



**New York-New Jersey Harbor Estuary Program
POLICY COMMITTEE
Meeting Minutes
November 2, 2000 @ USEPA Offices at 290 Broadway**

(draft Nov 28, 2000)

Jeanne Fox convened the meeting at 10:15. Introductions were made.

The minutes from the September 1999 Policy Committee meeting were approved as written.

Steve Resler from New York State Department of State gave an overview of the NY wetlands Agreement of Cooperation (AOC). This agreement had been worked out through the HEP Habitat Work Group between NYSDEC, the Corps, and NYSDOS. It is essentially an agreement to share information on permit applications to ensure the maximum protection for wetlands. All entities previously agreed to the contents of the document, but declined to sign it. The presentation at today's meeting is to get it on record that the entities agreed to it and to give an update. Marc Matsil asked if the agreement has helped. Mr Resler responded that it is not yet being fully implemented due to staffing changes.

Bob Nyman reviewed the focus areas for the coming year (FY2001) from the FY2000 HEP Annual Work Plan. Mr. Nyman noted the major activities that would be undertaken and pointed out that some of them were being done directly by the program and that others were being conducted by participating organizations. Bernie Blum asked that mosquito control be included in future work. Chuck Warren asked that the Habitat and Pathogens work group consider the request and report out at the next PC meeting what they have decided.

Chuck Warren then reviewed the proposed new HEP Budget Process that had been prepared by Bob Nyman. Mr. Bricke said that the \$300,000 available for HEP from the NEP was only a small piece of the overall budget needed to implement the CCMP. Bob Tudor agreed and showed a pie chart of funds that NJDEP had put towards implementation. He added that we should be looking down the line at future funding needs. Mr. Warren requested that a tracking mechanism be devised to meet goals on an annual basis. He said there are some CCMP goals that governments have an obligation to do (such as TMDLs). He said we should consider "non-required" activities.

The question was raised as to whether the program had a state of the estuary tracking effort underway. Dennis Suszkowski said that there is a Human Health Indicator Report due out shortly that HRF is producing with HEP funds. He added that HRF had HEP funding for a report for the

other environmental indicators, but that their intern who was working on it recently left the organization for another job.

Mr. Nyman said that another piece of the tracking effort was being undertaken by Zoe Kelman, but that the major hang-up was getting information from the agencies. The Policy Committee said that their staff would be asked to cooperate and provide the requested information.

The proposed budget process was then approved by the PC.

Tom Wakeman said that it was also important to show monies that were being spent in the tracking documents to the extent possible. Tom Creamer added that there should be a differentiation made between annual and cumulative costs (one time vs. recurring).

Gene Flatow handed out a short document describing a process to foster recommitment to implementing the CCMP. She said that an effort was already underway to prepare a successes and challenges document. A series of community meetings culminating in a one day conference on June 14, 2001 to be called ECO-2, was proposed. The Port Authority is providing space for the conference. It is the CAC and STAC's intention to also get businesses and unions involved in the effort. Ms. Flatow asked for the commitment of 1 staff person per agency to assist. She also asked for a commitment to provide funds or in-kind services of no more than \$5,000 per agency for printing costs. A total of approximately \$50,000 is being sought.

It was agreed that legislative briefings would take place prior to the June meeting. Peter Brandt of EPA will work with HEP for the briefings in DC. State and local briefings would be the purview of other HEP participants. HREMP and LISS would be partners in the June conference.

Dr. Suszkowski said he discussed the conference with Fred Grassle. There was a concern that there are few targets or milestones to shoot for. Ms. Flatow asked Mr. Tudor for NJDEP help. He said that Beverly Fedorko would be available to assist.

Ms. Flatow said that the notification flier, called "Help the Harbor" needed to get out soon. The MC Work Group will be meeting on Nov 14th and will receive a copy of the 24 page successes and challenges document. A target of two weeks was set for getting feed-back. She continued that the agencies should have representatives at the regional meeting to help answer questions. Mr Tudor suggested that the effort seemed rather rushed. Dr. Suszkowski responded that it only recently got going and that it has gained a lot of momentum. He asked if the PC thought the overall effort was a good idea and sought it's blessing to continue. Tom Wakeman added that there will be a huge number of new legislators that need to be educated. Marc Matsil sought commitment for printing funds for the habitat map.

