

Cleanup Standards Scientific Advisory Board Meeting Minutes
May 6, 2004

CSSAB Members Present:

Kevin Reinert	Mark Urbassik
Craig Robertson	Ronald Buchanan
Annette Guiseppi-Elie	Thomas Yohe
Edward Dobson	William Dreibelbis
Donald Goodman	

Environmental Protection Staff Present:

Thomas Fidler	David Hess
James Shaw	Samuel Fang
Randy Roush	Edgar Shaw
Thomas Leaver	Kurt Klappkowski

Guests Present:

Kenneth Okorn - Earth Tech
Micheal Meloy - Manko, Gold, Katcher & Fox
Colleen Costello - Langan Engineering
Jim Arthur - Environmental Standards
John Clark - Pennsylvania Department of Transportation
Michael P. Raffoni - Gem Chem, Inc.
Dan Snowden - Pennsylvania Department of Transportation
Scott Schalles - Independent Regulatory Review Commission
Jim Smith - Independent Regulatory Review Commission
Kathy Koerber - Environmental Standards, Inc.
Chuck Campbell - Science Applications International Corp.
Stephen Rhoads - PA Environmental Reporter
Ron Weaver - Advantage Environment Company
Derek Tomlinson - Environmental Resources Management, Inc.
Victor Kremeser - Atlantic Richfield Company
Cullen Flanders - Groundwater & Environmental Services, Inc.

Kevin Reinert called the meeting to order at 9:30 a.m. with a quorum of members present. Kevin had a few comments concerning the minutes of the December 10, 2003 meeting and Craig Robertson said he would pass some typographical edits and minor wording changes to the Department. A motion to approve the minutes was made by Ron Buchanan, seconded by Thomas Yohe and approved by the CSSAB nine Cleanup Standards Scientific Advisory Board (CSSAB) members attended the meeting.

Tom Fidler discussed vacancies on the CSSAB. There are currently two vacancies, which are Legislative appointments, and two CSSAB members' terms will soon expire. A number of resumes have been provided and the DEP has been actively pursuing the filling of the vacancies. No appointments have been made to fill the vacancies; Dave Hess indicated that all of the Secretary appointments have been filled. Tom Fidler suggested that CSSAB members raise the issue of the vacancies to the Legislature to get the vacancies filled.

Tom Fidler stated that the former Bureau of Land Recycling and Waste Management Director, Dave Hogeman, has been reassigned to the Bureau of Oil and Gas Management, and that Gayle Leader is the Acting Bureau Director and there will be a person chosen to fill that position until a nationwide search can find a replacement. Tom Fidler informed the CSSAB that the Land Recycling Program has been temporarily reassigned to the Office of Community Revitalization and Local Government Support, and Tom is now reporting to Deputy Secretary Eugene DePasquale. Tom Fidler stated that he expects this change to become permanent but part of that depends on the new Brownfield Action Team (BAT) process and how active we will become on priority projects, and funding for sites will become available around September 2004, with some requests for funding already received. Tom has been asked to lead the action team process. Tom announced that Justina Wasicek and Tom Au would be retiring. Tom Fidler also indicated that the Department is still looking for a funding source for the HSCA Fund that may run out of money within the next year.

Tom Fidler thanked the CSSAB and CSSAB's Fill Subcommittee for their patience and diligence in working on the clean fill policy. Secretary McGinty has decided to take a risk-based approach on clean fill. The Land Recycling Program was assigned the task of finalizing the policy and the general permit. Tom noted some responsibility would move back to the Waste Program and Bill Pounds and his staff are working on best practices manuals with some of the construction trade industries to help with implementation of general permits which come in under the regulated fill process. Jim Shaw has been the point person on Tom's staff.

