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BUD ALBRIGHT, STAFF DIRECTOR

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

November 16, 2004

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The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Leavitt:

On August 13, 2004, we wrote to you after receiving information that the Superfund funding shortfall would increase for the third consecutive year, posing a growing threat to public health and the environment. At that time, we requested that you answer a series of specific questions on the nature and extent of this serious problem before the end of the fiscal year.

Unfortunately, the letter of October 14, 2004, we received from Mr. Thomas P. Dunne, Acting Assistant Administrator of the Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response, failed to answer many of the questions posed in our letter. Also, the response was sent more than a month late, after the end of the fiscal year and after Congress had recessed. We believe EPA is now contributing to the funding problem by failing to inform Congress and the public about the specific needs of the Superfund program in a timely manner, making it much more difficult to address this serious funding shortfall.

The need for access to site specific information on the shortfall in the Superfund program has not diminished. In fact, we have recently received an internal EPA document indicating that the Superfund shortfall is expected to grow much larger, to between \$750 million and \$1 billion, by fiscal year 2007. A deficit of this magnitude will dramatically slow down the cleanups at some of the worst sites in the country, acting as a barrier to economic redevelopment. Every community affected has a right to know where it stands.

Upon receipt of EPA's response, Committee staff contacted EPA staff to request that the missing information be immediately provided on a site specific basis, as requested in the letter. They were informed that additional information would be provided very quickly, probably in less than a week.

No additional information has been forthcoming from the EPA and Congress is set to act on the Superfund appropriation shortly. We renew our request for a complete and comprehensive response to our letter of August 13, 2004. A copy of that letter is attached.

So that a full response to our letter is provided, we have highlighted below some of the deficiencies in the EPA letter and the information that remains outstanding:

Question 1: We requested detailed information on the clean-up work and activities that will not be performed at sites that need additional funding to initiate new projects or to expedite work at ongoing projects. We asked that the information provided on the need for additional funds reflect and include the region's specific requests for funding.

The response only included the lists of the projects that would receive funding and those that would not. The 34 projects in 19 states that did not receive funding obviously raise serious concerns about the program. Unfortunately, the detailed information we requested on the clean-up work and activities that would not be fully funded or expedited was not included. Discussion of the regional requests for funds versus the funds provided was also omitted. We once again request the information requested in our earlier letters concerning the regional requests for funding.

Question 2: We asked that EPA identify the ongoing remedial projects that are not sufficiently funded to date and the dollar shortfall, based on the regional requests.

We received no site specific information in answer to this question. EPA indicates that final allocations will be provided in November. We asked for the information to date, with an updated response after the close of the fiscal year. The purpose of the question is to collect information on the actual site work required from a technical perspective, but not fully funded. This information makes an informed discussion of the appropriate budget level and oversight of the funding priorities possible. Please provide, on a site-specific basis, the funding shortfalls based upon regional requests.

Question 3: We asked EPA to identify the removal projects not sufficiently funded to date and the dollar shortfall for each, based on the regional requests.

Again, EPA provided no site specific information in response to this question, saying that final information would be available in November. Please provide this site specific information on removal projects that did not receive the funding requested by the regions.

Question 4: We requested that EPA identify the pipeline projects not sufficiently funded to date and the dollar shortfall for each, based on regional requests.

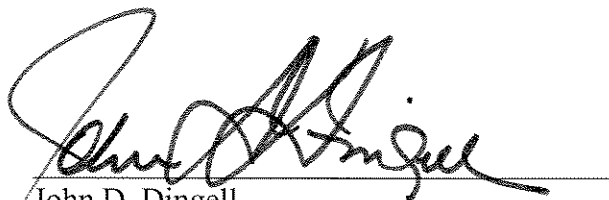
No site specific information was provided. EPA again indicates that final expenditure information will be available in November. Please provide this information along with regional requests.

We note that in the January 7, 2004, Inspector General's (IG) Report on Funding Needs for Non-Federal Superfund Sites, the Inspector General was able to answer the same kinds of questions we posed to EPA in our letter. In fact, the IG found that sufficient funds were not available to address a number of removal, remedial and pipeline projects in 2003. The IG concluded that this resulted in cleanups being performed in a less than optimal manner; that activities were stretched over longer periods of time; costs may increase; and actions necessary to fully address human health and the environment are delayed. The IG found that when EPA talks about "sufficient funding" it sometimes meant minimally sufficient, including delays and changes in the scope of work. We are certain that EPA can provide a complete answer to our letter, just as the IG did for fiscal year 2003. Finally, we again request specific information about the status of cleanup projects at the sites identified in Question 5. Apparently there were a number of cleanup projects where the Regions believed that work could be undertaken in FY 2004 if funding was available.

