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cleanupnews

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

Superfund Celebrates 20th Year of Achievement

Transportation centers. Shopping malls. Wildlife habitats. These aren't the first things you think of when you hear the word "Superfund," but twenty years after its enactment into law, Superfund is routinely turning abandoned hazardous waste sites into soccer fields, golf courses, shopping malls, and office buildings. By September 2000, construction and cleanup had been completed at over 750 sites nationwide.

The pace of Superfund achievements picked up in the mid-nineties after a series of reforms in 1993, designed to make the Superfund program "faster, fairer, and more efficient." Three times as many Superfund sites have been cleaned up in the past seven years than in all the prior years of the program combined. The reforms aimed at expanding state and public involvement in cleanup decisions, reducing litigation and transaction costs, encouraging the redevelopment of cleanup sites, encouraging innovative technologies, and addressing stakeholder criticisms. Examples of these reforms are described below.

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Historic Settlement Reached on Iron Mountain Mine

Agreement Will Clean Up One of Country's Most Toxic Superfund Sites

On October 19, 2000, the United States and the State of California announced a settlement with Aventis Crop Sciences USA, Inc. that could approach $1 billion for future cleanup of the Iron Mountain Mine Superfund Site located nine miles northwest of Redding, California.

The settlement, on behalf of the U.S. EPA, the U.S. Department of the Interior, the U.S. Department of Commerce, and several state agencies, is one of the largest settlements with a single private party in the history of the federal Superfund program. It is also one of the biggest environmental settlements for state environmental agencies.

The agreement, achieved after nine years of litigation and negotiation, will ensure long-term control of more than 95 percent of the releases from Iron Mountain, historically the largest point source of toxic metals in the country and the source of the most acidic mine drainage in the world. Prior to remediation, the mine discharged an average of a ton a day of toxic metals into the Upper Sacramento River, a critical salmon spawning habitat and a central feature in the state's water system.

Aventis, formerly known as Rhone Poulenc, Inc., has arranged for The IT Group to operate and maintain the site

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20 Years of Superfund

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- **Superfund Cleanups:** To ensure that cleanups are cost-effective and reflect the latest technology, the Superfund Innovative Technology Evaluation (SITE) Program was established. The SITE Program's demonstrations of new technologies have led to cost savings of over 70 percent per site. The total cost savings for innovative treatment as opposed to conventional treatment is estimated at $2.1 billion. To streamline the remedy process and make it consistent across sites, EPA now uses standard or "presumptive" remedies at four types of sites: municipal landfills, wood treater sites, contaminated groundwater, and volatile organic chemicals in soils.
- **Superfund Enforcement:** For every dollar spent on enforcement, EPA has achieved over $6 in private cleanup commitments and cost recovery. With an "Enforcement First" policy in effect, responsible parties have performed over 70 percent of the new cleanup work at Superfund sites. Some of the reforms EPA has implemented to achieve more efficient and equitable settlements include: getting the "little guys" out of Superfund enforcement by reaching settlements with *de minimis* parties, removing legal barriers to economic development, and reducing the need for litigation by using mediated settlements and other forms of alternative dispute resolution.
- **Community Participation and Partnerships:** Through Community Advisory Groups and Technical Assistance Grants of up to $50,000 for expert advisors, EPA offers communities meaningful opportunities for involvement early in the cleanup process and involvement throughout site cleanup. A number of partnership programs have been developed with communities, local businesses, large corporations, and state, local, and tribal governments. For example, the Superfund Jobs Training Initiative creates local economic benefits from site cleanup in disadvantaged areas.
- **Encouraging Economic Redevelopment:** Successful reuse of once-contaminated properties is happening all over the country, changing the perception that "once a hazardous waste site, forever a wasteland." The Brownfields Initiative, started in 1993, has leveraged over $2.3 billion in private investment and awarded over 500 grants to communities nationwide. The Superfund Redevelopment Initiative, announced in 1999, is a coordinated national program to ensure that communities have the tools and information needed to realize the potential of reusing Superfund sites.

Because of Superfund, hundreds of sites that were once dangerous have now been made safe. Wastelands have become productive — and sometimes even beautiful — again. And, most important of all, Superfund continues to prevent new sites and new dangers from occurring in the first place.

