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New Initiative to Restore Superfund Sites to Productive Use

Speaking at the Avtex Superfund site in Front Royal, Virginia on July 23, 1999, EPA Administrator Carol M. Browner announced a new pilot program — the Superfund Redevelopment Initiative — to help communities restore toxic waste sites to productive use. Nearly \$1 million in grants will be awarded to 10 communities in the first round of grants, with about \$5 million in grants going out by the end of next year to 50 communities around the country.

“Through this initiative, we will create jobs and encourage economic redevelopment in communities that are saddled with old abandoned hazardous waste sites,” said Browner. “We will work cooperatively with local governments and businesses to clean up old toxic waste sites and transform them into new parks, neighborhoods, or thriving commercial districts.” The initiative aims to encourage development on

existing industrial sites rather than in undeveloped areas. It is designed to empower states, local government and communities to develop public/private partnerships that restore abandoned sites to new uses, thereby increasing property values, stimulating tax revenues, and revitalizing communities.

One pilot site is the Escambia Treating Company in Pensacola, Florida — a 26-acre abandoned wood preserving facility. During its period of operation, from 1942 to 1982, excess wood preservative was allowed to drain from the treated products along drip tracks before on-site storage. Soils at the site are contaminated with dioxin and benzo(a)pyrene. The site was placed on the NPL in 1994 and EPA has excavated about 225,000 cubic yards of contaminated materials that are now

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Love Canal Cleanup Completed

After 21 years of cleanup work, in September 1999 EPA completed all construction activities at the Love Canal site in New York State. “The remediation is in place. Homes in the Love Canal neighborhood have been rehabilitated and more than two hundred families have moved back into this revitalized area which has been more closely monitored than probably any other area in the country for environmental safety,” said Damian Duda, EPA’s Project Manager for the site.

Love Canal played a key role in the enactment of the original Superfund legislation. Located in the southeast corner of the City of Niagara Falls, approximately 70,000 people live within three miles of the site, originally built as a channel or canal by William T. Love in the late 1800s for a proposed hydroelectric power project. Between 1942 and 1952, the Hooker Chemicals & Plastics Corp. (now Occidental Chemical Corporation) disposed of ap-

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

Love Canal Cleanup Completed

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proximately 22,000 tons of drummed and liquid chemical wastes in the canal, turning it into a landfill.

After two Presidential Declarations of Emergency, several evacuations, years of investigation and remediation, and a five-volume habitability study, the site is ready for rehabilitation. Numerous remedial activities have taken place over the period, culminating in the treatment and disposal of sewer and creek sediments in 1998-99. The state agency in charge of revitalizing the Love Canal area has sold 239 homes in the areas slated for residential use and has established a master plan for the areas slated for commercial/industrial use. An extensive array of nearly 200 monitoring wells currently exists around the containment area indicate that the containment system is working effectively. Ongoing maintenance and monitoring will continue at the site, and a five-year review of the site will be conducted by September 2004. For more information, contact Damian Duda at 212-637-4269.



Love Canal site in 1993. Leachate treatment facility is to the right of the containment area, Niagara River at the top.

ATSDR Public Health Assessments

The ATSDR (Agency for Toxic Substances and Disease Registry) issued public health assessments between April 1 and June 30, 1999 for 18 sites (see below) that are listed or proposed for inclusion on the National Priorities List. At some of these sites, the assessments were prepared in response to requests from the public.

Completed public health assessments and addenda are available for public inspection at the Division of

Health Assessment and Consultation, ATSDR, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at 703-605-6000. For more information, contact Robert C. Williams, ATSDR, 404-639-0610.

FY99 Shows Significant Accomplishments

More Superfund sites have been cleaned up in the past five years than in all prior years of the program combined. As of October 21, 1999, EPA reports the following achievements:

- **91%** of sites on the final Superfund National Priorities List (1,289 out of 1,412) are either undergoing cleanup construction (remedial or removal), are completed, or have been deleted.
- **670** Superfund sites have had all cleanup construction completed (48% of sites on the final NPL).



STEVE DELANEY, EPA

- **443** (438 Final/5 Proposed) Superfund sites (31% of sites on the final NPL) have cleanup construction underway. An additional 197 (172 Final/25 Proposed) sites

have had or are undergoing a removal cleanup action (12% of sites on the final NPL).

- **Over 1,000** sites have all final cleanup plans approved.
- **Over 5,900** removal actions have been taken at hazardous waste sites to immediately reduce the threat to public health and the environment.
- More than **31,700** sites have been removed from the CERCLIS waste site list to help promote the economic redevelopment of these properties.

U.S., FMC Settle AVTEX Fibers Lawsuit for \$63 Million

Cleanup Paves the Way for Community Redevelopment

FMC Corporation will clean up one of Virginia's largest Superfund sites under a consent decree entered on October 21, 1999. The Avtex Fibers Superfund site in Front Royal, VA, will undergo a cleanup project estimated at \$63 million, and FMC also will reimburse the EPA \$9.1 million for its past costs associated with the property. The site is located in the foothills of the Blue Ridge Mountains.

