

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523
Massachusetts Relay Service: TTY: 771 or 1-800-439-2370
www.berkshireplanning.org

SHEILA IRVIN, Chair
KYLE HANLON, Vice-Chair
MARILYN WILEY, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

AGENDA

Rest of River Municipal Committee
January 30, 2014 -- 11:00 a.m.
Stockbridge Town Offices, 50 Main Street, Stockbridge, MA 01262

1. Introductions
2. Review of minutes of January 10, 2014 meeting
3. Update to the Rest of River Municipal Committee on the status of GE/EPA/State negotiations and EPA Conditional Approval of the Revised CMS
 - EPA staff
4. Request of Rest of River Municipalities to join GE/EPA/State negotiations
 - Rest of River Municipal Committee
5. Other Business
6. Adjournment

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

www.berkshireplanning.org

SHEILA IRVIN, Chair
KYLE HANLON, Vice-Chair
MARILYN WILEY, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

Rest of River Municipal Committee
Meeting Minutes for January 30, 2014
Stockbridge Town Offices, 50 Main Street, Stockbridge, MA 01262

Attendees: List of attendees is found on page 8.

1. **Introductions.** The meeting opened at 11:12 a.m.
2. **Review of minutes of Jan. 10, 2014.** Motion to accept meeting minutes by Rene Wood and seconded by Pat Carlino; minutes were approved as written. Rene Wood and John McNinch abstained, as they were not present at the Jan. 10th meeting.
3. **Update from U.S. EPA Staff.** Mayor Bianchi welcomed everyone and thanked them for attending the meeting. He stated that the Rest of River municipalities are appreciative of the federal delegation supporting the municipalities' efforts to work cooperatively and that the delegation is encouraging all parties to sit at the negotiations table together. The goal of the communities is to have a voice in finalizing the Remedy Plan. The EPA, GE and the states have been at the negotiation table for some time, and he is hoping that the time has come whereby the municipalities can have a voice in the decision making that goes forward as time goes on. He is hopeful that they all can have meaningful and helpful discussions.

Curt Spalding, EPA Region 1 Director, provided an update on the status of the cleanup process. In June 2011 the EPA took the proposed Remedy Plan to the EPA Review Board, a quality control board that reviews and comments on proposed Remedies. It does not approve or disapprove plans, it just comments on them. At the same time, the states of MA and CT had substantial comments on the proposed Remedy. The EPA and the states then entered into discussions for approximately eight months, and in May 2012 the "Status Report" was brought to the public. It represented the joint approach of the EPA and the states. At that point the EPA was going to move ahead with the joint approach and offer it to the public. In the fall of 2012 EPA instead decided that it would engage GE about the cleanup approach in the status report. The idea was to share the thinking behind the status report with GE, because if they understood it and accepted the approach, they may be willing to consider a "forbearance." If this occurred, they would essentially give up their appeals rights that are incorporated into the Consent Decree.

The discussions went on much longer than anyone anticipated. It began with a limited set of issues and expanded as time went on. The Housatonic River cleanup up site, from the confluence southward, is an extremely complex system, with enormous environmental value, a functionally healthy ecosystem. This ecosystem is different than in downtown Pittsfield, where the river was more urban and had been more channeled and engineered. The discussions were extremely helpful, with the scientists and technicians on both sides of the table thinking about issues and cleanup techniques, but at the end of the negotiations it became clear that the gap between the GE and the agencies was too wide and the weights of the complexity of the cleanup were too heavy. Throughout the negotiations process, all sides had key decision making staff at each of the meetings. Both sides had participants from very high levels, including Bracket Dennis, General Counsel for GE and Ann Klee of GE at almost every meeting.

Mr. Spalding stressed that GE did not manipulate the process to their end. There were external factors that helped to slow down the process – illness of a key EPA staff member, a change in Washington DC staff, the shutdown of federal government – and these things made it more difficult to re-engage GE and bring negotiations back on track. The process had stalled and EPA decided to end the negotiations and restart the formal process. Mr. Spalding stated that he was at every negotiation, and that the parting was amicable and in good faith by all parties. There was transparency on all sides, with everyone being upfront with their positions and motives.