For a special 20th anniversary report on Superfund, go to http://www.epa.gov/superfund.

Superfund Successes on its 20th Anniversary

(as of 10/3/2000)

- Over 6,400 removal actions have been taken to reduce immediate threats.
- 757 Superfund sites have had all cleanup construction completed.
- Of the 1,450 final National Priorities List (NPL) sites:
  - 219 are deleted.
  - 1,200 have all final cleanup plans approved.
  - 1,330 are either undergoing cleanup construction or have been deleted.
- Of the 59 sites proposed for listing on the NPL, 28 have had or are undergoing cleanup.
- Since 1992, responsible parties have performed over 70 percent of all new cleanups at NPL sites.
- Over the life of the Superfund program, the estimated value of private party settlements is $18 billion.
- Over 460 *de minimis* settlements have been reached – allowing 22,800 small waste contributors relief from the burdens of Superfund litigation.
- EPA and its state and tribal partners have assessed more than 41,000 sites. More than 32,000 sites have been removed from the CERCLIS waste site list to help promote the economic redevelopment of these properties.

EPCRA Regulatory Revisions Ahead

Facilities that report information under the Emergency Planning and Community Right-to-Know Act (EPCRA) should expect to see some changes for emergency planning, accidental chemical release notifications, and hazardous chemical inventory reports by Fall 2001. The changes are expected to reduce reporting burdens for the small business community by streamlining reporting requirements, while still preserving the public's health and "right-to-know."

New regulations will address remaining issues from EPA's proposed rule of June 8, 1999. Reporting thresholds for gasoline and diesel fuel at retail gas stations were included in a separate final rule (64 *FR* 7031, Feb. 11, 1999).

Issues that remained following the 1999 final rule included: reporting thresholds for rock salt, sand, gravel, and other chemicals that pose a minimal risk; clarification of mixtures reporting and changes to the interpretation of the existing hazardous chemical exemption for solids under EPCRA §311; guidance on state flexibility; and revision of reporting thresholds for facilities with similarities to gas stations (motor pools, marinas, rental car facilities, and van and bus lines).

Not all issues will necessarily be addressed via rulemaking. EPA wants to give state and local governments more flexibility to implement the existing requirements of EPCRA §311/312.

In the future, companies may find that much of their EPCRA reporting could be handled electronically. The proposed rule discussed several flexible approaches to reduce the burden of reporting and managing information. Arizona and Florida already have or are piloting programs that promote streamlined submission of EPCRA §311/312 reports.

But states must ensure that any data management system complies with the statutory requirement that the SERC, LEPC, and local fire department receive the required information by March 1. The goal of streamlined submission must be to reduce the reporting burden for facilities without diminishing timely and full access to reported information. In addition, electronic data submission programs must continue to collect, at a minimum, the identical information required on Tier 1 or Tier 2 forms.

Timeline: Look for a rulemaking in Fall 2001. Guidance and Q&As will be available in Spring 2001. Proposed regulatory changes will be posted on EPA's Chemical Emergency Preparedness and Prevention Office website at www.epa.gov/ceppo/lr-regs.htm#epcra.

Iron Mountain

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cleanup over the next 30 years, and for payment to the federal and state governments of $514 million in 2030 to fund site costs for subsequent years. This unique funding mechanism enables Aventis — which is securing the funding through a financial assurance and insurance vehicle specifically tailored for this settlement — to pay roughly $160 million to fund the long-term operation and maintenance at the site (an estimated cost of $200 to $300 million), a payment to the U.S. EPA of approximately $8 million, and a payment to the natural resource trustees to fund natural resource restoration projects ($10 million). The settlement also waives $150 million in past costs, bringing the total amount to close to $1 billion.

"This innovative settlement is good news for people, fish, and animals from the northern headwaters of the Sacramento River all the way down to San Francisco Bay," said U.S. EPA Regional Administrator Felicia Marcus. "The discharge from Iron Mountain is so toxic that when workers inadvertently left a shovel in the green liquid flowing from one of its portals, the next day half the shovel had been eaten away completely. You can imagine what damage this type of drainage could wreak on the local ecosystem. Now, thanks to a true team effort on the part of a myriad of federal and state agencies, we have the funding and the resources in place to dramatically curtail the damage this site has imposed on our natural resources."

