

**Meeting of the Policy Committee of the
New York – New Jersey Harbor Estuary Program**

April 27, 2011, 10:00 AM – 12:30 PM

ATTENDEES:

Policy Committee Members or Alternates Present: Kevin Bricke, Tom Craemer, Jeff Myers, Kerry Kirk Pflugh, Phyllis Reich, Carter Strickland, Chuck Warren, Chris Zeppie.

Management Committee Members or Alternates, and work group chairs: Bob Nyman, Michelle Doran-McBean (via Phone), Roland Lewis, Ashley Pengitore, John Tavoraro, Rosalie Siegel

EPA & NY-NJ HEP Staff: Kate Boicourt, Mario DelVicario, Gabriela Munoz. **Facilitator:** Bill Logue

Observers: Marcy Benstock, Fran Dunwell, Mark Klein.

Materials Provided: 1) Agenda; 2) February 2, 2011 Policy Committee Draft Conference Call Summary; 3) Table of Management Committee Recommendations for Section 320 Budget for FFY 2011-2012; 4) Draft of Revised Action Plan.

MEETING SUMMARY

OPENING REMARKS AND ADMINISTRATIVE MATTERS:

Kevin Bricke, Acting Director of the Division of Environmental Planning and Protection at EPA Region 2, welcomed all present. All present introduced themselves. The group reviewed the agenda. The summary of the February 2, 2011 Policy Committee conference call meeting was approved with minor grammatical changes.

BUDGET DISCUSSION

Bob Nyman reminded Policy Committee members of the revised budget development process where they had several opportunities to provide input to the Management Committee in the development of the budget for Section 320 funds for FFY 2011-2012. He reviewed the table of recommended budget priorities which was based on prior year funding of \$600,000. The table lists items in order reflecting the Action Plan. The final budget amount is not yet known. During discussion, the group noted that if there is a short fall several areas might be reduced. The most likely reduction area is the Pilot-Scale Habitat Restoration because it could be adjusted through the RFP process. Those funds will be directed at moving projects through the final planning stages to ready them for construction. (At the close of the meeting examples were given of fish passages on the Bronx River.) Mr. Myers asked that projects that were not funded be tracked so that in future years this could factor into budget recommendations. In response to a question from Mr. Craemer, Mr. Nyman noted that one public access request was reduced and another dropped.

Mr. Zeppie noted that much of the funding is for staff and he hoped that items such as Fish Advisory Communication could be funded through other mechanisms and cited this as an example of how underfunded the program is. Mr. Strickland concurred, noting the need for more funding and the hope that the nonprofit community would help and Great Waters Program would lead to changes. Mr. Bricke agreed and also noted that EPA supports the HEP Action Plan through its TMDL program which recently funded \$200,000 on Total Maximum Daily Load (TMDL) efforts. He also noted that EPA relies on its non-federal partners to make the funding case for the program. Following the discussion there were no observer comments the budget as approved.

ACTION PLAN DISCUSSION

The facilitator reviewed the areas edited since the last draft. These include changes to the opening sections on challenges and climate change, minor changes in other sections, a review for consistency in grammar and usage and the addition of photographs.

Mr. Strickland suggested that Goal 1 be revised to reflect the language of the Clean Water Act by adding “where attainable” so that it would read: “Goal 1 – Clean up Pollution in the Estuary: All Harbor waters will meet the Fishable/Swimmable goal of the Clean Water Act, where attainable.” After discussion about whether this set too low a standard as the goal, the Committee agreed to incorporate the change as a reflection of the Act pending a response by New York and New Jersey by May 2 to ensure that the change did not impact any compliance or other program mandates of the states. EPA and New York State expressed concern about the “where attainable” language. There were no observer comments. With that change, the Action Plan was approved.

