

Jan 29 2014 DNR Meeting Transcription

South Central Region Offices (Fitchburg), 9-10:20 am

Attendees:

DNR staff:

- Mark Aquino, South Central Regional Director
- Linda Hanefeld, South Central Region Remediation and Redevelopment Team Supervisor
- Bruce Urben, South Central Region Remediation and Redevelopment Bureau Director (acting)
- John Budzinski, South Central Region Program Manager, AWARE Program

Midwest Environmental Justice Organization (MEJO): Maria Powell, Jim Powell

Madison Citizen: Anne Chacon

[Transcription was done by MEJO staff. It is verbatim to the fullest extent possible (nearly 100%); When individual words or phrases were unclear, the transcript says “unclear” or “two words unclear” etc. Times may be off by a second or two. At about minute 6:57, there was a skip in the tape and about 22 seconds of talking are missing. Also, the tape unexpectedly stopped at 1 hour and about 8 minutes, about 10 minutes before the end of the meeting, so the last 10 minutes are missing and we have summarized what was discussed from our written notes and memory].

Mark Aquino: Thanks for coming today, we appreciate you being interested and involved in the project. Though I wasn't personally involved in the project, they've kept me abreast of things, moving along. My position is Regional Director here. So I work with all of the programs in this 11 county geographic area. I report directly to the secretary's office. I help get issues in front of her if need be, or...she always likes to say that we're her eyes, ears, and voice—we can't be every place all the time. So we frequently represent her. I know a little bit of the background about why we're meeting today, and I understand that, Kipp's been a big project, the vapors are complex, it's sort of a new frontier for everybody, and that there's been a lot of collaboration during the cleanup process among all the parties, and that's great. We were just talking a little bit about how important it is for interested citizens and groups to work with us, and really, it helps the whole process, to make sure we're covering all the bases and getting all the perspectives, so it's all part of our cleanup role and the process. I know that, I think Maria, you were maybe a little frustrated with some of the last exchanges, in terms of, requests for information and maybe some technical interpretation. And so we thought it would be kind of beneficial if we could just hear your perspective, and maybe make sure we understand what your goals and objectives are in terms of information and research or analysis. Also, give us an opportunity to make sure you understand the system within which we need to operate, and the different venues available to you, you probably know them, but within the whole realm, everything from data that's available to you, to the extent to which we can kind of consult with you, to how the statute that authorizes us to then charge you a technical consultation fee to requestors works and the reasons it's there and kind of how we implement it. So we thought, just as a rough agenda, those were the things we were hoping to cover today. Certainly, anything else on your mind that you'd like to talk about, we're happy to discuss.

3:05 Maria Powell: Good. OK. Thanks for having the meeting. Actually, Jim's our professional facilitator here, so I'm going to kind of let him run us through some of this, so why don't you go...(gesturing to Jim)

3:17 Jim Powell: Yeah, thanks. I appreciate you introducing yourself and your role. I'm just wondering if others could explain their role in this, so we know who we're talking to.

3:27 Linda Hanefeld: Well, I'm Linda Hanefeld. I'm the South Central Region Remediation and Redevelopment Team Supervisor. I supervise the on-the-ground project manager for the site. So he's really the person who has really the best technical knowledge of what's going on with the property.

3:50 Bruce Urben: My name is Bruce Urben, so I'm the acting Remediation and Redevelopment Bureau Director. The responsibilities I have here would be basically giving the oversight to Linda and her staff and (unclear) policy issues within the program.

4:12 John Budzinski: I'm John Budzinski. I'm a Regional Program Manager for a program that we call AWARE, which would take in Air, Waste, and Redevelopment Bureaus. My job on a regional basis (unclear) several, coordinate activities between air, waste, and remediation programs, and provide information to our regional director. I have been in that role in southeastern Wisconsin, and I'm just transitioning into that role in south central Wisconsin. It's just starting, and this being one of our high priority projects here (unclear), and I'm glad to be here and to meet you and seeing what we can do for you.

4:58 Maria Powell: I'm Maria Powell, as you all know. I'm the President of the Midwest Environmental Justice Organization. I also, under that hat and under previous hats—we've worked with the Madison Kipp situation for a very, very long time, since the 90s, we used to live over there. I also have a PhD from the Nelson Institute for Environmental Studies, in environmental studies. My work focused on fish toxins and fish contamination, so most of my bigger interests have to do with what ends up in the water, and this is sort of upstream from that. But under that hat of PhD work, I do research and writing about environmental justice issues, environmental toxin issues—so some of this may end up in my long-term writing that does end up sometimes being published. That is very long-term though, but that's just to be transparent. I think I have mentioned that to various people involved with this (a couple words unclear).

5:54 Anne Chacon: I'm Anne Chacon. I've lived near Kipp for more than 30 years. I've been involved in efforts to see if we could get Kipp to do something about its contamination and air pollution for, I would say, the last 20 years since the 90s when they started injecting chlorine into their furnaces, and I was also part of the recent lawsuit, until the very end when I was not able to sign the settlement because I thought it imposed restrictions that I couldn't honestly agree to.

6:36 Jim Powell: I'm Jim with MEJO. Back in 2000 with some other folks we formed Clean Air Madison. Before that I used to be with Citizens for a Better Environment, which is based out of Milwaukee. We had a few questions that get at some of the things you hinted at.

6:57 Tape skipped. About 20-23 seconds missing.

7:22 Jim Powell: (after 20 seconds of talking missing)...citizens' questions, addressing environmental justice issues and things, so a lot of this is connected with Madison Kipp, but it's more like how you make your decisions, and that's sort of what you were talking about, because you fit into a larger system. Just trying to get a sense of this, because it will help us in particular figure out how to do things from here on out.

7:42 Maria Powell: So, yeah, thank you for having this meeting, we do appreciate that very much. So yeah, you mentioned the frustration we had. Yes, I was really frustrated when we were told we might have to pay \$700 for asking further questions. So can you explain the rationale for that?

Mark Aquino: Sure, and I don't know which one of you wants to walk through that...

