

DRAFT Meeting Summary
RSG Policy/Legal Workgroup

December 10, 2009
10:00 a.m.

Participants:

Bob Wagner (DEQ)
Gary Kelterborn (CMS)
Ralph Dollhopf (EPA)
Jennifer McKay (Tip of the Mitt)
Melinda Holland (E2)
Kevin Adler (EPA)
Brad Garmon (MEC)

1. Site Timeline document.

Melinda has not received any feedback or comments from the RSG. Brad will remind folks at the next RSG meeting to provide feedback if they have any. Bob has one additional item: In 1994, in addition to covenant not to sue, there was also an Administrative Agreement. Gary wants to update one activity in the late 1990s, and will send it to Melinda via email.

2. "Window of opportunity" for RSG input

Bob and Kevin provided an update on current activities. DEQ has provided CMS comments on the Development RA/IE and anticipate further communications with CMS. This is a time of open communication and dialogue and RSG input could be made to DEQ, EPA and CMS. DEQ anticipates acceptance of the Development RA/IE in April 2010 (about a 5 month window of input, but the RSG shouldn't wait until the end). A decision point is coming for the agencies. No formal public comment period is scheduled. Kevin discussed the typical superfund process for removal and remediation projects. A removal project would typically have a proposed plan and a public comment period on non-time critical project for alternatives. State of Michigan will make the final selection at Bay Harbor, so no formal comment period has been scheduled by EPA. DEQ has received the East Park RA/IE, and are moving toward acceptance (3rd revision), slated for a January decision. Window of opportunity for RSG input on this document is smaller than for the Development RA/IE. Final approval of the Development RI/AE is probably slated for 3rd quarter 2010.

DEQ and EPA will work to provide an update of the "general project flow" timeline¹ that was presented at the first RSG meeting, but probably not by the December 16th RSG meeting. There is a meeting in Detroit with CMS on Monday the 14th and that may impact the site schedule.

¹ May be found at: http://community-plan.net/bayharbor/docs/20090630_Activity_Flow_Update.pdf

Bob and Ralph will provide an update on the “general project flow” timeline at the meeting on the 16th even if not a written document.

DEQ could offer a public input process if requested, and are interested in talking to the RSG about what they would like to see. DEQ could consider the RSG process as part of public involvement, as comments solicited through non-DEQ sponsored events.

3. Site Legal and Regulatory Framework Presentation at the December 16th RSG Meeting

Two new permits (NPDES in water program, Deep Injection in Part 625) have been applied for. The Workgroup requests a presentation on the general rules and regulations regarding these permit processes for January 27 RSG meeting.

EPA and DEQ will provide a presentation to the RSG on December 16 on four subjects:

- Differences in MDEQ and EPA legal authority, program structure
- EPA enforcement lead superfund context
- Relationships between EPA, MDEQ and CMS
- State's discretionary opportunities for formal or informal public involvement

Melinda will schedule at least 45 minutes for this presentation. Brad will also put together some thoughts to present to RSG on target opportunities for the RSG to provide input on various pending agency decisions. East Park is an immediate need, and the Development RA/IE has about a five month window.

4. Glossary of legal and regulatory terms, feedback and update (new document).

Bob asks Melinda to provide him clarification via email on what terms are still missing from the document. The glossary appears to be missing six terms, i.e., baseline, technical impracticability, alternatives evaluation, etc. Agencies will work with Melinda to have a handout of the full document at the December 16th RSG meeting. During the workgroup update, Brad will explain that this is a work in progress with new additional terms, seek any questions or clarifications from group about particular terms or usefulness.

5. Clarification on costs and outcomes question for potential TASC request.

No feedback has been provided by members of the RSG, suggesting this might not be a priority for group. Workgroup will put this aside for now and focus on other immediate needs.

6. Other business

Discussion of the work group's views on having observers at work group meetings. Group would like to keep the workgroup meetings limited to RSG members or alternates, particularly for consideration and discussion of technical experts. Summaries of all meetings will be made available.