

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**SPECIAL MEETING (1)**  
**JUNE 24, 2003**

A Special Meeting was held by the Board of Trustees on Tuesday, June 24, 2003 at 8:55 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 Special Counsel Mark Chertok.

**CITIZENS:** Eight (8).

**60:03 NEGATIVE DECLARATION AND SETTLEMENT AGREEMENT -  
RIVERKEEPER AND VILLAGE OF HASTINGS v. ARCO**

**Mayor Kinnally:** The purpose of this meeting is to consider the negative declaration and settlement agreement between the Riverkeeper, the Village of Hastings, and ARCO. We have been in the public portion of the process since April. As a result of many comments received from the community at our public meeting on the May 13 and in the interim, we have renegotiated the settlement term sheet with ARCO and with the Riverkeeper.

Let me thank all participants in that process. It was very constructive. Some items that had been staring us in the face and were seemingly overlooked were addressed. To its credit, ARCO understood the seriousness of many of the concerns raised by both the public and by our consultants. We have addressed those concerns and incorporated them in both what we had originally called the Q&A, which we are now calling the responsiveness summary, a comprehensive outline of the questions and concerns raised by the public initially at the May 13 public meeting and subsequently, and in a settlement term sheet that addresses all of the issues that have been identified and then some.

I am not saying it addresses everything because things keep coming up, and we are dealing with the flexible nature of the cleanup. We are but the first of many steps along the way. The DEC is going to have its say in the PRAP and during the design and remediation phases. But to the extent that we have a blueprint for what we should do for the next phase, we have a very comprehensive blueprint.

**Special Counsel Chertok:** The last version of the term sheet and responsiveness summary and the proposed negative declaration addressed some new issues. We incorporated changes, particularly relating to ARCO's agreement to pay monitoring costs for the Village to hire a consultant, to participate in certain critical aspects of monitoring of the remediation, and access to data. It clarified that the trust fund determinations will be made by a majority vote, which is two out of three. We also addressed the potential for preserving certain of the

buildings and the water tower on the site, and ARCO has agreed to do a study of that feasibility with respect to the water tower in terms of disassembling and reassembling it and the potential for preserving intact on the site the administration building, building 51, and building 52, and if that cannot be done, to preserve a facade which could be stored pending a redevelopment where it could be reused on the site.

In addition, an issue was raised with respect to what I am going to call the outliers, three areas outside of the northern corner and the shoreline area which would be encircled by a bulkhead and slurry wall, that there were three single samples that revealed PCB's in the soils that were over 10 parts per million. The reason there was no resolution last week is we were negotiating this issue with ARCO at that time. There is a slight addition to the material that was put on the web site over the weekend, which is that ARCO has agreed for those three areas. They will be sheet-piled, with perhaps up to 50-foot grids in the sheet pile, so that area will be excavated down to 12 feet. There will be what is called end-point sampling to determine if there are PCB's at a 12-foot level. And in any event, whether there are or not, that area will be refilled with cleanfill and subject to the 5-foot cap on top, and if there are PCB's over 10 parts per million, left in that area. No pilings will be allowed in those sheeted areas. So even though there is only a very minimal potential for movement because of the type of material in that area, that would make sure that there is no potential whatsoever. \

**Andy Zimmerman, 7 Ridge Street:** I appreciate you making those changes. There are a couple of minor problems here. I am looking at term sheet in 4-A-2. The outlier data points, two of them are under building 52, but one of them is under building 51. It says they are all under building 52, here and also in the Q&A and also in the neg dec. I do not know if that is an incorrect statement of fact.

**Trustee Apel:** Which ones are under 51 and which ones are under 52?

**Mr. Zimmerman:** I believe that SB-85 is the one that is under 51. One of the TP readings also had greater than 10 parts per million. In fact, it was greater than 1,000 parts per million. This was near SB-85. This one is under the west end of building 51, and then outside of the west end of building 51 was this other one which is not addressed here. They are very close together, so they would probably be in the same grid.

