

CITY COUNCIL MEETING

AGENDA ITEM VI



Date: October 26, 2015
From: Elizabeth Dragon, City Manager
Subject: Manager's Update

Contingency Grant Line Activity: The City received the following in the contingent grant line this month:
\$300 Book Club
\$2,947.82 State of NH Fire Training
\$1986.14 Crimeline for K9 Officer

Macosko Foundry update- Director Lewis has been working with various agencies to deal with Brownsfield issues at the Macosko Foundry. Attached is the most recent update from US Environmental Protection Agency. As you will see from the attached report significant progress is being made on the site. EPA spent about \$150,000 on this clean up which saves the city those funds and/or the time and effort to submit and wait for a cleanup grant.

Legislative update:

The deadline for the Senate to propose bills is November 3rd. I have met with Senator Hosmer regarding the proposal of three bills.

1. As a follow up to the public statement made by the Council regarding the Curfew ordinance (copy of statement attached) I reached out to Franklin's legislative delegation. I heard back from our representatives and our Senator in support of a bill to address the matter. LSR-relating to RSA 31:43 dealing with curfew regulations and the ability of municipalities to adopt such regulations. The Town of Belmont is also interested in supporting this effort.
2. Relating to the Winnepesaukee River Basin Program. An LSR to allow the expenditure of WRBP funds for studies related to the evaluation of the most cost effective operation of the system -including evaluating alternative governance structures for the program. (I have attached a copy of RSA 485-A:49 Expenditures for the WRBP and an email opinion from Attorney General's office stating the requested study information could not be funded by the program.) This study has already been partially funded by the program and we are requesting the next step of the study be completed to provide actual dollar estimates for the alternative governance models (ex: converting WRBP to a separate utility vs. a state run facility). DES staff has indicated they would be supportive of this LSR.
3. Also relating to the Winnepesaukee River Basin Program. An LSR to make amendments to RSA 485-A:52 the role of the Advisory board for the Winnepesaukee River Basin Program. In 2012 all twelve member communities signed a Memorandum of

Understanding (MOU) with the Department of Environmental Services (DES). In this MOU item #1 states that for all capital improvement items the advisory board will make a recommendation in writing to approve or not approve the project and it will be included in the packet submitted by DES to Governor and Executive Council. While this doesn't preclude the DES from submitting something that is not supported by the majority of the community's paying the bill it allows communities to weigh in. We are requesting an LSR to add this agreed upon MOU language to RSA 485-A:52 regarding the role of the advisory board. Further we are requesting language that includes recommendations from the Advisory board for operational expenditures that reach a certain threshold (threshold amount not yet determined). DES staff has indicated this is something they could support if worded carefully. We plan to work on language at the advisory board level with DES staff.

(Copy of MOU reference item #1 & relevant statute RS485-A:52 Advisory board)

U.S. ENVIRONMENTAL PROTECTION AGENCY
POLLUTION/SITUATION REPORT
Macosko Foundry Site - Removal Polrep
Initial Removal Polrep



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region I

Subject: POLREP #1
Initial
Macosko Foundry Site
01MJ
Franklin, NH
Latitude: 43.4447111 Longitude: -71.6642406

To: Carol Tucker, US EPA-R1 OSRR EPRB
Ted Bzenas, US EPA-R1 OSRR EPRB ERRS I
Nancy Barmakian, USEPA R1

From: John Mckeown, On-scene coordinator

Date: 10/22/2015

Reporting Period: October 13, 2015 thru October 22, 2015

1. Introduction

1.1 Background

Site Number:	01MJ	Contract Number:	EP-W-08-062
D.O. Number:	0051	Action Memo Date:	8/6/2015
Response Authority:	CERCLA	Response Type:	Time-Critical
Response Lead:	EPA	Incident Category:	Removal Action
NPL Status:	Non NPL	Operable Unit:	
Mobilization Date:	10/13/2015	Start Date:	10/13/2015
Demob Date:		Completion Date:	
CERCLIS ID:	NHN000101059	RCRIS ID:	
ERNS No.:		State Notification:	Referred by NH DES
FPN#:		Reimbursable Account #:	

1.1.1 Incident Category

Time-Critical Removal Action

1.1.2 Site Description

In January 2015, New Hampshire Department of Environmental Services (NHDES) requested that EPA Region I Emergency Planning and Response Branch (EPRB) conduct a Preliminary Assessment and Site Investigation (PA/SI) at the Macosko Foundry Site to determine if conditions at the abandoned facility met the criteria for EPA to conduct a time-critical removal action.

