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Cleanup News *is an occasional newsletter highlighting hazardous waste cleanup cases, policies, settlements, and technologies.*

EPA Moves to Full Cost Accounting at Superfund Sites

Guidance Issued on Enforcement Discretion During Transition Period

EPA's Office of Site Remediation Enforcement has provided guidance to the regional offices on the exercise of enforcement discretion between now and October 2, 2000 when EPA moves to a full cost accounting approach to allocating costs at Superfund sites. (See notice in the *Federal Register*, June 2, 2000, pp. 35339-35345.)

Until the revised rates are issued, EPA will entertain settlement offers resolving claims for CERCLA response costs based on the current indirect rates.

EPA's current indirect cost accounting methodology allocates to Superfund sites only about one-third of the indirect costs that are incurred by EPA and properly allocable to sites. Full cost accounting will bring Superfund into compliance with cost accounting standards issued by the Federal Accounting Standards Advisory Board in 1995 and the requirements of the Federal Financial Management Improvement Act of 1996.

The effect of applying the revised rates will vary from site to site. The new method allocates indirect costs in proportion to direct costs, instead of in proportion to the number of Superfund staff hours charged to a site. As a result, sites with large direct federal expenditures compared to the number of Superfund staff hours will generally see the largest indirect cost increases, and few if any decreases. Sites with smaller federal expenditures compared to the number of Superfund staff hours, such as sites cleaned up by potentially responsible parties (PRPs) where EPA's costs are largely for oversight performed by EPA staff, will generally see smaller indirect cost increases, and are also more likely to see decreases.

Enforcement Discretion

After October 2, 2000, site costs, including oversight costs, will be calculated using the revised rates. Here are some of the issues of particular enforcement interest and EPA's intended approach to ensure a fair and efficient transition to the revised accounting methodology.

- *Concluded Matters* EPA recognizes the importance of finality and has no plans to re-open any concluded cases to apply the revised rates to claims for past costs that were presented and resolved in those mat-

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National Notable Achievement Awards Given in April 2000

At a ceremony in Washington on April 24, the year 2000 National Notable Achievement Awards were presented to outstanding EPA Regional Superfund, RCRA Corrective Action, and Superfund Enforcement staff. Here are a few examples of excellence in action.

Legal Enforcer of the Year Thomas P. Turner accepts congratulations from OECA Assistant Administrator Steven Herman and OSRE Director Barry Breen.

RCRA Corrective Action Award for Outstanding Stakeholder Involvement:

Gary Miller, Region 6

Gary Miller received this award for his work as the corrective action enforcement project manager at a hazardous w aste facility with substantial contamination that was partially destroyed by an explosion and fire. Gary worked effectively with the concerned surrounding community as well as with the state agency, EPA headquarters, and the facility owner to ensure that proper actions were taken to clean up the site.

After the Chief Supply Company was partially destroyed by an explosion and fire in March 1997, environmental samples detected chlorinated solvents, benzene, toluene, ethylbenzene, and xylene contamination. Gary assembled the community, the state, and EPA headquarters for numerous discussions regarding community concerns, the best way to approach the facility, the purpose of EPA's actions, and the safety of the facility's operations. In addition, he opened an ongoing dialogue with the community via e-mail.

Gary continues to work with the state agency and the facility owner to complete the cleanup. In a recent letter to the Regional Administrator and local Congressmen, a member of the community thanked EPA for its continued efforts and specifically for Gary's exceptional work.

Superfund Award for On-Scene Coordinator (OSC) of the Year:

Martha A. Wolf, Region 8

As one of two recipients of the OSC award, Martha Wolf was recognized for her professionalism, dedication, and high-quality work inspecting refineries and large-scale petroleum storage facilities located on the banks of pristine rivers in the Rocky Mountain area. In addition, she organizes and directs diverse and sometimes difficult stakeholder groups in Area Contingency Plan (ACP) negotiations, and establishes national regulations and policy for EPA's oil program.