On the term sheet, 18-B. It seems unclear because it says the pilings or pillars or other subterranean support structures would not be installed through the contact barrier in the northwest corner or shoreline area. Then jumping down to number 2, and sheeting to be left in place around the outlying data points and the slurry walls as required by DEC. I'm paraphrasing. But it seems that what you mean to say is that the pillars would not go through

the contact barrier over the area that is enclosed by that containment because it would not go sideways through the sheeting. We are talking about things that are going up and down, and it seems distant visions going through sheeting or slurry walls, which are horizontal walls. If you are talking about pillars, what you are really saying is you do not want it pierce the cap. Am I right about that? Otherwise, it is not making sense to me.

**Special Counsel Chertok:** Lets us try to clarify this. First of all, pilings can hit sheetings. The second point is that in the northern area there is an entire proscription because of the type of PCB's, the levels of PCB's. In this area the only real concern is that pilings would create a pathway for travel down to the south. If there is going to be a building on top, that building is going to be a second cap. So having a partial piercing of the contact barrier, which would be repaired under all normal engineering after that piercing is made, would not create a problem. And also, subterranean structures may not pierce the contact barrier depending on how they are made. So it is really the pilings in those outlier areas that are the issue.

In terms of your first comment, I believe that the TP is within the same grid. And in terms of the building, if one of them is building 51 versus 52, that will be clarified. It is not going to change the fact that the outliers will be treated in the fashion I have just described.

**Trustee Swiderski:** If you have a 50-foot grid around an outlier my expectation would be that the thing could not poke into that grid. Is that correct?

**Special Counsel Chertok:** That is correct. Pilings cannot go in the grid.

**Trustee Swiderski:** So within the four walls, those four steel sheets have been driven down? I would take it that you cannot drive a piling within the four walls of that.

**Trustee Holdstein:** Or to hit the sheeting with a piling.

**Trustee Swiderski:** Clearly. Definitely do not want that. But it is 6 inches of the sheeting plus what is within the sheeting.

**Trustee Holdstein:** I did not read it as hitting horizontally. I read it as hitting any of the walls that are constructed as well as the side walls.

**Trustee Swiderski:** It is within the four walls or the sheeting, right?

**Mr. Zimmerman:** I would hope that we would not be sinking pilings anywhere within that area, but is that what you mean to say here?

**Mayor Kinnally:** Yes, that is the intent.

**Special Counsel Chertok:** If you look at the responsiveness summary, I think it crystalizes. It is quite clear that the purpose is to prevent pilings from going within the 50-foot grid.

**Mr. Zimmerman:** I did not know where you wanted to change anything before you actually passed it.

**Mayor Kinnally:** Good point, Andy. Thank you.

**Mr. Zimmerman:** I would hope we would be able to estimate how much money is going to be required either for ARCO to put up for its hundred years that it is responsible or that the developer will have to put up afterwards. It seems that is something that we should know and there is some rational way of calculating that.

**Special Counsel Chertok:** Certainly, we will know what ARCO has to put up for the hundred years because this is going to be calculated and done in a financially acceptable manner. It is a little difficult at this point to talk about what a developer will need over a hundred years from now when you do not know what the development is. In addition, we do not know what the DEC is going to require or what controls or requirements the DEC might put on. It is hard to go that far in the future. If I recall my economics, a hundred years is the furthest you can project.

**Trustee Swiderski:** The standard is 20.

**Special Counsel Chertok:** You can do 20, you can do 30. You start going very far out and you are really at guesswork. There a variety of ways to approach this, and the purpose was to make sure there is flexibility. But it has to be in a financially acceptable manner. ARCO's numbers will be determined because we have the right to be assured that the method and the costing they are doing is acceptable. But to say after a hundred years, to develop a number where we are not even sure what development would be there, is impossible to do. That is a different issue, and that is part of the zoning that would be taken up when you have a specific development.

**Mr. Zimmerman:** The sampling, I take it from the responsiveness summary, is going to go only down and not sideways.

**Special Counsel Chertok:** That is correct because in the sheeting you are taking out all the soil, so there is no reason to sample sideways because you are going to hit sheeting. You cannot sample sideways. In other words, in that grid, in that sheeting, all the soil is removed.