The Site has been used since approximately 1905 for various operations, including a foundry,

automobile garage, machine shop, and millworks. In 2002, foundry operations at the Site ceased. In May 2014, the property was transferred to the City of Franklin, NH by tax lien.

EPA conducted a PA/SI at the Site in April of 2015. The PA/SI, conducted by EPA's Superfund Technical Assistance and Response Team (START) contractor Weston Solutions confirmed the presence of hazardous substances (lead, arsenic and PAHs) in soils and waste adjacent to the Site and Chance Pond Brook, the presence of limited containers of hazardous substances inside of the building, the presence of universal wastes inside of the building, and overall structural degradation of the building, increasing the likelihood of a release of hazardous substances into the environment.

The EPA OSC determined that Site conditions present an imminent and substantial endangerment to human health and the environment and recommended a time-critical removal action to address the contamination located inside the building and adjacent to the building and Chance Pond Brook.

1.1.2.1 Location

Latitude: 43° 26' 49.6" N Longitude: 71° 39' 59.8" W

The Site comprises two parcels identified on the Franklin Tax Assessor's Office Map Number 97 as Parcels 37 and 38. The foundry is located primarily on Parcel 37, which is the southernmost parcel. Chance Pond Brook flows through the property.

1.1.2.2 Description of Threat

Primary threats at the Macosko Foundry Site include the following:

- Migration of hazardous substances in soils located adjacent to the facility structure into Chance Pond Brook.
- Fire and explosion hazard from containers of D001 waste abandoned inside the facility structure.
- Inhalation or ingestion of hazardous substances via direct contact exposure pathway.

1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results

The primary hazardous substances of concern at the Site are lead, arsenic and three poly-aromatic hydrocarbon (PAH) compounds including benzo(a)anthracene, benzo(a)pyrene and benzo(b)fluoranthene. During the April PA/SI, EPA detected these hazardous substances in surface soils adjacent to the facility structure and Chance Pond Brook.

In addition to hazardous substances present in surface soils onsite, EPA discovered numerous small containers of hazardous substances consisting primarily of ignitable (D001) and corrosive (D002) characteristic waste inside of the building, along with various types of universal wastes, such as fluorescent bulbs and light ballasts.

2. Current Activities

2.1 Operations Section

2.1.1 Narrative

EPA signed an Action Memorandum on August 6, 2015 to address contamination at the Site. The overall objective of the time-critical removal action is to remove all containers of hazardous substances from inside of the facility building and to remove surface soil located between the facility building and Chance Pond Brook with concentrations of hazardous substances exceeding the NH DES Soil Screening Levels. All removed and excavated waste will be disposed at an EPA approved disposal

facility.

2.1.2 Response Actions to Date

The following response actions have been completed to date:

- EPA, START and ERRS, Guardian Environmental Services (GES), mobilized to the Site on October 13, 2015.
- GES set up the Site and established three zones of work: 1) Exclusion Zone; 2) Contamination Reduction Zone; and 3) Clean Zone.
- GES inventoried, removed and over-packed containers of hazardous substances from inside of the facility structure.
- GES removed lead-containing coal ash from inside of the building and placed in a roll-off pending setup of transportation and disposal (T&D).
- GES excavated contaminated soil located between facility structure and Chance Pond Brook and moved to roll-off pending setup of T&D.
- START collected confirmation samples from excavated areas and NERL Field Screening XRF confirmed lead and arsenic levels were below NHDES SSLs.
- START conducted overall Site air monitoring and documented activities during the time-critical removal action.
- ERRS backfilled the excavated area with a clean fill source and planted grass seed to prevent erosion.

2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs)

EPA is conducting this action as a fund-lead time-critical removal action. The City of Franklin, NH owns the Site and provided access to EPA. Franklin, NH also provided electrical power to the Site, a port-o-let, and removed debris from outside the facility to improve access to contamination.