From the late nineteenth century through 1963, the Mountain Copper Company, Ltd. mined the site for various minerals - including iron, gold, silver, copper, zinc, and pyrite. The mining operations fractured the mountain, changing the hydrology and exposing the mineral deposit to oxygen, water, and bacteria. According to scientists from the U.S. Geological Survey, waters in the abandoned copper and zinc mines of Iron Mountain are the most acidic ever measured — even more concentrated than battery acid.

Additional information on Iron Mountain Mine is available on the web at http://www.epa.gov/region09/features/ironmountain.html.

Hudson River PCB Cleanup Proposed

EPA Proposal Based on 10-Year Study of PCB Risks to People and Wildlife

After a ten-year, exhaustive scientific study of the contamination of the Hudson River from polychlorinated biphenyls (PCBs), on December 6, 2000, U.S. EPA Administrator Carol Browner announced a $460 million proposed plan to dredge portions of the river and protect public health.

"The Hudson River is among America's great natural treasures," said Browner, calling the proposed plan "one of the most aggressive environmental efforts ever proposed to restore a contaminated river and protect the public's health." The proposal targets the worst PCB hot spots for cleanup and recognizes the need for stepped-up containment of new PCB contamination from active sources.

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PCB contamination of the Hudson dates back to the thirty years before 1977 during which the General Electric Company (GE) discharged as much as 1.3 million pounds of PCBs directly into the river from its facilities in Hudson Falls and Fort Edward, NY. Abatement and removal actions directed by state and federal authorities related to Hudson River PCBs date back to 1976-77.

People who eat PCB-contaminated fish face an increased risk of cancer and other serious medical conditions including developmental, immune system, thyroid, and reproductive problems. The chemicals pose a special risk to the health of children.

The cleanup would remove over 100,000 pounds of PCBs that could contaminate people, fish, and wildlife through the food chain. It would reduce risks to public health and fish by five times immediately following the cleanup. New York State would be able to relax fish consumption advisories two years after cleanup is completed.

The scientific reassessment found that without targeted dredging, concentrations of PCBs are not expected to reach acceptable health and safety levels as a result of natural breakdown. PCBs now buried in the river's sediments are not remaining in place, the assessment found, and instead are moving downstream. Limited burial has not stopped the sediments from contaminating Hudson River fish, which still have PCBs far in excess of safe levels.

EPA has extensive experience with successful dredging projects. The proposed cleanup plan targets for dredging the most contaminated portion of the river — about 12 percent of the 40-mile stretch of the upper Hudson from Fort Edward downstream to the Federal Dam at Troy. The plan calls for the removal of over 2.6 million cubic yards of contaminated sediment, backfilling with clean material, then disposal and ongoing monitoring. After treatment, the dredged material would be transported away from river communities by rail for disposal. The plan recognizes the need for stepped-up containment of PCBs still entering the river through fractures in the bedrock beneath the GE Hudson Falls Plant. EPA will consider public comment on this plan and expects to finalize an approach to the Hudson River cleanup in August 2001.

EPA evaluated a capping alternative for the river as a whole to contain PCB sediments, but found it would be unreliable. Another alternative of bank-to-bank dredging was also rejected, in favor of targeted dredging of the contaminated areas. The dredging project, which would require GE responsibility for cleanup under the Superfund law, would take an estimated five years to complete and is estimated to cost about $460 million.

To address public participation for a project of this magnitude, EPA has implemented a unique Community Interaction Program (CIP), a tiered process composed of six working groups at three levels. To ensure that cleanup efforts are sensitive to the needs of local communities, EPA has already held several open houses and public meetings to present the cleanup proposals, and has opened a website (www.epa.gov/hudson) to make information continually available.

The public comment period on the cleanup proposals runs until April 17, 2001; comments should be sent to: Alison Hess/Doug Tomchuk, Hudson River PCBs Public Comment, U.S. EPA, 290 Broadway, 19th Floor, New York, NY 10007.

Pump and Treat Optimization

Superfund managers have made use of over 700 pump and treat (P&T) systems at various stages of site work. P&T systems can be extremely costly to run and many will need to stay in operation for decades. Until recently much of EPA's focus has been on remedy selection, design, and construction; as Superfund moves into its third decade, it is appropriate to review long-term operation, maintenance, and monitoring issues across all sites.

