



THE GEI MGP Reporter

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Part Two - Dealing with Neighbors

By Russ Selman, Katten Muchin Rosenman LLP

In the last issue I discussed how the neighbors to MGP cleanups have become the new "regulators". That's right, the days of making expert-to-expert arguments to set cleanup standards at realistic levels are waning as state/federal EPA officials defer increasingly to Mom and Dad. Such privatization of the former, exclusive governmental role has been sudden and disruptive. The neighbors bring their non-expert life experience to MGP cleanups and are not influenced by modern risk assessment and/or other complex rationales for leaving wastes in place.

Understandably, tales from this battle line are not much discussed as this very sensitive subject can embarrass especially when things have not gone well and costs escalate. I have based the below-listed "dos and don'ts" of MGP neighborhood management on dozens of experiences I have had over the past 20 years.

The "Don'ts"

Most utility errors in dealing with MGP neighbors stems from the misperception that the cleanup bears any resemblance to remedying pipeline spills, transformer substation releases or any other bread and butter environmental

problems common to utility operations. Preparing the neighbors for a realistic MGP cleanup schedule, namely 2-3 years, is a must-do. And, over-promising statements, such as saying that the cleanup will be painless and quick is rarely true for dentistry or MGP cleanups.

People

Blunt, "that's the way it is" - types should not represent the utility in public meetings. Too often the message heard is "we don't care". Also, lawyers should not do neighborhood presentations as we are not believable (my apologies to my brethren).

Goals

While the operating MGP was formerly in a commercial/industrial zone, seventy years has gone by and the neighborhood is now residential and such transformation must be recognized and respected. The utility's goal of resurrecting commercial/industrial cleanup standards is perceived by neighbors as an insult and likely to be rejected. While a "scrape and cap" cleanup may achieve residential standards, arguing for leaving shallow wastes in place loses the utility's credibility and neighborhood support.

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Editorial

The Irony of Tar

By Jerry Zak, GEI Consultants

Coal tar is the source of expensive environmental problems and the source of expensive, useful goods – shampoos, dyes, pavement sealers, wood preservatives, and so on. State and federal agencies drive coal tar cleanups and ensure that we prevent direct contact. FDA approves coal tar for direct contact.

We're not naïve about this. There is a huge difference between the potential effects of coal tar in a prime aquifer, and likely effects of 2% coal tar extract in a shampoo (meant to repel fungi that love the human scalp).

Creosote (coal tar derived) is an effective, safe (when used properly) wood preservative. It's effective because insects and fungi would rather gnaw on wood without creosote (me too). While EPA re-registration of creosote is expected soon, the agency has nonetheless been pushing industry to develop something new that's effective but less worrying.

One industry response is copper xylygen. Xylygen is based on xylene. One significant source of xylene is, yep, coal tar. So we keep going round and round.

MGP Reporter

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Newsbriefs

Gasholders to serve as housing. . . Will it happen as planned?

A major revitalization project has been undertaken in the King's Cross area of London with major accomplishments scheduled for completion just in time for the Olympics scheduled for London in 2012. However, if campaigners have their way, a delay could hinder this timetable sending the Pounds 2bn redevelopment project back to the drawing board.

The King's Cross development project would convert 67 acres of predominately dilapidated railway land into mixed-use consisting of offices, homes, shops and even hotels. The highlight – four gasholders,

temporarily removed for construction of a rail link, would be returned and utilized as part of the redevelopment. Three interlocking holders would provide the framework for housing and the fourth holder would serve as play facilities and open space. Proposals are also in place to return the King's Cross mainline station to its glory with a grand piazza at its entrance. Once completed, the project is estimated to provide 1,946 homes, student accommodations, a nursery and primary school, two health centers, a leisure center, 4.9 million square feet of office space and create up to 27,000 jobs.

The catch, according to campaigners, is that the revitalization proposal is only in outline form. Details for design and size of buildings are unknown and nothing about this 10-20 year building plan schedule is set in stone. In addition, two historical buildings which serve as excellent examples of the area's industrial history are scheduled for removal.

Campaigners have won their right to a judicial review of the project, when and if a delay will occur to review the revitalization plan is now up to the High Court to decide. *The Evening Standard (London)*, 03/12/2007.

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Slow Response

When the utility confronts a hostile neighborhood, and the utility representatives have no real authority to negotiate, months or years typically go by without a decision or a plan of action. It's during this wrongly named "quiet period" that neighborhood hostility ferments. By the (too long) time the utility again goes public, the neighbors have augmented their demands in a wholly disproportionate manner and the utility's deliberative approach strongly works against gaining control over a now incensed community.

The "Dos"

Seeing the MGP cleanup as a good thing for the community and as an enhancement for the community leads to positive community reaction. Paradoxically (perhaps), the utility obtains the best community support for MGP cleanup cost savings where the utility does additional non-remedial work for the community. While the utility sees the MGP cleanup as the sole or main goal, the community assumes that remedial work is the "necessary" effort and seeks more obvious community benefits. Too often the utility gets "whip-sawed". First the cleanup goals are driven dramatically higher and then the utility also confers a variety of non-remedial community benefits without getting any off-setting benefits. That's why a rigorous unitary plan to offer both can save money.

