

Community Advisory Group (CAG)
Hudson River PCBs Superfund Site
Meeting Notes
27 October 2005
CAG Meeting, 1:00 PM – 3:45 PM
Saratoga Springs, NY

Members and Alternates Attending: Chris Ballantyne, Dan Casey, Kenneth DeCerce, Phil Dobie, Richard Fuller, Mark Galough, Joe Gardner, Manna Jo Greene, Harry Gutheil, John Lawler, Roland Mann, David Mathis, Merrilyn Pulver, Neal Orsini, Rich Schiafo, Lois Squire, Julia Stokes, Oliver Holmes.

CAG Liaisons Attending: Danielle Adams (Ecology & Environment), Mark Behan (Behan Communications), William Daigle (NYS DEC), Joan Gerhardt (Behan Communications), David King (EPA Region 2), Gary Klawinski (Ecology & Environment) Deanna Ripstein (NYS Department of Health), Leo Rosales (EPA Region 2), Steven Sweeney (NYS Canal Corporation).

Others Attending: Daniel Milewski (Ecology & Environment), Doug Fischer (EPA Region 2), Kamoji Wachiira (CBI), Tom Nash (Irving Tissue), Tucker Etu (Irving Tissue), Colleen Calliger, Tom Brady (Albany County Health), Jerry Dudding, Tom Kryzak (Air & Earth Works), Jim Kudlack (Jim-Ber Farming Association Inc.), Michael Elder (GE), Kyle York, Christine Magiotta (Post Star), Lee Coleman (Daily Gazette) Matt Pacenza (Times Union), Jim Kinney (Saratogian).

Facilitators: Patrick Field, Ona Ferguson.

Members Absent: Jean Carlson, Cecil Corbin-Mark, Theresa Egan, Mark Fitzsimmons, Robert Goldstein, Gil Hawkins, Paul Lilac, Aaron Mair, Dan McGraw, John Rieger, Judy Schmidt-Dean, Jock Williamson.

The next CAG meeting will be held on Thursday December 8.

Key Action Items:

- CAG members are interested in an opportunity to share their efforts at leveraging money for the area so they can look for additional collaborative opportunities.
- EPA said they would share their comments on the IDR with the CAG as soon as they are submitted to GE; likely before the next CAG meeting.
- Merrilyn Pulver will send the stewardship money RFQ to the CAG electronically.
- CAG members want to know from GE what the best way is to work with GE to see that CAG concerns are met.
- Comments on the consent decree should go to: Assistant Attorney General of the Environment and Natural Resources Division, US Department of Justice, Washington DC

20530, ref: US v. General Electric Company, CIV 05-cv-1270, DOJ reference 90-11-2-529.

- John Lawler, Julia Stokes, and Chris Ballantyne will work on the question of offering GE a seat on CAG.
- Letter from CAG members re: economic impact has been sent.

Welcome and Reminder of CAG Groundrules

The facilitators welcomed everyone to the meeting and reminded the media of the groundrules regarding their coverage of the CAG.

Meeting Summary, Revised Groundrules and Action Item Update

September CAG meeting notes were approved without additional changes. Action items from August with updates and not discussed elsewhere in the meeting are as follows:

Lessons from the New Bedford Superfund Cleanup

Matthew Thomas, City Solicitor for New Bedford, MA, shared his experience working to create economic and other benefits for local communities during the New Bedford dredging project.

New Bedford Project Overview

New Bedford, located on the south coast of Massachusetts, has a population of about 93,000 people. It had the highest concentration of PCBs ever found in a marine area, due to discharge in the 1970s. A hurricane barrier prevented the PCBs from washing out to sea. The project had two different Record of Decisions, the first in 1990, and the second in 1998. The Superfund Forum, similar to the Hudson CAG, was formed to rebuild trust between the groups involved. The 1998 ROD, which was consensus-based, called for dewatering and four Confined Disposal Facilities (CDFs) to hold dewatered silt.

Three other towns were also affected. The four communities include a diversity of wealth, industry, and rural landscapes. All four worked together, using resources and representatives from all communities, with New Bedford in the lead. EPA was the lead agency, and Aerovox, one of the polluting parties, and others paid into a fund. EPA wasn't the source for funding economic opportunities, so we turned to Economic Development, transportation, and community design funding. Town planners shared the work, shared some grant funding, shared some community development money, and worked with the Commonwealth of MA as a big partner.

Positive Collateral Environmental Development

In 1998 the current mayor was elected. He immediately set to work trying to create "positive collateral environmental development" in which communities in the region would leverage public dollars with other public dollars and even private dollars. Money from these initiatives was used for many projects including fixing sewer overflow. The mayor made many

partnerships: public/public (city/state), public/private, public/educational institution (city/universities).

