

DETERMINATION TO NOT TAKE SUPERFUND ACTION

LCP Bridge Street Operable Unit 2
and Wastebeds 9 to 15
Onondaga Lake Areas of Concern
Town of Geddes, Onondaga County, New York

United States Environmental Protection Agency
Region II
New York, New York
August 2011

DETERMINATION TO NOT TAKE SUPERFUND ACTION

Introduction

The Onondaga Lake Superfund Site consists of Onondaga Lake and its tributaries and upland areas that contribute or have contributed contamination to Onondaga Lake. Currently, twelve areas of concern have been determined to be part of the Onondaga Lake Superfund Site.

The Environmental Protection Agency (EPA) has made a determination to not take federal Superfund action at two areas, which were evaluated, but are not included in the twelve areas of concern noted above. These two areas of concern are LCP Bridge Street Operable Unit 2 (OU2)¹ and Wastebeds 9 to 15 (see Appendix I, Figure, attached hereto, for the location of the areas of concern).

Because there is no identified pathway for contamination to migrate from either the LCP Bridge Street OU2 or Wastebeds 9 to 15 areas of concern to Onondaga Lake, no action is required under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (CERCLA), 42 U.S.C. §9601, *et seq.* The fact that no federal Superfund response action is anticipated regarding these areas of concern does not in any way affect what is considered to be the Onondaga Lake Superfund Site, nor does it affect Superfund action taken or to be taken in other areas of concern within the Onondaga Lake Superfund Site. In addition, this determination does not preclude New York State or the Natural Resource Damages (NRD) Trustee Council from taking actions at these areas under their authorities, as appropriate.

LCP Bridge Street Operable Unit 2

The LCP Bridge Street area of concern is situated approximately 2 miles northwest of the City of Syracuse, in the Town of Geddes, Onondaga County, New York. The approximately 20-acre property is located in an industrial area on Gere Lock Road, west of Bridge Street (Route 297), and south of the New York State Fairgrounds and an active railroad right-of-way. A scrap yard is located north of the property, a cogeneration facility is located to the west, and the former NAKOH Chemical facility is located to the northeast.

¹

An operable unit (OU) is defined as a discrete action that comprises an incremental step toward comprehensively addressing site problems. The cleanup of a site can be divided into a number of OUs, depending on the complexity of the problems associated with the site. OUs may address geographical portions of a site, specific-site problems, or initial phase of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

The LCP Bridge Street Site consists of two OUs². OU1 consists of approximately 18 acres of the facility. Since it was determined that OU1 has impacted the Onondaga Lake Site, actions under CERCLA were performed to address those impacts. A Record of Decision, issued in September 2000, selected a remedy for OU1. The major components of the selected remedy included the following:

- removal of tanks, containers and transformers;
- building demolition;
- sediment excavation and restoration of the West Flume and wetlands;
- soil washing, which reclaimed approximately 8 tons of elemental mercury;
- soil excavation of the Brine Mud Area and North Ditch;
- closure of pipes and sewers, which provided preferential pathways for contamination to enter into the West Flume; and
- installation of a slurry wall, groundwater collection and cap system.

All of the remedial work at OU1 has been completed with the exception of the final cap (a temporary cap is currently in place) and some limited soil excavation work.

OU2 consists of a 1.7-acre area where a former hydrogen peroxide plant was located at the facility. This area is north of the West Flume (a man-made stream), south of the New York State Fairgrounds, a scrap metal recycling facility and an active railroad right-of-way, east of an area of OU1 called the brine mud area, and west of the former NAKOH Chemical facility.

In September 2002, under a consent order with NYSDEC, Honeywell, a potentially responsible party, commenced a remedial investigation and feasibility study (RI/FS) for LCP Bridge Street OU2. During the RI, sediment, soil, groundwater and surface water samples were collected and analyzed. The results of the RI indicate that the historical use of xylene at the facility contaminated the groundwater, which migrates to the West Flume. Localized contamination of sediment in the West Flume has resulted. The concentration of xylene, however, rapidly decreases downstream of the facility and does not extend to the mouth of the West Flume, which in turn flows into Geddes Brook, then into Ninemile Creek, and ultimately into Onondaga Lake. The contaminated sediments in the West Flume were addressed as part of the OU1 remedy.

In March 2010, following the completion of the RI/FS, NYSDEC selected a remedy for LCP Bridge Street OU2 under state authorities. The major components of that remedy include:

² LCP Bridge Street OU1 and OU2 are New York State Department of Environmental Conservation (NYSDEC) designations. LCP Bridge Street OU1 is equivalent to EPA's LCP Bridge Street OU5.

- Injection of chemical oxidants into the ground to treat the contaminated soil and groundwater;
- Construction of a cover to prevent contact with contaminated soils and migration via storm water runoff;
- Development of a site management plan;
- Imposition of an environmental easement to (a) limit the use and development of the property to commercial/industrial use; (b) insure compliance with the site management plan; and (c) restrict the use of groundwater for drinking; and
- Long-term monitoring.