8:10 Bruce Urban: Sure. I'll take that first, give a higher level overview. A number of years ago, the Legislature passed some legislation that directed the department to , specifically the remediation and redevelopment program, to charge fees for various technical assistance. I think that was in regard to (the DNR) continually coming to the Legislature asking for additional full time employees, because during that period of time, we weren't able to hire and we had a lot of work. So they gave the authority, this is how we want you to do it, they directed us to draft administrative rules. So, generally, we have the ability to charge fees for technical assistance. Many times, most of the time when we're working with a responsible party, or a company for which there's been a release for, they can follow the administrative rules to clean it up, it's a voluntary process for them to follow, as long as they follow them. And when they get to the end and they want closure that's when the DNR involvement is and there's a fee to get closure, it's closed out and then we'll move on. We found over the course of time that there's been a lot of people that, that either had contaminated sites that wanted our direct oversight, review and approval of everything that we do, or people that may be associated with a site, live next to it, or looking at purchasing it, and also has an interest to get and has questions about it, and wants them answered. The intent of the fee is there to offset, to allow us to be giving out answers that folks want, where we have to spend additional staff time to either summarize, to prepare those, versus being able to use the money to offset the work that we would be doing when we're doing that. So that in theory is what the fee law was based on. Our intent certainly isn't to...we want to be open with all of our records, in fact all of the records we have are open. In this case, we certainly have a repository where everything that's going on in this case, there's a website. We want people to have the information. Where it becomes an issue is where we're asked questions, and usually of a very technical nature, where we have to do research, pull stuff out of reports, develop it ourselves, and that's where we would usually look to say, we can do that but we're going to have to charge a fee because, to offset the costs that we're losing in the time that we would be providing oversight in another place. So that's at a really high level—Linda, is there anything more that you would like to add?

11:18 Linda Hanefeld: Hmmm, I think that's pretty good. You've covered it pretty well.

11:22 Maria Powell: So I actually, of course originally you sent a link to the policy, NR 749. Looking at that, it looks applicable, or meant to be applied to industries, to facilities. So I guess I was wondering--

how is this relevant to citizens? And if it is relevant to citizens, why is it just being applied to us now, when it was first implemented in 1999, I think? Explain how this is relevant to citizens.

11:59 Bruce Urban: The rule isn't specific to industries, it's anyone that's requesting a fee-related request that would be regulated under that rule. Many times they are companies, firms, that have releases, but sometimes we also have requests from neighbors, offsite to a contamination source, that really want a technical assistance letter to tell them what the liability is, which we can do but we have to charge a fee for it. It's been in place for a relatively long time. I don't recall when the rules became effective, but it was at least five years ago.

12:41 Maria Powell: So can you point to situations in where people, citizens like us, you know, just grassroots, have had to pay \$700 to get their questions answered? Because we've been asking questions like this for years, and have absolutely never ever been told this before by DNR. Since the 1990s we've been asking questions like this.

13:04 Bruce Urban: Normally what we would do is, when an external group like this would ask questions, we try to focus them and their questions into the information we have and then provide them with the resources and documents that are out there so they can look at those and determine and get their questions answered, from that point. Statewide, unfortunately, I'm not going to be able to tell you, because I'm just now doing the acting portion of this, I don't know how many circumstances where we have charged fees. I believe we have, but I think what we try to do is to work with these groups to try to...our intent isn't to try to get money from you, or to stifle what you need, but maybe to focus what you're needing so perhaps we don't have to spend the time to do the summaries, gather the data, give an opinion about the question you have but rather to refer you to the actual document so that you can glean that information.

14:08 Maria Powell: We have, as Linda knows, we have been in here many, many times and looked at files. There are situations where we look at files and still can't find the answers to our questions. Also, I'm curious about that. I'm also curious to know if there's a limit to how many questions we can ask. It seems like we crossed a limit, it was too many. We've been asking questions and Linda had been answering some of them, but it seems we crossed a certain limit. So I guess if we could have more clarity on that. We've been engaging with Mike and others at the DNR for years on some of these, and sometimes we get answers and sometimes we don't, so we're trying to understand—did we cross a threshold, and is there a policy that would clarify more where you cross that threshold? I don't know if you two have any comments...

15:03 Jim Powell: After today, have we used up our questions, will we have to pay a fee to add more questions about Kipp?

15:12 Bruce Urban: To answer your question, there is no number of questions that you can ask and all of a sudden you've crossed a threshold and we're going to charge fees. There really isn't. I think we become concerned if the question are questions that were asked before and were answered, I think that

we always tend to say, well, have we answered those before, and if we have, or are they in documents that we have, are they on the website, is there something out there that we've tried to address that? So we'd probably have some concern about that. But it's really from the technical side, where we have to spend staff time that we normally wouldn't, to prepare an answer to a technical question, either to go back and review data or review another report that's out there somewhere else, to get an opinion, perhaps, where we have to prepare something that we normally wouldn't. I think that's the key.

15:59 Mark Aquino: I think that the few instances I've been involved in, they're relatively similar. It's somewhat subjective. I think that it depends on what phase the project is in. Typically what I've seen is...we want to be extremely transparent, we want to be comprehensive in our analysis. We know we don't know everything there is to know about cleanup. Early on, in midstream, you know, we probably answer a lot more questions from interested citizens, making sure they know what we're looking at... listening to..."OK, now you have some science, you have a study, can you bring it to us so we can incorporate it into our work?" As time goes on, and we do this in close consultation with the EPA, and the state department of health, you've seen some of that, as the project matures, and those three partners say, OK now we believe we understand the contamination extent, the nature, pathways, things of that nature. As those three partners become comfortable with the appropriate standards, and think they're on the right track...we have to be mindful of making sure that any additional staff time, when we reach that level of confidence, is going to be as efficient and productive as we can, because there are any number of sites across the state that these same folks need to be paying attention to. And some of those are at the very front end, where we don't know much of what's going on, and potential risk to public health, or environmental concern, is larger and less known. So when I've seen this happen is when we have a relatively mature project, there's a pretty good confidence level among the three consulting partners, governmental partners, and as Bruce says, it's getting to the point where, were happy to provide information about anything that's at hand, but we have to be mindful of the effectiveness of investing more staff time in regards to what additional benefit from a public safety or environmental concern would be reached by putting in more staff time.

