

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
SPECIAL MEETING
APRIL 22, 2003

A Special Meeting was held by the Board of Trustees on Tuesday, April 22, 2003 at 8:10 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Mayor Wm. Lee Kinnally, Jr., Trustee Michael Holdstein, Trustee Bruce Jennings, Trustee Marjorie Apel, Trustee Peter Swiderski, Village Manager Neil P. Hess, and Village Clerk Susan Maggiotto.

CITIZENS: Thirteen (13)

**42:03 SETTLEMENT AGREEMENT - RIVERKEEPER AND VILLAGE OF HASTINGS
v. ARCO**

Mayor Kinnally: The purpose of this meeting is to consider Resolution 42:03, the Settlement Agreement between the Riverkeeper and Village of Hastings against ARCO. In March, 1994, the Hudson Riverkeeper Fund Inc. brought a lawsuit against the Atlantic Richfield Company under the Federal Resource and Recovery Act. Subsequently, the Village intervened in the lawsuit as the second plaintiff. The essence of the suit was that PCBs disposed of at the 28 acre site by ARCO's corporate predecessor, the Anaconda Wire and Cable Company, were presenting "an imminent and substantial danger to human health and the environment" which is the legal standard for bringing a case under the Act. The lawsuit contended that the high level of PCBs posed a significant threat to human beings, the Hudson River, and fish, birds, and wildlife in and around the Hudson River. The lawsuit sought to have ARCO held responsible for eliminating the threat and cleaning up the site. The case only involves PCB contamination of the site itself, not the river.

The suit has been actively litigated since 1999. Depositions have been taken, engineers have analyzed the site, and negotiations between and among the parties commenced in early 2002. The negotiators were many. They included Alex Matthiessen of the Riverkeeper and his predecessor John Cronin; counsel for the Riverkeeper Karl Coplan; many counsel for ARCO including the firm of Arnold and Porter and Sibley and Austin; Mark Chertok and Kate Sinding from Sive, Paget & Riesel representing the Village; Sandy Stash and a number of other corporate and legal people from ARCO and its parent company.

I will read the key elements of the proposed settlement and the resolution. The Board will vote and comment on the settlement. If there are questions we will open up the floor. However, the Village required from day one of the negotiations that there would be a public meeting in Hastings at which the Board, our counsel, our engineer, the Riverkeeper, and Riverkeeper's counsel and engineers, would be present to answer the public's questions about the terms.

The settlement does not finalize the cleanup of the site. Only DEC can enter an order encompassing the cleanup of the site. What we have in the settlement is a commitment from ARCO to certain cleanups, amenities, and funds they are setting up, all of which are directed to those items that will do away with the imminent and substantial endangerment to human health and the environment in the Anaconda site.

I will read the key elements of the site and describe the essential terms of the proposed settlement in the settlement term sheet that has been made available to the public. The settlement term sheet has been signed off by ARCO and the Riverkeeper. The purpose of the resolution is to authorize me to sign on behalf of the Village.

Key Elements of the Proposed Settlement

The Hudson Riverkeeper Fund, Inc. (“Riverkeeper”), the Board of Trustees of the Village of Hastings-on-Hudson (the “Village”), and the Atlantic Richfield Company (“AR”) have reached agreement on the essential terms of a proposed settlement that would resolve the lawsuit brought by Riverkeeper and the Village against AR concerning the Hastings-on-Hudson Site.

The Trustees believe, based on the expert advice of their and the Riverkeeper’s counsel and environmental consultants, that the proposed settlement would ensure a remedy for the Site that meets legal requirements and fully protects human health and the environment, improves the ecology of the Hudson River and facilitates the redevelopment of the Site to enhance its use by and value to the community.

The Trustees have scheduled a public meeting for May 13, 2003 for the purpose of providing information so that the public can fully understand the terms and implications of the proposed settlement, explaining the rationale for favoring the proposed settlement, and soliciting public input and comment on the proposal. The other parties to the litigation -- the Riverkeeper and AR -- have already approved the proposed settlement. The basic elements of the contemplated settlement are contained in a “Settlement Term Sheet.” [available here tonight, in the Clerk’s office, the Library, and on the Village web site.]

