

**SAGINAW-TITTABAWASSEE RIVERS CONTAMINATION
COMMUNITY ADVISORY GROUP**

**RECOMMENDATION TO USEPA
October 14, 2014**

I. Subject

Proposed Cleanup Plan for the Tittabawassee River Floodplain Soil.

USEPA has proposed the removal and disposal of surface soil in Maintained Residential Areas where dioxin levels exceed 250 ppt, and either removal and disposal of soil, or clean cover, in Other Land Use Areas where dioxin levels exceed 2,000 ppt.

II. Background and Information Considered

- EPA presentations at the July 21, 2014 and September 15, CAG meetings.
- EPA fact sheets and FAQs
- Tittabawassee River Floodplain Response Proposal
- Site-Specific Cleanup Goals Document
- Summaries of the July and September meetings can be found at www.saginawcag.org and outline key CAG discussions and comments received from the public.

III. Recommendations and Comments

Overall Impression

The CAG is generally supportive of the dual land-use approach proposed by EPA. However, there are significant challenges in the implementation, monitoring, and enforcement of this proposed remedy. In particular, the CAG is concerned about the ability to maintain the remedy over time and ensure that future changes to property do not present harm to human health. We want to ensure long-term access to the river, appropriate control over personal property, minimal destruction of ecosystems, and the transparency, effectiveness, and reasonableness of monitoring, maintenance, and institutional controls.

In addition, we are concerned about the overall public understanding of this approach, and the perceptions of landowners whose property will be bound in perpetuity by some sort of institutional controls. The Q&A fact sheet does ask many of the right questions, but too many of the answers provide little, if any, real information, much less the reassurance that landowners will seek.

Each of these concerns are described in more detail below with specific comments and additional questions that we believe EPA needs to explain to the public. Many of these questions are well understood by the CAG as we have the benefit of regular interaction with EPA, but these are the issues that we believe will drive community concern.

Maintained Residential vs. Other Land Uses

The CAG has concerns over how land uses will ultimately be designated and how much control landowners will have in designating their property.

- How will maintained residential properties be determined beyond obvious homesites and lawns?

- People may have unimproved properties that they still use quite often and want the freedom to use more actively in the future, how will this be taken into account?
- Future owners may disagree with choices made by current owners, what rights will they have to future cleanup?

Cleanup numbers

The site-specific cleanup numbers appear to be consistent with other numbers being used on the larger cleanup. However EPA science is still incomplete, and a great deal of confusion regarding the dangers of dioxin exists in the community. EPA will need to be able to explain these numbers in a straightforward way. The fact sheet is a good start but does little to help people understand the underlying assumptions used for the two land uses. Table 3 in the PRG Report seems to provide a useful insight to these assumptions, though does not include the worker which appears to drive the non-residential exposure. More needs to be done to explain these numbers to the community.

- The CAG is not in full agreement over the specific levels, but does agree we want full protectiveness is achieved in places of maximum exposure. In particular, the environmental community would like to see a more stringent overall cleanup level and believes that EPA's 50 ppt level should be used. In overall CAG discussion, however, the CAG does understand how site-specific factors were applied to arrive at the proposed levels.
- EPA needs to more clearly explain how the numbers selected compare with other numbers that have been used for the cleanup by EPA and the State and the reasons for any differences. EPA needs to clearly and simply explain how the guidance is used as the starting point and site-specific conditions are then applied.
- EPA needs to more clearly explain how the maximum exposed individual was selected and used for each land use and what were the key assumptions for this exposure. Explain how these compare with the most sensitive receptor.
- The CAG is not satisfied with the fact that these numbers only address direct exposure and completely ignore agricultural impacts and the bioaccumulation in produce and meat. This is a significant oversight and needs to be addressed in a much more robust way than is currently being done.
- The community as a whole views the loss of trees as a significant mitigating factor in applying strict cleanup levels as discussed below.

Loss of Trees, Vegetation, and Topsoil

A significant concern of the CAG is the wholesale removal of trees and other vegetation to implement the remedy. We understand these will be replaced, but older trees will clearly be a significant loss that cannot be replaced.

