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Dear RAB Members:

Enclosed please find a copy of the minutes of the January 17, 2001, RAB meeting. If you have any questions or concerns please contact me at (401)841-7714.

Very truly yours,

Michele Imbriglio
RAB Secretary

Copy to: (w/enc)
Dr. D.K. Abbass
Ms. Barbara Barrow, Esq.
Mr. John R. Bernardo, III, Esq.
Ms. Mary A. Blake
Dr. David W. Brown
Mr. Richard D. Coogan
Mr. Paul A. Cormier
Mr. Thurston Gray
Mr. Byron Hall
Ms. Susan Hester
Mr. Eugene Love
Ms. Elizabeth Mathinos
Mr. Manuel Marques
Mr. Thomas McGrath
Mr. Ed Moitoza
Mr. James E. Myers
Mr. Howard L. Porter
Mr. Emmet E. Turley
Mr. John Vitkevich
Ms. Claudette Weissinger
Ms. Mary Philcox
Mr. David Egan
Mr. Paul Kulpa, RIDEM
Ms. Kymberlee Keckler, EPA
CAPT R. A. Cooper, NAVSTA
CDR R. L. Freitag, NAVSTA

CAPT Jon Wyman, Retired
Hon. Paul W. Crowley
Hon. June Gibbs
Mr. Joseph McEnness
Mr. Paul Russell
Mr. John Torgan
Mr. Jim Shafer
ATSDR
Mr. Gregg Tracey, SAIC
Councilman Dennis McCoy
Dr. David Kim
Mr. Brian Bishop
Brother Joseph
Newport Public Library
Middletown Free Library
Portsmouth Free Public Library
Mr. Bob Jones, Groton
Mr. David Sanders, NAVSTA
Mr. David Dorocz, NAVSTA
Ms. Melissa Griffin, NAVSTA
Ms. Shannon Behr, NAVSTA
Mr. Rick Machado, NUWC
Ms. Sarah White, EPA
Ms. Jennifer Stump, Gannett Fleming
Mr. Tim Prior, USF&WS
Mr. Ken Finkelstein, NOAA
Ms. Diane Baxter, TtNUS, Wilmington
Mr. Matt Weaver, Green Light Foundation
Dr. Robert Quigley
Mr. Robert Gilstein
Ms. Amrita Roy
Ms. Virginia Lee
Ms. Arlene Kalewski
Ms. Kelly Woodward

NAVAL STATION NEWPORT
RESTORATION ADVISORY BOARD MEETING
January 17, 2001

MINUTES

On Wednesday, January 17, 2001, the NAVSTA Newport Restoration Advisory Board (RAB) gathered at the Command Headquarters, Building 690, Naval Station Newport for its monthly meeting. The meeting began at 7:00pm and ended at 9:00pm.

In attendance were Claudette Weissinger, Richard Coogan, Emmet Turley, James Myers, Thurston Gray, Susan Hester, Dave Egan, Kathy Abbass, Dave Brown, Tom McGrath, Ed Moitoza, Manuel Marques, Manuel Furtado, Barbara Barrow, Bob Gilstein Portsmouth Town Planner, John Vitkevich, Kendra Beaver Save-the-Bay, Capt. Ruth Cooper NAVSTA, Melissa Griffin NAVSTA, Shannon Behr NAVSTA, Dave Dorocz NAVSTA, Jim Shafer, NORTHNAVFACENG, Greg Kohlweiss NAVSTA PAO, Paul Kulpa RIDEM, Kymberlee Keckler USEPA, Richard Gottlieb RIDEM.

NAVY POLICY ON NATURAL RESOURCE DAMAGE ASSESSMENT-Paul Yaroschak

This presentation was conducted via video teleconference (VTC) with the Restoration Advisory Board and the Office of the Assistant Secretary of the Navy (ASN) in Washington, DC. Mr. Paul Yaroschak, Director for Compliance and Restoration with the ASN's Office for Installations and the Environment gave the presentation. This office is responsible for formulating policy and programs. Also present in Washington were Dave Olson, Program Manager for the Navy's Environmental Restoration Program; Bernie Shafer, Counsel for cleanup issues and other issues related to CERCLA and RCRA; Rhonda Holmes who works for Dave Olson and has some particular expertise in ecological risk assessment.

Natural Resource Injury talks about what natural resources were injured. This is when we try to quantify as much as can be, how many, resources were injured. Typically this would be done as part of the ecological risk assessment (ERA). The ecological risk assessment is an integral part of the CERCLA process. Once we learn in an ERA what the injuries are, we try to address those injuries when a remedy is selected. The remedy is the remediation, if there is any. During the remediation, if there was some injury to natural resources, there may be restoration included. Remediation is the actual clean-up of the site. Restoration, if any, is the making whole of the natural

resources. The remediation and subsequent restoration addressed in the remediation is done with a special appropriation from Congress called, Environmental Restoration, Navy (ER,N) or clean-up funds. This appropriation is specifically designated to DoD for the purpose of remediation and restoration.

Interim Injury-is a loss of natural resources from the time that an event that harmed the natural resources occurred and the time restoration is complete. Suppose the ERA was looked and it was determined that there was an injury, restoration was completed during the remediation, but there was a period when the natural resources had been injured prior to the time restoration was done. This is a damage claim now. Someone had an economic loss from the period until the restoration was done and therefore that is a damage claim.