NYSDEC and Honeywell entered into a consent order for the design and implementation of the selected remedy on December 30, 2010. A workplan for the design and implementation of the remedy was approved by NYSDEC on May 9, 2011. It is anticipated that the design will be completed by March 2012.

Wastebeds 9 to 15

Wastebeds 9 to 15 are former liquid waste lagoons located on 670 acres in the Town of Camillus that received process wastes from Allied Chemical's (predecessor to Honeywell International Inc. or Honeywell) manufacturing operations from 1944 to 1986. The Wastebeds are located adjacent to Ninemile Creek, a major tributary to Onondaga Lake. The waste in the former lagoons is primarily nonhazardous calcium carbonate/chlorides from the manufacturing of soda ash using the Solvay Process. In addition, wastes from the Bridge Street Chlor-alkali plant, consisting of spilled materials, mercury, asbestos, lead, and wash water, and wastes from the chlorinated benzene manufacturing at the Willis Avenue plant, consisting of asbestos, wash water, spilled material, lead, mercury, and heavy organic residues, were disposed of here. Other substances disposed of at the Wastebeds include fly and bottom ash from the Allied Chemical plants, sewage sludge from the County's wastewater treatment plant, Anheuser-Busch brewery sludge, and brine purification muds. Wastebed 15 also received demolition debris and soil from decommissioning the Allied Chemical main plant. A portion of the old Erie Canal, which lies beneath Wastebed 15, was used as a landfill by the Town of Camillus. Under authorization from NYSDEC, the Town of Camillus operates a construction and demolition waste landfill in portions of Wastebed 15.

The sediments that will be removed from Onondaga Lake as part of the Lake Bottom remedy will be dewatered and permanently stored in an engineered Sediment Consolidation Area (SCA) located on Wastebed 13.

Most of the surface of the Wastebeds is covered with a variety of *vegetation*, including grasses, brush, and trees.

The groundwater under the Wastebeds is highly saline due to the leaching of salts from the Solvay waste. A hydrogeological assessment was performed between 1987 and 1989

to evaluate groundwater and nearby surface water quality near the Wastebeds. A Supplemental Site Investigation was conducted in 1998. Contaminants that were identified include relatively low concentrations of volatile organic compounds, phenols, and metals, including mercury. While contaminants were detected in the sediments and surface water in seeps and swales located adjacent to the Wastebeds and in Ninemile Creek, it is likely that these contaminants were released when the lagoons were in operation and/or released from the former LCP Bridge Street facility. While hazardous substances are present at the Wastebeds, the available data indicates that the levels of contaminants from the Wastebeds that are adjacent to Ninemile Creek are minimal and that the Wastebeds do not impact Onondaga Lake. Specifically, water samples collected from Geddes Brook and Ninemile Creek indicated that mercury contamination in the water column is mainly confined to the reaches below the source at the LCP Bridge Street plant. Data from sediment samples collected around Wastebeds 9 to 15 indicated that groundwater and runoff of sediment from the Wastebeds is not contributing to the high concentrations of mercury seen in the sediments downstream of the Geddes Brook discharge. Data collected for the Geddes Brook/Ninemile Creek RI indicate that the upper reaches of the streams (*i.e.*, Geddes Brook upstream of the West Flume and Ninemile Creek upstream of the Geddes Brook discharge), are not significant sources of mercury and other CERCLA contaminants to the lower reaches of the streams. Surface water sampling during the Geddes Brook/Ninemile Creek RI also indicated that the West Flume and the sediments downstream of the West Flume were significant sources of mercury to surface water. Overall, the data collected during the Geddes Brook/Ninemile Creek RI/FS and Geddes Brook/Ninemile Creek OU1 Supplemental FS indicate that contamination from Honeywell operations was primarily confined to the lower reaches of Geddes Brook and Ninemile Creek, and that surface water and sediment concentrations of mercury in the upper reaches of Geddes Brook and Ninemile Creek were generally consistent with non-point sources (*e.g.*, urban runoff), thus, not warranting remediation. It should be noted, however, that results from an investigation of a drainage ditch which adjoins Geddes Brook upstream of the culverts beneath the Conrail railroad tracks indicate that elevated levels of mercury are present in sediment and floodplain soils. The presence of contamination in the drainage ditch appears to be the result of backflow from Geddes Brook and/or historic overflows from the Wastebeds when they were in use as settling basins. Contaminated sediments and floodplain soil in and near the drainage ditch will be addressed under the Geddes Brook Interim Remedial Measure prior to remediating contaminated channel sediment and floodplain soil/sediment in and adjacent to the lower reach of Geddes Brook.

On November 5, 2010, NYSDEC and Honeywell signed a consent order which requires Honeywell to, among other things, implement a closure plan for the area of concern and fund a number of local environmental projects to benefit the public, including building a boat/kayak launch at Onondaga Lake, improving fishing access to Ninemile Creek and Onondaga Creek, commencing a public process to boost recreational opportunities at the reclaimed site, and funding mitigation and research efforts. On February 11, 2011, NYSDEC and Honeywell executed a Memorandum of Agreement, which covers the implementation and performance of local environmental benefit projects. In the near

future, the public will have the opportunity to review and comment on the design of the closure plan and the proposed environmental benefit projects.

