



Fw: OSRR Comments on Proposed South Terminal Conceptual Mitigation Plan

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Cc: Carl Dierker, ElaineT Stanley

06/22/2011 03:49 PM

Chet,

Attached are our the Agency comments on the conceptual mitigation plan. The details of the shellfish relocation effort needs more discussion.

Thanks

Phil

Superfund Records Center

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**State Enhanced Remedy in New Bedford, South Terminal
Conceptual Mitigation Plan
Prepared by the Massachusetts Department of Environmental Protection
Dated March 11, 2011**

OSRR Comments (Cindy Catri and Elaine Stanley)

General Comments

1. The document is not clear about which statutory requirements are being met by this plan. It should clarify, at least in the Executive Summary, that there are mitigation requirements in the Clean Water Act and Magnusen-Stevens Act and how this plan is meeting the requirements. Are there others statutes that require mitigation?
2. Often the language appears to equate high levels of PCB contamination in sediment in the upper Harbor with levels found in the outer Harbor which are actually much much lower, with concentrations well below our current Superfund cleanup level for the upper harbor subtidal and intertidal sediment of 10 ppm and 50 ppm for the lower harbor. EPA is seeking a balance between the benefits of mitigation in capping these lower levels of contamination against the results coming in from our current sampling data for the outer Harbor (Operable Unit No. 3 or OU#3), which generally confirm that PCB concentrations are well below 10 ppm with the exception of possibly two to three isolated areas. At present, there has not been a superfund PCB cleanup level established for the outer harbor. Language should be revised accordingly...see below for specific pages.
3. Regarding shellfish mitigation, EPA is strongly opposed to relaying contaminated shellfish out of Fish Closure Area 1 (Upper and Lower Harbor inside the hurricane barrier) into either Fish Closure Areas 2 or 3, located outside the hurricane barrier. A map of the fish closure areas may be found on EPA's website for New Bedford:
http://www.epa.gov/nbh/images/NBH_fish_closure_areas.jpg
4. They may be relayed to another location within Area 1, possibly on the Fairhaven side. Through several years of collecting and analyzing quahog tissue, the data shows that often times the post-spawn tissue has been observed to have higher PCB concentrations than the pre-spawn data (DMF actually collects the tissue and provides the data in yearly reports for MassDEP's Bureau of Waste Site Cleanup). Please revise pages 17 – 19 to reflect that any relaying activities will only take place within the portion of the harbor north of the Hurricane Barrier and it will be conducted in coordination with EPA and other resource agencies.
5. Regarding seeding, EPA is OK with this but seeding must be conducted outside of Fish Closure Area 1 (outside of the hurricane barrier). Please note that EPA's fish consumption advisory

restricting consumption of shellfish remains in effect. See EPA's New Bedford Harbor website for the seafood advisory: <http://www.epa.gov/nbh/seafood.html>

6. EPA recognizes that this is a conceptual plan and, if approved, anticipates receiving a detailed work plan for the approved mitigation projects or separate work plans for each project. For each project, the work plan shall include, but not be limited to: a scope of work; objectives and goals; project personnel organization and responsibilities; detailed design; detailed description of construction sequence; environmental and engineering controls as needed; additional characterization, if needed; environmental monitoring plan (pre-, during and post-as required); oversight responsibilities of contractor(s); corrective measures during and after construction; long term monitoring and maintenance requirements, and identification, evaluation and implementation of institutional controls. This (these) work plan(s) and monitoring and maintenance plans will be submitted to the SER resource agencies for review, comment and approval.
7. There may be a need for an EPA TSCA determination for capping of contaminated sediment in winter flounder habitat creation areas and intertidal and shallow subtidal area restoration. Also, there may be TSCA requirements for long-term monitoring and institutional controls for capped sediments.

Specific Comments

1. Page 1, second paragraph and page 4, last paragraph - The State is making the assumption that South Terminal CDF is LEDPA, however, EPA not made a determination yet.
2. Page 6, Shellfish Impacts, last sentence – add to end of sentence “and construction of the mitigation areas.”
3. Page 7, first bullet - Add to end that PCBs currently existing in sediment are below EPA Superfund cleanup levels for the upper and lower Harbor.
4. Page 7, 2nd bullet, 1st sentence – Suggest rewriting sentence to something like “Creation/ enhancement of 3 acres of inter-tidal area and enhancement of 7 acres of near-shore, shallow, sub-tidal areas located in the outer harbor immediately southwest of the hurricane barrier where a PCB-contaminated area has been partially (approximately 20 acres) capped (OU#3 pilot cap) (see Figures 5 and 6), to enhance.....” For reference, the Harbor Superfund site's OU#3 is an approximately 17,000 acre located immediately adjacent to the south side of the hurricane barrier and whose boundary extends to an imaginary line from Ricketson's Point in Dartmouth to Wilbur Point in Fairhaven. The approximately 20 acre area referred to in this plan located just south and west of the barrier was partially capped in 2005. The capped area, also known as the “OU#3 pilot cap” covers the area where PCB concentrations exceed 10 ppm. The proposed

seven acre mitigation area is partially within the remaining uncapped area where PCB concentrations are less than 10 ppm.

