

**Senior Management Board
Bourne Best Western
March 26, 2008
6:30 – 6:45 p.m.
Meeting Minutes**

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Handouts Distributed at Meeting:

1. Presentation handout: Overview of Textron NRD Restoration
2. Map: Osborne Pond

Agenda Item #1. Introductions, Late-Breaking News

Ms. Valiela convened the meeting at 6:05 p.m. and the Senior Management Board (SMB) members introduced themselves.

Mr. Gonser announced that a group from an Air Force research lab dealing with robotics technology will be using their equipment to do unexploded ordnance (UXO) removal work at the Massachusetts Military Reservation (MMR), primarily at the Southeast Ranges. He showed several photographs of the robotics equipment and noted that the Impact Area Groundwater Study Program (IAGWSP) will be issuing a neighborhood notice to the residents of Forestdale in Sandwich to inform them of these activities.

Ms. Grundman inquired about the timeframe for the robotics effort. Mr. Gonser replied that the group arrived yesterday and will be at the base for a couple of months. He also noted that the initial activity will be brush-cutting, and added that at some point the IAGWSP will probably make arrangements to have visitors (perhaps schoolchildren) come out to see the robotics equipment.

Agenda Item #2. Approval of 1/30/08 SMB Minutes, Agenda Review, More Late-Breaking News

Ms. Valiela asked if there were any changes or additions to the January 30, 2008 SMB meeting minutes. No changes were offered and the minutes were approved as written. Ms. Valiela also reviewed the SMB agenda, and then noted that a joint meeting of the Plume Cleanup Team (PCT), Impact Area Review Team (IART), and SMB would follow this meeting.

Ms. Garcia-Serrano announced that the Massachusetts Department of Environmental Protection (MassDEP) is offering ten \$10,000 Technical Assistance Grants (TAGs) to any public group that's interested. She also noted that application and selection criteria information are available at www.massdep.gov. Ms. Valiela asked about the application deadline. Ms. Garcia-Serrano replied that she believes it is the middle of April, but would work with the Environmental & Readiness Center (E&RC) to get that information out to SMB members.

Mr. Gonser also reported that the IAGWSP is sponsoring a West Point cadet to come to MMR during the first two weeks of June for environmental-type training that will include visits to the sewage treatment plant, the water plant, and some of the town municipal water supply systems. He then said that he would welcome input from SMB members about expanding those visits to include others – perhaps high school students, college students in the environmental science field, or even employees of the regulatory agencies or professionals in the community.

Agenda Item #3. Overview of Natural Resources Damage (NRD) Process

Terms of Consent Decree for Textron NRD Settlement

Ms. Young of the Executive Office of Energy & Environmental Affairs (EOEEA) in Boston noted that she is representing the Secretary of EOEEA, who is designated by the Governor as trustee of all of

Massachusetts' natural resources. She then said that during her presentation tonight she would be discussing: highlights of the Textron/MMR Natural Resource Damages (NRD) settlement, background information about the purpose and goals of the NRD program, the specific terms of the consent decree for the Textron NRD settlement at MMR that was filed in U.S. District Court and next steps for Textron NRD restoration.

Ms. Young then explained that the NRD settlement is only with Textron, and does not involve any other entities that have operated at MMR. She also noted that: the settlement was for a total of \$1.3 million in natural resource damages; a consent decree was entered in U.S. District Court in February 2008; the state received its payment of \$1 million within the past few weeks; the settlement goes toward both state and federal trustees; and, by federal law, the money is to be used for restoration only.

Ms. Young also reminded the group that in addition to the cleanup process, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act, and state law 21E, there are provisions for liability of responsible parties for injuries to, destruction of, or loss of natural resources resulting from the discharge of oil or the release of hazardous substances. She then noted that the law defines natural resources as land, fish, wildlife, biota, air, water, groundwater, and drinking water supplies – any resource that belongs to, is managed by, held in trust by, or controlled by the federal government, state government, or an Indian tribe. She further noted that the objective of the NRD program is to restore the resources that have been injured, and that an NRD claim is brought by the trustees for the costs of the restoration, the value of lost services, and the trustees' assessment costs.