18:24 Maria Powell: So would you be willing to point to situations where you had to charge someone—another citizen group, or citizens--\$700 to answer their questions?

18:36 Mark Aquino: We haven't done it, the ones that I've been involved in, we have not charged, essentially we have done I think what was done here, very similar—you know, just say, "Look, we've worked with you over a decade or two decades. Here's where we are, we've provided all the information." One instance I'll just put on the table that's something I have been working on quite a bit, the Badger Army Ammunition plant. A lot of concerned citizens, the local units of government, we went the extra mile or extra two miles on that one because we wanted to be transparent. We put all of the information that we felt was pertinent to cleanup on our website, just as this team did for Kipp, which is not the normal practice. That is a step that is above and beyond what we typically would do. But we want to do it with these projects that are very high visibility and high interest level. But we did recently get to a point where we were kind of at that same juncture, in terms of, "you know what, EPA is comfortable, DHS is comfortable, we're seeing redundancy in a lot of the questions they were asking, we

were answering the for the second or third time.” Or, we were to the point where, the folks who were concerned on that side of the table, they hired a professional hydrogeologist. (Maria—you’re talking about Badger right? Aquino, yes, exactly.) They wanted to have some technical discussions about how we arrived at this cleanup standard or that process, and we said, we’re very happy to talk to you, here’s the open records, we put all the stuff on the web, but to be efficient, if you believe that we missed something, or there’s some science out there that really needs to be applied but wasn’t taken into consideration, we’re happy to look at it, but we would ask that you bring the science forward, provide it to us and kind of highlight the sections, help us make the connections between that science and what’s going on here. That saves our folks the time, you know, someone comes to us and says you know there’s a report out from so-and-so that we think is really pertinent here. That way we can efficiently look at it, we don’t have to spend a lot of staff time, going out searching it down, evaluating it, kind of making those links. So we can reach the same objective, but do so more efficiently from a DNR staff time perspective. Because we have to balance the site with sites throughout the state.

12:06 Jim Powell: Yeah, it’s kind of like when we brought that conceptual site model idea, because since that’s happened, there’s been more information coming forward.

12:13 Maria Powell: A couple years ago, we met with DHS, Mike Schmoller, John Hausbeck, Brynn Bemis, Joe Demorett, the whole team, right over there in that room and brought forward all this information, and conceptual site model stuff, and suggestions for going forward, and suggestions for posting things on the website. Some of that was done, fortunately. So related to that, it reminds me of something I asked in an email. We know, because we’ve looked at a lot of records, that the DNR meets with Kipp very often and has for years, and they are getting, in many ways, a lot of technical assistance. Do they have to pay these fees every time they get that technical assistance? For meetings and things?

22:07 Mark Aquino: This is the exact discussion that unfolded under Badger. So I know, I’m hearing your concerns—are we the only ones who are being subjected to this process? I’ll give you the general answer and then I’ll rely on these folks for the specifics. A question came up from outside parties at Badger, saying you know you’ve been meeting with the Army and their consultants all the time—do you charge? To my knowledge, the answer has been no, and that’s what I told those folks. The general reason being is, the Army is the regulated party and we feel it is in everybody’s best interest that they fully understand the requirements that they are obligated to fulfill, from a cleanup perspective. So in other words, if they come in and say, well do we have to do this, do we have to do that, we feel it’s in the public’s best interest that we sit down with them and say here’s what you need to do and here’s why. I don’t know, beyond that, how we handle the regulated party discussion. Sometimes, and I’m not going to tie this to one case or another, because actually at Badger it doesn’t come into play, but if we are in an enforcement action with the responsible party, that’s also a different scenario. It’s a different set of rules, and it’s much like, you know, we have to understand what’s going on here and the implications. So do you guys want to give a more detailed answer?

23:38 Bruce Urban: I think that’s the key, as Mark alluded to, in this circumstance. There is current enforcement action that’s proceeding with the responsible party. So they’ve gleaned our attention,

maybe in the wrong way. To be sure that we're providing direct oversight, to be sure that they do things right, because historically, they haven't been on the right path. So, requiring a fee of them, no we are not. At the end, and usually when there's an enforcement action that is proceeding, at the end of the investigation and the cleanup, then there's a decision on the finalization of that action, that may result in forfeitures. Many times that does take into account staff time. Always during enforcement actions, we keep track of the time. We have activity codes and we have to log our time too. So at the end, when the attorneys ask us, we have to compile those, if there's going to be a cost recover that's done, which would be included under forfeiture. Now I'm not saying here there will be. That decision hasn't been made yet. That will be made at the end, and it certainly isn't going to be made by me, but dependent on everything that's transpired over the course of the...(last couple words unclear).

25:07 John Budzinski: Can you help me to understand a little bit, because I'm new to the project and at this meeting for the first time, help me to understand the types of requests you've made recently to us, where we've come back and said there's going to be a fee associated with it.

25: 24 Jim Powell: Before we get to that, we assume this is an hour meeting? We have a bunch of questions.

25:26 Maria Powell: Or can you go a little longer? Is there a time limit, or not?

25:33 Mark Aquino: I made need to leave depending on how long it goes.

25:34 Jim Powell: So I was hoping we could get to some of the questions we have and then we can get back to that. Because some of these are connected to some of the questions...

25:40 Maria Powell: Well I can just very quickly, I mean, it's an ongoing process. As these reports come out on the website, and we always look at the website, we'll come up with questions—like one of the questions that comes to mind is about the conceptual site model we have been asking about since the very beginning. I read all the EPA guidances so I know what's required. So one of our questions two years ago was about the conceptual site model, and there's many elements to that. And there were certain things that were asked of Kipp in the summer about the conceptual site model, and I was looking for that information, and it wasn't in the recent documents that were released, so I asked, something about the conceptual site model, and that was when Linda said come look at the files, so we did that, and actually after looking at the files for many many hours, we finally found the file that had some of the answers, but was never posted. So things like that. It has to do with a lot of...I do risk assessment and environmental justice, so I'm looking for certain kinds of things that have to do with assessing risks to the most vulnerable.

