

**Saginaw-Tittabawassee Rivers Contamination CAG
Full CAG Meeting
Memorial Park, Freeland MI
Monday, May 16, 2016
6:00 PM – 8:00 PM
DRAFT**

CAG Members Present

Drummond Black
Charles Curtiss
Leonard Heinzman
Jim Koski
James Krogsrud
Terry Miller
Luis Mulford
Laura Ogar
David Sommers
Joel Tanner
Bob Wiese

CAG Members Absent

Armando Falcon
Michael Kelly
Joe Kozumplik
William Marsrow
Lee Pavlik
Nancy Pavlik
Bryce Wakeman

Ex-Officio Members Present

Al Taylor, MDEQ
Diane Russell, EPA
Janelle Pistro, Dow Chemical

Support and Agency Staff Present

Doug Sarno, Facilitator

Doug Sarno called the meeting to order at 6:00 PM. Agenda items included:

- EPA Project updates
- CAG Planning

Copies of all meeting summaries and presentations are available at www.saginawcag.com.

Materials and additional information on the Dow Chemical Site including all presentations from CAG meetings are also available at the EPA web site at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0503250>

1. CAG Updates

Technical Assistance

The committee recommended that Environmental Stewardship Concepts (ESC) be the contractor to serve as the consultant to the CAG for technical questions and issues under the TAP. The CAG approved this arrangement pending further review and coordination through the leadership team. A contract should be established on an on-call task order basis and should be presented to the full CAG for review and approval at the next meeting.

Membership

The CAG received an application from Peter Bagley, he is a retired attorney with UAW GM Legal Services. He works extensively with environmental groups, and served on the original convening committee for the CAG. The CAG approved an invitation for him to join as a member.

Communication

The committee will work with membership to get some more press releases out. Working on the CAG Facebook page.

Administration

Drummond filed the CAG income tax report and annual reports. The CAG had to file a full return this year because we had more income than usual as some income from the previous year had come in late.

2. Project Updates

Diane Russell, EPA, reported that the EPA website has changed platforms, as such all bookmarks will no longer work-- the pages are still there but the links no longer work.

The new website is:

<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0503250>

EPA is closing the current office in Saginaw due to some issues with arson and theft. At the same time, as the Flint project has taken a lot of the local resources, EPA has decided to open the regional office in Flint. This will be located in Flint City Hall. The

office will operate in the same way out of Flint. Mary Breeden will stay with the office through December. EPA is also looking for a student intern. Diane is transitioning back to the Saginaw project and will continue to work with the CAG. All community outreach programs are ongoing and will not be interrupted.

Janelle Pistro, Dow, provided an update on field activities. There are 10 bank management areas (BMAs) in Segment 3. One is complete, and Dow is working with property owners to gain access to the remaining. Crews are waiting for river levels to go down to begin work, likely commencing in the next few weeks.

Since some of these sites will be visible, Dow is working on creating signage to help people on the banks and in parks to understand the activities.

CAG Question: Will the sign have EPA and DEQ information as well, and will it explain why the cleanup is happening? EPA and DEQ will review and approve the signs.

The work on two sediment management areas (SMAs) will begin later in the summer, these are in locations that will not be visible from public shore points, but there will be signs at boat launches.

Floodplain cleanup is currently working with 9 properties in Segment 3, two properties were just completed, and the other 7 are going through access and planning.

CAG Question: Is there followup to ensure that the properties are below the cleanup level? The properties will all have one foot of soil removed, and it is replaced with clean soil that is tested before it is placed.

3. Natural Resource Damage Assessment and Restoration

Lisa Williams, U.S. Fish and Wildlife Service (USFWS) provided the presentation. Joe Haas served as *ex-officio* with the CAG for a number of years and was able to focus on the Dow site exclusively, however Lisa manages many projects so has not been able to be present at most CAG meetings since taking over the site.

Lisa asked CAG members to identify what environmental issues are most important to them. Items mentioned included the following:

- Fishing
- Water quality in the Bay
- All types of outdoor activities
- Ability to be part of nature
- Gardening
- Living on the river
- The need to maintain the river for future generations
- Conservation of endangered species like bald eagles
- Walking, hiking

- Camping
- Ensure that the environment is there for our children and grandchildren
- Water quality, clean water
- Fishing
- Looking to create a nature preserve on the river in the township
- Ability to see wildlife thriving.

