Partnerships for Environmental Dredging: Lessons from Ashtabula

Richard L. Nagle
Assistant Regional Counsel
U.S. EPA Region 5, Chicago, IL

I. The Ashtabula River has not been dredged to its navigational depth for over 30 years. Like many other harbors, the sediments in Ashtabula are contaminated and the cost of dredging quite high. In 1994, a decision to adopt a partnership approach was made; partially to avoid the Superfund designation for the water resource and partially to try and bring parties with similar interests together to solve a complex problem. Below, I will briefly describe the Partnership, some successes, some unresolved issues, and conclude with some lessons we have learned.

II. The Problem

Ashtabula is located 75 miles east of Cleveland, Ohio, on the southern shore of Lake Erie. It has been an active commercial port since 1824. It has also been home to a mid-sized industrial complex since the 1940's. Fields Brook, a tributary of the Ashtabula River and Harbor was contaminated by the industrial complex and is now being remediated under the U.S. EPA's Superfund program. In the lower 2 miles of the river, from the mouth of Fields Brook into the Harbor, the sediments are contaminated by PCB's (> 50 parts per million), hydrocarbons, and heavy metals from Fields Brook and other sources. Navigation channel maintenance has been limited in the lower Ashtabula River due to contamination and appropriate disposal issues. While the majority of the harbor is not contaminated enough to preclude unrestricted disposal, the more-contaminated river sediment is moving downstream.

III. The Partnership

In 1994, U.S. EPA agreed to forestall expansion of the Fields Brook clean up into the Ashtabula River so that a "Public-Private Partnership" could attempt to fashion a dredging project that would address the needs of a wide group of stakeholders. The Partners, by signing the Charter, committed to active participation in solving the community problem. The Stakeholders include: members of the local community, recreational boaters, commercial dock owners, local industrial interests, and various local, state and federal agencies. Everyone involved anticipated that the partnership could do the job "smarter, cheaper, and faster" than government alone.

The challenge facing the diverse group of stakeholders was to effectively blend their authorities and resources and create a project that was more inclusive than any individual stakeholder could accomplish. To that end, the U.S. Army Corps of Engineers (USACE) and its dredging authorities under the Water Resource Development Act (WRDA) had to be blended with the response agency authorities that could be used to compel clean-up, State requirements for project planning, and local needs for restoration of the beneficial uses of the waterway.

The partnership has no legally binding agreements governing its members. Members signed a Partnership Charter as a pledge to try and do business a new way. Decisions on partnership matters are generally made by consensus, but there are by-laws and votes under the adopted

rules. The Partnership adopted the National Environmental Policy Act (NEPA) process as its planning tool, but retains the flexibility to address project needs outside traditional USACE dredging mandate. Work is done by sub-committees using a mix of agency professionals and local volunteers. The sub-committees report to a coordinating committee that manages short term operations.

In early 2002, the USACE released the Final EIS for the project for public comment. The Record of Decision (ROD) should be signed later this summer. The recommended project will dredge approximately 700,000 cubic yards of contaminated sediment from the river. It will be disposed of in two upland disposal facilities located about a mile from the river. The projected project cost is just over $46 million. (1999 dollars).

IV. Advantages of the Partnership Approach

Contaminated sediments pose a complex and expensive problem. One of the clear advantages of a partnering approach is the ability to bring more resources to the table. Any individual stakeholder may lack resources or authorities to deal with the overall problem. Together, the partners can bring a wide range of resources to the table.

In accepting the partnership approach, the stakeholders needed to spend some time initially to define the scope of the problem to be addressed. Traditionally, U.S. EPA would focus on "imminent and substantial endangerment of human health and the environment" and USACE would focus on navigational dredging. The local public, either represented by local boaters or members of the Remedial Action Plan (RAP) process, had interest in restoring the recreational and other beneficial uses of the waterway. Through the scoping exercise, the stakeholders can design a project that meets as many of their needs as feasible through one combined project.

One of the obvious resources is money. Funding for various elements of the investigation and planning phases of the project have come from local companies, city and township government, U.S. EPA grants, and the USACE. With a diverse funding base, different money sources can be used at different and critical times. For example, additional testing that would help refine the cut lines and volume estimates was funded by private resources when public resources could not be made available on short notice. The significant resources available under the Water Resource Development Act generally require local matching funds for a percentage of the funded item. In that situation state government and private funds fill this need. Administrative costs are always difficult to fund and the Partnership has relied on a mixture of government and private funds to cover these expenses.

