

AREAS OF CONCERN/SEDIMENTS – APPENDIX 1

AOC/Sediments Chapter - Supplemental Information

Recommendation #1: Great Lakes Legacy Act Funding, Amendments, Reauthorization and Guidance

- **Over the next five years, the Administration should request and Congress should appropriate \$150 million annually for the Great Lakes Legacy Act to remediate contaminated sediment sites in the AOCs. Continued funding at this level over an additional ten years will be needed to achieve the goal of cleaning up all known contaminated sediment sites in Great Lakes AOCs by 2020.**
- **The Great Lakes Legacy Act should enhance and accelerate the pace of sediment remediation in the AOCs by serving as the primary remediation authority or supplementing existing remediation programs addressing contaminated sediments (such as CERCLA, RCRA, state remediation statutes and WRDA § 312, among others). Congress should amend the Act to allow for more efficient implementation of the program, as follows:**
- **The “maintenance of effort” language in the Legacy Act should be dropped.**
 - The “maintenance of effort” language in the Legacy Act is counterproductive, penalizing states and local communities that undertake major remediation projects because they will have a higher baseline number for maintenance of effort. The “maintenance of effort” requirement appears to have been inserted in the Legacy Act because such language is customary in situations where grant money is being provided on an ongoing basis. This provision could inadvertently preclude an eligible remediation project from receiving Legacy Act funding if the nonfederal sponsor had coincidentally spent greater funds in the prior year, which is entirely possible in large projects that take place over a number of years. Therefore, the maintenance of effort requirement should be either completely eliminated or more narrowly defined in order to avoid this inadvertent and unfortunate restriction.
- **The life of appropriated Legacy Act funds should be extended beyond two years (as envisioned by the Legacy Act) to accommodate both responsible remediation and long-term remedy effectiveness monitoring, which is consistent with the 2002 *Great Lakes Strategy*.**
- **The current requirement of a 35 percent level of matching funds from the nonfederal sponsor should be made more flexible.**
 - The current 35 percent level of matching funds/in-kind services required under the Legacy Act from the nonfederal sponsor at “orphan sites” (sites where no viable source of private or public funding exists to cover the nonfederal share) for all practical purposes precludes the use of Legacy Act funds at those sites. The match should be adjusted to 25 percent, or at a minimum Legacy Act funds should be available for planning and design work with no match or reduced match, in order to “tee-up” projects and maintain momentum. There are several pure “orphan sites” listed among the U.S. AOCs. At these sites, if the state, tribal or local government is unable to provide the resources for the 35 percent nonfederal match, there will be a “checkmate” situation -- even for the typical scoping work such as site assessment, site characterization and feasibility studies -- whereby those AOCs will never be able to qualify for Legacy Act funding due to the match requirement. Therefore, the matching funds

requirement should be eliminated or reduced for some of the preliminary work that needs to be completed at a given site, such as site investigation or design work.

- **Provisions should be provided in the Legacy Act to allow discretion in disbursement of project implementation funds to address the current limitation requiring federal agency project implementation.**
 - Under existing language, the Act does not allow disbursement of funds to the nonfederal sponsor. Currently, due to administrative restrictions, the U.S. EPA Great Lakes National Program Office (GLNPO) cannot disburse funds to the nonfederal sponsor of a Legacy Act project to cover some or all of the 65 percent federal share. This is very problematic in situations where the nonfederal sponsor's contractors are doing most of the work. There are some situations, for example, where the nonfederal sponsor would likely contribute a very high percentage toward the overall project through implementation of a sediment remediation activity. Under the current approach, GLNPO would be forced to use its own contractors to complete the work covered by the federal share. Having two different contractors is inefficient and often problematic.