**Mr. Zimmerman:** But you could do the edge of it.

**Special Counsel Chertok:** There is nothing left to sample because all the soil is removed. If you put steel sheeting in a 50-foot square in each direction, and you remove all the soil, there is only soil under you. There is no soil on the sides. So soil sampling has to go downward.

**Mr. Zimmerman:** You could sample the edge of it within the sheeting before you take the soil away, or you could sample just on the other side of the sheeting.

**Special Counsel Chertok:** The soil, when it is removed, will be sampled for characteristic sampling to determine whether it has to be disposed of off-site or whether it can be used as cleanfill and soil. It will be reused either to refill that hole or for backfill in other portions of the site. So it does get sampled, but it does not have to get sampled in the hole.

**Jeff Bogart, 5 Jordan Road:** In the term sheet as it has been updated, the reference to an area of 50 by 250 square feet is removed. Why would we want not to be specific the way we were in the original version?

**Special Counsel Chertok:** Because now, the term sheet provides that within the remainder all the PCB's over 10 parts per million will be removed other than in the outliers. It was actually more specific and more demanding than it was before. Rather than identify a specific area where the excavation was to 12 feet, now we have this general statement that everywhere, other than the outliers, the soils will be removed down to 12 feet, period. In other words, we do not have to identify specific sections if we can achieve generally what we were looking at specifically.

**Mayor Kinnally:** To a level of 10 parts per million.

**Special Counsel Chertok:** Yes. Anyplace the soil contained PCB's with over 10 parts per million, that soil is excavated. The only exception is in the three outlying areas, which would be surrounded by the sheeting.

**Mr. Bogart:** Just to clarify, it will excavated down to a depth of 12 feet?

**Special Counsel Chertok:** That is correct.

**Mr. Bogart:** And that would be throughout the shoreline area?

**Special Counsel Chertok:** No. The shoreline area is going to be excavated to 12 feet. The 250-foot grid was outside of the shoreline area and outside of the so-called containment area. Rather than have a specific little section that ARCO is going down to 12 feet, we said it does not matter whether you go down to 9 or 12 feet as long as you take out the soils that the samplings show reveals PCB's with over 10 parts per million. We wrote it broadly with the exceptions of the outliers rather than trying to identify a particular area where they go to 12 feet versus 9 feet.

**Mayor Kinnally:** It is more comprehensive and more protective of the public and the environment.

**Mr. Bogart:** There is another change. We talk about the cap as being impermeable in the original, and now it is of low-permeability. Is there significance to that?

**Special Counsel Chertok:** No. The original term sheet was always low-permeability, and somehow the term impermeable slipped in incorrectly. To be accurate, it is always a low-permeable contact barrier.

**Mr. Bogart:** I was curious about the relationship of what is in the response to the public's comments and the term sheet.

**Special Counsel Chertok:** Response to comments that were raised by the public in some cases amplifies the sparser language of the term sheet, since the term sheet is not designed to contain every bit of the document that will be the consentor, ultimately, or an attachment to the consentor with more details. Where questions came up on particular areas of the term sheet you now have a more expanded version, which is what will be ultimately in the consent order because there will be more details in the consent order.

**Mr. Bogart:** The responsiveness is something that all the parties have agreed to.

**Special Counsel Chertok:** The parties have read it and concurred with it, yes.

**Mr. Bogart:** I have not understood why the Village did not seek more in the way of specifics about the cleanup. The response document talks about what will happen when the DEC does its job. The settlement document sets the minimum standard for the cleanup. It is

what ARCO is willing to do in most cases, regardless of what the DEC requires. But we are constantly talking about what will happen, and that stuff is not in the terms itself. As an example, we talk about how we are going to get drainage off of the site despite the fact that there is a cap. The response document says that we are going to have a drainage system put in, and the term sheet does not indicate that. Why was this not put into the settlement? The parties seem to agree that this is going to happen.

