

**Nyanza Chemical Waste Dump Superfund Site
Natural Resource Damages Assessment and Restoration
Restoration Planning
Project Selection Criteria**

Background

Natural resource damages from polluters for injury, destruction, or loss of natural resources resulting from the release of oil or a hazardous substance (which are distinct from clean-up costs) must be used by natural resource trustees to “restore, replace, or acquire the equivalent of” the natural resources that have been injured. Natural resource trustees are designated federal and state agencies that act on behalf of the public to assess natural resource injuries and identify potential projects to restore the injured natural resources and related service losses, and oversee the implementation of restoration projects.

Before Natural Resource Damages (NRD) funds can be expended for the purpose of restoration, replacement, or acquisition of the equivalent injured or lost natural resources and the services they provide, requirements for planning and public involvement must be met. Section 111(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as Superfund, requires natural resource Trustees to develop and adopt a Restoration Plan for the use of NRD funds following “adequate public notice and opportunity for hearing and consideration of all public comment.”

This document provides information about the criteria that the Nyanza NRD Trustees will use during the Restoration Planning process to help identify and evaluate potential restoration alternatives and to develop a restoration plan that will be submitted for formal public comment. It is important to note that a project’s consistency with these criteria does not guarantee that it will be funded, but merely establishes that the Trustees will/may consider the project for possible funding. Conversely, rejection of a proposed project based upon the criteria means that the Trustees will not use natural resource damage settlement funds for that project, even though the proposed project may yield a restoration benefit to an injured natural resource.

Nyanza NRD

In 1998, State and Federal natural resource Trustees, i.e. the Commonwealth of Massachusetts, the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce, and the United States Fish and Wildlife Service (USFWS) of the Department of the Interior, entered into a NRD settlement, recovering approximately \$3 million for natural resources injured, destroyed, or lost by the release of hazardous substances from or at the Nyanza Chemical Waste Dump Superfund Site (Site) located in Ashland, Massachusetts. Pursuant to the court-entered Consent Decrees, this NRD settlement was allocated as follows: \$2.8 million to be expended jointly by the State and Federal Trustees and \$230,769 to the Commonwealth of Massachusetts for injuries to groundwater at the Site.

In 1998, the Secretary of the Executive Office of Energy and Environmental Affairs (EEA), Secretary of the Interior, and the Under Secretary for Oceans and Atmosphere of NOAA signed a Memorandum of Agreement (MOA) to act on behalf of the public as Federal and State Trustees for natural resources for the Nyanza NRD settlement. The MOA outlines a framework for the cooperative development and implementation of a Restoration Plan to restore, replace, and/or acquire the equivalent natural resources affected by the release of hazardous substances from or at the Nyanza Superfund Site. In addition, DEP and EPA were signatories to the MOA to ensure coordination between Trustees and the remedial agencies.

While EEA, USFWS and NOAA will coordinate and cooperate in the development and implementation of a Restoration Plan, EEA has been designated as the lead Administrative Trustee and will manage the restoration planning process. Decisions regarding the use of NRD recoveries for restoration activities are made jointly based on unanimous consent by the Trustees.

Nyanza NRD Restoration Goals

The overarching goal of the Trustees is to restore the injured natural resources of the Sudbury River, including the adjacent wetlands and floodplains, and the species which are present or historically present, including fish, amphibians, reptiles, other aquatic organisms, birds and mammals. The objective of Restoration Planning is to identify projects that will result in improvements to natural resources beyond baseline because the injury has occurred over a lengthy time period. The Commonwealth will identify additional restoration goals and criteria for selecting groundwater restoration projects. Preferred projects will restore, replace or enhance the values of the natural resources injured, or acquire the equivalent of similar resources or services injured. Primary emphasis will be given to restoration projects that are closest in proximity to the location of injury: the upper Sudbury River watershed for groundwater projects and within and along the mainstem Sudbury River for aquatic resource projects. Secondary emphasis will be given to projects in the Concord River and its tributaries and the Assabet River. Elevated mercury concentrations or potential for biomagnification or bioaccumulation may limit consideration of some projects located in proximity to the location of injury.

