

Raymark Advisory Committee
DRAFT Meeting Summary
Tuesday, May 8, 2007
6:30 PM to 9:15 PM
Birdseye Complex Conference Room

Attendees

Members Attending: Veronica Peters, Paul Rohaly, Ed Ward, Ron Mazzey, Charlie Perez, Bob Connolly, Bob Delbuono

Government/Agencies Attending: Lisa LoBianco, Town of Stratford Health Department, John Miranda, Town Council, Mike Julian, Town Council, Gavin Forrester, Town Council, Pat Bowe, DEP, Ron Curran, DEP, Mike Jasinski, EPA, Ron Jennings, EPA, Jim Murphy, EPA, John Kilbourn, EPA

Others Attending: Mike Gross, Haliburton, Tim Hidu, John Turbeville, Shelley Morley

Facilitators and Technical Assistance: Patrick Field, CBI, David MacLean, GeoInsight Warren Hokum,

Convening of Meeting, Groundrules, and Summary Review

The RAC convened at 6:30 PM. The April meeting summary was approved.

Agreements or Major Clarifications

None reached at this meeting.

Army Engine Plant

The RAC followed up on a question regarding whether and if the Army Engine Plant could serve as a CAMU for Raymark waste. CT DEP and EPA noted the following.

- Raymark didn't start shipping waste off their site until filled to their lagoons. By the time the lagoons were filled, virtually all of the Army Engine Plant was constructed, so very unlikely that the plant received waste in for fill. Extensive work at the site has not identified any Raymark waste. When EPA reviewed all the existing records of Raybestos and elsewhere to determine possible waste sites, there was never any evidence in the written record (part of what is called an SI or Site Investigation), that Raymark waste was moved to the Army Engine Plant site. After a review of over 500 sites, EPA was able to narrow OU6 to the twenty-something properties. EPA was confident that the Army Engine Plant is not part of OU-6.
- Since there is no known or reported Raymark waste on the Army Engine Plant site, if it were to be a CAMU for Superfund waste, it would have to be treated as an off-Superfund site

landfill location. This would mean the same as siting a hazardous waste landfill, and all the state and federal permitting required. Such processes are uncertain and total time is from three to five years and very unlikely to happen in CT.

- The fact that the site is within the 100-year and 500 year floodplain would further complicate siting a hazardous waste landfill. .
- The Army is particularly anxious to be free of the site and it is hard to imagine why it would be in their interest to take on “outside” waste and bring additional responsibility for new waste management upon a new property owner.
- If the Army did permit a hazardous waste landfill on the plant property, they could accept waste from other facilities such as other Army hazardous waste site. The Army would not be limited to only accepting Raymark Waste.

The RAC asked the following questions or made the following points.

- We have waited so long for the Army Engine Plant Plan; we should explore this strategy anyway. The Town has asked for the Army’s “extensive” data, but we have not received it to date.
- Trucks are going to be rolling around the same time for both sites, so, what about synergy between the two? It’s not like action on either site is imminent.
- We recognize legal hurdles. Practically, however, the Army Engine Plant does not typically flood, is already contaminated, and is developable. Why not try and be creative?
- It should be noted that the OU4/Ballfield potential CAMU also floods. Storm runoff into Frog Pond Land and East Main Street is a reoccurring problem. We are assuming that EPA and DEP have a plan for addressing this as part of the potential CAMU design? Another RAC member noted that by keeping the Ferry Creek floodgates closed this year, the area did not flood because of water retained in Ferry Creek.
- Given that there is waste at the adjacent airport property, hard not to imagine that waste would be at the Plant too.
- It should be noted that Raybestos waste was transferred across Town over time. One of the markers of Raymark waste we determined was copper because of the early waste prior to PCBs (would still include lead and asbestos).
- Why is this on the RAC agenda? This is a very different site, problem, and jurisdiction.

OU6

The following points and questions were raised regarding the OU6 properties and potential CAMU locations.