- **U.S. EPA should develop guidance to clarify and reiterate the Legacy Act's original intent to permit potentially responsible parties (PRPs) to participate as the nonfederal sponsor for projects funded under the act. The guidance should confirm that PRPs are neither excluded from eligibility to serve as nonfederal sponsors nor absolved from their liability for remediation of contaminated sediments under federal and state remediation programs.**
 - The Legacy Act's original intent to permit potentially responsible parties (PRPs) to participate as the source of some or all of the nonfederal sponsor share should be clarified and reiterated. The Great Lakes Legacy Act was passed through the strong cooperative efforts of a diverse array of stakeholders. It was the understanding and expectation of industry and other stakeholders that PRPs could serve as the nonfederal sponsor under appropriate circumstances. This is consistent with the Legacy Act's goal of encouraging accelerated progress in remediating contaminated sediments in the Great Lakes region. The Act refers to the eligibility of funding for the nonfederal share as including "monies paid pursuant to or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree ..."
 - Despite the strong multi-stakeholder support for the passage of the Legacy Act and the express terms of the Act supporting PRP eligibility for funding under the Act, some have asserted that the "polluter pays" principle should preclude PRPs from being eligible to participate in GLLA funding. The Legacy Act does not absolve PRP liability under federal and state remediation programs. A diverse array of stakeholders agree that a balanced approach is appropriate, where PRPs are neither precluded nor entitled to be eligible to participate as a nonfederal sponsor at a Legacy Act sediment site. To do otherwise would cut off one of the best resources to obtain the 35 percent nonfederal share and an opportunity to achieve the important objective of the Legacy Act -- to accelerate the remediation of contaminated sediment in the Great Lakes.
 - Therefore, the eligibility of PRPs to provide some or all of the nonfederal share of a Legacy Act package should be evaluated on its merits on a site-specific basis, in the context of the concept of "added-value." Examples of circumstances where PRP participation in Legacy Act project funding would provide "added value" include: where an "orphan share" exists or where the remedy will be enhanced or accelerated such as where the scope (quality or

quantity) of the remediation is improved, innovative methods are employed or the remediation will be accelerated. Therefore, clarification regarding PRP eligibility as the nonfederal sponsor consistent with these suggested guidelines should be included in guidance developed by the agencies responsible for administering the Act. Implications of Legacy Act funding on Natural Resource Damage Assessment (NRDA) issues should be weighed in developing this guidance.

- In cases where implementing the Legacy Act is not feasible, if additional resources are necessary to complete a cleanup, and for sediment sites outside the AOCs, the Federal Interagency Task Force should develop effective mechanisms to address contaminated sediment sites through a collaborative process, leveraging resources from multiple partners and using authorities under all applicable statutes (e.g. WRDA, CWA, CERCLA -- including NRDA provisions -- RCRA, OPA, etc.).
- The Council of Great Lakes Governors, the Great Lakes Legislative Caucus and the Great Lakes Cities Initiative should form a task force to explore innovative options and create regional mechanisms for meeting nonfederal funding requirements under the Great Lakes Legacy Act, Corps of Engineers authorities, and other federal programs.

Recommendation #2: AOC Program Capacity

The Administration should request and Congress should appropriate \$10 million annually to the Great Lakes States and community-based coordinating councils in the AOCs; and \$1.7 million to U.S. EPA's Great Lakes National Program Office for regional coordination and program implementation.

Furthermore, the U.S. Army Corps of Engineers Great Lakes Remedial Action Plan Program, authorized in Section 401 of the Water Resources Development Act of 1990, should be included in the President's budget to enable the Corps to participate in the Federal-State AOC Coordinating Committee and to request funding for projects that advance restoration of the AOCs.

- The eight Great Lakes states, in collaboration with community-based coordinating councils in the AOCs, are vital to effectively implementing the Great Lakes Legacy Act and expediting restoration of the AOCs. The \$10 million annual funding will rebuild and sustain technical capacity at the state, tribal and local levels to ensure that resources – at all levels of government – are fully exploited to increase progress in cleaning up the AOCs. Annual funding for U.S. EPA's Great Lakes National Program Office is necessary to provide effective administration of the Legacy Act as well as consistent oversight and regional coordination of the AOC program. Specifically, this funding will support federal liaisons for each U.S. AOC while ensuring that resources in other federal agencies are fully leveraged to support AOC restoration efforts. The U.S. Army Corps of Engineers' Great Lakes Remedial Action Plan Program, authorized in Section 401 of the Water Resources Development Act of 1990, is specifically directed at AOC restoration. The program utilizes the Corps' unique experience in contaminated sediment remediation and supports planning and design work that is critical to preparing sites for large-scale remediation projects under the Legacy Act.
- A performance-based system should be developed to track progress in restoring the AOCs. Agreement needs to be reached on who is responsible for monitoring after site remediation work is complete. States, tribes and local RAP groups should identify monitoring and assessment needs, and use that information to develop and implement AOC monitoring plans. Where necessary, additional funding should be provided to supplement existing programs of pre- and post-remedial monitoring and assessment.

