


From: Barbara Hirst
To: Belton, Thomas; Murphy, Eileen; Patterson, Pilar
Date: 10/7/04 4:06PM
Subject: Re: Fwd: Re: Millstone-Raritan Phosphorus Study Meeting

Tom advised me of his concern some time ago and I suggested we have a discussion. Time has passed, no discussion yet, seems like it is needed. Shall I have my secretary set it up and who should be on the invite list? 

>>> Thomas Belton 10/05/04 12:38PM >>>

Eileen,

The outline of factual basis is simple. How to manage it is the question.

The Commissioner held a Public Meeting over a year ago telling in-State dischargers (mostly affecting Municipal Utility Authorities) with NPDES permits for Phosphorus, that they may perform a Phosphorus Evaluation Study in lieu of immediately accepting a Phosphorus limit at end-of-pipe. If successful this could save them millions of dollars in facility upgrade costs. DEP through a committee approach developed a guidance document with recommended action levels for evaluating these studies. The MUAs than have hired a number of Environmental Consulting firms to perform these studies.

Subsequently, a member of DEP who helped draft the guidance document left the Department and joined the consulting firm OMNI. OMNI convinced a number of the dischargers to band together to perform a broader study of the Millstone Raritan Rivers. Some of them did not have the immediate need to perform these studies but did so anyway.

At the same time DEP hired this same consulting firm OMNI to do develop TMDLS for us on this same waterway. They are therefore performing field work for a Phosphorus Evaluation Study for MUAs AND performing studies in support of DEP's regulatory commitment to develop Total Maximum Daily Load (TMDLs) for the Raritan Millstone Rivers; which would result in a waste load allocations for these same facilities for Phosphorus (i.e., a phosphorus permit limit). Thus the same contractor who is collecting data which DEP will use to regulate the MUAs. is at the same time collecting data in separate (but overlapping studies) to gain regulatory relief for their clients (these same MUAs).

At a recent DEP meeting with OMNI and one of the MUAs (over administrative completeness of a study report) the consultant pulled out graphs and data from the DEP TMDL study to support his position as to the MUA (data which we as regulators had not seen yet).

I found it difficult to discuss the TMDL data in relation to MUA Phosphorus Study (especially in front of the MUA representative) and sent a series of in house emails at the time asking if there should be some instructions given to consultant on how they should act with our data.

That's the crux of it.

I realize that in the era of OPRA all this may be moot as to who sees data when. But the consultant representing the regulator and the regulated community simultaneously made me uncomfortable and confused. I think we need some sense of the rules of engagement in such a scenario; that's all.
Tom

>>> Pilar Patterson 10/05/04 12:00PM >>>

Eileen:

I am concerned with the legal issue that Tom Belton has raised..not the specific details of the study....is that what you were referring to also?.....The legal issue is probably best handled through discussion rather than email?

>>> Eileen Murphy 10/05/04 11:45AM >>>

Can we get together an outline the issue? I've seen the emails and have an idea of what's going on, but I