Each time the sides came to some conclusions, new issues kept coming up. GE kept coming back asking questions on how cleanup might be done and all the different ramifications of what they would be doing. They wanted answers up front, where at this time there really weren't answers to be given. As an example, they had a very long dialog about capping – GE wanted certainty that the EPA cannot give them at this stage in the design of the cleanup. The answers they were seeking would not be available until the engineering of the cleanup began. The GE wants certainty – on the cost of the cleanup and the finality of the cleanup. The EPA was not in a position to be able and not willing to give them any type of certainty at this early stage. At this point both sides understood each other and that the answers that GE wanted were not going to be forthcoming. At the core of the EPA's strategy is the concept of adaptive management – where the cleanup process will be dynamic and open to change to require the best techniques of the time as the cleanup moves on. EPA could not provide the data and certainty that GE wanted. It was at this time that the new Administrator of the EPA, Gina McCarthy, looked at the situation with fresh eyes, and she restated that there could be no certainty at this early stage of the design.

Mr. Spalding reported that there was a positive to this process, in that there was a lot of joint thinking about the cleanup and how it might proceed. GE and the regulators understand each other better regarding the status report. So, at this point the EPA is working closely with the state agencies to tweak the status report and the Remedy. In essence, they are working with the states on a third iteration of what the Remedy Plan might look like. They will be running more models, projecting performance standards (such as fish consumption, PCBs in flux moving over Woods Pond dam), and other scientific parameters and details.

Mr. Spalding stated that for the Housatonic River his mission has always been to get the talented people in the field to execute the work, including the team from EPA and the state agencies. This also includes the team at GE, who has vast experience in conducting cleanup activities, especially in Pittsfield, where it has dedicated staff for years and years. The EPA and GE have worked jointly to

figure out how to do clean-ups, changing designs as they go along were needed. This includes change work orders, re-engineering and constantly changing the cleanup process so that it is improved. A lot will get figured out in the field as the cleanup of the river occurs. Mr. Spalding reiterated again that this cleanup site is large in scope and incredibly complex, a functioning river ecosystem from the confluence to Long Island Sound. Not as simple as a river running through a heavily urban space.

Mr. Spalding hoped that the revised, proposed Remedy Plan can be issued in May. At this time there will be a formal public comment period, extending typically 30 days, but obviously in this instance the deadline will be extended to at least 60 days. The municipalities, like everyone else, can comment at this time. The states themselves can also comment if they wish. And there are appeals rights. GE also has its own appeals rights through the Consent Decree. Only after the public comment period has ended can the EPA issue the Final Remedy Plan. The time period for issuing the final plan is undetermined and will depend on how many comments are received. The EPA is required to respond to each and every comment it receives. The Remedy will be modified according to the merit of the comments received.

Appeals would first go to the EPA Environmental Appeals Board in Washington and then to the First Circuit Court. To have standing, citizens and/or agencies have to have commented on the revised proposed Remedy to be able to appeal the Final Remedy Plan. According to the Consent Decree, GE has its own appeals rights. The Consent Decree does legally commit the GE to cleaning up the river, so EPA feels that it has good legal standing on its side. To gain an appeal, the GE has to claim that the EPA has been unreasonable in its plan. Mr. Spalding restated his confidence in the EPA team, now working closely with the Mass. DEP, that the scientific foundation is strong and that the Remedy will not be unreasonable.

As stated in the Status Report, the EPA is calling for all contaminated soils to go to licensed facilities, will involved river and bank work in Reach 5A, and other details that will not only clean up the river, but make it a healthier ecosystem.

The EPA and GE have not met or talked since the negotiations ended. The EPA has issued to the GE its Conditional Approval of the Revised Corrective Measures Study. This letter means that the EPA agrees with the science provided in the Revised CMS, but not all of its conclusions. The science is accepted as a baseline and foundation on how to move forward. The EPA has issued some conditions, which are listed in the letter.

The Consent Decree allows GE to dispute a lot of EPA orders. In the beginning these were few, but in the last few years GE has begun to dispute both small and large orders. GE has been paying for a lot of work EPA has conducted or initiated, and GE has begun to dispute paying the bills for some of the work. Some of these have been noted in the newspapers.

