

Allen memorandum to Horvath, October, 21, 1992.

*FFY 1993 Strategies and Plans for Pursuit of the U.S. FWS NRDA Program in Wisconsin:
How to Coordinate with a Reluctant WDNR*

This memorandum suggests a view of the current factors which most need to be addressed by the U.S. Fish and Wildlife Service (FWS) in pursuing the Natural Resource Damage Assessment (NRDA) program in Wisconsin.

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I. CURRENT FACTORS

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B. WDNR Reluctance. After 2 years of informal contact between the Green Bay Field Office (GBFO) and the WDNR, the FWS, Region 3 met with the WDNR on May 14, 1992 to discuss the NRDA process as applicable to Wisconsin (see attachment 1: meeting notes of July 13, 1992). No specific agreements were reached, nor specific plans for official NRDA cooperation finalized. However, the FWS agreed to postpone formal NRDA activity on the Fox River (for 6 months) so that the WDNR could begin building a "coalition" for voluntary sediment remediation and to allow staff and mid-management to lay the groundwork for general NRDA program coordination between the 2 agencies. Since that time, the GBFO has coordinated extensively with WDNR NRDA contacts (Pete Jopke and Tom Eggert) but neither has been granted authority to proceed with any official NRDA activity (see attachment 2: memo of June 17, 1992). In addition, official "coalition" discussions have been careful to avoid even mentioning NRDA mandates under CERCLA (see attachment 3: WDNR letter of September 18, 1992). Most recently, the Nemadji River spill in Superior, Wisconsin resulted in recommendations from several WDNR divisions, the State of Minnesota, and the FWS that the WDNR take the lead on an NRDA (see attachment 4: meeting notes of August 5, 1992). However, WDNR approval for action was denied. In addition, WDNR has apparently decided (internally) not to participate or cooperate in the Lake Geneva NRDA. Finally, the GBFO is not aware of any progress made towards actual voluntary sediment remediation on the Fox River, nor of any WDNR-sanctioned efforts by WDNR management to coordinate official NRDA activities at any site with other natural resource trustees, including the FWS.

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III. SPECIFIC RECOMMENDATIONS

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C. Fox River and Green Bay contaminated sediment sites: The FWS is engaged in long-term studies of potential injuries to natural resources in the Fox River Basin and Green Bay due to contamination of Fox River sediments, primarily from release of polychlorinated biphenyls (PCB) by paper industry facilities. The WDNR has begun an effort to build a coalition of paper industry facilities to voluntarily remediate contaminated sediments in the Fox River. However, the WDNR has shown extreme reluctance to pursue legally binding efforts, such as NRDA, in the event that sufficient voluntary clean-up can not be secured. This appears to be an unwise strategy, as paper industry facilities are unlikely to fund substantial sediment remediation projects without a realistic threat of enforcement and/or liability (given both the historical lack of such voluntarily efforts in the basin, and the inability of most companies to justify to their

owners large voluntary expenditures with no obvious returns). Finally, there is the danger that the WDNR is positioning to strike deals, such as covenants not to sue, with PRPs on the Fox River, while other trustees are relatively inactive and the public relatively unaware. Therefore, the FWS should begin in FFY 1993 official NRDA activities on the Fox River and Green Bay, both because it is mandated by CERCLA, and because it strategically advances FWS objectives in the face of real and persistent WDNR resistance.

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CONCLUSIONS

The FWS, the WDNR, and other natural resource trustees are required by CERCLA to pursue claims for damages when injuries to natural resources have occurred due to release of hazardous substances. The best way for the FWS to assure activity and cooperation from other trustees is to begin formal, official action, which, after all, is required by CERCLA, regardless. Given the WDNR's reluctance to engage in NRDA activities, it will continue to serve the WDNR's purposes to stall for time through continued unofficial or informal discussion and negotiation with the FWS and other interested trustees. Therefore, it is reasonable to assume two facts: 1) continued reluctance and lack of action by the WDNR is likely regardless of requests by FWS for official cooperation; 2) the WDNR is much more likely to respond to the NRDA process, as required by CERCLA, if the FWS begins official NRDA actions in a reasonable and predictable fashion.

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