"This agreement to clean up blighted property on the banks of the Shenandoah River is a terrific example of how the Superfund program works effectively now to restore contaminated land," said Lois Schiffer, Assistant Attorney General for the Environment and Natural Resources Division.

Under the oversight of EPA and the Virginia Department of Environmental Quality, FMC will be responsible for remediation at the 440-acre site, consistent with redevelopment plans by the Town of Front Royal and Warren County. The Avtex facility manufactured synthetic fibers for 49 years. FMC operated the plant from 1963 until 1976. The facility, built by the American Viscose Corporation in the 1930s, supplied material to the U.S. Armed Forces during World War II and for many years was the largest rayon manufacturer in the United States. The last owner, Avtex Fibers-Front Royal, closed the facility in 1989 after being cited for more than 2,000 violations of Virginia environmental laws, primarily associated with wastewater discharges into the Shenandoah River.

Since the site was listed in 1986 on



the National Priorities List, EPA has dismantled more than 740,000 square feet of building space at the site. FMC has spent an estimated \$20 million on cleanup activities, which addressed water quality degradation, removed tons of hazardous substances, and decontaminated buildings. As part of the current cleanup plan, FMC will address the remaining building decontamination and demolition issues; dispose of demolition debris, sludge, liquids and other wastes; remove above-ground and underground tanks; remove hazardous substances in certain building basements; continue waste water treatment; control erosion and sedimentation on the site; and clean up some 220 acres of waste lagoons, basins and waste disposal units.

To settle prior lawsuits brought by FMC, a number of federal agencies agreed to pay FMC about one-third of its cleanup costs. The government's liability is associated with its control of rayon manufacturing operations during World War II and production of

specialized fibers for aerospace applications through the 1970s and '80s.

Avtex is one of the pilots for EPA's "Superfund Redevelopment Initiative" (see article on page 1). Through the resolution of the Avtex Fibers Bankruptcy (expected by 12/31/99), the local Economic Development Authority will receive title to the Avtex Fibers Site. A Prospective Purchaser Agreement is being negotiated with the town and county to coincide with transfer of the property to the localities, eventually making the entire site available for redevelopment.

"We're pleased that this settlement will enable EPA and FMC to focus only on cleaning up the entire site, and not on the courtroom," said EPA Regional Administrator W. Michael McCabe. "A successful cleanup will remove this land from the Superfund priority list and return it to the community for commercial, recreational, and conservancy uses."

For more information, contact Meredith McLean, 202-564-4216.

Showcase Communities Share Successful Models

On October 18-20, 1999, 16 Brownfields Showcase Communities and 90 federal officials shared models of successful local-federal brownfields collaboration at the second Brownfields Showcase Community Summit. Hosted by the National Association of Local Government Environmental Professionals, the summit featured EPA Administrator Carol Browner, representatives from 20 federal agencies, and the mayors of

East Palo Alto, CA, and Stamford, CT.

Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. The 16 Showcase Communities are: Baltimore, MD; Chicago, IL; Dallas, TX; East Palo Alto, CA; Eastward Ho!, FL; Glen Cove, NY; Kansas City, KS/MO; Los Angeles, CA; Lowell, MA; Portland, OR; Providence, RI; Saint Paul, MN; Salt Lake City, UT; Seattle/King County, WA; Stamford, CT; and Trenton, NJ.

The summit highlighted some of the effective partnerships the Showcase Communities are developing with participating federal agencies. For example, Kansas City has worked extensively with the U.S. Army Corps of Engineers and received planning, engineering, and technical assistance in support of the Riverfront Heritage Trail project. The U.S. Department of Energy designated the City of Chicago a Brightfields pilot and awarded \$200,000 in technical assistance to locate solar collecting stations on brownfields.

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Brownfields Update

First Brownfields Revolving Loan Issued. Although several dozen cities have been awarded Superfund money to set up revolving loan funds for brownfield redevelopment, cities have found it difficult to actually issue loans. In October 1999, though, **Stamford, Connecticut** awarded the first loan made in the nation under EPA's Brownfields Cleanup Revolving Loan Fund (BCRLF) program to help clean up a Stamford Harbor waterfront property. The \$250,000 loan was awarded to Southfield Associates, LLC, a real estate developer, for cleanup of the site. The 15.1 acre project will be redeveloped into a residential community, including 320 housing units, a marina facility, and a boardwalk system.

"Private development companies have a key role in addressing the brownfields challenges within our communities," said Seth Weinstein, Managing Partner of Southfield Associates and Chairman of Clearview Investment Management. "I have been very pleased to work effectively with the City of Stamford and the U.S. Environmental Protection Agency to clean up one of the key brownfields sites on the Stamford Waterfront."

Stamford was selected as a BCRLF pilot in September 1999. EPA provided the city with \$500,000 to capitalize its revolving loan fund to leverage funds to clean up three major sites in its South End and Waterside neighborhoods. For more information, contact Sandy Dennies with the City of Stamford at 203-977-4190, or Barbara Basuener with EPA at 202-260-9347.

