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

SCOPE OF PROBLEM

- 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
- Feb. 2002: 11 Sediment Management Principles
- Dec. 2005: 220-page Contaminated Sediment Remediation guidance

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

EPA ACTIVITY AT SEDIMENT SITES

- 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)

UNIQUE CHALLENGES (cont.)

- 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?

ALLOCATION ISSUES (cont.)

- 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