

**Community Advisory Group (CAG)**  
**Hudson River PCBs Superfund Site**  
**Meeting Notes**  
**28 September 2005**  
**CAG Meeting, 1:00 PM – 3:45 PM**  
**Fort Edward, NY**

**Members and Alternates Attending:** Chris Ballantyne, Dan Casey, Rodney Davis, Kenneth DeCerce, Philip Dobie, Richard Fuller, Mark Galough, Joe Gardner, Robert Goldstein, Manna Jo Greene, Harry Gutheil, George Hodgson, Paul Lilac, Roland Mann, Merrilyn Pulver, John Rieger, Rich Schiafo, Lois Squire, Julia Stokes.

**CAG Liaisons Attending:** Danielle Adams (Ecology & Environment), William Daigle (NYS DEC), Doug Garbarini (USEPA), Joan Gerhardt (Behan Communications), David King (Hudson River Field Office), Dan McGraw (NYS Building & Construction Trades Council), Deanna Ripstein (NYS Department of Health), Leo Rosales (USEPA), Steven Sweeney (NYS Canal Corporation).

**Others Attending:** David Adams (SCEMC), John Callaghan (NYSCC), Rick Cark (STL), Lee Coleman (Daily Gazette Schenectady), Bill Fuchs (NPS), Lim Kudlack (Controlled Extraction Tech.), Tom Kuzak (Air and Earth Consulting, Inc.), Christine Margiotta (Post-Star), Neal Orsini (Town of Fort Edward), Matt Pacenza (Times Union), William Ports (NYS Department of Environmental Conservation), Ann Stoehr, Jim Zwynenberg (Associated Polymer Labs).

**Facilitators :** Patrick Field, Ona Ferguson.

**Members Absent:** Jean Carlson, Cecil Corbin-Mark, Theresa Egan, Mark Fitzsimmons, Gil Hawkins, John Lawler, Aaron Mair, Judy Schmidt-Dean.

The next CAG meeting will be held on Thursday October 27.

**Key Action Items:**

- EPA will get back to the CAG on how long it is estimated to take an 81-car train to cross an intersection in Fort Edward.
- There will be an update on archaeological work at the next CAG meeting.
- Please try to get IDR comments by October 7<sup>th</sup> to EPA.
- EPA will explain the process the CAG should expect during period from now until the final design is approved and construction activities begin.
- DEC will forward their IDR comments to the CAG.
- CBI will scope with Fred Ellerbusch the possibility of having Fred look at the part of the IDR that explains the Mechanical v Hydraulic decision
- John Lawler will contact New Bedford for a possible presentation in October.

- Julia Stokes, Merrilyn Pulver, Rich Schiafo, and Robert Goldstein volunteered to be on a call with Resource Triangle, Inc. to gather info on what is involved (e.g. sow, cost, etc.) in an Economic Impact Assessment Report.
- EPA will give and update on the status of the Habitat Delineation Report.
- CAG members would like Trustees to come to the CAG to present ideas people have submitted to date and to ask CAG members for other ideas.
- CBI will coordinate fall CAG meeting scheduling based on estimated release dates of documents and holiday schedules.
- EPA will send the CAG their comments on the IDR as soon as they have been submitted to GE.

## **Welcome and Reminder of CAG Groundrules**

The facilitators welcomed everyone to the meeting.

## **Meeting Summary, Revised Groundrules and Action Item Update**

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

- Regarding where and when sampling of PCB concentrations will be made for disposal purposes: EPA stated that the Toxic Substances Control Act (TSCA) requires that such disposal determinations be made on the sediments as found in the river. That means that sampling results for sediments as found in-situ (in place in the river) would be utilized to determine if wastes are TSCA regulated waste and need to be disposed in a TSCA permitted landfill. Once characterized as TSCA wastes these any other sediments that are mixed with such sediments are regulated as TSCA PCB waste. After processing and dewatering, all such wastes are still regulated PCB materials, regardless of their PCB concentrations at that point.