The Trustees have identified the following priorities for restoration of injured natural resources:

- aquatic biological resources and their supporting habitats and food sources
- riparian and floodplain biological resources and their supporting habitats and food sources
- groundwater
- water-dependent recreational uses, e.g. recreational fishing
- environmental education and stewardship

Restoration projects should address these priorities but respondents are not limited to these areas alone. New priorities can be identified if appropriate and incorporated into the restoration planning process provided that they meet legal requirements, technical feasibility and selection criteria. Highest priority will be given to restoration projects that actually restore, replace or acquire the equivalent of an injured natural resource. Although matching funds are not required for a project to be eligible for Nyanza NRD funding, the Trustees encourage proposals that leverage additional funding and in-kind services because it extends the availability of restoration funds and therefore increases the resource benefits provided by the funds.

Eligibility Criteria

Projects must meet the following Eligibility Criteria in order to be further considered and evaluated by the Trustees using the Evaluation Criteria. If any project does not meet the Eligibility Criteria, it will not be given further consideration by the Trustees. A project's demonstrated consistency with the Eligibility Criteria does not guarantee that it will be funded, but merely establishes that the Trustees may further consider the project for possible funding. Conversely, rejection of a proposed project based on these criteria means that the Trustees will not allocate NRD funds for that project, even though the proposed project may yield a restoration benefit to injured natural resources.

Consistency with Trustee Restoration Goals:

A proposed project WILL be considered eligible for Trustee consideration if it:

- Restores, replaces, and/or acquires the equivalent of natural resources or natural resource services that were injured by the release of mercury or other hazardous substances from the Nyanza Federal Superfund site

A proposed project WILL NOT be considered eligible for Trustee consideration if it:

- In terms of cost, limits the ability of Trustees to expend funds in a manner that accomplishes Trustee restoration goals and enables Trustees to serve a wide geographic area that benefits the restoration priority categories

Consistency with relevant laws and policies:

A proposed project WILL NOT be considered eligible for Trustee consideration if it:

- Is inconsistent with any federal, state, or local law, regulation, or policy
- Is subject to an independent, prior obligation to perform the project pursuant to statute, regulation, ordinance, consent decree, judgment, court order, permit condition or contract, or if otherwise required by federal, state or local law, including but not limited to enforcement actions, **unless** funding such public project would present a substantial restoration benefit to groundwater resources such as but not limited to:
 - a) Accelerating the pace of performance of the obligation, which such pace represents a calculable and substantial groundwater restoration benefit; or,
 - b) Increasing the likelihood of performance of the obligation, where such performance is a necessary pre-requisite to substantial groundwater restoration or to further substantial groundwater restoration

Consistency with remedial actions:

A proposed project WILL NOT be considered eligible for Trustee consideration if it:

- Is inconsistent or will be undone or negatively impacted by EPA's future remediation work, or will interfere with any ongoing or anticipated remedial actions in the Sudbury River watershed

Evaluation Criteria

The following Evaluation Criteria will be applied by the Trustees to prioritize eligible restoration projects through a qualitative assessment of their value and feasibility.

Level 1 – High Importance

Focus Criteria

Proximity to Injured Resources: Priority will be given to projects within the geographic location of the impacted environment or benefit the resources within that environment. Restoration projects for the Nyanza Superfund NRDAR shall be located within or adjacent to the Sudbury River mainstem, within the Sudbury River watershed, or outside the Sudbury River watershed but have a positive impact on the injured natural resources and/or their services that are located within, utilize, or historically utilized the Sudbury River watershed.

Relationship to Injured Resources (Nexus): Projects that restore, rehabilitate, replace, enhance, or acquire the equivalent of the same or similar resources or services injured are preferred to projects that benefit other comparable resources or services. Consider the types of resources or services injured the location, and the connection or nexus of project benefits to those injured resources.

Benefit Criteria: Ecological

Magnitude of Benefits: Project addresses a demonstrated need and maximizes the level of restoration, rehabilitation and/or acquisition of the equivalent natural resources that were injured. For example, ecological benefits could be measured in terms of an increase to fish, wildlife or rare species populations, an increase in native and/or rare plants in the Sudbury River environment, an increase in prey species provided for a predator species or the number of acres of habitat to be restored, enhanced or protected.

Natural Recovery: Project will clearly provide restoration benefits to injured natural resources and/or services in advance of the “natural recovery period.” The natural recovery period is the length of time it would take for the injured resource and/or service to recover to an optimal condition in the absence of human intervention.

Sustainability of Benefits: Project will result in long-term, self-sustaining and comprehensive benefits to injured natural resources and/or the services they provide. Project will require only periodic maintenance or management that represents a relatively small investment to provide continuing benefits.

