

**Site Remediation Program Reform  
Stakeholders Meeting  
March 6, 2007**

Stewart Abrams, The Shaw Group	Kate McDonnell, Assembly Majority Office
Jorge Berkowitz, Langan Engineering	Andrew Robins, NJ Builders Association
David Brogan, NJ Business & Industry Assn.	Tony Russo, NJ Chemistry Council
Eric DeGesero, Fuel Merchants Assn. of NJ	Steven Senior, Riker, Danzig
Michael Egenton, NJ Chamber of Commerce	Thea Sheridan, Assembly Minority Office
Judy Horowitz, NJ Office of Leg. Services	Mark Smith, Smith Pizzutillo LLC
John Hutchison, Senate Minority Office	Sheryl Telford, Dupont Corporation
	Neil Yoskin, Sokol, Behot and Fiorenzo

DEP Attendees: Irene Kropp, Assistant Commissioner, Site Remediation  
Staff: John Hazen, Legislative Services, SRWM: Barry Frasco, Wayne Howitz, Ken Kloo, Ed Putnam and Judy Shaw. Mary Kelvy, Recording Secretary

**Irene**

- ▶ At today's meeting the group is much smaller due to a disagreement with the environmental community dealing with representation on the Stakeholders Group
- ▶ The Commissioner and Deputy Commissioner exchanged various e-mails with the members of the environmental community
- ▶ I would like to keep the group at a manageable level; not open door and not open to the public
- ▶ We want to discuss issues, and put together white papers to help environmental committee to figure out where to go next with the legislation
- ▶ We hope people will come back into the room to join the Group
- ▶ Adam Leibtag will not be able to attend today's meeting due to other commitments. This meeting is a very important discussion from a union perspective.
- ▶ Develop white papers that discuss major issues that we might need to be handled through legislative changes. We need to identify potential solutions to what the problems might be or direction for legislation
- ▶ We need to lay out as necessary positions of different people or different organizations in the room; whether there are pros or cons or other ideas on a way to go forward
- ▶ It is to difficult to come up with a consensus on all the issues because of the large number of people represented here
- ▶ If everyone is alright with that, this is the direction I want to take
- ▶ At the last meeting we had a major discussion about breaking up into groups vs. the larger committee; there is no need to break down into smaller groups today.

**ISSUES/QUESTIONS/CONCERNS**

**Jorge** - I have a concern for the overall process and lack of participation from an important element like the environmental community. Is Senator Smith aware of this?

**Irene** - Senator Smith is aware of the lack of participation from the environmental community. He has been copied of all the letters that went back and forth.

**Neil** – I have the same concerns. These meetings entail a considerable sacrifice of time. If the legislature is not interested in the end product there is no point in doing this.

**Irene** - We need to get back to the Senator on these concerns. Does anyone have any objections to going forward with today's meeting? Everyone agreed to go forward.

## **HANDOUTS**

### **Irene**

- ▶ The first handout to be discussed deals with SR caseloads [attached: "Case Analysis Breakdown by Bureau"].
- ▶ First major problem is we have way too much work (high caseloads) for the number of staff we have.
- ▶ We had discussions about this at the last meeting. Now you have the numbers [on the chart]. I want to answer your questions and address your concerns with the information we have provided.
- ▶ We will go through the laundry list of options and try to make it more manageable. We want to get back on track. I want to move the Clean-Up program forward.
- ▶ The way Massachusetts did it in the early 1990s was in response to the stalling of Cleanups, not addressing them quickly.
- ▶ We are not getting the clean-up cases out the door quick enough. This is not the fault of the case managers or other program staff. They just have too much on their plates and they cannot get to everything in a timely manner.
- ▶ Number of cases in total is 18,729. This number is not the number of sites, but cases. Some sites have multiple cases. Some sites can include UST, ISRA, or Superfund Cleanups. There are more cases than there are sites.

### **EXPLANATION OF THE CHART**

- ▶ The number of MOAs is 6,400.
- ▶ The number of regulated Cleanups is 11,240.

**Question:** Are there oversight documents (MOA or ACO) for regulated tanks?

### **Wayne Howitz (DEP):**

- ▶ There is no oversight document that applies. It is the statute and rule that applies. The same applies for ISRA cases; there is not MOA that goes along with that program.
- ▶ Majority of these cases are covered just by regulation and a small amount are covered by a remediation agreement.

**Question:** How complicated are MOAs for homeowners?

### **Wayne Howitz (DEP):**

- ▶ They are fairly straightforward unless there is contamination goes under the foundation of the building. It can take a lot of time to remediate this type of case.
- ▶ Homeowner cases are not in the system as long as the other cases, even though the number says 4,000 cases, one case goes out the door as another one comes in the door.
- ▶ Regulated UST cases are complicated. Extreme contamination moves very quickly into the environment.
- ▶ BOMM [Bureau of Operation Maintenance and Monitoring] oversees CEAs, ongoing pump and treat systems, progress reports and environmental services inspection program.
- ▶ This Bureau has 13 case managers and 1,827 cases [See Chart].

**Question:** What is the publicly funded component is part of this Bureau?

### **Ed Putnam (DEP):**

- ▶ In Operation Maintenance Monitoring, there are 5 publicly funded case managers out of 13; in Design & Construction all 23 are publicly funded; in Wellfield Remediation all 6 are publicly funded; in Case Management, 5 of 29; and in Site Assessment, all 20 are publicly funded.

## **REMEDIAL LEVEL**

**Wayne:** A review of case levels follows:

- ▶ Level A is for emergency response.
- ▶ Level B is minor soil contamination. We call it "*cut & scrape*" which means it is easy to get to.