However, there is a special provision under TSCA that allows for a risk based approach to be utilized to determine if PCB contaminated materials below a specified concentration could be disposed in a non-TSCA landfill. In order for this to occur on this project, the landfill that would be receiving the waste would need to request that EPA Region 2 and the EPA Region in which the non-TSCA landfill is located, provide a risk based approval of such disposal under the TSCA regulations (note: this provision is 40 CFR § 761.61(c)) EPA would approve such disposal if the requesting party (i.e. the landfill that will be receiving the waste [GE may assist the requesting party]) can demonstrate that such disposal would not pose an unreasonable risk to health or the environment. If such an approval was granted, then subsequent sampling for disposal purposes would be conducted ex-situ after processing (or at the “end of pipe”).

A CAG member asked if this was only applicable to voluntary cleanups. EPA replied that they did recall that this provision only applied to voluntary cleanups, that many EPA attorneys had been involved in reviewing the potential for this provision to be used on the

site and determined that it could be used. Nonetheless, EPA agreed to check to see if there were any limitations linked to voluntary cleanup programs (note “voluntary cleanup” is a term that is often used in other cleanup programs; and does not apply to Superfund cleanups). Note: EPA attorneys have confirmed that this approach is not limited to so-called voluntary cleanup programs.

A CAG member also raised a concern that if a risk based approval was given, a party could intentionally mix clean sediments with dirty sediments to dilute their concentration so that the material could be disposed in a non-TSCA landfill. EPA replied that if a risk based approval was granted, measures would be put in place to ensure that intentional dilution would not take place without being accounted for. EPA went on to say that there are some very good reasons for approving such risk based determinations, one being that there are a limited number of TSCA-licensed facilities, and it might not make sense to tie up this landfill space with very low level contaminated sediments if these sediments could be safely disposed elsewhere. EPA noted that regardless of whether the material went to a TSCA or non-TSCA landfill, it would not be disposed in the Hudson River Valley.

- EPA’s comments to GE will become public once they are submitted, so EPA will share them with the CAG.
- Regarding the archaeological work GE is doing: Joan Gerhardt stated that Northeastern Archaeology is doing field observation. This week there have been 18 divers in the area doing the underwater work. The divers are drawing what they see under water, but not doing excavation. The project is currently focusing on three main areas of interest: (1) potential for two or three shipwrecks south of Rogers’ Island, (2) Fort Edward’s shoreline where the old fort was located, and (3) an area where research suggests there was a pathway or bridge on the west side of Rogers’ Island. Divers will be finishing this week and will prepare a report for GE, to be forwarded to EPA.
- CAG members had some comments and questions:<sup>1</sup>
  - *The Town of Fort Edward wants anything found in the area to be removed from the river and to remain in Fort Edward. All archaeology must be identified and studied prior to dredging or the opportunity will be lost.*
  - *We want a mechanism to enable the community to have an archaeological resource center for the region. Such a mechanism should support underwater preservation or remediation of any artifacts found.*
  - *There needs to be ownership, conservation, and readiness for display.*
  - *Saratoga County is interested in the Saratoga County artifacts. We have a historian, and many of our towns have their own historical societies.*
  - *There is no plan yet on how found artifacts will be evaluated, and how sites, if found, will be dealt with. Will there be any monitoring during dredging for sites of high potential but where significant artifacts have not yet been found?*

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<sup>1</sup> Unless noted otherwise, in bullet lists italicized comments were made by CAG members and plain text comments were made by EPA representatives in response to CAG comments or questions.

- *Is there a New York regulation about where material that is found goes? Most communities want to keep their own artifacts. Answer from another CAG member: underwater items belong to state of New York and the State Education Department, which can lend items on “permanent loan.”*
- *An update on implementation of the Town of Fort Edward’s application for party status for Cultural Resource Board three years ago would be timely.*

Merrilyn Pulver distributed the most recent copy of the Town of Fort Edward Town Report to the CAG. Julia Stokes distributed the Saratoga Plan Times Union insert to the CAG.