Ms. Young stated that natural resource damages have been pursued at all sorts of sites in Massachusetts, including for the Bouchard oil spill in Buzzards Bay several years ago. She also said that the purpose of the NRD process is to determine injuries to the resources; the goal is to restore the resources, and the trustees' jurisdiction is to represent the public as far as determining what the injuries and damages are and what the restoration should be. Ms. Young reported that in Massachusetts there have been ten NRD settlements so far, totaling \$46 million, including the Housatonic River case (\$19 million), the New Bedford Harbor case (\$20 million), and the Charles George landfill (\$1.2 million). She said that some of the cases have already undergone a number of rounds of restoration implementation, and so the NRD program has "quite a bit of experience in scoping out how to identify restoration projects."

Ms. Young stated that the NRD settlement was based on operations by Textron at MMR's J Ranges. She also noted that the consent decree relieves Textron of all of its liability for operations at MMR in regard to natural resource damages. She further noted that the natural resource trustees are the Department of Defense (DoD), the Department of Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and EOEEA, and the consent decree provides that NRD payments have been made by Textron to the trustees.

Ms. Young then began reviewing the terms of the consent decree by noting the following: the consent decree breaks down the dollar figure according to which trustee is receiving the money; there are limitations on how the money is to be spent; DOI received and will be managing \$175,000, based on NRD claims by DoD; the DOI money is to be used for restoration only, and in accordance with a Memorandum of Agreement (MOA) signed by all of the MMR trustees; before the trustee expends the funds, it must publish a draft restoration plan that outlines the planned expenditures (to be put out for public comment); and the trustee must provide notice of publication to the other trustees at least 30 days prior to expenditure. Ms. Young also noted that the state has no input on how the \$175,000 is to be spent; instead, that decision will be made by the federal trustees – DOI and DoD. She then asked if anyone from the Air Force would like to comment.

Mr. Sims, with the Air Force Center for Engineering and the Environment (AFCEE) office in Atlanta, said that he is the trustee representative for the Air Force, whose trustee is Kevin Billings, Deputy Assistant Secretary of the Air Force for Environment, Energy, Safety, and Occupational Health. Mr. Sims reported that Mr. Billings has been briefed on the Textron settlement, has discussed it with his attorney, and plans to discuss it with the other federal trustees and Secretary Bowles in the very near future, and look for a way forward.

Ms. Young then continued reviewing the terms of the consent decree by noting the following: EOEEA received and will be managing \$1 million, \$40,000 of which went back to EOEEA for reimbursement of assessment costs; the money, which is to be managed only by the state, is based on NRD claims by the state for injury to groundwater from Textron's operations, primarily at the J Ranges; the EOEEA money is split up into two distinct amounts (\$460,000 and \$500,000), each of which has certain restrictions and limitations associated with it; both amounts are to be used for restoration of injured resources, in accordance with CERCLA, state law 21E, and the MMR trustee MOA; before expending the \$500,00, the trustee must public a draft restoration plan and provide notice to the federal trustees at least 30 days prior to expenditure.

Outline Next Steps for Developing a Restoration Plan

Ms. Young stated that now that the trustees have received their NRD payments, the next step is to begin restoration planning. She noted that, as Mr. Sims indicated, the federal trustees are in the midst of discussing their plan. She also said that the state has a lot of experiencing in developing restoration plans, and the first step in the process is identifying restoration project alternatives designed to restore the injured or loss resource – in this case, the groundwater that was injured due to activities at the J Ranges. Another very important step, to be taken in parallel with the identification of projection alternatives, is the development of criteria to be used to evaluate each project and determine which ones are eligible for funding.

Ms. Young explained that based on the federal regulations for NRD, there are about ten basic criteria, which include that the project must be technically feasible, must be cost-effective, must not cause any additional injury, and must be consistent with state law. She also noted that beyond the basic criteria, for each restoration project that the state has undertaken, site-specific criteria have also been developed. Ms. Young says that she sees it as her task to develop the site-specific criteria and explain them at a future public meeting.

