

Superfund Remediation Center
SITE: NEW BEDFORD
BREAK 13.04
OTHER 47578

**New Bedford Harbor Superfund Site
Meeting
March 28, 1995
6:00 p.m.
Greater New Bedford
Vocational High School**

AGENDA

- Status of treatability studies: Subcommittee report
- Dredging update: Subcommittee report
- Expanded outreach and other procedural issues related to ROD-2
 - April 25 presentation
 - Identification of potentially interested groups
- Protocol issues statement and follow-up
- Public meeting: Explanation of significant difference (ESD) relative to the Hot Spot CDF

Summary of Meeting Held March 25, 1995
on the New Bedford Harbor Superfund Site

In attendance at the session were:

Facilitators

Michael Keating
Jane Wells

HATR

Jim Simmons

Concerned Parents of Fairhaven

Claudia Kirk

New Bedford City Council

Fred Kalisz, Jr.
George Rogers

DEP

Paul Craffey
Harish Panchal
Jay Naparstick

New Bedford Mayor's Office

Molly Fontaine

Downwind Coalition

Neal Balboni
Carol Sanz

NOAA

Jack Terrill

EPA

Frank Ciavattieri
David Dickerson

State Elected Officials

Rep. Bill Straus

Town of Acushnet

Roland Pepin

Town of Fairhaven

John Haaland

Approximately 20 members of the public observed the meeting, which was videotaped for subsequent broadcast on local cable television.

The meeting first heard a report from Dave Dickerson and Claudia Kirk on the work of the subcommittee on treatability studies. The work plan has been reviewed and approved by the subcommittee; an advertisement to alert potential vendors about the treatability studies will be run shortly in Commerce Business Daily; and it is anticipated that the request for proposals (RFP) for bench scale studies will be issued at the end of April or in early May, with the RFP for pilot scale studies following in June. The level of cooperation among citizens and agencies on the subcommittee's work was reported as being extraordinary, with the citizens' groups even making it onto the agencies' organizational chart for the project via a box identifying the DCC (the designated citizens contact) as a component of the overall management matrix.

A report from the dredging subcommittee by Dave Dickerson and Roland Pepin indicated that the dredging work is proceeding relatively smoothly. There has been a need to dredge one portion of the hot spots (Area G) to a greater depth than anticipated to remove high levels of contaminated sediments, which has occasioned some further delay in the overall dredging schedule.

Members of the Forum were asked to review and respond with any pertinent comments or suggestions to the facilitators' draft version of a protocol, designed to identify and describe the operational principles that have governed the Forum's proceedings. The protocol is intended to provide guidance to participants in other similar Superfund or other environmental controversies with an interest in fashioning a similar process.

The Forum endorsed unanimously a request of the New Bedford City Council to Sea Change to conduct, through one of its citizen panels, a technical assessment and risk characterization of the figures resulting from the treatability studies.

Lastly, the Forum discussed its next meeting, scheduled for April 25, on Phase 2 of the New Bedford Harbor clean-up. There was general agreement that membership of the Forum would need to change to reflect the nature and scope of the proposed remedy in Phase 2. While work on the hot spots will continue, including principally the letting and execution of treatability study contracts and decisions on the technologies to be adopted and implemented, the focus of Phase 2 will be different and broader. Organization of the Forum for Phase 2 also requires decisions about structure, including the number, composition and use of subcommittees.

The April 25th meeting will include a description of the proposed ROD for Phase 2 by the agencies and decisions on the membership and organization for the Phase 2 Forum. As such, the meeting promises to be a pivotal one for the further clean-up of New Bedford Harbor. Forum members recommended a concerted effort to reach out to groups with an interest in Phase 2 and to the general public about the agenda for the April 25th meeting. The facilitators are to develop, with the help of members, lists of groups to be notified; a press release is to be prepared on the meeting; and a special effort at publicity and outreach is to be conducted.

At 6:58 p.m., the Forum concluded its meeting and EPA and DEP conducted jointly a public ESD (Explanation of Significant Difference) hearing on changes in the original Phase 1 ROD required by the decision to store the hot spot sediments in the CDF pending completion of treatability studies and ultimate treatment of the sediments.

The next meeting of the Forum is scheduled for TUESDAY, APRIL 25, 1995 AT THE GREATER NEW BEDFORD VOCATIONAL HIGH SCHOOL AT 6:00 P.M.

New Bedford Harbor Superfund Site Forum

PROTOCOL ISSUES

Protocol: "The plan of a scientific experiment or treatment"
Webster's New Collegiate Dictionary

The purpose of this document is to begin the process of developing a blueprint or protocol for future cooperative efforts between government agencies and community groups involved in the remediation of superfund sites. Based on the experience of the New Bedford Harbor Superfund Forum, there is reason to hope that apparently insurmountable differences over methods of remediation between agencies and citizen groups can be effectively addressed.