Given the importance of this program to public health and the environment, Congress and the public have the right to know about the funding shortfalls in the Superfund program, and what they mean. Failure to adequately fund cleanups that are ready to be initiated or are ongoing means that reaching the EPA measurement goal of "construction complete" is unnecessarily delayed and these toxic waste sites continue to adversely affect the communities in which they reside. Access to timely and complete site specific information is critical if we are to begin to address this growing problem. As a first step, we ask again that EPA provide a fully responsive answer to our August 13, 2004, request for information on this program by Tuesday, November 23, 2004.

If you have any questions, please contact us or have your staff contact Richard A. Frandsen (202-225-3641) or Bettina Poirier (202-226-3400) of the Committee on Energy and Commerce Democratic staff.

Sincerely,



John D. Dingell
Ranking Member



Hilda L. Solis
Ranking Member
Subcommittee on Environment and
Hazardous Materials

The Honorable Michael O. Leavitt
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cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Paul E. Gillmor, Chairman
Subcommittee on Environment and Hazardous Materials

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U.S. House of Representatives
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August 13, 2004

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BUD ALBRIGHT, STAFF DIRECTOR

The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Leavitt:

It has come to our attention that the shortfalls in funding in the Superfund program will grow far worse this year. This continues a very troubling pattern that has been revealed to us through a series of Inspector General reports and several concerned Environmental Protection Agency (EPA) officials. The Administration's response has been to engage in a communications strategy to minimize the problem and limit access to site specific information. The trend is clear and it is ignored at the expense of public health and the environment.

In June 2002, the Environmental Protection Agency Inspector General reported a funding shortfall of \$225 million dollars that was slowing the cleanup of the Nation's most toxic waste sites listed on the Superfund National Priorities List (NPL). Thirty-three sites in 19 states were being adversely affected. The Agency then scrambled to de-obligate and re-certify unexpended prior year funds. On October 25, 2002, the Inspector General reported the final funding shortfall for FY 2002 with respect to remedial actions and long-term remedial action responses. The Inspector General concluded that ongoing cleanups at five sites were inadequately funded in the amount of \$23 million. An additional seven sites received no funding at all and the shortfall amounted to \$91.8 million. The total shortfall for FY 2002 was thus \$114.8 million.

Prior to the Inspector General's report, EPA had not publicly acknowledged any shortfalls in cleanup funding at NPL sites. Following the Inspector General's reports, EPA embarked on a communication strategy to downplay the seriousness of the cleanup funding shortfall. Former Assistant Administrator Horinko sent the communications package to Regional officials and press offices by memorandum dated October 10, 2002.

On July 17, 2003, EPA issued a press release announcing that it would begin the cleanup of 11 new Superfund projects in nine states for FY 2003. At the end of the press release EPA

acknowledged that at this time, 12 projects at 10 sites were not selected to receive funding. No overall or site specific funding shortfalls, however, were released publicly by EPA.

On January 7, 2004, the Inspector General released its report of the funding shortfall for FY 2003. This report identified a funding shortfall of \$174.9 million dollars which was dramatically slowing the pace of cleanup at 29 sites in seventeen states. In addition, internal EPA documents released by the Inspector General showed the tremendous financial stress that was confronting all aspects of the cleanup program. Shortfalls in funding were documented in 1) new start construction projects; 2) inadequately funded ongoing projects; 3) inadequately funded removal projects; and 4) inadequately funded pipeline projects.

The Inspector General observed the following:

“When funding is not sufficient, construction at National Priority List (NPL) sites cannot begin; cleanups are performed in less than an optimal manner; and/or activities are stretched over longer periods of time. As a result, total project costs may increase and actions needed to fully address the human health and environment risk posed by the contaminants are delayed.”

There are now less than two months left in FY 2004. The EPA has not provided any information to the public at large or affected communities about the Superfund NPL sites which will not receive funding to start new cleanup projects or inadequate funding of ongoing projects which will delay completion of cleanup activities.