Martha supervises the FRP and SPCC programs that compel facility owners to identify their vulnerabilities and change their practices to prevent spills, and to be well prepared for any that do occur. In FY99, she managed a workload of more than 100 SPCC and FRP inspections and reviews, and conducted negotiations for five separate river environments, bringing groups together to resolve conflicts and prepare ACPs despite their often contentious histories. In addition, she initiated an effort to incorporate all information and maps in the plans into a computerized geographic information system.

On-Scene Coordinators need to exercise diplomacy, and Martha has demonstrated an amazing ability to communicate effectively with uncooperative facility owners. Martha's patience has helped achieve the goal of safer, well-prepared facilities.

Superfund Enforcement Award for Team of the Year:

Casmalia Enforcement Team, Region 9

For its successful implementation of several key administrative reforms to achieve the largest *de minimis* settlement in the history of the Superfund program, the Casmalia Enforcement Team received the 2000 Superfund Enforcement Team of the Year Award. These reforms included expedited settlement; increasing fairness in the enforcement process; reducing transaction costs; and providing a meaningful forum for stakeholder concerns.

Through the team's efforts, EPA settled with more than 400 small waste generators, providing special legal protections to *de minimis* contributors. These *de minimis* parties have contributed a record $26.5 million toward cleanup of the site. The Casmalia Disposal site in Santa Barbara County, CA, is one of the largest hazardous

waste sites in the nation. During a four-year period in the early 1990s, EPA spent more than $17 million taking emergency response actions to stabilize the site.

The team used several innovative approaches to achieve settlement, including: (1) utilizing a sophisticated management information system to enhance communication with the *de minimis* parties; (2) conducting special outreach efforts to the *de minimis* parties; and (3) expediting the settlement process by consolidating payment with the submittal of signature pages.

The case team actively encouraged *de minimis* parties to contact EPA using a dedicated toll-free number. In addition, the team hosted an informational meeting attended by 350 people after the settlement offer was distributed. And throughout the arduous process of producing the settlement, team members maintained their sense of humor and a strong sense of camaraderie.

The Winners!

RCRA Corrective Action Awards:

Outstanding Stakeholder Involvement: Gary Miller, Region 6

Outstanding Use of Environmental Indicators: Raphael J. Cody, EPA-New England

Faster, Focused, More Flexible Cleanup: Matthew R. Hoagland, EPA-New England

Outstanding Team:

- Anniston PCB Work Group Team, Region 4
- Streamlining Team for RCRA Enforcement CA, Region 6
- Corrective Action Environmental Indicator Evaluation Team, Region 9

Superfund Awards:

On-Scene Coordinator: Vincent E. Zenone, Region 3; Martha A. Wolf, Region 8

Remedial Project Manager: Randy Sturgeon, Region 3

Site Assessment Manager: Cynthia Gurley, Region 4

Community Involvement Coordinator: Pat Seppi, Region 2; Sherryl A. Carbonaro, Region 4

Exceptional Merit Award: Earl Liverman, Region 10

Leader/Mentor: Robert W. Feild, Region 7

Superfund ROD: Sally Thomas, Region 10 (Pacific Sound Resources Site)

Superfund Team:

- Hurricane Floyd Response Team, Region 4
- Oklahoma Tornadoes Team, Region 6

Superfund Enforcement Awards:

Legal Enforcer: Thomas P. Turner, Region 5

Technical Enforcer: Lois Elaine Green, Region 9

Enforcement Team: Casmalia Enforcement Team, Region 9

For more on the awards, go to: www.epa.gov/superfund/new/awards/index.htm

Superfund Accounting

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ters. This includes consent decrees, litigated judgments, and administrative orders on consent. It also includes ceilings established in settlements and judgments for oversight or other response costs that the Agency can bill to PRPs under those existing settlements or judgments.

