo LLC	Sheryl Telford	Dupont Corporation
Jeff Tittel	Sierra Club – NJ Chapter	Neil Yoskin	Sokol, Behot and Fiorenzo

Goals

- The primary goal is to come up with some kind of legislative reform white papers/package for the Site Remediation program before June
- The Commissioner is also asking Irene to do some internal reforms that do not require legislation
- To come up with sound recommendations to strengthen the program and allow for timely cleanups
- We do not want to enact changes that could disrupt the Governor's economic growth strategy as it relates to brownfields redevelopment
- We want to balance environmental/human health concerns with economic growth needs

Baseline Rules

- One person speaks at a time
- Turn your placard if you want to be recognized
- Common courtesy
- Stay on topic
- We asked diverse participants so we can hear all views

Scope of Project

- Let's stick to Site Remediation issues. I don't want to get into Solid and Hazardous Waste sites unless they involve remediation issues
- [Approved] Minutes from the meeting will be posted on the Site Remediation website
- We will go around the room to get your views and ideas on what you want and what the group wants to focus on in future meetings
- Today's meeting is a broad overview of what we think the issues are and how we should proceed

Department's Perspective – IRENE KROPP

- Commissioner Jackson discussed the Department's perspective at Senator Smith's legislative hearing. We have also discussed daycare legislation. Are major issues fixable? He'd like to see change occur

Stakeholder Process

- VALORIE- how can you be invited to attend stakeholders' meeting?
- IRENE - We looked at many groups and individuals. I felt it was important to limit the number of participants so we could have constructive discussions. We included environmental groups, environmental justice groups, lawyers, consultants, builders, and legislative services. Future meetings will include Adams Liebtog from CWA. I have had many requests, even from individuals around the table, to include other people and other organizations, but I feel that the group is large enough already and very representative.

Case Load

- The number of caseloads prevents cleanups from occurring. There are over 18,000 cases in our database, which include cases where NFAs have been issued but ongoing monitoring is required.
- There are 6,000 MOA cases, 4,000 of these are homeowner cases. We went from 800 voluntary clean ups to over 1,600 in the last 6 months.
- Homeowner cases are handled by our field offices along with other MOA cases and they can not handle these in a timely manner because of their caseloads.
- ISRA, RCRA, Superfund, Publicly Funded and regulated underground storage cases comprise the remaining 11,000-to 12,000 cases.
- We have 250 to 300 case managers, including about 13 case managers in the northern field office and 13 case managers in the southern field office (each field office was increased by three individuals due to funds from the UST grant program). There are also 80 technical support staff of TCs and geologists.

Options

- One option is to stop taking homeowner cases. Banks are pushing homeowners to get NFAs.
- We need to hire more staff. We are losing one to two people every month and due to funding constraints are unable to fill the positions. The Department is looking into a blanket exemption from the Governor's office to allow us to hire.
- Question: Are oversight rates adequate or do other problems exist/
- Response: We cannot charge indirect costs for developers or homeowners. We do not collect all the money we invoice because we are constrained by settlements and excusing some bills. Federal programs use different indirect cost systems, staff spend time on projects, meetings and other activities for which we cannot bill and our direct billing system has design issues. The Department is building a new system. The old system has a six month billing cycle, is 12 to 13 years old and as a manual system, requires a lot of staff to operate.
- In-house contractors could do casework or provide technical support. There are two problems with this. First is where to locate the funds to hire contractors and second is the time it will take to set up new contracts.
- Another option is CEHA delegation but counties and freeholders are not inclined to add staff without additional secured funding. Funding constraints are an issue.
- Another option is a Licensed Site Professional (LSP) like the one in Massachusetts. The Commissioner and I saw a presentation on this. I would like this group to see it. We need a major change in how we are getting cleanups done.

Questions

- Does DEP know what stage of remediation each case is in?
- Answer: to do so we need to fully implement NJEMS. And there are a lot of new cases coming into the system 1,500 existing day cares, new daycares, schools under the Madden bill; and the number of new MOA cases are surpassing the number that are completed.
- SHERYL – You need to look not only at the caseload but also at how cases are managed. Need to look at alternative track, efficiencies and production metrics.