5. Page 7, third bullet similar comment - Add clarification that neither the 3 nor the 7 acres contain PCB- contaminated sediment above superfund cleanup levels for the upper (10 ppm) and lower Harbor (50 ppm).
6. Page 8, last bullet under Section 4.a. – Strike “relaying” of shellfish.
7. Page 9, first paragraph (and Table 1 of Appendix 1) – Total PCB concentrations cited here are based on the sum of the 18 NOAA congeners that have been multiplied by a factor of 2.6. EPA uses this multiplier factor *only for sediment located in the upper and lower Harbor, not for sediment located in the outer Harbor*. Please correct.
8. Page 9, last sentence in first paragraph: Revise as follows: after “PCB ” add “concentrations, although generally below EPA Superfund cleanup levels for the upper and lower Harbor, could have impacts such that capping.....”
9. Page 9, last paragraph, 4th sentence (on Page 9 and 10) – explain the term “within the proposed creation area”. Also, what would be the available alternatives for clean source material other than the CDF and the CAD cell (if not constructed in time?)
10. Page 10. last paragraph, 4th sentence – It should be noted that there are high levels of PCBs in the upper harbor and less so in the lower harbor, however, PCB concentrations in the outer harbor are overall typically less than 1 ppm, except for a few isolated areas. The proposed mitigation areas located in the outer harbor have PCB concentrations in sediment less than 10 ppm.
11. Page 11, top of page – Will total area be sufficient to support loss of habitat? Specific details such as thickness of cap and volume required for the capping as well as the need for addition of organic material to the capping material will be required in associated work plan.
12. Page 12, second full paragraph, second sentence – See Specific Comment # 4 above. Also note that the OU#3 pilot cap project was a “pilot study” and there has not been a remedy decision for OU#3.

13. Page 13, Section 4.a.iii – Specific existing data for PCB and other contaminants of concern in the salt marsh and channel should be included or cited in this plan to support the basis of mitigation.
14. Page 14, paragraph at top of page - Add concentration levels of PCB contamination. Also, identify the locations of sediment being capped and the concentrations of the capped sediment in order to issue a TSCA determination. It is likely capping specs and institutional controls will be required to satisfy TSCA.
15. Page 15, top of page – Provide the PCB concentrations that were found in the drainage swale.
16. Page 15, under proposed marsh restoration, second bullet - Identify alternative disposal options should the CAD cell not be built in time.
17. Page 16, after bullets - identify the location of the storm water outfall. On the same page, spell out acronym NHESP.
18. Page 16, last paragraph of Section 4.a.iii and in general – A comprehensive operation and maintenance plan will be needed for long term monitoring and maintenance of project structures and systems. Also, identify entity responsible for maintenance of this storm water structure.
19. Page 17, Section 4.a.v. - EPA should have been consulted regarding the shellfish mitigation alternatives as EPA has specific advisories for shellfish consumption. See also General Comment # 3 above.
20. Page 18 and 19, Reference to Figures 10, 11 and 12 – please see Specific Comment 31 below. Also, why has the City requested that seeding not be conducted until at least 2012 but possibly 2013?
21. Page 20, first paragraph - Does not account for settlement of hydraulically placed material over time. Need to identify performance standards for the work.
22. Page 21, second paragraph - Again, will need to know PCB concentrations left behind for TSCA determination? Also, all requirements for transportation of TSCA waste must be met.
23. Page 22, Section 4.b.ii – Please address management of project around the fish runs and if performing work during run times, identify impacts and mitigation measures to protect migrating fish.
24. Page 23, Section 4.b.ii, first paragraph – Explain why placement of material between 1/15 and 5/31 will be minimized.

25. Page 23 - change OU-3 area to OU#3 pilot capping area cited on top and bottom of page; also on Page 25, Section 4.b.iv.
26. Page 23, Section 4.b.iii - Oversight should be conducted by MassDEP through the SER process, not just by field personnel.
27. Page 24 Long-term monitoring plan – Identify who will be responsible for long term monitoring and maintenance of each mitigation project, including after the five year milestone. The plan will be subject to review upon receipt of plan (see General Comment #6 above).
28. Figure 3 – Cross section line on plan should be identified (A-A' on Figure 4?)
29. Figure 6 – Suggest renaming figure to “Profile View of Proposed Mitigation Area at OU#3 Pilot Cap Area
30. Figures 7 & 8 – Show outfall location. Also on Figure 8, identify drainage swale.
31. Figures 10 through 12 – These figures need titles and legends. It is very difficult to make out the exact boundaries of “BB-designated areas and please identify what these areas represent.
32. Table 1 should sum cogeners for total PCBs. Also see Specific Comment #8 – the 2.6 multiplier factor is only used in the upper and lower harbors north of the hurricane barrier. Please revise.
33. Appendix 5 – Monitoring of winter flounder mitigation is only considered for the “north of Butler Flat’s Lighthouse” site. There is no mention of monitoring the proposed mitigation area located between the OU #3 pilot cap and the shoreline.