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Via E-Mail & U.S. Mail

August 11, 2011

Ms. Amy Legare
Chair, National Remedy Review Board
United States Environmental Protection Agency
One Potomac Yard (South Bldg)
2777 S. Crystal Drive
Arlington, VA 22202
legare.amy@epa.gov

Re: *Sediment Management Work Group's Comments on the Proposed Operational Changes to CSTAG and NRRB*

Dear Ms. Legare:

The Sediment Management Work Group ("SMWG") is an ad hoc group of industry and government parties actively involved in the evaluation and management of contaminated sediments on a nationwide basis. The SMWG has long advocated a national policy addressing contaminated sediment issues that is founded on sound science and risk-based evaluation of contaminated sediment management options. As part of its mission, the SMWG suggested the creation of and then strongly supported U.S. EPA's formation of the Contaminated Sediments Technical Advisory Group ("CSTAG"). The SMWG believed and continues to believe that CSTAG provides very valuable technical expertise throughout the life of significant contaminated sediment sites. The SMWG, therefore, respectfully submits its comments on the *CSTAG and NRRB Proposed Operational Changes* (U.S. EPA June 30, 2011).

CSTAG Should Continue to Review Contaminated Sediment Sites at the Proposed Plan Stage in Advance of NRRB Review

CSTAG was created in February 2002 to ensure that "Regional site managers appropriately consider" the 11 Risk Management Principles "before site-specific risk management decisions are made". *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites* (February 12, 2002, OSWER Directive 9285.6-08). In addition to assisting remedial project managers in applying the 11 Risk Management Principles, CSTAG also promotes national consistency in the application and implementation of national contaminated sediment policy and technical guidance. To fulfill its purpose, for Tier 2 sites, CSTAG will "meet with the site manager and the site team several times throughout the site investigation, *response selection*, and action implementation processes." *Id.* (emphasis added).



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Thus, as established at its inception, CSTAG's review at the proposed plan stage is a critical component of its mission.

CSTAG's review of the proposed plan in advance of the National Remedy Review Board's ("NRRB") review is not a "duplicative review." To the contrary, CSTAG's review focuses on the technical merits and potential technical issues with the proposed plan. Having the expertise of the full CSTAG, as opposed to a few CSTAG members participating in the NRRB review, is of the utmost importance in selecting protective, cost-effective, and implementable remedies that are consistent with the 11 Risk Management Principles and the *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites* (U.S. EPA OSWER 9355.0-85, 2005). The SMWG has serious concerns that rolling CSTAG's technical review of a proposed plan into the NRRB's overall review will dilute the value of its specialized technical expertise and result in less attention being paid to the significant technical challenges posed by complex contaminated sediment sites. Moreover, addressing these significant technical challenges at the proposed plan stage in advance of the NRRB review will allow the resources of NRRB to be better spent on addressing higher level policy and legal issues rather than miring the entire NRRB in technical issues.

Lastly, one of the stated goals in the *CSTAG and NRRB Proposed Operational Changes* is to accelerate cleanup. Eliminating CSTAG review of the proposed plan before NRRB review of the proposed plan may have the reverse effect. If remedies with significant technical issues are selected, implementation of these remedies will not be accelerated. Rather, implementation may proceed more slowly because implementing parties would be forced to attempt to address these technical issues during remedial design and implementation. Moreover, the proposed change and its deferral of resolution of key technical issues could have a chilling effect on potentially responsible parties' ("PRPs") willingness to sign a consent decree which requires performance of remedies that have significant unresolved technical issues.

Opportunities for Stakeholder and PRP Input Should be Expanded

The SMWG supports the proposed expansion of stakeholder and PRP input to CSTAG and NRRB. The SMWG recommends that additional opportunities for stakeholder and PRP input, beyond those proposed, be provided. Given the significant scientific and technical complexity at most large contaminated sediment sites and the vast amount of data, a 20 page limit on comments submitted to CSTAG and NRRB seriously impedes meaningful participation by PRPs. Thus, in recognition of the need to provide meaningful participation while being mindful of U.S. EPA's resources, the page limit should be increased to 50 pages of text with additional pages available for tables and figures.



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In addition to increasing the page limit, the SMWG recommends that CSTAG and NRRB provide copies of stakeholder submittals, including PRP submittals, to all interested stakeholders in advance of CSTAG and NRRB meetings. This will serve two functions. One, it will increase transparency. Two, it will allow stakeholders to identify areas of common technical understanding as well as areas of remaining technical issues. Addressing these technical issues in advance of finalizing the proposed plan should result in better remedies and increased stakeholder acceptance of the selected remedy.

The SMWG appreciates that the current CSTAG procedure allows key stakeholders, such as PRPs, to present information at the first site meeting. The SMWG strongly recommends that this invitation to present information in-person be expanded to include subsequent CSTAG meetings and the NRRB meeting. In-person presentations often provide an opportunity to quickly highlight key issues and focus the subsequent discussion on proposed solutions. These can be more effective and ultimately save time compared to other forms of participation because questions can be addressed as they arise and points of potential confusion can readily be clarified. The SMWG, therefore, urges U.S. EPA to open both CSTAG and NRRB meetings to presentations by key stakeholders, such as PRPs. Of course, the SMWG understands that stakeholders would not be permitted to be present for any deliberative proceedings of CSTAG or NRRB.

SMWG Supports CSTAG's Involvement in Optimizing Data Collection Efforts

The SMWG strongly supports the proposed change that would permit CSTAG to make recommendations on focusing data collection efforts. At complex sediment sites, the RI/FS process can be extended, in part due to unfocused data collection efforts. Data collection efforts should be targeted at addressing specific questions, the answers to which will support site decisions. CSTAG's experts can help project managers ensure that data of the right type, quality, and quantity are collected to support site decisions.

Conclusion

The SMWG strongly believes that CSTAG's involvement throughout the life cycle of complex contaminated sediment sites is crucial to making progress at contaminated sediment sites. CSTAG's significant expertise should be drawn upon more at the proposed plan stage, not diluted by limiting CSTAG's review of a proposed plan to a subset of CSTAG members participating in the NRRB meeting. Moreover, given the importance of CSTAG's involvement at a site, participation by stakeholders, including PRPs, should be expanded. By strengthening CSTAG's role, CSTAG will better be able to fulfill its mission.

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The SMWG would be pleased to answer any questions about its comments on the proposed operational changes to CSTAG and NRRB. For further information, please feel free to contact the SMWG's Coordinating Director, Steven C. Nadeau, c/o Honigman Miller Schwartz and Cohn LLP, 2290 First National Building, 660 Woodward Avenue, Detroit, MI 48226, (313) 465-7492, snadeau@honigman.com.

Sincerely,

SEDIMENT MANAGEMENT WORK GROUP

Steven C. Nadeau
Coordinating Director

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- Elizabeth Southerland, Assessment & Remediation Division Director, OSRTI, U.S. EPA
- Stephen Ells, Chair, Contaminated Sediments Technical Advisory Group, U.S. EPA