

Community Advisory Group (CAG)
Hudson River PCBs Superfund Site
Meeting Notes
Thursday, November 30, 2006
1:00 PM – 3:15 PM
Fort Edward Firehouse

Members and Alternates Attending: Chris Ballantyne, Ken DeCerco, Philip Dobie, John Dukta, Richard Fuller, Robert Goldstein, Manna Jo Greene, Harry Gutheil, George Hodgson, Betty Koval, Roland Mann, David Mathis, Merrilyn Pulver, John Reiger, Rich Schiafo, Lois Squire, Julie Stokes.

CAG Liaisons Attending: Danielle Adams (Ecology & Environment), William Daigle (NYSDEC), Doug Garbarini (USEPA), Joan Gerhardt (GE), David King (USEPA), Deanna Ripstein (NYSDOH), Leo Rosales (USEPA), Dan Watts (NJIT).

Others Attending: Chris Adelman (Siena College), Nancy Aungst (Ecology & Environment), Mallory Baringer (Siena College), Robert Breen (Siena College), Laura Champion (Siena College), Erin Clune (Siena College), Michael Collins (Siena College), Jeffrey Cortalano (Siena College), Colleen Culligan, H. C. Covington (I Can America), Dan Culligan (NYSCC), Gerald Dudding (GFD Patents), Kevin Farrar (NYSDEC), Peggy Farrell (Ecology & Environment), Chris Gambino (Siena College), Tamara Girard (NYSDOH), Danielle Grasso (Siena College), Eileen Hannay (Rogers Island Visitors Center), Gary Klawinski (Ecology & Environment), Tom Kryzak (Air and Earth Consulting), James Kudlack (Controlled Extraction Technologies), Roberta Kudlack (Controlled Extraction Technologies), Mandy Malone (Siena College), Toni Marrau (Siena College), Jenny McNulty (Siena College), Danielle Morsch (Siena College), Kate Muir (Siena College), Bonnie Naumann (PostStar), Brian Nearing (Times Union), Nicholas Peters (Siena College), Fred Realbuto (Audubon Society of NY), Steve Sanford (NYSDEC), Linda Thorpe (Ft. Edward Resident), Erin Wagner (Siena College), Larissa Walker (Siena College), Lloyd Wilson (NYS DOH).

Facilitators: Ona Ferguson, Patrick Field.

Members Absent: Dan Casey, Cecil Corbin-Mark, Mark Fitzsimmons, Mark Galough, Rob Goldman, Gil Hawkins, John Lawler, Aaron Mair, Dan McGraw, Judy Schmidt-Dean.

Next meetings: The next CAG meeting will be held on Thursday, January 25, 2007 from 1-4pm, location to be determined. [NOTE: subsequently postponed to February 22, 2007]

Action Items

- EPA will post the NRD and EPA presentations on the CAG website.
- EPA hopes to have a new project roadmap during Winter 2007.
- Saratoga County Board of Supervisors resolution on navigational dredging will be an agenda item at the next CAG meeting.
- EPA will inform CAG members about Consulting Parties meetings about cultural resources so interested CAG members may attend.
- EPA will send Julie Stokes copies of URS reports.

Welcome, Introductions, Meeting Summary Review

Participants were welcomed, and facilitators asked for and received approval of the CAG meeting summaries from September with several corrections on the meeting location and the DEC report.

Update on Consent Decree, Court Approval, and Next Steps

Doug Garbarini presented information about the current status of the project. The courts ruled that the facility is “on site,” and approved the Consent Decree on November 2. The Quality Assurance Project Plan, hundreds of pages on subjects including air quality, water sampling and the Environmental Monitoring Plan, is due to EPA on December 4. The QAPP doesn’t have a formal public comment period, but can be made available to those who would like to see it. The original proposals for contracts 1 and 2 had expired, so GE is renegotiating the terms of Contracts 1 (Facility Site Construction) and 2 (Rail Yard Construction). These contracts should be awarded by December 29. Workplans, including schedules, are due for EPA review 30 days later. GE has divided Contract 3 into 3A (Construction) and 3B (Operations), re-bid that contract and is evaluating bids. That work will likely begin in late spring 2007, as some of it can’t be done in winter weather. The construction of the wharf may wait until winter 2007-08 because it has to happen when the Champlain Canal is shut down and the water level is lowered. EPA will be working with GE on overall project schedules based on work plans, and can likely produce a new project roadmap in early 2007.

EPA noted that Fort Edward did file its notice of appeal to the Consent Decree decision within its 30-day window for appeal. This appeal now goes to the federal Second Circuit Court of Appeals located in New York City. Nonetheless, when Judge Hurd issued his decision on the Consent Decree, the process moved forward.