Supporting Documentation

Documentation in support of this determination includes the following:

- *Environmental Assessment of Lower Reaches of Ninemile Creek and Geddes Brook, Oswego Watershed, New York*. Prepared for AlliedSignal, Solvay, NY by CDR Environmental Specialists, Stow, MA. July 1991;
- *Summary Data Report*, Allied Wastebeds 9 to 15 and Lower Nine Mile Creek Valley, Blasound, Bouck & Lee, July 1995;
- *Onondaga Lake RI/FS West Flume Mercury Investigation and Supplemental Sampling and Ninemile Creek Supplemental Sampling Data Report*. Prepared for AlliedSignal, Inc., Syracuse, NY by PTI Environmental Services, Bellevue, WA. 1996;
- *Supplemental Site Investigation Report, Wastebeds 9 to 15*, Blasound, Bouck & Lee, August 1999;
- *Wastebeds 9-15 Subsite Evaluation*, NYSDEC, June 2000;
- *Record of Decision, LCP Bridge Street Subsite*, NYSDEC, September 2000;
- *Remedial Investigation Report, Onondaga Lake*, TAMS, December 2002;
- *Remedial Investigation Report, Geddes Brook/Ninemile Creek*, TAMS/EarthTech, July 2003;
- *LCP Bridge Street OU2 Subsite Evaluation*, NYSDEC, February 2004;
- *Feasibility Study, Onondaga Lake*, Parsons, November 2004;
- *Record of Decision, Onondaga Lake Bottom Subsite*, NYSDEC and EPA, July 2005;
- *Feasibility Study, Geddes Brook/Ninemile Creek*, Parsons, May 2005;
- *Supplemental Feasibility Study, Geddes Brook/Ninemile Creek OU1*, Parsons, November 2008;
- *Record of Decision, Geddes Brook/Ninemile Creek Site OU1*, NYSDEC and EPA, April 2009;
- *Supplemental Feasibility Study, Geddes Brook/Ninemile Creek OU2*, Parsons, May 2009;
- *LCP Bridge Street Subsite, Five-Year Review*, EPA. October 2009;
- *Record of Decision, Geddes Brook/Ninemile Creek Site OU2*, NYSDEC and EPA, October 2009;
- *Remedial Action Report and Certification, LCP Bridge Street Site (OU1)*, Parsons, November 2009;
- *Record of Decision, LCP Bridge Street OU2*, NYSDEC March 2010; and
- *Frequently Asked Questions (FAQs) Onondaga Lake Dredging Project, Sediment Consolidation Area (SCA) at Wastebed 13*, NYSDEC, New York State Department of Health, EPA, April 2010.

- *Geddes Brook/Ninemile Creek Addendum to the Outfall 019 Drainage Ditch Pre-Design Investigation Data Summary Report, Parsons, May 2010.*

Highlights of Community Participation

On October 29, 2010, EPA published a notice in the *Syracuse Post-Standard* announcing the commencement of a public comment period on its October 2010 *Notice of Determination to Not Take Superfund Action at LCP Bridge Street Operable Unit 2 and Wastebeds 9 to 15 Onondaga Lake Areas of Concern*. The *Notice of Determination* provided the basis for EPA's decision to not take Superfund action at the Wastebeds 9 to 15 and LCP Bridge Street OU2 areas of concern. The *Notice of Determination*, as well as documents in support of this document, was made available to the public in five local repositories and on EPA's website for a 30-day comment period which was to conclude on November 30, 2010. In response to a local request, however, the public comment period was extended to December 15, 2010. A notice announcing the extension to the public comment period appeared in the November 30, 2010 edition of the *Syracuse Post-Standard*.

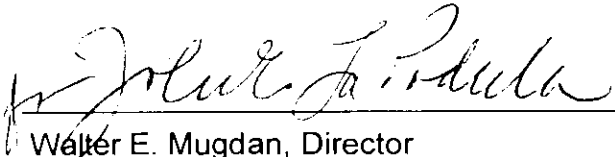
Comments were received from the Onondaga Nation, the Atlantic States Legal Foundation, the Town of Camillus Supervisor, and a resident from the Town of Camillus. Responses to the comments are included in the Responsiveness Summary (see Appendix II, attached hereto).

Authorizing Signature

Based on the foregoing, EPA, with NYSDEC's concurrence, has concluded that no federal Superfund response actions are required at LCP Bridge Street OU2³ and at Wastebeds 9 to 15. Both potential areas of concern are being or will be addressed under state authorities. The fact that no federal Superfund response action is anticipated regarding these areas of concern does not in any way affect what is considered to be the Onondaga Lake Superfund Site for the purpose of future potential NRD actions related to the Site, nor does it affect Superfund action taken or to be taken in other areas of concern within the Onondaga Lake Superfund Site.