- ▶ Level C1 is soil contamination. Groundwater may be contaminated so the case will need some level of investigation.
- ▶ Level C2 sites have soils and groundwater impacts.
- ▶ Level C3 cases are multimedia; soil, groundwater are effected with additional contaminants.
- ▶ Level D: are Superfund-caliber cases, with multimedia impacts and multiple contaminants.
- ▶ The least complex level is Level A and the most complicated is Level D
- ▶ Null means it was not put into the database
- ▶ Level U mean unknown

**Note: This table has been added to the minutes for clarification. It was *not* part of the session**

**Table 1: Site Remediation Case Complexity Categories**

<b>A</b>	An emergency action taken to stabilize an environmental and/or health threatening situation from the sudden or accidental release of hazardous substances.
	Appropriate remedial actions involve a single phase of limited or short-term duration.
	Cases found to have immediate fire and/or explosion conditions are emergencies NOT IECs. Contact the Bureau of Emergency Response at 609-633-2168 immediately to initiate response actions.
<b>B</b>	Single-phase remedial action in response to a single contaminant category affecting only soils. May be a subsite of a more complex case. Does not include ground water investigation or remediation.
	Examples of Level B cases include but are not limited to "Cut-N-Scrape"; Surface Drum Removals; Fences; Temporary Capping or Tarping.
<b>C-1</b>	A remedial action which does not involve formal design where the source is known/identified. May include the potential for (unconfirmed) ground water contamination.
	Examples of Level C-1 cases are regulated or unregulated underground storage tanks containing gas or heating oil, septic fields, etc.
<b>C-2</b>	A remedial action which consists of a formal engineering design phase, and is in response to a known source or release. Since the response is focused in scope and address a known, presumably quantifiable source, this remedial level is of relatively shorter duration than responses at sites of higher remedial levels. Usually involves cases where ground water contamination has been confirmed or is known to be present.
<b>C-3</b>	A multi-phased remedial action in response to an unknown and/or uncontrolled source or discharge to the soils and/or ground water. In this remedial level, the contamination is unquantified (or presumed unquantifiable) and, therefore, no determinable timeframe for the conclusion of the remedial actions is known.
<b>D</b>	A multi-phased remedial action in response to multiple, unknown and/or uncontrolled sources or releases affecting multiple medium which includes known contamination of ground water. In this remedial level, the contamination is unquantified and, therefore, no determinable timeframe for the conclusion of the remedial actions is known.

**Irene:** The numbers were pulled off NJEMS for a report, so there will be a few data quality issues. We are working on cleaning it up. Site Remediation has not been using NJEMS consistently for a long time. As times goes on, we will get better data from it.

**Jorge:** Almost 11,000 cases are underground storage tanks related. How would these cases break down into the levels explained previously?

**Wayne:** Generally homeowner cases will fall either in a C1 or C2 level. Regulated tank universe is 85-90% C2 cases, leaving 10-15% just soil contamination. Level D are where most ISRA [Industrial Site Recovery

Act] and Case Management sites are, including Superfund and RCRA [Resource Conservation and Recovery Act] cases. All regulated tanks go to UST. We do have situations where a case manager has a case next door and we will put these cases together with so that case manager can capitalize on their familiarity with the area.

**Question:** How do you make that distinction?

**Wayne:**

- ▶ We generally try to house all of the regulated tank cases in the UST Office. The Field Operations North and South have a large number of MOAs. Other bureaus also handle MOAs. So each field office has about 15 case managers with overwhelming caseloads. A lot of the time they can't even work on the minor cases and get them out in a timely fashion.
- ▶ We are thinking about changing the way we assign cases to field offices. That's part of what we are talking about today. We need to discuss whether we take homeowners cases off the plate entirely.

**Andrew:** How much time in hours is spent on homeowner cases?

**Irene:** We will be able to estimate more accurately down the road. We can do runs with our electronic time sheet system and match it up to NJEMS. I think they have some averages for how long it takes to do homeowner tanks, most take about 3 to 4 hours and some other cases have been in the system 4 to 5 years. Every couple of weeks a case manager's priorities can change based on what comes in the door.

**Irene:**

- ▶ I want to do things in a step-wise fashion to fix caseload problems. This was discussed with the program's Bureau Chief, Assistant Director and upper management.
- ▶ One thing we can do relatively quickly is address how we handle homeowner cases. If we do this effectively it will free up time for our case managers to work on critical cases. Here are all the options we have discussed to date:
- ▶ First option would be to increase our staff.
- ▶ Commissioner Jackson wanted our thoughts on staffing needs. If SRP were to turn all submittals around in 60 days. The numbers of case managers would have to be astronomical; we would need an additional 900 people.
- ▶ Even if we were 50% off in our calculations, we will still need 450 people in SRP.
- ▶ Any new staff we get approval to hire in the future basically closes the holes created by the people that are leaving. Even if we get a chunk of staffing, it really is not going to get to the basic problem, which is there is just too much work.
- ▶ Even if we get additional staff, we have other issues too, such as computers, phones, vehicles, etc. to supply to the new staff

**Question:** With the new budget, where does the staffing issue lie with the Governor's Office?

**Irene:**

- ▶ Commissioner Jackson intends to hold Site Remediation staff steady. In the overall budget cuts, the Department will take a 10% staffing cut across the board. Only Site Remediation and maybe some enforcement programs will be exempted. All other programs will be impacted.
- ▶ We are now getting some exemptions from the Governor's Office to fill some vacant positions. Seventeen positions were recently filled in the Site Remediation program in the Underground Storage Tanks program, Grants, and in the Solid Waste program.
- ▶ Second option we can consider just saying "No" in some cases. We do not have the people to handle the work coming in the door. Can we just say "No"? We cannot say we are not signing anymore MOAs or taking any new cases. That would create a firestorm.
- ▶ Stopping DEP reviews of homeowner cases puts the responsibility on banks to have environmental firms to do the reviews that they are requiring for homeowner transactions.
- ▶ The third option is CEHA delegation. County freeholders are not inclined to increase CEHA staff at

this point in time. They would need a guaranteed source of funding, not just seed money to get them started.