Residual Injury-suppose the Navy did the restoration and one or more of the other trustees didn't like the restoration. They felt it was insufficient and that there was remaining loss after the restoration. Assume the Navy believes they did what was necessary during the remediation and have completed restoration. This disagreement would be the basis for a damage claim.

If natural resources are injured and it is known how much was injured the damage part of this is the value of that damage. Is there economic value? And to whom is that economic value attached?

There are specific Department of the Interior (DOI) and National Oceanic and Atmospheric Administration (NOAA) procedures depending on whether you are onshore or offshore and depending and whether it is oil or hazardous materials. Generally both agencies have procedures for how to value damages to the natural resources.

In a damage claim the potentially responsible party (PRP), would pay a trustee damages based on the value of damages. Within the government there is a very specific claim procedure within law and within the government. The Department of Justice (DoJ) has very standard procedures for this. Any claims that are paid against the government are paid out of the Judgement Fund. The type of claim does not matter. Claims against the government are paid from the Judgement Fund. See Enclosure (1)

QUESTIONS-

Kendra Beaver-Save the Bay: Is it your position that in order to get any restoration of the resources that a claim needs to be

filed? In other words you don't negotiate natural resource damages?

Paul Yaroschak-Response: You are using two different terms and let me try to define them. In the same breath you used the term natural resource damages and restoration. The restoration part of it can and often is included in our remedial selection. So the answer is yes we can include the elements and in all honesty we need to make some decisions about what is rational and reasonable. Yes we do include restoration within our clean-up funds and within our restoration program. Now, if a trustee is not satisfied with that for some reason later if they felt the Navy didn't do the job and wants to file a claim that would be on the damage side. Does that answer your question?

Kendra Beaver-Save the Bay: Yes. So for a natural resources damage claim it would not be negotiated, a claim would need to be filed for that?

Paul Yaroschak-Response: For the damage portion of it that is correct.

Richard Gottlieb-RIDEM: It sounds to me, if I understand you correctly, that you first need to address the remediation and restoration prior to talking about natural damage resource claims. How do you handle a situation where you might want to address the natural damage resource claim as part of the restoration remediation of the site whereby you might be able to save a lot of money by doing something all at once rather than separating it out and coming back at a later date?

Paul Yaroschak-Response: We have made a policy decision to typically separate these two for a variety of reasons. What we try to do, and I am not saying we are always successful, but what we try to do is work with the trustees and the state and try to address the natural resource injury during the remedial and restoration stage. So in other words try to do what we need to do in terms of restoration. Now if we are successful there will be no damage claim. If we are not successful there may be. So to answer your question more specifically, we would not want to address damages during the restoration stage because (VTC connection lost) We have made a specific policy decision to try to divide the two very cleanly for some of the reasons I described. We will try to address the injury portion of this, not the damage portion, but the injury portion of this during the ERA, the remedial selection and any restoration that might be part of that. Then separately after that, if there are remaining damages that would be addressed through a claim.

Richard Gottlieb-RIDEM: One final question. It sounds like when you say the funds come through the Department of Justice then they are settled in a monetary. Is it also possible to then to, for example, have the Navy do some kind a project as opposed to a monetary settlement.

Paul Yaroschak-Response: No it is not. That is one of the reasons we have completely separated this. Because here is what could happen. We could begin to put, you know what a supplemental environmental projects are. But what we could wind up doing is starting to negotiate and doing supplemental environmental projects, which frankly, are "good" and "nice to have things" and using are clean-up money for that. So as a policy decision, what we have decided to do is try to again, address the injury under the restoration and remedial phase and then if there are any remaining damages, address that through a claim. And those claims may be valid and that will be paid out of the Judgement Fund if there is.

Richard Gottlieb-RIDEM: And that is always a monetary settlement?

Paul Yaroschak-Response: Yes sir.

Kymberlee Keckler-USEPA: I have a question concerning Section 122J of CERCLA, which is the covenant not to sue. Specifically if you were to issued a covenant not to sue by one of the trustees, say the State of Rhode Island for example, would any sort of negotiated settlement have to come out of the ER,N funds or is this or somewhere else?

Paul Yaroschak-Response: It would depend on the terms of the negotiated settlement. And I refer to Bernie to see if he has any thoughts on this.

Bernie Shafer-Response: I think any kind of negotiated settlement and anything that talks about 122 we would do through DoJ. Since we are talking about a state trustees or a foreign government trustee, again a non-federal trustee is basically giving up rights in return for things from us would have to be through DoJ who would determine whether or not the United States interests were being adequately represented by that covenant not to sue. In this case, if the state were to talking to us, in terms of settling and giving us in exchange for the settlement a covenant not to sue that is 100% of the time a DoJ matter. The Navy does not litigate on its own in order to settle lawsuits on its own when it comes to areas that DoJ represents. One exception to this is one area of claims we do on our own without DoJ and that is the typical Federal Tort Claims Act type claim

that we get and pay for with a typical situation that the Navy JAG claims office handles. Those kinds of claims are based on negligence and through the Federal tort claims process there are certain rules and procedures to follow. They are not relevant to this. 100% of the time, natural resource damage claims are not based on negligence theory, they are based on a plain ordinary strict liability theory. As a smart trustee you don't want to use the Federal Tort Claims Act when you can use CERCLA as your basis for recovery. And if you use CERCLA as your basis for recovery, it is going to be DoJ handling the representation of the United States versus the Federal Tort Claims Act where the Navy can handle those things and settle.