**Special Counsel Chertok:** First of all, there is a lawsuit, which has a more limited claim in it. The settlement will be on the parameters of the lawsuit. But secondly, and perhaps as importantly, neither the Village nor the Riverkeeper is the DEC. The DEC is a state agency charged with responsibility for the overall cleanup and remediation of the site and ensuring that it is done properly. The site is listed on the state Superfund list, and the DEC has that responsibility. We could negotiate all we want, but if the DEC decides to do certain things, for example how they want to manage the stormwater, then negotiating a specific provision for stormwater would be of little moment. So we would spend our lives negotiating something that could be overturned by the DEC. The point was to salvage the basic framework, where the DEC can probably fill in the gap, so to speak, and do a cleanup and make sure the cleanup is done in accordance with state law.

**Mr. Bogart:** My observation is that there are things that might have been put in the document that would have also set minimums. The DEC could always override that because that is what the document seems to provide.

**Mayor Kinnally:** We did not endeavor to design the cleanup in the settlement term sheet. That is not part of the lawsuit and, as Mark said, that is the DEC's job.

**Trustee Jennings:** Mark, you mentioned that between the term sheet and the final settlement document there are things in the responsiveness document that, presumably, are going to be incorporated into the final settlement document?

**Special Counsel Chertok:** That is correct. The consent decree.

**Trustee Jennings:** So given that process, the term sheet is not the final agreement, number one. And number two, we still have to decide, I suppose through negotiation, what is put in the consent decree out of the Q&A and what is not. Is it conceivable that something like mention of a drainage system would be put into the consent decree?

**Special Counsel Chertok:** The purpose of the responsiveness summary is to respond to comments by the public. In some cases, the responsiveness summary expands upon

provisions in the term sheet because those questions related to the term sheet. But the purpose of the term sheet is to set the parameters of the consent decree. The consent decree will have the term sheet in details that implement the provisions of the term sheet. But just because we respond to a question about a drainage, for example, that will there be drainage and the answer is, yes, the DEC will undoubtedly require a stormwater drainage because that is part of the overall remediation, does not mean we are going to put all that in the consent decree. So the answer would be, not necessarily.

**Stuart Cadenhead, 5 Valley Place:** This section that was added about the points beneath building 52, SB-72, when were those found? I do not think they were on the original map that was handed out.

**Special Counsel Chertok:** They were y found when the sampling was done several years ago. They were looked at, but did not become a focal point until the last several weeks.

**Mr. Cadenhead:** And those are the only points? Those points below 52?

**Special Counsel Chertok:** As Mr. Zimmerman pointed out, one of them may be under 51, but those are the only points of the sampling that showed PCB's over 10 parts per million other than the southern area where those will be completely removed and the so-called containment area where PCB's over 10 parts being left below either 9 or 12 feet, depending on the area in question.

**Mr. Cadenhead:** Do we know where below building 52 they are?

**Special Counsel Chertok:** Yes, it is reflected on the map. If you look at figure 5.10 on the remedial investigation you will see boring SB-84, SB-85, and SB-72 will be below buildings 51 or 52. This is on one of the detail maps in the library in the remedial investigation which reflects where sampling was taken and reflects all the sampling, and it shows it relationship to different buildings.

**Trustee Apel:** I want to thank everybody for all the work they have done. It is an amazing process, and it shows that we have a remarkable community because they all come out and give their advice, and they constantly keep us on our toes. We also have excellent legal and engineering firms that are able to give us the information we need. The process has been spectacular, and everyone should be proud because we got it all together and it is good.



**Trustee Holdstein:** I agree 110% with Marge, and say a special thank you to Mark Chertok and Kate Sindig, our environmental counsel, and Warren Riznychok, from our engineering and environmental consultants, who have done an extraordinary job in responding to so many questions and have put in so many hours to create a very fine final settlement.

**Trustee Jennings:** My added thanks to everyone involved for their hard work. The original purpose of the lawsuit was to protect health and safety and the environment. This not only accomplishes that objective but, as has been mentioned, goes well beyond it. The negotiations of all three of the parties were done in good faith, and we have reached a very reasonable accommodation of some conflicting values and goals that all three of us had. That is in the nature of negotiation and settlement. Everyone involved in this negotiation is to be commended for their willingness to do this.