- ▶ Four CEHA agencies currently handle 1,089 homeowner tank cases on a pilot basis. The counties get little money to do this work. Bergen County is actively participating in this pilot program. The Freeholders elected to provide that service to their citizens. We are not paying them for the work they do. The amount of work they do is greater than the amount of money they get.
- ▶ Essex County wants to expand their work in the following areas; underground storage tanks, environmental regulation and regulated tanks. From discussions with them, they would require seed money up front for the hiring of staff, keeping staff on for a while until a fee program can go into effect.
- ▶ Fourth option is Clean-Up Star which Ken Kloo will discuss later in the meeting
- ▶ Do we expand Clean-Up Star above and beyond what it is doing now? Do we limit it to only unregulated underground storage tanks?
- ▶ A fifth option is to have homeowner underground storage tanks linked to the new UST certification regulations coming out this summer.
- ▶ The sixth option is to use in-house contractors. Money is a big issue when considering hiring contractors to do this type of work in-house, whether it involves case management, tech support or something else. We have talked about this work before and piloting this approach with homeowner cases. We can also consider getting contractors in just the Northern and Southern field offices under a Section Chief's oversight.
- ▶ The seventh option is developing a Licensed Site Professional Program, like Massachusetts, which deals with homeowner tanks and more.
- ▶ Commissioner Jackson wants to start with the low priority cases, but we should consider looking at all cases down the road.
- ▶ We believe an LSP program would be most beneficial for New Jersey. It could be modeled after the Massachusetts program but not include Tier 1 - high priority cases or Superfund cases. Tier 1 is the same as Level D on our chart [separate document, marked **3/6 Case Analysis**]

**Question:** Can a report be done showing how many cases are in the remediation phase?

**Irene:** Yes, a report can be done.

**Question:** Can we look at what stage is each case in and where bottlenecks occur? How many cases are in the remedial investigation stage? This seems to be where bottlenecks occur.

**Irene:** Delineation in the remedial investigation stage can be a time-consuming process for the regulated community. It can be the hardest thing to accomplish; often the community's definition of delineation is different from ours. Once delineation is agreed upon, the remediation process is usually straightforward. We need to streamline the delineation process.

#### **CLEAN-UP STAR PROGRAM/Irene and Ken Kloo**

- ▶ We are looking at two alternatives for the Clean-Up Star Program:
- ▶ We can expand the program to allow more types of cases to. Now it is limited to soil cases only. The program could be expanded to include groundwater, other specific types of cases. We could have basically the same program we have now with a larger universe.
- ▶ The new unregulated UST Certification Clean-Up Star Program will change the focus of the Clean-Up Star Program. Clean-Up Star requirements will change; the new requirements will be consistent or identical to the regulated UST certification. So if you are certified to do UST work, you will be certified for Clean-Up Star.
- ▶ Cleanup stars submit a questionnaire that provides a brief explanation of what has been accomplished at the site. Some cases that come through are subject to an audit; either a paper audit or for a smaller number of sites, a more intensive field audit such that could include a field inspection and even some sampling as a quality control mechanism.

- ▶ As with the Clean-Up Star Program Certification, the licensed professionals will have to do the work in accordance with the rules and achieve the appropriate remediation standards. There would be significant penalties for fraudulent or negligent activities.
- ▶ One idea is to take all unregulated tank cases out of the program right now and subject them to an expedited audit process. This would free up case managers to deal with much higher priority status cases. Homeowner tanks generally have a lower potential of impacting receptors. Homeowner cases with potential or actual impacted receptors would be handled differently.
- ▶ We could assign all future MOAs to the field offices.
- ▶ Gary Sanderson has started developing a strategy based on the existing Clean-Up Star Guidance Document.
- ▶ There would be no direct billing associated with this, but eventually a fee would be established this. Fees would have to be paid up front. The exception would be cases from Gary's program.

**Question:** Why restrict to Clean-Up Star Program? The real estate transactions are of primary importance to the lending community. With Unregulated tanks, both parties would have to be comfortable with the use of their own consultants.

**Answer:** The Department would work on the highest priority cases, such as if groundwater contamination existed and it was impacting receptors. This we would be able to act upon these cases more quickly. We need to sit down with the real estate industry and talk to people who handle these transactions to work something out. DEP is not required by law to take these cases.

**Question:** The "just say no" policy would apply to NFAs and sites where there was no discharge. Will Regulated sites where it is reasonably certain that a discharge occurred be included? Has your opinion changed from the last meeting to now?

**Answer:** I am exploring all options on the table. Discharges impact these I don't think we can say "No" when cases involve drinking water wells, surface water, vapor problems and human or ecological receptors.