Dave Egan-TAG: I wanted to follow through on a couple of these topics. I think interim injury as Kymberlee just ended up with was really where we were kind of focusing our discussions because the restoration that is planned or I should say the remediation that is planned with the subsequent restoration appears to being going back to baseline conditions. So it doesn't appear that there is going to be a residual injury and that's good, but there would still be that interim injury. I wish some of the other trustees were here tonight, that would include NOAA and US Fish & Wildlife. NOAA in particular has been a proponent of negotiated settlements instead of having to go through a damage assessment process for that interim injury they would enter into a negotiated settlement process. It is going to save time from the side of the trustees. Save time from the side of the Navy or DoJ if they will be involved. It will reach a conclusion more quickly and should allow settlement of that in a more expeditious manner. So I guess that is one of the reasons that we wanted to have this discussion. You indicate you have made a policy decision, but would you see potential advantages to doing a negotiated settlement process or something which I hope you would perceive as not frivolous from the get go.

Paul Yaroschak-Response: No. I would not want to do that in fact we have thought this out pretty thoroughly. I would not want to do that for the interim injury clearly. And all of the reasons you described are true, that we probably could do it quicker. But, what would be missing would be the rigger and scrutiny provided by the DoJ attorney on this whole process and secondly the fact that if indeed there is interim injury and it is valid, the DoJ would pay that out of the Judgement Fund. So we would miss those two pieces out of that and we think that is very very important. Understanding that it might be easier for the participants there to go ahead and negotiate, I understand that.

Bernie Shafer-Response: The example that you were using was NOAA. We have an additional issue for us when it comes to Federal trustees since there is Comptroller General opinion which have held that one Federal agency cannot bring claims against another Federal agency. There are a series of cases where the Air Force destroys FAA running lights by negligently landing a plane at an airstrip somewhere, the Navy crushes a Coast Guard ship, the Army destroys a Department of Interior National Forest or portion of it during range activities and uniformly the Comptroller General's rule that one Federal Agency doesn't have to compensate the other for these kinds of things. So there would be a problem for us in handling in any fashion or other a NOAA claim. And particularly if you looked at it from DoJ perspective who is representing the United States would put them in the odd position of getting a claim from the left hand of the government and paying for on behalf of the right hand of the government. So, your example, unfortunately you used a Federal trustee when for us it is really a non-Federal trustee where this issue primarily comes up.

Dave Egan-TAG: And that's ok. I think perhaps I should have been more inclusive. NOAA would join RIDEM for instance if RIDEM were to pursue a damage assessment. But I think RIDEM has also expressed an interest in a negotiated settlement process and NOAA has expressed an interest in joining RIDEM in that negotiated settlement process. I understand that certainly the Navy would have an interest in having DoJ involved but that to me does not preclude the use of a negotiated settlement. I am sure attorneys get practice in negotiation. I guess my question is getting DoJ involved I don't think that precludes the use of a negotiated settlement, it just involves bringing them in suit or into the process that is what we are a proponent of.

Bernie Shafer-Response: Let me clarify that. You're right. There is no need and DoJ makes this very clear for actual litigation to start. DoJ is allowed to compromise or settle Federal claims against us or against others without actual formal litigation. That is really not the issue so yes, you were right. The point though is a claim would have to be filed. DoJ would have to be the one to manage the settlement since any settlement would involve the use of Judgement Fund money which DoJ would be the entity who is capable of tapping it. We do not have access to the Judgement Fund because we are not representing the United States. DoJ is representing the United States in this kind of thing. But to clarify, you don't need actual litigation but filing a claim is what starts the process of determining whether or not we could settle out of court.

Dave Egan-TAG: Maybe we could follow this another step then. Let's recognize that there was some injury otherwise you wouldn't be doing the clean-up. So there was some injury precipitated a clean-up. Let's assume there is no residual injury but that still leaves that interim injury so there would be the basis of a claim there. Couldn't the Navy perhaps try to bring DoJ in at this point and couldn't this process perhaps be initiated, recognizing that there is a legitimate basis for a claim and without requiring the official legal filing of claims. Because that is when you start getting into the costs and time and things like that.

Bernie Shafer-Response: I don't think so. And the reason is because the problem for DoJ would be they need to know what the sum certain is that you are after and I know they do not spend Federal money to help claimants perfect their claim to help DoJ go and take them to money. It is incumbent upon the trustee if they want to file the claim, file it, but some how come to the table with what they want and how they came up with their conclusions. Typically a trustee will say to DoJ/Federal Government, well you know that under natural resource damage principles I am allowed to bring not only the claim for the damage itself but the cost that I incurred determining what the damages were. So do you really want me to do that, go spend a bunch a money to figure out whether or not there actually has been damage and add that to the claim itself? The answer effectively is yes. I don't believe DoJ has ever changed their position on this that you need to come up with the money to figure out what your damage is, but the bottom line is that is compensable as well. It just that they (DoJ) are not in the business as we (Navy) are not either in the Federal Tort Claims Act to help claimants perfect their claim.

Paul Yaroschak-Response: There are two built in safeguards here. One is that helps us protect clean-up funds from being used for damage assessments for a trustee. The second thing it does is, if people are really serious and they are really have a legitimate claim then they would spend the money up front to do the damage assessment and then claim it back in the claims process.