FY2000 Pilots. EPA is accepting proposals for 50 new National Brownfields Assessment Pilots, each funded up to \$200,000 over two years. An additional \$50,000 may be awarded to assess contamination if the brownfield will be used for green space purposes. All applications must be postmarked no later than **Feb. 16, 2000**. Copies of the application package can be obtained from 1-800-424-9346 or 703-412-9810, or downloaded at: <http://www.epa.gov/brownfields>.

CUED Study Yields Brownfields Cost Data. EPA's brownfields program has been criticized by Congress for not producing measurable

results. Now a study of 107 completed brownfields redevelopment projects conducted by the Council for Urban Economic Development (CUED) has come up with hard numbers on the program's costs, funding sources, and demographics. The study found that the median amount of private funds leveraged per public dollar spent is \$2.48. The median remediation cost per acre was \$56,945, with the cost per square foot running at \$4.46. Within a one-mile radius of the brownfields sites, the residents were 35% minority (compared to the national average of 24%), and 25% below the poverty level (twice the national average of 12.6%), indicating that the sites are indeed serving environmental justice objectives. To order the study, contact CUED at 202-223-4735 or <http://www.cued.org>.

Environmental Justice Complaints. EPA recently conducted six case studies to determine whether the redevelopment of brownfields have been impeded by Title VI environmental justice complaints and whether these complaints are deterring businesses from redeveloping brownfields. The study showed that community residents were not likely to file Title VI complaints because they were actively involved in the redevelopment process and could identify and address their concerns; and residents were more interested in the economic benefit. Also, most brownfield sites did not require environmental permits, therefore limiting the chance of a Title VI complaint being filed. (Under Title VI of the Civil Rights Act, a person can file a complaint alleging discriminatory environmental and health effects from actions taken by recipients of EPA financial assistance, including environmental (pollution control) permits.) Copies of the case studies can be accessed at <http://www.epa.gov/brownfields> or by calling the hotline at 1-800-424-9346.

Don't miss Brownfields '99! on December 6-8 in Dallas, TX!
For information on the conference or other brownfields topics, go to: <http://www.epa.gov/brownfields>.

Annual Treatment Technology Report Available

Information about treatment technologies being used at more than 900 hazardous waste sites around the United States is available in a report issued in June 1999, Treatment Technologies for Site Cleanup Annual Status Report - 9th Edition (#EPA-542-R99-001). This year's report includes a broad range of treatment technologies, such as control technologies and innovative groundwater treatment technologies being used at Superfund sites, RCRA corrective action sites, and Departments of Defense and Energy sites. The report updates projects included in the 8th edition, and information on projects derived from 79 Records of Decision signed in 1996 and 1997. It also now includes information on 217 incineration and solidification/stabilization projects not previously covered. For the most frequently selected technologies, the report analyzes selection trends over time, contaminant groups addressed, quantities of soil treated, and project implementation status.

Detailed project information is now available in a new searchable electronic database, EPA REACH IT sys-

tem, at <http://www.epareachit.org>. The report also is available electronically at <http://clu-in.org> or can be ordered by calling the EPA National Service Center for Environmental Publications at 1-800-490-9198.

Innovative Remediation and Site Characterization Technologies Resources

This revised CD-ROM contains many new publications, easy access to the new EPA REACH IT database, and the ability to do simple searches. The resources on this CD can help federal, state, and private-sector site managers evaluate alternatives among innovative technologies for site assessment and cleanup. The ability to gain access to resources that provide information about innovative site characterization and remediation technologies will increase understanding of those technologies and of the cost and performance factors related to them. Such understanding is essential to the consideration of those technologies for use in addressing contamination at hazardous waste sites.

The new CD should be available in late November. To order a copy, call

NSCEP 1-800-490-9198 and request document number 542-C-99-001.

EPA and DoD Agree to Evaluate New Environmental Technologies

In July, EPA and the Department of Defense signed an agreement to collaborate on testing new commercial-ready environmental technologies. EPA and DoD are now joining forces to verify technologies through EPA's Environmental Technology Verification program (ETV) and DoD's Environmental Security Technology Certification program. This will allow companies that develop new pollution prevention, control, and monitoring technologies to obtain objective third-party testing and will help superior technologies penetrate markets of interest to both EPA and DoD. After the technology is tested, the companies will receive a verification report that they can use in marketing their products. Results of the testing will also be made available on the Internet. This agreement will save time and expense for both agencies, while supplying the public with information on new technologies which is currently unavailable. More information on this program is found at: <http://www.epa.gov/etv>.