- ▶ [There was a discussion of banks receiving properties through foreclosures, and getting some sort of exemption – the transcript is unclear here]
- ▶ ...Banks selling properties resulting from foreclosures – some level as an exemption, some level push people on to get it through; "just say no" does not always work. Calls for legislation or something. 1) ISRA-type work; done within. 2) Criteria done; this is exempt. 3) Criteria done; you need to go to the Department, someone needs to certify it at the end you would get your NFA. 4) There will be Timeframes; if you don't have this, you have to get this. Every level involved doesn't always have the same approvals for every case.
- ▶ **Mark:** We are receiving pressure from the Banking community. The state is handling a lot more cases than usual
- ▶ **Andrew:** Issues from banks is whether or not they are protected if they need to foreclose to protect their capital.
- ▶ **Steve:** This is not lending liability issue – it is about collateral– the lenders aren't liable. Lenders need an NFA to say collateral is clean, so that properties may be transferred.
- ▶ **Sheryl:** I am lost in the mix. Should we deal separately with homeowner issues? What is the Department's goal with homeowner tanks? What is the environmental goal? What do we want to accomplish?
- ▶ **Irene:** Clean homeowner sites could still be evaluated, but not with the use of a case manager, geologist, etc. The municipality or the county health department can handle these cases. We need to look at every option for timesavings and cost savings.
- ▶ **Question:** Is there something, cases or work, that the Department is willing not to do?
- ▶ **Answer:** We need to evaluate every program to see if there are some sites that we do not have to be involved in. Some ISRA cases for example. Maybe, some of those sites can get their certification from the Clean-Up Star program.
- ▶ **Ken Kloo:** The use of the Clean-Up Star program is something we could do quickly. In six months we could pull 5,000 cases off our plate. It would still need a small administrative staff to work with the regulated community.

- ▶ **Jorge:** The environmental groups are really needed at these meetings
- ▶ **Irene:** About the Massachusetts Licensed Site Professional Program (LSP), Stew will speak on this. It's basically establishes that any case in the Department, other than Tier 1 cases, can be handled by a consulting firm that has been licensed by the State and is overseen by a board. Some legislative fixes will take a long time to go through the system. Like Massachusetts, we need to get required legislation that would establish a licensing board, develop tests, and the procedures to set up the program.
- ▶ Underground Storage Tank Rules are coming out late spring or early summer. We need to get the program up and running, getting tests out and certifying these individuals. I feel that we need something quicker, which would be the in-house contractor option.
- ▶ **Neil:** We need to refine delineation, which is where the bottleneck occurs. If the process is the problem, should you not go back to try to improve it? Above cases are mostly Level C2 cases
- ▶ One way to free the process up and move it along quicker is give the Department the authority to say 'do this or else.' We need to define what the characteristics of delineation are? What does DEP expect? Cultural changes within the Department are needed. We should be allowed to remove the source of contamination and delineate after? Most of responsible parties know where the contamination is at the time of transfer.
- ▶ **Irene:** All excellent points. There is definitely a logic to this approach if you know where the material is and remove it. An interim remedial measure (IRM) that reduces the bulk of the mass of contamination is great and something the Department should encourage. But this is still does not get you to the point of getting the NFA.
- ▶ **Neil:** A White paper is a good approach. Look at the characterization and requirement of delineation and where is the bottleneck in the process in regards to the Tech Regs 5.1 & 5.2. Refer to Tech Regs. if risks are involved
- ▶ About groundwater with restricted use remedy. We need clarity in the Tech Regs. We're not asking for a sign off but will do so later. The Department needs to tell me what to do to get to the remedy.
- ▶ **Mark:** Is the Governor willing to say that he will give up a standard? Environmental groups and the community are not giving up on it either. Environmental groups are at the point they want something done too. The Brownfields program is focusing on getting cleanup done quickly. People need money to fund the cleanups to bring the properties back to tax-paying status.
- ▶ **Irene:** I agree, there have been cleanups where we pushed a developer to delineate and the development was pushed out of a business. Then we have a site where a lot of contamination still exists and no cleanup completed.
- ▶ **Sheryl:** Regarding the Tech Regs. What are we trying to accomplish? What should be our goal/metrics? How do you get it? Intensity of the problems - complexity of media involved. Not all sites are the same. Different sites will be handled differently. Different situations for example include operating sites, Brownfield sites, and industrial sites converting into parks or residential use. We need to focus on the right remedy based on land use.
- ▶ The challenge and complexity will depend on the type of site; how should each site be handled? The Tech Regs. Limit discussions about the bigger picture. We need to define a program to get where we need to go. What are we accomplishing on the environmental perspective?
- ▶ **Neil:** We need to reframe how we look at the Tech Regs. How we cast a type of regulation from a regulatory sense not necessarily a minimum standard we need guidelines not regulations
- ▶ **[Unidentified Commenter]:** I have arguments against guidelines. We need regulations not guidelines because when we deal with guidelines in other programs and you can never pin the Department down.
- ▶ Do the Tech Regs need to be more flexible? There is a cultural problem. Nobody has time to sit down and have a meeting because of the caseload. If we keep the Tec Rules as regulation, we need to incorporate flexibility within the context of the regulation.
- ▶ One issue coming up with the Tech Regs and its readoption is flexibility interfering with grace period rule.
- ▶ The Department has a wide range of cases and every case is unique. If you try to address every issue you will keep adding more and more to the Technical Requirements for Site Remediation,

N.J.A.C. 7:26E.