Regarding future negotiations and who might be at the negotiation table – Mr. Spalding stated that the negotiations are ended and there are no more planned for the future. Regarding the pursuit of economic compensation, including “lost opportunity costs,” he stated that the federal cleanup laws do not allow the EPA to order the GE to pay this compensation. Doug Clark brought up that it is more difficult to go after payment for damages after the fact than before it happens. He brought up the damages done to Silver Lake Boulevard by the heavy machinery used in Silver Lake. Rene Wood

noted that the damages to the boulevard are not lost opportunity costs, but were real direct costs to the city. Mr. Spalding stated that he presumes that GE will need to pay to fix the road. Mr. Spalding noted that the next public review phase is where a lot more details will be hammered out. Much of the removal and capping will be in Reach 5A, and at this point there still in no clear access to that portion of the river. They are still trying to figure out if dredging will be from a floating barge, from a road next to the river, etc. There have been conceptual ideas, but no concrete approach at this point. The approach is GE's to figure out and propose to EPA. This is a time where input from the municipalities will be constructive, as they might have information about the sites and locations that the GE and EPA do not.

4. **Rest of River Municipal Committee Requests.** Attorney Matt Pawa suggested that the municipalities be involved during the design phase – the federal statute does not require this, but it does not preclude it either. He feels that involvement of the municipalities be on par with that of the state agencies of Mass. and Conn. Dean Tagliaferro stated that this would occur, as the City of Pittsfield was consulted and involved in the cleanup activities at Silver Lake. Each municipality can review engineering plans and provide comments at any stage in the cleanup. Brian Olson reiterated that it was routine that the EPA consults communities during each cleanup site.

Jennifer Tabakin asked the EPA staff to outline how the design phases will be conducted. Will the EPA/GE design cleanup of the entire stretch of river up front, or will design and construction of specific sections occur in piecemeal as they move down the river? Susan Svirsky stated that the work will be done in pieces. There will be an overall scope of work for the length of the river, but the detailed engineering of specific reaches will occur in several pieces, over the length of about 14 years. It would be unreasonable to design the entire cleanup, for work that won't occur for 10-14 years, because a lot can happen in those intervening years. Mr. Spalding reminded the group that work will evolve as they move down the river. By the time they reach impoundments in Lee or Great Barrington, the approach may be very different, depending on what they learn as they work their way down the river. There will be constant monitoring to judge the level of effectiveness of cleanup work already done. For instance, the data looks pretty good in the first 1.5 miles of river in Pittsfield, indicating that cleanup activities were successful.

The municipalities came back to the issue of socioeconomic losses and compensation. Tim Conway reminded the municipalities that federal cleanup laws do not allow the EPA to require GE to pay economic compensation. He did say that it was not unheard of that communities work with responsible parties to come to some resolution and possibly attain compensation of some type. Brian Olson mentioned that EPA can dictate what occurs on the cleanup site, as defined in the Remedy, but it can't dictate what occurs off the site. He suggested looking into laws that could help the communities with impacts that occur off site. Doug Clark stated that this was the crux of the issue – that trying to get compensation from GE will require a sidebar conversation with GE, and the municipalities do not have the financial resources to take on the GE.

Curt Spalding responded that the EPA and DEP are regulators, and that Mass. has been looking into its laws that could influence the cleanup. The municipalities could consider these laws, and some of their own laws, to serve as leverage in discussions with GE. Doug Clark stated that this is exactly why the municipalities want to be involved in any future negotiations or design stages, so that they will be informed and be able to determine off-site impacts to the communities. Brian Olson mentioned that some of the communities along the Hudson River had some success in dealing with

GE on similar issues, and they will get contact information to the towns so that they can follow up on that.

Curt Spalding said that during negotiations the EPA was pushing most for what they heard loud and clear from everyone, and that was that contaminated materials would be sent to licensed facilities (there are no such facilities in Mass.). The other issue was to have a positive benefit, enhancing the natural resources of the river after the cleanup. In the long term there will be less PCBs and less PCB-connected impacts. He cautioned the municipalities on the tricky issue of “betterments,” such as wanting to have a bridge built here or a boat launch there. These things have to be justified in terms of infrastructure and community. There is a national framework for this, built into the superfund framework. But this is for superfund sites, where public dollars are being used to do the cleanup. Here it is a private company spending the money, so it can be more difficult.

Pat Carlino wanted to clarify when during the permitting process can the municipalities have the most influence. She summarized that GE will do design of a stretch of river, and EPA must approve the design. Is this when the municipalities can have the most say? EPA responded that yes, during the design phase of work each municipality can review and comment on the design submitted to EPA. Dean clarified that the municipality can provide input to EPA about design, but it cannot ask EPA to require compensation for economic impacts that may come about from that particular design and construction. Jennifer Tabakin wanted still more clarification. She asked about construction permits – does EPA issue them or do the municipalities? She inquired about trucking and other impacts to the communities. Curt responded that EPA will issue the permit. GE will offer a design for construction; he expects that Dean will approach the local DPW to get input on how this might impact the municipality.