BROWNFIELDS

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A number of communities are moving rapidly on their redevelopment goals. In Salt Lake City, Utah, an 18-acre railyard in the center of the District has been purchased by Salt Lake City for the development of an Intermodal Transportation Hub to serve Amtrak, Greyhound, City bus, future light rail and future commuter rail. Amtrak has already relocated to the new site. Forty million dollars in funding for this project was authorized in TEA-21. The Department of Transportation's recent

policy allowing federal funding to be used, on a site-specific basis, at properties with environmental contamination, was instrumental in making this project possible. Another 30-acre railyard behind the historic Union Pacific Depot Gateway District has been sold to a private developer for a \$250 million mixed-use development. This project is expected to create 7,300 to 10,000 new jobs. Construction of the first phase will begin in the summer of 1999 and is scheduled for completion in 2001.

The summit identified numerous obstacles that showcase communities

have encountered, including lack of awareness of the benefits of brownfields development, the need for extensive time and coordination with each constituency group, and financing issues, including the lack of gap funding and the scarcity of local matching resources. In addition, government regulations on the use of federal funds (e.g., Superfund monies cannot be used on petroleum contamination) limit flexibility.

For more information on the summit, contact NALGEP at 202-638-6254.



Findett Corporation: U.S. District Court Upholds EPA's Annual Allocation Costs

*[United States v. Findett Corp.,
No. 4:97-CV-1557-CDP (E.D.
Mo., Sept. 15, 1999)]*

On September 15, 1999, the United States District Court for the Eastern District of Missouri filed a memorandum and order granting the United States' motions for summary judgment on CERCLA liability and recovery of response costs against Findett Corporation. The court held that Findett was a liable party at the Findett/Hayford Bridge Site and that CERCLA's six-year statute of limitations did not bar the United States' action. The court also found that the government was entitled to recover all of its response costs (including the costs of non-site-specific response activities of contractors, i.e., annual allocation costs).

The site is located in St. Charles, Missouri and for over ten years housed a recycling operation owned by Findett. Operations ceased in 1976. In the early eighties, EPA began an investigation and determined that the site was contaminated with PCBs and volatile organic compounds, substances disposed of by Findett in its recycling operations. Findett entered into a consent decree for cleanup of the site in May 1990 and agreed to pay EPA's oversight costs. At that time, however, the United States reserved its right to seek recovery of all other past and future costs incurred at the site.

In 1994, an existing shareholder bought all of Findett's shares and acquired a 100 percent ownership interest. On July 25, 1997, the United States brought an action for recovery of its past and future response costs, and

subsequently filed motions for summary judgment on liability and recovery of response costs. In response, Findett argued that: (1) the government's liability claim was barred by CERCLA's six-year statute of limitations; (2) it was no longer a liable party and/or a third party was liable for the United States' response costs; and (3) the government's costs were inadequately documented and inconsistent with the National Contingency Plan because the United States failed to follow the NCP and a Superfund financial management directive.

Findett argued that the United States' cost recovery action was barred by the statute of limitations under Section 113(g)(2)(B) of CERCLA. This section requires the government to file an "initial" action for recovery of costs no later than six years after the initiation of physical on-site construction. Findett claimed the entry of the 1990 consent decree was not an "initial" action because Section 113(g)(2)(B) required any such action to include a declaratory judgment on liability for future response costs or damages. Because the court did not enter a declaratory judgment when the consent decree was entered, it could not be an "initial" action. Thus, the United States "initial" action was brought in July 1997 and was too late.

The district court disagreed. It stated that the purpose of the language in Section 113(g)(2)(B) was to avoid the need to relitigate liability questions and did not mandate that every "initial" action include a declaratory judgment. Therefore, the court held that the entry of the consent decree in 1990 was an "initial" action under Section 113(g)(2)(B) and that the 1997 cost recovery action was a "subsequent action" and was not time barred.

Findett also argued that it was no

longer a liable party after a shareholder purchased all of its stock. The court again disagreed and held that the successor cases cited by Findett were inapposite because in this case the shareholder had purchased with knowledge of the environmental contamination at the site. Thus, Findett retained its liability. Though Findett also claimed it had a third party defense, the court determined that Findett did not prove the release was caused "solely" by a third party.

The court also granted the United States' motion to recover \$3,293,909 in past response costs. Findett had argued that most of these costs were not recoverable because the government had failed to follow an EPA directive, "Financial Management of the Superfund Program" (EPA Directive 2550D). On summary judgment, the court held that Section 107(a)'s language limited Findett's defenses, stating, "even assuming the government failed to comply with the EPA Directive 2550D, that failure does not bar its recovery in this action." The court also found that the government's costs were not inconsistent with the NCP because it provided detailed costs summaries and related affidavits to support its costs.

In upholding EPA's annual allocation costs, the court explained:

Through the annual allocation process, a contractor who works on multiple sites under a single contract with the EPA allocates to a given site the costs of a non-site-specific response activities that are nevertheless necessary to support its site-specific response actions (e.g., rent on a regional office from which a contractor oversees work at several sites). Allocation to a particular site is made on the basis of the ratio of that site's direct costs to the total cost of all site and non-site

activities. By totaling the site-specific costs with the allocated non-site specific costs, the government endeavors to develop the real total cost of the site work performed by the contractor.