- ▶ A challenge for the Department is to balance the regulatory needs with the needs of the regulated community. One of the functions of a Rule Manager is to tell people we need to do, we cannot keep adding more and more in regulation. The Environmental community does not want grace periods. For the regulated community, it appears that the grace period rules add more work for the case manager. It is really harming the program and not helping it.
- ▶ **Irene:** Our goal is stopping the endless back and forth. The grace period rule is worth discussing.
- ▶ **Jorge:** Grace period regulations solve half the problem - Site Remediation's problem.
- ▶ **Irene:** We haven't really fully implemented it. We are still training staff. Thirty page NOD letters and comment letters are too long. Stewart will speak on the Massachusetts Licensed Site Professional Program.
- ▶ **Stew:** In Massachusetts, they have 500 sites where they gathered information and put it into a summary. Environmental industry and the community were committed to this. This is an example where you need to spend money to make money. You cannot be cheap if you want this kind of program to be successful. This could be an element of a long-term solution and can be a Corzine achievement.
- ▶ There are some 'gray spots' in the LSP program; flexibility is needed; the decisions lie in the hands of the LSP. But reviews are completed within two weeks. If the LSP isn't sure of something, there is a case manager to contact. An opinion will be rendered by the LSP. There are Q&A sheets, a guidance manual for LSPs, and the LSP examination and licensing.
- ▶ This is a long term solution not a short one. LSP program is audited to make sure standards are being met. Twenty percent of the opinions are audited.
- ▶ There is an LSP Licensing Board which consists of five LSPs, 5 non LSPs, Governor appointee, Commissioner or designee, five board staff who give and rank the test, three environmentalists, a professional engineer, and a staff attorney.
- ▶ Most cleanups are completed in one year. Fees for the first year are nominal. If the case goes longer more significant fees are charges.
- ▶ About 60% of the cases clean up to unrestricted or resident standards. Around 30% of the cases clean up to background and approximately 7-10% close with use restrictions.
- ▶ If we implement this type of program we have to be committed and have the environmental community has to be on board. Mass. stakeholder process lasted over two years. They had a Blue Ribbon Panel that involved representative from the petroleum industry, attorneys, and the agricultural community.
- ▶ **Neil:** We should copy the Massachusetts panel.
- ▶ **Stew:** We do not want to follow the Connecticut model. It does not work well
- ▶ **Irene:** Connecticut model is not voluntary, not strong enough and the licensing not strict. Their Board not independent. They have not suspended any licenses yet.
- ▶ In Massachusetts, they issue a newsletter every six months telling you who got disbarred and why. It's very clear on what is acceptable and what is not.
- ▶ Once an LSP renders a bad opinion their careers are over. The LSP license is very prestigious. The quality of work is good because the LSP's career is on the line.

#### CLOSING REMARKS:

Thank you for coming, our next meeting will be here and the Commissioner will be attending. We will discuss Remedy Selection & Institutional Controls.



<b>MOA's</b>		<b>Total</b>
<b>Homeowners</b>	<b>4,000</b>	
<b>Developers</b>	<b>400</b>	
<b>Other*</b> (i.e. small business tanks)	<b>2,000</b>	
		<b>6,400</b>
 <b>Regulated</b>		
<b>UST</b>	<b>5,702</b>	
<b>ISRA</b>	<b>1,335</b>	
<b>Initial Notice (INS) (UST &amp; ISRA)</b>	<b>1,403</b>	
<b>BOMM</b>	<b>1,800</b>	
<b>Other*</b> (i.e. BFO Non-Homeowner, Public Funded, Wellfield Remediation, NPL)	<b>1,000</b>	
		<b>11,240</b>
<u>Other (CEHA)</u>	<b>1,089</b>	
		<b><u>1,089</u></b>
		<b>18,729</b>

**Notes Added April 4, 2007:**

**Note: The number of cases presented in each category has been modified to reflect a single count for each case. For example, an ISRA or BOMM assigned case may also be a UST case. The case will be counted as UST and will not be reflected in subsequent categories.**

<b>Total Number of:</b>	
Sites	17298
Sites w/ Confirmed Contamination <sup>4</sup>	15112
Program Interests	17368
Cases	18738
MOA Cases <sup>1</sup>	6397
Homeowner Cases <sup>1</sup>	5066
Developer Cases <sup>1</sup>	413
Reg UST Cases <sup>1</sup>	5702

			Remedial Level <sup>3</sup>							Case Type <sup>1</sup>			
Bureau	Mgrs	Case Count <sup>2</sup>	Level Null	Level B	Level C1	Level C2	Level C3	Level D	Level U	MOA	Home owner	Developer	Reg UST
<b>No Bureau Named</b>		193											
<b>BCFM</b>	5	95	60		3				32	94		24	1
<b>BCM</b>	46	716	6	15	82	71	255	253	32	208	2	15	11
<b>BDC</b>	23	105	2		34	31	19	18	1		1		4
<b>BFO-N</b>	22	4182	23	89	2736	1202	95	15	22	3256	2478	123	17
<b>BFO-S</b>	22	2953	8	153	1353	1363	7	12	56	2098	1503	155	25
<b>BISR</b>	39	1335		337	144	372	203	278	1	71		5	5
<b>BOMM</b>	22	1827	12	79	276	1224	138	96	1	119	4	9	1014
<b>BUST</b>	60	3924	2	12	761	3140	2		7	97		17	3857
<b>CAS</b>	9	265	10	2	42	4	1		202	228	145	5	1
<b>CEHA</b>	11	1089		2	1082	3			2	14	919		
<b>INS</b>	25	1403	198	671	33	10	1		461	15		1	754
<b>NONE</b>	1	1							1				
<b>OBR</b>	16	189	4	4	30	36	42	17	55	132		47	9
<b>OWR</b>	15	129	1	1	24	45	54	4			5		1
<b>SA</b>	20	265	18	3	72	11	134	1	23	2	1		
<b>SHWP-N</b>	13	103	1		7	3	84	7		39		10	1
<b>SHWP-S</b>	9	113			1	3	107	1	1	16		4	
<b>STAR</b>	1	7		4	2				1	1	2		

Notes (added 4/4/2007)

1 Cases may be counted more than once where a case is designated as having multiple case types (e.g. MOA and Homeowner).

2 Cases may assigned to multiple Bureaus within SRWM that is reflected as a higher assigned case count than Total case count.