In July 2000, the Office of Solid Waste and Emergency Response outlined a commitment to optimize Fund-lead P&T systems (OSWER Directive No. 9200.0-33). The Optimization Initiative is intended to encourage systematic review and modification of existing P&T systems to enhance overall remedy effectiveness and cost effectiveness, without compromising protectiveness or other objectives of the Superfund program. It provides EPA an opportunity to demonstrate its commitment to effective management of long-term remedies. This effort recognizes that remedial approaches should not remain static, that site conditions change over time, and that better tools and strategies have evolved which allow for improved performance.

Background

Over the past year, the Office of Emergency and Remedial Response (OERR) and the Technology Innovation Office (TIO) worked together to develop, pilot, and implement a process to optimize ground water P&T systems. Conducted in cooperation with the U.S. Army Corps of Engineers, the pilot included identification of all Fund-lead P&T sites in the EPA Regions and subsequent optimization analysis of four sites in Regions 4 and 5. Results from the pilot indicated that there is a potential to improve our operating Fund-lead P&T systems and a definite need for continuous evaluation of system operation and maintenance.

Recommendations for the pilot sites included changes in P&T system operation and maintenance, remediation technology modifications, aboveground treatment technology modifications, and changed or reduced monitoring data needs. Implementation of some of the recommendations will require additional capital expenditures; others are relatively low-cost adjustments. Overall, the pilots demonstrated that optimization can reduce long-term remedial action costs, accelerate cleanup times, and enhance protectiveness of human health and the environment.

Initiative Goal and Schedule

The primary goal of the initiative is to assist the EPA Regions in optimizing Fund-lead P&T systems by expanding the pilot project to all ten Regions. An additional goal of this effort is to increase awareness of the benefits and the need for routine optimization analysis as a part of the ongoing management responsibilities for long-term Superfund remedies. In year one, Headquarters, in collaboration with the Regions, will identify all Fund-lead P&T systems, collect baseline cost and performance data on those systems, prioritize sites based on optimization potential, and further evaluate the optimization opportunities for up to two high-priority sites in each Region. The effort will use an approach called Remedial Systems Evaluation (RSE), in which an independent expert team works collaboratively with the regional project manager (RPM) and site contractor to evaluate the performance of all major components of the operating system. The RSE team will consist of senior technical staff from EPA, technical experts from the U.S. Army Corps of Engineers, and selected support contractors.

The site RPMs will have the essential role of determining which optimization recommendations are appropriate, and working with Headquarters to secure any funding and technical assistance needed for implementation. Headquarters is committed to providing technical, administrative, and monetary support for this project in FY 2001. A system will be set up to document any cost savings or changes in remediation time frame associated with optimization recommendations.

The anticipated schedule for the initiative is as follows:

December 2000 - March 2001:
Identify all Fund-lead P&T sites.

February - September 2001:
Complete one or two RSEs per Region.

November 2001:
Prepare report summarizing project findings.

For more information on this project, please contact Kathy Yager (TIO), 732-321-6738, or Paul Nadeau (OERR), 703-603-8794.

EPA Upheld in Two RCRA Pre-enforcement Review Cases: Mohave County, AZ, and Amoco Oil Co., Casper, WY

On September 26, 2000, the U.S. District Court for the District of Arizona granted the government's Motion to Dismiss Mohave County's complaint seeking pre-enforcement review of a unilateral administrative order (UAO), issued by Region 9 under §7003 of RCRA. The Court held that "both the statutory structure and legislative history of RCRA compel the conclusion that the statute precludes judicial review of the preenforcement order in this case."

Mohave County, along with 12 other Arizona counties, had entered into an agreement in which Maricopa County would arrange for the disposal of tires from the 13 counties. Maricopa County then contracted with Colinas Tire Recovery, Inc. to dispose of the tires. Colinas contracted with Blackwater Industrial Corporation to temporarily store the tires on the Gila River Indian Community Reservation. However, Colinas' successor breached its contract with Maricopa County and abandoned the tires on the reservation.