Because the government offered a thorough and detailed explanation of its contractor allocation process, the court concluded that inclusion of these costs was proper. Contacts: Ben Lammie, OSRE, 202-564-7126; Audrey Asher, EPA Region 7, 913-551-7255.

Keystone Sanitation Landfill: Court Enters De Micromis Settlements.

[United States v. Keystone Sanitation Co. et al., Civ No. 1:CV-93-1482]

On July 28, 1999, Judge Sylvia H. Rambo granted the United States' motions to enter three "de micromis" consent decrees. The first consent decree involved 95 "de micromis" parties and was lodged with the court on April 5, 1996. A second consent decree, involving 72 de micromis parties, was lodged with the court on May 23, 1996, and a third consent decree, involving 28 de micromis parties, was lodged on No-

vember 24, 1998. This last consent decree was unopposed by the *de maximis* defendants. The de micromis parties resolved their Superfund liability with nominal \$1.00 settlements. These parties were all brought into the litigation by other defendants, and none were sued by the United States. Most of the de micromis settlers are small businesses — including apartment buildings, pizza shops, and theaters — that could not afford the legal expenses of protracted Superfund litigation.

The Keystone Sanitation Landfill is located on a 40-acre property in Union Township, Adams County, Pennsylvania. It accepted municipal, industrial and construction debris from 1966 to 1990. The landfill is located in an area of hilly terrain above fractured bedrock. Leachate from the landfill has contaminated the local aquifer, which is a source of drinking water in the area.

Judge Rambo ruled that EPA has the statutory authority pursuant to Section 122(g) of CERCLA to define a *de minimis* party's eligibility on a case-by-case basis. The court noted that the United States had reasonably determined a 0.1% volumetric cut-off in accordance with EPA's 1993 de micromis policy and had ensured that only the smallest amounts of hazardous substances could be consid-

ered. In the agreement, EPA had used a maximum limit of 55 gallons or 100 pounds of hazardous substances as a cut-off. The court also cited the government's use of questionnaires and certifications to determine a party's contribution to the site. It noted the United States had conducted additional investigations and had cross-checked the certification with existing information. It also noted that the reopener provision in the agreements allowed the United States to reopen a settlement if information is discovered that a party's certification was false or that it no longer qualifies for de micromis status. The court stated it was satisfied that the de micromis settlements met the statutory requirements of CERCLA, SARA and the case law.

The Keystone Sanitation Landfill has been the subject of a large amount of publicity both in the national new media (CBS' 60 Minutes) and in Congress during the Superfund reauthorization hearings. With the de micromis settlements being entered by the court, the United States has reduced transaction costs and obtained finality for the truly small waste contributors at the site.

Contacts: Mary Rugala, EPA Region 3, 215-814-2686; Carolyn Lane-Wenner, OSRE, 703-242-9647.

Superfund Redevelopment

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being stored at the site under secure cover. The site may be redeveloped as a commercial, light industrial, and/or a commerce center.

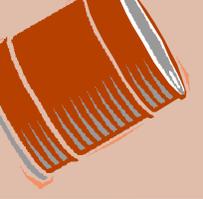
Other pilot sites include: Pownal Tannery, Pownal, VT; Roebing Steel, Roebing, NJ; Avtex Fibers, Front Royal, VA; Tar Lake, Mancelona, MI; Many Diversified Interests, Houston,

TX; National Mine Tailings, Park Hills, MO; Midvale Slag, Midvale, UT; Frontier Fertilizer, Davis, CA; and McCormick and Baxter Creosoting Company, Portland, OR.

Each community will receive up to \$100,000 in the form of a cooperative agreement with the local government or a comparable level of support from private responsible parties, to conduct reuse assessments and public outreach to help determine the likely future use of the site. The national focus on rede-

veloping Superfund sites builds on the success the Administration has achieved in its Brownfields Economic Redevelopment Initiative and relies on many of the tools that have been developed over the last six years under the Superfund Administrative Reforms.

For more information about the initiative, visit EPA's web page at: <http://www.epa.gov/superfund/programs/recycle/index.htm> or call the Superfund hotline at 1-800-424-9346 or 703-412-9810.



Leaking underground storage tanks (USTs) can threaten human health and the environment, especially by contaminating groundwater. About half of the U.S. population depends on groundwater as a source of drinking water. In 1984, Congress responded to the increasing threat to groundwater posed by leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I required EPA to develop a comprehensive regulatory program for USTs. EPA's Office of Underground Storage Tanks (OUST) was established to carry out those Congressional mandates.

Priorities for OUST's efforts over the next few years are: evaluating UST systems; improving operation and maintenance of UST systems; carrying out and overseeing corrective actions; and implementing the UST program in Indian country.

In 1988, EPA issued regulations setting minimum standards for new USTs installed after December 22, 1988 and requiring owners of existing substandard USTs to upgrade, replace, or close them by December 22, 1998. In addition to compliance with the preventive requirements for spill, overfill, and corrosion protection, all UST sites must meet requirements for release detection, notification, installation, corrective action, reporting, and recordkeeping.