26:56: John Budzinski: So our process of taking, of having this repository at the library—it's a good resource for you then, that virtually all the documents we have are there, available for you free of charge...

27:09 Maria Powell (interrupting): It is good, but we have some questions about that. We should go on, because we have some questions about where there are gaps in that and trying to understand how we can address those gaps.

27:20 Anne Chacon: OK, what is the DNR's policy with regard to which records are included in the official files that are available to the public. In other words, is everything posted? When you take things out of the file, why do you do it? What's your general policy on what's available to the public?

27:46: Mark Aquino: I'll answer the general question and then I'll let Linda get to the specifics. In general, anything that comes into our office through a report, correspondence, short of it being part of an enforcement action, where our attorneys would say it's confidential, would be part of the open records. The question is, how quickly, and I'm not sure the process of how quickly we get things posted in the repository or on the website.

28:17 Linda Hanefeld: Yeah, sometimes it takes a while to get things posted or get things down to the repository. We kind of use, just to some extent, like discretion. We get these biweekly reports, and I know not all of those are there. But we try to get the more monumental, more meaningful documents out there, like any work plans, or once they have their work completed, those kinds of documents. Their big site investigation report, we try to make that available.

28:59 Mark Aquino: So the everyday correspondence that may come in isn't necessarily posted?

29:04 Linda Hanefeld: No.

29:06 Bruce Urban: Two places I guess you'd have to rely. We're trying to keep the repository and the website up to speed, but the place with everything in it would be our file. That would include all of that information.

29:19 Maria Powell: You mean down there in the...(referring to the hard copy files downstairs)

29:22 Bruce Urban: Correct

29:23 Anne Chacon: You said that confidential information isn't included, and how is that determined? And how is it determined, what's confidential?

29:32 Bruce Urban: Our legal offices, our attorneys are the ones that give us that advice. It would be something that would be considered to be confidential because of us being the client proceeding with an action. There may be things in there that may not be an open record under the open record law.

29:56 Mark Aquino: So if there's an ongoing enforcement action, but the action hasn't been completed, typically there are communications and information associated with that enforcement, that at least until the enforcement is done, are not open records. Generally speaking, after that, then they're open

records. To answer your question, to give you the really short answer, it's the state open records law—that's what we follow. Everything that's defined in state open records, is an open record that you can ask for. It may not be in the repository, but that doesn't mean you don't have access to it, you just need to make the request. And then any exclusions that the juries would then decide, temporarily or over the longer term that aren't open records would be consistent with the definitions in that law as well.

30:46 Anne Chacon: Could you be more specific—for instance, are you saying that any of the communications between the polluter and DNR that goes on until the enforcement action is complete is confidential?

31:03 Mark Aquino: No. It's only if it directly pertains to the enforcement proceedings, and that's where lead staff would consult with our legal staff to make sure that we're drawing the line in the appropriate place. Because we're trying to balance transparency and the public's right to the information with information that needs to be maintained on a confidential basis at least during a legal proceeding. Really, as Bruce said, anything that comes in to us, absent those statutorily defined legal interpretations that our attorneys say, no, this isn't an open record, is a public document. If I send an email to Bruce about something, it's a public document.

31:48 Bruce Urban: What may be considered confidential is what goes on between attorney and client. In this case the client would be DNR, the folks working on the case, our program attorneys, maybe the AG's office, with that potential enforcement action that's going on. That could be considered, I won't say it's all considered, but that could be considered confidential, and would not necessarily be in the open records file.

32:12 Mark Aquino: Right. And the program staff don't independently make a decision, this is in, this is out. That's really for the attorneys to say, this is an open record, this isn't.

32:24 Maria Powell: What about like, internal memos, meeting agendas, documents like that?

32:31 Bruce Urban: If it doesn't meet those exclusions, they're all open records.

32:38 Jim Powell: So once an enforcement is completed, then there's a final letter to the industry or whatever, does that mean that some of those other documents that may not have been in that file then go back into it, or is there still confidentiality, with attorneys in particular? The reason we're asking some of this stuff is, there are plenty of files that aren't in the files anymore, and that were a year ago. And we also know, because of various things, that things just move around a bit. We're trying to get a sense of how this really works. There could be plenty of reasons, but we're trying to figure out what the policy is. So with an enforcement action, do some of those things that might have not been in there, because they were sort of draft rather than a final thing, would those go back into the file?

33:22 Bruce Urban: Once the enforcement action would be complete, now it could be that the case is closed, it's been resolved, but there could be litigation that's going on after that settlement, perhaps if

there's been referred (unclear), that would not be put in there till and if the case is resolved. And many times that's dependent on the settlement that's negotiated through the AG's office. Or it could be things that are negotiated through that process that will be maintained as confidential forever, perhaps. So we're really at the mercy of our legal folks with that process.

34:08 Mark Aquino: Bruce, maybe questions regarding how the Department of Justice handles open records, would that be a good idea for these folks to ask Justice that question? Or are we still the best entity to provide that this is how it works explanation?

34:25 Bruce Urban: I think if you have specific questions about the department's litigation on a case, we would refer you to our department's attorney and/or to the Department of Justice to get those answered. In general, I'm sure that the Department of Justice would explain how they, what their process is.

34:47 Mark Aquino: Right. In general, not this is what we're doing on Kipp, but this is generally how we make those decisions.

34:49 Maria Powell: Yeah, well we're not, well I'll speak for myself, we're not interested necessarily in the specifics of the litigation. We're more interested in understanding, you know, when we do come in here, what information will be there or not be there? I mean, because I'm more interested in risk assessment in this case, for publication (unclear).

35:09. Mark Aquino: We understand, and it's a fair expectation to know what's a public document, and who makes the decisions about what's not a public document. (some words unclear but meaning is correct)..