2.1.4 Progress Metrics

This information will be provided during the next POLREP.

<i>Waste Stream</i>	<i>Medium</i>	<i>Quantity</i>	<i>Manifest #</i>	<i>Treatment</i>	<i>Disposal</i>

2.2 Planning Section

2.2.1 Anticipated Activities

EPA has over-packed all containers of hazardous substances and universal wastes. EPA has also moved all contaminated soil and lead-containing waste ash into three roll-off containers. ERRS collected waste profile samples and has begun the process of setting up T&D. Once T&D is been established, EPA and ERRS will return to the Site and complete the project.

2.2.1.1 Planned Response Activities

See above.

2.2.1.2 Next Steps

See above

2.2.2 Issues

During the PA/SI and the time-critical removal action, EPA identified additional lead-containing waste ash located under the facility office in an enclosed confined space area along the south side of the facility structure. This material cannot be safely addressed without at least a partial demolition of the building. EPA enclosed the opening around this area to prevent migration into the soil and into Chance Pond Brook but did not remove the lead-containing waste ash as part of this action.

2.3 Logistics Section

No issues

2.4 Finance Section

2.4.1 Narrative

No issues

Estimated Costs *

	Budgeted	Total To Date	Remaining	% Remaining
Extramural Costs				
ERRS - Cleanup Contractor	\$120,000.00	\$0.00	\$120,000.00	100.00%
TAT/START	\$30,000.00	\$0.00	\$30,000.00	100.00%
Intramural Costs				
Total Site Costs	\$150,000.00	\$0.00	\$150,000.00	100.00%

* The above accounting of expenditures is an estimate based on figures known to the OSC at the time this report was written. The OSC does not necessarily receive specific figures on final payments made to any contractor(s). Other financial data which the OSC must rely upon may not be entirely up-to-date. The cost accounting provided in this report does not necessarily represent an exact monetary figure which the government may include in any claim for cost recovery.

2.5 Other Command Staff

2.5.1 Safety Officer

2.5.2 Liaison Officer - NA

2.5.3 Information Officer

EPA assigned a Community Involvement Coordinator (CIC) to the project.

The CIC worked with the OSC to develop a Fact Sheet and delivered copies of the Fact Sheet to representatives of Franklin, NH and to nearby residents on Chance Pond Road.

3. Participating Entities

3.1 Unified Command

U.S.EPA

NH DES

City of Franklin, NH

3.2 Cooperating Agencies

See above.

4. Personnel On Site

EPA (3)

OSC - John McKeown

Chemist - Scott Clifford

CIC - Kelsey O'Neil

NHDES (1)

Mike McCluskey

City of Frnklin, NH (5)

Dick Lewis and representatives from Franklin Department of Public Works.

START (1)

Christine Dupree

ERRS (6)

RM - Mike Quinlan plus one chemist, two equipment operators and two technicians from Guardian Environmental Services.

5. Definition of Terms

No information available at this time.

6. Additional sources of information

6.1 Internet location of additional information/report

EPA created a website for the Macosko Foundry Project on EPAOSC.org.

The link to the Website is: www.epaosc.org/Macosko

6.2 Reporting Schedule

Next report will be the Final POLREP once T&D is completed.

7. Situational Reference Materials

No information available at this time.

FRANKLIN MAYOR AND COUNCIL STATEMENT REGARDING CURFEW ORDINANCE

At the September 8th meeting of the Franklin City Council it was decided that steps would be taken that would lead to the enforcement of the Franklin curfew ordinance that requires minors under sixteen (16) years of age to be off the public streets between 9:00 p.m. and 5:00 a.m. on week nights and 11:00 p.m. and 5:00 a.m. on weekends, with certain exceptions. Since that date, the Council's actions and the ability to enforce the curfew ordinance have been called into question, primarily by representatives of the American Civil Liberties Union of New Hampshire. It is clear that organization was and is prepared to initiate a lawsuit of some nature against the City seeking to prevent the enforcement of the ordinance and perhaps seeking some form of monetary damages against the City. The Council is also cognizant that a similar ordinance in the City of Keene was previously declared illegal based upon constitutional questions even though that ordinance, like Franklin's, was based upon a statute enacted by the New Hampshire Legislature. During the three decades that have passed since that decision the State Legislature has taken no action to address the situation.