This is not the last act of the remediation. The DEC has still got to do its job. We still have to work together with ARCO and the DEC, and try to make sure that the best remediation possible can be accomplished. I believe, however, this settlement protects us against some unlikely, but possible, glitches in that ongoing process, and that is one of the great strengths of it. It protects us if the DEC requires too little, and it also protects us if they require so much that a legal dispute breaks out between ARCO and the DEC. The way that gets resolved is going to be affected by this settlement, and we protected our interests in that eventuality as well.

This is an extremely reasonable outcome of a difficult process and an extraordinary boon to the Village as we move forward.

**Trustee Swiderski:** The effort was a remarkable one, and I will thank our environmental counsel, whose work has been studious and hard. They are paid in a lump sum, and we have done our best to drive their hourly salary down to minimum wage through this effort. However, at least it is minimum wage, which is more than we can say for those out in the pews and at the meeting two months ago, who also spent hours worrying about these issues at no benefit to themselves other than for the greater good of the community. The real thanks I have are for those. They made it a better settlement.

**Mayor Kinnally:** Let me turn to page 3 of the settlement term sheet, paragraph 4-A, subdivision 2, and make a change. The first line reads now, for three limited outlier data points below building number 52. It will now read for three limited outlier data points between building number 51 or number 52.

On page 7 of the same document, which would be paragraph 18, deed restrictions, subparagraph B. It reads now, new pilings, pillars, or other subterranean support structures would not be installed through 1) the contact barrier or cover in the northwest corner of shoreline area, and this area would be designated as open space, as set forth below; and 2) sheeting to be left in place around the outlier data points, etc., etc. It would now read, the new pilings, pillars, or other subterranean support structures would not be installed 1) through the contact barrier or cover in the northwest corner or shoreline area, and this area would be designated as open space, as set forth below; and 2) within sheeting to be left in place around the outlier data points, etc., etc.

On MOTION of Trustee Holdstein, SECONDED by Trustee Swiderski the following Resolution was duly adopted upon roll call vote:

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") negotiated the conceptual terms of a proposed settlement of the action, which terms were set forth in a Settlement Term Sheet that was executed by each of the parties on or about May 13, 2003; and

WHEREAS, a Short Environmental Assessment Form ("EAF") was prepared and filed with the Village Clerk on May 13, 2003; and

WHEREAS, the Board of Trustees has designated itself as Lead Agency pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, to the extent that the proposed settlement is an action that is subject to review under SEQRA, the Board of Trustees has determined that the proposed settlement should be treated as an Unlisted Action; and

WHEREAS, the Board of Trustees conducted a public meeting on 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 until the close of business on May 27, 2003; and

WHEREAS, the Board of Trustees has reviewed and considered all questions and comments received from the public concerning the proposed settlement and has prepared a Responsiveness Summary setting forth responses to the questions raised by the public; and

WHEREAS, the Board of Trustees has continued its negotiations with AR and the Riverkeeper concerning the terms of the proposed settlement, including those with respect to certain issues raised by the public; and

WHEREAS, the parties have negotiated the terms of a Revised Settlement Term Sheet; and

WHEREAS, the Board of Trustees has determined that the proposed settlement would not result in any significant adverse effects on the environment, and would in fact have positive environmental impacts as it would assure a remediation at the Harbor-at-Hastings site that is more than sufficient to protect public health and the environment.

THEREFORE, BE IT RESOLVED THAT

1. The Board of Trustees adopts the Negative Declaration, which shall be filed in the Office of the Village Clerk; and
2. The Board of Trustees endorses and authorizes Mayor Wm. Lee Kinnally, Jr. to execute the Revised Settlement Term Sheet annexed hereto.

**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:** Kudos have been thrown around here this evening, but it was yoeman's work by everyone. The work product that we have is much better today than it was when we started this. To use Bruce's analogy, this is an opening act. I am not sure that it is ready to bring the curtain down because probably the consent decree will be the final scene of this act. But I want to thank everybody.

**ADJOURNMENT**

On MOTION of Trustee Apel, SECONDED by Trustee Swiderski with a voice vote of all in favor, Mayor Kinnally adjourned the Special Meeting at 10:05 p.m.