## **Reflections From Last Meeting**

Patrick Field stated that the August meeting was seminal because the CAG discussed then decided to take individual action together on drafting and signing a letter. At the same time, building frustration felt by some CAG members was expressed. The facilitator shared his perspective on some structural problems that have led to some of that frustration. He stated that what GE and EPA are required to do under Superfund is primarily an engineering task. Engineering projects typically have two types of impacts: (1) mitigatable impacts (like covering lights that shines into a neighbors yard), and (2) unmitigatable impacts (which may be unmitigatable because Superfund regulations don’t allow EPA to compensate for economic impacts).

While some CAG members care passionately about engineering details, many people, especially elected officials, care a lot about impacts that fall where there is no clear authority or requirements. Patrick suggested that there is common ground between EPA and the CAG on addressing mitigatable issues, but that there may not be much leverage for the CAG on the issues many CAG members care most about.

Patrick shared a pie-chart showing decision space. He showed that there are many constraints on how Superfund decisions get made, including natural constraints, dollar and staffing resource constraints, process constraints, politics, and legal and regulatory constraints. This can mean that the area for public advisory group influence is relatively small. This can be hard, especially for elected officials accustomed to considering an issue, then making decisions and seeing change.

CAG members responded with the following points:

- *At the last meeting the CAG had indeed taken a giant step forward and suggesting that the options for influence are bigger than delineated, that collaboration is powerful, and that moral responsibilities of players are leverage points for the CAG.*
- *One noted that the “engineering” part of the project includes all impacts of design issues, including noise and lights. It isn’t just the construction component of the project.*
- *One member noted that while Superfund doesn’t require than “unmitigatable” issues be addressed, neither does it prohibit such action.*
- *CAG members stated that the community is of primary concern to many of them. They noted that up until recently the community hasn’t been of real significance to the CAG, which has been a source of anger for some. Yet now they see the CAG working together*

*to focus on concerns about the community of people who live along the banks of the river and the ecology of the river itself. While there may not be a mechanism in place as of yet to address these concerns, the process evolving within the CAG is a good one and people are working together more and more.*

- *One CAG member noted that it seems impossible to compartmentalize what is mitigatable and what isn't. The CAG wants to prioritize the health, safety, and welfare of the upper river communities and to protect natural and cultural resources.*
- *A CAG member commented that it is by virtue of the moral authority of the community that many CAG members were able to agree to jointly draft and sign a letter describing the issues they care about which are not yet being addressed. He described the CAG as telling EPA that, within the constraints of law, there are ethical issues of importance to people in the community, and that the federal government must address those issues. He noted the communities want EPA standing beside the CAG and the community during the clean up.*
- *Several CAG members commented that GE is not constrained by the same federal laws as EPA regarding how they spend money. GE is financially responsible to shareholders and ethically and morally responsible to the communities in which they operate. GE may address ways they feel they've had or will have a negative impact on a community, and public pressure brought on by the perception that GE isn't fixing problems it has caused can encourage GE to take action.*

The facilitator noted, regarding GE's role, that all companies have certain constraints, including responsibilities to their shareholders and GE may or may not have money to address issues above and beyond Superfund requirements, and that it is up to GE whether or not they will be able to spend more above what is required. He stated that there have been cases where the government approved creative ways to mitigate economic difficulties for local people associated with Superfund clean ups.

### **Intermediate Design Report: Key Concerns**

David King of EPA presented an update on the IDR. EPA is in the process of review. Some of the key design review considerations for EPA relate to community health and safety, achievement of the performance standards, and design feasibility (i.e.: will it work?). EPA's comments to GE will include, but are not limited to, the following topics: closure of Fort Edward Yacht Basin, traffic concerns, Lock 7 details, additional rationale on dredge method selection, resuspension controls, wharf/unloading area emissions, performance standard attainments, and coordination with New York State Canal Corporation.