GEOGRAPHIC SCOPE DISCUSSION

Mr. Myers, at the request of Mr. Tierney, presented the thinking of New York State concerning the potential expansion of the geographic scope of HEP. He started by acknowledging that New York City, the Port Authority and New Jersey had expressed concerns about the possibility of expansion. He reiterated that the initial concept was to create a broader base for advocacy for increased funding for HEP. Other Estuary Programs such as the Chesapeake Bay and Great Lakes serve as models for appropriate levels of funding and an emphasis on a watershed approach. However, an expansion is not assured of bringing additional funding and it raises equity concerns for several HEP partners. The latter could be addressed by specifying a focus area or carve out for core areas. He expressed the underlying interest is increased funding.

Several members voiced their opinion. Mr. Warren noted that the Port Authority, Army Corps of Engineers and New York City had provided significant funding for programs and projects yet that level of funding does not match the needs of the Action Plan which needs a broad base of support and geographic expansion is one method of doing that. Ms. Kirk Pflugh said that New Jersey was supportive of a watershed approach so long as close attention was paid to the core area and that New Jersey programs were not compromised. Larger congressional support is beneficial. Mr. Strickland noted that the City has been frustrated by inequities in distribution of funding on a variety of programs with broad geographic scope, such as the utility funding. Mr. Zeppie stated that to the extent the program extends beyond of the core area it is outside of the jurisdiction of the Port Authority and therefore reduces the role of the Port Authority. He reminded the Committee that the Authority had invested more than \$100 million in things such

as the Contamination Assessment and Reduction Project, the Comprehensive Restoration Plan and other initiatives. Mr. Bricke expressed appreciation for the investment and role of the Authority. Mr. Creamer noted that the structure of some of the other estuary programs with greater funding did not parallel that of HEP so their model might not be transferable. Several members expressed desire to make a final decision concerning whether the geographic scope would be expanded.

Following this portion of the discussion, the Committee then focused on how the current direct funding does not match the resources needed to accomplish the Action Plan and the strength of the HEP through its collaborative and consensus based approach of the Policy and Management Committees. All agreed that resources were the underlying issue. The Committee asked that the white paper on the geographic issue be circulated for comment, including suggestions for alternative ways to increase funding. The Citizen Advisory Committee will be asked to comment as well. The issue will be placed on the agenda for discussion and decision at the next Policy Committee meeting.

CITIZEN ADVISORY COMMITTEE REPORT

Roland Lewis, Co-Chair of the Citizen Advisory Committee (CAC), reported on several matters. A coalition of organizations will be participating in the Great Waters program meeting in Washington May 17-18. A map is being drawn of the boundaries of the program, it is likely to include the five boroughs and six counties including a small portion of Westchester and Long Island Sound which will overlap with the Long Island Sound Study. During this discussion Mr. Bricke noted that the HEP core area extends to the Piermont Marsh and dam and that the work of HEP has extended to the watershed.

Mr. Lewis noted that the Harbor Coalition has received seed funding. The desire is to work closely with the HEP Policy Committee and not duplicate efforts. He hopes to be able to provide regular reports and exchange of ideas. The coalition will be hiring a campaign director with experience in communications, political awareness and organizing. They will be housed at the Metropolitan Watershed Alliance. He asked all present to identify potential candidates. There will also be a presence in the Washington area. An event will be held on May 16th followed by a program on a boat with panels and discussions. Policy Committee members are invited.

The CAC will meet June 3 in New Jersey. Agenda items for that meeting will include planning for the New Jersey league of Municipalities conference, coordinating with the Long Island Sound Study CAC on license fee for fishing, and other issues. The CAC is also interested in having Regional Administrator Enck convene another larger meeting of CACs from programs in the region.

TOTAL MAXIMUM DAILY LOAD UPDATE

Mr. Myers provided a brief update on the TMDLs for Nutrients, Pathogens and Toxics.

Nutrients. The nutrient TMDL will focus on Newark Bay, Raritan, Lower Harbor and Hudson River. Jamaica Bay and Long Island Sound will be handled through a consent order. The states have provided comments on the technical work and June 2010 draft plan on the marine dissolved oxygen criteria. With limited funding left, EPA will provide some support for documentation and additional model runs. Bergen County is leading modeling and monitoring for phase 2 of the

TMDL for the Hackensack River. There is a need to track nutrients and organic carbon to assess changes as a result of the TMDL.

