

Minutes

Asbestos Advisory Group Meeting

June 1, 2016
Room 111 Metcalf Building

Optional Work Session: 10:30am to 12:00pm

General Session: 1:30pm to 3:30pm

The goal of the Asbestos Advisory Group is to advise DEQ on various issues relating to asbestos regulation.

Committee Members in Attendance:

Brad Evanger – Minor Facilities (via Lync)
Peggy Trenk - Trade Associations
Patricia Heiser - Environmental Advocacy
Bruce Kirby – Contractors & Consultants
Annette Satterly - School Organizations (via Lync)
Nick Van Tighem - General Construction Contractors (via Lync)
Ed Surbrugg – Consulting Engineers & Architects
Harold Blattie- City & County Public Works & Permitting
Joe Radonich – State & Federal Public Works
Barb Butler – Waste & Materials Management
Jim Devlin – Citizen at Large

Committee Members not in Attendance:

Jennene Lyda – Worker Protection
Alan Olson – Major Facilities

Others in Attendance:

Greg Kurvink – DEQ ACP
John Benoit – DEQ ACP
Judy Kirby – Kirby Environmental
Jim Whaley – DOA A/E
Dan Hess – Asbestos Specialties of MT
Jessica Smith – DEQ REM

AAG Support Staff in Attendance:

Amanda Allen – DEQ Minutes
Emily Ewart - DEQ Rule Writer
Mark Hall - DEQ Hazardous Materials Section
Bob Habeck - DEQ Facilitator

Optional Work Session – 10:30 a – 12:00 p

- Members in Attendance: Bruce Kirby, Judy Kirby, Jim Devlin, Dan Hess, Mark Hall, and John Benoit

General Session was called to order at 1:35 p.m. by Bob Habeck

Welcome & Opening Remarks:

- Bob Habeck provided the Welcome and Opening Remarks and review of the May meeting minutes. Bob introduced Dr. Patricia Heiser, a Carroll College Professor, and new AAG member representing the Environmental Advocacy position. Bob asked for those on the phone to identify themselves.

Action Item:

- May Minutes. Motion to approve was moved by Jim Devlin and second by Bruce Kirby. No further discussion. There was unanimous approval.
- Bob talked about the July Working Lunch Picnic. This is an opportunity to reflect on the AAG's successes. He will need a head count to prepare for the lunch.
- Bob spoke about the AAG strategy for the summer months. July will be a reflection of the entire posters. Bob will also review the Charter to remind members about the facilitated process going into discussions on recommendations. September and October will be the time to take everything back to the constituents and report back to the membership. Bob assured the membership that the group is on track and doing great work.
- Bob reviewed the June agenda items.

Old Business:

- The Environmental Advocacy position has been filled. Welcome Dr. Patricia Heiser!!
- Review of May's Focus Group Exercises – Bob showed the group the posters and how DEQ staff interpreted the comments on the posters. DEQ staff also added difficulty factors for each and the challenges included.
- Jim Devlin wanted to know how DEQ plans to implement the changes that would result from the AAG recommendations with the limited staff in the Asbestos Program. DEQ discussed the possibility of using DEQ employees from other programs to support the asbestos program. Also, implementing new program strategies needs to be thought of as a multi-year approach once recommendations are received by the Director, discussed, prioritized, and then implemented.

- Peggy Trenk asked if EPA would have to bless any changes that would be made. Mark Hall said that EPA has the right to review any changes in order to ensure the state's program remains as stringent as the federal program. Program delegation / primacy to DEQ from EPA is always a concern to consider when making changes.
- Public Comment on Old Business – Joe Radonich wants to make sure we are hitting all eight items (obligations). So far, all appear to be accounted for. Bob gave a brief explanation of the eight obligations and said we would continue to cross reference. Bob then gave a brief explanation on the *Level of Effort*. DEQ lawyers will be engaged in the future to interpret the recommendations from a legal standpoint and defensibility percentages.

New Business:

- A breakout session occurred for AAG members and others in attendance to make comments or suggestions on the second set of draft focus group recommendations involving Funding and Enforcement & Clean Up. The group re-convened to discuss the comments written during the breakout session.