35: 22 Maria Powell: Oh yeah, so this is related and we sort of covered it, but I'm going to ask it anyway—just what the policy is on posting information on the website. Because we look at the website all the time, and thank you, it's a good resource—some of that came out of our meeting two years ago, we said, people need this information, and being at Hawthorne is really good. A lot of people cannot access the website, for whatever reason, and I know they look at that. I've looked at it there as well. So, but it appears to include certain things and not other things. Obviously you can't put everything up there. So how do you decide, what's the policy on that?

36:00 Linda Hanefeld: I don't know if we necessarily have a policy, but it's kind of like, we try to look at milestones in the progress on the site. And we post that kind of information. The other thing that people seem to be interested in is when work is going to happen. (loud coughing, missed some words). They see a truck, or they see a well, a drill rig somewhere, just to try to let people know that, hey this is going to be in your neighborhood, this activity is going on, you're going to see this, this is (unclear) out there. You know, kind of, what phase of the work is being looked at. Yeah, we don't post every week. I mean, for a while there we were, we were posting a lot of things quite regularly, but you know, we've kind of

gotten to a point where we're reviewing documents, we're gearing up for another set of information to be posted, so there are going to be gaps in what we post.

37:06 Bruce Urban: I think the key would be, don't rely on a website to be the official file. The official file would be here, and if you're really looking for everything, it would be in the official file.

37: 14 Maria Powell: Oh, believe me, we have been through the files. Several times.

37:19 Mark Aquino: And the reason we don't have a policy, is because, this is not a standard part of our process, it's one of those things where we're going above and beyond, so it's a little less formal.

37:27 Maria Powell: I know, I mean, this is good. It is good.

37: 30 Linda Hanefeld: Yeah, and I would say, I really appreciate when you say, hey, we're missing parts of things that should be out there.

37:39: Maria Powell: Yeah, that one document we found after several hours, it was containing conceptual site model information. Somehow, it was probably an oversight, I'm sure. Yeah.

37: 48 John Budzinski: So the conceptual site model, you did find that?

37:50 Maria Powell: Well not, I mean we found (jumbled, lots of people talking), we found a piece of it, and it took many hours of, I mean to get to it, it was kind of ridiculous, it was at the very end (a couple words unclear). Anne was there. And it was an oversight, I think, that it wasn't posted, but it was, it did have a couple answers to the questions that we were looking for.

38:12 Jim Powell: Connected with the website, there's been public meetings around the Kipp situation for the past several years, and lots of information presented from DNR, and also people commenting, and on the website kind of connected with those meetings, there's some comments from some citizens, but other comments, which are written and submitted, aren't included on the website. And I know from people who ask us about this, you know, there was this meeting and this was said, and people said this, and then, what's available, reflecting what happened in the meeting? It doesn't show the full array of what happened, because some of the comments aren't there, and they tend to be some of the more critical comments.

38:49 Maria Powell: There were some comments that were actually sent in by email. Some of my comments never showed up there.

38:54 Jim Powell: That's what I meant, like documents that are written, that would be easy enough to put on there. So if, that's probably part of discretion and wanting to do it or not. We're trying to figure out if there's a policy connected with that, or is it just sort of the totality of how you look at it—you decide to not put some and others...we're saying that because in a formal public hearing process, where

there's questions, you're required to respond formally. So this isn't that, this is more of a public meeting, where there's lots of questions, but I think, and this has the citizen aspect to it, which is what we're key on, to show these questions were asked, and people had these different opinions, that's the kind of stuff...

39:30 Maria Powell: And also, things that are sent in, via email or in another format, on the Kipp issue or whatever issue, I work with EPA all the time and I do a lot of citizen engagement with EPA, and they have to post everything, especially if somebody asks for it to be posted. So now we're just asking the DNR, is there a policy or a framework in which you decide what to post, because the Kipp website, the DNR website for Kipp, has a public comment section. And I'm just wondering, what you decide to post, what guides that?

40:15 Linda Hanefeld: I don't know that we have a policy...

40:18 Bruce Urban: I don't know if it's a formal policy, and I think Mark kind of hit on that, we don't, bringing up the website (few words unclear), we're not under the same policy that EPA is. For every site that we work on, there's thousands of sites that are currently going forward in the state, I don't think we could maintain those if we wanted to. So I think we're looking at it from the perspective that this is a DNR site with the intent to try to get out the status of where we are and to give the milestones. If there is a way, and if we do have a place for comments in there, there's no reason that we couldn't post them. The intent of the website, though, would be for the DNR to keep externals aware of where we are with that process. As you know, some comments might be very pertinent to the cleanup and investigation, and some may not. The safest route is not to have comments on there, so that we don't have to try to make that call. I don't know why some are on and some are off.

41:26 Linda Hanefeld: Yeah, the only times I remember soliciting formal comments was back before we did the open house type of approach. So I don't know of any since then (unclear, lots of people talking at once; Budzinski said something about it not being a complete collection of comments...).

41:46 Maria Powell: Yeah, but it says public comments, so it's a little confusing. And I have had people from the neighborhood, because we talk to people in the neighborhood, recently people have asked me--I sent this and it never showed up on the public comment. I know that's not the main intent of this, so, just trying to understand that...

42:02 Bruce Urban: Would it be better if that portion wasn't even on the website, and it was clear that it was the department's milestone...(missed a couple words)

42:09 Jim Powell: I think people like having what they can get on the website, and so even though it's not official, it seems in this day and age, long-term policy thinking, you know, a repository that's not just physically in the library, but also it's the same exact information online. That probably makes a lot of sense, but that's...(couple words unclear)...the web has been around a while, but not long enough to make, we understand all that. And you know official files, some of those things, when we've made

requests, sometimes you get files that are or are not in the official files, and you can tell that they're actually electronic files, but you didn't get them in the open records request, but they were in the files. I understand how difficult it is searching for all this stuff.

43:00 Maria Powell: Can we focus on the question he asked—I'm a big one for public comments, and public comments being available. I think it's really important. And it is very much, politically, the right thing to do right now. So I would err towards leaving it on there. But then you have the problem of, you have some comments on there and not others, and I doubt very many people are sending you comments now. That's just my own, and you know, I do a lot of citizen engagement stuff, and I know that public comment, and showing that you care about public comment, and hopefully you really do, it is important. But I don't know, that's for you to decide, but I would err towards leaving it, but again you have to (last few words unclear, something about choosing what comments to put up or not)...