Due to its 40 brownfields, New Bedford was designated a 2001 Brownfields Showcase Community. This created new opportunities for dialogue and creative thinking with EPA, and also provided a federal coordinator on-site. For every federal dollar for clean up, New Bedford leveraged \$22 in private money.

Reuse of CDFs

In 2002, New Bedford completed its four-year consensus building process and planning, which included potential reuse of the CDFs. This is one example of how EPA can create the clean up and plan for future reuse. Originally the CDFs were going to create 20 acres of land in the industrial working waterfront that would only hold the weight of people walking on them. Yet Army Corps of Engineers standards for the Navy require projects to support 1000 pounds per square foot. New Bedford residents demanded these same standards for their project to provide for real economic development opportunity. Matthew explained that had EPA had taken industrial land out of use it could have been considered a taking. He explained that when EPA saw how New Bedford was using EPA commitments to get additional economic development dollars NOAA, DOT and others, the agency realized that it was necessary to be very realistic about what New Bedford could expect from them.

Outcomes

Today New Bedford has a facility with rail yards and deep river, dredged area, and a harbor walk is being created over a base created by EPA shore work. Four businesses use the rail yard. EPA leased two soccer fields, and in return the town got three new soccer fields. New Bedford also has turned one coastal area into a park. New Bedford will get \$50 million for the project (both more money and a longer process than anticipated).

The ROD included a State Enhanced Remedy (SER), which determined that by becoming a "portfield," New Bedford could dredge areas that were <50ppm (so not rising to the waste of Superfund or TOSCA but still difficult to dispose of). Under the SER, New Bedford is in their fourth phase of dredging today. They are digging the clean harbor basin, sending clean sediment up harbor to cap areas where dredging isn't possible, and putting contaminated dredge into the resulting pits under EPA and Army Corps regulations.

Today the City of New Bedford and EPA are strong partners. The mayor formed a Limited Liability Company. The LLC, with the Department of Justice, EPA and our council, has taken ownership of a company that went bankrupt. The agreement over the contaminated site includes EPA providing \$8 million for cooperative remedial action. The LLC has put out an RFP to select a cleanup team. The RFP has two parts: remediation and redevelopment.

EPA built the dewatering facility on a site owned by the town that had been leased to a boatyard. The EPA paid to relocate the boatyard since they needed the site.

Ideas for the CAG

- *Provide HAZWAP 40-hour training:* This training was the most effective preparations for the New Bedford community in terms of economic development. They used brownfields job training money and trained 150 people, of whom approximately 80% found work on the Superfund site.
- *Job fairs were also somewhat useful.*
- *Political Outreach:* The mayor of New Bedford inviting contractors to come see him in person and welcomed him and let them know his expectations. Those meetings made a huge difference.
- *Look for Environmental Liability Transfer Companies:* These companies take on remediation projects because communities' fear of the unknown leads them to overestimate the cost of cleanup. They do the cleanup at a guaranteed reduced cost and redevelop sites based on community-created designs.
- *Build Partnerships and Coalitions:* of varied groups at all levels.
- *Aim for Cognitive Restructuring:* Reframe challenges as opportunities, and believe it's possible to find real opportunities
- *Craft consensus –based plans:* In New Bedford, this emerged around the idea of bringing in a railroad
- *Gather a strong creative team:* ideally with a “champion” and creative people to support the champion
- *Seek to leverage other public investments:* (state or federal) to supplement local taxes.
- *Let everyone take credit for the work.*
- *Don't accept no for an answer:* ask why not, then try to come up with new solutions
- *Look for opportunities:* so each involved party will want to take action because they will each win in some way.
- *Create a Transfer of Development Rights program:* Where industrial and commercial development help fund recreational and environmental benefits in other towns, for example the Pine Barrens in New Jersey.
- *Use the situation as an educational opportunity:* Schools in the New Bedford area used it to improve local students' math and science skills.
- *Use the good political timing:* This is a great time politically to ask for benefits because next year is a congressional mid-term election.

Conclusion

It is much better to negotiate a settlement with EPA than to go through a court. This process is difficult, but it is much better than being in court. Community groups never have adequate legal representation, but they do have the power to mobilize constituencies during the crisis. This should be seen as a crisis of opportunity that can be leveraged for good if the local community is mobilized. It is a huge opportunity. Ask your congressmen's staff to ask questions you don't think you're getting answers to. Don't be afraid to ask more questions.

Questions

CAG members mentioned that their situation differs from the New Bedford situation because Fort Edward is small (6000 people) and has few technical staff or resources, because some members don't feel they can negotiate with EPA. Several thanked Matthew for reminding the CAG how powerful coalitions can be, and one noted that it would be great to find a way to fund some legal council for the CAG.

