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CERCLA & Clean Water Act Coordination Strategies: Sediment Remediation, Stormwater Management and Water Quality Permitting

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Introduction

- EPA has recently issued RODs at several large sediment sites
- Many of us are in the midst of allocating cleanup liability
- At some point allocated and transition to remedial design
- Key issue for sediment cleanups – accommodate federal and local requirements while meeting your design goals
- Lessons learned and strategies on coordination

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Agenda

- Where to determine compliance along the investigation and design process
- On-site vs off-site and substantive requirements
- Examples of how to document compliance during the design process
- Key sections and coordination examples for the Clean Water Act

Note: Talk does not cover post remedy compliance with CWA- more to be done (ASTSWMO Sediments Focus Group report-April 2016)

Process

- ARARs in FS or decision docs
- RDWP – start to outline how you intend to comply
- DAR/BOD- Assess data and discuss compliance
- Complex projects may need separate document- SRCAP
- Coordination between EPA/State/Local occurring at each step

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ARARs

Important Concepts

- Applicable vs relevant and appropriate – determine up front
- State-led cleanup typically requires permits
- CERCLA lead cleanup activities that remain onsite are statutorily exempted by CERCLA §121(e) from obtaining permits
- CERCLA actions need to meet substantive requirements and do not need to meet administrative requirements
- Offsite actions need to meet all permit requirements

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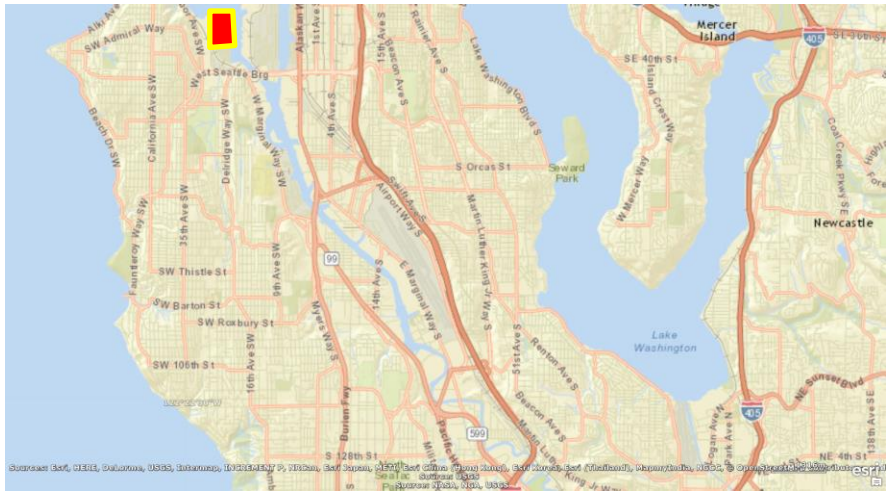
ARARs

Onsite vs Offsite

- 1990 NCP definition for onsite:
  - "The areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action."
  - "Onsite" includes a receiving water body even if the water body flows offsite. Includes through a POTW.
  - Defining "in very close proximity" is flexible and requires input from all stakeholders as they may view this differently
  - Most common need is to define if a waste staging area is in very close proximity or not to the site

Onsite or Offsite

On or Offsite?



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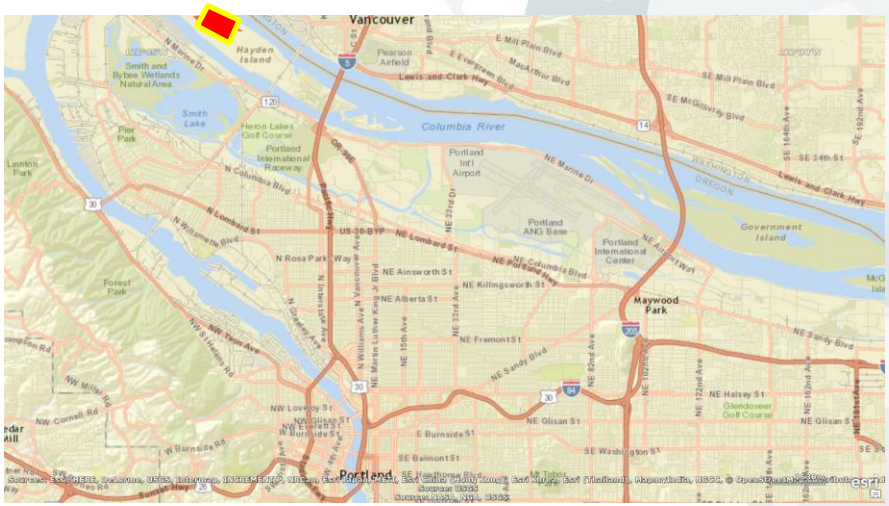