43:44 Mark Aquino: We're fine with leaving it there, but we don't want to have an instance where we're trying to go the extra mile and provide additional information create consternation. We don't want to have a situation where no good deed goes unpunished. But I think we can take another look, particularly given the volume of comments that might be coming in now, and I don't know that there was any sort of conscious effort to screen things. My guess is what happened is, it's a really important meeting, it's very timely, those comments get posted. Two months later something trickles in, and it just doesn't connect. It doesn't sound like there was any criteria for these postings.. (couple words unclear)

44:27 Maria Powell: Yeah. I would guess that right now you're not really getting very many comments.

44:30 Bruce Urban: I think the format has changed also. I think we're looking at using the open house method, where we've got all the agencies, public health, DNR, (word unclear), EPA, all the agencies that would be involved, so that people can come and talk with them and get their questions answered. I think that's a more difficult forum to try and, you've got five people in a line, each of them ask a question, and it gets answered, I don't know that it's written down....

44: 58 Maria Powell: Yeah, everyone's talking at once, we've been to them.

45:00 Bruce Urban: Yeah, it's really difficult to capture all of those, and when we have, when we do request those, I think we can make a point of (unclear, "good listening rules"?)

45:12 Anne Chacon: Can you tell me what role Kipp representatives, including their lawyers, play in the decisions and policies you make? Some of the things we've been talking about?

45:25 Jim Powell: so like, things in the files, open records...(unclear, everyone talking at once)

45:30 Mark Aquino: they have to follow open records laws

45:34 Anne Chacon: But do you talk to them about what they think should, for instance, be made confidential?

45:43 All DNR staff: No, no...

45:44 John Budzinski: Our attorneys, in order for us to be effective in our enforcement activities, our attorneys will look at, what do we need to keep confidential, for us, for the DNR to be effective in that role, and we're not going to have a party that we're pursuing have input into that.

46:07 Anne Chacon: But do DNR's lawyers talk to Kipp's lawyers, for instance, about some of these things?

46:17 John Budzinski: To ask about what would be confidential...?

46:17 Anne Chacon: Not just about what would be confidential, about policies regarding public access to the things in DNR's files...

46:26 Mark Aquino: I would say no. It's not outside of the realm of possibility that entities may request things to be made confidential. But that's what it is—it's a request. And the next step would be for our attorneys to go back to the law and say, does this meet a statutory exclusion or not? So, open records law is for the most part pretty black and white. We don't negotiate individual or grievance (these two words unclear) with parties about what's going to be confidential or not outside of that legal framework.

47:08 Anne Chacon: I have a follow-up. You mentioned the Department of Justice--is it possible that it would be a more indirect process? For instance, a Kipp representative might go to the State Dept. of Justice and request something, and they might deal with DNR's lawyers, so that people actually working on the project wouldn't, I mean, they might know what the policy is directly to be, because not everyone, at least a lot of the public is somewhat—you know, the open records law is not always clear to them. So the people who are actually working on the project might not be aware of where the influence or the recommendations are coming from.

48:00 Mark Aquino: Are you talking about the people at the Department of Justice?

48:05 Anne Chacon: Yes

48:07: Mark Aquino: They're all attorneys and they're very well versed in open records law. And it's something that anyone in government is keenly aware of. You occasionally see Wisconsin State Journal, or the media, challenging certain interpretations. So there is a little bit of a grey area. Those things really are handled by the attorneys and they're not, in their interpretation of the law broadly, there are no, sort of, this is going to be our policy for this project type approaches. And really the Department of Justice is the state experts on the law, so we rely on that...

48:47 Maria Powell: I don't mean to rush through these questions, but following up on that, we know that the DNR, the team—DNR, DHS, city/county public health, and city sometimes—meets regularly to talk about the Kipp situation, and Kipp representatives are there, including the lawyers, including the insurance people. We know that this has been happening for years. And I guess the open records thing, I have full trust that the DNR is trying to follow the law, and it's not Kipp, though we know they may have some indirect...there's some subjectivity, or some discretion. But I'm more interested and concerned, or as interested and concerned, with what role Kipp plays in those more informal settings, like meetings, in deciding, you know, there's a public meeting coming up, or there's an open house coming up, what are we going to talk about? If there's a decision coming up about risk assessment or measurement, what roles is Kipp playing? Because Kipp is at those meetings, we know that. So can you talk about their role at those meetings in decisions? It's not just open records, it's also everything else.

50:00 Mark Aquino: OK, I'll take a stab at that. I may not be the person to do it because I'm not in the meetings, but I can tell you that any similar meeting that I've been in, we want to listen to the regulated party, and they have an opportunity to provide input. They don't make the decisions. They may have a desire or a request. But how we proceed is a department decision that's made by the program staff, if need be in consultation with our attorneys. So to get directly to your question, Kipp isn't in the driver's seat, in terms of, no, we're not going to have a meeting on this. If our staff feel that's important, then we're going to proceed.

50:41 Linda Hanefeld: Yeah, that's exactly right. Yes, Kipp and their lawyer and their insurance people and those types of folks are there, along with state and city health people, DNR folks, Kipp's consultants. I guess recently some of the meetings we've been at, Kipp's consultant wants to present their data, and present their perspective to the group, and so we just listen and it's our opportunity to ask their experts questions about how they came to these conclusions about some of the stuff, the statistical modeling that they do. It's our opportunity to ask their experts as it's being presented, any questions we have, and understanding their perspective on what's being presented. But then we, that's what happens there, then DNR and all the regulatory people will kind of meet again, so go away (unclear) and say, here's our perspective, here's the rules we need to work within, does this meet or not meet our criteria?

52:10 Maria Powell: Yeah. OK, so I have several questions about environmental justice, and I know Jim has some questions. Can you explain the DNR's environmental justice policy?

52:26 Mark Aquino: Are you talking about how we codify environmental justice requirements?