- The 251 Main Street property, which is lumped with a Town DPW AOC has about 1,100 cy of waste on the private property of the total 3,600 cubic yards of waste across the two properties.
- *Why is groundwater testing for Raymark waste from private properties even required, capped or not? If Raymark waste is not really soluble (lead, for instance), and the GW is already monitored more generally under OU2, why do you need more?* It was noted by DEP

that the GW monitoring for the OU1 as a source under the groundwater “site,” or OU2, is different than any specific GW monitoring that would occur per property. For each OU6 property, at least two years of post closure monitoring would be required to ensure there was no unanticipated leaching of unremoved Raymark waste. For any property that is capped, the GW monitoring requirement would be perpetual and would fall to the private property owner. EPA does not pay for operations and maintenance of remediation and, and since the state wishes to minimize it’s costs, it would pass most to all O&M obligations, including cost, on to private property owners. (COMMENT: the DEP has noted its goal is to minimize the long-term burden of future cost to the state, town and/or the property owner.)

- The RAC notes that if DEP will not assume any GW monitoring costs, it may very well effectively eliminate any chance that a private property owner would be willing to cap their property. This leaves the RAC even fewer choices about the ultimate remedial remedy.
- The costs in the FS assume three monitoring wells would be required for each property. Drilling, collecting from, and analyzing samples from these wells are estimated to cost, on average, about \$52,000 over the three years.
- *So say we, as a property owner, have waste removed and in the second year, there are signs of some kind of leaching, but it is likely OU2 “recontaminating” the property, who then is liable for further monitoring?* Typically, the property owner is not responsible for ground water impacts migrating onto their property from a known groundwater plume originating upgradient and off-site..

Legal Issues

John Kilbourn from EPA attended the meeting and sought to offer answers to RAC legal questions raised in recent meetings. CT DEP also weighed in extensively on these issues. EPA began the discussion by noting that:

- EPA can only speak to federal, not state, issues.
- EPA intends to comply with state and federal laws for the Raymark waste footprint.
- Within the Raymark waste footprint, EPA and the state intend to reach a joint settlement with the property owner (this would not address state regulated waste outside of the federal waste footprint).
- EPA is only offering its informal opinion at this point. The Department of Justice and EPA management have the final say for these issues regarding the federal government.

Operations and Maintenance Responsibilities

- *If you have clean closure (removal of all Raymark Waste from your property), are you free of O&M costs and liability?*
 - If there is no remaining waste, there will be no remaining cleanup. However, under state law, the property is required to be monitored at least for two years post-clean closure and longer, if CT DEP determines that the two-year data is not sufficient. If the property has waste that remains below the water table, there will need to be some kind of land use restriction (ELUR) put on the deed to prevent digging below the water table.
 - CT DEP noted that they would be looking to individual property owners for all to most future costs of Operations and Maintenance for remediation CT DEP noted they would

possibly cover ground water testing on clean closure and properties with isolated soil and properties with waste below the water table for two years.

- *What if you have waste removed on your property above the water table? What about the remaining liability below the water table?*
 - As noted above, the ELUR would prohibit digging into the waste without agency (DEP and EPA) review and approval. It would include an annual ELUR inspection, quarterly compliance with GW monitoring for two years, and longer, if CT DEP determines that the two-year data is not sufficient. The deed restriction, or ELUR, would be on the title in perpetuity. Such ELURs are typical and accepted in CT conveyance/real estate. Regarding banks, at least in Massachusetts, such activity and use limitation documents have not prevented the financing of properties (though the ELUR may affect the overall property value, to some degree). Banks are certainly less willing to lend prior to final settlements and remedial decisions because of uncertainty.
 - *What if you have waste below the water table and wish to drive pilings into that waste?* Such actions would require approval by the agencies to ensure no recontamination. Concern might be mobilizing waste along the pilings or waste generated during construction.
 - *What is the estimated cost for O&M for Ferry Boulevard properties should waste remain in a cap on those sites?* The estimated cost for ground water monitoring over 30 years, net present value, is \$363,000.

