

Site Remediation Program Reform  
Stakeholders Meeting  
April 9, 2007

Attendance

Jorge Berkowitz	Langan Engineering	Christian Bollwage	Mayor of Elizabeth (Telephone)
David Brogan	NJ Business & Industry Association	Eric DeGesero	Fuel Merchant Association of NJ
Joe DellaFave	Ironbound Community Corp.	Michael Egenton	NJ Chamber of Commerce
Kevil Duhon	Senate Democratic Office	John Hutchison	Senate Majority Office
Glenn Gilmore	Mayor of Hamilton	Douglas Palmer	Mayor of Trenton (Telephone)
Kate McDonnell	Assembly Majority Office	Tony Russo	NJ Chemistry Council
Andrew Robins	NJ Builders Associations	Thea Sheridan	Assembly Majority Office
Steven Senior	Riker, Danzig	Sheryl Telford	Dupont Corporation
Mark Smith	Smith Pizzutillo, LLC	Neil Yoskin	Sokol Behot & Fiorenzo
Jeff Tittel	Sierra Club NJ Chapter		

Department of Environmental Protection Attendance

Lisa Jackson, Commissioner	Tom Cozzi, Site Remediation
Ken Kloo, Site Remediation	Wayne Howitz, Site Remediation
Ed Putnam, Site Remediation	Judy Shaw, Office of Community Relations
Mary Kelvy, Recorder	

LISA J., Commissioner, DEP made opening comments:

- Thank you for coming. I'm glad to see the environmental community back at meetings.
- Final product resulting from these Stakeholder Meetings is a White Paper that will contain various topics.
- This meeting will be about municipalities' issues.
- The Mayor of Hamilton, Glen Gilmore, is present at the meeting. A conference call from the Mayor of Trenton, Douglas Palmer and the Mayor of Elizabeth, Christian Bollwage will join us to share their thoughts on Site Remediation.
- Do we need legislation to create better inspection partnerships with local health officers, CEHA and DEP? We need tighter coordination and tighter enforcement powers between municipality and DEP when local redevelopment occurs. Sites need to be reviewed to ensure compliance with remediation obligations.
- TOM C. reviewed the topics of the prior meetings:
  1. First meeting went over how the process will work and everyone got to know each other. Went over recommendations and requirements.
  2. Second meeting reviewed the Division of Site Remediation's caseload. Handouts were given out. Total cases 18,729; MOAs 6,400 (home owners, developers and other); 11,240 regulatory cases (ISRA, UST, Legislative cases, BOMM, etc.)

- GLENN G. - Interaction between local health departments and the State is needed when dealing with enforcement. There needs to be coordination involving the redevelopment law.
- DEP has more resources than local government, but DEP needs more staff.
- If something impacts the health of a community and is considered critical, the Chief Executive of the municipality should be notified.
- Communication and prioritizing is what is needed when dealing with municipalities. Is legislation needed to accomplish this? DEP needs more manpower and resources to accomplish this.
- Challenges increase with communication when dealing with redevelopment of a site vs. a piece of land that is vacant.
- Redevelopment of a Brownfield site is important to make this known to the citizens. DEP needs to do inspections. They have more knowledge of different contaminants, than local municipalities.
- Cleanup standards and timely inspections would increase public confidence and trust.
- A common interest with Washington Township and all municipalities is that everyone wants smart growth. Higher density growth should be encouraged but yet it's not working.
- School funding and property taxes are issues of concern.
- Misperception that DEP has more resources than it actually has. Municipalities have a shared interest to build up DEP staff.
- Hamilton Township is the largest suburban township with over 90,000 residents. Environmental disasters locally frighten the community and DEP staff has helped us through some difficult challenges.
- Communication with municipalities is a serious problem. We have learned that there has been DEP communication with the Health Officers, but DEP has not been sending it to the Chief Executive of the municipality. This may confuse the health officer, but the Mayor sees that there are serious impacts on the health of the community.
- Do the inspections when they are needed. Health Departments do not have the background, so we need DEP to come and look at these sites and tell us that we have done this correctly according to regulations.
- CHRIS B. – some other departments do not fast track (ex. DOT) for the BDA. Departments need to work with DEP more efficiently.
- Has DEP looked into accepting a fee for faster review, once the city gets the okay? Site Remediation can be reimbursed. Funding for the NJRA is a great program but woefully underfunded – not enough to get sites in. Banks will not fund until NFA letters are issued.
- Cost cap insurance for twenty years could be very expensive. Length of time for the BDA expediting purchase, the city pays the cost of a case manager and could expedite review.
- DOUG P. – repeat of the same issues that Chris Bollwage raised. Flood information, working with DOT, working with the school construction problem. DEP helps cities with remediation problems and knows the history of the city. As long as the environment is clean and it stays this way you can do it.
- LISA J. – What is it you want from DEP?
  1. What are the clean up levels?
  2. Explain the levels of clean up?
  3. Better partnership with local municipalities to improve.