Jim Shaw gave a slide presentation on the clean fill policy. The clean fill policy replaces the proposed safe fill regulations. The policy establishes two classifications of fill: clean fill and regulated fill and is used to determine whether a material qualifies as clean fill or regulated fill. Determination of what type of fill a material is based on environmental due diligence and a history of the property. Clean fill may be used in an unrestricted manner. If there is evidence of a release of a regulated substance, the material must be tested to determine its classification. The policy establishes how fill may be used. Use of clean fill does not require a permit but must comply with other environmental laws and regulations, such as Chapter 102 and 105. Regulated fill may not be placed on greenfield property not planned for development and may not be placed on residential property. Mark Urbassik asked if lead based paint removal would be required of fill material. Tom Fidler replied that using Best Management Practices, the Department would expect removal of lead based paint. A general permit is not required for remediation activities entirely on an Act 2 site. Craig Robertson asked whether the

clean fill material could be taken to a non-residential property under Act 2 that exceeds the residential limit but not the non-residential limit and be acceptable. The Department response was yes. The definition of background was stated to be the concentration on the receiving property before the beneficial use activity commenced, more like a baseline. material above health based standards must be managed in a way to prevent exposure to that material as part of the construction activity.

Ken Okorn raised the issue of why iron is not in the metals and inorganics table for clean fill. It was suggested that the Department might want to review that numbers are based on a K_d value of zero and see if that is appropriate. Craig Robertson stated that the CSSAB will have to deal with the 190,000 mg/kg number some day, stating he believed there should be no limit of 190,000 mg/kg for iron. Mike Meloy stated iron should be in the Table. Tom Fidler indicated that the Department had focused on the structure and policy in general permit and not the numbers in getting the clean fill policy done. A copy of the fill registration form must be submitted to the municipality. The applicant must also provide proof of a recorded deed notice concerning the fill and its location. In regards to a CSSAB question on applicability to a 100-year floodplain, Tom Fidler said the Department could waive siting limitations and make adjustments based on the priority of the project. There is a requirement for a Pennsylvania Natural Diversity Inventory (PNDI) review for ecological considerations for property greater than one acre in size. The PNDI system is a regulatory requirement in the programs that must be complied with as part of the general permit process. Mike Meloy asked if a brownfield is greater than 10 acres was the Department using the 15-day or 60 day review time period. Tom Fidler stated Secretary McGinty said we would use the 15-day turn around period for all brownfield properties.

Several CSSAB members said that the Department should be commended for the clean fill policy and for using a risk-based approach. Tom Fidler suggested the fill subcommittee be reconstituted after some time to review how things are working and look at issues that may need some additional technical advice and support. Kevin suggested a short meeting in November with the Department to look at clean fill issues and perhaps report at the December meeting. The CSSAB voted to commend the Secretary and the Department and Ron Buchanan will draft a letter from the CSSAB to Secretary McGinty. Tom Fidler asked that the CSSAB add to the letter that the Fill Subcommittee continues to act as a support mechanism.

Tom Fidler gave a slide presentation on the Department Enhancements. Most issues raised were on how the program operates. Key points involved concern about limited HSCA funding and the ability to provide money for assessment and remediation projects. EPA Region 3 is using Pennsylvania's vapor intrusion guidance for non-residential applications. The Rendell Administration has a strong focus on brownfield redevelopment including: The Business in Our Sites program will cover all aspects of redevelopment with one-third being grant money for any aspect for redevelopment with the preference being for loans. The Real Estate Construction Fund also known as Building PA is a money source set aside as a stopgap-funding source used to keep a project moving. Tax Increment Financing (TIF): large cities have been successful in

establishing TIF districts to stimulate redevelopment projects, however, smaller and medium cities have not had the ability to do creative tax work financing and this loan guarantee supplies the support to allow these to do tax increment-financing districts within their jurisdiction. To focus attention on the urban environment, the Administration is establishing Main Street and Elm Street Programs. The Main Street is for downtown restoration and Elm Street is for residential neighborhoods so investors and persons will move back into the urban environment. The water and sewer funding on the ballot was approved, and will likely be administered by DEP or the Department of Community and Economic Development (DCED). This funding source will be for economic development requiring water and sewer capacity. Growing Greener II is in question at this time due to funding; we are looking establishing a fee for toxic releases. The BAT will be involved with high priority projects and will pull together staff to expedite the project and work with the Regional Asst. Directors. A project person will be assigned to a project and become a single contact working with all aspects of the redevelopment.

