

Additional Recommendations

Priority #1

The Great Lakes Legacy Act should be the primary authority used to address contaminated sediments in the AOCs. Congress should amend the Act to streamline the clean-up process and allow for full federal funding of assessments and preliminary remedial design in order to move projects forward.

Some elements of the Legacy Act should be fine-tuned to enable more effective use of its funds. Maintenance of effort provisions should be dropped; the life of appropriated funds should be extended; the Act's original intent to permit potentially responsible parties (PRPs) to participate as the nonfederal sponsor should be clarified and reiterated; and restrictions on disbursements to non-federal sponsors should be lifted.

- The “maintenance of effort” language in the Legacy Act should be dropped. It is counterproductive, penalizing states and local communities that undertake major remediation projects. Section 118(c)(12)(E) of the Act can inappropriately and inadvertently disqualify or limit otherwise eligible and valuable projects.
- The “maintenance of effort” requirement appears to have been inserted into 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 drafted 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 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 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/ 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 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 necessary to be completed at a given site, such as site investigation or design work.

- The Legacy Act’s original intent to permit potentially responsible parties (PRPs) to participate as the nonfederal sponsor 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 industry’s understanding and expectation that PRPs could qualify for funding under appropriate circumstances. This was one of the principles of the Legacy Act’s policy of encouraging accelerated progress on remediation of 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, the current system is cumbersome and inefficient for PRPs to participate in Legacy Act projects. PRPs’ ability to apply for and receive GLLA funding should not be artificially limited on the basis of the “polluter pay principle” only to sites with orphan shares or covering work performed above and beyond the specific requirements of the selected remedy. To do so cuts off one of the best resources to obtain the 35 percent nonfederal share and an opportunity to ensure that the important objective of the Legacy Act -- to accelerate the remediation of contaminated sediment in the Great Lakes -- is fulfilled. Therefore, clarification regarding PRP eligibility as the nonfederal sponsor should be included in the next legislative action on the Legacy Act.

- 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 of 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. Moreover, the nonfederal sponsor's interest in supervising a project and ensuring that it is optimally implemented is undermined by the need to have a GLNPO contractor potentially implement the project

- An open solicitation schedule should be maintained under the Legacy Act to facilitate project start-up when a project is deemed to be ready for implementation.
- Guidance on how the Legacy Act Program interacts both with enforcement programs and the polluter pays principle for CERCLA and OPA should be developed. Implications for resolving Natural Resource Damages (NRD) must be weighed in deriving this guidance.
- In cases where implementing the Great Lakes 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 NRD provisions, RCRA, OPA, etc.).

Additional recommendations for the Legacy Act and sediment remediation:

- 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.

Priority # 2

Building AOC program capacity, including funding staff at State and local levels to meet the goal of establishing delisting targets in all AOCs by 2008.

- A performance-based system should be developed to track progress in remediating all contaminated sediment sites in the Great Lakes. Agreement needs to be reached on who is responsible for monitoring. States 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.
- U.S. EPA and each of the Great Lakes states should establish a five-year agreement for administering the AOC program that outlines 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 or by passing through funding to the local level.

Priority #3 Improving federal/state/local coordination

- 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 implementation activities anticipated during the fiscal year.

Priority #4 Addressing issues of disposal capacity, destruction technology development, treatment and beneficial use.

- 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 disposal sites within the Great Lakes Basin.
- US EPA, the Army Corps of Engineers and the States should develop guidance for the beneficial re-use of sediments and encourage sediment remediation projects that utilize alternatives to disposal.
- Explore and implement beneficial use of sediment when feasible and practical.