- VALORIE – I'm concerned about how the cases are prioritized.
- JEFF – DEP has only ranked 500 sites.
- IRENE – We are building a new GIS ranking system so its real time.
- JEFF - DEP should track the ones that are 2, 5 or 10 years old and not yet done. EPA is concerned about NJ rankings and 3, 500 cases impacting groundwater.
- STEVE KEHAYES. - You can only rank based on the data you currently have on site. We need to rank cases based on the greatest threat and we need to track CEAs on the GIS.
- IRENE- it will be hard to rank all 18,000 cases, because we have cases in the Department with unread reports, so we do not know if they are a priority. We agree cases need to be prioritized based on a variety of factors like threat, population, type of contaminants and extent of contamination.

Remedy Selections

- PROTECTIVE REMEDIES - we do not have good handle on all the institutional and engineering controls or the monitoring and maintenance systems; this needs to be improved upon. We need to look at issues such as acute soil standards, caps, and levels of contamination that is left behind at site with controls in place.
- DEED NOTICES – we have met with an organization willing to put up a website to track institutional and engineering controls so the general public see what is happening in a certain neighborhood. As properties change hands, parties involved may not know they have deed restrictions and are supposed to submit biennial certification.
- ENVIRONMENTAL INSURANCE - new products could be designed to protect against remedy failure. Adam Zellner has been discussing this with the Banking and Insurance community. There are products that may provide incentives to clean up more than what is necessary to be protective.
- INCREASED PUBLIC INPUT - We will have increased public input primarily to C&D cases. There will be more assessment of sensitive populations and some cases will have public hearings. These new requirements will not require as much as the EPA Superfund model. In April we will propose a new rule which requires persons conducting cleanups to provide notification to local municipalities on what is going on in their area.
- RANKING- we need a better handle on environmental threats to-water systems and public health and sites with environmental justice issues. We are presently building this into the GIS system. We can view a demo of the system for the group.
- TECH REGS – They can be an impediment to cleanup; we may need to look at an Alternate track program.
- FIRST PRIORITY LIENS – Public funds aren't spent; spill fund monies are used
- CUMULATIVE RISKS – The Environmental Justice Advisory Council has a subcommittee focusing on this [and we will be discussing it at a future meeting of the stakeholders]
- OTHER - Discussions were held with Senator Smith internally. We discussed banning underground home heating oil storage tanks and the need for a fund that dry cleaners will pay in to cover future remediation costs. Wisconsin and Illinois have model programs.
- CURRENT STATUS – We are no longer issuing NFA letters when there are outstanding bills. Commissioner Jackson is already implementing this. This was a recommendation from the audit. We are no longer signing MOAs with for Spill Act dischargers. We also are addressing the issue of multiple oversight documents, MOAs for sites that are already under ACOs. The Department will be supportive when developers take on the responsibility to conduct remediations. The concern with the Department and the LLC world is that the whole site is dealt with. That means that contamination is controlled, maintained, monitored and the remediation is financed.
- INCREASE ENFORCEMENT - historically the program would not take enforcement action if the state did not have adequate public funds or case managers to handle the case. This caused us to limit our enforcement. Now we are using penalties, injunctive relief and court to increase our enforcement program.
- Landfill issues – there are numerous issues when residential houses are built on landfills. It can be difficult to ensure that there is the necessary continued monitoring and maintenance. Homeowner

associations can be caught by surprise when there are problems.