The EPA Memorandum of Agreement (MOA) signed between EPA and the Department is the first one in the nation that transcends Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and Federal Toxic Substance Control Act (TSCA). It will be a one-cleanup program and the participant will get liability protection. Tom Fidler indicated that Act 2 sites could be considered to be operating under the MOA. Craig Robertson asked if there would be any oversight by EPA. Tom Fidler stated there would be some sites that can't participate and have established a process that would allow operation jointly under both processes; and that EPA may have some concerns about special industrial area sites that may cause for greater requirements. Sites in the Act 2 process can be considered to be operating under the MOA.

Tom Fidler stated that the Growing Greener II would be top priority so that we can stabilize the HSCA fund balance. To continue to support the Program there will be a 10-fold increase in Act 2 fees and this would not put DEP out of line with similar costs in other states. There has been some confusion on deed acknowledgment incorporation and DEP is suggesting that the notice language come in with the final report. DEP will allow some time for the remediator to present the recorded deed.

Concerning the Section 902 waiver, DEP wants to review a cleanup plan and in doing so render authorization under all appropriate programs, and to change the language to incorporate redevelopment. If there is a brownfield property where there is a good idea on how the property is going to be reused, DEP would like the person and the Department to review a cleanup plan for the property that would include all the information needed to authorize activities under Chapter 102, 105, and the NPDES storm water permitting process so when an approval is received it will be for all the programs. DEP is considering giving permit waiver expansion; Tom would like to pursue a change in the language that pertains to permit waivers associated with redevelopment of the property.



In legislation change, the DEP is in the process of using the Pa One-Call System for sites with engineering controls. The definition of this system would be expanded to include sites with engineering controls and Chapter 250 changed to incorporate subscription to the system so that the property owner would be contacted in the case of possible disturbance of the engineering control. DEP will be notified to make sure the cap is restored and maintained, or characterization and restoration is done. Mark Urbassik asked if this would include institutional controls and Tom Fidler said DEP's concern is where excavation may disturb a control and that it may broaden to include an institutional control in the One-Call System (see discussion of UECA below). The property owner will be responsible for the control and DEP field staff will make property visits. Tom Leaver stated that the property owner would be responsible to mark the control locations. In reply to Mike Meloy's question concerning any need for an application for the One-Call System, there will be no application required for involvement in this system. Information will go into a database and the property owner will have to become a PA One-Call System member. Mark Urbassik asked if DEP would be including systems at sites already completed. Tom Fidler stated as part of an EPA grant DEP requested funds to do inspection of all properties that had an approved engineering control as part of the approved remedy. Site visits and inspections will address historic sites and the DEP hopes to capture all the new sites under this program. The proposed bill does not include grandfathered language; existing systems can apply to this program.

The Uniform Environmental Covenants Act (UECA) legislation is a model that attempts to deal with issue of institutional controls subject to risk based cleanups. This allows the DEP to become a signatory to any environmental covenant we become automatically informed about land covenant changes. Tom thought that this and the PA One-Call System legislation would run the session of the Legislature. Tom Yohe asked if there would be an enforcement role for DEP and Kurt Klapkowki said yes. Approved projects are published on the web. There will be a nominal fee for tracking institutional and engineering controls.

In the Low-Risk Sites Program the DEP wants to rely on the professional. It will involve a completeness review to see that the criteria have been met. Concerning the Low-Risk Sites, Craig Robertson asked if 90-day sites can be low-risk sites and was informed that they do not. Tom Fidler stated that the low-risk site process is in place now and that DEP staff still has issues on review. A six-month period will be set in place for DEP staff and clients on the initiation of the low-risk site program. Dave Hess stated that, if a site fails the low-risk criteria, it would go into the normal Act 2 process. Tom Fidler said that the Department of State might not be effective resolving problems found in an audit of low-risk sites, and the DEP is looking at the possibility of barring participation for a client who did poor work would not be allowed to participate for a period of time. Craig Robertson said it is usually not a problem of professional judgment on site investigation, but rather something that should be understood. He requested the DEP to raise issues of generic concern. Tom Fidler said very few issues had been raised to the CSSAB.