It should not fall upon the citizens of the City of Franklin to bear the expense of a defense of an ordinance based upon a plainly worded state statute nor should the implementation of such an ordinance result in potential exposure of the City to a claim for financial damages by those claiming to be adversely affected by the ordinance. Consequently, the Council regrets to announce that based upon legal advice received from the City attorney the ordinance will not be enforced for the foreseeable future. However, in an effort to act positively into this situation and to advance the goal of reducing both juvenile crime and juvenile victimization, we are calling upon the Franklin legislative delegation and state senate representative to initiate action at the state level that would result in New Hampshire municipalities being able to adopt a local curfew ordinance designed to successfully survive legal challenges. We firmly believe that the Legislature, with appropriate assistance from the Office of the Attorney General, can address this issue for the safety and betterment of the State's citizenry, particularly our juvenile population.

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 485-A

WATER POLLUTION AND WASTE DISPOSAL

Winnepesaukee River Basin Control

Section 485-A:49

485-A:49 Expenditures. –

I. With the approval of the governor and council, the department may use state, federal or other funds accruing to the department and funds borrowed from the state water pollution control and drinking water revolving loan fund established under RSA 486:14 for the acquisition of existing sewage or waste treatment facilities, design and construction of new sewage or waste treatment facilities, alteration, improvement or additions to existing sewage or waste treatment facilities, pumping stations and intercepting sewers, inclusive of operation and maintenance of same; the terms operation and maintenance of treatment facilities shall include maintenance of all buildings, equipment, supplies, and administrative costs associated with the management of the treatment facilities, and for such other purposes as may be involved in the operation of an effective regional pollution control program. The department may purchase, take and hold for the state such materials, lands, easements and rights-of-way as may be required for the purposes of this subdivision. If the department is unable to purchase lands, easements or rights-of-way at what is deemed reasonable compensation, the department shall request the governor and council to appoint a commission to assess the damages sustained by the owner, and thereupon proceedings shall be conducted in the same manner and in accordance with provisions of RSA 230.

II. To provide funds for the municipal share of the costs involved pursuant to this subdivision, the state treasurer is authorized to borrow upon the credit of the state not exceeding the sum of \$3,000,000 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

III. The payments of principal and interest on the bonds issued under paragraph II shall be made when due from the special fund established by RSA 485-A:50, VI.

Source. 1989, 339:1. 1996, 228:106. 2005, 117:1, eff. Aug. 14, 2005.

Dear Director Forbes,

You have inquired as to whether we believe that DES and the WRBP may use funds received by WRBP to finance unspecified studies to be conducted by certain WRBP member communities to review the feasibility of those communities establishing a separate compact amongst them to operate a regional sewage disposal district.

The WRBP was established by the legislature for the purpose of acquiring, planning, constructing and operating sewage and waste disposal facilities in accordance with basin and regional treatment needs consistent with federal and state requirements. RSA 485-A:45, I. To administer the provisions of RSA 485-A and to perform such other and related duties as may be required, DES is designated to receive and utilize funds. Further, DES is authorized to use funds for the acquisition of existing sewage and waste treatment facilities, alteration, improvement or additions to existing facilities, including operating and maintaining them, and for such other purposes as may be involved in the operation of an effective regional pollution control program. RSA 485-A:49. Municipalities that are members are required to pay the costs estimated to be incurred administering the WRBP program. RSA 485-A:50. Interestingly, the power of all member municipalities in connection with the planning, construction, financing and operation of sewage or waste treatment facilities are transferred to DES. RSA 485-A: 48.

An agency's jurisdiction is determined by statute. It may not exercise powers not provided in its governing laws. *Appeal of Monsieur Henri Wines, Ltd.*, 128 N.H. 191, 194 (1986). It is clear that the purposes of the statute do not include funding the activities of third parties in conducting studies which may lead to forming an organization of members of WRBP that would in essence serve to replace WRBP. Given that the legislature has assigned to DES the task of planning any further regional and basin sewage facilities or systems, it would seem somewhat obvious that DES could not advance money to others for that responsibility (without addressing whether such activity is ultra vires as to those other entities). Moreover, the actions of third parties in planning a replacement regime does not fall within any of the jurisdiction of DES for the use of funds received under the statute for the project. As a result, we do not believe that DES may expend funds that are earmarked for use by WRBP to acquire, operate, and maintain the basin wide project, for purposes outside of its statutory jurisdiction.