The following issues emerged during the course of the New Bedford Harbor Superfund Forum and seem to raise matters that will need to be addressed in any similar, future effort:

1. Membership: There is a basic tension between a group that is too small to be representative and one that is so large nothing can be accomplished. The principle of representation is fundamental, in the sense that every possibly effected constituency cannot participate fully in the process, nor can all interested members of every impacted constituency serve. The task is to find a workable number that incorporates a spectrum of community interests and opinions sufficiently broad to ensure that the process has credibility. Some considerations include:

a. Inclusion over exclusion: The overriding preference should be for inclusion, not exclusion. If vital groups or individuals are left out of the process, there will be a heavy price to pay eventually. If the number of representatives that needs to be included becomes too unwieldy (i.e., over 30), it may make sense to create a large oversight body, with a smaller working group that reports back to the larger body for ratification of its work.

b. Flexibility: The size and composition of the overall group may, and probably should, change over time, as the nature of the task or the ramifications of new remedial options become more clear to the participants and the community at large.

c. Forum control of membership: The group or forum, as a whole, should determine its own membership. That is not a decision that can be left to the facilitator or any one party. Membership is often a useful issue with which to test the group's ability to generate consensus successfully.

2. **Consensus**: The notion of consensus means that the forum does not decide issues by vote. The necessity for consensus requires the group to understand fully and well the unmet interests of the dissident(s) and to work hard to reshape the group's decision to meet, as fully as possible, the dissident's concerns or reduce the adverse impact flowing from the group's decision on the dissident's interests. The search is always for a decision that everyone can, at least, live with, on the theory that a solution that responds most fully to the interests of everyone in the group is most likely to be the best solution capable of being implemented. While the goal is unanimity, consensus does not mean ultimate paralysis for the group. If the group's efforts to address the dissident's concerns are ultimately unsuccessful, the group may go ahead and adopt a decision. The danger is that the dissident(s) will then bolt the process. If the dissident is only one of many participants, the group may be willing to assume that risk; if the dissidence is substantial, however, the group has probably failed of its fundamental purpose and needs to do more and better work.

3. **Organization**: The group or forum needs to be formally convened probably by some outside, process-oriented agency that has familiarity with the logistics of group facilitation and the local resources available to conduct it, as well established neutrality that assures a measure of legitimacy to potential group members who may be quite skeptical about all governmental entities. The initial and principal task of this outside organizing agency or resource will be to structure a process for the group's selection of its own facilitator. Thereafter, the facilitator(s) typically become the group's principal architect(s).

4. **Facilitator**: The facilitator's role is to orchestrate the process, not the substance, of the controversy. He or she (or they) must be unfailingly neutral relative to outcome, but consistently empathetic to the positions and constraints of the parties. Hence, it is important that the group select its own facilitator, someone with whom it feels genuinely comfortable, both to ensure candid communication and inspire confidence in the decisions about process that he or she must make.

5. **Openness**: The group must determine early the degree of openness that will characterize its deliberations. There are some who will argue that the facilitation process needs to be conducted out of the public eye in order to enhance the candor of the group's discussions and curtail the tendency to posture. The New Bedford Harbor Superfund Forum elected to open its process up as much as possible, including the taping of all of its sessions for subsequent showing on cable television. The preference for openness does not seem to have had the predicted negative impact, and the greater accessibility to the process seems to have

enhanced its credibility.

6. **Media:** Because the New Bedford Harbor Superfund Forum decided to televise all of its proceedings, media contacts were less of an issue than they might otherwise have been. At the Forum's first organizational meeting, there was a commitment simply to avoid "inflammatory" comments to the media, representatives of which were obviously free to attend the open sessions of the Forum. There was a later disagreement about press releases, which led to a proviso requiring the parties to submit proposed press releases to the facilitator for review prior to their dispatch. If a group opts for closed sessions, it must carefully think through and agree on a common policy on media contacts.

7. **Outreach:** While there was considerable discussion early in the process in New Bedford about making an effort to reach out to the immediate community potentially impacted by the proposed remedy, little effective outreach actually occurred. Neither the resources nor the kind of personal or institutional contacts needed to sustain such an effort were available to the Forum. Given that reality, making the process as open as possible, both to the media and the general public, was especially important.

8. **Meeting notices:** Again, because of the limited effectiveness of the Forum's outreach efforts, adequate notification of upcoming Forum meetings became especially important. Eventually a list of media outlets to be notified in advance of meetings was generated, but responsibility for activating the list well in advance of meetings was diffuse, and notification suffered accordingly. A group needs to identify early an individual member who is responsible for assembling and updating a list of media outlets to be notified and for actually notifying the listed outlets.