The CAG had several questions and comments¹:

- We have no way to coordinate the brownfields we have along the river.
- Could our counties work together to lead and coordinate the whole region?
- New Bedford had a logistical advantage because it was the largest stakeholder and had significant resources. Here we have many counties and small municipalities and few resources. Could EPA fund our efforts at collaboration?
- If under Superfund at New Bedford, EPA had to spend money to relocate businesses, can't it require the GE provide some money for compensation for businesses that are harmed but not relocated? *If a business will be adversely affected even temporarily, EPA has to pay a benefit. The Federal Relocation Act was created for affected people and businesses. You should look into this*
- How was the private sector involved in New Bedford? *EPA did a wonderful outreach program. When they closed seven acres along the river, they responded to all questions about air quality, put out newsletters, and had abutters meetings. Today they still run an abutters group that had input into the design of the dewatering facility. EPA recognized that local businesses should have input because they were going to feel the impact.*
- Fort Edward has met with GE. EPA has also been working very closely with the town of Fort Edward. Perhaps Fort Edward can share in the CAG what we've been doing in these past few months. We are feeling much more comfortable today than we have. We are working to form partnerships and to leverage dollars. David King and Merrillyn Pulver are going to the national Brownfields Conference next week.
- It is upsetting that a Superfund Site isn't legally considered a brownfield.
- In New Bedford, residences appeared to be close to the proximity to the dredging, where there would be a lot of noise, yet you said you hadn't had one complaint. *And we haven't. Our housing is right along the river. We used a hydraulic dredge, which takes dredge materials to a de-sanding facility, from which it gets pumped to the dewatering facility by an underground facility, and it gets pressed into filter cakes, which get shipped out by rail. There is some noise, but we've never had complaints. When they cleaned the 7 acres, from peoples' yard, we never had any complaints about dust or noise because EPA worked with the residents. I give the Army Corps and the EPA credit for choosing good contractors and monitoring the process.*
- Were you working on a project labor agreement, or did EPA bring people in from outside? *We have in our law that anytime city dollars are leveraged, at least 50% of employees have to be local. Sadly this doesn't work if other money is involved.*

EPA-GE Consent Decree Agreement for Dredging

Doug Fisher of EPA presented the consent decree to the CAG. On October 6, 2005 a consent decree between EPA and GE was lodged with the court. The decree lays out GE and EPA roles in relation to each other, but it doesn't necessarily describe all process details going forward. There is now a 30-day comment period on the consent decree, which ends November 14 [NOTE:

¹ Comments in plain text in this bulleted list are from the CAG. Italicized comments are from Matthew Thomas.

Extended to December 14]. Following public comment, a US court will decide whether to approve and enter the agreement. If EPA decides changes need to be made, GE would need to review them.

The 140-paragraph consent decree commits GE to construct the sediment processing facility and to perform Phase I of dredging. After the completion of the dredging, GE and EPA will both separately prepare Phase I Evaluations, which will be peer-reviewed. The consent decree requires GE to spend up to \$5 million prior to its Phase 2 opt-in deadline to prepare for the re-mobilization of contractors and equipment needed to undertake Phase 2, regardless of who is ultimately responsible for Phase 2. It is EPA's hope that GE will opt in to phase 2. If GE doesn't do so, EPA can do the work itself and collect the money from GE.

The ROD requires a peer review of Phase I, to answer questions about productivity (speed) and whether engineering standards can be met, and dredging type performance. The panel will be comparing the two reports to performance standards. It will be too early for the panel to be able to determine if the project is meeting its ROD objectives. EPA is responsible for determining whether the dredging is meeting the ROD, including determining whether there have been reductions in PCB levels in fish, in the water column, in the mass of PCBs available for transport downstream, and in the mass in sediments that may be bioavailable.

The CAG had a range of questions about the peer review process. They wanted to know how the panel will have enough time in Spring of 2008 to review two reports and allow dredging to happen that season (later that summer). EPA replied that the panel will have the time needed, and that the point of having both GE and EPA to complete an evaluation of Phase I was to enable GE to submit their own review of the process. Some noted that information from the two reports, both engineering and quality of life standards, should be shared with the public, to which EPA noted that they expect the data to be publicly available. EPA noted that there would most likely be a public process at that time.

The CAG had some comments and questions:²

- *If GE opts out of Phase 2, EPA still has the power to administer a unilateral administrative order to seek reimbursement. Triple damages would be a real disincentive for GE to avoiding Phase 2. These would apply only if EPA ordered GE to do the cleanup and GE didn't comply.*
- *Why is GE required to pay EPA \$78 million if they opt into phase 2, but only \$43 million if they opt out? These amounts have to do with past costs and costs of overseeing GE's work (which would decrease if EPA did Phase 2).*
- *Are there other phased agreements like this? I'm not aware of any, but this clean up is new in many ways due to its scale.*
- *What is the timeframe for deciding who will start Phase 2? Discussion in 2008 could remove much of that construction season. This depends on changes GE suggests needs to*

² Comments in this list in italics were made by CAG members, and those in italics were made by EPA.

be made to the process. Either GE would do a discrete area of dredging in 2008 or dredging would begin in 2009.