Ms. Young also said that while federal law requires trustees to put out a draft restoration plan for public comment, her position has always been that the public should be involved well before the draft restoration plan is written. Therefore, she would like to open up for discussion the options for public input/public involvement and what the most appropriate forums might be for her to attend to start talking about potential ideas from the public, the municipalities, and the state and federal agencies on the best ways to use the money. She also noted that in some cases, the EOEEA has actually put out Requests for Responses (RARs) to solicit proposals from the public to be reviewed and selected, and then awarded the money by a grant round through the state. In other cases, ideas from the public have been solicited more informally, and then incorporated into a draft plan put out for public comment. Ms. Young then said that she really wants to work with the Upper Cape communities to identify the best process to use to solicit ideas and determine the best projects to address the injuries to resources as part of the NRD settlement.

Questions and Comments from SMB and Public

Ms. Valiela asked if the resource being discussed is just groundwater, and Ms. Young confirmed that the claim was based on injury to groundwater. Ms. Valiela then asked if it's correct then that suggestions for projects would need to focus on groundwater in some way. Ms. Young replied that there would have to be a connection to groundwater, and noted that in some cases land acquisition has been funded since protecting the land in a recharge area actually protects the groundwater. She also mentioned that other states have implemented water conservation programs. Ms. Valiela also asked if it's correct that, beyond the investigation and cleanup that's already under way, the NRD effort has nothing to do with cleaning up a particular plume. Ms. Young confirmed that this is correct. Ms. Garcia-Serrano said that since MassDEP's groundwater standards are based on groundwater that ultimately discharges in surface water, she would think that surface water could be a focus of the restoration projects.

Ms. Zuern asked why the settlement money isn't being used to pay for cleanup expenses already incurred. Ms. Young replied that the cleanup is separate from the NRD, and therefore EOEEA will be looking for a prospective project to fund rather than reimbursing costs that have already been incurred for cleanup. She emphasized that the NRD program is in *addition* to the cleanup program. Ms. Zuern then asked if Textron had been sued for more money, to cover part of the cleanup costs. Ms. Young clarified that the basis of the lawsuit was the dollar value of the lost use of groundwater contaminated by Textron's operations.

Ms. Callahan asked if eligible projects should only come from those communities directly impacted by the J Ranges. Ms. Young replied "I'm not making that statement at this point, but it was the basis of the claim." She also said that her intent at this meeting is just to introduce the entire concept of NRD and then hold subsequent meetings when she'll explain the project criteria in detail.

Mr. Gonser explained to Ms. Zuern that initially the Army made a claim against Textron to recover cleanup costs, and then the state came with its claim pertaining to natural resources. He clarified that there are two pieces – and what's being discussed tonight is the NRD piece. He also said that he believes that the overall claim settlement was valued at \$8.5 million. He further noted that about \$200 million has already been spent on the J Ranges, but the Army could recoup some amount of money for the cleanup that's been done. Mr. Gonser also said that with respect to input from the communities, he would suggest that Ms. Young coordinate with the Upper Cape Water Cooperative, as it involves all of the water suppliers for the base and the four towns surrounding it and could provide "the entire water supply picture for the Upper Cape."

Mr. Taylor asked how the restoration projects would be funded. Ms. Young replied that the funds would come out of the state's remaining \$960,000 and the federal trustees' \$175,000. Mr. Taylor commented that in total there really isn't very much money. Ms. Young agreed. Mr. Taylor then noted that the budget for planting along Route 132 in Hyannis, where construction is ongoing, is more than \$2 million. He also said that he thinks it would be best to seek input from the Upper Cape Water Cooperative, as the public has no background in preparing restoration projects of this type. Ms. Young noted that this is the kind of feedback she's seeking.

Mr. Goddard inquired about a timeline for receiving public input. Ms. Young replied that there is no timeline as yet, but the idea is to develop a restoration plan within the next year or two. Mr. Goddard then asked if there will be newspaper ads and news releases. Ms. Young confirmed that public outreach efforts will include public meetings, news releases, and the like. Mr. Goddard also made a point of noting that the Textron settlement has nothing to do with the MMR Natural Resource Trustee Council (NRTC), which was looking at the base-wide cleanup. He then asked if the NRTC has been making any progress. Ms. Young replied that the NRTC has been in hiatus for a number of years now.