Mr. Creamer asked for and received confirmation that the 24 pager would not have reference to the June 14th meeting. N.G. Kaul said that agency support for past public meetings worked well. Part of the June meeting would be dedicated to sharing the reactions from the community meetings. Mr. Warren said he thought the overall effort was good.

Jeanne Fox said that the legislative briefings should be done by HEP with the Policy Committee as the lead. They should probably take place in April 2001 and have a PC opening followed by CAC and STAC presentations. Mr. Kaul said that program staff don't do congressional briefings and that he can only ask if the Commissioner is willing to participate. Ms. Flatow said she knew how to do the Albany briefings, but needed help with Trenton.

The Policy Committee agreed to the first three items on the CAC proposal. Peter Brandt will coordinate 4-5 for EPA. Jim Mueller said that 4-5 would have to be decided out of the Commissioner's office. Bob Tudor said that he would like to be able to customize the meetings. Beverly Fedorko said that the Commissioner would want to use electronic media as much as possible, including the website.

Mr. Matsil reiterated that he wanted to get the maps printed. Mr. Tudor said he would look into it.

Tom Wakeman provided an update on the DMMIWG as Jim Tripp was unable to make it. He said he would provide an handout to Mr. Nyman tomorrow. He noted that rather than referring to resources as contributions, that they should be referred to as investments. He said HEP needed to be more effective in getting to the legislature. Recently, the DMMIWG had been discussing habitat and Greenports. Sediment Decontamination will be a subject of a future meeting.

Ron Borsellino discussed some of the dredging issues and said the CCMP dredging chapter would be available for review by the end of April. Lenny Kotowitz of the Corps was identified as the lead for the Corps for review of the 24 pager. Mr. Borsellino then discussed the Remediation Materials Work Group (restructured criteria work group). He said that copies of the MOA were available. He said that on Oct 25, 2000, EPA released it's response to the peer review issues. On Nov 15, the monitoring data will be made available. On Jan 15, 2001, the proposal for reviewing framework will be completed. There will be a focus on science. The next meeting of the Remediation Materials work group will take place on Nov 9th.

Mr. Warren asked if it was a HEP effort, because it seemed to be outside of the HEP process. Mr. Bricke responded that it was an agency effort with HEP coordination. Dr. Suszkowski said he was not asked to be a member of the RMWG because he was co-chair of the STAC, but rather for his technical experience. He added that if EPA is serious about using the best science, then they need to use science now and not wait for the peer review. Ms. Fox said the first meeting was a non-technical meeting and that future meetings will be of a more technical nature. She added that the process should have been completed by now, but because it is important the time frame was extended. Revisions will be made based on stakeholder input, then it will be passed on for peer review. EPA won't know who peer reviewers are ahead of time. She asked that if people had recommendations for reviewers, that they get them to Battelle. Dr. Suszkowski said that there appeared to be no censuses on which comments to address, EPA just hand picked comments to respond to. Ms. Fox reiterated that HARS was for remediation. Chuck Warren suggested that the current process leads to "advocacy science."

Tom Creamer said he was not sure if the RMWG was part of HEP. He said there were three overarching issues: the three-party letter which shut down the mud dump and designated the

HARS; the CCMP which was to look at criteria; and the Sept 2000 MOU which continues the partnership.

Mr. Warren said that the criteria is not part of the 3-party letter and that there is a need to make people feel that this is a fair process. You can't pick and choose comments. Ms. Fox said that consensus could probably not be reached. Mr. Wakeman said the PA was currently buying up scientists and would be willing to provide them. Mr. Borsellino said that it was ultimately EPA's decision. Ms. Flatow said that there appears to be a closed door. She said that people need to feel that the best science is being used in order to be able to defend it. Mr. Bricke asked that if 10 peer reviewers were to have an open discussion, would that alleviate the concerns. Dr. Suszkowski said that would be better. Ms. Fox said this is not a rule-making effort, but that it is producing guidelines for the region. She said she would consider the request and discuss it internally.