9. **Agendas:** Parties ought to allow the facilitator to set the agenda for the first organizational meeting. Thereafter, the group itself should largely control the substantive agenda. At the conclusion of each group session, there ought to be an agreement on the key issues to be addressed at the group's next gathering, and an assignment of tasks to individual members to prepare for consideration of the identified agenda items. Agenda control tends to be an important early issue that fades as members become acclimated to the process, to each other and to the facilitator.

10. **Summaries:** The facilitator should author the summary of proceedings produced after each general session of the forum. The purpose of the summaries is to memorialize the decisions and indecision of the group. They are not intended to be precise minutes of proceedings, but rather are designed to emphasize

agreements and identify differences while ignoring posturings. Because of the facilitator's substantive neutrality, he or she is best able to execute this task in a productive manner. It would be a mistake to assign this responsibility to one of the parties.

11. **Meeting logistics:** The place of the meetings, especially when the group is large and the session must be videotaped, can present a significant challenge. Considerations of general public access dictate that the meetings occur within the affected community. The site has to be sufficiently large and available at night, given, again, the need to make the process accessible to the general public. The site should also be on arguably neutral ground. Finally, the facilitator will probably want an arrangement and atmosphere that promotes informality and discussion. After some fits and starts, the New Bedford Harbor Superfund Forum was fortunate to procure as a regular venue the Greater New Bedford Vocational High School, the cafeteria of which proved to be an exceptionally comfortable and convenient locale. Representatives of the state and federal agencies involved seemed to understand and accept the relative hardship of travel from and to Boston at night as an inevitable part of the process, even in one of the cruelest winters in local memory.

12. **Subcommittees:** As a group delves further into substantive issues, it will quickly make sense to begin to create subcommittees to assume responsibility for conducting research into and developing common positions on different aspects of the group's work. The use of subcommittees is also a useful way of expanding the number of people who can become involved in the group's work, since there is no reason non-forum members cannot participate in the activities of the forum's subcommittees. The smaller subcommittees can meet more regularly and typically get more accomplished than the full group, although the work of subcommittees needs to be monitored by the full group. The subcommittees, in turn, need to keep in close touch with the forum.

13. **Technical assistance:** The citizen components of the forum may need, or perceive a need for, technical assistance in digesting and responding to the sometimes complex and sophisticated technical and scientific issues commonly part of any remediation controversy. While citizen activists often achieve a level of competent understanding of such issues that is simply phenomenal, they frequently fear that some new issue will arise that is beyond their understanding. In addition, there is no denying the complexity of environmental, scientific, technical, bureaucratic and political issues in a major superfund remediation dispute. The need for help is understandable. There is, therefore, a need to make available to representatives of the community technical assistance that can help them address these issues. It is equally important that citizen groups be able to

select their own technical assistants. The problem for the forum, then, is how to fund such assistance.

14. **Caucuses:** There will be times in the process when the facilitator needs to meet separately with one or more of the constituent groups within the forum. Typically such meetings occur outside of and between the general public meetings of the forum, but sometimes the facilitator will want to meet with groups during the general meeting itself. Also, government and/or citizen groups may need to convene and confer separately as proposals emerge during the course of a public session. It is common and totally appropriate for such separate meetings or caucuses to occur. Indeed, their occurrence is often vital to the group's success.

15. **Ratification:** Because of the representative nature of the group or forum, its members typically cannot commit to a specific group decision the constituency they represent during a general meeting of the forum. They must take back to their respective constituencies whatever solutions have emerged for formal ratification. This is no less true of the governmental agencies involved in the process than it is of citizen groups. Indeed, the representatives of governmental agencies and bodies must often secure both bureaucratic and political ratification, a process that can be both time-consuming and full of peril. An example from the New Bedford Forum will suffice to demonstrate the point. While the Forum essentially agreed on a resolution of major controversial elements in early August, the document memorializing that agreement was not fully ratified by all of the groups represented in the Forum until the following January.

These, then, are the issues that seem, at first blush, fundamental for the development of a superfund forum protocol. Members of the New Bedford Harbor Superfund Forum are requested to review this list and contact the facilitator with suggestions, corrections or amendments.

At the conclusion of the discussion, the members agreed that the agencies would, over the next two meetings of the Forum, put together presentations directed to the concerns and issues identified as important in this session, beginning with an in-depth consideration of CDFs and the issue of location. A second session would consider such issues as alternatives and funding. It is the hope of Forum members that by a third session, the full group would be able to articulate an agreement on an overall approach to Phase 2.

Meetings were scheduled for Tuesday, August 22; Tuesday, September 5, and Tuesday, September 19, all at 6:00 p.m. at the Greater New Bedford Vocational High School.

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