Under the proposal, AR has committed that the cleanup of the Site would include *at least* the following key elements:

Excavation of Soils Containing PCBs: excavation of soils containing concentrations of polychlorinated biphenyls (“PCBs”) greater than 10 parts per million (“ppm”) (the State environmental criterion) as follows:

- throughout most of the 28 acre Site [add acreage], excavation of all soils containing concentrations of PCBs greater than 10 ppm and all lead hot spots
- in a small area of approximately 1.25 acres in the northwest corner of the Site (“Northwest Corner”), and along the shoreline in the vicinity of the Northwest Corner (“Shoreline Area”), to a depth of at least **7 feet**
- in the limited remaining area (consisting of a few acres) in the northern portion of the Site, to a depth of at least to **9 feet**, and, in an approximately 12,500 square-foot subportion of this area, to a depth of up to **12 feet** (excavation to these depths in this area should remove substantially all soils containing PCBs in concentrations greater than 10 ppm)

The proposed areas and depths of excavation would eliminate PCB contamination from the vast majority of the Site. In those limited areas known as the Northwest Corner and Shoreline Area, where total removal is not practical or safe for engineering or environmental reasons, the remaining pockets of contamination would be contained by underground walls, covered with 7 or more feet of clean backfill in the excavated area, and then sealed with the additional five-foot cap that is required for the entire Site, as described below, which is more than adequate to provide for human and environmental health and safety.

Installation of Cap and Placement of Clean Fill: installation of a **five-foot** cap over the entire Site consisting of:

- a **six-inch** layer of asphalt or similar material at the Site’s current elevation
- a demarcation layer to identify the cap and indicate the “no excavation” areas, for instance a snow fence or material of a different character
- a **four-foot** layer of clean fill
- a **six-inch** layer of topsoil

Installation of Bulkhead: installation of a new bulkhead along the shoreline of the Site

Depths of Excavation:

The depths of excavation and other aspects of the cleanup could be greater than this minimum guarantee if mandated by the New York State Department of Environmental Conservation (“DEC”). Under the Settlement Term Sheet, AR would be prohibited from challenging a DEC-

ordered remedy in an administrative or court proceeding, unless the DEC-ordered remedy requires excavation greater than nine feet in the Northwest Corner or twelve feet in the Shoreline Area. In any such contested proceeding, however, AR would be required to advocate for a remedy including excavation to at least the depths outlined above (under the heading “Excavation of Soils Containing PCBs”). Therefore, unless disallowed by DEC or a court (which the parties believe is improbable), AR has guaranteed the performance of excavation to these depths.

Public Health and Development Features:

The Settlement Term Sheet also contains a number of measures to *ensure public health and promote the sound redevelopment* of the Site. Under the terms of the settlement, AR would be committed to supporting these measures if the DEC-ordered remedy does not require excavation exceeding the 9- or 12-foot depths in the Northwest Corner or Shoreline Area, respectively. Of course, any redevelopment of the Site would be subject to the Village’s zoning and site plan approval. The measures in the Settlement Term Sheet include:

- the designation of a minimum of 6.25 acres, and possibly up to 14.25 acres, of **open space** on the Site
- **public access** to such open space areas that would allow for the creation of parks, riverfront promenades, or other desirable public uses
- a 65-foot **height restriction** and 100-foot **setback** from the Hudson River (60 feet from the cove) for any buildings constructed on the Site
- a prohibition against the use of any groundwater from the Site for drinking, irrigation or domestic purposes
- a prohibition against any detached single family residential homes on the Site
- a long-term financial commitment from AR to maintain the Site bulkhead and cap for a period of 100 years

Environmental Trust Fund:

In addition, AR would establish an **Environmental Trust Fund** for environmental projects that might range up to \$4.5 million, depending on the level of cleanup required by DEC. AR would pay \$100,000 into this Trust Fund immediately upon approval by the court of a Consent Decree containing the terms of the settlement. Any additional money would be paid into the Trust Fund

upon the establishment of the final remedy for the Site. Projects financed by the Environmental Trust Fund would include ecological and open space creation and improvements, and priority would be given to projects in the Village.

The Settlement Term Sheet also contains a provision requiring AR to pay attorneys' and consultants' fees and costs to the Riverkeeper and the Village.

Mayor Kinnally: I will now read the Resolution 42:03.