Mr. Creamer said that there are policy issues out there that don't have a forum for discussion. He said that it seems to be an unsatisfied need. This will be added to the agenda for the next PC meeting.

Dick Draper gave an update on the wetland issues requested at the past PC meeting. Mr. Matsil said there have been some egregious wetlands violations that were brought up at the HWG meeting. He said that penalties don't seem to be a deterrent and that mitigation ratios are currently not appropriate. There must be a replacement for ecological loss. Mr. Warren asked that the HWG make recommendations to the Management Committee and then bring any issue to the PC.

The Policy Committee approved the 12 Staten Island sites for the Habitat map, with caveats placed on two of them. NYCDEP said that they could not approve two of the sites at this time because of active proposals for development.

Tom Belton and John Defina gave a presentation on their GIS work to identify potential sources of toxics to the Harbor based on electronic data submissions. They are focusing on contaminated sites within 1000' of waterbodies and within the 100 year floodplain. They are currently looking at Hudson County. There are currently 1400 sites in the study area, however, there are only digital data available for a portion of these sites. The project will be able to indicate which sites are likely to contribute contaminants to the harbor so that clean-up efforts can be better prioritized.

The next meeting of the Policy Committee will be scheduled for May 2001. There may also need to be a conference call to discuss the April legislative briefings.

The meeting was adjourned at 1:30.

BEFORE THE HEP POLICY COMMITTEE
DMMIWG COMMENTS
James T.B. Tripp, Co-Chair
Tom Wakeman, Co-Chair
November 2, 2000

In the last few months, there have been major developments relating to the Port and the Hudson-Raritan Estuary. These include: the WRDA channel expansion authorization, the completion of the Corps' habitat restoration reconnaissance study and proceeding now to the feasibility stage, the release of the HARS MOA with an interim matrix number for PCBs and a process for moving forward, further development of dredged disposal alternatives, the completion of the EDC cross-Harbor freight study with its proposals for an improved cross-Harbor float system and freight tunnel, together with ancillary rail improvements on both sides of the Hudson River, the Port Authority's commitment to invest \$75 million in this cross-Harbor system that was the subject of a recent charrette, the Port Authority's investment plan and the gradual evolution of the CPIP process.

HARS. We have long awaited the release of revised criteria to determine what dredged materials may go to the HARS. After a long wait, EPA and the Corps released an interim PCB number that is considerably lower than the former one and the EPA response to peer review comments. Since the old PCB number of 400 ppb was higher than what was typically found in worms in the HARS, the new number has the advantage of assuring that material placed in the HARS will result in lower PCB levels in worms than much of the surficial sediments in the HARS. EPA and the Corps have set a reasonably tight schedule for moving ahead with this work. We attended the first meeting of the Remedial Material Work Group (RMWG) on October 23. We have a lot of work to do in the coming weeks to review both the PCB and peer review documents. We are committed to this process and look forward to working with both the EPA and the Corps, the agencies with ultimate legal responsibility for management of dredged material in the ocean or waters of the United States and remediation of the HARS. Governor Whitman's willingness to open upland sites in NJ for NY material is also the latest indication of evolving Bi-State, regional cooperation on Port and Estuary matters.

Some questions remains about this process and the goal of the RMWG. First, while EPA states that the matrix numbers are to be set so as to avoid any potential, significant effect on sensitive, test organisms, the Corps and others also make it clear that these are not proposed as national numbers; instead, they are considered to be HARS specific. What then is our goal for the HARS? And what is our schedule and strategy for attaining that goal? Are we trying to determine how best to remediate and restore the HARS on a set schedule or to decide what dredged material could be placed anywhere in the ocean so long as EPA designated the site? One goal would be to leave the HARS alone; another, to place only "safe" material there that would cause no unacceptable bioaccumulation affect; a third would be to reduce the exposure potential of organisms at the HARS to contaminants in sediments many of which EPA found to have category III characteristics in its survey, i.e., to improve the quality of the chemistry and biology of the HARS, ultimately capping it with clean material that physically would constitute an

appropriate substrate. Many members of the RMWG consider these basic policy issues to be unresolved, although EPA is of the view that they are.