Substantive vs Administrative Requirements

- Substantive – Examples of numerical or control requirements
  - Effluent water quality standards
  - Water supply limits for makeup water
  - Design requirements for intake structures (prevent impingement)
  - Land disposal requirements
- Administrative – Examples of procedural, permitting
  - Coordination between EPA and USFWS regarding Migratory Bird Treaty Act or effects on fish and wildlife under Section 10 of the Rivers and Harbors Act
  - Obtaining a CWA 401 certification
  - Coastal Zone Management (CZM) permit

Substantive Lessons Learned

- Some local permits may be easier to obtain and pay for vs back and forth – electrical permit, fire safety permits for an upland processing facility
- Administrative (communication between agencies) still may occur – old habits die hard
- Under equivalency process the EPA is typically the lead in coordination with other agencies/ states
  - need process to keep EPA coordinator in the loop with project changes and developments
- Permit application checklists can be a helpful tool

Remedial Design Work Plan RDWP

- Identify the data you will collect to determine compliance
  - Decant water from sediment press
    - Use pilot study to show compliance with water quality requirements
  - Rigid work area isolation
    - no flooding downstream
  - Exceedance of 10x UTS for UHCs
    - TCLP testing, post pilot study if applicable
  - Air emission and compliance
    - Use Pilot study to estimate emission from processing system
  - “Factual” data to support CWA 404b1 analysis
    - Suspended sediment/turbidity from dredging or capping

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Design Analysis Report/Basis of Design - DAR/BOD

- Assess data and discuss compliance in Design Analysis Report/BOD
  - Possibly need individual reports/appendix for each design element

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Design Analysis Report/Basis of Design - DAR/BOD

- Examples
  - Explain how capture silt during upland construction and capture and/or treatment stormwater during operations
  - Worker safety at removal area or upland processing facility
  - BMPs for air and odor emission control (cover sludge, have workers wear H2S badges, etc.)
  - Need to add stabilizing agent for compliance with free liquids requirement during transport

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Substantive Requirements Compliance Plan

- Often use a separate document that describes how all design elements are complying with ARARs and/or substantive requirements

Type of Requirement	Requirement Summary	Design Approach	Design Element	How Met (or reference to where discussed)
Location Specific	Evaluate Probable Impacts	Cap Placement meet substantive requirements	Backfill, Capping	Appendix C

“Other” Requirements

- Underwater sound
  - Outside of migration periods
  - For “informational purposes”
- Superfund JTI
  - Job Training Initiative
- Bird deterrence
  - Barge or processing piles- Attractive nuisance
- Odor Monitoring

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Clean Water Act – Key Sections

- Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) program
- The substantive NPDES requirements, include:
  - discharge limitations
  - monitoring requirements
  - best management practices

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Clean Water Act – Key Sections

- Section 404 prohibits the unauthorized discharge of dredged or fill material into waters of the US, including wetlands.
- Documentation of the effects of the discharge is required as part of a Section 404(b)(1) evaluation. USACE makes 404b1 determination

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Clean Water Act Coordination Examples

- Section 402 of the Clean Water Act:
  - Discharges from the onshore processing of dredged material
    - Identify necessary discharge limits and controls
    - EPA regions to coordinate between Water and Superfund offices
    - Will also need to coordinate with states if they have more stringent discharge standards
- Section 404 of the Clean Water Act:
  - Discharge of fill material including capping or backfill
    - Identify specifications for backfill and testing requirements
    - EPA to coordinate with USACE and wetlands office
    - EPA also coordinate with State if CWA 401 delegated to state
    - EPA and resource agencies to coordinate on impacts to ESA species

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