

The Governor's Task Force on State Exposure to Hazardous Waste Clean-up Liability: Lessons from Metachem

The proposed task force to examine the clean-up liability left from the Metachem bankruptcy offers the State of Delaware an opportunity to develop processes and policies to mitigate or avoid similar liabilities in the future. The need for this examination with recommendations to the Governor becomes even more urgent in light of current state budget shortfalls and insufficient funds in the Federal Superfund account. The cost of clean up is estimated to be at least \$70 million with informed observers saying the figure is low.

The potential for significant water, air and soil pollution from the Metachem site presents a real threat if the facility is forced into cold shutdown. Currently DNREC and EPA are maintaining the plant's basic operating system in order to avoid failure of protective systems designed to contain hazardous chemicals within the facility. The annual cost of keeping the plant operating is \$5 million paid out of the EPA Region 3 emergency response account. This amounts to one-third of the total annual emergency response fund for all Region 3 states.

Apart from the obvious benefits to Delaware in conducting an investigation into this problem, the findings have national implications as well. A number of states are facing similar problems where bankrupt corporations have left polluted facilities behind for the state to clean up. States are also facing the worst budget situation in decades with few resources available to pay for costly clean-up procedures. With Superfund no longer available to assume the financial burden, EPA will have to go to Congress to get funds out of general appropriations to pay for site remediation. Because of federal budget deficits, funds to pay for site clean-ups will have to compete with all other budget priorities from Defense to education. In addition, the choice of which sites receive funding becomes a selection based on politics, not objective risk criteria.

Already, this process has dramatically cut Superfund and National Priorities List clean-ups. During the Clinton years, 75-80 clean-ups were completed each year. This year only 35 sites will be cleaned up. There are

more than 1200 sites in line to be cleaned up nationwide. Metachem has not even been added to the list.

The Task Force will examine the conditions that led to the Metachem liability and whether it could have been avoided. It will identify and propose corrective actions necessary to prevent this situation from happening again. And it will establish a process for identifying other high risk Delaware industrial facilities which if closed or abandoned would leave the State (and/or the federal government) with the costs for environmental clean-up.

As part of it's charge, the Task Force will explore market-based financial vehicles that might be adopted to protect the state from fiscal liability in the future. This includes, but is not limited to, environmental bonding similar to what is used for mining reclamation and innovative environmental insurance instruments. As stated earlier, Task Force findings and recommendations could benefit other states facing similar problems.

The Task Force faces a daunting task on a short timeline, but the long and short-term benefits to Delaware and other states can be significant.

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