³ LCP Bridge Street OU1, which is an identified source of contamination to Onondaga Lake, has been addressed through a nearly completed Superfund response action.

Pursuant to CERCLA requirements, the Onondaga Lake Bottom Site remedy will be reviewed not less than once every five years (beginning August 2015) to ensure that it remains protective of human health and the environment. This review, which will be summarized in a "Five-Year Review Report," will be based upon an evaluation of the results from monitoring of the remedy. An assessment of the protectiveness of the SCA on Wastebed 13 will be included in that evaluation.

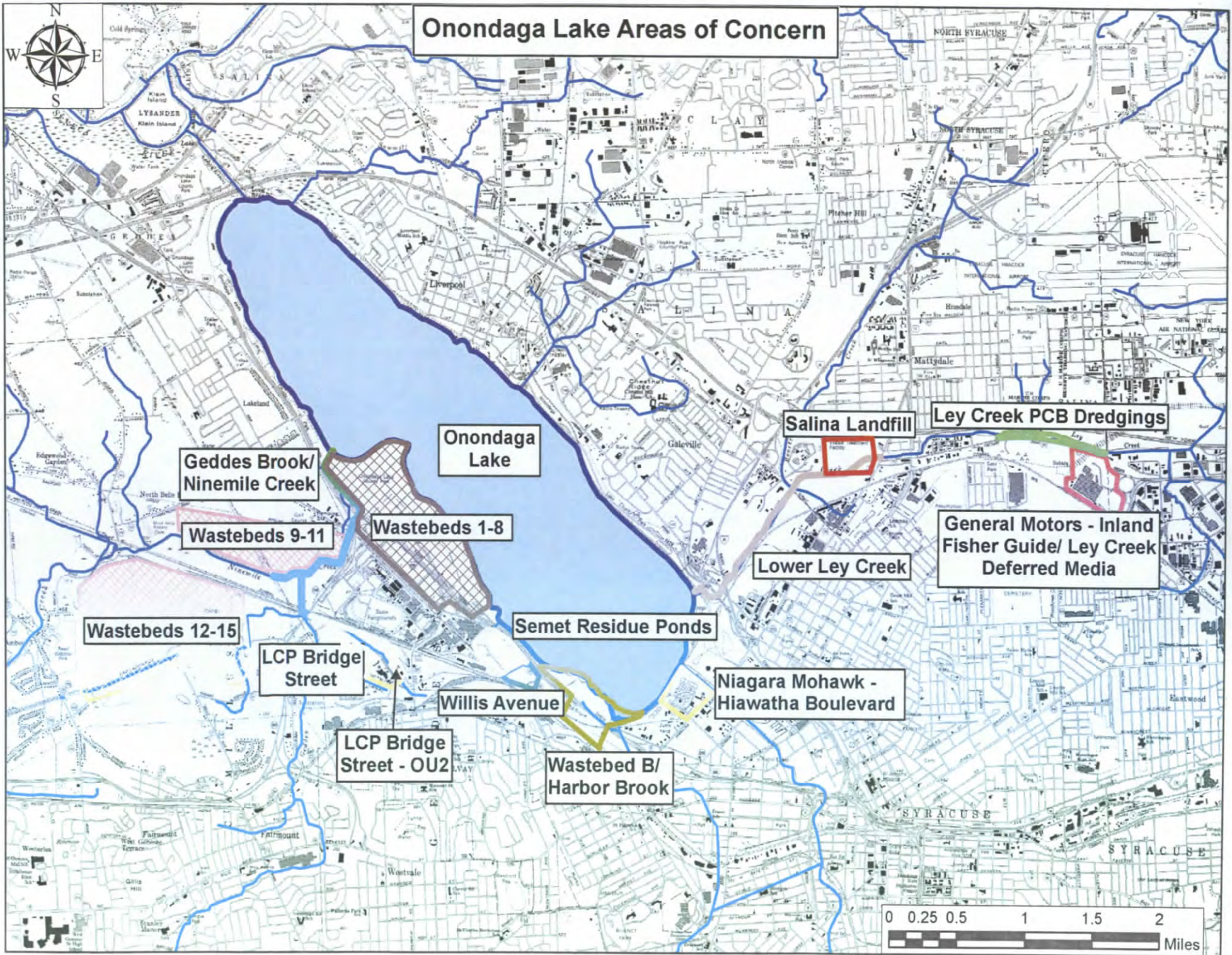


Walter E. Mugdan, Director
Emergency and Remedial Response Division


Date

APPENDIX I

FIGURE



Onondaga Lake Areas of Concern

Geddes Brook/
Ninemile Creek

Wastebeds 9-11

Wastebeds 12-15

LCP Bridge
Street

LCP Bridge
Street - OU2

Wastebeds 1-8

Willis Avenue

Semet Residue Ponds

Wastebed B/
Harbor Brook

Onondaga
Lake

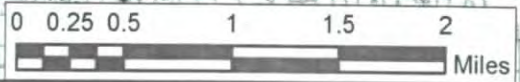
Salina Landfill

Lower Ley Creek

Ley Creek PCB Dredgings

General Motors - Inland
Fisher Guide/ Ley Creek
Deferred Media

Niagara Mohawk -
Hiawatha Boulevard





APPENDIX II
RESPONSIVENESS SUMMARY

**Determination to Not Take Superfund Action
LCP Bridge Street Operable Unit 2
and Wastebeds 9 to 15
Onondaga Lake Areas of Concern
Town of Geddes, Onondaga County, New York
Responsiveness Summary**

