Mud-Wrestling Without the Glamour: Strategies for Coping With Sediment Sites

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OVERVIEW

♦ Scope of Problem
♦ Trends in EPA Activity
♦ Unique Challenges – Technical and Non-Technical
♦ My Focus Today: Non-Technical Challenges and Coping Strategies
♦ Information Sources
SCOPE OF PROBLEM

♦ Sediment sites increasing in number, size, cost. Trend likely will continue.

♦ 2004 EPA report to Congress on sediment quality lists 96 watersheds with “Areas of Widespread Sediment Contamination,” based on nonrandom survey of sampling locations (only 9% of water body segments in U.S.).

♦ Over 8,000 sampling stations “probably” associated with harmful effects on aquatic life or human health.
SCOPE OF PROBLEM

♦ 2005 EPA Contaminated Sediment Remediation Guidance reports that, partly due to sediment contamination, fish consumption advisories cover:

  100% of Great Lakes
  35% of other U.S. lake acreage
  24% of total U.S. river miles
As of 2003, EPA reported about 7 sediment “megasites” (cost > $50M)
By 2007, more than 14 sediment megasites
Others on horizon: e.g., Lower Passaic, Berry’s Creek, Tar Creek, Tittabawassee River, Kalamazoo River
Many other sites with sediment cleanup costs between $10M and $50M (e.g., Saginaw River, Sheboygan River, Lavaca Bay)
SCOPE OF PROBLEM

- Many current and future sediment sites not on NPL
- Even non-mega sites present complex problems and high costs
- E.g., Bayou d’Inde, Calcasieu Parish, La:
  - ~ 5 miles of bayou, marshes, and mud flats
  - EPA did RI; sampling data poor
  - ~ 4.5 years for PRPs to complete FS (CAS)
  - ~ $25 million remedy if agencies accept recommendations
EPA ACTIVITY AT SEDIMENT SITES

- Apr. 1998: Contaminated Sediment Management Strategy
EPA ACTIVITY AT SEDIMENT SITES

- More than 60 Tier 1 Sites (>10K cy to be removed or >5 acres to be capped) (# Tier 1 sites fluctuates)
  - EPA tracking over 98 areas within these sites
  - Mostly PCBs, metals, PAHs
  - 50% had removal as sole remedy
  - 33% included capping or MNR
  - <10% had capping or MNR as sole remedy
Projects just keep getting larger

~ Hudson: 2.6M cy dredging, $450M
~ Lower Fox (OUs 2-5): Initially 7.3M cy dredging, now 3.5M cy dredging + 650 acres of cap or sand cover, $600M
~ Lower Passaic: FFS evaluated dredging alternatives ranging from 1M-11M cy, with costs ranging from $0.9B-$2.3B
EPA PERSPECTIVES

- Headquarters vs. Regions
  - Contaminated Sediments Technical Advisory Group
  - National Remedy Review Board
- Sediment PCBs and TSCA
- RPMs and Project Coordinators
- EPA vs. States; learning curves
- Implications for site strategies
UNIQUE CHALLENGES

- Human health – fish consumption advisories, direct contact, links to natural resource damages
- Ecological health – bottom of food chain, bioaccumulation risks, links to natural resource damages
- Exceptional need for risk management, including risk of remedy
UNIQUE CHALLENGES (cont.)

- Political challenges
  - Visibility; campaign fodder
  - Multiple federal and state agencies; turf battles
  - Local political bodies may be both PRPs and potential beneficiaries
  - Potential for legislative interest (pro and con)
UNIQUE CHALLENGES (cont.)

- Community relations challenges
  ~ National and local citizen groups
  ~ A River Runs Through It
- Private lawsuit risks (floodplains)
  ~ Rockwell/Town Branch Creek (KY)
  ~ Dow/Tittabawassee River (MI)
Atypical allocation issues

- Rivers, harbors, estuaries = "linear" sites
- Often large geographic areas
- Like groundwater basins, but the dirt moves too
- Multiple sources over space and time
- Geographic divisibility among sources?
- Fate and transport issues (hydrodynamics)
COPING WITH THE CHALLENGES

Topics to cover:
- Coping with EPA
- Coping with States
- Coping with Groups
- Coping with natural resource trustees
- Allocation at multiparty sediment sites
COPING WITH EPA

♦ EPA knocks on the door (sends a notice of potential liability) and asks if you want to come out and play.

♦ Your response?
  “This ain’t just rock salt in this shotgun”
  “Talk to [Acme] Corporation”
  “Give me a little time, then let’s talk”
COPING WITH EPA (cont.)

- Evaluate:
  - Liability
  - # PRPs – Opportunity to form Group?
  - Potential costs
  - Likely alternatives
- Individual vs. Group interests
- The power of numbers
- Examples: Fox River, Berry’s Creek
COPING WITH STATES

- The State environmental agency sends a notice of potential liability and asks if you want to come out and play.

- See factors regarding response to EPA, plus:
  - Should EPA be involved?
  - Should Jawetz get his head examined?
  - Tittabawassee River example
COPING WITH GROUPS

♦ In response to an earlier notice from EPA or the State, a Group has formed.
♦ The Group sends a notice and asks if you want to come out and play.
♦ See factors regarding response to EPA, plus:
  ~ What does/will EPA/State think of me?
  ~ What will the Group do?
  ~ Transaction cost evaluation
  ~ Buying peace of mind; power of numbers
COPING WITH NR TRUSTEES

- The natural resource trustee agencies have formed a Trustee Council. The Council sends a notice of potential liability and Pre-Assessment Screen and asks if you want to come out and play.

- Your response?
COPING WITH NR TRUSTEES (cont.)

- See separate talk on cooperative NRDAs.
  Easiest to remember: If pay when play, OK. If pay, but can’t play, not OK.

- Closely related issue: RI/FS beginning or underway. Reach out to NR Trustees?
  ~ What will they otherwise do?
  ~ Pros and cons
ALLOCATION ISSUES

- Somewhat akin to groundwater plumes from multiple sources to a regional aquifer (but the dirt moves too!)
- Impacts of flow direction and speed, time, commingling, deposition, resuspension, degradation, human activities (e.g., dredging)
- Multiple contaminants with differing impacts on risks, remedy, NRD?
Little case law on allocation at sediment sites; potential advantages of ADR

Volume of discharges (total loadings) usually far too simplistic (but see Fort James/Fox River NRD settlement…)

Likely need to factor in location, time, fate and transport features (and toxicity?)

Allocations of study, remedy, NRD costs may all differ – different factors

May need to break site down into sub-areas to preserve manageability
USEFUL INFORMATION SOURCES

- Contaminated Sediment Remediation Guidance (EPA 2005)
- Superfund Sediment Resource Center
- “Risk Management Strategy for PCB Contaminated Sediments” (NAS 2001)
- “Sediment Dredging at Superfund Megasites: Assessing the Effectiveness” (NAS 2007)
- Sediment Management Work Group
- ABA/SEER/Sidley Austin reference list