

## **Metachem Task Force Meeting Notes March 7, 2003**

Task Force Members Present: Jeff Bross, Bob Chou, 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: John Hughes, Steve Karlsen, Liz LaSorte

Others: Jim Bryant, Shawn Garvin (EPA), Marilyn Harmer, Jennifer Klecan (Office of the Controller General), Joe Skurla (duPont), Jeff Montgomery (News Journal), Alan Muller (Green Delaware)

Task Force Members Absent: Mike Parkowski

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

Chairman Quillen received a call from State Representative Joe DiPinto to discuss the Delaware Easy Group. This is a group of retired technical individuals who have collectively offered their assistance to the task force.

Chairman Quillen welcomed task force member Phil Reese, and thanked him for his interest and service to the task force.

### **Task Force Assignments**

In preparation for recommendations for the task force report, Chairman Quillen asked task force members to begin on the following:

Mike Parkowski and Pam Meitner – take the lead on environmental laws

Phil Reese and Steve Karlsen – business and bankruptcy issues

Bob Chou and John Deming – total environmental management systems (emphasis on small to mid-size companies).

Lee Ann Walling – What can DEDO do to help out?

Jeff Bross and Dick Fleming – insurance

Shirley Price – legislature and Governor's office

**Next Meeting**

The next meeting will be March 14 at Lukens Drive, DNREC/EPA overview of Metachem site and enforcement history. March 28, the task force will begin discussing possible solutions and recommendations.

**Task Force Business**

A fact sheet entitled “Spill Compensation and Control Tax (Act) was passed out. Chairman Quillen thanked Brian Jefferis for his work compiling this fact sheet together. Mike McCabe said that this is the first fact sheet. The information in the fact sheets will help the task force gather the best solutions. Other fact sheets will include bankruptcy laws as they relate to state cleanup claims. Brian will summarize the information for each fact sheet.

Mike McCabe reported that the Metachem due diligence report is no longer privileged under attorney/client. Charter Oaks has agreed to release it. Summary copies will be mailed to task force members next week.

**Kevin Matthews, AIG Insurance**

Kevin Matthews, Director of Association and Government Relations for AIG Environmental presented information on his company, how its insurance policies have helped other states and how it can help Delaware. (The presentation will be posted on DNREC’s website next week.)

Kevin reported that he has worked extensively on Superfund issues and commended the Governor for appointing the task force. Bankruptcy is a real problem. Other states are experiencing the same issues. To his knowledge, Delaware is the only state to be proactive.

AIG often insures companies who are having problems, and has about 70% share of the environmental insurance market. Their offices are staffed with environmental attorneys and engineers and staff with other technical disciplines. AIG is an “AAA” rated company that is fiscally sound. Only one out of ten insurance companies are “AAA” rated.

AIG’s major competitors are Zerick, Chubb, Excel and Liberty. Five years ago, AIG held the same market share (70%) as it does today. Chubb is double A rated, the other three A rated, compared with AIG’s triple A rating.

In 1980 general liability insurance ceased covering environmental liabilities as part of the coverage. When environmental harm was excluded, AIG began to offer coverage primarily for landfills. 99.5% of all claims filed with AIG are settled without litigation. AIG has paid out more in claims in fiscal year 2001 than the EPA spent on Superfund

sites for the same period of time. The insurance policies issued by AIG cover financial institutions, clean up, consultants and non-environmental contractors. Sites insured include brownfields, Underground Storage Tanks, environmental surety and clean up associated with RCRA.

AIG has environmental insurance for acquisitions and mergers which includes ground water and soil contamination. It protects the seller and buyer from all disclosed problems and from future pollution legal liability (PLL). PLL is not covered by general liability. AIG offers “menu driven” insurance, company’s pay for the coverage they need. The price is driven by the amount of potential liability as indicated in the due diligence report completed by AIG. The coverage is initiated by exceedences of government standards and does not require government interaction (self-reporting) for the policy to be activated. The policy is also adjusted to include changes in governmental standards.

Policies also include third-party; off-site clean up due to migration of pollutants. Generally the migration is ground water, but sometimes it is soil migration. The insurance policies can identify the government as the third party.

Environmental insurance offered through AIG also covers material sent to a landfill. When the landfill closes AIG can cover all parties who send material to the landfill. In the event materials become a source of contamination, those parties who obtained covered are released from pollution legal liability and AIG takes over the responsibility for clean up.

Coverage can also be obtained for business interruption, shut down and evacuation. It covers delays in clean up and subsequent development. This type of policy can be used as a substitute for financial assurance.

Currently, bonding is no longer an option. The environmental bond market collapsed in the wake of the fiscal scandals such as Enron and WorldCom. Reclamation bonds may be available in the next three to five years.