1. Comment from Joseph Heath, Esq. on behalf of the Onondaga Nation:

The limitation of the boundaries of the Onondaga Lake National Priorities List (NPL) Site to those areas where the contamination is “affecting the Lake” is impermissible given the Comprehensive Environmental Response, Compensation, and Liability Act’s (CERCLA’s) expressed definition of NPL sites based on the location of the release of hazardous substances. The second paragraph of the notice is EPA’s effort to clarify that the action that is the subject of the notice does not affect the extent of the “Onondaga Lake Superfund Site” as defined by CERCLA. This language, however, does not go far enough and is potentially confusing, in light of the inconsistency between the definition of the extent of the Onondaga Lake NPL Site and the definition of “facility” in CERCLA § 101(9)(B), 42 U.S.C. § 9601(9)(B). EPA should clarify this statement and specifically state that in taking this action EPA does not intend to affect the extent of the geographic area which may be addressed in any future effort by any Trustee to recover Natural Resource Damages (NRD) under CERCLA § 107(a)(4)(C), 42 U.S.C. § 9607(a) (4)(C).

Response to Comment:

While the boundary of an NPL site is based upon the location of the release of hazardous substances when the site is listed on the NPL, when the Onondaga Lake Superfund Site was listed on the NPL, the location of the release was considered to be Onondaga Lake. It is for that reason contamination from the tributaries and upland areas must be tied to contamination that has occurred or is occurring in Onondaga Lake in order for an area of concern to be considered part of the Onondaga Lake Superfund Site and for a remedy to be selected for that area under CERCLA .

The geographic boundaries of the NRD claim to be filed by the NRD Trustees Council are to be determined by the NRD Trustee Council, and are not limited by the geographic boundaries of the Onondaga Lake Superfund Site. Pursuant to Section 111 (b) of CERCLA, 42 U.S.C. § 42 9611(b), NRD claims may be asserted against the Hazardous Substance Trust Fund from a release or threat

of release of a hazardous substance from a vessel or facility for injury to, or destruction or loss of, natural resources, including the cost of damage assessment, provided that all administrative and judicial remedies to recover the amounts of such claims from persons who may be liable for NRD damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a) (4)(C) have been exhausted. A facility in Section 101(9), 42 U.S.C. § 9601(9) is defined as ... "(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located..." As such, the NRD Trustee Council may bring an action for any area in which they determine injury to, or destruction or, loss of natural resources has occurred due to the release of hazardous substances by the Potentially Responsible Parties (PRPs). In response to the comment, the Wastebeds 9-15/LCP Bridge Street Operable Unit (OU) 2 Decision Document states that although EPA is not taking Superfund action at Wastebeds 9-15 or LCP Bridge Street OU2, both the State and the NRD Trustee Council are not precluded from taking actions at these areas of concern.

2. Comments by Atlantic States Legal Foundation, Inc.:

- a. The Wastebeds 9-15 area of concern was included in the original Hazard Rank Scoring package when the Onondaga Lake NPL Site was listed on the NPL and remains part of the Onondaga Lake Superfund Site until addressed in accordance to the procedures outlined in 40 C.F.R. § 300.425(e).
- b. The State of New York recently entered into an administrative consent order (ACO) related to the closure of Wastebeds 9-15. The State's process for negotiating and issuing the Consent Order excluded the public from involvement in the decisions related to that closure, including the determination of what suitable environmental benefit projects should be included in the Order. The consequence of EPA's determination not to take Superfund Action at this area of concern has already had a profound impact on the public's ability to participate in the decisions related to this area of concern.
- c. The factual record with respect to LCP Bridge Street OU2 does not support the conclusion that the area of concern is not affecting Onondaga Lake. The statement in the Notice that "the concentration of xylene, however, rapidly decreases downstream of the facility and does not extend to the mouth of the West Flume" does not demonstrate that the area of concern does not pose a threat of contamination to Onondaga Lake.