4. More field oversight.
5. Better communication overall.

- DEP's attitude is "what can they do to help to make sure the environment is clean?" What about the clean up side? How clean is clean?
- Bergen Record [article says we shouldn't] we build residential on top of landfills? Historic fill issues, concerns about drinking water, and the things we don't know should development happen? Clean up levels? Once we approve a cleanup plan, are there enough resources to complete it.
- CHRIS B. – Never listen to the Bergen Record. Jersey Gardens Mall would never have built if we listened to the Bergen Record. Policies based on science. Machines are stronger than they were five years ago and maybe the science can tell us that.
- DOUG P. – How clean does a site have to be to build a school on it? How clean does a site have to be to build residential? I don't know what science can do about it.
- GLEN G. – A blatant example is WR Grace. A charge of fraud by the environmental firm on the part of the consultant. Make sure DEP has the resources to do its work. We can delegate work but not the responsibility. Then do they want to take the risk? Test more regularly and audit sites more regularly. Pay in escrow to alleviate expenses. Developers to contribute and provide resources to fast track projects and reviews.
- Chronologies showing that the land and water is constantly clean, but auditing still needs to be done.
- Follow up on Chris Bollwage is to help with the crunch of resources, pay into an escrow, integrity of experts, but we need to figure a way legislatively to put together an opportunity to put into an impact fee to fund extra help.
- JORGE B. – Making sure our decisions are scientific based. We need to establish a scientific principle to show consistency to the public. Irrespective of the past use, if we follow principles of what's safe and not safe, we have a foundation. Carve outs are a problem. Home yes but school no?
- JEFF T. – Molecular biology background, you have to look at especially vulnerable population, look at chromium 240 now it's 20 from the research I've seen. Economic consequences can't hide behind science. Policies need to be set and followed. Clean ups need to be remedied and institutional controls need to be set. What kinds of institutional controls, if you have high levels of contamination, you probably shouldn't cap. You need to build in a degree of safety/margins of safety.
- JORGE B. – Don't use science to make decisions. Mayor of the town should have the final decision.
- GLEN G. – We have a federal administration that says the science [doesn't prove] global warming; there are no sinners and no saints. I have to bring economic growth and I've preserved open space and more than any other administration. But I think it makes overwhelming good sense to bring the development to a Brownfield site, but let's do a thorough study and audited by everyone not just DEP but the public and the environmental community. It is a dangerous game when it comes to how we view science and let's look for some common ground. Science moves us forward do not hide behind it. DEP and a public environmental commission should audit sites.
- Agreement bet between Glen and Jeff that there is a faction that can dismiss the science based on their credentials.
- LISA J. – As scientists, there is a level of the unknown. Engineered solutions [can] fail and time and uncertainty are major issues. New contaminants keep coming up and how you mitigate against uncertainty, cumulative risk/precautionary principle, especially when you are talking about residential property. I don't think it was the intent of our framers to

put the risk back on the municipality. If it's a parking lot, it is no biggie but if there is methane or VI this is a biggie. When dealing with science there are always levels of the unknown. DEP has to evaluate more:

1. Cumulative risk
2. Precautionary principle
3. Engineering risks & failures

Who bears these risks? Someone needs to bear the risk if the contamination is not gone and how far can DEP go? Developers say we need some certainty because we can't go forward.