In August 1997, about two million tires caught fire, and it took three months to bring the fire under control. Because of air quality concerns, the Gila River Indian Community Reservation, Pinal County, and the State of Arizona declared a state of emergency and evacuated more than 300 people. Using the statutory authority under RCRA §7003, the EPA Gila River team successfully negotiated a settlement with all of the potentially responsible counties except Mohave County. Under the settlement, the counties have removed and properly disposed of all of the unburnt tires and are now evaluating, under EPA oversight, how best to address the burnt tire piles.

In May 1999, EPA issued a unilateral order under RCRA §7003 to Mohave County, directing the County to participate in the remediation plan being developed by the other counties. Mohave County did not comply with the Order and commenced the District Court action challenging the issuance of the Order.

In the second case involving RCRA pre-enforcement review, the 10th Circuit, in Amoco Oil Co. v. USEPA, affirmed a decision of the District Court for the District of Colorado not to vacate its earlier order holding that RCRA §3008(h) is not subject to pre-enforcement review. In 1996, EPA issued a UAO to Amoco under §3008(h) of RCRA related to Amoco's Casper, Wyoming, refinery and associated facilities. Amoco challenged the UAO, and the District Court dismissed the challenge, holding that there is no pre-enforcement review of UAOs issued by EPA under §3008(h) of RCRA. Amoco appealed to the 10th Circuit.

Contacts: Lewis Maldonado, Region 9 (Mohave), 415-744-1342; Chuck Figur, Region 8 (Amoco), 303-312-6915; Tracy Gipson, Headquarters RSD, 202-564-4236.

Retroactive Application of SREA: Gould, Inc. v. A & M Battery & Tire Service, et al.

On October 31, 2000, the Third Circuit, ruling on an appeal from the U.S. District Court for the Middle District of Pennsylvania, held that the post-judgment enactment of the Superfund Recycling Equity Act (SREA) required the reversal of the judgments entered against the appellant PRPs in lower court contribution actions, finding that the SREA applies retroactively to judicial actions initiated by private parties prior to November 29, 1999, and pending at the time of enactment. The appellant PRPs had earlier been held liable for contribution of costs in connection with contamination at a battery recycling site.

This decision finding that the SREA applies retroactively to pending judicial actions between private parties (and not initiated by the United States) falls in line with two other court decisions on the retroactive application of the SREA, Department of Toxic Substances Control v. Interstate Non-Ferrous Corporation, 99 F. Supp. 2d 1123 (E.D. Cal. 2000) (addressing pending litigation initiated by a state) and Morton International v. A.E. Staley Manufacturing Co., 106 F. Supp. 2d 737 (D.N.J. 2000) (addressing pending litigation initiated by a private party). In the case at hand, Gould, which remediated the battery recycling site, lost its argument that its lawsuit was part of a judicial action initiated by the United States because it was an EPA administrative action that caused Gould to incur response costs necessitating its cost recovery action.

This ruling also addressed other issues regarding interpretation and implementation of the SREA, whether or not application of the SREA violates due process guaranteed by the Fifth Amendment for lack of rational basis, and the definition of "recyclable material." Having found the SREA to apply, the Third Circuit remanded the case to the District Court for it to determine whether appellants satisfy the Act's requirements for exemption from liability. The decision upon remand may be the first to address substantive issues pertaining to what materials are or are not covered by the exemption (e.g., whole batteries vs. battery components, etc.).

Contact: Meredith McLean, 202-564-4216 [No. 99-3294, 2000 WL 1635392 (3rd Cir. 2000)].

Improving Superfund Fiscal Management

Improvements in fiscal management of the Superfund program were the subject of a memo to the EPA Regional Administrators issued in September 2000 by OECA Assistant Administrator Steve Herman. The five key areas in the cost recovery and accounting process to receive renewed focus are:

- implementing revised indirect cost rates (see Cleanup News #5),
- maintaining timely billing of PRPs for oversight,
- improving the data in information systems,
- managing and collecting overdue accounts receivables, and
- improving site-specific charging.

Regional Offices were asked to update their plans for addressing overdue accounts receivable, including designating a single point of contact for Superfund accounts receivable management, instituting procedures for timely recording, tracking, review, and follow-up on accounts receivables, and conducting an initial case by case review of all overdue receivables.

Also announced in the memo is a new award to be added to the Notable Achievement Awards, for Superfund Financial Manager of the Year. The criteria for the award will focus on developing, implementing, and sharing best practices to ensure accurate site-specific charging.