Response to Comments:

- a. When the Onondaga Lake Superfund Site was listed on the NPL, its hazard ranking was based upon the potential source contamination of four areas of concern: Semet Ponds; LCP Bridge Street; Willis Avenue; and Wastebeds 9-15. Subsequent remedial investigations and feasibility studies did not identify existing pathways of contamination to Onondaga Lake from LCP Bridge Street OU2 or Wastebeds 9-15 areas of concern, and through this action, EPA has determined not to take Superfund action at these areas. Because they were considered part of the original release, the two areas of concern remain part of the listing for the Onondaga Lake Superfund Site until such time as the Onondaga Lake NPL Site is deleted pursuant to the procedures of 40 C.F.R. § 300.425(e).
- b. The State of New York's Wastebeds 9-15 ACO did not require the same degree of public involvement as is required under the CERCLA remediation process prior to issuance of a final decision document or issuance of a judicial consent decree. ACOs are signed by the parties to the Order and are negotiated within the administrative arena. However, as required by the Wastebeds 9-15 ACO, a copy of the Order was filed with the real property office and was made available to the public for thirty days after the effective date of the Order. In addition, the public will be consulted in the implementation of the work called for in the Wastebeds 9-15 ACO. For example, under Appendix E, Paragraph IV.F of the ACO, there will be public participation prior to approval of the Final Site Closure Plan. In addition, Appendix B of the ACO requires the parties to enter into a Memorandum of Agreement (MOA) to further delineate the Environmental Benefits Projects (EBPs) and to include a public participation schedule. The MOA, executed on February 11, 2011 provides, among other things, a plan for public outreach to solicit comments on the EBPs.
- c. As is discussed in the Wastebeds 9-15/LCP Bridge Street OU2 Decision Document, the Site characterization data do not indicate an existing pathway of contamination from the LCP Bridge Street OU2 area of concern to Onondaga Lake. Data collected from the LCP Bridge Street area of concern, the West Flume, Geddes Brook, Ninemile Creek and Onondaga Lake indicate that the LCP Bridge Street OU2 area of concern's principal contaminant, xylene, while present in Onondaga Lake, is not currently migrating beyond the LCP Bridge Street OU2 area of concern.

3. Comment from Mary Ann Coogan, Town Supervisor of the Town of Camillus:

Sediment removed from Onondaga Lake as part of the Lake Bottom remedy will be dewatered and permanently stored in an engineered Sediment Consolidation Area (SCA) located on Wastebed 13. We have been advised by the New York State Department of Environmental Conservation (NYSDEC) that all of these sediments are hazardous waste, by definition. What will be the hazardous waste classification status of the SCA on Wastebed 13 while it is operational and after it is completed and capped?

The conclusion to the Determination document states that “no federal Superfund response actions are required ... at Wastebeds 9-15.” It goes on to say that the areas of concern are being or will be addressed under state authorities. The Town has considerable technical comments and questions relative to the actions (Consent Order) by the NYSDEC but those comments and questions will be submitted to and addressed by the NYSDEC.

Response to Comment:

The sediments in Onondaga Lake have not been formerly assigned a hazardous waste classification, although it is believed that some hazardous wastes are present in the lake. The Wastebeds 9-15 area of concern is currently listed as a Class 3 site on New York State's registry of inactive hazardous waste sites. A Class 3 site does not pose a significant threat to human health or the environment and remedial action can be deferred. Upon closure of the SCA, the portion of Wastebed 13 that the SCA is constructed on could be reclassified as a Class 4 site, meaning that it is properly closed with continued management, maintenance and monitoring in place.

EPA recognizes that the Town of Camillus has directed its technical comments and questions to NYSDEC.

4. Comment from Allen Silverstone:

Will soil at Wastebeds 9-15 meet the preliminary remediation goals (PRGs) for PCBs in an EPA guidance document which is currently being developed to address potential human health and ecological effects of dioxin and dioxin-like substances? Have any Toxicity Equivalent (TEQ) calculations for dioxin have been developed?

Response to Comment:

In May 2009, the EPA Administrator Lisa P. Jackson directed the Agency to accelerate work underway to reassess the human health risks from exposures to dioxin including completing the development of draft interim PRGs for dioxin in soil. Following through on that commitment, EPA has developed the draft interim PRGs and made them available online on December 31, 2009. EPA initiated a public comment period on the draft interim PRGs on January 7, 2010. EPA is currently revisiting the toxicity of dioxins and dioxin-like substances and is developing responses to comments received on the draft interim guidance. It is not known when this guidance will be released as final. EPA may also be issuing additional guidance on implementation following the release of the final assessment. The guidance and supporting documents can be found at <http://epa.gov/superfund/health/contaminants/dioxin/dioxinsoil.html>.

Since the closure plan for the Wastebeds 9-15 area of concern is being implemented under State authorities, NYSDEC will determine if and how the guidance may be applied. No TEQ calculations have been performed for PCBs that may be present at the area of concern or in the sediment from the lake that will be contained in the SCA.