EPA's next steps are to compile public and EPA comments. They will identify areas of discussion, clarifications, changes, or additions needed in the final design. EPA would like to include public concerns in their comments to GE. GE and EPA will then discuss the comments together. GE has 120 days after the IDR is approved to submit the final design and the CHASP. Then there will be a public comment period on the Final Design Report and the CHASP.

The CAG had several questions and comments:

## COMMENT TIMING

- *The public should have benefit of seeing EPA comment before we have to submit our comments, so we can comment on both the IDR and on the EPA response.*
- *The process has to be kept open and transparent even past the 7<sup>th</sup> of October. The CAG and the public need to be kept updated about what changes are being made to the design and how. There needs to be a dialogue about how the final design is proceeding. What happens between finishing submission of comments after IDR and the final report? Between now and approval of the IDR, a lot of information needs to be generated. During the 120-day period, we're hoping to have regular meetings with GE.*
- *It is possible that people will still be commenting on the IDR when the consent decree is released, creating a period when the public is commenting on both simultaneously. Yes.*
- *Saratoga County passed a resolution yesterday asking to extend the comment period to November 15, and we'd like the support of the CAG. We would like NY State and EPA's comments prior to closing of the comment time if possible.*
- *Saratoga County agreed to hire a consultant on sound. The CAG's repeated requests for background noise level assessments haven't been addressed, so our county will hire a consultant to do this, requiring an extension beyond the October 7 deadline. EPA would like initial comments by October 7, but will accept comments on an ongoing basis.*

## COMMENT MATERIALS/PAPERWORK

- *EPA should actively factor in comments provided to EPA in the next few weeks.*
- *Could the looming consent order render all comments useless? I hope that all comments raised at the CAG meeting are taken to the consent order conversations with GE. There will be a comment period on the consent decree if and when agreement is reached.*
- *Has the State submitted IDR comments? Yes. These will be sent to the CAG.*
- *Will EPA be both summarizing and forwarding public comments verbatim to GE? Yes.*
- *EPA and DEC comments must be shared with the CAG as soon as possible (not just at the next CAG meeting). DEC will determine if they can share their comments. EPA's comments on the IDR will be public as soon as they go to GE, so can be sent to the CAG.*
- *EPA should include in their comments their methodology for their assessment.*

## IDR AND THE ROD

- *My understanding is that the IDR has to comply with the ROD. How is EPA comparing the two, and will EPA be able to demonstrate point-by-point that the IDR is in compliance with the ROD? The residual standard is of particular concern, as we see discrepancies there. We are checking that the IDR is in compliance with the ROD. Because this is an intermediate design, all the ROD components are not yet included. We view meeting performance standards as showing compliance with the ROD. If there are things that don't comply with the ROD, we'll certainly have to address those.*
- *Amending the ROD if necessary could be a new project. We hope that this isn't necessary and that things can stay on track with the ROD that was such a complex and tough agreement to reach.*
- *Reaching a consent decree prior to addressing ROD/IDR inconsistency doesn't make sense. The design needs to meet ROD and engineering performance standards. There is a significant connection between design and implementation. We're hopeful that we'll reach agreement. It is EPA's job to make sure that the project is consistent with the ROD. When EPA negotiates consent decrees, it is usually negotiating design and*

implementation at the same time, though that is not the case here because of the unique nature of this project.