For more information on these fiscal measures, contact Bruce Pumphrey, OSRE, 202-564-6076.

USTfields Pilots Announced

EPA has announced grants for ten communities in a new initiative to clean up abandoned underground petroleum tanks. The new program places special emphasis on communities with environmental problems caused by the fuel additive MTBE. Like the successful Brownfields program, the new program, called USTfields, will provide grants to states for community pilot projects to plan cleanups, stop contamination of groundwater, protect public health, and allow for future economic development of the sites.

Communities in ten states are targeted to receive $100,000 each for assessment and cleanup of these abandoned tanks. The ten communities include: Nashua, NH; Trenton, NJ; Wilmington, DE; Anderson, SC; Chicago, IL; Kansas City, MO; Albuquerque, NM; Salt Lake City, UT; Oakland, CA; and Portland, OR. EPA plans to select forty more USTfields pilot projects in 2001. These USTfields pilots are intended to be a supplement or attachment to an existing EPA cleanup and redevelopment pilot such as a Brownfields assessment .

Like a Brownfield, an USTfield is a site or a portion of a site that has actual or perceived contamination, as well as an active potential for redevelopment or reuse. Petroleum contamination is generally excluded from cleanup under EPA's Superfund and Brownfields programs due to the petroleum exemption under the Superfund law. As a result, the cleanup and redevelopment of properties containing abandoned underground storage tanks are either not occurring or are delayed. Under the new USTfields Initiative, local communities can use federal grant money to interest developers and citizens in helping to plan cleanups of these tanks, as well as to leverage new funds to complete the job. In addition to protecting public health and the environment, such actions will create new commerce, new jobs, and local neighborhood improvements.

Special consideration is given in the awarding of grants to cities experiencing problems from MTBE contamination. MTBE is a fuel additive that fulfills a provision required by Congress under the Clean Air Act. A Blue Ribbon Panel assembled by EPA has determined that MTBE poses special risks to groundwater. EPA has subsequently called on Congress to eliminate MTBE from reformulated gasoline and, as a backstop measure, is also beginning regulatory action aimed at eliminating MTBE under the Toxic Substances Control Act.

For more information about the USTfields Initiative, go to www.epa.gov/oust and look under "What's New."

Brownfields Showcases Selected

Twelve new Brownfields Showcase Communities were selected in October 2000 to demonstrate the benefits of collaborative activity on Brownfields. The 15 federal agencies participating in the Brownfields National Partnership will offer coordinated technical, financial, and other assistance to the selected communities. The showcase communities include nine federally designated Empowerment Zones/Enterprise Communities, four small/rural communities, two tribes, and one Base Realignment and Closure Community (BRAC).

The first round of 16 Showcase Communities, announced in March 1998, has leveraged more than $900 million in economic redevelopment funds. For more information, call 202-260-4039 or visit the EPA Brownfields website at: http://www.epa.gov/brownfields/showcase.htm.

calendar

June 10-13, 2001

2001 International Containment & Remediation Technology Conference and Exhibition

Orlando, FL

State-of-the-art and innovative technologies for containment, remediation, and long-term monitoring of contaminated sites, with a particular focus on issues of importance DOE and other federal agencies conducting defensible assessments of the present and post-closure cumulative effects of radioactive and chemical contamination at hazardous waste sites.
Contact:http://www.containment.fsu.edu

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Glossary

CEPPO	Chemical Emergency Preparedness and Prevention Office
CERCLA	Comprehensive Emergency Response, Compensation, and Liability Act (Superfund law)
EPCRA	Emergency Planning and Community Right-To-Know Act
LEPC	Local Emergency Planning Committee
MTBE	Methyl-tert-butyl ether
NPL	National Priorities List (Superfund)
OERR	Office of Emergency and Remedial Reponse (EPA)
PCB	Polychorinated biphenyls
PRP	Potentially Responsible Party
RCRA	Resource Conservation and Recovery Act (hazardous waste)
RPM	Regional Project Manager
RSD	Regional Support Division (OSRE/EPA)
SERC	State Emergency Response Commission
SREA	Superfund Recycling Equity Act
UAO	Unilateral Administrative Order
UST	Underground Storage Tank

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

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