APPENDIX II-a
RESPONSIVENESS SUMMARY

Correspondence Received During the Comment Period



JOSEPH J. HEATH
ATTORNEY AT LAW
716 EAST WASHINGTON STREET SUITE 104
SYRACUSE, NEW YORK 13210-1502
315-475-2559
Facsimile
315-475-2465

FACSIMILE TRANSMITTAL

TO: ROBERT NUNES	FAX #: (212) 637-3966
FROM: JOSEPH J. HEATH, ESQ.	FAX #: (315) 475-2465
DATE: December 14, 2010	

**THIS TRANSMISSION CONSISTS OF 3 PAGES, INCLUDING THIS PAGE.
COMMENTS:**

CONFIDENTIALITY NOTICE:

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JOSEPH J. HEATH
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315-475-2559
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315-475-2465

December 14, 2010

VIA FACSIMILE and FIRST CLASS MAIL

Mr. Robert Nunes
New York Remediation Branch
Emergency and Remedial Response Division
US EPA Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

**RE: NOTICE OF EPA DETERMINATION NOT TO TAKE SUPERFUND
ACTION AT WASTE BEDS 9-15 AND LCP BRIDGE STREET
OPERABLE UNIT 2**

Dear Bob:

I am writing on behalf of the Onondaga Nation, for whom I am General Counsel, to offer the following comments on the October 2010 Notice of EPA Determination to Not Take Superfund Action at Wastebeds 9-15 and LCP Bridge Street Operable Unit 2.

As you know, the Nation continues to be concerned that the limitation of the boundaries of the Onondaga Lake NPL site to those areas where the contamination is "affecting the Lake" is impermissible given CERCLA's express definition of NPL sites based on the location of the release of hazardous substances. As a result, a key portion of this notice is EPA's effort in the second paragraph of this notice to clarify that the action that is the subject of this notice does not affect the extent of the "Onondaga Lake Superfund Site" as defined by CERCLA.

This language, however, does not go far enough and is potentially confusing in light of the inconsistency between the definition of the extent of the Onondaga Lake NPL site and the definition of "facility" in CERCLA §101(9)(B), 42 U.S.C.9601(9)(B)¹. EPA should

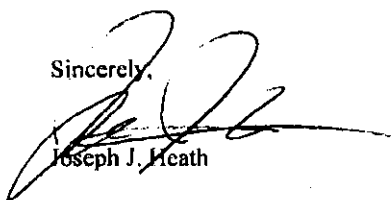
¹(9) The term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond,

MR. ROBERT NUNES
December 14, 2010
Re: NOTICE OF DETERMINATION NOT TO TAKE ACTION
Page 2

clarify this statement and should specifically state that in taking this action, the EPA does not intend to affect the extent of the geographic area which may be addressed in any future effort by any Trustee to recover Natural Resource Damages under CERCLA §107(a)(C), 42 U.S.C.9607(a)(C).

Overall, this document represents a substantial improvement in the EPA's involvement of the public in decisions concerning the Onondaga Lake NPL site. Prior to this notice, this and similar decisions were made without any possibility of public involvement despite the substantial impact they have on the decisions made around the remediation of Onondaga Lake. EPA should continue to critically evaluate the decisions that are made about the status of sites around Onondaga Lake to ensure that the applicable public notice requirements are met.

Sincerely,



Joseph J. Heath

cc: Onondaga Nation Council of Chiefs

lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) *any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located*; but does not include any consumer product in consumer use or any vessel. (Emphasis added).



**ATLANTIC STATES
LEGAL FOUNDATION, INC.**

December 15, 2010

VIA ELECTRONIC MAIL TO nunes.robert@epa.gov

Mr. Robert Nunes
US Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

**RE: NOTICE OF U.S. ENVIRONMENTAL PROTECTION AGENCY'S
DETERMINATION NOT TO TAKE SUPERFUND ACTION AT
WASTEBEDS 9-15 AND LCP BRIDGE STREET OPERABLE UNIT
2**

Dear Bob:

On the surface, it might appear that the above-captioned notice is more confusing than instructive, in that it addresses a relatively minor procedural matter in the context of the complex administrative and legal proceedings involving Onondaga Lake. On closer scrutiny, however, it is clear that important issues related to the public's involvement in decisions related to Onondaga Lake are implicated.

I note that the State of New York recently entered into an administrative consent order related to the closure of Wastebeds 9-15. As a general matter, the closure of the wastebeds using the Part 360 regulations appears reasonable under the circumstances. However, the State's process for negotiating and issuing the consent order excluded the public entirely from involvement in the decisions related to that closure, including the determination of what suitable environmental benefit projects should be included in the order. Thus, the consequence of EPA's determination not to take Superfund Action at this site has already had a profound impact on the public's ability to participate in the decisions related to this site, even prior to its becoming final.

As a result, I would caution EPA to ensure, as closure of this site moves forward, that the appropriate process be followed to delete or recategorize this site under the Superfund regulations. Because the site was ranked in the HRS scoring package for the

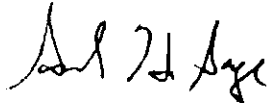
Onondaga Lake NPL site, it remains part of the Onondaga Lake Superfund site until it is addressed in accordance with the procedures outlined in at 40 CFR 300.425(e).