- TOM C. – Because of concerns of remedy failure, the question is what levels are acceptable under a capping scenario? If it's not impacting ground water and it is a human health exposure issue, we don't feel high levels are safe to leave under a cap.
- GLEN G. – I grew up in Manville. All the homes across the street are down because there was a creosote factory underneath. This happened after the kids are all grown up; this is where we played hide and seek. Do you want your family to live next door to this? Keep it where it is with deed restrictions, if there is a risk; we need to have it removed. Risk of known substance in a capped area, risk of leakage; vapors contaminating groundwater, these are different stories.
- JEFF T – Science can be subjective and there is a balance between the science, policy and risk. Depends on what you want to build.
- JOE – Ironbound site has loads and loads of caps. What's the cumulative effect? The long-term maintenance issue and where residential development has happened and people who don't speak English are growing vegetables in their backyard. Lots of other factors; baseline with the science and other public policy issues. Demands a strong public participation process. Case by case basis. Cumulative effect in the community.
- There are cases outside this conversation where normal development applications are made and they don't trigger any of this. You would think certain things like zoning change from industrial to residential but there is nothing triggering a review.
- GLEN G. – We need to have a system that anyone of us can easily access a list of the capped sites, by township, the maintenance schedule of these sites. I don't know what the maintenance involves and I want to know when it was capped and presumably what's there and who set aside an escrow to manage it over time. Escrow money [can be used] to maintain it.
- TOM C. – What is left behind on deed notice?
- SHERYL T. – Standards across the board approach for residential vs. park vs. school. Exposure of risk scenario, based on what is being built. Structure process approach. We often talk about what are the right standards. Site specific way, whether it's commercial, park, school, residential, raises different risk and exposure scenarios based on substances on a case by case basis. It's not consistent with current review and it is a one size fits all. My position is that for certain sites; we need to take a step back and incorporate community concerns but with take more resources.
- Engineering and institutional controls – I don't think we will ever see a situation where we aren't using engineering and institutional controls. But there is a lot more we can do to beef up the program. Whether it is a permit system where one individual is responsible for accountability of the caps resulting in a statewide registry with corresponding auditing/accountability.
- Vapor intrusion is another issue. How are we incorporating that into BOCA codes [national building codes of Building Officers and Code Administrators] and what about requiring vapor barriers? Maybe builders need to install vapor barriers. DuPont just

amended their company policy to put the vapor barrier in upfront as part of the construction.

- TOM C. – When you have 200 plus managers how do we ensure we are applying things in the same way?
- ANDY R. – Predictability; Our members need to know where to build and what standards to follow. We are getting inconsistent direction from the State. If there were rules that indicated where we can build, the market can determine if that makes sense and our members can make decisions. We need to know what the State wants. The State wants housing, the State wants redevelopment of Brownfield, but the direction we are getting does not allow for predictability. Practically each day we are hearing about another layer of limitations on where one can build, for example, we are hearing about limitations on building in sewer service areas such as Newark and Elizabeth, we need more predictability for all programs including SRP. If we are to redevelop Brownfield, I think it is imprudent to stop using engineering controls. We should discuss auditing, perhaps follow-up by permit, and steps to improve transparency. There may be cases where it may be better not to use controls. If the permit idea put forward will increase transparency and accountability while still allowing for the use of controls, then we should explore that further. As for using science, I don't know where you come out if you don't. Even now it takes six months or more to get a case manager or to have an RAR approved. How much longer will it take if reviews aren't based on science? We need the science to be the controlling factor.
- JEFF T. – I'll use chromium as an example the policy of 200 versus risk based at 20. The background level is 14 so if 6 is health based; you can't excavate the whole city.
- TOM C. – I'm hearing two things; First, how do we assure the public that engineering controls are protective and second we have talked about CEHAs or other agencies to do the inspections.
- GLEN G. – If you make the information readily accessible, where they are and when they were capped. Maintenance schedule then communities will join in the vigilance of monitoring it. If you don't have the resources, rest assured that when we see that there is a cap that hasn't been maintained there will be a call for it to be addressed.
- TOM C. – Science and geologists and other scientists who will not agree on the delineation.
- TONY R. – what about the views of mayor about eminent domain to take over a cleanup to put it back into good use.
- GLEN G. – I know I have an absentee owner who doesn't see the return on the cleanup yet the risk of me trying to undertake that task is too timely and costly. It's too Olympian for me to make on – I would hope that the state, environmentalists and the building community collaborate on a plan. The applications of eminent domain, but the challenge is daunting and I prefer not to come to that point.
- JEFF T. – who pays the difference? [What if] the RP wants to clean it up to industrial but the town wants residential?
- Rezoning decisions; the client/members may feel they want to clean up to a lesser level.
- NEIL Y. – Financial assurances and engineering controls and comfort. There is no reason DEP can't have a registry of every site with a cap or engineering/institutional control. There is not capital fund to do that to maintain the cap if it fails. It is very typical that homeowners associations become responsible. That is relatively easy to solve.
- NEIL Y. – Second we try to extract policy out of examples, like a military model; every time a ship touches bottom, there is group formed to assess what went wrong. I don't think anyone has investigated what went wrong at Kiddie College, MLK, and WR Grace. At the end of it there was a paperwork issue; had the paperwork been done properly, it