Dave Egan-TAG: Now I recognize that you know, creating certain roadblocks along the way is a deterrent at times. I guess what I would like to ask is whether or not is this policy that the Navy is presenting tonight consistent across DoD?

Paul Yaroschak-Response: Yes it is. We just put out a DoD policy on this to try to very clearly separate natural resource injury and damages for that very reason. In fact we have a

number of policy groups across the services. I am not saying at every place there may not be somebody out in the field that hasn't followed it yet or gotten word, but generally speaking we are all on board with this. DoJ is comfortable with the way we are handling this.

Dave Egan-TAG: And how about perhaps in research getting prepared for this meeting or for other similar meetings, how about other Federal agencies. How are they treating interim injuries or even residual injuries?

Paul Yaroschak-Response: I don't know. I can't answer that. I don't know.

Dave Egan-TAG: Is that something you can find out for us? Perhaps contact the DoJ?

Paul Yaroschak-Response: Well I don't know that it is going to change our policy and what we do. Here is why Dave. Our policy is consistent with CERCLA. In other words we are comfortable that we are consistent with the law, we are consistent with what DoJ wants us to do and understand that we are trying to do here is walk a fine line. We are a potentially responsible party (PRP) and the defendant in any case like this for a claim, but we are also a trustee. So as a trustee we are trying to do the right thing under our restoration process, preserve our clean-up money for the real clean-up on the other hand as a PRP and a defendant we are trying to make sure that we don't have people just grab the money out of that pot. We are very comfortable with that policy and despite what DoE or some other agency may be doing, this is the way we want to do it.

Dave Egan-TAG: Okay. I guess what is frustrating from this side is that my understanding is that while a clean-up, let's say there is a site here McAllister Landfill that is going to undergo dredging and restoration shoreline, near shore, you know it might cost $20 million dollars before it is all said and done. If you went through the calculations and looked at the interim injury you might come up with a dollar amount $400,000-$500,000. So the dollar amounts associated with the interim injury pale in comparison with the dollar amounts associated with the remediation restoration but yet the work required to get to that dollar amount for interim injury seems to be a much longer and harder road. So that what is essentially frustrating I think from the community's side.

Paul Yaroschak-Response: You indicated say the interim injury were $400,000-$500,000. How would you actually know that without having perfected the claim through a damage assessment?

See part of our problem Dave is that many times estimates are thrown out on interim injury and people want to negotiate a settlement without having gone through the rigger of the actual damage assessment and filing a claim. There is some real value to that. I know you can see it as a roadblock and as a community member I guess I would see it that way. But I would tell you that there is some real value in going through that process.

Dave Egan-TAG: I don't disagree with that but the negotiated settlement process does the same thing, where NOAA brings their number crunching to the process, USF&W bring their number crunching, RIDEM debates the value of that, Navy DoJ debate the value of those numbers, you get to the same end point via a different process.

Paul Yaroschak-Response: We agree and we agree that we can do a negotiated settlement as long as the trigger for that is having a state trustee file a claim and then we can start the process. All we are pointing out is the trigger that you need. The trigger you need is the state trustee file the claim and then we can start the process.

Dave Egan-TAG: Have you had any, you mention you don't think you have any damage claims that have been filed or under way. Do you have a sense how long that process might take once a claim has been filed? How quickly could it be run through the system?

Paul Yaroschak-Response: Do you mean a damage assessment?

Dave Egan-TAG: Let's say a claim is filed and then you are going to negotiate a settlement to that claim.

Paul Yaroschak-Response: Keep in mind that what DoJ is going to want is to have some semblance of a damage assessment so they have a basis for negotiation. I can't answer for you in your specific case how long you think it would take to do a damage assessment. I just do not know the situation or what the conditions are you are working with.

Dave Egan-TAG: Let's assume the ERA and RI collects a lot of data that needs to feed into that. So let's assume the data is collected, the assessment is done, the claim is filed. So from that point on what can you project? Is this a multi-year process or can it be done in a few months?

Bernie Shafer-Response: Yes. The reason I say that is, on the other side of the equation I have been to conferences where a

DoI expert on natural resource damages has described situations where this guy traveled to sites where DoI's natural resources had been damaged and they have gone after a PRP and they have done "back of the envelope" evaluations as to what they think the harm to the Federal resources has been. This guy, I have heard is empowered to go and settle on behalf of the Federal government against people and they have wrapped things up in a matter of weeks or months without getting wrapped around the axle of a part A or part B full blown natural resource damage…

Paul Yaroschak-Response: But he is acting as the trustee not a PRP.

Bernie Shafer-Response: Right, but I took from that conversation that it is something that could be done relatively quickly if DoJ saw the handwriting on the wall and the data that you were presenting made real easy for them to say that clearly we are liable, that the figure is not out of line with other things we have done before, let's quick settle and make this thing go away and in a couple of months it is done. But on the other hand it could be a year. It really would depend on the facts of the claim and ultimately I cannot speak on behalf of DoJ. But, I have seen them go quick and I have seen them go real slow depending on what the dynamics are.

Paul Yaroschak-Response: I think if it is well laid out and the facts are there, and it is reasonable, I would guess it would proceed relatively smoothly and could be done in maybe 2-3 months, that is just a guess.

Bernie Shafer-Response: Again we do not have any claims right now or have had any brought against the Navy and so we do not have any experience with how DoJ handles this. We know that they do. (VTC connection lost)

Dave Egan-TAG: In the spirit of working together and trying to get through this issue is there someone at DoJ who the Navy has worked with or would work with respect to any negotiated settlements once a claim has been filed but is there someone there at DoJ who could serve as the point of contact who could help us make sure that we gather the appropriate information to expedite the process once a claim is filed.