- WHEREAS,** The Hudson Riverkeeper Fund, inc. (the "Riverkeeper") initiated an action in the United States District court for the Southern District of New York pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B), against the Atlantic Richfield Company ("AR"), alleging that contamination by polychlorinated biphenyls ("PCBs") at the Harbor-at-Hastings site presents an imminent and substantial endangerment to human health and the environment; and
- WHEREAS,** the Village of Hastings-on-Hudson (the "Village") subsequently intervened as a plaintiff in the action; and
- WHEREAS,** such action is captioned *Hudson Riverkeeper Fund, Inc. and Village of Hastings-on-Hudson v. Atlantic Richfield Company v. United States of America, the United States Department of Defense, the United States Department of Commerce and the United States Navy*, bearing case number 94 Civ. 2741 (WCC) (S.D.N.Y.); and
- WHEREAS,** the Riverkeeper, AR, and the Board of Trustees of the Village of Hastings-on-Hudson (the "Board of Trustees") have negotiated the conceptual terms of a proposed settlement of the action that are set forth in a Settlement Term Sheet, a copy of which is annexed hereto; and
- WHEREAS,** the Board of Trustees believes that the Settlement Term Sheet addresses the primary goals of ensuring a remedy for the contamination at the Site that fully protects human health and the environment, that improves the ecology of the Hudson River, and that facilitates the redevelopment of the Site to enhance its use by and value to the community; and
- WHEREAS,** to the extent that the proposed settlement is an action that is subject to review under the New York State Environmental Quality Review Act ("SEQRA"), the

Board of Trustees has determined that the proposed settlement should be treated as an Unlisted Action; and

WHEREAS, a Short Environmental Assessment Form (“EAF”) has been prepared; and

WHEREAS, the Board of Trustees has not made, and will not make, a final determination with respect to the approval of the proposed settlement prior to providing the public with the opportunity to review and comment on the proposed settlement, and prior to considering such comments; and

WHEREAS, the Board of Trustees has scheduled a public meeting for May 13, 2003 for the purpose of providing information to the public concerning the terms and implications of the proposed settlement, explaining the rationale for the proposed settlement, and inviting public comment on the proposed settlement, now therefore be it

RESOLVED: that

1. The Board of Trustees accepts the EAF, which shall be filed in the Office of the Village Clerk, and designates itself as Lead Agency; and
2. The Board of Trustees endorses and authorizes Mayor Wm. Lee Kinnally, Jr. to execute the Settlement Term Sheet; and
3. A public meeting for review and comment on the Settlement Term Sheet is hereby set for May 13, 2003 at 8 PM at Hillside School All Purpose Room, and written comments may be submitted to the Village Clerk through the close of business on Tuesday, May 27, 2003.

Trustee Holdstein: Seeing these documents and hearing them read even after we have labored over them for so many nights brings a lump to my throat and little chill because we are finally turning a corner on this site. We will have a lot to address on May 13, and we hope for a large turnout, but what needs to be acknowledged tonight is the incredible amount of work that our Mayor has done in getting this resolved, along with Mark Chertok and Kate Sinding, in the negotiations. It has been a long, arduous process. This is an exciting moment for the Village and I commend my fellow Trustees and former Trustees, including Jim Keaney, Elsa DeVita, and David Walrath, who have served on the Board during a lot of the negotiations. Today we have an incredibly powerful statement that begins the process of cleaning this site and getting it

ready for reuse. Any further comment would be premature, because the public has to digest the documents we have this evening, but I cannot emphasize enough the debt this community owes to the Mayor, our counsel, and Malcolm Pirnie, our environmental engineers, for the hard work and successful negotiations we have come to the public with tonight.

Trustee Jennings: I will be brief tonight because there will be more opportunity for discussion on May 13, but I certainly want to join Trustee Holdstein in congratulating Mayor Kinnally, our counsel, and all those who spent many hours working on these complicated and protracted negotiations. I believe that the settlement before us is excellent for several reasons. The principal reason for the lawsuit was to protect the health and safety of our citizens and the environment. This settlement achieves that objective very effectively and in more than a minimal way. But in addition to that, it provides the Village with certain benefits that will help us to work with the developers of the site in a constructive way. This proposal does not exist in a vacuum, but also is in a relationship to the decisions yet to be made by the state DEC. This agreement puts the Village in a good position almost regardless of how the state decides. If the state requires less, ARCO is still committed to doing more. If the state requires more, we still have guarantees for a number of important benefits that will be forthcoming regardless. This is a win-win situation, and I am very pleased that this has come about.