would have saved a \$10 million site. JEFF interjected a comment about what was brought onto the site and NEIL agreed. Military model adopted. Boards of Engineers understanding about what went wrong on the above cases.

- If enough is known about the geochemistry and the impact pathways, it would not matter what the volume of material is and the Department should set the level if there are unknowns. The State won't proceed nor should it. If the public says how you can leave that and there is an answer, then explain it. If unknown contaminants exist you cannot proceed.
- TOM C. - Clarifying acute levels of contaminants and doing additional studies if needed. If we have those kinds of levels, do we feel safe capping? [We need to] deal with the nature of the contaminant, not the volume of it.
- JEFF T. – Do you remove the hotspots?
- JORGE B. – How do you calculate a hotspot?
- ERIC D. – Most of the focus is on engineering control and the cap. CEAs when groundwater is involved haven't gotten as much attention. We do the monitoring, process when delineating groundwater and into a feedback loop never get to closure delineation, global engineering and institutional control not just one fix. [It gets into a] "He-says-she-says" [situation] about the delineation.
- TOM C. – In depth on the website.
- MARK – Tactical to strategic (we need the subgroups to tease these out). Legislators think strategic and get down to tactical. Trying to internalize Brownfield redevelopment property that isn't being used on tax roles and productive use because the mayors would like to redevelop the state needs someone to do the cleanup, which isn't happening because a) no RP or b) not interested.
- It fits in with smart growth one of the things the legislature has to grapple with is notification goes to Jeff's point when you start talking about the decision locally about zoning. The real issue is what people think is the right amount of notification and participation. So, when a municipality accepts a remediation, they understand and see what they are agreeing to; a protocol for how to do it the remedy issue the standard science issue will be incorporated but the issue of trying to assure the public that the remedy is understandable and doesn't create confusion.
- TOM C. – What can we do about predictability? What can we do to make more predictable when handling municipal issues? What can we do when dealing with developers?
- JEFF T. – If someone is willing to clean it up to a relatively clean standard removing hot spots and BAT be able to go through the process quicker so a town can use this through an area wide plan. Clean up to some standard and remove hot spots. Better clean up more transparent. Remediation based on end use.
- TONY R. – Based on what?
- JEFF T. - YES
- TONY R. - What is a hotspot?
- JEFF T. – Identify and then remove those spots, clean down to 20 feet put in a barrier and you will be well above the risk.
- ANDY R. – What does the not gold standard look like?
- JEFF T. – Go back and forth? Law allows you to pursue.
- JORGE B. – CEHA (Community Environmental Health Act) has a lot of promise but it is going to come with a price tag. CEHA [wants] to reduce what if an engineering control was to fail and we need an insurance pool 10-year buy out and the cap and the Department may have to buy the next ten years?