3 Approximately 50 assigned cases having historical, non-standard Remedial Levels are not reflected in this chart for issues of clarity and formatting.

4 This number includes pending sites being actively investigated by NJDEP for reassignment and/or legal action. The number of sites with contamination undergoing active remediation is 14,039 (NJDEP KCS-NJ Spring 2006)

## MASSACHUSETTS LICENSED SITE PROFESSIONAL (“LSP”) PROGRAM

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March 6, 2007

This summary provides insights into the LSP program in Massachusetts. Note that there is remarkable similarity between MA and NJ, in that there is a long term industrial legacy, an active Brownfield industry, urban centers in need of revitalization and a current industry base centered on real estate and high technology industries.

### Some Features of the LSP Program:

- Flexibility – A Responsible Party (RP) has some flexibility in remedy selection. For the simple sites, the site closure process can proceed quickly. For complex sites, RP has some flexibility in remedy selection within the framework of the regulations.
- Risk-based closures are available. Deed Restrictions and Institution Controls are established based upon clear risk-based procedures and standards. These restrictions have become generally accepted in the real estate community.
- Sites whose risk score is high become “Tier IA sites” and these sites require DEP approvals at each phase. Thus, risk of DEP finding fault with the eventual closure program is reduced. Until recently, “Tier 1A” sites were still directly under MADEP control. More recently, these sites may go through the LSP process, but with some limitations.
- 5-year deadline to cleanup. Simple sites do not have an issue with this requirement. However, many sites do and technically speaking these sites are in non compliance. These sites remain compliant by going into a separate regulatory status, where the long term monitoring and operation at a site is permitted and overseen (e.g., for a pump and treat or natural attenuation, or monitoring after a removal action to verify effectiveness), or a schedule

### Some issues:

- Incompetent or poor decision maker LSPs. These people exist and a strong audit system was put in place from the outset to weed these folks out of the system. The key to the audit system is to insure that LSPs can lose their license for poor decisions. That said, only a small fraction of MADEP audits of LSP work (e.g. less than 1%) find that additional field work is necessary and a smaller number of these sites end up coming to a different conclusion after the additional work is done. So the overall performance of the program appears acceptable.
- Conflict of interest, i.e., an “In-house” LSPs (e.g. an LSP within a Responsible Party company or developer-company). Anecdotally, this has been seen to be more of a problem compared to independent LSPs. An independent LSP can establish a third party objectivity and develop the confidence of people concerned

- about the project. Sometimes Stakeholders do not trust either the MADEP or the RP and look toward the LSP. For example, a colleague was the LSP for a complex site with community concerns. Asked at a televised school committee meeting whether he would let his kids play on the ball field, he was able to say yes. In turn, the community appeared to derive some reassurance from that statement.
- State investment in regulatory revisions, guidance and training – At the beginning of the program, the MADEP took a proactive stance in training, writing revisions to regulations that did not work, and a willingness to listen and adjust. The program will not work unless the State DEP writes clear regulations with identified standards; conducts regular training programs, and provides a “hot line or “help line” to talk about complex sites early in the process. Most people in Massachusetts agree these are critical factor in the program’s overall success. However, budget cuts a few years ago have recently limited the MADEP’s ability to be interested and willing to help out. They are slow now with regulatory revisions, sparse on new guidance documents, with no “Q&A’s” recently published. While this is unfortunate and makes LSP role more difficult, the program still works.
  - Risk of unfavorable audits - The one down side is that because of the chance for an unfavorable audit result, there is some reluctance to proceed with more complex projects “at risk”, particularly in Brownfield or redevelopment situations. In these situations, a strong partnership between the MADEP and the LSP is considered a must.
  - Public notification – The LSP system is coupled with requirements for public notifications and hearings. Thus the decisions of a LSP are subject to public scrutiny.

Overall, there is strong confidence in the LSP system in Massachusetts and it has generally worked out well for the taxpayers, responsible parties, and the public. Typically, sites are being cleaned up faster and in ways more responsive to public needs than in the more traditional direct regulatory oversight approach. The 3-9 month periods waiting for MADEP approvals on reports that were typical before the program no longer exist. (The reality is that in New Jersey, 3-9 months would be an improvement.)

SUBJECT: MassDEP Auditing Statistics

## Background

Initially, understand that MassDEP conducts (after-the-fact) audits of privatized cleanup activities, focusing mainly on the site closure endpoint, the Response Action Outcome (RAO). This auditing is conducted in a tiered, sequential fashion, codified in our regulations and program as "Level I, II, and III Audits", which are further described at <http://www.mass.gov/dep/bwsc/files/audits/audfact.pdf>

We try to screen most RAO submittals via our "Level I" auditing procedure, in an attempt to identify sites where the cleanup appears to be inadequate, or documentation is lacking. Based upon this initial sorting, in-depth "Level III" audits are done on a "targeted" basis, to further examine the site, and identify regulatory violations and needed follow-up. In addition to these Targeted audits, we also select sites "at random" for a comprehensive Level III audit, to provide another level of programmatic protection, and to provide insight into the quality of work for the larger universe of sites in our systems (i.e., one expects to find more problems/higher rates of noncompliance at sites that are selected for audit because of apparent concerns).