The Natural Resource Damage Assessment and Restoration (NRDAR) program was created by Congress in addition to the cleanup program for hazardous substances to replenish the common store of natural resources for public use and enjoyment. Authorized under CERCLA (the Superfund law) as well as different laws. EPA can act to force the cleanup but that order authority does not extend to resource restoration. NRDAR Trustees must instead negotiate and settle or litigate natural resource restoration projects.

The NRDAR goal is to restore injured natural resources and the services they provide by restoration, rehabilitation, or replacement. It is not punitive, it is compensatory. Restoration relates directly to the offset of what was injured.

There is no trust fund for NRDAR at hazardous substances sites, it is purely based on polluter pays. If there is no responsible party, then there is no NRDAR

Government Agencies serve as trustees on behalf of the public. These Trustees:

- Are specified by law and regulations
- Include state governments, federally-recognized tribes, secretaries of certain federal departments (authorized officials, like governors, delegate work to specific individuals)
- Work on behalf of the public.

The NRDAR process conducted by trustees includes the following activities:

- Determine the injury through time to the natural resources, including losses to the public (loss of fishing for instance)
- Assess damages based on injuries, what is needed to restore and compensate, work with the public on restoration opportunities
- Recover damages as money or restoration projects via a negotiated settlement or litigations
- Implement and evaluate/monitor restoration.

“Injury” looks at what is broken, a measurable or observable adverse change in the quality, viability, or value of natural resources and the services that they provide. Federal regulations provide resource-specific definitions that can be used to determine if a natural resource has been harmed or “injured”.

Services provided by natural resources are the physical and biological functions performed by the resources including human uses. Trustee’s look at impacts such as healthy habitat, food chain, recreational and cultural uses.

Damages include what it takes to fix the injuries. Primary restoration returns injured resources to baseline, while compensatory restoration is additional restoration to address losses over time.

CAG Question: How far back does NRDAR look for compensatory damages? It depends on the statute, so for CERCLA this starts at 1981 in conjunction with the statute.

CAG Question: are there examples of restoration along the rivers here? In the late 1990s there was a GM settlement that acquired land on the Saginaw River and Bay and created some public access and boat launch resources, but it is waiting for the dioxin cleanup for restoration work on the river.

CAG Question: How long does the monitoring last? There are different types of monitoring, some shorter to make sure the right activities were complete, others to study recovery over time. It also depends on the type of restoration that is conducted and how long it takes to understand whether the desired results are being achieved. Some restoration projects themselves require consistent activities over a period of time.

CAG Question: What is the current status of this project? We developed an assessment plan a few years ago, and are working to identify activities. Restoration actions will build on cleanup activities.

If the cleanup being done already addresses injuries as it moves forward, then the overall NRDAR claim is reduced.

The April 2008 NRDAR Damage Assessment Plan describes the trustee's approach for conducting NRDAR, addresses losses caused by natural resource injuries resulting from Dow's releases, and describes methods that the trustees plan to use. The report can be found at:

<http://www.fws.gov/midwest/es/ec/nrda/TittabawasseeRiverNRDA/>

Restoration has to relate directly to what was injured. Scaling is done to base the scope of projects on the level of the injury. Projects cannot be used to conduct research. There is a detailed set of criteria for restoration in the Damage Assessment Plan.

The Trustees and Dow have collected ideas from many sources for restoration. These concepts include wetland restoration, fish passage, habitat continuity, invasive species control, and shoreline softening.

CAG Question: who did the original study that resulted in the wild game advisory? It was a collaboration between DNR, DEQ, Dow, and community health departments. People agreed on what data to collect, but don't always agree on what the results mean.

Public Comments

Public Question: What are some of the specific injuries you have notified to date? The fish advisories are certainly one, MSU studies do show some level of injury over time.

On June 6, there will be a public information meeting for the City of Midland cleanup.

The meeting adjourned at 8:05