There was discussion about how the Fort Edward appeal affects the project timeline. EPA staff responded that they are intending to proceed as planned with contracting and making sure that GE can get access to the property, acknowledging that there could be interruptions. One CAG member noted that an injunction would stop the project, but that there had been double deference to the consent decree, by a judge and a federal agency

head. The Town of Fort Edward clarified that they are not intending to hold the project up, and that they appealed to get the fully assessed tax value of the property and to have some oversight by town bodies including the planning board.

Update from the Natural Resource Trustee Council

Steve Sanford Chief of Bureau of Habitat and NYS Dept of Environmental Conservation (NYSDEC), presented on behalf of the Trustee Council that includes the NYSDEC, US Dept of the Interior (DOI)/National Oceanic and Atmospheric Administration (NOAA) and the National Park Service (NPS). Mr. Sanford gave an overview of Natural Resources Damages Assessment. The Trustees are working on a brief status report, which they hope to complete in the next six months. That report will show determinations of injury that they know at that time, but the investigation will continue for several more years.

The Trustees' goals are to: (A) identify and quantify injuries that were or are being done to a variety of natural resources, (B) restore injured ecosystems to their baseline condition, i.e. the condition they would have been in if the environmental insult had not ever happened, (C) compensate the people of New York and the US for their losses, where restoration cannot take place. CERCLA (Superfund) and NY State Common Law are the legal basis for their claims. The essential elements of a claim are:

1. Pre assessment – done here in the 1990s looking at existing information
2. Assessing and Measuring Injuries
3. Damage Determination – putting a value on what an injury is worth, in either dollars or restoration projects
4. Restoration Planning – for which they have and are soliciting input
5. Restoration – which often happens after a claim has been resolved

In this case, they have found PCB contamination at every level and resource (water, sediment, soil, etc). Many of the resources are exposed to PCBs, but this doesn't mean they are injured or indicate where that contamination is from, necessarily. The Trustees have to show measurable marked deleterious change to show injury. Per se injuries are those that exceed established government standards or criteria, while original science injury is proven by science/work done specifically by the Trustees. The Trustees have been looking at the pathways of PCBs to larger and larger animals, starting from sediments and insects that live in sediments and moving up the food chain.

The trustees are checking for injury in birds including the spotted sandpiper, tree swallow, and peregrine falcon. They are checking frogs, mink (through a study where captive mink are fed a diet including Hudson River PCBs), snapping turtles, and fish including brown bullhead and largemouth bass. They are also looking at injuries to cultural use and human use (for example because the angler's ability to safely consume fish is compromised, or because navigation is impeded by the increased cost of disposing of dredge spoils). No one knows at this time how dredging for navigation beyond those

areas EPA has already identified to be dredged for the project in Phase I will occur or when it might be addressed. Gene Leff from the Attorney General's office noted that they would like this issue to be addressed as soon as possible. He also stated that the Canal Corps came up with a figure in the range of 500,000 additional cubic yards (above the 2.65m cubic yards being removed for environmental purposes) that need to be dredged for navigational purposes that have contaminated material. Doug Garbarini stated that in the ROD it was estimated that 2-300,000 cubic yards of navigational dredging might be needed. The Saratoga County Board of Supervisors passed a resolution that navigational dredging be conducted concurrently with remediation dredging. Copies of the resolution were distributed to the CAG, and it was requested that this be put on the agenda for the next CAG meeting.

The goal of restoration planning is to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources, so the Trustees are looking at this. They are considering connection to injury (they look for a plausible nexus between the environmental insult and the injury they'd like to restore), and are seeking suggestions and support from the public. They have received 60-80 submittals from the public to date, including towns, non-profits, counties and individuals. Settlement can either occur amicably with the parties involved (which would be a confidential negotiation) or the Trustees would litigate. The Trustees will want public support for their restoration plan before it gets submitted to a judge. They see the public's role as reminding the Trustees of their resource concerns. The speaker noted that the Trustees are ready to engage in settlement discussions at any time.

One CAG member noted that some restoration has to happen soon to be timely, including the purchase of development rights for the farming community along the river if it is to remain open space and non-fragmented habitat, because demand for the property is rising and it may become unattainable in the future. Another CAG member asked that the Trustees consider 200 miles of river for restoration planning, not just the 40 project miles, as people and systems all along the length of the river have been affected by the contamination. It was stated that many CAG members feel strongly that the remediation and restoration should be dovetailed for efficiency of time and money. CAG members asked that this message be conveyed to GE via its CAG participant.