The situation with respect to LCP Bridge Street OU-2 is somewhat different, and the factual record does not, based on our review, support the conclusion that LCP Bridge Street OU-2 is not affecting Onondaga Lake. The statement in the Notice that "the concentration of xylene, however, rapidly decreases downstream of the facility and does not extend to the mouth of the West Flume" does not demonstrate that the site does not pose a threat of contamination to Onondaga Lake.

The West Flume, as your notice correctly states, flows into Geddes Brook which flows into Ninemile Creek which discharges to Onondaga Lake. Xylene is highly mobile and despite the distribution of the contamination which may have been observed to date, has a high probability of entering Onondaga Lake, independently or during any remedial activities affecting the site. In the words of your notice, there is "an identified pathway for site-related contamination to migrate from...LCP OU2 to Onondaga Lake." Therefore I would urge EPA to more closely review the decision not to take Superfund Action with respect to this site.

The consequence of the decisions reflected in this Notice is to exclude the public from involvement and deprive them of information related to the remediation of these two parts of the Onondaga Lake NPL site. Onondaga Lake's remediation is sufficiently complex without interfering with the public's access to information unnecessarily or worse, impermissibly.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel H. Sage". The signature is written in a cursive, somewhat stylized font.

Samuel H. Sage
President

Office of the Supervisor

TOWN OF CAMILLUS
4600 WEST GENESEE STREET
SYRACUSE, NEW YORK 13219

MARY ANN COOGAN
SUPERVISOR

December 15, 2010

PHONE: (315) 488-1335
FAX: (315) 488-8768
macoogan@townofcamillus.com

Mr. Robert Nunes
Remedial Project Manager
Central New York Remediation Section
US Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

Dear Mr. Nunes:

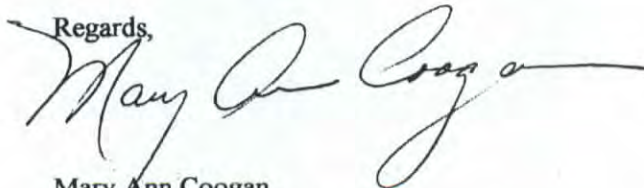
The Town of Camillus is writing to comment on EPA's Determination to Not Take Superfund Action at LCP Bridge Street Operable Unit 2 and Wastebeds 9 to 15 Onondaga Lake Areas of Concern. Comments are limited to Wastebeds 9 to 15.

The last paragraph of the description of the current situation states in part "sediments removed from Onondaga Lake as part of the Lake bottom remedy will be dewatered and permanently stored in an engineered Sediment Consolidation Area (SCA) located on Wastebed 13". We have been advised by NYSDEC that all these sediments are hazardous waste, by definition. What will be the hazardous waste classification status of the SCA on Wastebed 13 while it is operational, and after it is completed and capped?

The conclusion to the Determination document states that "no federal Superfund response actions are required... at Wastebeds 9 to 15". It goes on to say that the areas of concern are being or will be addressed under state authorities. The Town has considerable technical comments and questions relative to the actions (Consent Order) by the NYSDEC but those comments and questions will be submitted to and addressed by the NYSDEC.

The general conclusion is "that there is not sufficient condition on Wastebeds 9 to 15 to warrant a federal Superfund response action". The Town takes no exception to that conclusion but re-emphasizes that an answer to the questions in the second paragraph above are requested.

Regards,



Mary Ann Coogan
Camillus Town Supervisor

CC:
Camillus Town Board




Allen Silverstone
<silversa@upstate.edu>

10/31/2010 06:01 PM

To: Cara Burton <CBurton@onlib.org>, Robert Nunes/R2/USEPA/US@EPA, Thomas Annal <teannal@gw.dec.state.ny.us>, beei@health.state.ny.us
cc: Stephanie Harrington <smharrin@gw.dec.state.ny.us>, Mary Cook <Carymook@aol.com>, Hugh Kimball <Contlr14@aol.com>, Kathy MacRae

bcc

Subject: Re: Problems down the road???

History:  This message has been replied to and forwarded.

1 attachment



Interim Dioxin PRG guidance for Soil - Interagency Review Draftx.doc

Colleagues,

I read with some distress that EPA is not taking Superfund Action at the WasteBeds and LCP bridge.

I attach for you the draft document that will govern in the near future the acceptable levels for safety and health for the PCBs in the waste especially that being brought up from the Lake to the Wastebeds.

Since neither Honeywell nor NY DEC has submitted testimony opposing this much more stringent standard, I presume you are going to be okay with meeting that level.

I have not seen any TEQ (Dioxin equivalent calculations on the PCB--Aroclor mixture) calculations, but I think it would be appropriate... maybe Tom Anal?

I will argue, that this decision is misguided, since there will then have to be some sort of post remediation.

See you on Monday.

One more thing about that year end report...

The version I have says nothing about the issues that the public raised. This is not appropriate. The report doesn't need to take a position on concerns raised, but it should summarize them (and, I believe it would be fair to say the CPWGs have tried to examine most of them). juli