- The CAG hopes that a significant effort will be made to ensure that the largest and oldest trees can be saved whenever possible.
- In cases where significant soil is removed, the soil backfill used to ensure long-term revegetation should be of a quality consistent to what is removed, and the vegetation itself should provide consistent aesthetic appeal. For example, removing a mature forest and replacing it with grass is simply not

acceptable. Many people have chosen their properties in large due to the views they provide.

Property-Specific Approach

The property specific approach leaves a lot of questions yet unanswered. The CAG believes that a consistent and transparent approach to identify which soils must be removed is essential and communicating this approach up-front will be important to public understanding and participation in the cleanup. The CAG also believes that there needs to be a clear approach and criteria for making exceptions. For example, there are many large stands of trees that could be placed in a permanent easement and that have little or no chance of use by the most sensitive receptors used for other areas.

Use of the Clean Cover Approach

Placing a clean cover on private property raises issues of responsibility, long-term safety, and flexibility. The Q&A statement “A clean cover is designed to last a long time,” does little to help homeowners understand the implications to their property.

- It would appear that clean covers would significantly restrict use of property, ability to garden, build and conduct other activities. If so, these restrictions need to be clearly articulated for landowners.
- Please explain how clean cover areas be monitored and maintained.
- Please explain the landowner responsibilities with regard to maintenance.

Potential for Landowner Refusal

Given the complexity and uncertainty of the remedy, the CAG envisions significant landowner refusal in having their properties cleaned. The CAG believes that maximum landowner cooperation is essential for the remedy to be effective. People need to understand the full ramifications of what they are signing, and may need to have significantly more information than is available in the EPA documents to even want to sit down at the table to discuss this. EPA needs to provide at least general guidance of what kinds of things people can expect with regard to the future of their property before they will sit down to discuss this issue.

- The main issue will be to identify what property rights stay with the owners, and what rights they lose by having long-term controls, and/or clean covers that will require monitoring and maintenance.
- Landowners will need to understand the opportunities and limitations on managing their property, and what would be allowed or not allowed based on the property designation.
- Please explain the conditions under which landowners require permission before doing things on their own property.
- Institutional controls and their impacts on the landowner and land transfers will be critical, see specific concerns below.

Access and Use of the Waterfront

Regardless of land use designation, access to the waterfront will be an important part of this remedy. It is not unlikely that improved residential will be apart from the river with other uses cleanup adjacent to the water.

- Does “other uses” account for accessing the river, boat docks, riverside recreational activities, etc.? This needs to be fully explained.

- Can landowners safely create a path to the waterfront under the “other uses” category? This needs to be fully explained.

Monitoring and Changes in Property Use

Most, if not all, properties will require institutional (deed) controls in perpetuity following cleanup. Monitoring of cleanup levels will be required at least for some period of time to ensure flooding and erosion do not undermine the remedy. New buyers will need to be informed of the restrictions on their properties, and ongoing monitoring and enforcement of these controls will be required. Communicating and working closely with landowners will seem to be a perpetual necessity. The following issues need to be fully explained:

- Who will perform the monitoring, how frequently, and how will it be enforced?
- How will monitoring be conducted post flood events to ensure that EPA assumptions are accurate?
- Who will manage the long-term use of property, and be responsible for information and enforcement during property ownership changes? Pointing to individual lawyers and real estate agents as is done in the current documents does not seem like a robust plan.

Institutional Controls

In general, the community has little knowledge of institutional controls, and these will ultimately determine the long-term effectiveness of this remedy. It is important that EPA provide much more information on institutional controls, what they are, how they are applied, and the ramifications for landowners.

- EPA indicates controls will be determined on a case-by-case basis, what does this actually mean?
- There cannot be wide differences on what is required on each property. Property owners will talk, and consistency will be very important.
- What is really fixed and what is flexible? What are the criteria for making those choices that are possible?
- It appears unreasonable to suggest that each parcel will have a different management plan, as long-term monitoring and maintenance will require a holistic orientation.

October 14, 2014

Approved by Unanimous Consent

Saginaw-Tittabawassee Rivers Contamination Community Advisory Group

Signed and hand delivered

Judith Lincoln on behalf of the CAG