

MEMORANDUM

TO: JAY COHEN; EED FILE

FROM: COURTNEY E. LINDAHL

DATE: SEPTEMBER 4, 2003

SUBJECT: INITIAL MEETING WITH DEPARTMENT OF ENVIRONMENTAL PROTECTION,
SEPTEMBER 3, 2003

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION ATTORNEY WORK PRODUCT

Introduction by Law Department

Jay Cohen gave a brief overview of the nature of the claims that the City is currently facing with regard to the World Trade Center disaster. He also emphasized the importance of preserving electronic evidence and the potential repercussions (court sanctions, etc.) if all possible steps are not taken to preserve evidence. The three goals for the meeting are: 1) Identify all archives and legacy systems, 2) Identify all current systems, and 3) as of the date of the Cardozo letter, receive assurances that evidence is being preserved.

E-Mail Systems

Prior to 9/11, DEP used Microsoft MS Mail. They currently use Microsoft Exchange/Outlook. Since receipt of the Cardozo letter, the e-mail accounts of former DEP employees have remained open. Some may have been deleted prior to the letter; DEP will check archives. Each bureau within DEP has its own Exchange administrator and server. DEP stated they have hard copies of all e-mail, but Jay countered that metadata embedded within the e-mail is also crucial to the discovery process.

DEP does recycle tapes. Jay requested a hard copy of the protocols for recycling tapes and data retention.

Document Management Systems

Although each bureau is different, DEP stated that file servers are used minimally. Most documents are on the hard drives of PC's, of which there are approximately 4,000 throughout the state. DEP does have the capability to log on remotely to most, not all, of the PC's. Stand alone PC's are not networked.

Other Systems

Following are additional systems and potential sources of electronic evidence identified by DEP:

CIS System: Billing system

Hansen: CRM Oracle database that existed on 9/11. Used to address air, noise, water, and sewage complaints. There are no means of archiving on Hansen, all the information remains on the server. CSR is workorder component of Hansen.

Clipper applications: Facilities database

ACP 7 and ACP 5 database: Not currently backed up, DEP will find means to back up this information. Is a D-base backend.

Maps:

GIS: Mapping of sewers and water mains.

Also maps with information on downtown environmental cleaning. LaDuca is custodian.

FMS: Payroll and Purchase orders.¹

¹ DEP stated that Pfizer would have the back-up of this system. This may be a point that should be clarified at the next meeting .

LIMS: Lab data of water quality and sewage outflow.

Webserver: Public Affairs maintains the site; is stored at DoITT. DEP will check for any former versions of the website. DEP has no intranet.

“Skater” System: Records from pumping stations.

Photographs: DEP will preserve digital photographs.

DEP stated that electronic evidence does not exist on the following systems:

PDA’s

Home PC’s

Citrix

RAS

Blackberry

DPAX: DEP stopped using this system six months prior to 9/11.

Voicemail

Current Practices

DEP currently uses NT. DEP backs up information in a decentralized manner. The back up occurs incrementally every night and then a full back up is performed on a weekly basis. DEP currently recycles PC’s with a normal salvage process and with some cascading. Some PC’s belonging to employees working during the months following 9/11 are gone. DEP does keep record of which PC’s have been salvaged, but the form used by DEP does not necessarily give the name of the former owner of the PC.

Actions to be taken by DEP

DEP will no longer recycle tapes, instead they will purchase new tapes. DEP will also look into copying the hard drive of a PC before salvaging, especially for members of the

management team.. Next, DEP will send communications to all employees directing them not to destroy or delete anything from the hard drive (examples of documents or information not to be destroyed will be included in the correspondence). DEP will also send correspondence to the various bureaus requesting the following regarding stand alone PC's: the contact person for the PC, what system is on the PC, and what types of records are on the PC. A follow-up communication will also be sent to the owner of the PC to ensure accountability for the stand alone. Finally, a reminder will be sent to senior staff not to destroy or salvage any PC's. The General Counsel, Mark Hoffer, offered to allow the Law Department to review the correspondence before it is sent.

Meeting Attendees

Bob Avaltroni, DEP

Mike Gilsenan, DEP

Mark Hoffer Esq., DEP

Robert Cucinotta, DEP

Frank Schiano, DEP

Jay Cohen Esq., Law

Scott Rosenberg, Esq., Law

Dan Margetanski, Esq., Law

Courtney Lindahl, Law