- WHITE PAPER – A white paper on landfills was developed for the Commissioner. Residential development on landfills is a major concern to folks in the Department, including me. We need to clarify when is this appropriate and when isn't.
- KELLY – what about residential development and new schools? The Madden bill just mentions new construction. We need to touch upon air pollution, air toxins, diesel fuel left in soil, etc.
- TONY - How will this work once the stakeholder process is complete?
- IRENE - Results will be presented in a White Paper. We will address how we want to see it go forth, whether legislative changes are required or not and how we want it to be presented to Senator Smith.
- KEVIL – the legislators will be holding hearings before the introduction of legislation.
- ERIC – What is DEP's Authority? My concern is for the NFA when it's clean.
- IRENE – We want to find an alternative process for soils only. We don't [necessarily] want to see a hand-off to CEHA. We want to see Cleanup Star work. We need to see if there is a way to marry UST and Cleanup Star.
- JORGE- There's a bad economy, urban areas are not being revitalized, there's limited housing and fewer income housing choices; these are things we talked about. How can DEP directly or indirectly have an impact? Outside contractors scrutinize their expertise during the approval or disapproval process. Moving TCs and geologists would increase case managers by one-third. There are parties out there that are willing to pay the cost to get cases moved. There needs to be a way to move the money back through the system. This will impact the process: it will get contractors on board to revitalize urban areas. DEP needs a fund that will return back to get the process moving.
- STEW – This is a huge problem – I have a procedural issue – Should we be meeting as subcommittees? We could identify the hottest issues and group them in subcommittees with staff support. Acknowledging that these changes will take time, as this winds its way forward, we could become a standing group to continue to monitor the process along the way. I have seen similar monitoring being done on 30 states. These states monitor progress and they have strong public notification component. NJ has longest comment letters ever. If there is more talking and less writing, we will be more efficient.
- KEVIL – We need to focus on legislative issues; speeding up the process and focusing it. We need five papers with specific recommendations by May 2007. OLS has to draft some complicated legislation; they need to clarify how to say "no" and how to let clean-up star get in the picture. There is a universe of people in banking who can be approached for guidance.
- IRENE - The Department is writing about 450 NFAs for non-leaking tanks per year, banks want a letter even though a discharge never occurred.
- JEFF - We want a priority system that works. We need more transparency and clearer standards - case managers don't have a lot of power - if they don't like it, it takes longer - priority/transparency. As a body we have to ask the Governor for the resources if he is serious about his economics growth and cleaning up sites. We need financing for getting DEP staff, we can look at other programs, escrow accounts, and tax breaks. This will help divert part to DEP for staffing. As far as capping, and cap materials we need to know how do we deal with the issue of what's coming in being worse than the original problem. We also need to tie cleanups to other state programs to add incentives (e.g., Cash Out for Parking) allowing additional development density could contribute to local transit. What about the sites that are already remediated? Industrial becomes residential; if industrial is cheaper, it drives less economic return. The Suydam Case, National Lead - if the RP goes industrial and city wants to condemn – a municipality would have to link to higher and better use, maybe if it's zoned mixed use you don't get an industrial option.
- SHERYL- if we're going to shift technical coordinators and geologists to case management as mentioned by Jorge, we have to determine how to manage the tech components. Currently science/exposure/risk issues vs. a process approach for remedy selection. We need something for long term protectiveness - analysis of the complex issues around full remediation. Morale seems to be at a low.
- IRENE – The hiring freeze, promotion freeze, AWP and furlough issues contribute to low morale.
- ANDREW - The idea of meeting in subcommittees has down sides; we need a broad perspective on critical issues. About requests for clean sites - we established innocent purchaser and we need to know that up front. On remedy selection, we need to move cases more efficiently – the current process just takes too long – you

can't be an innocent purchaser. Ecological risk - protective goals, but takes 24 months - solution is controls; legislation focus is known, yes, but what about this as an alternative?

- KEVIL – We need to engage the Assembly. This was put forward at the request of Senator Smith, who called for public stakeholders in the process. Don't know how fast it will move.
- DOUG O'MALLEY - This is a very complicated process. Chromium and "pave & wave" are issues.
- IRENE - The toxicity and level of contamination will be part of the site record as we move toward electronic report systems. Sites can move up the priority list.
- You need to make the system searchable, e.g. chromium.
- DOUG O'MALLEY – what about treble damages? DOL is focused on NRD and statute of limitations.
- IRENE –We need to pick the cases we can win in court and set a precedent.
- BUDDY - Tech regs are broken and stop us from moving forward. There are no "off-ramps" for low risk or routine sites. Many sites get held up on delineation. It is difficult to get horizontal and vertical delineation to zero. There is a lot of argument with case managers when we think that we have enough data. (the numbers are beyond protective). We need to focus on sites that really need help.
- KELLY- School construction and SRWM - particularly in the inner cities where there are a few acceptable sites. How are we working with the School Construction Corp? In Camden they had to close two schools, faulty construction, and how that impacts the children/education. Schools are overcrowded. What is the relationship with SCC and the priority for sites?
- IRENE - We have a memorandum of agreement. SCC did have funded positions but there was an appearance of conflict of interest. Commissioner Jackson met with SCC last week.
- STEVE SENIOR - TRAC is an association of environmental engineers, attorneys, etc - we focus on the regulations. Use of institutional controls has been helpful to the cleanup and redevelopment of brownfields. Painting them with a broad pejorative brush is inappropriate. Do need to think about how to improve the enforceability of Deed Notices. Remedy selection and use of engineering controls should be based on science and not government mandated feasibility studies. Cleanup Star suffers from narrow focus. We need to encourage the expansion of this program.

Also need to look at enforcement and the grace period rules. Write less, talk more to agree upon investigation and remediation requirements; Grace Period rules ratcheted up the level of debate – there needs to be a balance between enforcement and practical matters.