Bernie Shafer-Response: They way we work with DoJ is that we have a staff of Navy attorneys in the Navy litigation office, there is maybe 10 attorneys who do full time environmental law litigation. They in turn work with a counterpart at DoJ and that counterpart consists of maybe 30 different attorneys. I don't think we ever really know for sure who the attorney would

be that would be assigned to a given case if one were perfected against us. So the bottom line is, I know who one of them might be, I know who the pool might be, but I don't know which attorney actually would until a claim was actually filed and we have something for out lit officer who could go to their counterpart at DoJ and say we got a new one to work on.

Paul Yaroschak-Response: We have not had any natural resource damage claims filed against us. We have had inquiries, formal inquiries, similar to what you have, in fact even more formal, however, when you try to channel those through the process that we have described here, those claims went away. They were sufficiently addressed during the remedial phase and the state decided not to pursue damages. The other thing I would mention and I want to read one or two sentences out of CERCLA because this is important. This is very important for your understanding on what the money can be used for. This is right out of CERCLA, "sums recovered by a state as a trustee shall be available for use only to restore, replace or acquire the equivalent of natural resources", so in other words it is strictly to recover or replace what was damaged. Be careful that you understand what the money can be used for.

Bernie Shafer-Response: The reason that is important is that when we are talking settlement with DoJ, in this case at least we are talking natural resource damages, DoJ is going to expect a natural resource restoration plan sometime as one of the outcoming of any kind of settlement to make sure the money is properly spent. So it is not as cut and dry as writing a check. It is writing a check and watching how it is actually spent.

Paul Yaroschak-Response: Keep in mind they are typically to address the injury, not to address something else like in kind for it. In other words, some trustees say that because we had this injury over here we would like you to spend the money to do this over here. That is not in accordance with the law.

Kathy Abbass-RAB: I was interested in what you said about having just issued a policy statement. I am wondering what the change in the administration and the upper echelon might be and any changes in the laws that you see in the future. How is that going to effect the process that we are in now? Do you see the change in the administration having any effect at all this?

Paul Yaroschak-Response: Absolutely none for two reasons. Number 1, the kinds of things we are talking about are too low on the radar screen frankly for a new administration. They have got many big things to worry about. Secondly, a Republican administration, there is some talk about reforming natural

resource damage, it is very controversial. Some people think that once the restoration is done that we should not be using public money to pay for interim injury. A Republican Congress would probably like to amend CERCLA in regards to natural resource damages, maybe Democrats too. Politics in Washington right now they are not going to touch that with a 10' pole. It is too controversial. So the bottom line here is that I don't think CERCLA with regard to this is going to be amended, I don't see it happening any time soon and secondly below the law any regulations and policy I don't think they are going to change substantially. DoI does have a draft regulation out. I don't think there is going to be any substantial change under this administration.

VTC ended.

Dave Brown initiated discussion trying to ascertain what the State's value on the interim injury is. Rich Gottlieb feels valuation cannot be done until remediation is complete due to the fact that it is not known how effective the remediation will be. Kymberlee Keckler disagreed and feels the process can begin prior to remediation.

Paul Kulpa wants it to be clear that RIDEM believes the landfill (McAllister Point onshore) area is still there and will be there forever and is pretty easy to file a claim on. Paul referred to valuation figures from a USF&W assessment. Paul also states that the state at all of its Superfund sites has not had to file a claim. Anyone the state has dealt with in the private sector has negotiated with the State rather than going through the claim process. There was group discussion that this, based on the presentation just given by the ASN's office, is clearly not an option.

Kymberlee Keckler stated private industry does not have the same fiscal constraints that Federal facilities do. There are very specific pools of money. She doesn't feel it is fair to compare a claim against the Federal Government with one of a private corporation.

Jim Shafer stated to Paul Kulpa that if he (Paul) feels a claim is simple then….Paul Kulpa stated they (RIDEM) will have to file a claim.

Captain Cooper wanted to ensure that the Navy does not view the filing of a claim as confrontational and that if filing a claim is the proper procedure then a claim should be filed.

Dave Brown continued discussion. Inquired whether or not there is something the RAB can do. Rich Gottlieb stated nothing will be done until the remedy is complete. Discussion on this issue continued: Will RIDEM keep the RAB updated? Will RIDEM continue the process without nudging from the RAB? There is disagreement regarding statute of limitations for the onshore portion of McAllister Point?

RIDEM (Paul Kulpa) feels the Navy needs to be more specific on what information is warranted in the claim. It was brought to the group's attention that as stated during the VTC-the State's claim will not be perfected for them. It was also brought to the group's attention that there is obvious disagreement with the State-Paul Kulpa feels that negotiation has already been completed, Rich Gottlieb feels that the process will not start until the remedy is complete.

Paul Kulpa stated that if RIDEM must follow the formal claim process and get all the lawyers involved then they may want to wait until the remedy is complete. But, on every one of the State's Superfund sites they have negotiated settlements before the remedy was complete.

Discussion continued on the above issues. The group requested a written copy of the Navy policy on this issue.

MEETING MINUTES

November meeting minutes were approved. NOTE: Tom McGrath was not listed as being in attendance at the November RAB meeting however he did attend that meeting.

