

The Things You Find During Spring Cleaning...

by Lisa Alexander

PASSING BY THE BULLETIN BOARD ON A SNOWY EVENING...

With all due respect to Robert Frost and "The Road Less Travelled"...

There it was. Uncovered while cleaning out files as we move to a "paperless" office, someone had posted on the bulletin board a newsletter from September 1987 - *Environmental Profile: Massachusetts Department of Quality Engineering, "Special Report"*. There in black and white, was a collection of articles heralding "one of the most ambitious environmental agendas undertaken" and plans to meet the challenges of the "Question 4 amendments to the 1983 state Superfund law" to "accelerate... the identification, assessment and cleanup of hazardous waste sites in Massachusetts."

The newsletter described the "aggressive" two-year plan to find and root out hazardous waste disposal sites around the state. The plan included hiring 460 (460!) new staff – a veritable army of engineers, analysts, attorneys, toxicologists and administrative support staff across all programs in "DEQE" – as part of the legislative and popular mandate to clean up sites and spills. The new staff would represent an almost 50% increase to approximately 1500 agency-wide. The newsletter described DEQE plans to cope with the influx of new bodies: the 90 square feet of space per person, the "banks" of filing cabinets and equipment necessary to support their work.

The plan included the identification of "locations to be investigated" and the publications of site lists each year until they were all accounted for in the Agency databases... and cleaned up.

One article described the models being evaluated for the cleanup program. The primary model considered was a "private" one "where those responsible for the contamination do the work under DEQE oversight; [and] state contractors are utilized only where responsible parties will not agree to follow through." Two alternative models under consideration at the time were:

- a "public" model, where the state or state contractors would conduct the cleanups, with PRPs subsequently paying the full cost after the fact; and
- a "delegated" model, where work could be delegated to a local government entity or special regional agency.

Beginning in June, 1985, the Superfund Advisory Committee ("SAC") had begun meeting to "develop a process for answering a broad and sometimes perplexing set of questions about the degree and type of response action required at any site in the Commonwealth." The 17 member body was composed of citizens representing environmental advocacy groups, municipal officials, public health specialists, and the business community. The SAC grappled with questions such as:

- the roles of responsible parties during the site assessment and cleanup process;
- the definition of a disposal site (as opposed to a "spill");

- the operational definition for a “permanent solution”, as opposed to a “temporary solution”; and
- the consistent determination of what poses a “significant risk” at sites.

The newsletter also focused on the important role of public involvement and the use of Technical Assistance Grants (“TAGs”). So soon after news reports about Love Canal and our own experiences with Wells G&H in Woburn, it is not surprising that there was sometimes great fear and outrage when “sites” were discovered in a neighborhood. Citizens wanted to know – “Do I have anything to worry about with that excavation going on? Why are those people wearing white suits and masks? What’s in those soil piles? Will I get sick? What about my neighbor with cancer?”

The Public Involvement Plan (PIP) process was created so that groups of concerned citizens could be kept advised of progress of work on sites and provide input. For PIP Sites, copies of reports were to be placed in accessible, public repositories (typically a town library). “Priority” sites typically had a DEQE staff person assigned to oversee the cleanup and meet with the PIP group periodically, but the TAG assistance was also made available so that groups could hire their own consultant to provide another, objective, qualified opinion on the work being done. Over time, 374 official “PIP” groups have been established, 102 which are still potentially active on “open” sites.

We know now that the 1987 vision of DEQE never fully materialized. In 2010, the entire MassDEP currently consists of fewer than 800 staff (down from a high of about 1100). These days, everyone is shedding file cabinets and bookshelves as we transition to a nearly paperless operation, and the One Winter Street office prepares to give up yet another floor.

Program innovations, technology, and budget cuts have transformed the way MassDEP operates. Our files and records are increasingly being made available on-line, so that anyone -- not just PIP groups or those motivated enough to trek to a Regional Office -- will soon have access to them, anytime, anywhere. Everything about our program -- regulations, cleanup standards, risk assessment tools, policies -- can also be found on-line.

The Bureau of Waste Site Cleanup has been in the vanguard of regulatory innovation. When the 1988 MCP became final, it already had provisions for cleanups to be conducted with less Department oversight- the “Waiver Program” did not eliminate the *need* to do work, but eliminated the need for obtaining *approvals* from the Department for every monitoring well installed or cubic yard of soil excavated. Yet soon after promulgating the 1988 MCP, it became clear that the number of sites coming into the process far exceeded the state resources required to oversee the work, laying the groundwork for the next (1993) incarnation of the MCP.

It is interesting to look back to the regulatory models under consideration in 1987, and reflect on the evolution of the MCP over the last twenty-three years. The Waste Site Cleanup program of today is not any of the “private”, “public” or “delegated” models envisioned in 1987, but rather a public-private partnership that is flexible enough to address the wide range of sites and conditions that come into the MCP universe. The regulations provide a structure that balances flexibility and prescription, innovation and standardization, and assigns specific roles and responsibilities to the key participants in

the cleanup process. Government has the responsibility to set protective and fair rules, ensure the requirements are met, and to conduct response actions itself, if necessary. Responsible parties have the obligation to conduct the assessment and cleanup of sites according to the promulgated rules. Licensed Site Professionals have the responsibility to oversee the response actions and attest that the work was conducted in compliance with the rules. Experience has shown that the cleanup program works best and most efficiently when the three main players (MassDEP, PRPs and LSPs) each fulfill their assigned roles. All three are necessary to ensure that the quality of environment in the Commonwealth is protected and the credibility of the program is maintained in the eyes of the public and the marketplace.

The path DEQE embarked on in September 1987, was the road less travelled – no other state in the country has adopted our collaborative public/private program to the same extent. Looking back down the road 23 years and 27,000 cleanups later, we can see how some of the changes and innovations made by MassDEP, the regulated community and the LSP community along the way have been highly successful, and how some have not worked as well as we had hoped... As we meet the challenges ahead, let's take stock in where we started and how far we've come, and what it takes to keep this program moving forward. It will take a lot of work and cooperation by all involved parties to tackle the many remaining challenges in the waste site cleanup world.