

Brownfields Working Group Meeting Notes - April 24, 2001

On Tuesday April 24, 2001 at 8:30 AM, the Brownfields Working Group met for the second time. This subcommittee was established as part of a larger effort to streamline the site remediation regulatory processes.

The meeting agenda focused on an in-depth review of DEM's existing Model Settlement Agreement.

The group discussed the cover letter that accompanies the model settlement agreement. There was particular concern with the language that states that those that deviate from the model will be subjected to longer timelines. The consensus opinion was that this was too negative. The group recommended that the approach be made more positive and state that those that have followed the language in the model have generally seen quicker turnaround times for their projects.

Following the discussion of the cover letter, the group discussed the following points on the model settlement agreement document:

- Some terms, such as remedial action work plan, environmental land use restriction, and soil management plan, should be defined in the document. It was agreed that since these terms are specifically defined in the site remediation regulations, a direct reference would be sufficient.
- The use of the term "contaminated site" throughout the document creates negative impressions of the project and has raised concerns with new owners. It was suggested that this term be replaced with "site" or "property", as specifically defined in the agreement.
- The "performing party" and "settling respondent" should be outlined in the Statement of Facts section as opposed to the Definitions section.
- Under the "Work to be Performed" section, the word "future" should be removed concerning the use of the site. This is often thought to mean that the current settling respondent would always be responsible for the use of the site, even if it eventually passed out of their control (i.e. they sell the site in the future whereafter the new owner is responsible for compliance with the terms of the agreement).
- It should be clear that "Existing Contamination" and the associated liability relief does not address asbestos or lead paint.
- The annual inspection and certification language in the settlement agreement should be consistent with the language in the model ELUR.

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- There should be a time frame associated with the required notice to DEM in the event of excavation or disturbance of the site, such as 15 or 30 days prior to the planned work. There should be clear provisions for emergency actions such as utility repairs.
- Natural resource damages should not be included in the "Reservation of Rights" section of the agreement. The topic should be moved to the "Work to be Performed" section and worded in the model such that DEM must make a decision on whether NRD assessment and response is necessary on the specific project. If necessary, it should be negotiated as part of the scope of work to be performed. If not necessary, it should be included in the covenant not to sue.
- The requirement to retain all business records for ten years was seen as excessive. At a minimum, this should be limited to environmental records.
- The Access/Notice to Successors in Interest should be broken into two separate sections.
- With respect to successive access, the settling respondent may not be able to ensure that other parties provide access to DEM after they no longer have control of the property.
- In terms of transferability of the agreement, DEM should not have to provide written consent for the transfer of the property. Written notice to DEM within a set time period prior to the transfer should be sufficient since the agreement and associated obligations run with the land. This was a critical issue.
- There was concern about language that extends the contribution protection to "the state and any other person." The implications of extending this to "any other person" should be considered.

The meeting adjourned at 10:00 AM.