Mothballed properties were discussed as those with an environmental concern where the owner has no plans for the property and the area is targeted for redevelopment. One of the roles for enforcement may be to prioritize these mothballed properties; ones that a community would like to see developed. Tom Fidler said mothballed sites could be a role for HSCA. If a community requested the DEP for support we would use our HSCA staff to approach the owner or order to take action on the site; if that does not work DEP can do the work itself and seek cost recovery. Regarding community eminent domain powers communities may be skeptical about taking title because they may not be sure of what the reaction of the agency may be concerning their obligation on the property. This will provide an upfront approach for them to see that the agency is acting as a partner.

Tom Fidler said the DEP would be taking a look at civil penalty policy under the Clean Streams Law (CSL) and other programs to add language about persons who participate in the Land Recycling Program. This would be to resolve liability issues and provide some discretion for people who operate under the voluntary program, so long as good faith is being made to resolve issues related to liability under the other enforcement programs and that discretion will be exercised. If the cleanup stalls, DEP had the authority to require additional work.

The CSL requires a release disclosure on contamination and a possible remediation. This has been a point of contention for property owners in putting properties into the voluntary cleanup program. DEP put a statement on the web that indicates that if someone discovers contamination while moving through the voluntary cleanup program process, a report does not need to be immediately made to the agency. The disclosure is still required under the CSL but that disclosure will be made along with submissions made in characterization data along with how the issues will be resolved under the Land Recycling Program process. The requirement under the CSL is not waived but disclosure can occur as part of the Voluntary Cleanup Program process. This process applies to operation under the Land Recycling Program.

Randy Roush of DEP did a slide presentation on vapor intrusion. Annette Guiseppi-Elie said new attenuation numbers will be coming out after the March 2004 workshop. Results of the workshop concerning sampling outside a building will allow for more comfort about conditions inside a building. Kevin Reinert will be doing an abstract for the 2004 Brownfields Conference to be held in Pittsburgh (Nov. 2004).

Victor Kremeser of Atlantic Richfield gave a slide presentation on LNAPL. Dave Hess requested information on the cut off for effective removal of LNAPL from soil; technical guidance to the DEP concerning what's done under Chapter 245 and what could be done under Act 2. Craig Robertson said SPL should be left in the ground  not affecting anything and only requires removal under the Tank Program. Dave Hess said that the Tank Program looks to Act 2 for guidance and the DEP need more information about what to tell people about LNAPL removal. Colleen Costello said the CSSAB could help in setting numbers. Victor Kremeser of Atlantic Richfield wants technical and practical definition of removal of LNAPL in Pennsylvania. Craig Robertson stated he wanted to be sure it would be used if the CSSAB did some work on the matter. Tom

Fidler told the CSSAB that before taking the matter of LNAPL removal to a CSSAB subcommittee, he would discuss the need for guidance. Craig Robertson will meet with Tom Fidler in a few weeks concerning the LNAPL matter. Derek Tomlinson said there are still DEP case managers who believe LNAPL has to be removed and there are some who still require removal of measurable product. Kevin Reinert said things are getting better and training will smooth things out.

Tom Fidler discussed resorcinol saying that a lot of data is available and it is time to develop a standard. He suggested Sam Fang and Jim Shaw pull the information together and share it with the Standards Subcommittee. Kevin Reinert said the matter fits the Risk Assessment Subcommittee. Tom Fidler said the DEP  a regulation rev  process started and a number of standards will be adjusted. The draft should be proposed to the CSSAB by September, but December is the deadline. Dave Hess stated that the draft on the regulation changes will go to the CSSAB at the September 2004 meeting and that it goes to the EQB in April 2005. December 2004 will be the deadline for comments.

The meeting adjourned at 2:11 p.m.