52:29 Maria Powell: However you want to...codify would be great but however you, the department, thinks about environmental justice. If it's in policy, great, but we just want to understand how you approach looking at environmental justice.

52:47 Mark Aquino: Well, to the extent that there are federally mandated environmental justice evaluations or considerations, we certainly comply with federal law. Beyond that, I guess I would defer

to program staff in terms of anything beyond meeting federal requirements, that we do or we don't, or our approach (unclear).

53:09 Bruce Urban: I think generally we have an obligation to comply with the statutes that are in place, and in the (unclear) rules.

53:17 Maria Powell: When you say statutes, you're talking federal or state?

53:19 Bruce Urban: State

53:20 Maria Powell: Can you explain what they are generally?

53:24 Bruce Urban: Well, the cleanup requirements are generally all contained under portions of 292 statutes, they're broken up in there, but basically 292 covers the cleanup requirements, which gave a authority to administrative rules, to the NR 700 series. So generally, we rely on law. Federal law, of course, if it would apply in the case, but we're working on state law specifically, and administrative rules that were promulgated from that state law...

54:04 Mark Aquino: To make sure we're answering your question, would you use the term environmental justice, I interpret that to mean socioeconomic analysis that federal law requires you to analyze to make sure that certain decisions don't disproportionately benefit or have negative impact on specific segments of society. Is that what you're talking about?

54:24 Maria Powell: Um, yeah, although more specifically, (a couple words unclear) and we have some follow-up questions that it will become clear what I mean, how those things affect how you assess a site like Kipp and look at how it will potentially affect the most at risk groups..

54:47 Mark Aquino: So it's two parts. It's the environmental justice as I just articulated, based on federal law, and then what Bruce is talking about primarily is actually the cleanup standards, methodologies and approaches.

55:03 Maria Powell: Well, they're all connected. (a few unclear words, everyone talking at once).

55:06 Mark Aquino: well, we want to do both, because with a certain standard or approach, you want to make sure it doesn't, according to the federal definition, disproportionately adversely impact a certain segment of the population or disproportionately benefit a certain segment of the population.

55:20 Maria Powell: Would you be willing, after the meeting, to send us what relevant policy language applies to the DNR? That would be really helpful.

55:29 Mark Aquino: Sure, we could give you what we have.

55:31 Maria Powell: State and federal, whatever, and so, just follow up on that. Are DNR staff trained to incorporate environmental justice into their decisions and actions?

55:43 Bruce Urban: I think generally they, our response will be that the statute gives us the guidance, the requirement to promulgate rules. The rules would include those social and economic concerns that we have. I'll use an example that might make it easier to understand. It talks about developing a remediation plan. It doesn't say that that remediation plan has to be the most expensive plan, and it has to be done by a certain point in time. It can be the least expensive plan, that will still cover everything, and be sure all of the risks that are involved, the public health risks, the environmental risks, the habitat risks, are all taken into account. So the rule gives that ability for a responsible party to make those choices. That's where the justice portion, I think it's an example of how that's ruled in. So I'd say our response to your question, your formal response, would be the statutes, which give authority to promulgate the rules, that's where it's currently contained (last word unclear).

57:00 Maria Powell: So, actually one thing that I, environmental justice, to really define how we think about that, I'm not going to go into that right now, it's pretty broad, but it also includes, in addition to socioeconomic, it includes race, ethnicity, and social disparities based on race and also based on class, socioeconomic. Also, at risk groups. So, can you be more specific, and say how is DNR addressing environmental justice issues around Kipp? How, and this is probably a question for Linda because this is more specific to a site. How has the staff working on the Kipp situation addressed environmental justice?

57:44 Linda Hanefeld: Well, I mean, we've done things like, we've gone out and knocked on doors to try to make sure that people are aware that there are meetings, especially early on, when things were really hot. You know, we've had our public meetings, we're trying to get information to folks on the web page, make it available at the library. And then I guess, it's my understanding that the standards, the cleanup standards, the things that we use as our guiding principles to establish that we've met our regulatory obligation, or that Kipp has, that how those numbers are generated take into account some of the more vulnerable populations—pregnant women, older people. So I mean, in that respect, I don't know that we've necessarily thought about ethnic groups, for example. But I don't ...

58:48 Mark Aquino: Are you talking about physiological populations in terms of who is more susceptible, or less...

58:55 Maria Powell: Well, yes and no. Yes, there's vulnerable groups, which, you just mentioned some—can be pregnant women, elderly—but on race, a very core part of environmental justice, is people of color, looking at disparities—are you white, are you not white, that's part of it. Anyway, carry on...

59:18 Linda Hanefeld: Yeah, well I don't, we're looking at the neighborhood, or at least the most immediately affected homes. We're not intentionally avoiding...

59:39 Maria Powell: Have you identified—well staff, not you personally, the DNR staff working on the Kipp situation, have you identified where those most at risk groups would be, and that includes both physiologically at risk, pregnant or elderly or sick, but also people of color. Has there been any attempt to identify where those people are?

1:00:00 Linda Hanefeld: No

1:00:00 Bruce Urban: I would say not, and generally that's incorporated into the information that we would get out. It's a shot-gun approach. So we would say what the risks are, associated with those groups, in a general basis, so Linda uses a great example of where maybe, circumstances around there where residents may have access to a computer, can look at the website, can see it. Other people don't. Some of them can't look at a newspaper, they won't see it. So, knocking on doors, putting fliers on doors, those would be the key things that we would look at to get the information. Have we gone so far as to, you know, can all these people read if we give them that information? I don't think we've gone that far.

1:00:46 Maria Powell: Right. Well, I'm talking about information, I'm also talking about risk assessment. Have you looked at the EPA's guidances on environmental justice, in regards to contaminated sites like this, especially vapor intrusion sites? Has anyone on the DNR staff looked through those?

1:01:11 Linda Hanefeld: No. I know I haven't, but I can't speak for others

1:01:15 Bruce Urban: I'm sure our staff have, because we communicate and we work with EPA closely. But in circumstances where they don't necessarily apply to how we would proceed to get sites cleaned up. So I think we generally have an understanding, but not necessarily applicable.