- *Oversight Billings:* EPA has no plans to recompute oversight bills that were prepared and sent to PRPs before the revised rates are issued.
- *Claims in Litigation Prior to October 2, 2000:* There may be special circumstances in these cases, especially if the litigation is at an advanced stage, that cause the case team to decide not to seek to amend the claim by applying the revised indirect rates. An example might be certain cases in which costs have already been presented to the court and the parties are awaiting the court's decision. These decisions will be made by the EPA/Department of Justice case team on a case-by-case basis.
- *Interim Settlement Policy in Anticipation of the Revised Rates:* One purpose of EPA giving advance notice of the change in rates is to provide PRPs who have unresolved cost recovery liabilities an opportunity to settle with the United States at the current rates. Until the revised rates are issued, EPA will entertain settlement offers resolving claims for CERCLA response costs based on the current indirect rates.
- *Proving Indirect Costs:* Implementing the new accounting method will not alter the burden of proof that EPA must meet when seeking recovery of indirect costs. EPA will continue to provide evidence acceptable in a court of law to prove that the indirect costs sought are allocable to the site that is the subject of the enforcement action.
- *National Consistency/Coordination:* EPA has a substantial interest in promoting a nationally consistent approach during this transition period. As always, EPA will exercise its discretion to ensure that resulting settlements are fair, reasonable, and consistent with CERCLA.

For more information, contact OSRE's Policy and Program Evaluation Division at 202-564-5100.

District Court Upholds EPA's Cost Recovery at Atlas Asbestos Mine

In August 1992, the United States entered into a consent decree (CD) with potentially responsible parties (PRPs) Atlas and Vinnell Mining to perform a cleanup at the Atlas Asbestos Mine Superfund Site. The CD required the PRPs to reimburse EPA for all future response costs, including oversight costs and indirect costs. The CD permitted Atlas to contest payment of any future response cost on one of three grounds: (1) an accounting error was made by the government; (2) costs billed were inconsistent with the National Contingency Plan; or (3) costs billed were not actually incurred in connection with the site.

In August 1994, EPA sent its first bill to the PRPs, for costs incurred between December 1990 and December 1993. The PRPs disputed these costs, placed the disputed funds in an escrow account, and requested additional documentation from EPA. In December 1997, EPA sent a second bill. Again, the PRPs disputed these costs, but did not establish an escrow account for the disputed amount until ordered by the district court in June 1998. Following a period of informal, and then formal dispute resolution, EPA issued a decision requiring the PRPs to pay roughly $641,000 of the roughly $677,000 originally billed. The PRPs challenged EPA's ruling in district court alleging, amongst other things, that EPA failed to adequately document costs, had improperly billed non-site-specific costs, and was not entitled to recover attorney's fees incurred in defending the dispute.

The opinion included very favorable language regarding EPA's use of its annual allocation and indirect cost methodologies.

Addressing each type of cost separately, the court broadly interpreted the provisions of the CD to permit the collection of all contested costs (including attorney's fees, annual allocation costs, and indirect costs). The court did find that in some instances EPA had failed to provide enough supporting documentation, and failure to remedy this deficiency would prevent the recovery of those costs (roughly $67,000).

The opinion included very favorable language regarding EPA's use of its annual allocation and indirect cost methodologies. Although the court acknowledged that EPA employs a "complicated methodology" to apportion indirect and annual allocation costs, the court did not find EPA's methodology arbitrary or capricious. In addition, the court was not persuaded by the argument that EPA was not entitled to recover non-site-specific costs. The court found that the CD unambiguously requires the private parties to pay indirect costs, and although the CD does not specifically mention annual allocation costs, the court held that "these costs are incurred in connection with the Site" and therefore are recoverable.

For more information, contact OSRE's Regional Support Division, 202-564-4200 [U.S. v. Atlas Corp. and Vinnell Mining, E.D. Cal., 1/12/00].

