Comments
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Date: June 17, 2002

Number of Pages Transmitted
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From: Katherine L. Felton
Our File: 44870.2
Re: Hylebos NRDA Settlement Proposal Comments

To: Gail Siani
Company: NOAA Damage Assessment and Restoration Center NW
Facsimile: 206-527-1542
Phone: 206-526-4565
City/Country: Seattle

* * * * * * *

MESSAGE:

Gail,

Please see attached.

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June 17, 2002

VIA FACSIMILE AND US MAIL

Hylebos NRDA Settlement Proposal Comments
Attn: Gail Siani
NOAA Damage Assessment and Restoration Center NW
7600 Sand Point Way NE
Seattle, WA 98115-0070

Re: Buffelen Woodworking Company

Dear Ms. Siani:

Buffelen Woodworking Company ("Buffelen") writes to submit the following comments on the Hylebos Waterway Natural Resource Damage Settlement Proposal Report ("Report") prepared and recently published for comment by the National Oceanic and Atmospheric Administration ("NOAA") on behalf of the Natural Resource Trustees for the Commencement Bay, Washington, Nearshore/Tideflats Superfund Site.[1] Given the complex nature of the damages assessment/settlement proposal, Buffelen is still studying it in an earnest effort to understand it and its implications. Accordingly, the following are only preliminary comments submitted on behalf of Buffelen, and it may have further comments on the assessment/settlement proposal as it completes its analysis.

1. Use of Habitat Equivalency Analysis.

Buffelen has some concerns about NOAA's intent to use habitat equivalency analysis (HEA) for the Hylebos. Buffelen understands that the CERCLA regulations do not provide for HEA, and has some questions about the use of HEA for a CERCLA site. Buffelen intends to study this issue further and may have specific comments at a later time.

[1] In addition to NOAA, the Trustees include the Puyallup Tribe of Indians, the Muckelshoot Tribe, the Washington Department of Ecology, the Washington Department of Natural Resources, the Washington Department of Fish and Wildlife, and the U.S. Department of the Interior represented by the U.S. Fish and Wildlife Service.

2. Damages Assessment.

Buffelen has a number of concerns about NOAA's damages assessment. It appears that NOAA has not conducted population loss studies for the Hylebos. It also appears that the damages calculations are based on dose/threshold predictions which are then aggregated across contaminants. Buffelen has serious concerns about these methods, and the results achieved in NOAA's analysis.

Buffelen is also concerned about the analysis' focus on estimates of individual effects and stressors, and the projection of those individual effects to populations through a "services reduction" model. In particular, Buffelen is concerned by a number of assumptions that appear to have been built into the models used by NOAA in estimating these effects. Buffelen is continuing to study these issues and expects that it may have further comments to submit as it completes its review.

3. Discounted Service Acre Years.

Buffelen is concerned by a number of aspects of the DSAY calculations and analyses NOAA has performed. Some of the concerns include the translation of individual effects estimates into ecological service reductions, and the accuracy of mapping of areas that have suffered service reductions, including baseline habitat characterizations, and current and historical contaminant concentrations represented in NOAA's analysis. Buffelen is continuing to study these issues and expects that it may have further comments to submit as it completes its review.

4. DSAY allocation to Buffelen.

Buffelen has a number of concerns relating to its DSAY allocation. First, to the extent Buffelen is liable for any natural resource damage in the Waterway, it is liable only for those damages that it caused. Buffelen did not exist until 1955 when employees of Buffelen Manufacturing Company ("BMC") purchased the company in bankruptcy. Buffelen has remained a worker-owned co-op since 1955. To the extent that NOAA is attempting to collect damages for BMC's NRDA liability, Buffelen is not responsible for BMC's orphan share.[2]

[2] See Appendix 2 Site Activity Report, at 5 (indicating that Buffelen started business in 1913, perhaps, suggesting that Buffelen is responsible for the orphan share of liability attributable to BMC).

