

Metachem Task Force Meeting Notes January 31, 2003

Task Force Members Present: Jeff Bross, Bob Chou, John Deming, Dick Fleming, Pam Meitner, Mike Parkowski, Bill Quillen, and Lee Ann Walling, Mike McCabe consultant to the task force and Brian Jefferis intern to the task force

DNREC: Marj Crofts, John Hughes, Steve Karlsen and Lynn Kruger

Others: Shawn Garvin (EPA), Mike Towle (EPA) and Jeff Montgomery (News Journal)

Task Force Members Absent: Shirley Price and Phil Reese

Chairperson Bill Quillen called the meeting to order at 9:25 a.m.

Introductions

Bill Quillen – The Governor asked him to chair the task force. He has twenty years of experience as a state judge, presiding, moving to result and rendering a report expeditiously.

Bob Chou, plant manager, Formosa Plastics – Served as an advisory council member for DNREC and has been in the chemical business since college.

Dick Fleming, Delaware Nature Society – Had a full career in the industry as an industrial chemist for the duPont Company. He has been involved in environmental issues for the past five to seven years.

Lee Ann Walling, special advisor to the Governor and the deputy director of the Delaware Economic Development Office (DEDO) - Business intelligence and industrial accountability are important aspects of her job. She is looking into new ways to offer incentives and reinvestment opportunities to companies who have a presence in Delaware.

John Deming, vice president, CIBA – has thirty-four years experience in the chemical industry and has worked on coastal zone issues. He expressed some frustration concerning this matter and is interested in the answer to the question “how did this happen?”

Mike Parkowski, Attorney in private practice – formerly with the Army Corps of Engineers, deputy director of enforcement for EPA Region III and general council to DNREC. He spent the last thirty years practicing law, a good portion in environmental law. He has worked with most Delaware companies on coastal zone issues.

Jeff Bross, professional engineer and president of Duffield Associates, a geological consulting firm – His technical perspective is utilized as co-chair of the Economic Development Council, and the board of directors of the Committee of 100

Pam Meitner, attorney, duPont Company – Pam has been with the duPont Company for thirty years. She has been called upon to use her expertise to assist with the bad public perception with the state concerning companies operating in Delaware. She has eighteen years of environmental experience and is serving on several committees: the State Emergency Response, Chronic Violator Regulations and Community Involvement Advisory Council (CIAC).

Mike McCabe, consultant to the task force – has thirty years of environmental experience, his experience includes being a senate aide to former Senators Gary Hart and Joe Biden, deputy administrator for the EPA, and now the very important work of the task force.

John Hughes, cabinet secretary for DNREC – spent thirty-two years of his career at DNREC, the last eighteen as division director for the Division of Soil and Water Conservation. John commented that DNREC was incapable of investigating itself because of its deep involvement with Metachem and because of where we are now. We will open our books and resources to this task force. The Governor knew we are not good at analyzing ourselves, so she brought together highly qualified people (a board of luminaries).

Brian Jefferis, intern for DNREC – is a graduate of U of D with a degree in economics and finance. He has a desire to learn more about environmental policy and may pursue a graduate degree in economics.

Steve Karlsen, chief financial officer for DNREC – is also an attorney. Steve is the DNREC contact for the task force. His experience includes CFO and vice president of private and publicly traded companies. He came to DNREC in 1992. He worked closely with former cabinet secretaries in the mid '90's taking a look at the financials for Standard Chlorine. Steve also has experience with leverage buyouts. He urged task force members to contact him if they need documents or information to assist them in their quest to find the answers to the Metachem puzzle.

David Small - John Hughes gave a brief overview of DNREC's deputy secretary who has industrial responsibility. David is a former journalist and is one of two or three highly trusted confidants. He has been given high profile assignments and has a high horse power mind.

Karen Garrison, Administrative Specialist III with DNREC – Karen will be providing support to this task force. She provides support to the deputy secretary, CFO, enforcement coordinator and the community ombudsman and coordinates many department-wide events.

Charge of the Task Force

In the Governor's State of the State address (January 23), she announced the creation of this task force. Our purpose is to review the events that led to the closure of the Metachem facility near Delaware City. The goal of the task force will be to determine what environmental, operational, business and financial factors played a role in the Metachem closure and identify any steps we as a state could take to prevent this situation from occurring again.

Jeff Montgomery's article in the January 31, 2003 edition of the News Journal summarized the "charge" as "An administration panel being formed to investigate the costly collapse of a Delaware City chemical plant." "The group will examine Metachem's closing and abandonment in May and consider ways to prevent similar problems."

This task force will see what lessons can be learned and what institutional approaches the government should be doing.

Proposed Mission Statement

We will not look at other facilities in a specific way. We will develop a process that identifies signals or indicators that the facility is having problems that may result in a shut down. Is there any authority to do this? Did DNREC enforce the federal delegated laws and state laws? The impact of this abandoned plant had an effect on the environment. Are the environmental laws the proper laws to evaluate a facility? Accessing a facility that is facing financial difficulty and being singled out gives the state the ability to provide assistance and avoid this situation. We will not review the remediation process.

Mike McCabe said he has been reviewing documents and interviewing people for the last six weeks. It is a complicated issue and involves many laws and regulations; it also involves relationships with the EPA and a state agency. What happened with Metachem is happening in states across the country the impact of what is done by this task force may have a broad impact. Superfund law handles abandoned property, but the fund is out of money. Special funds from Emergency Response are being used to cleanup Metachem. The expenditure represents one-third of the total Region III EPA budget being spent on this one site.