Corporate Officer Held Individually Liable in U.S. v. Aronowitz

On January 31, 2000, the U.S. District Court for the Southern District of Florida held that Jack L. Aronowitz, president and owner of Technical Chemicals & Products, Inc. (TCP) was individually liable as an operator and arranger under CERCLA Sections 107(a)(2) and (a)(3), as was his company TCP. EPA filed a cost recovery action against Aronowitz and TCP for response costs incurred in responding to release problems at the Lauderdale Chemical Warehouse site in Broward County, Florida. The court held that Aronowitz and TCP were jointly and severally liable for $401,177 plus post-judgement interest.

From 1985 to 1992, TCP operated the site when hazardous substances (toxic and volatile chemicals) were disposed of, and arranged for the disposal of hazardous substances located at the site. The court held TCP and Aronowitz liable because of the specific activities TCP conducted at the site and because Aronowitz directed, managed, and controlled the environmental operations of TCP.

The court found that Aronowitz's actions met the criteria for direct operator liability under CERCLA, as articulated by the Supreme Court in United States v. Bestfoods, 524 U.S. 51 (1998). The Supreme Court in Bestfoods addressed the issue of parent/subsidiary liability under CERCLA. In finding Aronowitz individually liable as an operator, the court applied the same standard of control for operating a facility to corporate officers as was used in Bestfoods, where a parent corporation was alleged to have operated facilities owned or operated by its subsidiary. The court also held that Aronowitz's actions in operating TCP were sufficient to find him liable as an arranger under CERCLA.

For more information, contact OSRE's Regional Support Division, 202-564-4200 [United States v. Aronowitz, No. 98-6201 (S.D. Fla. 2000)].

EPA Participates in Counter-Terrorism Drills

A series of counter-terrorism drills conducted on May 20-25, 2000 at the behest of Congress helped federal planners assess national readiness in the event of a terrorist attack. Code-named "TOPOFF" for Top Official, the Federal Disaster Drill was masterminded by the Department of Justice and the Federal Emergency Management Agency to measure the integrated capabilities of federal, state, district, and local resources — including personnel, procedures, direction and control, communications, facilities, and equipment — in the event of a Weapons of Mass Destruction terrorist incident. EPA has formal responsibility for cleanup of any hazardous materials releases in such an event.

Personnel from EPA headquarters (OERR, CEPPO, Radiation and Indoor Air) and regional counterparts worked closely with local emergency responders to ensure that quick local and federal responses would hold civilian casualties down to a minimum during the simulated exercise. Participating responders were not informed of the specific scenarios in advance.

The three-part exercise began when a simulated explosion occurred in Portsmouth, NH, on May 20 at the start of a charity race. The response was complicated by the simultaneous release of a chemical agent, determined to be mustard gas. Local law enforcement officials, firefighters, and rescue crews scrambled to deal with fake deaths and injuries.

A similar scene took place in Denver where a simulated attack involving a biological agent, first thought to be anthrax, was subsequently determined to be the pneumonic plague. The nation's capital was also pulled into the mix when simulated explosions laced with uranium occurred at St. Elizabeth's Hospital in Washington, D.C. and at the U.S. Airways Arena in Largo, MD.

B.A. Marvin, Jr.

Mutual Aid Personnel Treat Simulated Victims in Portsmouth, NH.

The exercises aimed to assess the nation's ability to manage crises and consequences, and to highlight areas in which more training might be needed to fend off the possibility of terrorist attacks and to respond quickly and effectively in their aftermath. For more information, contact CEPPO at 202-260-8600.

A Snapshot of Risk Management Plans

In June 1999, an EPA regulation called the Risk Management Program (RMP) prompted 15,000 U.S. facilities that use hazardous chemicals to submit reports describing their potential risk to surrounding communities. The Risk Management Program captures information from businesses such as cold storage warehouses, water utilities, oil refineries, fertilizer makers, and farm suppliers as well as chemical manufacturers. One of the most valuable pieces of data in the reports is the history of actual chemical accidents that occurred at these facilities in the past five years.

EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO), industry associations, state and local emergency managers, and others are reviewing the data to find accident frequencies by industrial sector, correlations between facility characteristics and accidents, findings about potential consequences of accidents to off-site populations, and significant trends in chemical industry hazards and accidents. Preliminary data from the RMP accident histories indicate that over a five-year period, there were:

- 1,900 serious accidents among these 15,000 facilities;
- 33 deaths and 8,300 injuries; and
- Evacuation or sheltering of 221,000 individuals.

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To Permanently Relocate or Not?

by Pat Carey, OERR

The decision to permanently relocate residents away from areas near Superfund sites was the topic of discussion at the Relocation Forum Stakeholder Meeting held March 2-3, 2000, in Washington, DC. Representatives from industry, state and local government, public health, environmental justice and other federal agencies convened to review, discuss, and give input on the *Interim Final Policy on the Use of Permanent Relocation as Part of Superfund Remedial Actions*.

The interim final policy, issued June 30, 1999, states EPA's preference to clean up and restore property so people can live safely in their homes. The policy explains when to consider permanent relocation as part of a cleanup at an NPL site, and gives examples of situations where permanent relocation could be considered.

The policy, which emerged out of a 1995 request by the National Environmental Justice Advisory Council, also recognizes the importance of early, direct, and meaningful public involvement in relocations. EPA recommends that Community Advisory Groups be formed to engage all interested parties in a dialogue about cleanup and how relocation fits into a community's long-term vision and plans. In the last few years, EPA has undertaken a number of initiatives to widen its understanding of the issues associated with relocation:

- A national relocation pilot was selected in Pensacola, Florida at the Escambia Woodtreating Site.
- EPA reviewed sites where cleanups were done in residential areas, then sponsored a series of forums to hear stakeholder views and experience on the subject of relocation.
- In 1996, a Relocation Forum was held in Pensacola, Florida, with community and environmental justice groups. Seven additional forums were held in 1996 and 1997 with representatives from various stakeholder groups.

EPA's next steps include developing case studies of five sites where permanent relocations have taken place; issuing mini-guidance on issues that need to be addressed quickly, such as the release of appraisals, advisory services, etc.; and disseminating the necessary information to regional offices, federal agencies, and all those responsible for the successful implementation of relocations.

For more information, contact OERR at 703-603-8960. Access our website for the Interim Final Policy and related documents, at www.epa.gov/superfund/tools/topics/relocation/index.htm.

Safer, More Livable Communities

EPA's Office of Solid Waste and Emergency Response has released a new report titled *Innovations in OSWER: Making Safer, More Livable Communities.* Prepared for key customers in states, tribes, other agencies, industry, and communities, the report describes a range of new strategies, new partnerships, and new approaches to help make communities safer and more livable. The report is available on OSWER's What's New page at: www.epa.gov/swerrims/whatsnew.htm.

RMPs

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Higher accident rates were found at facilities with ammonia refrigeration units (35.4%), followed by water utilities (22.7%), refineries (19.3%), fertilizer manufacturers (11.6%), and farm suppliers (11.0%).

The Wharton School at the University of Pennsylvania also is studying the data. Wharton has issued a working paper that presents preliminary findings on accident frequencies and severities available from RMP*Info, the database set up to store Risk Management Plans and accident history data. The paper analyzes which facilities actually filed plans, and then presents results for various segments of the U.S. chemical industry on observed accident frequencies between June 21, 1994 through June 20, 1999. The report is available at www.epa.gov/ceppo/ap_arcs.htm

In the future, we can expect to see industry sector-specific and chemical process-specific studies. The key question remains whether there are predictors of accident frequency and severity and, if so, how can industry, CEPPO, and others work together to lower the risk to communities.