- *It is amazing to decide that so much money that will be paid to EPA without any money in the agreement for impacted communities.*
- *If Superfund money runs out before Phase 2, what would that mean?*
- *We would like to see EPA's comments on the IDR before they are completed and before the Nov 14 deadline for public comment. We can probably do that.*
- *Phase I covers removing 10% by volume but what level or total mass of PCBs? This can't be determined as a percentage until we know the mass for Phase 2 (in the Phase II DAD, expected spring 2006). 10% of dredging mass should be more than 10% of the mass of PCBs because it is some of the hottest areas of contamination.*
- *How are contractors going to bid this work, not knowing if they'll work for a year or two or for more? Both facility construction and dredging will start on time, with contracts for Phase 1 unless GE chooses to put provisions in for contractors staying on to Phase 2.*
- *CAG members ought to form a partnership with other communities that have suffered this kind of contamination to work with the federal government to build up the Superfund to ensure the project can be completed in a timely way.*
- *Now is the time to work with GE for local economic benefits.*
- *How will GE choose contractors? Mark Behan suggested that the CAG should make clear proposals to GE if they want a response on this broad issue. GE will solicit proposals from responsible experienced contractors.*
- *Is a mid-stream evaluation possible? Yes, after three dredge seasons (Phase 1 plus two seasons in Phase 2) we expect to know if dredging is working.*
- *What kind of contingency plan do you have? What kind of guarantee is there that Phase 2 will happen? EPA has the right to ask GE to do it, or to force GE to do it, or do it themselves and recover the costs.*

Several people noted that they would like to offer GE a seat on the CAG if it would enable them to participate more fully. The facilitator noted that the CAG does have the power to change its membership. Other CAG members noted that if a GE representative were at the table, they would want it to be a GE technical project manager, not a pr rep. Several CAG members volunteered to talk more about this question prior to the December meeting.

Update on Economic Impact Assessment Subcommittee

Julie Stokes presented that four CAG members and a facilitator were on a conference call with Research Triangle, Inc to determine the scope and potential cost of an economic impact analysis. The scope as drafted is for Phase 1 and includes impacts on canals, jobs lost and jobs added. It also notes that counties would help bear the cost of providing data. At this point neither GE nor EPA are likely to fund such an analysis since it is beyond their scope and jurisdiction under Superfund.

Merrilyn Pulver stated that as the Town of Fort Edward and Washington County are trying to understand the full economic impacts of dredging. They're going to do an analysis (but no recommendations) with Washington County stewardship money program, earmarked by

Congressman Sweeney. She will send an RFQ electronically to CAG members. The work will include: (1) the environmental effects of the existing pollution in the Hudson River in the area, (2) analysis determining the effects that pollution has on economic development in the area. The money is for looking at baseline conditions. The socioeconomic studies that were part of the earlier feasibility study were loosely done, but they are what exist at this time.

In conversation it was noted that CAG could submit its hopes for getting funding of an economic analysis into the consent decree to the Department of Justice. CAG members discussed how the CAG might get their agenda before the judge so the judge can see that the riverfront has the right to be protected during the process. One CAG member noted that part of the reason the CAG is struggling with this question is because EPA decided not to do an Environmental Impact Statement on the dredging, which would have included economic impacts. Another stated that any economic analysis has to be defensible to the point it potentially could be used to make a natural resources damage claim. The risk analysis done in the responsiveness summary in Part 3 of the ROD was done before the location or area of dredging were known.

IDR Discussion

One CAG member noted that the Final Design Report has to be 100% consistent with the ROD and that the ROD was already a compromise in terms of what many groups wanted to see in terms of protection of the environment and human health. She said she had read many CAG members' comments on the IDR, and themes included: serious concerns about leaving PCB contaminated sediment along the shoreline in a way that is inconsistent with the ROD and that PCBs <50 ppm are left in the river, concerns that capping is proposed, concerns about the decision to use mechanical over hydraulic dredging, rather than a combination, a reminder that the ROD requires as many passes as necessary (not just two) to reduce the contamination, the comment that the protection of public water supply is critical, the comment that measures should be implemented to assure maximum use of the yacht basin, and a comment that natural recovery, backfill and re-colonization are insufficient to restore habitat.

Other CAG Issues

The CAG would like a discussion about habitat delineation soon and with discussion time. Members want to talk about potential impact to animals. EPA noted that John Vetter will be at December 8 meeting to discuss the latest work on cultural resources.

The next CAG meeting will be held on December 8, 2005. CAG members raised some concerns about this date and the facilitators agreed to find another date, if possible.

The meeting was adjourned at 4:00pm.