Reductions in load are likely to be needed in the Hackensack, Raritan and Arthur Kill. The Hudson River and Upper Bay have limited water quality exceedences and an agreed upon plan needs to be developed with a cost-benefit analysis including discussions of cap loadings at treatment plants and how those are defined – permitted amounts, current discharges or some other amount. New Jersey feels a healthy stakeholder outreach process needs to be conducted concerning these rules before a plan is proposed. A proposal is under consideration for such a process and will include the CAC and municipalities. Two meetings are planned which will address pathogens and nutrients simultaneously. There is concern that the environmental and business communities are being overwhelmed by the number of meetings on rule making. As a result, the state is establishing a calendar. New York City is pursuing a similar approach and requested a TMDL schedule.

Mr. Bricke stated that Administrator Enck suggested the Policy Committee take up the issue for discussion as the costs is potentially in the billions of dollars and the cost-benefit discussion needs to be held. An upcoming difficulty is that permits allow an increase in flow and load substantially and this will need to be considered in any cap discussion.

Pathogens. The technical work on load reductions to meet recreational standards has been completed. The shellfish criteria are being reviewed by the states. The states and EPA have agreed to use the seasonal geometric mean of 35 enterococcus per 100ml as the standard. This means that reductions will be needed at present only in the Passaic and Hackensack rivers. This will trigger CSO and stormwater abatement. The states favor establishing TMDLs for pathogens and nutrients at the same time. Potentially more restrictive national pathogens standards are anticipated in 2012 from EPA. The selection of the geometric mean can be revisited in 2012 when those standards are known. New Jersey has requested a review with model runs for potentially unrestricted shell fish harvests, and cited Sandy Hook as an example.

Toxics. The majority of the technical calculations for organochlorines have been completed to determine load reductions necessary to meet standards. Initial calculations for PCBs indicate that greater than 99% reductions will be needed in all source categories. Similar calculations are underway for dioxin, DDT, and chlordane. Reductions for PAHs are being reevaluated based on New York's revised draft criteria. These will require a very long time frame and reliance on a pollutant minimization program and will be informed by the Delaware River TMDL.

In response to a question, Mr. Bricke noted that the track down efforts are part of the pollutant minimization program and a central issue will be how permits are written because of the stringency of the standards. The standards are not achievable in the near-term.

FISH PASSAGE UPDATE

Kate Boicourt provided an update on a competitive grant to create two fish passages on the Bronx River. The grant was awarded to the New York City Department of Parks and Recreation to complete design and construction drawings. Addressing the two dam passages at the Snuff Mill Dam and Bronx Zoo, and a third one at 182nd Street with work funded by National Fish and Wildlife Foundation, will open approximately 7 miles of upstream habitat for alewife and

blueback herring which were reintroduced to the river in 1996-1997. The Bronx Zoo and Snuff Mill are at 50% design stage. The designs will allow for limited human access with a portion of the fish passage being constructed under an existing walkway.

The Army Corps of Engineers is interested in forming a HEP subcommittee to work specifically on fish passage in the estuary. The first step will be to identify locations where fish passage could be improved.

OTHER BUSINESS

Ms. Kirk Pflugh requested that an upcoming agenda item be the Comprehensive Restoration Plan update and review of the 11 indicators. During consideration of the oyster restoration efforts differences in the regulations and policies between New York and New Jersey came to light. She suggested an analysis identifying those differences with respect to the indicators and summarizing them in a grid would help in reconciling, aligning, and improving the states' rules, regulations, standards and regulatory authority. She cited the example of the fish advisories as a positive example of coordination where there is agreement to adopt the more restrictive standards. Mr. Bricke noted that New Jersey was considering adoption of the New York dissolved oxygen standards. The Committee agreed to this after several members expressed the hope that the analysis and suggestions not be bound by the status quo.

Mr. Creamer requested that the EPA and states look to the availability of planes and helicopters to assist in spotting floatables during the floatables season as the Army Corps funding limitations might be taking one boat out of service.

The Committee agreed to continue meeting quarterly.