1:01:44 Mark Aquino: So you want some follow-up information from us about how we consider environmental justice on Kipp?

1:01:48 Maria Powell: Yeah. Specific policies, but also actions. I can send you some of the, EPA has some pretty good guidances with suggestions for how to look at this.

1:02:04 Mark Aquino: Yeah, the guidance is good, and I'm sure like Bruce said, we probably already have it. But if there's a specific environmental justice requirement that you feel is applicable here, could you identify that so we could make sure we're answering that part of your question too?

1:02:18 Maria Powell: Yeah. OK, I think we're almost done. Jim, why don't you go on.

1:02:24 Jim Powell: Connecting with assessing risks, what's the current role of the Department of Health Services in identifying and assessing risks to those living in, around, or working at Kipp. EPA, DHS, you all, so what's their current role now, especially as more tests are coming in, more information coming out, what's their role right now?

1:02:44 Linda Hanefeld: Ah, well, I think their role really hasn't changed. We consult with them, we share the data with them. Together, between the DNR and the two health agencies, we sit down, we talk about the information that's available, and together we make decisions on whether or not risks still remain, and whether or not those risks are acceptable.

1:03:15 Bruce Urban: We really, the Dept. of Natural Resources does not set the standards. The standards come from our health partners, either through our state health office, or through EPA, through their health offices. So those, we would rely, for instance, a standard in groundwater comes through an interpretive process from health to look at all the pathways. That gets formalized and adopted, and the department would adopt those standards in their rules. Same thing would be true for instance, with the vapors. If the state does not have a standard for vapor we would go to state health, and ask them to look at that issue, to look at what the risks are for populations. They in turn have access to other federal health agencies, to help them establish that. If there's a federal number, they can certainly look at that, but they'll do their own assessment, come back to us with a recommendation, and we will either use that as a current standard that hasn't been promulgated yet, and then put it into the process so it is eventually adopted into rules. So that's kind of the process.

1:04:36 Maria Powell: And that's Henry Nehls-Lowe, right? We were interacting with him, we were hearing a lot more from him in the first couple years of this recent Kipp thing, since June 2011 (a few words unclear). I see John Hausbeck is now the main contact for on the Kipp webpage for health information. So we're just trying to understand (can't understand last couple words).

1:05:00 Jim Powell: So connected with that, since we haven't seen any documents from DHS, or they haven't been passed through from you, or shared publicly, is it safe to assume then that, the position is that based on lots of information in the last couple years, there's been no change in the status of the health or safety, the risk assessment from DHS regarding the neighbors, around Kipp, the Kipp workers, or anyone. It's just, it's the same kind of thing they said before. The question is connected with, there's lots more information, you're still in the process of discovery and trying to figure things out. And in that process, new information is coming in and it seems like there's more pollution to contend with. That's an observation. So where's DHS on that—are they reassessing how they look at it, where things are currently? What is it, just sort of, until you all are finished with it, they come in after that?

1:05:50 Linda Hanefeld: No. I would have to say that DHS is looking at it concurrently with us. For example, one thing that will be forthcoming is background PAH sampling and analysis, that report. And when we get that, we'll sit down with DHS and John Hausbeck and say, we'll look at the data and try to figure out, what is it telling us, and what does it mean for the neighborhood.

1:06:30 Maria Powell: Yeah. Do you work with OSHA at all? OSHA consultation program? For the workers in the plant?

1:06:37 Linda Hanefeld: We will involve them. Yeah.

1:06:39 Maria Powell: But you haven't yet.

1:06:41 Bruce Urban: If we see that we think that there's violations, we would refer that to OSHA.

1:06:44 Maria Powell: Has there been any assessment of exposures to the workers in the plant?

1:06:54 Linda Hanefeld: We're starting to get that information.

1:06: 58 Maria Powell: Alright. Last question I have, hopefully, is...so some contaminants that are found in the soil around Kipp, PAHs come to mind in particular, but there's some metals that are being found at somewhat high levels, probably originally came from the stacks, at least to some extent. We worked on Kipp for a long time, mostly on air. So we know a lot about the air. So they probably originally came from the stacks and vents. Given that, and this is in your arena of coordination (referring to John Budzinski), how are you coordinating with the air program people on trying to put together, you know, this PAH in the soil, where is this coming from? The stacks and vents? It seems to make sense to me from a risk assessment standpoint that you would try to coordinate. So how are you coordinating?

1:07:54 Linda Hanefeld: Yeah, well, I speak with my counterpart in the air management section, and (Maria: is that Tom Roushar? Linda: yeah) and I can't recall, um....

1:08:10 Bruce Urban: I know that they've looked at the discharge permits currently that are there, and the discharge standards, and I've had conversations with Tom, just recently, that they're currently in compliance with all their discharge permits...TAPE STOPPED.

SUMMARY OF THE LAST 5-10 MINUTE OF THE MEETING, from MEJO members' notes and memory:

Maria Powell commented that being in compliance with air permits doesn't necessarily mean that there aren't problems, and permits don't require measurement of all contaminants coming out of the stacks--so nobody knows what's actually emitted. Maria Powell asked, can R & R coordinate with air management to see if PAHs and other contaminants in soils are connected to what's coming out of stacks? John Budzinski said that the people in R & R and air management work in the same office, talk all the time, eat lunch together, and if air management says they're in compliance, they would accept their decision. Mark Aquino said that Linda Hanefeld and John Budzinski would go back and talk to Tom Roushar about it. If he says everything is OK, they'll accept his assessment.

Maria asked, if we have further questions, will we have to pay \$700? They said they wouldn't really charge us \$700, but our future questions would be funneled through a new point person, John Budzinski (who hadn't previously been involved with the Kipp project) instead of being addressed by the people who are directly managing the Kipp project, who are too busy to deal with them, as discussed earlier. Mark Aquino asked that if we feel they aren't complying with the Code of Federal Regulations (CFR), we should send them our explanation for that (our recollection is that he was referring to environmental justice issues, but we're not totally certain of that).