Another question involves the relationship between the RMWG and any group of scientists who review the proposal that is supposed to come out of the RMWG by January 2001. What it make sense to have more interaction between the RMWG, in particular the scientists that RMWG members bring to the table, and the peer review scientists? Wouldn't bringing the best scientists, including those identified by RMWG members and those brought in by EPA, to the table for detailed discussions be a good approach?

A third question brought up at the DMMIWG meeting yesterday is the exclusion of New York City from the RMWG. Given the extent of NYC's involvement and interest in port development, habitat protection, maintenance dredging, the feasibility of upland alternatives and the HARS, it would seem appropriate to include a NYC representative. One more person will not make the RMWG unwieldy. EPA may be concerned that, with the inclusion of NYC, New Jersey would insist on a municipal representative. Given the representation of NJ port interests on the RMWG, this may not be necessary. In any event, EPA could ask New Jersey Maritime Resources if that would be necessary. If the response is No, it is a non-issue. If the response is Yes, then EPA could add a NJ municipal representative, just as the HEP Policy Committee has both a NYC and a NJ municipal representative.

Dredged material management. Over a period of more than two years, the DMMIWG heard numerous presentations about the reasons for and status of the Pennsylvania mineland reclamation demonstration project using contaminated dredged material combined with other fly ash and other materials to fill in and stabilize conditions in abandoned surface mines. Since Pennsylvania has some 200,000 acres of abandoned strip mines, the potential for environmental remediation is huge. Given the review process that Pennsylvania DEP has put in place, we have confidence that the level of scientific monitoring will assure that real remediation is taking place. We are grateful to both States that the board of the Port Authority in April approved the contract so that this demonstration project could proceed. With a rail transport system in place and with material from NJ as well as NY sites being used in this demonstration project, we hope that the project can be gradually expanded, that abandoned mine sites closer to our metropolitan area in Pennsylvania will become candidates for remediation, and that the Congress will be willing to help fund this tri-State remediation initiative.

Over the last several years, under the auspices of Frank McDonough and now Rick Gimello, New Jersey Maritime Resources has moved ahead with several upland, remediation projects. Some of these were described very recently in the NY Times Real Estate Section on brownfields remediation initiatives in New Jersey, some of which have been using dredged material. It is, of course, important that New Jersey monitor these projects carefully, both with respect to potential release of contaminants into the air as well as water. On the other hand, New York has not had a program of comparable magnitude. This reflects the difference in the size of port operations in the two States. It also reflects the complexity of finding upland sites in NYC given its density and the proximity of residential areas to virtually all brownfields sites. EDC is

now moving ahead with its Penn & Fountain landfill demonstration project. We fully support this initiative since its success would provide significant potential for use of dredged material.

Superfund sites. The CARP has effectively brought the two States together, with Port Authority funding, to conduct a detailed assessment of sediment contaminants with a view to identifying sources of those contaminants. However, we have to recognize that much of the navigational dredging in the Harbor constitutes environmental dredging for the Lower Passaic River and upper Hudson Superfund sites since those sites are major sources of Harbor sediment contaminants. While we understand the complexities of these Superfund assessment processes, we would urge the responsible federal and State agencies to find ways to use the range of decontamination technologies that they have nurtured over the last several years to demonstrate the feasibility of remediation of hot spots in these sites sooner rather than later.

Habitat. The DMMIWG has paid considerable attention to Hudson-Raritan habitat restoration and protection initiatives since we see linkages between the expanded development of the Port, implementation of an efficient transportation system to support the Port and environmental restoration. At the November DMMIWG meeting, we heard a full presentation by the Corps of its habitat restoration feasibility study and representatives of the supporting agencies in the two States, NYC and the Port Authority, as well as Marc Matsil, chair of the Habitat Work Group.