Some partners do not have cash resources but can provide less traditional resources of very high value to the Ashtabula dredging project. First, land for access and disposal are essential to a successful dredging project. The transfer and dewatering station for the project sediments will be on land leased to the project by one of the partners at a very low cost. The property was originally contemplated for direct acquisition, but the lease arrangement meets everyone's needs by allowing the owner (a railroad) to retain a controlling interest. Second, a set of properties in the Ashtabula area were generated as possible disposal sites. With residents guiding the selection committee, a set of locally acceptable disposal locations was established and a final

disposal site selected within one mile of the river. Third, USACE projects generally require a local sponsor that is a governmental entity with taxing authority. The City of Ashtabula Port Authority is filling that role and assuming some significant responsibilities. Fourth, the environmental dredging authority available under WRDA section 312(b) requires a analysis of environmental benefit to justify the expenditure. To produce this analysis in a timely fashion, partners from the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service prepared an analysis of the ecosystem benefits provided by the upstream portion of the project. Fifth, as mentioned above, there are times when the use of governmental money requires lead time that could push back the project schedule. Private resources can facilitate sample analysis and produce results that will keep the project on schedule.

V. Issues Raised By Partnership Approach.

The partnership approach does raise a number of issues in project planning and implementation. Most of these issues relate to the consensus-based operation of a large group. While not a set of issues that has hurt the Ashtabula partnership process, these are some of the issues that could have a significant impact on project completion. First is transaction costs. In any large group, it is costly both in terms of time and money to get to a decision point. Much of the first two years after the Charter signing were spent establishing project goals, writing by-laws and assigning committee tasks. Second, consensus decision-making is a slow process. The evaluation process is iterative and options are evaluated relative to individual stakeholder goals. This diversity in perspective can be both a resource and a constraint. It often takes significant discussion to resolve issues, especially in early phases of a partnership. Third, it's important to keep a focused project goal. A partnership project should set an attainable goal in a reasonable time frame. The Ashtabula Partnership focused on the contaminated sediments in a selected reach of the River. While larger watershed issues could have been added, the group decided to keep a narrower focus that would help assure success. Additional projects could grow out of a successful sediments project. A related issue is mission creep. As a project starts to take shape, stakeholders may be tempted to add tasks. Sometimes a shift in project scope is warranted, but it is important for the project coordinators to keep the group from adding baggage that could sink the project either administratively or financially. Ashtabula has struggled with the concept of interim dredging projects to keep recreational navigation open while the main project is planned. These interim projects are now planned outside of the main project effort. Fourth, some partners may have institutional incompatibilities. Sometimes this stems from the adversarial regulatory relationship of agencies and industry. Sometimes this arises between agency missions. In Ashtabula, the partners had to resolve the issue of the appropriateness of giving government grant dollars and WRDA funding to a project that could arguably be subject to Superfund enforcement. Fifth, any cooperative effort is subject to difficulties with holdout stakeholders. Consensus is lost if one party, especially one with a large resource investment, decides to withhold participation pending a favorable decision on the project. While Ashtabula has not had a hold out, there are discussions regarding the allocation of stakeholder liability that could result in a major partner withdrawing support.

VI. Lessons Learned

After eight years of the partnership process to address contaminated sediments in Ashtabula,

there are a number of partnership attributes that have helped generate a Final EIS for this project. First, a commitment by the parties to solve the defined problem. The Partnership has remained focused on the attainable goal set years ago and has resisted mission creep. Calls for additional interim dredging or expanded watershed development plans have been kept at a respectful distance. Second, early participation by a wide range of stake holders, while slow in the early stages, results in a broadly acceptable project down the road. The broad support and inclusive project design have helped smooth the approval process in the later stages, and while not speeding up the process, provide continued progress toward project implementation. Third, cooperation requires both carrots and sticks. A successful cooperative enterprise is most likely when all the stakeholders would benefit from cooperation. For some stakeholders, solving the local contamination problem is enough to elicit cooperation. For parties removed from the local effect of the contamination, the threat of legal action may be required to enhance cooperation. Fourth, partnerships reflect an approach, not a formula. Each site has it's own unique history and set of stakeholders. In Ashtabula, a non-binding charter was enough to start the process. In other situations, a more formal arrangement may be necessary. If the parties have residual animosity, a mediator may prove useful. For smaller projects, there may be fewer parties and less focus on building common goals. Last, you need parties with the potential adequate resources at the start. Many problems can be solved by a committed partnership. Raising all of the tens of millions of dollars necessary to implement a solution is just too large an obstacle to solve.

The Partnership approach to environmental dredging holds great promise as a tool for addressing complex projects. Our experience in Ashtabula has taught us that there is no magic formula, but if the project is properly scoped, if a wide range of stakeholders are brought to the table early, if stakeholders remain committed to the cooperative approach (with either carrots or sticks), and if parties with adequate resources are available, you are have every reason to expect a better project in the end, maybe not cheaper and faster, but better.