- The law says 10 to the minus 6. There are programs that are inconsistent; radon is ten to the negative 2. If we looked at the risks associated with Air Pollution, we would put people in Warren and Sussex County --the absolute opposite of the concepts of smart growth because there is a distinct lack of infrastructure there. So we need to meld our policies with the concept of relative risks and their acceptability. Risk assessment is a tool, not an answer.
- TOM C. – Future discussion on Environmental Insurance will be dealt with at the May 4<sup>th</sup> meeting and Cumulative Risks will be discussed at the May 17<sup>th</sup> meeting.
- TONY R. – If a property is going to be deed restricted maybe we need a registry and a permit.
- ANDREW R. – That goes beyond what is there.
- JEFF T. – The battle comes with the new use [which] can change the zone [and that] leads to a battle between the RP and the town
- TOM C. – If there is a change of use there has to be a way the Department is involved. Some mechanism where Department can be involved.
- SHERYL T. – What if it's not an existing contaminated site and it is not considered industrial because it is not known in the first place?
- JOE – That may be an historical issue, [where there is] no use for a long time, but it doesn't reach DEP level. [It] is a local permitting issue but what can be done on a state level to institutional reviews. We want those locally as well or coordinate. Change of use issues/activity does not reach DEP level. Local community issue what can be done. What is the State level and what is the community level. Dep review and coordination needed.
- MIKE E. – [We need] collaboration of everyone involved DCA, EDA, DOT, and DEP; need to coordinate with DOT, DCA and how they communicate. There is an effort with Zellner's scorecard, but we need this on a managerial level.
- Permitting concept [needs to be] transparent and accountable. We are thinking about the first transaction and we need to set something up for the long term and a change of use that is down the road. When a site is remediated and the property owner has the responsibility, developer needs to bear that cost for the residential scenario. We will put money in a trust for the inspections. May not be popular but the reality is that for many of these sites there aren't responsible parties. We need something straightforward and clear. This then can be clearly conveyed to the mayors.
- ANDREW R. – dealing with HDSRF when they want to do an assessment but they don't own outside the resolution. [The put a] lien on property - assess work and what money is available.
- KEN K. - We have actually made a decision and made in conjunction with deputies and Bayonne that limitation doesn't apply any longer and they have to have the ability to exercise eminent domain. Now they have to just pass the resolution.
- JUDY S. – Requiring something from DEP before doing anything is not notification.
- ANDY R. – regarding HDSRF – there are ways to clean up the law to allow it to work better notwithstanding the interpretations/notification.
- Steep slope to require reviews and look at the potential sites. What is the presumptive clean site in New Jersey (there isn't one). Ten years ago chlordane, dieldrin, lead arsenate [were problems]. I was privy to ECRA discussion. The purpose was to stop them from leaving before cleaning them up and the initial testimony was that the requirement would impact 60 to 70 cases.
- If you mandate it to be a part of the MLUL checklist, which some municipalities have already, or if you are just talking about zoning changes, they are going on constantly. It is massive.

- Permitting and responsibility and appropriate amount of money set aside for potential problems.
- STEVE S. - Recent HDSRF legislation requires municipalities to have an intent to acquire the subject site in order to access funding for investigation and remediation. More typically, municipalities will adopt a redevelopment plan but not necessarily intend to acquire the site -- acquisition would be done by the designated redeveloper. This gives rise to uncertainty about the availability of funding to municipalities and diminishes use of HDSRF grants intended to facilitate redevelopment of brownfields.
- KEN K. – Asking municipalities to pass a resolution to access funding when they have no intention of ultimately acquire the property, puts the municipality in a bad situation. DAVID B. – [What about the] expedited permit discussion? Since mayors are in agreement. Is that realistic?
- TOM C. - It has appearance problems – the question is how to address the appearance problem if we were to accept a higher premium to get work done more quickly?
- Sheryl T. – permitting issues and accountability. Transparency of overall process. Brownfield first transaction work toward NFA. Set up multiple transactions and set up for change of use. Property owners have the accountability and time of transaction. New company/developers deal with the cost based on what they want to do with the property.
- JORGE B. – don't want it weighed too heavily because there are some instances where it won't happen.
- KEN K. – we are looking at prioritizing those development sites under Brownfield managers – same process approach for BDAs and Portfields. Scorecard approach should be discussed at future meetings. Team approach should be look at too.