Early in the underground storage tank program, EPA recognized that, because of the large size and great di-

versity of the regulated community, state and local governments were in the best position to oversee USTs. Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program, and EPA sets objectives for state programs to meet. As of September 1999, 28 states, the District of Columbia, and Puerto Rico have received final state program approval to operate the UST program in lieu of the federal program.

As of April 1999, more than 824,000 active USTs are regulated by the federal UST requirements, while approximately 1.3 million substandard USTs have been closed. An underground storage tank system is a tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground. Federal UST requirements apply only to tanks storing petroleum and certain hazardous substances. Approximately half of USTs are owned by marketers who sell gasoline, while the remaining USTs are owned by noncommercial entities, such as local governments, largely to provide fuel for service vehicles.

OUST estimates that, as of April 1999, over 80 percent of USTs met the preventive requirements for spill, overfill, and corrosion protection. Compliance rates have risen from about 60 percent in November 1998 to the current level, and all indicators show that compliance continues to improve. However, EPA still has more work to do to ensure that all owners comply with the technical requirements, including leak detection requirements. For example, EPA is concerned that, although owners installed leak detection equipment on their tanks, a significant percentage of leak detection systems may not be operated or maintained properly. Nevertheless, owners and operators and those non-marketers who are responsible for

UST sites should be prepared to demonstrate compliance with state and federal UST requirements or risk the likelihood that their UST sites may be found to be in violation and subject to potentially costly penalty fines — or in some states, non-delivery of fuel.

Congress created the Leaking Underground Storage Tank (LUST) Trust Fund in 1986 by amending Subtitle I of RCRA. The Trust Fund, which OUST administers, provides money for overseeing corrective action taken by a responsible party who is the owner or operator of the leaking UST. The Fund also provides money for cleanups at UST sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action.

When releases of product do occur, the UST regulations require owners and operators to report the release, remove the source, investigate the extent of the contamination, and clean up the soil and groundwater. As of April 1999, 385,927 releases have been confirmed; 327,210 cleanups have been initiated; and 211,637 cleanups have been completed. However, there is still more work to be done in the corrective action area. Approximately 170,000 cleanups have not yet been completed, and EPA estimates that as many as 80,000 additional releases may be confirmed before 2005. Priorities for OUST's efforts over the next few years are: evaluating UST systems; improving operation and maintenance of UST systems; carrying out and overseeing corrective actions; and implementing the UST program in Indian country.

For more information about the UST program, refer to the OUST web site at <http://www.epa.gov/OUST/>. The RCRA/Superfund Hotline at 1-800-424-9346 can provide free compliance assistance materials and answer questions about the UST program.

New Law Requires RMP Facilities To Hold Public Meetings

On Aug. 5, 1999, President Clinton signed the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act. This law primarily concerns the public availability of the Off-Site Consequence Analysis (OCA) sections of the Risk Management Plans submitted by companies under Section 112(r) of the Clean Air Act. Such companies include chemical plants, petroleum refineries, paper mills, water treatment plants, warehouses, and food businesses with large ammonia refrigeration systems. OCA information addresses the worst possible accident that could occur at a facility if all safety systems failed.

The new law prohibits government officials from disclosing to the public the off-site analyses sections of the Risk Management Plans until at least Aug. 5, 2000. By that date, the federal government must complete an assessment and rulemaking to address future pub-

lic availability of those materials.

However, the law does *not* bar facilities from sharing the OCA data with the public. Moreover, approximately 95% of the 14,800 facilities that reported RMP information by the June 21 deadline must provide the public with at least a summary of that information. **A public meeting must be held by Feb. 1, 2000.** Small businesses that qualify as a small business stationary source under the Clean Air Act's Section 507 (c) technical assistance program may post a summary of their OCA information instead of holding a public meeting.

Reasonable notice to the public must be given before the meeting is held. At the meeting, facilities must talk about the local implications of the plan submitted by the facility, including a summary of the OCA portion of the plan. The small percentage of facilities (5%) that have no potential for off-site consequences are not required to host a meeting. Facilities that hosted meetings between Aug. 5, 1998, and Aug. 5, 1999, get credit for that meet-

ing if it was publicly advertised and if the local impact of a worst-case accident was discussed

By June 5, 2000, the owner or operator of the facility must send the FBI a certification statement that the public meeting has been held, or the OCA summary posted. The FBI will document receipt, and provide the documentation to the EPA.

Many plant managers and business owners say that sharing RMP data openly has been a springboard to a better relationship with their community. The public meeting gives these businesses an opportunity to get acquainted with their Local Emergency Planning Committees, fire chiefs, or elected local officials. Other facilities have chosen different forums, such as the PTA and local school board meetings, to talk to the public about their RMPs.

For more information, tap into EPA's Chemical Emergency Preparedness and Prevention Office at <http://www.epa.gov/ceppo>. RMPs can be accessed at <http://www.epa.gov/enviro>.