## Level III Audit Outcomes

There are generally four possible outcomes of a Level III Audit:

1. Passing - the submittal (e.g., RAO) is considered adequate, and no further work is required.
2. No follow-up work is required - while the submittal is considered to be adequate, violations occurred during the conduct of actions at the site, usually with respect to assessment and cleanup deadlines and/or interim submittal requirements (e.g., late or non-existent progress reports). In the case of an RAO, these past deadline violations and interim submittals become moot, but are nonetheless cited, as a means to establish patterns of non-compliance by individual parties.
3. Follow-up is required - the most common citations in this regard concern the level of documentation provided to conclude, to a reasonable degree of certainty, that a site has been adequately cleaned up. In these cases, MassDEP requires additional investigatory and/or monitoring efforts (e.g., more soil or groundwater samples, modified risk assessments, etc.).
4. Submittal is invalidated by MassDEP or retracted by PRP - in these cases, the document is deemed to be so deficient that a significant amount of additional work

will be needed to either cleanup the site, and/or establish the documentation to prove that it does not pose a significant health risk.

Most parties that conduct follow-up work eventually obtain enough information and data to confirm the adequacy of site cleanup, while a smaller percent must undertake additional remediation and/or modify their RAO category. For information relevant to audit follow-up, please refer to a report prepared by the LSPA, available at: <http://www.lspa.org/Intern%20report-FINAL%20052504.pdf>. In this report, the LSPA followed up on the results of a number of sites where a DEP Level III audit had cited violations and required additional work.

## Statistics

### Number of Audits

*See Table 1 for the number of audits performed annually at all sites*

### Results of Audits

*See Tables 2, 3, 4, and 5. It is perhaps worth noting the significantly lowered rate of RAO retraction/invalidation for "Random" Level III audits (3-5%), compared to the "Targeted" Level III audits (10-15%).*

**Table 1 - Number of Audits conducted each Fiscal Year (FY)**

<b>Fiscal Year</b>		<b>Total</b>	<b>Percent of Fee Paying Sites</b>
<b>FY 1999</b>	Sites Required to Pay Fees	4,381	-
	20% Audit Goal <sup>1</sup>	876	-
	Level I Audits [Toward 20%]	555 [512]	11.7%
	Level II Audits [Toward 20%]	0 [0]	0%
	Level III Audits [Toward 20%]	192 [186]	4.2%
	Total Audits Conducted in FY99	747	17.1%
	Total Count Towards 20% <sup>2</sup>	<b>698</b>	<b>15.9%</b>
<b>FY 2000</b>	Sites Required to Pay Fees	4,857	-
	20% Audit Goal <sup>1</sup>	971	-
	Level I Audits [Toward 20%]	1,663 [1,612]	33.2%
	Level II Audits [Toward 20%]	0 [0]	0%
	Level III Audits [Toward 20%]	185 [134]	2.8%
	Total Audits Conducted in FY00	1,848	38%
	Total Count Towards 20% <sup>2</sup>	<b>1,746</b>	<b>36%</b>
<b>FY 2001</b>	Sites Required to Pay Fees	4,804	-
	20% Audit Goal <sup>1</sup>	961	-
	Level I Audits [Toward 20%]	1,212 [733]	15%
	Level II Audits [Toward 20%]	72 [63]	1%
	Level III Audits [Toward 20%]	332 [276]	6%
	Total Audits Conducted in FY01	1,616	
	Total Count toward 20% <sup>2</sup>	<b>1,071</b>	<b>22%</b>
<b>FY 2002</b>	Sites Required to Pay Fees	5,008	-
	20% Audit Needed <sup>1</sup>	1,002	-
	Level I Audits [Toward 20%]	912 [674]	13%
	Level II Audits [Toward 20%]	249 [203]	4%
	Level III Audits [Toward 20%]	208 [180]	4%
	Total Audits Conducted in FY02	1,369	
	Total Count toward 20% <sup>2</sup>	<b>1,057</b>	<b>21%</b>
<b>FY 2003</b>	Sites Required to Pay Fees	5,143	-
	20% Needed <sup>1</sup>	1,029	-
	Level I Audits [Toward 20%]	1,700 [1,324]	26%
	Level II Audits [Toward 20%]	199 [190]	4%
	Level III Audits [Toward 20%]	196 [167]	3%
	Total Audits Conducted in FY03	2,095	
	Total Count toward 20% <sup>2</sup>	<b>1,681</b>	<b>33%</b>
<b>FY 2004</b>	Sites Required to Pay Fees	6,723	-
	20% Needed <sup>1</sup>	1,345	-
	Level I Audits [Toward 20%]	1,936 [1,274]	
	Level II Audits [Toward 20%]	214 [210]	
	Level III Audits [Toward 20%]	131 [126]	
	Total Audits Conducted in FY04	2,281	
	Total Count toward 20% <sup>2</sup>	<b>1,610</b>	<b>24%</b>

<sup>1</sup> Per MGL c. 21E, Section 3B, MassDEP must audit 20% of sites that pay an annual compliance fee

<sup>2</sup> MassDEP audits some sites that do not pay an annual compliance fee, and therefore do not count toward the 20% statutory mandate

**Table 2  
Results of Random Level III Audits**

A **Random Audit** is an audit where the subject of the audit was selected using a methodology in which each member of a class has an equal probability of being selected for audit

<i>RANDOM LIII AUDITS</i>	FY94-00		FY01		FY02		FY03		FY04		FY05	
<b>TOTAL</b>	<b>361</b>		<b>65</b>		<b>72</b>		<b>46</b>		<b>36</b>		<b>27</b>	
RAO, DPS, WCS	300	83%	64	98%	55	76%	33	72%	27	75%	18	67%
Other (e.g., IRA, RAM)	n/a	n/a	1	2%	17	24%	13	28%	9	25%	9	33%
Passing	110	30%	19	29%	17	24%	13	28%	13	36%	9	33%
No Follow-up Required	133	37%	26	40%	23	32%	10	22%	7	19%	1	4%
Follow-up Required	118	33%	20	31%	32	44%	23	50%	16	44%	17	63%
Invalidate/Retract	10	3%	3	5%	4	6%	1	2%	4	11%	1	4%



**Table 3  
Targeted Level III Audits**

A **Targeted Audit** is an audit where the method used to identify the subject of the audit is any method other than that employed for a random audit and based upon specific criteria established by MassDEP. Most Targeted Level III Audits are sites that were first screened via a Level I Audit, which identified possible or likely violations and/or deficient work.