A brief summary of the discussion are as follows:

- **R8) DEQ should provide a fee discount for individuals with multiple asbestos certifications for the purpose of promoting professional conduct and customer service.**
 - Discussion regarding the fee rule that was written before AAG began that would have done away with the discount.
 - This was generally supported and was mentioned to maybe remove the strikeout.
- **R9) DEQ should increase compliance rates such that revenues would increase through additional accreditation and permit fees.**
 - This is similar to R11.
 - Questions were asked if this was about money or getting compliance.
 - Joe Radonich suggested repeat offenders should pay higher fees.
 - Barb Butler pointed out that in Storm Water, if you don't get a violation, you get a 25% discount the following year.
 - Jim Devlin explained that OSHA says if you get a second violation within three years, your fine doubles.
 - There was discussion on how we can incentivize more people to come into the field voluntarily. Bob suggested we move this recommendation to revenue instead of Enforcement/Compliance.
- **R10) DEQ should adopt an application fee of \$50 for small scale projects as defined by HB434 and \$100 for projects not otherwise defined as small that remove non-friable and non-regulated materials such as floor tile, pipe or roofing material projects.**
 - Harold Blattie said that exempt means exempt, and asked "If something is exempt, what is the justification for the fee?" Mark Hall and Bruce Kirby discussed that small scale means small projects that fall below federal NESHAP

but still fall under state inspecting regulations. Therefore, it was not addressing exempt projects. Bruce discussed how this would let ACP know when projects are going on and increase fees with making less of a point of contention. Bruce explained that there is a gray area as to “when do we define it,” and explained using Transite. Transite is handled in a non-regulated manner, but if you break it, there is a high potential for fiber release.

- Jim talked about this getting additional revenue without adding additional pain. It is basically letting DEQ know before a project happens.
 - There was discussion on this forcing people to put in a courtesy notification. This would make it possible to avoid the 10-day wait if you find regulated materials because it would fulfill the NESHAP notification requirement.
- **R11) DEQ should allocate more staff time towards identifying non-compliance and take the appropriate measures to achieve compliance.**
 - The group talked about in-house rotation or the possibility of a temporary position.
 - Discussion of *upward liability* and giving the violations to the company.
 - **R12) DEQ should develop and distribute education/information for asbestos regulatory requirements to promote compliance. Make information available in both hardcopy and electronically.**
 - The same as R1?
 - John Benoit talked about a rule proposal that would make it required for the material to be maintained by training provider offices.
 - John Benoit briefly explained the accreditation process for initial and refresher courses.
 - **R13) DEQ should revise its agency enforcement process to increase monetary fines both in terms of frequency and amount in order to increase program compliance.**
 - Possibly combine with R14.
 - Jim Devlin asked if there is a list of infractions. John Benoit said there is a guidance document for ACP and for the Enforcement Division.
 - Barb Butler talked about RCRA and that they could go after a company owner.
 - Patricia Heiser asked how much interaction there is between Enforcement and ACP. Bob gave a brief description of DEQ’s structure between Enforcement and the Programs.
 - **R14) DEQ should publish a list of non-compliant contractors.**
 - Jim Devlin said the NESHAP says the owner has responsibility. Jim suggested we flag this as “Ask the lawyers.”
 - Bruce Kirby pointed out that if the owners name is on the list, it would not show the person who actually makes the errors. Most property owners only do one job so there would be a list of thousands of people who would never do another job again. Jim threw out the idea of going the other direction and making a preferred list.

Public Comment:

- Dan Hess asked about a mentor program.
- July's working lunch will be at noon.
- Joe Radonich asked what the goal is for the next meeting. Bob said he will send out the compilation and the next meeting will be to discuss all the recommendations and narrow them down.
- It was discussed that legal will look at these following AAG review – perhaps in August or September.

Action and Discussion Items for May Meeting:

- Review of June minutes for approval.
- Detailed discussions of draft recommendations from all the Focus Groups.

Meeting Adjourned at 3:30 p.m.