

Board Meeting Minutes

Duck and Otter Creeks Partnership, Inc.
March 20, 2008
Pilkington North America Headquarters
811 Madison Ave., Toledo, OH 43697
1:30 p.m.

Attendees: Lynn Ackerson, Ohio EPA; Dave Barna, US EPA; Andrea Beard, City of Oregon; Sandy Bihn, Citizen; Cherie Blair, Ohio EPA; Susan Boehme, Great Lakes Sea Grant, liaison to Great Lakes National Program Office; Jack Brunner, Tetra Tech (via phone); Jim Burns, Secor International (representing Chevron); Chuck Campbell, City of Toledo; Mike Darr, BP; Dave DeVault, US Fish and Wildlife Service; Landon Eenigenburg, ARCADIS (representing CSX); Cliff Fleener, Pilkington NA; Jon Gulch, US EPA; Sue Horvath, Citizen; Archie Lunsey, Ohio EPA; Warren McCrimmon, Toledo-Lucas County Port Authority; Tim Murphy, City of Toledo; Shannon Nabors, Ohio EPA; Don Nelson, City of Oregon; Kris Patterson, Partners for Clean Streams; Susan Richards, Envirosafe Services of Ohio; Bob Rule, de maximis, Inc.(representing Ashtabula River Partnership); Bruce Rust, ARCADIS (representing CSX); Olivia Summons, Sunoco; Neal Thurber, BP; Marc Tuchman, US EPA Great Lakes National Program Office

Staff: Jill Shalabi, Executive Director

Agenda Items:

1. Introductory remarks

Sue Horvath thanked everyone for coming, and gave a brief overview of how the Partnership formed– that she and June Brown spearheaded efforts on Duck and Otter Creeks because they did not want a repeat of what happened on the Ottawa River, where a lot of money was spent on legal battles before anything actually got done to help the river. Introductions were then made.

2. Risk assessment update

Jack Brunner reviewed some of the historical information available on the creeks, such as the 1999 ChemRisk Sediment Quality Assessment. This was similar to an ecological risk assessment (ERA) and relied primarily on 1998 Ohio EPA sampling data. Jack also went over Tetra Tech's involvement with the Partnership and the Phase 1 Risk Assessment done in 2005. This was a screening-level Human Health Risk Assessment (HHRA) done using old data, more recent spill reports and Hecklinger Pond fish tissue data. Some EPA risk thresholds were exceeded these were mostly PAH-driven. Tetra Tech also produced a Data Gaps Analysis that identified the need for additional data that would be required to complete an ERA. The data gaps analysis also recommended toxicity testing with macroinvertebrates, and AVS/SEM analysis (to measure the bioavailability of metals). US EPA Great Lakes national Program Office (GLNPO) funded a sediment assessment designed to address the recommendations of the data gaps analysis to collect data to use for a follow-up human health risk assessment (HHRA) and a more complete ERA. Sediment samples were collected in April 2007 from 19 locations on Duck Creek and at 27 locations on Otter Creek. These were all of the locations recommended in the data gaps analysis. PAHs, PCBs, pesticides, metals, TOC, oil and grease, percent solids, and grain size were analyzed at all 46 locations. At select locations (master sampling locations) full scan-PAHs, AVS/SEM and toxicity analyses were performed. The creeks were divided into the same exposure areas as in the 2005 risk assessment, and each exposure area contained a master sampling location. The new risk assessments will use only the updated data and will follow US EPA and Ohio EPA guidance. Some of the older data may also be used and some assumptions may change from the 2005 risk assessment. For example, at Hecklinger Pond, the fish were removed which altered some of the exposure scenarios. Jack stressed that he wants feedback and agreement from the Partnership before proceeding too far along with the risk assessments. Therefore some interim deliverables have been agreed upon that will present the key assumptions, for example, which ecological risk assessment sediment criteria will be used to evaluate data, problem formulation assumptions, species for food chain models, and the toxicity reference values. For the HHRA, they will follow Superfund guidance as well as Ohio EPA guidance, there will be an updated list of contaminants of concern, and the conceptual site model, potential receptors, exposure pathways, etc. will all be revisited before performing the risk calculations. In addition, they are incorporating additional data from Envirosafe that they just received about a week ago. The interim deliverables will be posted on an ftp site by the end of the day tomorrow. Jack requested one set of consolidated comments for efficiency. The risk assessments will be used in part to evaluate the creeks as a potential candidate for Great Lakes Legacy Act (GLLA) monies and to identify cleanup targets. March Tuchman mentioned that it will be important to see cleanup targets for

Board Meeting Minutes

contaminants of concern proposed at the end of this process and that the final document produced by Tetra tech should provide some input and comment on this subject. Dave DeVault asked to be included in the group who gets to see the cleanup targets. Sue reminded everyone to include their emails on the signup sheet. A meeting was scheduled on April 3 at 1:00 to discuss the interim deliverables and provide individual comments so Jill can consolidate them as requested. There were no questions for Jack.