#### MECHANICAL VS. HYDRAULIC DREDGING

- *We want to know what combinations of types of dredges were considered.*
- *Clamshell mechanical dredging doesn't cause spillover (resuspension)?*
- *A clamshell mechanical dredge and a hydraulic dredge both need to meet the same resuspension criteria, right? Yes.*
- *Could Fred Ellerbusch look at the IDR's explanation of the choice of mechanical dredging?*
- *Would it make sense for us to review the ROD regarding the mechanical/hydraulic dredging decision? I don't think we're that far off from it in the IDR.*
- *Where the IDR explains the choice of dredging technology, the numbers show no differences among all the dredging devices, which indicates to me that this analysis might have been outcome-determined, which is very disappointing*
- *The issue is whether or not the dredging meets design criteria, not what type of dredging is used. There should be language in the design report such that as long as the dredging meets design criteria, that is fine, and if it doesn't then the technique must be changed.*
- *The type of dredging technology has implications to the community that are not necessarily measurable in performance standards. We want to minimize impacts. Meeting performance standards pass/fail, but we want this to be an A+ project. We want the best possible project, not to simply meet performance standards.*

#### OTHER ISSUES

- *Please add sound pollution as something in particular to be considered under the IDR evaluation. Quality of life issues include noise and light, considerations.*
- *The Fort Edward Citizens Committee will be meeting tonight with E2, a consulting firm. They'll be providing us an overlay map highlighting potential impacts of remedial activities. That will help us bring valuable comment to EPA and plan well.*
- *The Saratoga Chamber of Commerce is concerned about the impacts of the design as it is now on the community. It is very important that the IDR looks at the economics of what will happen to recreation, tourism, and economic development. This needs to be a primary consideration in addition to making sure the ROD is considered.*

Joan Gerhardt made the following comments: Since signing the consent agreement to do the design, GE's commitment has been to do this project safely and effectively. GE is not designing this process to fail. We look forward to hearing comments on IDR. Regarding the data on resuspension rates for different technologies: the data on resuspension in environmental dredging is very limited. We've looked at the available research and at what EPA looked at in its 2001 feasibility study, which concluded little difference between the two technologies. This project will be a test on the ability of a dredge to perform with respect to resuspension, particularly in Phase 1. That performance will have to meet EPA performance standards for resuspension. If anyone in the CAG has data on types of dredges, please pass it along so that GE can see it.

## Brief Updates:

- On the possibility of developing an Economic Impact Assessment Report: Research Triangle Institute International was recommended as a firm that does this kind of work, as a resource that could be consulted to better understand what is involved in generating such a report. RTI staff members have offered to be on a brief phone call with the CAG to sketch out such an assessment. Julia Stokes, Merrilyn Pulver, Rich Schiafo, and Robert Goldstein volunteered to be on a call with RTI. CBI will manage the logistics of getting signatures from CAG members who wanted to sign the letter requesting the Economic Impact Assessment Report. Then there will have to be a discussion as to how such a Report could be paid for.
- The Habitat Delineation Report is not yet finalized. It will be finalized sometime between now and the release of the Final Plan. CAG members noted that they would like input into it prior to its being finalized, so EPA offered to discuss it at the October CAG meeting or at a later date.
- Re: the invitation to New Bedford people who might know about the economic development situation during that dredging project: John Lawler has contacted someone who was head of economic development for New Bedford during dredging. It is hoped that he can come to the October meeting. If not, a call with him (during the CAG meeting or at another time) could be set up.
- Trustees are soliciting projects for Hudson dredging restoration. They are interested in seeing page-long outlines of potential projects that would address affected areas and include cost estimates. CAG members would like Trustees to come to the CAG to present ideas people have submitted since the last Trustees presentation at the CAG and to ask CAG members for other ideas. It was noted that few projects have been submitted in the last 18 months. Only recreational or biological projects will be considered, not injury to private property. It was noted the Fort Edward has explored the possibility of submitting purchase of development rights (PDR) or archaeological project proposals, and also that it is difficult to get PDR funding from this source, but not impossible.
- GE/EPA negotiations are ongoing.

CBI will coordinate fall CAG meeting scheduling based on estimated release dates of documents and holiday schedules.

At 3:40 the meeting was adjourned.