Premiums for environmental insurance policies average five to ten percent of total coverage. For example, a policy with one million dollars in limits would be accessed premiums of between fifty to one hundred thousand dollars for five years of coverage. A non-characterized site may pay more than ten percent in premiums.

All insured sites are monitored by AIG. Tier 2/emergency response service is part of the coverage. This helps get loss and exposure to a minimum and the financial and environmental risks are taken by AIG. Five percent of clients use this service, but it is an expensive and a relatively new product. Many larger companies self-insure. Beginning in 1995, the price of the product dropped and broader coverage was added.

Generally, the coverage limit is accessed by the insurance broker or internal risk manager for the potential insurer.

Clean up cost cap insurance helps with liability management because coverage begins on “day one”. This policy is generally used in closure, post-closure or Superfund sites. AIG will give a release of liability to the owner.

The Metachem site was a known Superfund site with ground water problems.

AIG is the largest underwriter of Underground Storage Tank (UST) insurance. At one time, MTBE was an unknown risk. AIG now covers current companies for the MTBE liability even if it was not a known risk at the time the insurance coverage was obtained.

The Environmental Protection Program (EPP) covers large and long term environmental liabilities. It provides funding for financial disclosure, financial assurance, and ability to do exit strategy. It replaces escrow accounts, remedial action trusts and reserves. This type of coverage can benefit Delaware with financial assurance that monies will be available for future activities that are either required by a governmental agency, needed for long term O&M and Superfund litigation resolution. This is an incentive for settlement. The EPP also benefits with long term and high limits, another set of “engineering eyes”, potential tax benefits for private parties, liability transfers and buy-outs and protection against bankruptcy.

AIG is the only endorsed carrier for environmental “brownfields” insurance in the State of Massachusetts. In October 1999, and for the remainder of the calendar year, AIG insured four sites, in 2000 twenty-eight, in 2001 thirty-two and 2002 seventy-nine. The state of Massachusetts paid three and a half million dollars in insurance subsidies for brownfield redevelopment. In return, \$160 million was spent in redevelopment, \$60 in clean up which resulted in the creation of 15,000 new jobs, 140 sites cleaned up and a positive infusion into the state’s economy.

AIG was the endorsed carrier and had no competition in the State of Massachusetts, that scenario drove rates down. Due diligence was done on each site by AIG and a release of pollution legal liability issued.

The state of Massachusetts insures the brownfield developer, the state of Wisconsin, the state. In Wisconsin, the developer pays for the source of containments to be removed and certified by the state that the site is “clean”. Then the developer pays money to the state who purchases an AIG insurance policy and obtains a release from pollution legal liability.

The states of North Carolina and Arkansas have had problems with bankruptcies and are models the task force can look at.

Superfund has some significant financial issues. It could take up to ten years for some sites to reach priority status with EPA.

Small to mid-size companies cannot afford coverage.

In Delaware, HSCA is designed to take care of state hazardous waste sites. HSCA is funded by oil taxes. Delaware is self-insured. Massachusetts subsidized premiums to leverage the clean up. HSCA funds can be used to purchase the policy. For example \$24 million in coverage becomes \$240 million when AIG takes the risk. Annually, \$4 to \$4.5 million is added to the HSCA fund. Currently, there is \$22 million in the fund. HSCA funds cover sites ineligible for Superfund designation. DNREC's cabinet secretary decides what sites are designated to receive HSCA funds. The primary source of HSCA funds is Motiva.

AIG has taken over Florida's Underground Storage Tank funds and takes care of all clean up claims.

EPA's representative, Shawn Garvin, announced EPA had raised its limits on emergency response clean-up at the site from \$5.8 to \$16.9 million. EPA is continuing to weigh, evaluate and look at options.

#### **Task Force Website**

Mike McCabe informed the task force that a website for the task force and the public is scheduled to up and running sometime next week.

#### **Other Issues**

Chairman Quillen recognized Alan Muller (Green Delaware). Mr. Muller expressed his general concern that public comment was not an item on the task force's agenda. Chairman Quillen stated that the public would have the opportunity to comment at a later meeting, and Mr. Muller would be notified when public comment is scheduled on the agenda.

Jim Bryant shared that the ATSDR will be meeting on Wednesday at 1:30 p.m. at the Delaware City Fire Hall to discuss the health evaluation and effects of Metachem. He invited the task force to attend.

Chairman Quillen thanked Kevin Matthews for his informative presentation.

**The meeting adjourned at 12:05 p.m.**

Respectfully submitted,

Karen Garrison  
Administrative Specialist III, DNREC

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*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.*