While much-welcomed habitat restoration seems to be moving ahead with the prospects for significant federal funding, habitat protection remains a big problem. A number of environmental organizations put together two years ago a very modest three-year, \$60 million habitat protection proposal, with half the cost to be covered by the federal government and the two States sharing the other half. To date, only New Jersey, via Commissioner Bob Shinn, has committed its share. Although we hear optimistic noises from NY, nothing definitive has occurred, and the federal commitment is uncertain. At a time when the two States, the Port Authority and the federal agencies are successfully persuading the Congress and OMB to support the \$2 billion HNS, the struggle to win support for even this modest program does not augur well for accepted concepts of port development and Estuary protection linkages.

Similarly, assaults on remaining estuarine habitat in the Hudson-Raritan Estuary continue. The 600-acre Empire Tract in the Hackensack Meadowlands is the subject of a permit application by the Mills Corporation to construct a massive mall on 206 acres and a stormwater detention basin on most of the remainder. If the proposals in the CCMP for habitat protection and restoration as well as port development are to experience shared vitality, the federal agencies and New Jersey must find ways of protecting the remaining wetlands in the Meadowlands, including this tract, through relocating development to upland sites within or outside of the District, through acquisition or otherwise. Otherwise, noises about a commitment to habitat protection are full of "sound and fury, signifying nothing". Similarly, the devastation to the Cheesequake Marsh by sedimentation brought about by the clearing of the adjacent bluff at the La Mer development must not be tolerated. While the Corps responded, New Jersey DEP did not in a timely fashion. DEP must have the resources to prevent this kind of desecration. The Corps and DEP should insist on full restoration of the denuded and excavated bluff and should investigate the appropriateness of

significant civil and possibly criminal penalties. Given the intensity of development pressure on both sides of the River, increasingly on the waterfront, developers must know that actions that may adversely impact estuarine resources through sedimentation or otherwise simply will not be tolerated. Local land use planning organizations, building departments, and appropriate officials must be advised as to the legal requirements for them to oversee developer activities within their communities.

Finally, it should be mentioned that the environmental community finds the mitigation proposals that the Corps has put forward for the AKA deepening underway and other proposed channel expansions to be pathetic. These projects are continuing to alter the basic shape and bathymetry of the Estuary in profound ways. Counting fish is not an appropriate measure of damage. We must have a methodology that measures disturbance to natural conditions and processes. Mitigation costs should be much closer to 10% rather than 1% of project costs. Such funds could be used to help with habitat protection, as well as restoration.

Transportation and the CPIP process. Port expansion means ever increasingly levels of throughput of goods entering and leaving from port facilities. The overwhelming dependence of this region, including the Port, on trucks has a marked effect on the region's economy and environment, in terms of congestion and air pollution. The two States, the Port Authority, NYC, the private sector and the environmental community must aggressively pursue strategies to increase the rail and barge modal share for port goods significantly and to retard growth in truck VMT. In addition, trucks servicing port facilities should be required to use clean fuels and engine technologies.

EDC has been moving ahead with proposals for an improved cross-Harbor float system and a freight rail tunnel. Both of these proposals entail very substantial ancillary improvements in freight rail track capacity, crossing separations, staging yards and clearances on both sides of the River, reflecting the long-term under-investment and de-investment in freight rail infrastructure in recent decades. Chris Ward advised the DMMIWG that the Port Authority's \$13 billion capital program for the next five years does not include any funds towards the minimal \$500 million program that the Class 1 railroads have identified to make the existing system functional. In addition, we have hardly begun to look at ways of using barges to transport goods between key points in the region. The Port Authority at its recent charrette brought together very good people from all sectors. The region and the Port face no more important challenge than finding better and cleaner ways to move and distribute goods. The Port and its CPIP process can be the tail that moves the region's goods movement dog.