Trustee Apel: Michael and Bruce have really said it all. My primary concern has always been the health and safety of the community, and after a lot of hours of reading and discussing and negotiating, I feel that we have come up with something that is going to do that. I look at this as just a beginning. Once we get past this point there will be a lot more to think about, and I am delighted we have gotten this far. I want to thank everybody for all their hard work.

Trustee Swiderski: I come to this negotiation at the very tail end and have had my work cut out for me trying to understand the issues and the level of detail that will leave me comfortable enough to vote aye on the resolution before me. It has been a lot to absorb and I tried to do some independent reading to try to understand what standards are out there. I think it somewhat exceeds the standards as I understand them. It is a fine settlement for the Village, better than many expected, and I will be pleased to vote for it. It is a shame that I come in at the tail end of the hard work of a lot of people and have the chance to vote in favor of a settlement where others who have gone before me have done all the heavy lifting, but I guess I'm lucky.

Mayor Kinnally: Today happens to be Earth Day, and it is an auspicious occasion that we can celebrate Earth Day in this way. I thank my colleagues who have been generous in their comments about my efforts. The efforts go beyond the people who negotiated: our Manager, our Deputy Village Manager, and our Planning Consultant Meg Walker have pitched in. The discussions the Board had among themselves, with the Riverkeeper, with ARCO, were not done

in a vacuum. A very good silent partner in this was Waterfront Watch. While I would talk to Phil Karmel from time to time, Waterfront Watch was sending messages to DEC, to ARCO, to the Village, staking out positions, advocating certain things, and their imprint is on the documents. Comments from the public always go into the mix. We could not have gotten where we are this evening without the residents of the community and the various stakeholders.

The RPA presentation and report was used in the negotiations. There is a provision in the settlement term sheet about continuing discussion about potential transfer of property to the Village. ARCO has asked us to continue negotiations with them for a year to talk about possible transfer of additional parcels of land. They had talked about additional commitments at this point, but because the development phase is just beginning and the Village is working through the LWRP to see what vehicle is best in developing the site, we came to an agreement to talk further to get more open space for the Village. Whatever we have there will meld us with the river: we have access, we are going to have the promenade, the northwest corner, additional parkland. But the basic blueprint or underlying architecture for what we want to see is there in the RPA report; it was a reference point that people kept going back to and was quite helpful.

I think this is a very good settlement. While there were disagreements among all the negotiators, and discussions became contentious, the discussions never became disagreeable, and there was good faith bargaining by all parties to come to this agreement. The hard and fast position of this Board was that in no way would any settlement compromise the health and safety of the people on the site, or fish and animals. The Village insisted on the additional five feet of fill at ARCO's expense from the beginning. All in all I am delighted. Did we get all that the Village wanted? No. Did ARCO get everything it wanted? No. I will not speak for the Riverkeeper.

DEC is aware of the proposed terms and encouraged us to go forward with the meeting this evening. The settlement might assist them in their deliberations. We are closer than we have ever been to the cleanup and development of the site. I hope this will be an inducement to DEC to get their deliberations concluded so that we can move on to the next phase, the review of the PRAP and having the ROD issued, and then they can get into the design and engineering of the cleanup. The financial guarantee for the maintenance and reconstruction of the bulkhead is excellent; it ensures the integrity of the site for 100 years and is one less item for the developer to worry about and claim a need for density for.

On MOTION of Trustee Apel, SECONDED by Trustee Holdstein, Resolution 42:03 was duly adopted upon roll call vote:

ROLL CALL VOTE:

AYE

NAY

Trustee Michael Holdstein	X
Trustee Bruce Jennings	X
Trustee Marjorie Apel	X
Trustee Peter Swiderski	X
Mayor Wm. Lee Kinnally, Jr.	X

Mayor Kinnally: The main opportunity for comments will be on May 13, but I will open it to anyone for brief comments.