We have just learned, however, that the funding shortfall for FY 2004 has gotten worse for the third consecutive year and has now reached crisis proportions. The attachment to this letter was prepared by the Democratic staff of our Committee, based on information provided by EPA officials. It contains the funding situation for remedial action new starts for FY 2004. Even if funds are moved around or a few sites encounter engineering delays, it is apparent that the severe lack of funding will dramatically affect progress on the cleanup of sites throughout the country. The attachment shows that at this time 46 sites in 27 states have new start remedial actions that are not funded or will be inadequately funded. The shortfall is \$263.1 million.

To continue to manage this important public health program in this manner is highly irresponsible. It is past time to come clean with the American public, cease minimizing the problem, and provide Congress and the public with complete and comprehensive funding information about each site.

Each site was listed on the NPL because it presented a public health and environment risk. This list represents the worst sites in the country and each affected community deserves to

have these sites cleaned up in the most expeditious manner. Without adequate funding to finish the cleanups these sites will remain a public health risk and a barrier to economic redevelopment.

In 2001, a Congressionally-mandated report entitled "Superfund's Future" prepared by Resources for the Future, an independent research organization, informed EPA that hundreds of millions of dollars of additional cleanup funding would be necessary beginning in FY 2002 and continuing through FY 2007. Specifically, the Resources for the Future report, using the base case scenario, showed that the cleanup program would need an additional \$140 million in FY 2002, an additional \$202 million in FY 2003, and an additional \$106 million in FY 2004. The high case scenario, for FY 2004 was \$233 million. Events have shown that the projections in the Resources for the Future report were essentially right on the money. EPA apparently choose to ignore the findings of this comprehensive study.

Instead of making an all out effort to educate the public and the Congress about the serious funding shortfall, EPA has instead adopted communications strategies to minimize and downplay the problem. Without a change in direction the serious funding shortfalls of today will grow far worse in the next few years. Some sites ready to begin cleanup activities have gone unfunded for three consecutive years.

There was an indisputable backlog of sites ready to go forward with cleanup activities that were not adequately funded in FY 2002 and FY 2003. The Administration finally acknowledged this growing backlog when it submitted its FY 2004 budget by requesting a funding increase of \$150 million for Superfund cleanup construction. The Congress, however, failed to appropriate the additional requested cleanup funds. A similar pattern is occurring with the Administration's request in the FY 2005 budget for an additional \$150 million for Superfund cleanups. In late July, the House Committee on Appropriations reported the bill making appropriations for EPA for FY 2005 with no increase for Superfund over last year. Further, for EPA overall, the Appropriations Committee cut over \$600 million from EPA's enacted appropriation for FY 2004. With the shortfall in FY 2004 of more than \$260 million in remedial action new starts, it is clear that the Administration's budget requests are sorely deficient and beyond dispute that the Administration has underfunded the cleanup program.

Unfortunately, we have detected no real effort by officials of EPA and the Administration to support the budget request for additional cleanup funding or to make it a priority. We also understand that officials from the Council on Environmental Quality and the Office of Management and Budget have been pressuring EPA to keep regional officials from acknowledging the need for additional cleanup funding.

To further evaluate this extremely disturbing situation regarding inadequate cleanup funding for the Superfund NPL sites, we request answers to the following questions by no later

than Tuesday, September 7, 2004, with an updated response on October 5, 2004, reflecting the full fiscal year:

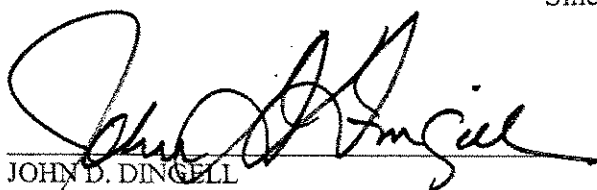
1. Please specify in detail the cleanup work and activities that will not be performed or for which funds have not yet been allocated at sites that need additional funding to initiate new cleanup projects or expedite work at ongoing cleanup projects, based on regional requests.
2. Please identify the ongoing remedial projects that are not sufficiently funded to date and the dollar shortfall for each, based on regional requests.
3. Please identify the removal projects not sufficiently funded to date and the dollar shortfall for each, based on regional requests.
4. Please identify the pipeline projects not sufficiently funded to date and the dollar shortfall for each, based on regional requests.
5. Please provide the current status, including funds allocated to date for FY 2004, as well as the type and dollar amount of the cleanup work or activities ready to proceed for the following projects:

Region	Project	FY04 Regional Request (\$millions)
1	Eastland Woolen (ME)	3
4	Barber Orchard (NC)	6
4	Calloway	.5
4	Brewer Gold	.4
4	Pepper Steel (FL)	1
4	Reasor Chemical (NC)	.55
6	Tar Creek (OK)	4.7
7	Valleley Park TCE (MO)	2
8	Arsenic Trioxide (ND)	10
8	Midvale Slag (UT)	20
9	McCormick and Baxter (CA)	5
9	San Gabriel Valley Area 4 (CA)	15
9	Tuscon Airport (AZ)	.1
10	Commencement Bay (WA)	6
10	Wyckoff/Eagle (WA)	7.4

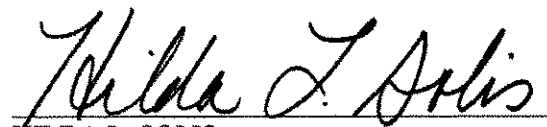
The Honorable Michael O. Leavitt
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If you have any questions, please contact us or have your staff contact Richard A. Frandsen (202-225-3641) or Bettina Poirier (202-226-3400) of the Committee Democratic staff.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER



HILDA L. SOLIS
RANKING MEMBER
SUBCOMMITTEE ON ENVIRONMENT
AND HAZARDOUS MATERIALS

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Paul E. Gillmor, Chairman
Subcommittee on Environment and Hazardous Materials

FY 2004 REMEDIAL ACTION NEW PROJECT NEEDS*

STATE (REGION)	NATIONAL PRIORITY LIST SITE	FUNDS REQUESTED	
		BY REGION (in millions)	FUNDS ALLOCATED (in millions)
Arkansas (6)	Mountain Pine Pressure	3.5	0
California (9)	Pemaco	4	4
Colorado (8)	California Gulch	6.3	0
	Central City/Clear Creek	2.9	0
	Summitville	11.2	0
Delaware (3)	Standard Chlorine	2	0
Florida (4)	Sapp Battery	4	0
Georgia (4)	Brunswick Wood	5	0
	Marzone	Unknown	0
	Woolfolk Chemical Works	5	1.5
Idaho (10)	Bunker Hill**	7.6	0
Illinois (5)	Jennison Wright	12.5	3.6
	Ottawa Radiation	15	0
	SE Rockford Groundwater	7.5	2.5
Indiana (5)	Continental Steel	35	0
Iowa (7)	Railroad Ave.	1	0.3
Louisiana (6)	Marion Pressure Treating	9	0
Massachusetts (1)	Atlas Tack	13.1	0.4
	Hatheway & Patterson	2.5	0
Michigan (5)	Tar Lake	Unknown	0
Missouri (7)	Riverfront Site	1.2	0.3
Montana (8)	Upper Ten Mile	7.2	4.4
Nebraska (7)	Hastings Groundwater	Unknown	0.2
	Omaha Lead	6	5
New Hampshire (1)	Mohawk Tannery (proposed)	6	0
	New Hampshire Plating	3.5	4
	Ottati & Goss/ Kingston Steel Drum	2.5	0
	Troy Mills Landfill	4	8
New Jersey (2)	Cosden Chemical Coatings	5	3
	Federal Creosote	10	9
	Imperial Oil Co./ Champion Chemicals	2	0
	Kauffman & Minter	3	0
	Roebing Steel (1)	6	0
	Roebing Steel (2)	8	0
New Mexico (6)	North Railroad Ave. Plume	6.5	0
New York (2)	Genzale Plating Company	4	4
	Mackenzie Chemical	Unknown	1.2
Oregon (10)	McCormick & Baxter	9	9.2
Pennsylvania (3)	Crossley Farm	4	0
	Franklin Slag Pile	4	0
	Havertown PCP	Unknown	0
Rhode Island (1)	Rose Hill Landfill	3.5	0
Tennessee (4)	Wrigley Charcoal	4.3	0
Texas (6)	Hart Creosoting	9.8	0
	Jasper Creosoting	6.2	0
	Rockwood Industries	4.5	0
Utah (8)	Davenport & Flagstaff Smelters	11.9	0
	Eureka Mills	20	5
	Jacob's Smelter	4.2	0
Vermont (1)	Elizabeth Mine	4	0
Virginia (3)	Kim Stan Landfill	8.1	0
Washington (10)	Pacific Sound Resource	9.3	2.3
West Virginia (3)	Vienna PCE	3	2.9

*At some sites there are multiple new projects.