Susan Svirsky noted that there will also be parameters called “Quality of Life Performance Standards,” which dictate things like noise, hours of operation, dust, etc. Municipalities should pay attention to these. These will still not address the economic impacts that the municipalities are looking for, but they will be important to the communities as construction advances. She suggested that we look at the standards that were used in the Hudson River cleanup.

Doug Clark again reiterated that the municipalities will suffer socioeconomic impacts from the cleanup – impacting tourism, recreational use of the river and roadways. He’s a civil engineer by trade, and heavy truck traffic is a real impact. Town roads haven’t been designed for such heavy loads, and there will be damages. It is difficult to quantify how much of the damage came from river cleanup truck traffic, and the municipalities will have to deal with these at the tail end of the construction. Curt responded that to minimize impacts to tourism or roads, there are all kinds of mitigation that could occur – changing truck routes away from specific tourist spots or roads, that sort of thing. The EPA has some discretion to force the issue of mitigation such as these things, and could work with the municipalities and the GE to see if doing the work a better way will be accepted by GE. Any quantification of damages, such as road damages, will be beneficial in such instances.

Curt stated that he did not feel during negotiations that he was sitting across the table from a GE that wanted to thwart a cleanup. The negotiations were somewhat positive, so he suggested that we work with that type of attitude, so that things can be worked out. Curt also reminded everyone that the cleanup costs are a large amount – somewhere in the \$600 million range, but that the figure will depend on design and construction approaches. At this scale, he would think that there should be some room for discussions between the municipalities and GE.

Matt Pawa asked if the EPA could require GE to restore infrastructure, bridges and roads, that have been damaged due to cleanup activities. Is this part of the federal permitting process? Tim Conway responded that if anything gets damaged due to implementation of the cleanup that GE is responsible for restoring it. There is a fine line between restoration and betterment, but EPA does have the legal authority to require restoration. Matt asked if that was a matter of law, or if the EPA had to put this in each statement of work that occurs. Tim responded that they try to import from other laws to make it work, but they do have the legal authority to do this.

Tricia Farley-Bouvier noted that we should not lose site of the fact that the next phase of cleanup work will impact residential neighborhoods. Homes are often the single most important investment that a family has, and there will be work in peoples' back yards. Some of these families may want to sell their homes in the next few years and retire, and their home is their retirement fund. This could be the most significant political aspect to the cleanup, where people fill city hall chambers and bury Dean in phone calls. Brian suggested that the first 1.5 mile cleanup may be our reference, where Dean worked directly with the landowners and GE, and where many got a little improvement in their back yards. They did not receive financial compensation for the impacts of cleanup activities, but at least they received some improvements to their land.

Jennifer noted that in the smaller towns, like Great Barrington, everyone knows the town manager's phone number, and the staff could be inundated with calls and questions. They will need to have information and EPA contact information ready to hand out to residents. She also noted that she welcomes the chance to review approaches and engineering plans for work that will occur in each municipality, but that small towns do not have the staff time or capacity to be able to review, analyze them and understand all the impacts to the town from a large pile of engineering drawings. This is the reality of staff in small towns. Brian responded that this is common in many towns where large cleanup projects happen, and that the EPA Technical Assistance Grants are designed to help those towns facing these situations. This would allow the towns to bring in consultants to review the plans and provide technical analyses of the proposed work. He mentioned Fort Devons, where the Town of Ayer received funds to help it understand the work that was needed to remediate groundwater contamination caused by the Army. Curt also mentioned New Bedford, where the cleanup activities not only remediated the bay of PCB contamination, but also met some of the goals that the city was hoping to realize. He recommended that the towns have clear goals and that possibly these can be incorporated into restoration efforts. As an example, Curt suggested that after GE is finished cleaning up an area it has to restore the area, and it might not cost them any more to restore it in a way that is meeting a goal of the community. He cautioned that there is a fine line between restoration of a site and betterment, but that the community could meet certain goals if they work with GE and the agencies during the design phase of a specific cleanup area. He sees it as a Venn diagram – there is a circle on one side that is the cleanup, and there is a community goal on the other side, and community benefits would be where the two actions overlap. Curt suggested that the communities be very proactive during design, and have a clear rationale for what they want to see done to be able to achieve those goals. This allows the agencies to be creative during design. Curt mentioned that there is a good track record now [between the GE/agencies/city] with the first mile and a half behind everyone, so it could work going forward.

