

Sediment Update

This article is another installment of a series of updates on developments relating to contaminated sediments. Several key developments have occurred in the recent past and are reported below.

EPA Proposes \$460 Million Dredging Cleanup For The Hudson River

In what many have viewed as U.S. EPA Administrator Carol Browner's last hurrah, Ms. Browner personally announced U.S. EPA's proposed remedy for the Hudson River. EPA characterized the plan as "one of the most aggressive environmental efforts ever proposed to restore a contaminated river and protect the public's health." The plan targets 12% of the 40 mile stretch of the Upper Hudson, from Fort Edward downstream to the federal dam at Troy, New York. Under the EPA plan, almost 500 acres will be dredged. This massive dredging project would require removal of over 2.6 million cubic yards of contaminated sediment, followed by backfilling the river bed with a clean material and is expected to require five years to complete. A spokesperson for General Electric (GE), the potentially responsible party for the site, called the dredging proposal "absurd" and stated that it "charts a course of environmental devastation for the Upper Hudson River for a generation or more."

From the regulated community's perspective, the proposed plan's requirement of substantial dredging is of great concern. Many believe that the plan ignores sound science, including the conclusions of 20 years of extensive investigation, evaluation and modeling with respect to the river. For example, scientists have concluded that only the sediments in the top five to ten centimeters are bioavailable and, as such, could potentially impact human health and the environment. GE's reports conclude that most of the sediments in that upper range are relatively clean and do not pose a threat to human health and the environment. At the same time, both the U.S. EPA and the GE models evaluating sediment stability reached the same conclusion: a 100 year flood would not have a materially adverse effect on the sediment bed in the river. Consequently, GE's scientists have concluded that sediments containing PCBs at higher concentrations buried at depth are not bioavailable, and are not likely to be disturbed during flood events. In addition, extensive models were developed and peer reviewed which evaluated the recovery time of the river system. The GE models show that the river system will recover to acceptable PCB levels before the proposed dredging can commence in 5 years.

The first indication of problems which may develop in finalizing and implementing the remedy surfaced during the initial public meeting on the proposed plan which occurred on December 12th in Saratoga Springs. Over 1000 people attended the meeting in a crowd that was described as split fairly evenly between the pro-dredging supporters wearing red and the anti-dredging supporters, wearing green. During the public meeting, Region II Superfund Director Rich Casbe revealed for the first time the Agency's plans for staging the dredged materials. In response to a question, Mr. Casbe indicated that the dredged materials would be stored on or near the Port of Albany's property and some other river bank property in Port Edward. This plan was attacked by the Port Director and local officials in those communities. Surprisingly, Region II had never discussed the possibility of using these areas for the staging of the dredged materials with the appropriate local officials.

The two month public comment period is expected to be quite heated with most of the local communities near the proposed dredging area adamantly opposed to dredging while down-state environmental groups are strongly supporting the proposed plan. GE is expected to vigorously oppose the U.S. EPA plan.

Fox River Natural Resource Damages Developments

In another hotly contested sediment arena, competing natural resources damages (NRD) assessments for the Fox River recently were released by the U.S. Fish and Wildlife Service (USFWS) and the Wisconsin Department of Natural Resources (WDNR). USFWS valued the NRD claims between \$176-\$333 million, depending on the aggressiveness of the restoration activities utilized at the site. The WDNR estimates are substantially lower. The USFWS plan was released over the objections of the WDNR, which is also serving as an NRD trustee for the Fox River. The State objected that the USFWS did not allow the State to meaningfully participate in the development of the plan.

Following immediately on the heels of the announcement by the USFWS of its natural resource damages assessment, Fort James (now a part of Georgia Pacific) reached a settlement with WDNR in the amount of \$7 million for its share of the natural resource damages relating to the Fox River. The value of the restored resources covered by this settlement is estimated to be \$55 million. The settlement will fund several environmental restoration projects, land acquisition and construction of recreational facilities. The

resolution of the discrepancies between the USFWS and WDNR assessments, complicated by the recently announced Fort James settlement, is expected to be tied up in litigation on a variety of complex jurisdictional and substantive issues.

National Academy of Sciences Report on Contaminated Sediments Anticipated in Early January 2001

In 1998, Congress commissioned the National Academy of Science (NAS) to establish a committee to study the issue of remediation of contaminated sediments. Specifically, the Committee is looking at the decision-making process for managing contaminated sediments from a risk-based perspective. The Committee has deliberated for almost two years and has accepted input and comments from a wide variety of stake-holders, including U.S. EPA, the Army Corps of Engineers, industry, and environmental and community groups. The NAS Committee conducted public meetings at a number of well-known contaminated sediment sites, including the Fox River, the Hudson River, and in Washington state.

The Report of the NAS Committee was originally due out in mid to late 2000, but has been delayed until to January 2001. U.S. EPA Senior Headquarters staff have indicated that they look forward to receiving the Report and anticipate giving the Report weight when finalizing the Agency's pending sediment guidance, as well as in the Agency's future review of sediment issues.

U.S. EPA Guidance on Contaminated Sediments

Comprehensive U.S. EPA guidance on remedy selection for contaminated sediment sites is due out in early May 2001. U.S. EPA's Contaminated Aquatic Sediment Remedial Guidance Work Group ("CASRGW") is nearing completion of its draft guidance. The purpose of the guidance is to provide a detailed approach for evaluating contaminated sediment sites and in particular, for assisting in the selection of remedies for those sites. The guidance is intended to provide a uniform framework for decision-making at CERCLA sediment sites on a national basis. The guidance is expected to provide significantly more detail than the first major policy document released by U.S. EPA on this subject, the Contaminated Sediments Management Strategy, which was issued in April 1998. U.S. EPA recently announced plans to

conduct a National Sediment Workshop to discuss draft guidance and other relevant sediment issues in Alexandria, VA on May 29 thru June 1, 2001.

Sediment Management Work Group Update

The Sediment Management Work Group (“SMWG”) is an ad hoc potentially responsible party (PRP) organization which advocates a risk-based decision-making framework for management of sediments. The SMWG has been concerned that dredging has been used as the presumptive remedy for the vast majority of sediment sites addressed nationally over the last four or five years. The SMWG believes that a balanced, risk-based approach would permit consideration of all sediment management alternatives on equal footing, including natural recovery, in situ remediation (e.g., capping), and dredging. Two of the most critical issues which appear to be shaping up as the areas of disagreement between the regulators and the regulated community are the issues of sediment stability and the belief that reduction in contaminated sediment volume translates into risk reduction in all instances. Studies of completed dredging remedies on PCB-impacted water bodies have shown that the residual concentrations of contaminants left in the sediments after a “successful” dredging project often fell within the 6-12 ppm range of PCBs, which generally is not considered to be low enough to effectively reduce PCBs in fish tissue to an acceptable level.

The SMWG has been very active over the last two years, meeting with U.S. EPA at the national and regional levels, as well as with other agencies, in order to maintain a continuing dialogue and to advocate its risk-based decision-making framework.

The SMWG has published nine technical papers, including a comprehensive remedy selection process in the form of a decision tree which can be found on its web page, www.smwg.org. For additional information about the SMWG’s activities, please feel free to contact Steven C. Nadeau, Coordinating Director, at (313) 465-7492 or via email at snadeau@honigman.com.

Steven C. Nadeau