TARGETED LIII AUDITS	FY94-00		FY01		FY02		FY03		FY04		FY05	
<b>TOTAL</b>	<b>962</b>		<b>267</b>		<b>136</b>		<b>150</b>		<b>95</b>		<b>99</b>	
RAO, DPS, WCS	627	65%	246	92%	111	82%	114	76%	84	88%	92	93%
Other (e.g., IRA, RAM)	n/a	n/a	n/a	n/a	19	14%	36	24%	11	12%	7	7%
Passing	272	28%	42	16%	12	9%	13	9%	12	13%	23	23%
No Follow-up Required	243	25%	78	29%	21	15%	20	13%	7	7%	4	4%
Follow-up Required	447	46%	147	55%	103	76%	117	78%	76	80%	72	73%
Invalidate/Retract	55	6%	18	7%	21	15%	29	19%	24	25%	10	10%

**Table 4**  
**OVERALL LIII AUDITS (combined Random and Targeted Audits)**

<b>LIII AUDITS</b>	<b>FY94-00</b>		<b>FY01</b>		<b>FY02</b>		<b>FY03</b>		<b>FY04</b>		<b>FY05</b>	
<b>TOTAL</b>	<b>1324</b>		<b>332</b>		<b>208</b>		<b>196</b>		<b>131</b>		<b>126</b>	
<b># Targeted</b>	963	<b>73%</b>	267	<b>80%</b>	136	<b>65%</b>	150	<b>77%</b>	95	<b>73%</b>	99	<b>79%</b>
<b># Random</b>	361	<b>27%</b>	65	<b>20%</b>	72	<b>35%</b>	46	<b>23%</b>	36	<b>27%</b>	27	<b>21%</b>
RAO, DPS, WCS	932	<b>70%</b>	312	<b>94%</b>	166	<b>80%</b>	147	<b>75%</b>	111	<b>85%</b>	110	<b>87%</b>
Other (e.g., IRA, RAM)	n/a	n/a	n/a	n/a	42	<b>20%</b>	49	<b>25%</b>	20	<b>15%</b>	16	<b>13%</b>
Passing	383	<b>29%</b>	61	<b>18%</b>	29	<b>14%</b>	26	<b>13%</b>	25	<b>19%</b>	32	<b>25%</b>
No Follow-up Required	376	<b>28%</b>	104	<b>31%</b>	44	<b>21%</b>	30	<b>15%</b>	14	<b>11%</b>	5	<b>4%</b>
Follow-up Required	565	<b>43%</b>	167	<b>50%</b>	135	<b>65%</b>	140	<b>71%</b>	92	<b>70%</b>	89	<b>71%</b>
Invalidate/Retract	65	<b>5%</b>	21	<b>6%</b>	25	<b>12%</b>	30	<b>15%</b>	28	<b>21%</b>	11	<b>9%</b>

**Table 5**

The 10 MCP regulation citations most frequently cited in Level III Audits during FY 2005 were:

No.	MCP Citation	Citation Description
1	40.0904(2)(a) I	Failure to define the horizontal and vertical extent and concentrations of oil and/or hazardous materials in all evaluated media.
2	40.0926(3)	Failure to determine or estimate an EPC which provides a conservative estimate of the concentrations contacted by a receptor at the Exposure Point over the period of exposure.
3	40.1004	Failure to meet the Performance Standard for an RAO.
4	40.0926(1)	Failure to identify and document an exposure point concentration for each oil and hazardous material in each medium at each exposure point.)
5	40.1003(4)	Failure to identify the location of a site for which a Response Action Outcome applies shall be clearly and accurately identified in the Response Action Outcome Statement. The boundaries of a disposal site or portion of a disposal site for which a Response Action Outcome applies shall be clearly and accurately delineated and provided in documentation submitted with the Response Action Outcome Statement.
6	40.0183(2)	Filing of Downgradient Property Status submittal by parties who have contributed to, or exacerbated the release, or by parties involved in direct or indirect contractual, corporate, or financial relationships excluded in the MCP.
7	40.0835(4)(f)	Failure to provide the information and assessment findings outlined in 310 CMR 40.0835(4) in the Phase II Report including: Nature and Extent of Contamination, including a characterization of the source(s), nature, and vertical and horizontal extent of contamination at the disposal site, presence and distribution of any non-aqueous phase liquids, tabulation of analytical testing results, and, where appropriate, a characterization of background concentrations of oil and/or hazardous material at the disposal site;
8	40.0904	Failure to provide a Site Characterization where the Scope and level of effort of the Site Characterization commensurate with the complexity of the disposal site or sufficient to conduct the Risk Characterization (See also 310 CMR 40.0191).
9	40.0904(2)(c)	Failure to define all existing or potential migration pathways, including, but not limited to, soil, groundwater, surface water, air, sediment and food chain pathways.
10	40.0926(2)	Failure to identify an Exposure Point Concentrations that is determined or estimated in a manner consistent with the type and method of Risk Characterization that is being performed.