- The RAP process should be revised to ensure appropriate flexibility in planning and implementing restoration activities, and to utilize plans developed under other programs to accomplish RAP goals.
- Under the proposed Federal-State AOC Coordinating Committee, U.S. EPA and each of the Great Lakes states, in consultation with local AOC advisory groups, should establish five-year agreements for administering the AOC program. Such agreements should outline their respective roles and responsibilities, priorities, anticipated outcomes, resource needs, staffing levels, and procedures for documenting and reporting progress, and clearly communicate this to all interested parties, particularly local stakeholders.
- States should provide adequate staffing to coordinate funding opportunities for AOC work, either by maintaining adequate professional capacity at the state level and/or by passing funding through to the local level.

Recommendation #3: Federal-State Collaboration

The existing U.S. EPA/State RAP Work Group should be expanded to a Federal-State AOC Coordinating Committee to better coordinate efforts and optimize existing programs and authorities to advance the restoration of the AOCs.

- The Federal Interagency Task Force should develop effective mechanisms to leverage resources and technical assistance from federal agencies. Each federal agency should ensure that its annual budget request to Congress includes funding for AOC work anticipated during the fiscal year.

Recommendation #4: Promote Development of Environmentally-Sound Sediment Treatment and Destruction Technologies, Beneficial Re-Use of Sediments, and Best Available Disposal Options.

U.S. EPA, the U.S. Army Corps of Engineers and the states and tribes should actively examine innovative approaches to the ultimate disposition of contaminated sediments as an alternative to the current practice of disposing of them in Confined Disposal Facilities (CDFs) or landfills. Congress should fund at \$3 million annually over the next five years the research and development program authorized in Section 306 of the Great Lakes Legacy Act. This research will test and promote viable treatment technologies that allow for the separation, immobilization, neutralization or destruction of contaminants in sediments, in-situ or upon removal. A significant focus of this work should be on the development of technologies that produce no new contaminants and do not release contaminants to the environment.

- The Council of Great Lakes Governors, the Great Lakes Legislative Caucus and the Great Lakes Cities Initiative should work with the Federal Interagency Task Force on mechanisms for providing disposal capacity for contaminated sediments.
- There must be multi-stakeholder involvement in the identification and approval of contaminated sediment disposal sites within the Great Lakes Basin.
- U.S. EPA, the U.S. Army Corps of Engineers and the states and tribes should develop guidance for the beneficial re-use of sediments and encourage sediment remediation projects that utilize alternatives to disposal.
- Explore and implement beneficial re-use of sediment when feasible and practical.

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Assessment of Ongoing Activities

Program Administration: US EPA's Great Lakes National Program Office (GLNPO) has assumed oversight responsibility and appointed federal liaisons to each AOC. In 2004, Congress increased funding for state and local support for AOC efforts, recognizing the need to rebuild capacity in this critical area. However, much work remains to bring State and local programs back to effective levels and to reduce bureaucratic requirements that impede progress in the AOC program.

Restoring beneficial uses: The Great Lakes Legacy Act of 2002 provides dedicated funding for sediment remediation, filling an important gap in the Great Lakes program. The accelerated sediment remediation program envisioned by this Act builds on a considerable amount of preparatory work by US EPA and other federal, state, local and tribal agencies to characterize the nature and extent of contaminated sediments in the AOCs and to evaluate remedial options.

