

Metachem Task Force Meeting Notes March 14, 2003

Task Force Members Present: Jeff Bross, John Deming, Dick Fleming, Pam Meitner, Mike Parkowski, Bill Quillen, Shirley Price, Phil Reese, 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, Nancy Marker and Ali Mirzakilili

EPA: Carol Amend, Shawn Garvin, Karen Melvin, Linda Peterson, and Christopher Pilla

Others: Jim Bryant (Peace), Tom Digatti (WDEL News), Dan Erdman (Conestoga-Rovers & Assoc. environmental consulting firm from Exton, PA.), Midge Harmer, Matthew Lintner, Maryanne McGongol (Common Cause of DE), Jeff Montgomery (News Journal), Alan Muller (Green Delaware), and William Prickett (Prickett, Jones Law Office)

Task Force Members Absent: Bob Chou

Chairman Bill Quillen called the meeting to order at 9:30 a.m.

Chairman Quillen reviewed the “ambitious” agenda for the task force. All meetings begin at 9:30 a.m., future meetings are scheduled as follows:

March 21, Dover office. Agenda items include a review of draft portions of the task force report and discussion regarding policy options.

March 28, New Castle office. Chronic violator’s regulations presentation and continued discussion on policy options are agenda items. At 11:15 a.m. public comment and recommendations will take place.

April 4, Dover office. The task force will discuss draft recommendations and the draft final report.

April 11, Dover office. This may be the final meeting of the Governor’s Task Force on Metachem. The task force will conclude its final recommendations and report.

Chairman Quillen welcomed and introduced Matt Lintner, an environmental attorney who practiced in the public and private sector in California. Matt will be assisting the task force.

Task Force Assignment Reports

John Deming reflected on last week's information provided by AIG Insurance. He reported that his company self-insures; and has found AIG to drive a hard bargain. There are only three insurance brokers globally John would recommend for environmental insurance: Marsh, Willis and AON which are all out of New York City.

John has connections with Solutia who was contacted by Metachem before declaring bankruptcy. Solutia was unable to help Metachem.

John reported that Bob Chou is talking with PPG.

DNREC/EPA Overview of Metachem Site and Enforcement History

DNREC, Division of Air and Waste staff, Marj Crofts, Deputy Principal Assistant; Ali Mirzakhali, Administrator of Air Quality; and Nancy Marker, Program Manager for the Solid and Hazardous Waste Branch were present to provide the task force with information and to answer any of their questions.

In 1995, the site was owned and operated by Standard Chlorine; it was purchased by Metachem in 1998.

Metachem was regulated as a large quantity generator under hazardous waste regulations. Two million pounds per year were shipped off site. No financial assurance was required. In the early 1990's there were at least three notices of violation issued. There were countless labeling of drums and housekeeping issues. In 1995, a confidential informer identified tanks believed to contain waste, contrary to the company's information provided to us that it contained product. Prior to this, we felt the company was forthcoming with us. DNREC asked for the removal of tanks and rail cars.

After 1998, yearly inspections were conducted. In the fall of 2000, DNREC entered into negotiations for a Stipulated Final Judgment with Metachem. During negotiations, many more millions of pounds of chemical were discovered on site, much more than anyone thought existed. Delineated within the final judgment, Metachem was to remove all tetras under a seven-year schedule.

Under the Extremely Hazardous Material Law (EHML), chemical inventory must be reported. The information submitted on reports does not always characterize the contents. It is uncertain if the materials on the site qualified under EHML. Do we know what's in our chemical plants?

The Solid and Hazardous Waste Branch is responsible for waste streams. There were 160 tanks of raw material and by-products that did not fall under the branch's authority and could not be touched. Looking at mass balance (not from a regulatory standpoint),

an above the ground storage tank regulation will help. We rely on better program integration of knowledge to determine if it is a raw material, product or hazardous waste.

If a company creates material that doesn't meet standards it incurs disposal fees for the off-spec product. There is a latent risk if the company stores the product to avoid the disposal costs.

Title V Clean Air Act permitted DNREC to hire more engineers which improved the ratio of technical staff to inspection sites. More frequent and better inspections were done well from 1995 on.

Reflecting on what happened let's look at what we did well, what we didn't and what we can do in the future. In the mid 90's a more detailed review of procedures, increasing technical sight, better technical review of permits and reporting were all implemented with funding provided through Title V 1990 Clean Air Act Amendment. The amendment provided oversight for all major resources. Fees were generated when the amendment was implemented in 1993 with fees due in 1996. Resource assessment, enforcement, and inspections were affected. Before implementation we had a staff of thirty, after implementation staffing increased to eighty-eight. The transition for the implementation of Title V was gradual. A final Title V permit was not issued to Metachem.

What we did wrong – We were distracted by the emergencies. The focus changed, we were responding to other situations and putting Metachem on the back burner. We relied on company representations too much, and showed too much patience by granting extensions. We considered the economic aspects a bit too much, the economic discussion fell into play.

What we have to do – balance workload, environment requirements, bring companies into compliance, ensure compliance and be in full enforcement mode.

What should we do differently? – Don't rely on setting standards and hope that companies comply. Continue to enhance technical review and oversight, verify and scrutinize engineering claims.

No one thought the stack tests at Metachem would fail. A number of environmental compliance issues were air related.

In 1995 or 1996 Metachem claimed economic hardship when it was told to improve the process, permit, etc. This was brought up in court, but the financial info was given to DNREC voluntarily before the court requested Metachem to supply it.