Establish Good Realtor Relations

During an MGP cleanup with the attendant noise, traffic and bad publicity, property values will (temporarily) suffer. Given that their home is most people's largest asset, threats to its value are a highly emotional event which weaken the utility's remedial planning and general credibility. Proactive steps must be taken by the utility or the neighbors will resort to hostile actions causing increased remedial costs.

Utilities should work with MGP area realtors. First, the realtors can "spread the word" that property values will go up after the cleanup is complete. Second, realtors can provide realistic property sales information to use when the utility offers a "price stabilization guarantee" that will reimburse neighbors for losses based on the average inflation of home prices in the area. Note that such adverse value impacts may be transitory and reverse after a remediation. Third, working through realtors, the utility can offer to buy nearby residences (and this is, of course, the glue which convinces realtors to work with the utility on an exclusive basis). Given that experi-

ence shows home values do not suffer from MGP remediations, except during the active cleanup phase, such steps reassure the neighbors and stops excessive demands.

Neighborhood Revitalization

Often the MGP remedial area is the worn and ungentrified part of town. Neighbors see the MGP cleanup as one more depressing factor in local real estate values. Such perceptions may be accurate and leave little to no enthusiasm for a cleanup.

For comparatively little money, enormous community support can be won by the utility's investing in the local community's revitalization. Specifically, by offering low or no interest loans for home repairs, the cleanup wins community support. Such "beyond the MGP site boundary" thinking responds to the very real needs of the community who typically have less interest in the vagaries of remedial action but are concerned by blight. After all, the spending of millions of dollars for subsurface work is unseen and the neighbors may, wrongly, conclude that the MGP cleanup does little for property values. The community's goodwill can be obtained when the utility shows its interest in improving the neighborhood and such extra costs can be justified as the community supports the utility's MGP cleanup plan.

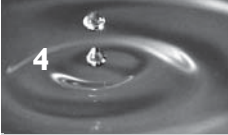
Recognizing the MGP cleanup as part of an overall neighborhood revitalization effort is the central thought in gaining neighborhood support in approving MGP remedial action. The current approach of separating the two, leads to lack of community support and too expensive remediations. Hopes that area-wide revitalization will occur after a cleanup are often proved correct, but afford the utility no benefit in reducing its remedial costs. The utility's willingness to take on both simultaneously can (and has) substantially reduced MGP costs.

The opinions expressed are those of the author and not necessarily those of GEI. We invite comment from those with differing opinions. The author may be contacted at russell.selman@kattenlaw.com.

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Sneak Peek

Our next issue will include a feature article from Attorney Dave Elkind (Dickstein Shapiro, LLC - Washington, DC). Dave will discuss potential problems created for site owners when imperfect language is used in environmental reports.



Coal Tar & Pavement Sealers (Part II)

By Jerry Zak, GEI Consultants

In the last two issues of the MGP Reporter we described the city of Austin's (Texas) ban on coal-tar-based pavement sealers within city limits, and related concerns raised by the Dane County (Wisconsin) Lakes and Watershed Commission. Now, the February 2007 issue of Chemical and Engineering News (C&EN) has devoted four pages to the Austin ban.

C&EN summarized the nature and non-coal tar sources of PAHs, quoted Mateo Scoggins, the city's aquatic biologist, and got input from Geoff Crenson, Chairman of the Pavement Coating Technology Center. According to the C&EN report, 85 million gallons of coal-tar-based pavement sealers are sold annually in the US, accounting for around \$100 million of sales. While non-coal-tar-related coatings are available, Crenson was quoted as explaining that coal-tar-based sealers have the advantage of resistance to ultraviolet rays.

In response to the Austin ban, the Pavement Coating Technology Center conducted its own study, using the Tampa, Florida-based environmental consulting firm Environ. The study found that the average concentration of PAHs in Austin waterways is comparable with averages in urban waterways across the US. In addition, the study took exception to the city's conclusion that pavement sealer was the main source of measured PAHs in waterway sediments. According to C&EN, Robert DeMott, Environ's principal toxicologist, said the city needed to know what "...percent of PAHs came from sealed parking lots and what portion came from a variety of other sources."

We'll continue to monitor developments and keep you up-to-date.



GASWORKS EUROPE

March 4-6, 2008
Dresden, Germany

Redevelopment, Site Management and Contaminant Issues of former MGPs and other Tar Oil Polluted Sites

This international conference on the redevelopment of Manufactured Gas Plants (MGP) in Dresden addresses the remediation of such sites by focusing on appropriate remediation technologies, risk assessment and legal issues, case studies, integrated strategies and fit for purposes approaches as well.

The objective of this conference is to exchange experiences and ideas concerning the management of abandoned tar contaminated sites in general (MGP, wood preserving sites, coking plants). It will provide a platform for problem owners, site managers, companies being active in the field of remediation technologies, and community stakeholders.

Special Sessions, round table and panel discussions will be offered according the demand. An exhibition will provide information on the state of the art of remediation.

Please find further information on the internet at: www.mgp2008.com.

SpeakUp



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Thanks to Andy Coleman, Ph.D., of Electric Power Research Institute for sharing this pertinent book cover. If you come across anything related to MGPs or coal tar, which you think would be of interest, please email to dunites@geiconsultants.com.