Benefit Criteria: Socioeconomic

Stewardship: Project will result in an “informed citizenry” that will help ensure ongoing environmental stewardship of restored natural resources and their services. Project provides a critical foundation for on-going and future restoration activities in the Sudbury River watershed.

Implementation Criteria: Feasibility

Technical/Technological: Project will employ well-known and accepted techniques to achieve stated ecological, engineering, economic, and social objectives. Likelihood of success in proposed project location and expected return of resources and resource services is high.

Relationship of Expected Costs to Expected Benefits: A project's costs are commensurate with the benefits it provides to injured natural resources and/or services. This will be a qualitative cost-benefit analysis.

Implementation Criteria: Effectiveness

Implementation-oriented: Project has a high ratio of NRD funding dedicated to implementation (e.g. on-the-ground habitat restoration, land acquisition) compared to general program support and operation.

Leveraging of Additional Resources: Project demonstrates a strong commitment by partners representing a broad range of community and other interests to provide matching funds and in-kind services and involve volunteers. This leveraging of non-NRD resources is preferred because it extends the availability of restoration funds and therefore increases the resource benefits provided by the funds.

Level 2: Medium Importance

Benefit Criterion: Ecological

Multiple Benefits: Project will provide benefits to the greatest number of species, natural resource types, and services.

Avoidance of Adverse Impacts: Project has little to no potential for adverse environmental impacts, or modifications to project would considerably decrease benefits to injured natural resources and/or services. Adverse environmental impacts can be short or long term, direct or indirect, and include those affecting resources that are not the focus of the project.

Benefit Criterion: Socioeconomic

Community Goals: Project complements one or more community goals, needs and/or recommendations as expressed in existing plans that incorporated public input and involvement in their development.

Avoidance of Adverse Impacts: Project has little to no potential for adverse effects to human health and safety. Project has little to no potential for adverse socioeconomic impacts, or modifications to project would considerably decrease benefits to injured natural resources and/or services. Adverse socioeconomic impacts can be short or long term, direct or indirect, and include those affecting resources that are not the focus of the project.

Implementation Criterion: Feasibility

Measurable Results: Project delivers tangible and specific ecological, economic, social and/or human use results that are identifiable and measurable, and/or that may be evaluated using quantitative or professionally accepted methods, so that changes to the Sudbury River watershed can be documented and evaluated.

Level of Difficulty: Consider all obstacles that may be faced for project implementation (e.g., coordination with multiple outside parties, regulatory permits required, complex design and engineering, and public support)

Supplemental Criteria

The following criteria should be considered when appropriate (e.g. in the case of more than one project being equally preferred after Level 1 and 2 evaluations are complete).

Pilot Projects: Project employs innovative approaches and/or techniques but includes clear performance criteria, measurable endpoints, and a comprehensive monitoring and contingency plan.

Comparative Cost-Effectiveness: Project provides the same or similar restoration benefit at a lesser cost than another proposed project.

Enhancement of Remediation/Response Actions: Project clearly complements and enhances completed, ongoing, or planned remediation or response actions by concurrently or subsequently implementing restoration projects.

Coordination and Integration: Project is clearly coordinated and integrated with other ongoing or planned restoration activities that enable synergistic benefits to injured natural resources and their services.

Protection of Project: Opportunities exist to protect the implemented project and resulting benefits over time through conservation easements, land acquisition, or other types of resource dedication. Long-term protection is preferable.

Benefit Documentation: Receipt or delivery of benefits to the public as a result of project is documented. Consider expert documentation that we should consult or published literature that might be helpful.

Additional Information

Please remember that information submitted to the Trustees by all parties is included in a public record and is subject to disclosure pursuant to the Federal Freedom of Information Act and the Massachusetts Public Records Law. Please note that, prior to selection of any project for funding, all proposals will be subject to public review and comment as part of an open public comment process.

If the idea is chosen and if a solicitation is conducted for accomplishing that idea, there is no guarantee that the proponent of the idea will be chosen to perform that work. It is possible that an idea may be implemented, after public review, through a sole source contract or grant if the idea meets the appropriate criteria for such an award. Because proposals will be subject to public review, respondents who are concerned about revealing proprietary interests or methods should only present enough information to provide the Trustees with an understanding of the idea.

Direct awards of funding will not occur under this solicitation for restoration ideas. Rather, this solicitation for restoration ideas will result in prioritization of proposed ideas considering public review and comment. The Trustees will then determine the most appropriate means of implementing approved project ideas which may or may not require further solicitation.

Questions?

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