Technical Outreach Services for Communities Proves Its Worth

The 1999 Technical Outreach Services for Communities (TOSC) National Conference and Training was held in Potomac, Maryland, on September 27-29, 1999, bringing together university representatives, EPA community involvement staff and citizen leaders, involved with TOSC projects at cleanup sites. With 115 projects undertaken, the TOSC program provides free, independent technical assistance to citizens who want to be involved in understanding hazardous waste issues at hazardous waste cleanup sites. Two citizen speakers provided the keynote addresses.

Tony Davenport, representing four Chicago communities, described TOSC as a "godsend" that provided both technical help and peace of mind. He stressed that because TOSC was independent and had no stake in the outcome, the community could and did readily accept the analysis and interpretations produced by TOSC, even though some of the information was not what they expected.

Rosa Hilda Ramos of Cataño, Puerto Rico, a member of the National Environmental Justice Action Committee, noted that the TOSC program can help rebuild trust when citizens have become disillusioned and shut out of the regulatory process. In her case, the community received assistance from the New Jersey Institute of Tech-

nology, which worked directly in the community and through a partnership with a local university. Ms. Ramos urged that the program expand beyond toxics to more general environmental issues, and stressed that EPA should seek out smaller, more community-oriented universities for the program. Both speakers recommended that universities participating in TOSC expand their services to include mediation or other dispute resolution assistance.

Other topics included skillbuilding, the role of Community Advisory Groups, cultural risk assessments in tribal communities, and Internet resources. For more information on the conference, contact Helen DuTeau at 703-603-8761.

Superfund Reauthorization

The last few months have seen continuing efforts on Capitol Hill to move forward on a Superfund Reauthorization bill. Unfortunately, as EPA officials have testified in hearings on several different bills, the proposed legislation would actually weaken the Superfund program rather than strengthen it. H.R. 1300, H.R. 2580, and H.R. 2247 are all “fatally flawed” in that they address problems that have already been fixed through Superfund Administrative Reforms.

As Timothy Fields stated in testimony before the Subcommittee on Finance and Hazardous Materials of the House Committee on Commerce (Sept. 22, 1999), EPA believes that “as the result of the progress made in cleaning up Superfund sites in recent years, and the program improvements resulting from administrative reforms, there is no longer a need for comprehensive legislation. Comprehensive legislation could actually delay cleanups, create uncertainty and litigation,

and undermine the current progress of the program. As a result, the Clinton Administration believes only provisions that provide narrow, targeted liability relief for qualified parties that builds upon the current success of the Superfund program are appropriate.”

Specifically, the provisions that EPA supports — in addition to legislation to reinstate the Superfund taxes, — would be limited to:

- prospective purchasers of contaminated property
- innocent landowners
- contiguous property owners, and
- the liability of small parties.

The problems with the proposed bills include: liability provisions that could increase litigation, undermine the critical “polluter pays principle,” and exempt many parties who should pay for cleanup; replacing the current goal of restoring contaminated groundwater to beneficial uses, wherever practicable, with a much lower standard; and new risk assessment terms and requirements that would require EPA, states, and contractors to change the way a Superfund cleanup remedy is chosen and thereby delay cleanups; reduced incentives for responsible parties to settle, and an overly burdensome allocation process that could discourage settlements.

EPA continues to support reinstatement of the Superfund taxes and enactment of narrowly targeted Superfund legislation that builds upon the success of Superfund’s administrative reforms.

Cleanup Notes

July 8, 1999 — New Reforms Will Accelerate Cleanups at More Than 1,700 RCRA Hazardous Waste Management Sites. The reforms include annual cleanup goals and guidance to encourage creative and flexible approaches to ensuring cost-effective cleanup progress. Under the reforms, EPA, the states, and the involved industries will continue to assess and address contamination from toxic and other materials at some 3,000 RCRA facilities, focusing on the most highly contaminated areas first. EPA already has assessed many of these sites and believes that these facilities do not pose immediate health threats. At 255 sites, cleanups already have been completed, and early actions have been taken at more than 800 sites to protect against any immediate threats to public health or the environment. The contamination at the 1,712 facilities targeted under the reforms is primarily the result of past toxic pollution that occurred prior to modern RCRA practices. Cleanups are expected to proceed at an average rate of 200 per year through 2005. For more information, go to: <http://www.epa.gov/epaoswer/osw/cleanup.htm> or call the RCRA hotline at 1-800-424-9346 or 703-412-9810.

October 21, 1999 — EPA Adds 10 Sites and Proposes 9 Sites to NPL. The primary purpose of the National Priorities List is to guide EPA in determining which sites warrant further investigation. Currently there are a total of 1,221 final sites and 57 proposed sites. The 10 recent additions include: Basin Mining Area, Basin, MT; Upper Tenmile Creek Mining Area, Lewis and Clark County, MT; Georgia-Pacific Corp. Hardwood Sawmill, Plymouth, NC; Iceland Coin Laundry Area Ground Water Plume, Vineland, NJ; Lightman Drum Co., Winslow Township, NJ; Fruit Avenue Plume, Albuquerque, NM; Garland Creosoting, Longview, TX; State Road 114 Ground Water Plume, Levelland, TX; Vienna Tetrachloroethene, Vienna, WV; and one federal facility, McGuire Air Force Base #1, Wrightstown, NJ. More information about these and the proposed sites is available at <http://www.epa.gov/superfund/sites/index.htm#desnqry>.