3. Overview of Partners for Clean Streams and Joyce Foundation involvement

Kris Patterson reviewed Partners for Clean Streams (PCS) and its involvement in the Partnership's risk assessment process. PCS is a new non-profit organization supporting the Maumee RAP. The Joyce Foundation has invested \$5 million in the Maumee Area of Concern (AOC), and PCS has received some of that money. The risk assessments for Duck and Otter Creeks are one of several projects in the Maumee AOC that is being funded by the Joyce Foundation through PCS. Kris said that the Joyce Foundation seems most interested in our project because they realize that local groups often struggle with the local match requirement for GLLA projects. Jill is coordinating day-to-day activities with PCS' contractor (Tetra Tech). PCS' goal is to make sure all gov't agencies are at the table and talking to each other as the risk assessments move forward. Kris also mentioned "Get the Lead Out," which is an upcoming event for PCS.

4. Overview of Ohio EPA involvement

Shannon Nabors mentioned Ohio EPA's involvement with industry in the watershed, for example permits and inspections, and said that Ohio EPA supports the Partnership as an opportunity to approach environmental problems in a unique and proactive way. Their particular interest is restoration of Beneficial Use Impairments (BUIs) in the Maumee AOC. Ohio EPA always has the enforcement option, but avoiding enforcement is desirable because projects are done sooner and no time is wasted in court. Therefore, when there are opportunities for groups like the partnership to work together to leverage money and resources, they support this. Shannon also mentioned that Ohio EPA will soon be focusing on RCRA facilities in the watershed to address outstanding RCRA corrective action issues, so the timing of these risk assessments is good.

5. Overview of Great Lakes Legacy Act

Marc Tuchman gave a presentation on the GLLA (a copy of his presentation is available to anyone interested). He also mentioned the current momentum of the Ottawa River cleanup and hoped to have the same thing happen with Duck and Otter Creeks. The main points regarding the GLLA are:

- GLLA is a relatively new program. It was passed in 2002. Its goal is to accelerate the pace of contaminated sediment remediation in AOCs.
- GLLA is not an enforcement process. The focus is on forming partnerships to address problems voluntarily. US EPA teams up with the state, municipalities and/or industry to address sites in AOCs, resulting in faster cleanups.
- GLLA priorities are (1) remediation of contaminated sediments, (2) monitoring and evaluation (sediment characterizations, feasibility studies, remedial design, etc.) and (3) source control.
- It is a cost-share program. The non-federal cost share is 35% minimum. Cash is preferred, but match can also be in-kind. Negotiated administrative orders can be used as in-kind match, but not unilateral orders (UAO). Project cost-shares fall into the following categories: (1) Orphan site - no action anticipated following a formal evaluation - 35% minimum, (2) No enforcement pending - 35% minimum (Ashtabula is in this category), (3) Betterment project - activities undertaken in addition to those required under a Superfund Record of Decision - 40% minimum, (4) Enforcement pending but no settlement reached (such as the Ottawa River - an NRDA claim has begun there) - 50% minimum.

Lynn Ackerson asked where RCRA corrective actions would fit into these categories. Marc said that these would be considered as any other enforcement action. Marc mentioned that five remediation projects have been completed so far and gave a brief overview of the projects (including the Ashtabula River).

6. Overview of Ashtabula River remediation process

Bob Rule (project coordinator of the Ashtabula River project) gave a presentation on the Ashtabula River cleanup through the GLLA (a copy of his presentation is available to anyone interested). The Ashtabula Partnership was established in 1994. By 2001 they had a comprehensive management plan for the project (basically the Remedial Investigation/Feasibility Study) that detailed what they would do for primary restoration activities. They originally wanted to pursue money from the Water Resource Development Act through the Army Corps of Engineers (ACE), but then decided to go through GLLA when it became available. Under GLLA, they have been