The task force will look into surety bonds, environmental insurance and other ways to address this issue. Over the next two months members of the task force may be called upon to use their expertise and background to help with specific projects.

What remediation is/has been done? Is there any residual value to the land or is it a wasteland? Is there a way to generalize the approach to remediation? The EPA is applying some of its most innovative approaches including selling off some of the product stored on site. A suggestion was made that the task force look at Metachem from the viewpoint of a Brownfield project.

Proposed Mission Statement

The proposed Mission Statement was discussed and wording updated. (Note: Words taken out has been ~~marked through~~, additional words are in *italics*.)

Determine what environmental, operational, *regulatory* and business & financial factors played a determining role in the Metachem situation;

Identify and ~~implement~~ *recommend* the corrective actions necessary to prevent this situation from happening again; and

Establish a process for identifying other (~~high risk?~~) Delaware industrial facilities which if closed or abandoned according to state and federal bankruptcy laws, ~~would saddle~~ *could impose upon* the State and/or the federal government) ~~with~~ the costs for environmental clean-up.

Scope of Work **does not** include:

Review of other facilities

Assessment of blame, liability, or civil or criminal responsibility vis-à-vis any individual or non-governmental entity

Review of existing remediation at Metachem

➔ Task force members will review the DRAFT of the proposed mission statement and provide recommendations for changes at the next meeting.

Other

Bill Quillen polled members to see if they were interested in a field trip to Metachem. Discussion ensued.

The binder issued to task force members was reviewed.

Questions were posed as to the RCRA (Resources Conservation Recovery Act) status of the Metachem site. Marj Crofts said she would obtain the answers.

Metachem Response Summary

Michael Towle, On-Scene Coordinator, Removal Response Section, Hazardous Site Cleanup Division, Environmental Protection Agency (EPA) Region III, presented “The Standard Chlorine Site (aka Metachem) Response Summary”. He reported that Delaware was part of a pilot program from 1998 -2000. Mike has fifteen years experience with hazardous waste at EPA, ten of those years with Emergency Response. He has experience with sites much larger and more complex than Metachem.

Mike became involved in May 2002 when the plant closed down abruptly and no “critical” employees were retained to maintain and secure the site. EPA had one week to take custody and control of the plant. The wastewater treatment plant operates twenty-four hours a day, seven days a week. OxyChem helped empty the lines and tanks in early May to take back Chlorine. Under Chapter 11, EPA contractors hired existing (qualified) staff in order to keep key staff on site. The wastewater plant is still running to date. The plant processes rain and groundwater on a daily basis. Some tanks were found to be in poor shape and the material was moved from a failing tank to improve the stability of the site. Eighty portable containers held materials for long-term storage. When products are produced, Dioxin and PCB remain after the distillation process.

Forty-three million pounds of chemical inventory remain on site. Thirty-three million of the mixture is intermediate – mixed chlora-benzene. There are not many chlora-benzene users in the world. The product has inherent value, but is more difficult to dispose of. Converting it to liquid form greatly reduces the disposal costs. There are only two incinerators in the world who have the capability of disposing of the chemicals remaining at the abandoned site. Are there other cost-effective ways to remediate?

The community is concerned about the repercussions of chemicals remaining at the site. EPA is updating the community on a regular basis.

There is an ongoing effort to reduce inventory through the sale of product. This method generates revenue as well as getting the hazardous materials off site.

The cost of continuing to maintain and secure the site is \$5 million per year. There is a systematic infusion of chemicals into the soil.

This site experienced two major events. In 1981 5,000 gallons were spilled in 1986 600,000 gallons were spilled. A ground water recovery system was installed in 1986.

Meeting Dates and Agendas

Bill Quillen led a discussion regarding date, time and location of future meetings. It was decided that the meetings will take place on Fridays at 9:30 a.m., with the next meeting (Feb 7) held at DNREC (Dover) at 9:30 a.m. The task force was asked to reserve every Friday morning for the next couple of months for task force meetings.

Mike McCabe reported that he will be interviewing “key players” and some of them will attend task force meetings to allow for two-way dialogue. A representative from AIG Insurance will be available to give specifics about environmental insurance at the February 28th meeting. Mike is attempting to line up Keith Trostle, Environmental Attorney, Dept. of Justice; Nick DiPasquale, former Secretary, DNREC; Christophe Tolou, former Secretary, DNREC; Frank Romanelli an executive with Metachem and Bob Touhey a former executive with Standard Chlorine and former director for the Div. of Air and Waste Management, DNREC (in the mid ‘80’s).

Marj Crofts reported the Resource Conservation Recovery Act (RCRA) is a federal law that covers hazardous waste storage and provides for financial assurances. Metachem was regulated as a generator facility to store chemicals for ninety days. It was not a treatment storage or disposal facility, so no assurances were required by law.

The public version of the ENSR (Environmental Compliance Audit Report for Metachem Products LLC) will be available at the next meeting.

The meeting adjourned at 12:00, noon

Respectfully submitted,

Karen Garrison
Administrative Specialist III, DNREC

The minutes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of Task Force members and the public in supplementing their personal notes and recall of Task Force presentations.