Brownfields Tech Center Supports Local Decision-Makers

Faced with a brownfields redevelopment opportunity and a variety of complicated recommendations from contractors, brownfields decision-makers now have a place to go for help. The Brownfields Technology Support Center helps decision-makers become aware of the full range of technologies available in order to make informed, "smart technology" decisions for their sites. Technologies that lower costs, decrease time frames, and/or positively impact other decision considerations (e.g., community acceptance, logistics, etc.) can significantly affect the redevelopment potential of brownfields sites.

At no cost to localities, the Brownfields Center offers unbiased assessments on options relevant to specific sites. The center can also provide a technology-oriented review of investigation and site-specific cleanup plans. Operated by EPA's Technology Innovation Office, the center provides five types of assistance:

- *Document reviews:* The center can review sampling and analysis plans, quality assurance project plans, feasibility studies, engineering designs, or work plans, and evaluate the documents in terms of technology options, implementation processes, or other factors.
- *Technology scoping:* Using information provided by EPA Regional staff for specific brownfields pilot sites, the center can prepare lists of potentially applicable technologies, along with brief analyses of their advantages and disadvantages under specific conditions at a site and in light of the specific features and needs of a site.
- *Technology descriptions:* The center can develop a brief "layman's" guide describing a specific technology or technique. The guides can help decision-makers fully understand the principles of the technology (along with the cost and time necessary to implement it) and communicate information about the technology to constituents and stakeholders.
- *Review of literature and electronic resources:* The center can provide a list and description of available information resources for technologies relevant to specific decisions at a site. This can help stakeholders broaden their understanding of the technology options available for use at their sites.
- *Demonstration support:* Drawing upon the expertise of the EPA Superfund Innovative Technologies Evaluation (SITE) program, the center provides planning assistance and technical review capabilities to localities seeking to arrange demonstrations and evaluations of innovative sampling, analytical, and treatment technologies.

For more information, contact the EPA Regional Brownfields Coordinators, or the center directly at 1-877-838-7220 (toll-free), or www.brownfield-stsc.org.

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calendar

Aug 14-16, 2000

ATSWMO Superfund Managers Meeting

Phoenix, AZ

Contact: Jim Konz, 703-603-8841.

Aug 28-Sept 1, 2000

National Community Involvement

San Francisco, CA

Contact: Helen DuTeau,703-603-8761.

October 11-13, 2000

Brownfields 2000

Atlantic City, NJ

http://www.brownfields2000.org.

November 1-3, 2000

Health Risk Communication Symposium: Uncertainty, Stakeholders, and Public Health Action

Bethesda, MD

Sponsors:DOE,EPA,HHS. Focus on risk communication issues in U.S. and in developing and transitioning nations. Includes half-day breakout sessions analyzing case studies. Contact: Lisa Carroll, 865-576-2266, carrolle@orau.gov.

Acronyms

ADR	Alternative Dispute Resolution
ACP	Area Contingency Plan
CD	Consent Decree
CEPPO	Chemical Emergency Preparedness and Prevention Office
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (Superfund law)
DoD	Department of Defense
FEMA	Federal Emergency Management Agency
FRP	Facility Response Plan
ITT	Innovative Treatment Technologies
NPL	National Priorities List (Superfund)
OERR	Office of Emergency and Remedial Reponse (EPA)
OMB	Office of Management and Budget
OPA	Oil Pollution Act
OSC	On-Scene Coordinator
OSRE	Office of Site Remediation Enforcement (EPA)
PCB	Polychorinated Biphenyls
PRP	Potentially Responsible Party
RCRA	Resource Conservation and Recovery Act (hazardous waste)
RMP	Risk Management Plan
SITE	Superfund Innovative Technologies Evaluation
SPCC	Spill Prevention Control and Countermeasure
TCP	Technical Chemicals & Products, Inc.

cleanupnews *www.epa.gov/oeca/osre*

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