I hope that this answers your question about this issue. Please feel free to contact me if you have any other questions or concerns.

Regards,

Peter C.L. Roth
Senior Assistant Attorney General

VCC
Mayor
Council
4-26-12

MEMORANDUM OF UNDERSTANDING

WHEREAS, RSA 485-A:45-54 authorizes the New Hampshire Department of Environmental Services (DES) to acquire, plan, construct, and operate sewage disposal facilities to service several communities collectively known as the Winnepesaukee River Basin Program (WRBP);

WHEREAS, the WRBP serves the sewer users located in portions of the municipalities of Belmont, Center Harbor, Franklin, Gilford, Laconia, Meredith, Moultonborough, Northfield, Sanbornton, Tilton and the State-owned Lakes Region Facility, which is currently managed by the New Hampshire Department of Administrative Services (DAS), and these users are variously represented by the signatories of the Memorandum of Understanding (MOU), including the DAS, Bay District Sewer Commission, Belmont Board of Selectmen, Franklin City Council, Gilford Board of Selectmen, Laconia City Council, Meredith Board of Selectmen, Northfield Sewer District, Sanbornton Board of Selectmen, and Tilton Sewer Commission, and which are collectively referred to as the Member Communities in this agreement;

WHEREAS, the cost of operating and administering the Winnepesaukee River Basin Program is borne entirely by the Member Communities;

WHEREAS, RSA 485-A:52 establishes an Advisory Board, referred to herein as the Advisory Board or the Board, for the purposes of reviewing (a) matters of mutual concern to the Member Communities and DES; and (b) the WRBP annual operating budget;

WHEREAS, while it is recognized that the DES has effectively operated these facilities for the benefit of these communities since the inception of the WRBP over 30 years ago, the Member Communities have become increasingly concerned about costs to maintain and operate the Winnepesaukee River Basin Program sewage facilities, particularly the projected costs to communities to fund capital improvements to replace and upgrade the aging WRBP wastewater facilities infrastructure; and

WHEREAS, the Member Communities and DES share the goal to continue to ensure and improve the efficiency and cost effectiveness of the operation of the Winnepesaukee River Basin Program;

NOW, THEREFORE, incorporating the whereas clauses above and in the interests of continuing to improve WRBP operations, under the applicable statutes and regulations related thereto, the undersigned parties hereby agree as follows:

- 1 For all requests for contracts to plan, design or construct capital improvements that require approval by the Governor and Executive Council, DES agrees to include a letter from the Advisory Board Chair documenting the consensus and recommendations of the Advisory Board. DES will include this letter as part of the approval request package submitted by DES to Governor and Executive Council for approval of contracts for these purposes.
- 2 Under RSA 485-A:52, DES is required to submit an annual budget to the Advisory Board by DES for review and comment at least 60 days prior to the beginning of every new state fiscal year. Henceforth, DES will also provide its proposed biennial budget for the WRBP

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 485-A

WATER POLLUTION AND WASTE DISPOSAL

Winnepesaukee River Basin Control

Section 485-A:52

485-A:52 Advisory Board Established. – There is established a Winnepesaukee River advisory board consisting of one member, from each community, appointed by the board of selectmen of a town or the city council of a city involved. The term of office of each member shall be one year commencing July 1, 1972, and each member shall serve until his successor shall have been appointed. The advisory board shall annually elect a chairman by majority vote of its members, and the board shall meet at least quarterly upon the call of the chairman or at least 3 members of the board in order to consider matters properly coming before it for attention. The advisory board shall meet with the department at suitable intervals to review matters of mutual concern. An annual budget shall be submitted to the advisory board by the department, for review and comment, 60 days prior to the beginning of the new fiscal year. Members of the advisory board shall receive no per diem but shall be entitled to reimbursement for expenses including mileage when in the performance of duties required under this subdivision. Each municipality shall provide funds necessary to reimburse its members to the advisory board.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.