COMMITTEE REPORTS FROM COMMUNITY MEMBERS

Project Committee-Emmet Turley Committee Chair: Emmett has information on dredging. He encourages everyone to read his attachment. See Enclosure (2).

Planning Committee-Tom McGrath Committee Chair: Planning Committee Chair has been vacant. Barbara Barrow nominated Tom McGrath as Chair, he has accepted, the board has approved. Tom will be on vacation. He will return to the RAB in March.

Membership Committee-Howard Porter Committee Chair: Committee chair was not in attendance at this meeting, however, Tom McGrath introduced Ed Moitoza as a new member from Middletown.

Public Information-Claudette Weissinger Committee Chair: The newsletter is available for comment and review before printing.

NEW BUSINESS

Kathy Abbass attended the National Stakeholders forum in St. Louis November 12-16. Kathy has provided a report on that forum. See Enclosure (3).

ACTIVITY UPDATE-James Shafer

James Shafer did not give a status report on various IR sites as there has been little change since the November meeting, however, he did provide slides. See Enclosure (4).

NEXT MEETING

The next meeting of the Restoration Advisory Board (RAB) is scheduled for Wednesday, **February 21, 2001**, at 7 p.m., at the Officers' Club. The agenda will include the RAB Budget and brief presentation by Kathy Abbass on member design concerns at McAllister Point.

Enclosures:
(1) Navy Policy on NRDA
(2) Project Committee Report
(3) Dr. "Kathy" Abbass' Forum Report
(4) Activity Report

ENCLOSURE (1)

Natural Resources Injury

What was injured?

What quantities were injured?

Analyzed during the eco risk assessment.

Addressed during remedy selection...possible restoration...Navy uses "cleanup funds" (ER,N).

- Interim injury...economic l ss for time period up until restoration...addressed via damage claim →

- Residual injury...economic l ss for that not addressed by remedy...addressed via damage claim →

Natural Resources Damages

What is the value (and to whom) of damaged/lost resources?

DoI/NOAA procedures for valuation.

PRP pays Trustee damages based on value of services.

This is a claim against the Government...DoJ has standard procedures.

Navy uses DoJ "judgment fund".

Controversial from public policy perspective.

Why do we draw a line between injury/damages?

Vital to preserve cleanup funds for *actual* clean and restoration *directly related* to the injury

- Damages are the economic value (to someone) for lost use of resources
- Damages are a claim against the government for which there are standard procedures and a special fund (judgment fund)

Forcing damage claims into judgment fund process provides DoJ involvement & scrutiny…frivolous claims are smoked out

RESTORATION ADVISORY BOARD

Project Committee Report
"Environmental Dredging"
January 17, 2001

Enclosed is some information on environmental dredging, which refers to removing contaminated sediments from bodies of water in order to improve water quality and restore aquatic ecosystems.

The dredging process can be done as "dry or wet", usually determined by the extent of the contamination problem. Both processes are described in this article and certain benefits are attributed to each.

Certain benefits are:

Restoration of a healthy habitat for the base of the food chain;
A healthy habitat will support more auatic orgaanism and benefit the entire food chain, including fish and lobsters;
Reduction of weed growth and nuisance algae;
Restorationof clean waters to permit safe recreational use of the area;
Cost savings for future clean-ups ;
Economic benefits as well as increased property values in nearby areas.

Much of this information can be useful to the communities in this area that will be subjected to environmental dredging and remediation.

Submitted by:

Emmet E Turley

Emmet E Turley, Chairman

ENCLOSURE (2)

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Report Of The Extent And Effects Of Sediment Contamination In White Lake

Visit other sites about contaminated sediments:

Great Lakes Dredging Team

U S Army Corps of Engineers D O T S

Center for Contaminated Sediments

U S Environmental Protection Agency

International Joint Commission

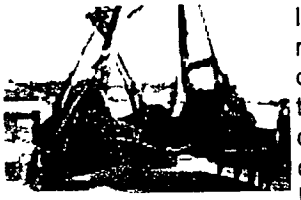
Questionnaire1 Results

White Lake Sediment Cleanup Outreach Project
Environmental Dredging

There are a variety of methods of cleaning up contaminated sediments, including capping, place treatment, stabilization, and dredging. While dredging is usually thought of as a way t deepen harbors and channels, it is increasingly used now to remove contaminated sediments from rivers and lakes in order to improve water quality and restore aquatic ecosystems Called environmental dredging, this is the method most likely to be used to remove contaminated sediments in Tannery Bay. The dredging process used can either be "wet or dry".

A dry dredging process can be used if feasible and if the contamination problem is localize and not spread out over a large area of the lake. With this method, a sheet pile wall would l built around the contaminated area and the water pumped off by a hydraulic pump into a storage basin built above the ground, like an aboveground swimming pool. The water woul be tested and treated if contaminated and will undergo treatment before being discharged back into White Lake

Somewhat dry mud would be left in Tannery Bay. Depending on the type of sediments, materials such as fly ash or lime may be added to solidify them. There should be no air or dust problem from the contaminated sediments, especially if the sediments are kept wet. A backhoe would be used to excavate the sediments and place them in temporary storage where they may stay for several days or a week at most. Because of the animal hides and hairs in the sediments, there could be odors from the sediment, although keeping them wet will keep the odors down Trucks would transport the sediments for final disposal, most like to a landfill that is licensed to take residential solid waste. After the sediments are complete removed and trucked to a disposal facility, the sheet pile wall would be removed and the bottom of the bay leveled off if necessary. Dry dredging is one method that can minimize th distribution of contamination to other parts of the lake.