Board Meeting Minutes

able to move forward very quickly: in December 2005, the GLLA project agreement was signed. In May 2006 they began remediation activities (built landfill). In Sept. 2006 dredging began. Activities were divided: US EPA has control of all “water” activities (inside the banks of the river) and the Ashtabula Partnership controls all “land” activities as part of their 50% cost share (pipelines, landfill design and permits, treatment and discharge, etc.). The process benefitted by communication between and among stakeholders, developing a statement of work early on, doing a lot of outreach and communication activities for the community, and involving everyone in decision-making (state, federal, citizens, trustees, etc.). The Ashtabula River was the first big GLLA project and therefore serves as the model for other project, including the Ottawa River. Bob presented two reasons that the Ashtabula project has been a success: (1) GLLA is not a regulator/enforcer – everyone works together in a collaborative way to achieve common goals and (2) the partner (US EPA) also has money invested in the process and so they look at cost-effectiveness and economic considerations. GLLA does have its requirements, but Bob felt that these requirements are minimal compared to the cost-share benefits and the benefits of the cooperative relationship with US EPA. One of the Ashtabula Partnership’s primary goals was BUI delisting and the initial steps of that process are beginning now. Lynn Ackerson asked if the Ashtabula Partnership will stay together to act as stewards to sustain the quality of the restoration after the site is delisted. Bob said that there may be a spin-off group formed for this purpose, but the Ashtabula Partnership was formed for the purpose of dredging the river. Sandy then asked if there were any PRPs that did not buy in to the process. Bob said that the participating PRPs are suing those not participating for contributions. The participating PRPs agreed to fund the project and they may go after those not participating. Sue asked what is necessary for delisting BUIs other than sediment removal. Bob said that fish consumption advisories and habitat loss must also be addressed. Dave mentioned that a NRDA agreement will require a restoration project that will address some of those BUIs. Someone asked how the PRPs in the Ashtabula and the Ottawa River were identified. There were already separate enforcement actions by US EPA and Ohio EPA that identified PRPs in both cases. Regarding the Ottawa River, as of last week a group agreement was in place and a GLLA application has been made. Shannon Nabors mentioned that Ohio EPA worked with the Toledo Metropolitan Area Council of Governments (TMACOG) and the Maumee RAP. The City of Toledo, with TMACOG’s assistance, had initially put together a small package for a GLLA application. The City wanted to use projects to meet the local match requirements, but this was not accepted. Ohio EPA approached all of the PRPs that they were aware of in September 2007 and provided some “motivation.” In the case of Duck and Otter Creeks, the motivation may be that right now there is no active enforcement, so the cost share will be less. The longer the Partnership waits the more chance that the state or federal EPA could gather the resources to start an official enforcement action. This is actually what happened on the Ottawa River, so their cost share is 50% rather than 35%. Archie Lunsey mentioned that another source of motivation should be the possible sunset of the GLLA. Reauthorization is not guaranteed and it is a competitive process. Mike Darr asked if risk assessments were done in Ashtabula and Bob said that there were risk assessments done. Sandy Bihn asked if there were debates over contaminant thresholds. Bob said that this was not an issue for them and that there was no real controversy. Archie mentioned that there was already a Superfund action so that was why there was no debate. Shannon asked about the management structure of the Ashtabula Partnership. Bob was the consultant for the Ashtabula project and was funded by the collective group – each industry did not have their own consultant. Bob coordinated directly with USEPA and GLNPO. In the Ashtabula project, the Port Authority was the non-federal sponsor and the money passed through them. Mike Darr asked about the GLLA application process. Marc mentioned GLNPO’s website for finding requirements for both remediation and non-remediation projects and also mentioned that his group will be able to help – that the application can be an interactive process. There is also a copy of the rule on the website. Sue Horvath asked about the possibility of including source evaluation and control for old landfills (Westover) near the creeks. Marc said yes, if the link can be made between the landfills and the contaminants found in the sediments. Archie mentioned that leachate is a problem, but only water sampling has been done and there is limited sediment data. He is looking at ways to address the leachate issue and talked to Jon Gulch about ways US EPA might address the situation. However, its CERCLA score was too low for further action. Archie can do some sampling, but again the priority is not high. He even thought about getting brownfields money, but the watershed is not a priority investment area. Archie thinks it would be a simple engineering fix to stop the leachate and that it could be done with a few hundred thousand dollars, based on a very rough estimate.

7. Overview of Natural Resource Damage Assessments

Dave DeVault gave an overview of the Natural Resource Damage Assessment (NRDA) process. CERCLA (Superfund) and the Oil Pollution Act (OPA) allow for natural resource trustees to bring claims for damages to natural resources due to a release of a hazardous substance. Damages can be both past damages and future

Board Meeting Minutes

damages that may occur if a situation is not addressed. NRDA's often work in conjunction with other regulatory processes like CERCLA and RCRA, but NRD claims can also be brought on their own. For example, the Ottawa River began as an NRD claim against PRP landfills. Bob mentioned that for a GLLA project, the cleanup could be tailored to meet the additional requirements of an NRD claim. Sue asked Jon Gulch if he had anything to add. He mentioned that he liked the fact that things seem to be coming together. Now there is a lot more information and data and he sees the willingness of some industries to participate regularly as a good sign. Jon wants to see things keep moving because his office is watching the progress carefully. Dave also mentioned that while he cannot guarantee that he will take action, he is looking at Duck and Otter Creeks very closely.

