

I Should Have Seen That Coming: A Case Study

Sharon Bailey, P.E. (sbailey@louisberger.com) (Louis Berger, Seattle, WA, USA)
Gwyneth Linus, P.E. (glinus@louisberger.com) (Louis Berger, Philadelphia, PA, USA)
Thalia Loor, P.E. (tloor@louisberger.com) (Louis Berger, Elmsford, NY, USA)

Background/Objectives. In 2013 Louis Berger was retained by a law firm to serve as consulting experts and testifying expert witnesses on behalf of a remedial contractor and its insurer, in a lawsuit related to the remedial dredging of a petroleum-impacted sediment in a small canal in northern Utah. A review of the documents on the case indicated a number of red flags that could have /should have warned the Contractor of future legal issues.

Approach/Activities. The canal was used by several industries and the local municipality (collectively herein referred to as the Owners) for the discharge of stormwater and other treated process flows. The Owners retained the Contractor to remove and dispose of contaminated sediment in the canal under an Administrative Order on Consent (AOC). The Contractor completed the work, demobilized from the site, and was paid for its contracted work. However, regulatory agencies did not approve site close out due to TPH and oil and grease concentrations exceeding cleanup standards in several confirmation samples collected during the work. Ultimately additional samples collected over the entire length of the canal were found not to meet cleanup standards.

The Owners sued the Contractor contending that the contractor had failed to remove all of the contaminated sediments forcing the Owners to re-excavate the canal utilizing a separate contractor. Ultimately, the matter settled out of court. Working for the Contractor's attorneys, Louis Berger reviewed and evaluated the performance of the Contractor, dividing the work into four main segments: (i) contract language; (ii) Contractor's approach to the work; (iii) site conditions and other extenuating factors; and (iv) the scope and cost of follow-on activities.

Results/Lessons Learned. Louis Berger's review and analysis identified a number of red flags that could have warned of potential problems that should be addressed during the contracting stage of the project. Such potential problems included; (i) overly broad specification language; (ii) contract language that was not consistent with the specifications; and (iii) design documents and a project schedule that were inconsistent with project expectations. This presentation discusses these and other red flags that should be recognized and addressed at the initial stages of a project, from the viewpoint of the Engineer and Contractor. This presentation also outlines some typical risks in the contracting and bid review stage of environmental remediation projects and provides recommendations regarding methodologies to mitigate such risks. This is intended to assist the engineers and contractors in identifying contracting red flags and is not a legal analysis of the project.