CAG Updates and Issues

Update on Archaeological Work

David King presented about the latest in-river work by GE. In September, GE/URS submitted a report on their July 2006 diving. Comments are being compiled for submittal to GE. The Lake Champlain Maritime Museum (LCMM) has done follow up diving work this fall, and EPA expects a report in January. LCMM collected many artifacts, including pottery shards, looked closely at several boat pieces, took photos and videos and did detailed documentation. The next step is to identify which sites are eligible for listing on the national register, what mitigation is needed, and formulation of a Memorandum of Agreement (MOA) with GE on what will happen on archaeological

work. The Consulting Parties group is the public review mechanism, as outlined in the 106 process, while others are welcome to comment in the process.

Contingent Water Supply for Waterford and Halfmoon

Doug Garbarini updated the CAG on the subject of contingent water supplies. EPA's Division Director made a decision on November 9 about contingency measures for the protection of public water supplies and near-shore measures: GE is required to implement or pay for contingencies. Halfmoon and Waterford are glad to know this outcome. Next steps are for EPA to draft decision criteria that would trigger contingency measures and to discuss them with GE prior to finalizing. Simultaneously, GE will conduct options analysis and recommend options for providing additional PCB treatment capabilities and/or alternative water. GE has 100 days from Nov 9 to get this options analysis to EPA. EPA and DOH will facilitate discussions between GE and water suppliers. Contingency measures may be different in Phase I and Phase II. GE staff, including Mark Behan and John Haggard, met with Halfmoon on November 29.

CAG concerns remain about test time and travel time of resuspended sediments. Halfmoon noted that they would likely shut down their water supplies that draw from the river as soon as they hear about any problem, and any system implemented has to be tested and proven safe ahead of time. Fort Edward noted that it has residents who take water directly from the river, and wants residents along the river in the Thompson Island Pool area to be protected through the creation of a new water district.

EPA Final Decision on Restoration of Bathymetry in Near Shore Areas

The dispute between GE and EPA was decided such that GE is responsible to do backfill in the nearshore area in a manner that maintains the configuration of the pre-existing shoreline and the backfilled or capped areas, as called out in the ROD. GE is required to put more backfill/cap to restore bathymetry than they initially proposed, such that the shoreline slopes will be closer to those currently in place. The backfill materials are still under discussion. In November, EPA also did near shore sediment sampling in five Phase I areas. The summary of this data will be available in Spring 2007.

PCB Baseline Water Monitoring

Monitoring of river water continues. The high flow event sampling from June shows upwards of 150ppt of PCBs, whereas the weekly flow readings tend to be under 50ppt. EPA is using very sensitive testing systems. Note that EPA won't be dredging at high water flows (over 10,000 cfs). Two consecutive hits of 500ppt would require that dredging stop.

Status of Habitat Issues

GE disputed some comments related to backfill specifications, capping in shallow water, inclusion of habitat layer in caps, replacement of submerged aquatic vegetation, and special consideration for especially sensitive or unique habitats and shoreline stabilization measures. EPA and GE are working towards informal resolution of these disputed comments.

Status of Phase II Work

The Phase II Dredge Area Delineation Report (DAD) is being reviewed.

Railroad Safety

Roland Mann noted a concern that the United Transportation Association newsletter this summer highlighted the fact that most railroad companies do not require certified or licensed inspectors to inspect where hazardous waste is being handled. There isn't currently any special training for handling toxic materials. Railroads have cut back on staffing in recent years. Some engines are being run by remote controls, while some trains have only one staff person on them. There are railroad accidents and they can be lethal. This project will have multiple 81-car trains per week. Roland would like this safety question to be considered for all the communities the trains will pass through from Ft. Edward to the waste's final destination.

Saratoga County Brochure

Ken DeCerce distributed a brochure developed by Saratoga County. All the supervisors and mayors spent six months working together on the brochure, which shows a wish list of items for which they would like to get funding. They started by discussing joint hopes and concerns about dredging, then broadened their discussion to common hopes for things like trails and fishing access points. The Saratoga County Board of Supervisors will prioritize among these, focusing collaborative efforts on water. The group believes that collaboration can lead to an additional inflow of capital from any and all sources. Harry Gutheil, Julie Stokes, George Hodgson and Ken DeCerce all worked on this project, with the LA Group. Many communities have since put in grants building on what is in the brochure. In last 45 days, Saratoga County has received grants approved of over \$1.8M as a result, at least in part, of the supervisors and mayors talking together.

Inter-Agency Work Group (IAWG)

A workshop for local educators/curricula developers was recently held at Adirondack Community College. Information was shared among the educators and the education subcommittee of the IAWG. Discussions are underway to look for ways to integrate the numerous educational and scientific opportunities surrounding the dredging project into the current and future curricula of local schools.

Adjourn

The meeting was adjourned at 4:00p.m.