She mentioned that there have been changes in the administration, and in the trustees at the federal level, and said that there hasn't been any progress beyond what was made several years ago.

Mr. Pannorfi asked whether EOEEA would possibly consider retrospective initiatives and reimbursements, rather than those that are prospective in nature. Ms. Young replied that generally projects that have already been implemented and completed would not be funded. However, consideration would probably be given to funding a municipality's initiative or program that requires money for future steps.

Agenda Item #4. Osborne Pond Update

Ms. Iorio introduced herself as the U.S. Army Corps of Engineers (USACE) project manager for the Osborne Pond Formerly Used Defense Site (FUDS), which, she explained, is no longer in possession of the federal government, but is being leased by the U.S. Coast Guard (USCG). She noted that from 1943 to 1953 the Army used the Osborne Pond site (an 18-acre upland area and an 8.5-acre pond) as a bivouac area. She also reported that Osborne Pond came into the FUDS program in 2002, after a former reservist who was interviewed the year before indicated that the site was a possible disposal area for munitions and explosives of concern. The interviewee mentioned having seen a photograph from the late 1960s that showed explosive mortars, hand grenades, and artillery shells when the water level in the pond was very low.

Ms. Iorio said that the first phase of work performed by the USACE at the site occurred in 2005. This involved digital geophysical mapping in transects, which was followed up by an intrusive investigation – that is, digging up a variety of different types of anomalies and identifying them as either a munition or explosive of concern or as cultural debris, which most of the anomalies turned out to be. Ms. Iorio added that this effort led to the discovery of one discarded military munition, which was unfuzed, judged safe to move, and disposed of on base.

Ms. Iorio then spoke about the second phase of the work – investigation of the pond itself, which started with a digital mapping effort in 2003. She showed a map of the pond and pointed out the symbols representing the five outfalls that were identified, the shallow anomalies that are going to be dug up, and the deep anomalies that are going to be dug up (greater than three feet). Ms. Iorio noted that dive teams will be needed in order to investigate the outfalls and anomalies in the pond, and this work, which is expected to be about a two-week effort, is planned for the May/June timeframe.

Ms. Iorio also stated that to date the USACE has been working on the Remedial Investigation/Feasibility Study (RI/FS) Workplan, which is now in the finishing stages of review and finalization. She also mentioned that MassDEP is the lead agency for FUDS sites, and so the USACE has been working very closely with MassDEP, as well as with the U.S. Environmental Protection Agency (EPA) and the USCG. She further noted that a public involvement plan, which was a joint effort by the USACE, the USCG, and MassDEP, with input from EPA, is expected to be issued very soon.

In conclusion, Ms. Iorio made the following summary statements: the work consists of intrusive investigation of 22 anomalies (12 shallow targets, five outfall locations, and five deep targets); an RI/FS Report will be issued next fall; depending on what is identified in the pond, the RI/FS will recommend further action at the site; and the process will be a joint effort among the stakeholders.

Questions and Comments from SMB and Public

Ms. Garcia-Serrano said that she'd like to thank the USACE for its "fantastic work and cooperation." She also mentioned that she's aware that Osborne Pond is one of Capt. Abel's top priorities, and she

noted that MassDEP is fully committed to ensuring that the work there gets done and that it's protective of human health and the environment.

Ms. Valiela inquired about the dark areas shown in the figure depicting the pond. Ms. Iorio explained that they represent thickly-vegetated areas. Ms. Valiela then asked if the pond might be used for public swimming once it's been cleaned up and checked out thoroughly. Ms. Iorio noted that the pond is really too shallow for swimming, but added that in terms of future use of the pond, the USACE wants to wait and see what's found there before making a determination. Ms. Garcia-Serrano added that the RI/FS process will involve the development of an array of remedies to be evaluated, one of which will be selected according to current and foreseeable future uses.

Agenda Item #5. SMB Meeting Schedule and Adjourn

Ms. Valiela stated that the SMB will meet next at the Bourne Best Western on May 28, 2008. She then adjourned the meeting at 6:45 p.m.