8. Additional discussion, Q & A, open announcements

Cherie asked Marc what he thought about the likelihood of GLLA reauthorization. Marc said reauthorization is looking good and also that money can still be appropriated under the original authorization. Neal Thurber mentioned that industries realize that there are elevated levels of contaminants in the creeks, but that the problem is not as bad as at other sites. Something may need to be done, but we must wait for the risk assessments to see if the contaminant levels are elevated enough to be a concern. The issue is that the contaminants are evenly distributed and the few evident hotspots are upstream of industry. Industry might be willing to do a GLLA project and provide the local match money, but they must be assured that the money will be spent in doing the most environmentally efficient project, meaning that the creeks will not be recontaminated from upland areas or runoff. Businesses don't want to spend money voluntarily only to discover later that what they cleaned up (sediments) was not really the problem and that they must now do something else. At least if it's done through the courts, businesses know they are legally done. Neal thinks there needs to be some kind of structure in any voluntary action. Archie mentioned that industry had the same concerns in Ashtabula but through GLLA, money can be leveraged such that the scope of the GLLA application can be sufficient to serve as primary restoration to satisfy NRD claims and therefore any future industry liability would be limited. Marc mentioned that the government doesn't want to come back to do more work either. As a group they can decide what the logical first steps are (addressing CSOs, runoff issues, etc). Bob added that the likelihood of US EPA demanding more work in the future is unlikely since part of the technical review process for a GLLA application includes CERCLA, so this provides some inherent protections for industry. Also, Bob mentioned that if it is later determined that CSOs are the problem, that's a different group of PRPs. So industry does get some inherent protections through GLLA, but they do not get a covenant not to sue unless the project goes through Superfund. Marc mentioned that the Partnership could start working on things now. The Partnership could decide that more data is needed or that source control should be investigated before a remediation project is started. Cherie asked if a GLLA project can move forward in phases – first an exploratory phase followed by a construction phase? Marc said it would be two separate applications, but the second application would basically result in an amendment to the first project agreement for the remedial action. For the Ottawa River, the application that has been submitted is for the first phase – the remedial design. Neal asked about the local match requirements - can it be money from the state, city, private sources such as from the Joyce Foundation – anything non-federal? Shannon said that we should not count on state money – the fund that was used for the Ashtabula project has been exhausted. Any work done can be considered in-kind only if the work is started after the project agreement is signed. Sue asked about the total cost and cost share for the Ottawa River project. Marc said that it's still being reviewed. Bob thinks the total cost would be in the range of \$800K - \$1 million for the application that has been submitted and that the cost share is still being negotiated. Neal also mentioned sources such as old unplugged oil wells in the watershed. Shannon said that ODNR has funding to close wells, but the property owners have to be willing to put in the application, it can't be done by a third party. Neal asked if the risk assessment shows that there are hotspots, can a GLLA application be used to address just those hotspots? Marc said there would have to be agreement from everyone that leaving the rest of the creeks alone would be acceptable. Sandy said that it has been well-documented that oil is a problem in the creeks and that industries' responsibility is not dependent just on the law – they should not try to pass the buck when there are people here who are responsible. Neal said that he does not disagree that things were not done right in the past, but that any money spent must be spent in the best way. Sue asked Bob about suggestions on how to get industry talking. He said that the fact that many industries attend Partnership meetings regularly is evidence that communication has already begun. Shannon thinks the risk assessments will tell the story and will lead to a vision of what to do. Then we'll be able to say what needs to be done and just have to figure out where the money will come from. Mike Darr asked if there had been any sediment work on the Maumee River itself. Shannon answered that basically not much sampling has been done as far as delineating the nature and extent of contamination in the river.

Board Meeting Minutes

Also, Olivia Summons dropped off a written summary of the recent oil spill on Otter Creek. Jon Gulch said that the Coast Guard had formally turned over the spill to US EPA and he will be overseeing the situation. Currently, there are booms placed at four locations and will be maintained for the time being. A source has been located and excavated. It appears that an 8-inch pipeline ruptured and the oil is being conducted along the railroad tracks by some unknown underground conduit, perhaps drainage tiles. The spill has now moved about ½ mile. Exploratory trenches and recovery trenches are being dug and this work will continue for the foreseeable future.

9. Closing remarks

Sue thanked everyone for coming and copies of the sign-in sheet were distributed.

10. Next meetings

- Full Board: May 15, 2008 – 1:30 pm, Oregon Municipal Complex Council Conference Room
- Steering Committee: time and location to be determined