Regarding impacts to residents, Curt suggested that different techniques could minimize these impacts. There have been discussions about removing sediment from the river using barges, where landings might be located in industrial areas to reduce construction of new access roads.

Nat recommended that the communities be involved in every step along the way going into the future. As an example, the issue of moving downriver in a sequence, where they reach Rising Pond in 14 years. He offered that right now, every dam in between the confluence and Rising Pond are already being impacted by the PCB contamination. Columbia Mill is not marketable because of the PCBs behind the dam attached to the property, and Onyx Mill needs run-of-river water to continue their manufacturing process, and Glendale Power lost two years of added revenue and capacity during the FERC permitting process due solely to the PCBs at their dam site. The dams are an economic issue and cleaning them up should not be done solely according to a sequential order. If an opportunity arises to improve any of the dams, they should be attended to when that opportunity arises, not according to a pre-determined sequential order. Curt responded that the state brought up this issue up to GE during the negotiations and this was a big topic of discussion. Mary Griffin was especially strong on this point, that it be possible to address dams for improvement or removal when the time was ripe. So, bringing this issue up during the public comment period is incredibly important. Bryan suggested that communities pass along any information that they have about their dams so that this type of information can be reviewed and be in the agencies' hands before the Remedy is issued. The decision could be flexible. Susan suggested that the dams issue has been included in the more recent cleanup strategies because the communities have pressed the issue so often. The more recent state report of 2012 specifically mentions dams because the towns brought this to the EPA's attention so strongly.

John McNinch asked what the process would be for GE to set up a licensed [hazardous waste] facility in Massachusetts. Would it be difficult to do so as part of this cleanup? Mike Gorski stated the agency's belief that it would be nearly impossible. There is a statute to allow such a facility, but it has never been used because it is such a heavy burden to get permission to do so.

Susan and Curt both restated that the communities should bring forth important issues and ideas as soon as possible to the EPA and the agencies so that these might be considered for inclusion in the proposed Remedy due out in the spring. Sooner is better. They agreed to hold a ½- day workshop with the municipalities to give them a clear sense of what is being proposed, so that the agencies and municipalities could work together on specific issues.

Bob brought up the fact that the Onyx Mill, the last remaining paper mill in the town, relies on water quantity and quality. So, maintaining flow is very important. Rene brought up the fact that states have specific standing in the process, but the communities do not. She requested that the state and EPA meet with the six Rest of River municipalities to help them further understand that special status that the state enjoys. This status might be used to leverage some of the things that the municipalities are trying to achieve. She feels that the municipalities will need the state to be our first line of defense in further negotiations and/or design phases, and to date the amount of dialogue between the state and the municipalities has been limited. Attendees at the table agreed to such a meeting.

Curt thanked the Rest of River Municipal Committee and public representatives for their patience. He reminded attendees that Dean is in Pittsfield, Susan is in the area quite often and that Bryan, who was involved in this project many years ago, will be returning to serve in a leadership position.

5. **Other Business.** No other business was discussed.

6. **Adjournment.** The meeting was adjourned at 12:46 pm.

List of Attendees

Rest of River Municipal Committee

Dan Bianchi, Pittsfield Mayor
Pat Carlino, Lee
Doug Clark, Pittsfield
Jorja Marsden, Stockbridge
Jim McGrath, Pittsfield
John McNinch, Lenox
Bob Nason, Lee
Chris Rembold, Great Barrington
Steve Shatz, Stockbridge
Jennifer Tabakin, Great Barrington
Rene Wood, Sheffield

Berkshire Delegation

Ben Downing, State Senator
Tricia Farley- Bouvier, State Representative
Dan Johnson, Congressman Neal staff
Kerry Sullivan, Rep. Pignatelli staff
Jeremiah Thompson, Sen. Warren staff

Federal and State Agencies

Bob Cianciarulo, EPA
Tim Conway, EPA
Mike Gorski, DEP WERO Dir.
Jim Murphy, EPA
Brian Olson, EPA
Curt Spalding, EPA Region 1 Dir.
Susan Svirsky, EPA
Dean Tagliaferro, EPA
Maeve Vallely Bartlett, EOEEA
Mike Vedovelli, Mass. Office of Business Development

BRPC Representation

Lauren Gaherty, Senior Planner
Nat Karns, Exec. Dir.
Matt Pawa, Pawa Law Group