In a wet dredging process, the contaminated sediments would be removed by either a hydraulic dredge or an environmental clamshell or bucket. Hydraulic dredges work like vacuum cleane to remove bottom sediments and associated water Environment clamshells "grab" the sediments and some water, but seal tightly order not to let the contaminated sediments out into the water Using either the hydraulic dredge or the environmental clamshell the sediment and water mix is transported to a dewatering facility on shore where the sediments and water are separated. The sediments are then stored as in the dry dredging method until transported to a disposal facility. The water is tested and treated if necessary before being returned to White Lake. Because the water mixes with the sediments during th removal process, it is more likely to be contaminated than in the dry dredging process. In a wet dredging process, plastic silt curtains are installed around the perimeter of the area to b dredged to stop contamination from dispersing throughout the lake The silt curtains are anchored to the bottom of the lake and the tops are attached to floats. With wet dredging, there could be short-term impacts from dispersal of the contamination from the bay to othe parts of the lake. If conducted correctly, however, any dispersal of the contamination will be small or equal to what may have already been occurring before the cleanup from wave action or boating activities

Monitoring would occur during the cleanup to ensure that there are no impacts to water quality. Ecological monitoring may take place for several years after the cleanup to measur improvements in the benthic community

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Questionnaire1

White Lake Sediment Cleanup Outreach Project
Effects of Contaminated Sediments on White Lake
Benefits of Cleanup

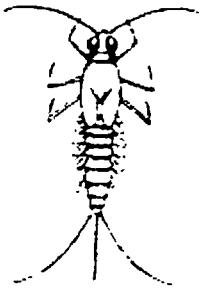
Even though cleanup efforts in the Great Lakes began in the late 1960s, not much attentior was paid to the bottom of lakes and rivers - the top priority was stopping the new discharge: of pollution Many people thought that if there were toxic chemicals on the bottom of a lake, they were safe there and would not harm the lake, the animals in it, or the people living around it.

After the worst pollution discharges were stopped, levels of chemicals in fish and wildlife dropped, but then leveled off and slowed their decrease. Because of this, scientists now believe that the air, runoff from land and contaminated sediment are contributing pollution t the Great Lakes. Cleaning up contaminated sediment is one of the top priorities of the U S. Environmental Protection Agency and Michigan's Department of Environmental Quality. Contaminated sediments are linked with problems such as.

- restrictions on eating fish and wildlife,
- damage to fish and wildlife populations;
- bird, animal or fish tumors, deformities, or reproductive problems,
- loss of fish and wildlife habitat;
- damage to phytoplankton or zooplankton populations,
- added costs to agriculture or industry;
- eutrophication or undesirable algae,
- damage to bottom dwelling organisms or benthic communities, and;
- restrictions on dredging

What are the effects of contaminated sediments in Tannery Bay on White Lake and the benefits that can be expected if they are cleaned up?

Tannery Bay sediments provide an unhealthy, contaminated habitat for the base of the food chain.



MAYFLY (Nymph)

The animals in benthic communities are often the link between contaminants in the sediment and the rest of the food chain. Healthy communities living in clean sediments typically have far more species than communities in contaminated sediments. Cleaner lake bottoms w have more species of midges along with mayfly larvae, crustaceans ar clams.

As early as 1967, a Water Resources Commission study showed that the benthic community in Tannery Bay was impaired. The most recent study by the Robert B Annis Water Resources Institute (WRI) and the Great Lakes Environmental Research Lab (GLERL) shows that the problem is serious and continues today The contaminated sediments are toxic to aquatic benthic organisms - when exposed to the contaminated sediments in th laboratory, benthic organisms did not survive The WRI/GLERL study also conducted an analysis of the species on the lake bottom that showed that the benthic community living or the bottom of Tannery Bay is less diverse and healthy The bottom of Tannery Bay has bee contaminated for decades, so it is difficult to compare the health of fish and wildlife populations before the contamination occurred with present day conditions. It is obvious, however, that a contaminated, unhealthy lake bottom is not a sound foundation for the lake

Questionnaire on Cleanup Options

food chain and its overall health.

Cleaning up the sediments in Tannery Bay will leave a healthy habitat, which will support more aquatic organisms and benefit the entire food chain, including White Lake's fishery.

Contaminated sediments, animal hides and hair can cause weed growth.

FRESHWATER AL

Nutrient contaminated sediment, animal hides and hair are likely promoting the growth of weeds. Tannery Bay is relatively shallow and has consistently supported a large growth of nuisance algae dating back to a 1967 nutrient survey by the Water Resources Commission Much of this may be due to the presence of animal hairs and hides, which are high in nitrogen, and may be acting like a fertilizer for the lake bottom. ***Removing the contaminated sediments and animal products from the bay will reduce the weed growth and make it a more attractive and productive are***

Contaminated sediments limits public use of the lake.