** The Washington Recreational Area is one of the projects associated with the Bunker Hill site and is located in the State of Washington.

Summary of FY 2004 Remedial Action New Project Needs*

	STATE (REGION)	NATIONAL PRIORITY LIST SITE	FUNDS REQUESTED BY REGION (in Millions)	FUNDS ALLOCATED (in Millions)
Projects Requiring Funds With Zero Allocations: 33				
1	Arkansas (6)	Mountain Pine Pressure	3.5	0
2	Colorado (8)	California Gulch	6.3	0
3		Central City/Clear Creek	2.9	0
4		Summitville	11.2	0
5	Delaware (3)	Standard Chlorine	2	0
6	Florida (4)	Sapp Battery	4	0
7	Georgia (4)	Brunswick Wood	5	0
8		Marzone	Unknown	0
9	Idaho (10)	Bunker Hill*	7.6	0
10	Illinois (5)	Ottawa Radiation	15	0
11	Indiana (5)	Continental Steel	35	0
12	Louisiana (6)	Marion Pressure Treating	9	0
13	Massachusetts (1)	Hatheway & Patterson	2.5	0
14	Michigan (5)	Tar Lake	Unknown	0
15	New Hampshire (1)	Mohawk Tannery	6	0
16		Ottati & Goss/ Kingston Steel Drum	2.5	0
17	New Jersey (2)	Imperial Oil Co./ Champion Chemicals	2	0
18		Kauffman & Minter	3	0
19		Roebing Steel (1)	6	0
20		Roebing Steel (2)	8	0
21	New Mexico (6)	North Railroad Ave. Plume	6.5	0
22	Pennsylvania (3)	Crossley Farm	4	0
23		Franklin Slag Pile	4	0
24		Havertown PCP	Unknown	0
25	Rhode Island (1)	Rose Hill Landfill	3.5	0
26	Tennessee (4)	Wrigley Charcoal	4.3	0
27	Texas (6)	Hart Creosoting	9.8	0
28		Jasper Creosoting	6.2	0
29		Rockwool Industries	4.5	0
30	Utah (8)	Davenport & Flagstaff Smelters	11.9	0
31		Jacob's Smelter	4.2	0
32	Vermont (1)	Elizabeth Mine	4	0
33	Virginia (3)	Kim Stan Landfill	8.1	0
Total			202.5	0
Projects Allocated Less Than Requested: 13				
34	Georgia (4)	Woolfolk Chemical Works	5	1.5
35	Illinois (5)	Jennison Wright	12.5	3.6
36		SE Rockford Groundwater	7.5	2.5
37	Iowa (7)	Railroad Ave.	1	0.3
38	Massachusetts (1)	Atlas Tack	13.1	0.4
39	Missouri (7)	Riverfront Site	1.2	0.3
40	Montana (8)	Upper Ten Mile	7.2	4.4
41	Nebraska (7)	Omaha Lead	6	5
42	New Jersey (2)	Cosden Chemical Coatings	5	3
43		Federal Creosote	10	9
44	Utah (8)	Eureka Mills	20	5
45	Washington (10)	Pacific Sound Resource	9.3	2.3
46	West Virginia (3)	Vienna PCE	3	2.9
Total			100.8	40.2
Total Shortfall				263.1
Projects With Full Funding				
47	California (9)	Pemaco	4	4
48	New Hampshire (1)	New Hampshire Plating	3.5	4
49		Troy Mills Landfill	4	8
50	New York (2)	Genzale Plating Company	4	4
51	Oregon (10)	McCormick & Baxter	9	9.2
Total			24.5	29.2
Projects With Funds Allocated With An Unknown Request				
52	Nebraska (7)	Hastings Groundwater	Unknown	0.2
53	New York (2)	Mackenzie Chemical	Unknown	1.2
Total				1.4

*At some sites there are multiple new projects.

** The Washington Recreational Area is one of the projects associated with the Bunker Hill site and is located in the State of Washington.