A. The Buffelen Site Did Not Contribute to Copper Contamination Within the Waterway

NOAA allocated 2.858 DSAYs to Buffelen for copper contamination identified at the CU6 footprint. The Report suggests that NOAA's allocation was based upon two findings: (1) that Buffelen deposited machine shop metal shavings directly into the Waterway, and, therefore, engaged in an activity which may have contributed to the copper contamination within the Waterway; and (2) that sediment samples taken along the Veneer Finishing Plant on the Buffelen site tested for the presence of copper, thereby, establishing a pathway between the Buffelen site and the Waterway.[3] Buffelen is troubled by these conclusions and the resulting allocation because the evidence relied upon by NOAA in making its allocation decision does not support the findings that apparently drove the allocation decision.

NOAA relied on the April 6, 1988 and July 28, 1989 Hart Crowser Reports to establish that the metal shavings could have been a source of copper contamination in the Waterway and that there was evidence of copper contamination in sediment samples along the banks of the Buffelen site. However, as the 1988 report indicates, Hart Crowser tested the metal shavings, and, while it found trace quantities of other metals, it did not report the presence of copper. See Document 109, 1988 Report, at Appendix D (Waste Pile Designation Certificates Analysis). Even if it is assumed that Hart Crowser simply did not test for copper (as opposed to finding no trace in the shavings sample), the test results do not support a conclusion that copper was present in quantities above maximum regulatory limits. Examining the test results for the other metals reveals that all were well within their regulatory maximums. For example, Arsenic tested at <.2 ppm when the regulatory maximum was 5 ppm, Chromium tested at <.1 ppm when the regulatory maximum was 5 ppm, Lead tested at .7 ppm with a regulatory maximum of 5 ppm, and Mercury tested at <.005 ppm with a regulatory maximum of .2 ppm. See Id. Because Copper is typically found in proportionate quantities with these other metals, even if Copper were present in the shavings, the Hart Crowser report does not provide a basis for suggesting that it would have been present in a quantity dramatically out of proportion to these other metals. As a final note, Buffelen would like to point out that the Hart Crowser report concluded that the metal shavings were not even "dangerous" or "extremely hazardous waste" under Washington law. See Id., at 12. Therefore, Buffelen is unclear as to the basis for NOAA' conclusion that the metal shavings were a source of copper contamination within the Waterway.

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[3] See Appendix 2, at 5; Appendix 3, at 6; Appendix 4, at 3.

Buffelen is also concerned with the apparent reliance by NOAA on the July 28, 1989 Hart Crowser report, to establish that a nexus existed between Buffelen's operations and the copper contamination in the Waterway. Although Hart Crowser did report Copper was present in the sediments, it could not determine the cause or source of the contamination and clearly stated as much.

> We do not know of any woodworking practices at the Veneer Factory which would influence total metal concentrations in the underlying soils. Likely, the total metal results reflect concentrations which are natural to the soils sampled, or which have been influenced by tidal flooding by the Hylebos Waterway.

1989 Hart Crowser Report, at 4-22 (Document 82). Based upon a review of NOAA's evidence, Buffelen is unclear how NOAA established that a copper contaminating activity occurred on its site. Buffelen is continuing to analyze the copper contamination allocation and may have supplemental comments on this issue.

B. PAH Contamination Within the Waterway Did Not Come From The Buffelen Site

Buffelen is also concerned that its 12.724 DSAY allocation for PAH contamination within the Waterway is excessive. NOAA's allocation decision appears to turn on the fact that there was an oil leak from a ruptured compressor in 1980 and because Buffelen treated its wood with a hydrocarbon based preservative. With respect to the May 6, 1980 compressor leak, this was an exceptionally small leak (approximated at 1-2 gallons) which was immediately reported to Buffelen management who reported it to the Department of Ecology. While reporting the spill, Mr. Guizzeti (Buffelen's CEO) also instructed that oil absorbent pads be laid down to contain and collect the spill. Because of Buffelen's prompt action, the Department of Ecology wrote a letter to Buffelen thanking it for its "prompt action and cooperation" in controlling the oil spill. See Exhibit A. With respect to the finding that Buffelen is a source of PAH contamination, there is evidence of prior PAH contaminant testing in the Buffelen area that reveals that in general PAH concentrations are below the detection levels. See Exhibit B (Striplin Round 2 Data Report Testing PAH levels in Sediments in the Waterway, May 22, 1999, at Figures 21c, 25b, Tables B-4, B-5. As with the issue of copper

contamination, Buffelen continues to analyze NOAA's PAH allocation and may provide supplemental comments at a later time.