EPA Issues Superfund Relocation Policy

EPA issued for public comment a new relocation policy that provides direction to EPA staff on when to consider permanent relocation of residents and businesses near or on Superfund sites. The "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions" issued in July 1999 outlines some of the circumstances under which permanent relocation may be considered to protect human health and the environment.

EPA's preference is to clean up and restore property so that people may remain safely in their homes and businesses. The primary reasons for conducting permanent relocations at Superfund sites would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (homes or businesses) are an impediment to implementing a protective cleanup. In the limited cases where permanent relocation may be deemed appropriate, the policy demands that EPA must "make every effort to implement actions in an expeditious, thoughtful and fair manner."

The interim relocation policy was developed in response to a request made by the National Environmental Justice Advisory Council's Waste and Facility Siting Subcommittee. Specifically, NEJAC asked EPA to determine when citizens should be relocated

away from residential areas near or affected by Superfund sites. NEJAC based its request on concerns it had heard from communities affected by Superfund sites. These communities wanted to be relocated because they feared the potential effects sites pose to their health, property values, and overall quality of life.

As part of the groundwork for developing the policy, EPA undertook several efforts to understand the issues associated with relocation. One effort entailed establishing the Escam-

EPA's preference is to clean up and restore property so that people may remain safely in their homes and businesses.

bia Wood Treating Company site in Pensacola, Florida, as a national relocation pilot. A second effort involved an EPA review of a number of sites where cleanups in residential areas had been conducted. The findings of that review revealed that EPA cleans up the overwhelming majority of Superfund sites in residential areas without the need to permanently relocate residents and businesses. Finally, EPA sponsored a series of stakeholder forums to solicit views and experiences on the subject of relocation. Stakeholders stressed the importance of EPA working closely with community members to address their issues, involve the community in the site decision-making process, and communi-

cate openly and honestly.

EPA is seeking public comment on this interim policy and will address these comments before issuing a final policy. A multi-stakeholder meeting is scheduled to be held in March 2000 to hear comments on the policy. The interim policy is available on the Web at <http://www.epa.gov/oerrpage/superfund/tools/topics/relocation> or by calling the Superfund hotline at 1-800-424-9346 or 703-412-9810.

Negotiation and Enforcement Strategies Memo

On June 17, 1999, Barry Breen, Director OSRC signed a memorandum on "Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of Remedial Design/Remedial Action at Superfund Sites." The memorandum is a product of a workgroup with representatives from all ten EPA Regions, OSRE, OGC, and the U.S. Department of Justice.

The memo recommends strategies which can be used to encourage PRPs to enter into a settlement using the model RD/RA Consent Decree. It discusses the current model Unilateral Administrative Order, and suggests practical alternatives to expedite Superfund settlements and the cleanup process. The memo relies on existing guidance to identify incentives available to PRPs for settling with EPA and disincentives for not settling. It also highlights how EPA can ensure that cleanups being performed under a settlement are not delayed and what EPA's enforcement options are when settlement negotiations fail. Contacts: Ben Lammie, OSRE, 202-564-7126; Baerbel Schiller, EPA Region 7, 913-551-7257.

December 6-9, 1999

4th Annual Joint Services Pollution Prevention / Hazardous Waste Management Conference and Exhibition

San Antonio, TX

An open forum for exchanging ideas, success stories, case histories, and technologies related to pollution prevention and hazardous waste management. The conference will cross federal, academic, and industry lines. For more information, visit <http://www.serdp.org/symposiums/symposiums.html>.

December 6-8, 1999

Brownfields '99

Dallas, Texas

Brownfields '99 will provide discussions, opportunities for critical networking, and a forum for making deals that will change the face of America. For information, go to: <http://www.epa.gov/brownfields>.

Acronyms

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|---------------|---|--------------|--|
| ADR | Alternative Dispute Resolution | NSCEP | National Service Center for Environmental Publications |
| ATSDR | Agency for Toxic Substances and Disease Registry | OERR | Office of Emergency and Remedial Response (EPA) |
| CEPPO | Chemical Emergency Preparedness and Prevention Office | OGC | Office of General Counsel (EPA) |
| CERCLA | Comprehensive Emergency Response, Compensation, and Liability Act (Superfund law) | OSRE | Office of Site Remediation Enforcement (EPA) |
| DoD | Department of Defense | OUST | Office of Underground Storage Tanks (EPA) |
| DOE | Department of Energy | PCB | Polychlorinated biphenyls |
| NCP | National Contingency Plan | PRP | Potentially Responsible Party |
| NPL | National Priorities List (Superfund) | RCRA | Resource Conservation and Recovery Act (hazardous waste) |

cleanupnews

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