The sediments in Tannery Bay are contaminated with chromium many times above background levels, mercury, arsenic, and other chemicals of concern. Contact with the contaminated sediments, whether by wading or swimming in the bay or near Svenson Park is a public health issue The WRI/GLERL study did not show that mercury in the sediments was being taken up by aquatic organisms in one 30-day bioaccumulation experiment. It did not, however, address long term bioaccumulation. Methylated forms of mercury do accumulate in the food chain and increase in concentration as they move up the food chair There is a fish consumption advisory for mercury on all of Michigan's inland lakes and mercury in Tannery Bay could be a factor in limiting fish consumption in White Lake ***Removing the contaminated sediments will allow for safe, recreational use of the lak both in the bay and its vicinity.***

Contaminated sediments may add costs to area governments, businesses, and private citizens.

The contamination in Tannery Bay is unstable and continues to spread throughout the lake Unless it is removed, it could mean extra costs for area municipalities and private businesse or individuals that may need to conduct expensive tests before maintenance or other routin dredging projects can be completed Once the sediment disperses throughout the open lak resolving the problem becomes more complicated and more expensive for Whitehall Leath Company to resolve. ***Cleaning up the contaminated sediments now will be easier and less expensive than in the future.***

Contaminated sediments create a perception that the lake is not healthy and safe. O March 6, 2000, the Lake Michigan Federation and the White Lake Public Advisory Council disseminated a questionnaire in The White Lake Beacon to measure the level of knowledg of the Tannery Bay contaminated sediments, what information would be useful to residents on the issue, and what expectations they might have of a sediment cleanup A majority of those who responded expressed their belief that the lake is not healthy and safe for residen to use for recreation and fishing. ***Cleaning up the sediments will assist in changing the widespread and long-lived perception that White Lake is polluted and not safe for people to use.***

Cleaning up the sediments could improve the White Lake area economy. While there are no studies or figures available specifically for White Lake, several Canadian studies ha linked cleanups of contaminated sediments with a raise in property values and increased tourism and recreation-related investments. ***Removing contaminated sediments may enhance White Lake's tourism economy and increase the value of White Lake area properties.***

weissin@banet

DR. " KATHY" ABBASS' FORUM REPORT

Newport Navy RAB member D. K. Abbass(Kathy) attended a national stakeholders forum in St. Louis Nov. 12 –16. This meeting, sponsored by Ms. Sherri Goodman, Deputy Under Secretary of Defense, brought together about 350 individuals who represent the various groups interested in environmental cleanup at DOD sites. About 25 RAB members from around the country were included.

An opening session on Tuesday featured an introductory address by Secretary Gordon and a number of speakers made remarks on "New Ideas and Tools for Future Clean up Efforts." The audience then had the opportunity to voice their concern and ask questions of panel members. During the day on Wednesday there were break out sessions on a number of different topics: Community Involvement, FUDS Sites Improvement, Partnering with Regulatory Agencies, Risk Management and Communications, Range Clean up, Clean up Privatization, and Site Closure and Permanent Remedies.

Following the presentation on each of these topics the audience made comments and asked questions, all of which was synthesized into a report. On Wednesday evening representatives of the various armed services met with the participants to answer questions that had not been addressed in the breakout sessions. Kathy went to the Navy group and discovered that some of the Navy Administrators had been to our Newport RAB meetings. On Thursday morning the reports of the break out sessions were presented to the entire group, and there was further opportunity for input. Then the complete record of the meeting was available for comment before publication and potential action.

Although the various groups interested in DOD clean up have had a chance to voice their opinions, it is not yet clear if the Stakeholders Forum Report will have any leverage in the new Washington administration. Only time and vigilance will tell.

A draft report of the meeting is available for comment on the following web sites:
www.denix.osd.mil www.itrcweb.org and www.keystone.org

These web sites are short termed.

ENCLOSURE (3)

Activity Update

Naval Station Newport
Installation Restoration Program

Old Firefighting Training Area

- Final offshore ERA submitted April 28, 2000
- Final onshore Background study in Aug 2000
- Draft Final Remedial Investigation Report for onshore and offshore submitted Oct 25, 2000
  - final RI report submission pending resolution of outstanding issues for arsenic and offshore PRG's
- Feasibility study planned for Winter 2001

ENCLOSURE (4)

McAllister Point Landfill - Offshore

- Record of Decision -USEPA signed 3/1/00
- Notice of availability of ROD
- Deadlines for Remedial Design Documents
  - 35% Remedial Design Workplan 1May 00
  - 60% Remedial Design Workplan 20 July 00
  - 85% Remedial Design Workplan 10 Oct 00
  - Final Remedial Design Workplan 4 Jan 01
  - Pre-Construction Meeting 26 Feb 01
  - Project Closeout Report 30 Aug 02

McAllister Point Landfill - Onshore

- Continue long term monitoring of landfill gas and groundwater

Tank Farm 5

- Two additional bedrock wells installed at former Tanks 53 and 56
- Submitted Data Report April 21 2000
- sampling results comply with RIDEM GA ground water standards
- Received RIDEM response October 16, 2000
- One additional sampling of all wells required to support final decision
- Sampling planned for Spring 2001

Derecktor Shipyard

Onshore:

- Submitted removal action report September 2000
- Submit draft final report March 2000

Offshore:

- Funding for remediation planned for 2005/2006

Melville North Landfill

- Remediation Complete
- Submitted Closure Report September 2000
- Received RIDEM comments Jan 16, 2001
- Planned response to comments by Feb 01
- Planned submission draft final report April

Gould Island

- Installation Restoration Field Work in April 2000
- Submitted Draft SASE Report August 2000 recommending proceed to RI/FS
- Submitted final SASE Report December 2000
- RI Work Plan planned for January 2003