Bob Zahn, 24 Crossbar Road: There was time that my neighbors said they would not involved in the cleanup because nothing had happened for 15 years. I took a stand against that and got involved in whatever I could do. This moment on Earth Day is truly momentous for the Village and I am proud to be living in such a wonderful Village with such a wonderful environmental record, and that we are going ahead with this proposal. Congratulations.

Julius Chemka, 8 Ridgedell Avenue: I would like to commend the Board for their vote tonight and especially Mayor Kinnally who has worked long and hard for this. Now that we have hit a home run, let's go after the other two parcels to the south and get the whole area cleaned up. As a boy I played on that waterfront and it was always contaminated. Now we are going to get it cleaned up. Thank you for all your work; you have done a great job.

Peter Wolf: While we have to look at all the terms, it certainly seems that this is a major step forward and addresses all the Village concerns. Do you have a feel for the schedule in terms of the DEC, the PRAP and a ROD?

Mayor Kinnally: I do not. It is sooner rather than later, but they have not committed to any timetable. This is an incentive to DEC to move forward.

Regarding Mayor Chemka's point, the Village has already entered into discussion with the adjacent property owners not only about cleanup, which is more contentious, but also about the Village taking title to that property. We will have more information in days to come

Amy Parekh, Waterfront Front: Thank you for a well done negotiation. I appreciate the fact that you have incorporated our desire for an adequate soil cover on the site. Thank you for listening to us and for your cooperation.

Jeff Bogart, 5 Jordan Road: I commend the Board and Mayor Kinnally for their work in bringing this together. It will be interesting to study this in detail. Will the documentation leading up to the negotiation be made public?

Mayor Kinnally: That will have to await discussion with counsel. We are under a confidentiality order by the judge in this case that we may not disclose any documents or positions taken in the course of the discussions except for the documents shown today. But under the terms of the order I believe all the parties have to consent to the release of the documents.

Mr. Bogart: Are the other parties named on the document signatories to the terms?

Mayor Kinnally: No. The term sheet discusses that the claims of ARCO against the Departments of Defense and Commerce and the Navy are not affected by the settlement. Those claims are extant. They have not been parties to the negotiations.

Mr. Bogart: Who will be present at the Public Hearing?

Mayor Kinnally: The Board, Mark Chertok, Kate Sinding, Malcolm Pirnie, the Riverkeeper Alex Matthiessen and counsel to the Riverkeeper Karl Coplan, and an engineer from Carpenter Environmental for the Riverkeeper. I do not know if ARCO will be here.

Mr. Bogart: Has a price tag been put on the settlement?

Mayor Kinnally: They have cried poverty for a long time, and my reaction has been, Who cares? If they said their budget was X dollars, and it costs X plus Y, I told them to go back and get Y. In the FS certain numbers were outlined; I do not know what their budget is.

Mr. Bogart: Will the five feet elevate the existing site?

Mayor Kinnally: Yes. There are provisions for the end of the site where the bulkhead is so that appropriate measures are taken to ensure that none of the fill goes into the river and runoff will be contained. You are talking about five feet from the existing base line. If ARCO has to take seven feet out in the northwest corner, there would be in effect 12 feet of clean fill. You would replace the seven feet with clean fill, start with the asphalt cap or similar surface across the entire site, and on top of that the four and a half feet of additional fill and topsoil.

Mr. Bogart: Do we know how deep they will have to go for the major portion of the site?

Mayor Kinnally: No. There are test borings and they know the areas with the PCBs and the lead hot spots in the south.

Mr. Bogart: Why the limitation on digging in these two areas?

Mayor Kinnally: From what I can gather from the data generated, you are not going to remove all the PCBs in those areas because the contamination is quite extensive, and going beyond the dry area into the wet area - there are methods that are somewhat successful, but there are cost and engineering reasons for not going down deeper; the fear is that it would undermine the site and you might lose part of it. The health concerns are not greatly enhanced by going down deeper.

Mr. Bogart: You are talking only about the land portion?

Mayor Kinnally: The underwater land was not part of this lawsuit.

Mr. Bogart: Can you tell us what things you wanted that you did not get?

Mayor Kinnally: No. In any settlement you do not get everything you want. We got a lot.

On MOTION of Trustee Apel, SECONDED by Trustee Holdstein, Mayor Kinnally adjourned the Special Meeting at 8:55 p.m.