C. PCB Contamination in the Waterway Did Not Come From the Buffelen Site

NOAA allocated 2.881 DSAYs to the Buffelen Site for PCB contamination within the Waterway. This allocation was based upon NOAA finding that Buffelen had a PCB transformer on its site and that Hart Crowser tests detected the presence of PCBs beneath the veneer finishing plant located on the Buffelen site. See Append. 3, at 7; Append. 2, at 6; Append. 4, at 3. While Buffelen acknowledges that there were a few high-energy capacitors containing PCBs on its site, Buffelen does not believe they could have been a source of the Waterway contamination. The reason for this belief is that the capacitors were sealed and located inside a building approximately 200 feet from the Waterway. Further, Buffelen did not have any reported maintenance or leakage problems up until the capacitors were removed from the site between 1989-1993.

In addition, Buffelen is concerned about its PCB allocation because the evidence suggests that PCB contamination in the Waterway actually contaminated the Buffelen site – not the other way around. In the area around the veneer finishing plant, PCBs have been detected in shoreline sediments. However, the samples demonstrate that the concentration gradient moves upward from a peak concentration of 290 ppb at the low point along the shoreline in the Waterway, to a non-detect up the embankment. In addition to this "reverse gradient", PCBs have not been detected in the ground water or runoff water of the Buffelen site. Furthermore, in 1997, Striplin Environmental Associates conducted PCB testing within the Waterway to determine the likely source of PCBs within the Waterway. Their conclusion was that there was a trail existing from upstream testing stations (HY-17 and 3112S) to the Buffelen site testing station (3104S). See Exhibit C (Figures 5-12b and 5-13). These maps demonstrate a PCB contamination trail that originates upstream from the Buffelen site and seems to stop at station 3112S. Given that the net flow at the Hylebos is toward the mouth of the Waterway, contamination patterns regularly appear down-gradient of from the pollutant source. Based upon the results of this prior testing, it is highly unlikely that the Buffelen site is the source of the PCB contamination within the Waterway. As with the other issues identified in this letter, Buffelen may provide supplemental comments at a later time.

5. Valuation of Settlement Proposal & Evaluation of Proposed Projects.

In addition to the issues discussed above, Buffelen has concerns relating to the overall ability to analyze the dollar value of the settlement proposal. NOAA proposed that liability will be satisfied by parties through their development of a restoration project generating an equivalent number of DSAYs to which it has been allocated or by purchasing "credits" from another parties restoration project. Report, at 19. Buffelen is concerned that the information currently provided by NOAA is insufficient to evaluate the settlement proposal from either a project-planning or a cash-out perspective.

Driving this problem is the fact that Buffelen cannot translate DSAYs into dollars. Unless Buffelen knows the dollar value of a DSAY, it cannot determine the total settlement value of NOAA proposal. Further complicating this analysis is the fact that NOAA propose to evaluate the DSAY yield of *potential restoration projects based upon performance criteria and monitoring* efforts. According to NOAA, "the details of the performance criteria and monitoring requirements for each project will depend upon the nature, size and parameters of the project and consequently will need to be developed as part of the project design process." Report, at 20. Under these circumstances, Buffelen cannot determine the dollar value of NOAA settlement offer.

In conclusion, Buffelen would like to convey its appreciation to NOAA and the other Trustees for publishing its damage assessment/ proposed settlement for public comment. Buffelen looks forward to working the Trustees to resolve the natural resource damages issues in the Hylebos Waterway.

Sincerely,

RIDDELL WILLIAMS P.S.

By
Katherine L. Felton

KLF/dph
(w/ enclosures - via U.S. Mail only)

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