



Current Policy Issues in Remediation and Redevelopment Division

a discussion with the
DEQ Environmental Advisory Council
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Objectives for today

- (Re)orient EAC to RRD programs
- Frame policy issues for discussion
- Invite EAC members' observations



RRD Programs

- Part 201 of the NREPA – general Environmental Remediation program
- Part 213 of the NREPA - Leaking Underground Storage Tanks (LUSTs)
- Superfund (National Priorities List sites, under the federal Comprehensive Environmental Response, Compensation and Liability Act or “CERCLA”)



Regulatory evolution

- 1980 – CERCLA (federal recognition of need)
- 1982 - Act 307 (prioritization for state funding)
- 1988 – LUST (reporting and response requirements imposed)
- 1989 – MUSTFA (financial assurance for UST owner/operators)
- 1990 – “Polluter Pay” (enforcement emphasis for Act 307/Part 201)
- 1995 – Liability and cleanup standards reform (Part 201 and 213 partially aligned)



The issues

- Role of government in remediation programs
- Government as regulator and facilitator of redevelopment
- Uncertainties of risk based decision-making



Role of Government

- Part 201 – rules and statute provide detailed framework of cleanup options and requirements, attempting to balance flexibility with certainty. Specified activities require DEQ approval, but much response activity can be “self-implemented.”



Role of Government, con't.

- Part 213 – Qualified Consultants/ Certified Professionals (QC/CP) responsible for assuring corrective action complies with statute and guidance. DEQ role generally limited to audit of submittals. DEQ approval required only for a small number of actions (fewer than under Part 201).



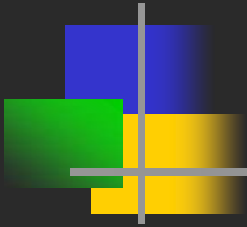
What is the “right” role?

- What requires notification?
 - Comprehensive versus high-risk releases
- What needs oversight?
 - How to assure oversight is effective in securing compliance?
- What needs approval?
 - Before- or after-the-fact
 - Public trust resource versus private property affected



What is the “right” role?

- Should the role differ with regard to work done by liable and non-liable parties?
- What decisions can be “delegated” to others?
- What does the public expect?
- What do resources allow?





Government as Regulator and Facilitator of Redevelopment

- DEQ administers grants, loans and other redevelopment assistance functions, such as approval of work to be paid for by tax increment financing
- DEQ oversees cleanups by liable parties and “due care” compliance by others



Regulator and Facilitator

- Redevelopment has been an explicit consideration in the cleanup program since late-1980s, both in policy development and in allocation of state financial resources.



Regulator and Facilitator

- Evolution:
 - 1988 Bond provided grants and loans to Local Units of Government (LUGs)
 - 1996 legislation and 1998 Bond increased emphasis on state financial support for redevelopment
 - 1995 amendments were largely driven by desire to eliminate obstacles to redevelopment.



Regulator and Facilitator

- Land and resource use restrictions imposed as part of land use based cleanups facilitate redevelopment (short term?) but affect future (long term?) land use choices.
- Coordination with LUGs critical –
 - Land use planning awareness
 - Redevelopment needs (allocation of \$)



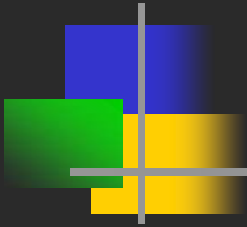
Regulator and Facilitator

- Issues can arise when there is a desire for reduced cleanup or “due care” requirements when a major property sale, development, or business retention/expansion is at stake.
- Staff who know how both the cleanup and redevelopment tools can be used are more effective facilitators.



Regulator and Facilitator

- There is increasing pressure to redevelop of solid waste “landfills”
 - Residential and commercial uses are often targeted (necessary for economic viability)
- What risks and uncertainties are we willing to tolerate?
- Does it depend on what role the DEQ plays in the project?





Risk Based Decision-Making

- Risk based decisions are part of virtually all regulatory programs.
- The cleanup program was the last to adopt a risk based approach, in spite of the fact that “zero risk” is less likely to be achievable in the cleanup context than in emissions control.



Risk Based Decision-Making

- Risk based decisions are inherently uncertain and subject to reconsideration based on changing knowledge about hazards posed by contaminants.
- Not all risks may be properly accounted for with current methods.
- Current criteria may be over- or under-protective.



Risk Based Decision-Making

- Additional information may cause criteria to go up or go down.
- Increases in criteria are relatively easy to accommodate.
- Decreases in criteria may require additional response activity to address unacceptable risk.



Impacts of criteria changes

- Should the cost of any additional response activity be shifted to the public, to current land owners, or retained by the person responsible for the contamination?
 - Statute requires person implementing remedial action to assure it is protective (an ongoing obligation).



Impacts of criteria changes

- Requiring implementing party to be responsible for future cleanup enhancements may discourage property sales (hence, redevelopment).
- Shifting this burden to the public or others may encourage property transfer and redevelopment, but at what cost and to whom?



Impacts of criteria changes

- Does the need to assess the impact of future cleanup criteria changes affect how we define the role of government in the cleanup programs?