- *Do ground water monitoring costs apply to Beacon Point, AOC-2 where the waste lies below the seasonal high water table?*
 - Yes, two years of monitoring would be required, likely conducted and paid by the CTDEP (note the above answer).

- *What are the cost components of O&M generally and who might pay for them?*
 - Five year reviews most likely paid for by EPA.
 - Monthly inspections on caps and any needed repairs of caps on site, paid for by the property owner.
 - Annual ELUR inspections (by property owner).
 - Annual reporting (by property owner).
 - The state is exploring covering ground water monitoring on two years of monitoring for properties where all waste is removed, properties with environmentally isolated soil (soil below a building slab) and properties with waste remains below the water table.
 - Groundwater quarterly sampling, analysis and validation (for monitoring beyond the first two years for clean closure or waste below the water table sites), as well as report preparation and submittal, would be paid for by the property owner.
 - A RAC member noted that the state's stance on O&M is counterproductive and in contradiction to the goal of this committee, which was to minimize waste moved about Town and now this cost, imposed on property owners, severely reduces any willingness they might have on keeping waste on site.

Liability

- *We understand that each property will have its own liability settlement. But, what are the*

specific components of liability that will likely be addressed in most or all settlements? Could the components include costs/payments for remediation by the property owner? Operations and maintenance responsibilities (see above)? Lingered or remaining liabilities if waste is transported elsewhere from their property to an in-town or out-of-town site? State waste remaining?

- Liability must be treated on a case-by-case basis. Superfund imposes liability such that merely being the property owner, even if you never caused the release of contamination, may make you liable. There are certain limited defenses. There is the innocent landowner defense, and another defense if a plume is coming from off your property on to your property. Very generally, the earlier waste was disposed of, the easier to satisfy your burden. EPA generally does not go after residential property owners for compensation.
- *If the waste is brought to the ball field, who owns that property then? Who will be responsible for O&M? Who will be liable?*
 - The EPA noted that O&M is principally the State's Responsibility.
 - The ball field is currently owned by a private property owner and discussions would have to be held with that property owner. If another entity (say the Town) took over the property due to back taxes, bankruptcy, foreclosure, or abandonment, EPA would still look to another entity to bear operations and maintenance costs, be that the state, Town, or a future property owner.
 - It was suggested that the state should bear the O&M cost of any CAMU, or, at least, share that cost.
 - The Town should determine the future intended use(s) of that site. The SRI work envisioned that it would be an athletic complex.
- *If a cap were placed on a private property, I understand the owner would be liable for harm they do to the cap. But what about liability if someone were to drive a car across the property, hit a fence post, and dig up waste that way? How far does future liability extend?*
 - If an action occurs due to a non-property owner, the owner is still required to take action to reduce and eliminate any exposure that may arise. The agencies would expect the owner at their own cost to repair the situation. The owner, might in turn, be able to pursue the other entity in court under civil law. The goal would be to try and not put fence posts, light posts, or other such objects into the cap in such a way their injury would re-expose waste.

Additional RAC Comments

The RAC made the following additional comments after the above information was shared.

- The Mayor has expressed concern about consolidation at Short Beach Park.
- Let's get the RAC's recommendation and get something done now for the Town.
- The state is holding a financial gun to the property owners' heads. If you keep any waste on your property, you'll bear a ridiculous cost for your troubles. After hearing what we heard tonight, is anything we are doing now or in the future really going to matter?

- As far as some of us are concerned, we are back to only one acceptable recommendation: cap it all in place.
- Let's remember that there are still three CAMU locations on the table, not just the ball field. So, please stop referring to taking the waste to the ball field only.

EPA closed by noting that they do see the RAC's input as valuable, that they do not want to force a decision down anyone's "throat," and they want to work in partnership with the Town and the RAC to find a way forward.

Adjournment

The RAC adjourned at around 9:15 PM.