The Act authorizes \$270 million over five years (beginning in fiscal year 2004) to remediate contaminated sediment in the US or bi-national AOCs. US EPA received \$10 million in FY 2004 and \$22.5 million in Legacy Act funding for 2005. Though Legacy Act funds are a boon to AOCs, progress is slowed by the fact that appropriated funds have not reached authorized levels, and by well-intended but convoluted provisions in the Act that make it difficult to disburse funds.

Delisting: In 2001, the US Policy Committee developed delisting principles and guidelines (www.epa.gov/glnpo/aoc/delist.html) that clearly describe the attributes of acceptable delisting targets and the process to totally delist an AOC. The guidance is being used by the States and local Remedial Action Plan (RAP) groups to define delisting targets for the BUIs identified in their AOCs. The guidelines allow for incremental progress towards delisting by BUI or by stream segment, and present a viable option for better measuring intermediate progress in AOCs. "Area of Concern in Recovery" status is available for AOCs that have implemented all feasible cleanup activities, but require time for the ecosystem to respond.

Over the last several years, GLNPO has begun funding technical workshops, research on feasible targets for BUIs, and development of statewide and local AOC restoration targets. The current lack of delisting targets slows down remedial work and creates the impression that the Great Lakes region is not ready to undertake a full-scale restoration effort.

AOC status updates

The most recent review of progress in the U.S. AOCs is the 2004 updates of the Lakewide Area Management Plans: 2004 LaMP Updates (U.S. EPA, GLNPO, April 2004, www.glin.net/aocstrategyteam/documents/AOCs2004.pdf)

In 2002, the Great Lakes Commission also produced a status report on progress in the AOCs: [An Overview of U.S. Great Lakes Areas of Concern](http://www.glc.org/docs/AOC/aocoverview.pdf) (Great Lakes Commission and U.S. EPA, 2002, www.glc.org/docs/AOC/aocoverview.pdf) [Includes BUI table for all U.S. AOCs.]

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BUI	Primary Sources of Beneficial Use Impairments								
	CSOs	Contaminated Sediment	Rural NPS Runoff	Storm Water Runoff	Point Sources	Landfill Leachate	Habitat Loss or Fragmentation	Malfunctioning HSTs and package plants	# of AOCs Impacted (Out of 31 total)
Restrictions on Fish and Wildlife Consumption	X	X			X	X			29
Tainting of Fish and Wildlife Flavor					X	X			3
Degradation of Fish and Wildlife Populations	X	X	X	X	X	X	X		21
Fish Tumors or Other Deformities	X	X	X	X	X	X			14
Bird or Animal Deformities or Reproductive Problems		X	X						9
Degradation of Benthos	X	X	X	X	X	X			27
Restrictions on Dredging	X	X	X	X	X	X			29
Eutrophication or Undesirable Algae	X	X	X	X	X			X	13
Restrictions on Drinking Water or Taste and Odor Problems			X		X				9
Beach Closings/Recreational Use	X	X		X	X			X	19
Degradation of Aesthetics	X	X	X	X	X			X	20
Added Costs to Agriculture or Industry		X	X					X	3
Degradation of Plankton Populations	X	X	X				X		7
Loss of Fish and Wildlife Habitat	X	X	X				X		27
# of AOCs with this source	15	30	19	18	20	16	24	5	

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References

GLNPO and the States have developed an estimation of sediment costs by AOC, which is available at <http://www.glin.net/aocstrategyteam/documents/RemediationEstimatesJan05.xls>).

U.S. Policy Committee. 2002. Great Lakes Strategy – A Plan for the New Millennium. www.epa.gov/glnpo/gls/index.html

Braden, J., S. Chattopadhyay and A. Patunru. 2003. The Economic Value of Environmental Cleanup: Contaminants in Waukegan Harbor, Illinois. www.nemw.org/Waukeganexsummary.pdf

Lakewide Management Plans (LaMPs) for the Great Lakes are available at: www.epa.gov/glnpo/g12000/lamps/index.html

U.S. Policy Committee. 2001. Restoring United States Great Lakes Areas of Concern: Delisting Principles and Guidelines. (www.epa.gov/glnpo/aoc/delist.html)

GREAT LAKES AREAS OF CONCERN