- IRENE – There needs to be more verbal back and forth between the case manager and the RP.
- JORGE - Science is what supports us and builds public trust. We are vulnerable to mistrust if we move away from science. A landfill is a contaminated site. If the science proves it can be developed, we have to let it go forward (on the scientific issue). We can fix problems using engineering controls that work. It is our job to make sure they work. Paving and monitoring are good remedies. Jeff can say it but the Commissioner should not.
- IRENE- The landfill have many problems including settling. Other issues arise if homeowners and associations get struck with problems no one could foresee.
- ERIC – I have issues with capping and monitoring if the remediating party still owns the property. We should just be cautious broad-brush criticism of institutional and engineering controls. There are over 200,000 tanks and most are being replaced with above ground tanks. I have a question regarding fuels – what about ethanol storage? DCA, fire professionals, and homeland security say that it is not a long-term panacea. Do we go back to NJPDES permits for monitoring groundwater? NJPDES leans toward compliance and NJPDES.
- JEFF – [DEP should require] performance bonds. On the issue of Vapor Intrusion, we should follow NY lead. We should apply the Precautionary Principle. On chromium, a presumptive remedy that's more protective will get cases through the system quicker.
- JOE D. - I'm from Newark and I am wondering if we can focus somehow on municipal issues? I raise this on behalf of municipalities. Mayor Bollwage and Mayor Palmer should be involved in these discussions. We have non-ISRA cases that have been converted from industrial to residential use.
- JUDY – The mayors [Bollwage, Gilmore and Palmer] are stakeholders but couldn't be here today.

Are there Municipal Land Use Law [MLUL] issues? Linking local and state requirements for preliminary plan approvals? The legislature passed 1708 requiring municipal notification, which was sponsored by Assemblywoman Linda Greenstein.

- IRENE - There are contaminated sites that don't go through DEP. How do we get these sites captured? Currently there is a loophole - neither bill catches it if there is no remediation being conducted. For example: In the Ironbound (which is an environmental justice area) there is a company that built on a [potentially contaminated] site without going through DEP.
- DAVE P. – We need protection or assurances that we are not precluded from pursuing legal action in the future by participating in this discussion. Jeffrey talked about legislation not regulation. Legislature is short term. Everything else is long term. Next meeting we need to discuss 5 or 6 things for the Legislature to focus on. Let's limit the meeting to legislative issues. Get something in the legislative process in a short time frame, so it can be drafted. Focus on this, these are the expectations of the Senator Smith meetings.
- MARK - the Legislature will think of two constituents - those who want to see the process work and those that want to see that the process is responsive and understandable. We can't get support if they don't know what we're talking about; you won't get support from environmental community if we aren't transparent and you won't get support from the business community if the obstacles aren't removed.
- JORGE – We have a brain trust. Lets maximize our input, use the subcommittee approach to focus on specific issues or talk about the same issues and then bring it back, vet the issues in the larger group.
- STEW – I echo Jorge's process; there are too many people [to cover it all]. Let's set some tight deadlines for each subcommittee, think about the others in the process, and mimic the legislative process, three general areas, and 7 per area.
- JEFF - I don't want to fight at a larger meeting for something that isn't done at the subcommittee level, it weakens the input of the environmentalists.
- NEIL – In subgroups where we have time to talk in depth and then come back, make recommendations on the same universe of ideas addresses everyone concerns about important issues not left out of the mix.
- STEW - It could work in parallel time; subgroups meet and then come back together. We could spend ½ time as subgroups and ½ time to report to the whole group.
- VALORIE – I favor smaller committee as well. Taking Jeff's concern into consideration, smaller groups lead to cross-dialogue. Governor's environmental policy group model did not have a lot and people did not get to connect because the subgroup worked in a parallel manner.
- TONY - What is the top issue? Let's do it first. I'm opposed to subgroups. Let's keep it simple.
- KEVIL – I echo that - what is the end recommendation? Let's identify positions and where there is agreement/disagreement. Would be useful to the legislators/the value is in the understanding.
- DOUG - Democracy is a messy sport – I support a larger group. Irene will be the Taskmaster.
- JORGE – With subgroups it's 'storming, forming, norming.' We get to hear each other's concerns and ideas as a whole.
- ANDY - Experiences will vary, and there is the educational aspect; issue spotting.
- VALORIE - Compromise, possibly do some breakouts. We don't have to stay in subcommittees for every meeting.

CLOSING COMMENTS

IRENE - large group next time - we will provide information on caseload and metrics. Focus on the list and talk about the caseload issue. Then we go to subcommittees where we discuss all issues in separate groups. Delegation/Contractors/LSP