Phil Reese said that for at least two years prior to the shut down, Metachem was considered by Conectiv as a credit risk for non-payment of electricity. Financial indicators are important. We're relying too much on company representation. Any remedy without increasing staffing?

Ali suggested we work on retention and recruitment to preserve the level of knowledge within the department. Having access to external (expert) resources would assist DNREC in carrying out the permitting and inspection, process. DNREC was too distracted; there are gaps in our activities. Resources were identified flags. Perhaps a SWAT/Strike team approach is viable.

John Hughes said he can't see where the Department could have done any better even if it had perfect vision. Business knowledge is an important aspect, would a Delaware Economic Development Office (DED0) bail-out have helped Metachem? How do you prevent a business from failing?

DNREC structured a compliance plan so Metachem could continue to operate. The Consent Decree was issued with flexibility to allow the company to work it out. The best solution was to establish a compliance assistance vehicle so we can turn it around and continue operations.

EPA Region III staff came to answer questions posted by the task force - Carol Amend, Chief, RCRA Compliance and Enforcement; Chris Pilla, Chief, Air Enforcement Branch, Air Protection Division; Shawn Garvin, State and Congressional Liaison; Karen Melvin Chief, Enforcement and Compliance Assistance Branch, Office of Enforcement, Compliance and Environmental Justice; and Linda Peterson, Environmental Engineer, Air Protection Division.

Collaboratively and retrospectively, EPA delegated the authority to the State and has no misgivings about their action. Metachem was a Superfund site under remediation. Two spills triggered that process under Standard Chlorine's ownership. In January 2002, it became apparent that the innovative technology Metachem developed was not going to work. At that time, EPA took on the responsibility for cost recovery and soil remediation. EPA made many claims in bankruptcy court against Metachem. In a Superfund site, other parties can be sought for cost recovery as a remedy for EPA for ground water and soil remediation.

There were no significant assets in the Godel shell corporation owned by the Weiner family. A court order is required in order to "pierce the corporate veil" and go after officers of the corporation who "cashed in" before the company closed down.

The News Journal ran a story stating the EPA received an increase of five to sixteen million dollars in funding. An EPA Removal Action Memo asked for \$5.8 million. Funding was expected to increase. This represents greater involvement in the remediation by EPA.

The decontamination process is being finished. All boundaries of the site are NPL listed. The whole site is eligible for Superfund benefits. The State does not pay for emergency cleanup, but it does pay for security, utilities, and small containers at the site. The state has spent over one million dollars in HSCA funds.

If this were a site without a Superfund component, the state would be responsible for the entire clean up. Through the Consent Decree, EPA agreed to do other non-delegated components. Dioxin and furon issues were cooperatively solved.

DNREC does multi-media inspections from a “holistic” approach. Environmental Management Systems help resolve violations. The state has draft legislation which met initial resistance due to budgetary restraints. It costs a lot less to prevent than to respond.

Ablex and Stern steel was shut down by DNREC for excessive violations. The company was presented with a three-stage shut down proposal.

Did DNREC have an opportunity to review the Due Diligence Report? Ali responded that he thought the report was poorly done. He was not contacted or called by Metachem and was not involved at the facility at that time. Nancy said the report contained no surprises.

No states in EPA Region III review the transfer of permits when there is a change in ownership. The state has no leverage to stop the transfer of permits. Under Delaware’s Coastal Zone Act, a property located in the Coastal Zone must notify the State of the transfer which must be approved prior to the transfer.

Was EPA involved in the air stack test and permitting requirements? EPA was most likely putting pressure on the state. Standard Chlorine and Metachem challenged the technical protocols. EPA has a technician that could be “lent” to DNREC. Linda Peterson (Environmental Engineer for EPA) was hired for her expertise in stack testing.

There is a High Priorities Violations list. The state responds with enforcement actions and tries to solve the violation. Violations of HON regulations are issued by the EPA.

In 1992, a citizen’s coalition group wrote to the EPA with their concerns about the site. Emission problems and toxic substances were cited as their concerns.

Product testing confirmed the level emitted from the site was in violation. The site was monitored to see if levels were above the standards. Dioxins from the facility were in the waste stream. Ali said he looked at one process that contains dioxins, but the product showed small quantities. Ali said he never felt political pressure, and used his own judgment. Stack tests are expensive and are not required in the regulations. There was talk about revoking permits.

Marj suggested the task force obtain the Administrative Order from the Attorney General’s office.

Enforcement negotiations are critical to the enforcement package that allows negotiations.

Several audience members asked to be recognized in order to make comments. Chairman Quillen acknowledged Mr. William Prickett who spoke to the importance of finding the solution to keeping companies like Metachem from bankruptcy.

Environmental, enforcement and compliance issues must be identified and later it can be determined what may have been done better.

A letter was sent from the cabinet secretary to the EPA administrator. The EPA is not in a position to offer recommendations.

Chairman Quillen reminded the public that public comment would be received by the task force as part of their March 28 agenda.

Meeting Information

The next meeting will be March 21 in the Dover office to review draft portions of the task force report and begin discussing policy options. The March 28 meeting will be in New Castle, the April 4 and 11 meetings will be in Dover. Public comment and recommendations will be received at 11:15 a.m. on March 28.

Task Force Website

The web site for the Governor's Task Force on Metachem is up. This website is constantly evolving. Please check back often for updates.

<http://www.dnrec.state.de.us/DNREC2000/Divisions/AWM/do/metachemtaskforce.asp>

Chairman Quillen thanked DNREC and EPA staff for taking time from their busy schedule to present information with the task force.

The meeting adjourned at 11:55 p.m.

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.