



FY2004 Enforcement, Compliance and Cleanup Results Announced

EPA met or exceeded federal targets in enforcement, Superfund cleanups, and underground storage tank cleanups, according to fiscal year 2004 data released in November. At the end of the fiscal year, Sept. 30, EPA compiles program data on enforcement, compliance and cleanup activities and releases it to the public as a measure of Agency achievements in protecting human health and the environment. Included in this year's cleanup figures were an estimated 3.4 million cubic yards of contaminated soil and sediment and 9.5 million cubic yards of groundwater that will be remedied.

Office of Enforcement Compliance and Assurance

OECA reported that a billion pounds of pollution will be reduced as a result of enforcement actions taken in 2004, a dramatic 67 percent increase over the previous year and the second highest annual tally. In addition, there were increases in the dollar amount of injunctive relief, which is the value of compliance actions required by the settlement, the number of supplemental environmental projects (SEPs) settlers agreed to complete, and the number of inspections EPA conducted. Violators have agreed to pay a record \$4.8 billion in injunctive relief, a 66 percent increase over the previous year. The number of SEPs—environmentally-beneficial projects a settler agrees to complete that go beyond what is required of the settlement—increased from 150 in 2003 to 213 in 2004, a 42 percent increase. And the number of inspections rose 11 percent to 21,000 from the previous year's 18,880.

Additional information about OECA's FY2004 accomplishments, including the "numbers at a glance" and highlights of successful civil and criminal cases, including a \$60 million PCB cleanup at the Fox River Superfund Site in Wisconsin and a \$40 million groundwater cleanup in the San Gabriel Valley in California, are available online at: <http://www.epa.gov/compliance/resources/reports/endofyear/eoy2004/2004highlights.html>.

Office of Solid Waste and Emergency Response

In OSWER, the Superfund program reported that construction was completed at 40 sites. To date, construction has been completed at 926 sites on the National Priorities List (NPL). The Superfund program also reported that in FY 2004, 11 new sites had been added to the NPL and 26 had been proposed for listing. A summary of Superfund's 2004 accomplishments is available at:

<http://www.epa.gov/superfund/action/process/numbers04.htm>. The Office of Underground Storage Tanks reported a significant drop in the number of new releases, down to 7,850 from 12,000 last year. Also, the number of sites awaiting remedial action

dropped by 5 percent from 2003. OUST's FY2004 accomplishments are available at: <http://www.epa.gov/oust/cat/camarchv.htm>.

For additional information, contact Pat Reilly of OECA, reilly.pat@epa.gov; Jennifer Browne of OSRTI, browne.jennifer@epa.gov; or Cheryl Johnson of OUST, johnson.cheryl@epa.gov.

EPA Administrator Leavitt Addresses Brownfields Conference

"The President's vision is very clear. The President wants to see eyesores turned into retail stores. He wants to see rail lines turn into trail lines. He wants to see Brownfields become ballfields."

-- Administrator Mike Leavitt

On September 20, 2004, Administrator Leavitt urged Brownfields conference participants to speed the pace of Brownfields projects and to work together to do so. "All successful Brownfields projects are collaborations," Leavitt noted, as he encouraged everyone involved in the Brownfields redevelopment process—including developers, insurers, and federal and state agencies—to consider Brownfields projects as "problem solving networks." He added that EPA should be examining why some Brownfields efforts succeed and some fail and applying successful strategies to new redevelopment projects. Leavitt followed by outlining seven questions that need to be asked of any Brownfields project to ensure that there is adequate collaboration to guarantee success. Leavitt proposed asking if the key collaboration players "have a shared problem and shared pain," there is a leader committed to the effort, and the partners have a "clear and defined purpose."

This year's conference in St. Louis attracted over 4,000 participants. As with past conferences, there was a "Marketplace of Ideas," and the Phoenix Awards, which honor excellence in brownfields redevelopment, were announced. Some conference attendees chose to tour "green" redevelopment sites, including the Laclede Power Building, a former St. Louis power plant that is being redeveloped as a trailhead to the Mississippi Riverfront Bike Trail.

Brownfields 2005 is scheduled for Nov. 2-4, 2005 in Denver, Colorado. As the conference approaches, conference details including the call for ideas and registration materials will be available at: <http://www.brownfields2005.org>.

For additional information, contact Tony Raia, OBCR, (202) 566-2758.

Dunne Speaks on Future of Superfund

Next year, EPA will celebrate the 25th anniversary of the “Superfund law”—the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In anticipation of this anniversary, Thomas Dunne, Acting Assistant Administrator of OSWER, spoke at the University of Virginia about the history of the program, current challenges, and how to address these realities over the next quarter century.

The new realities of the Superfund program, which Dunne referred to as the “Superfund facts of life,” include the lower purchasing power of the dollar, costly and more complex site cleanups, and the expansion of the emergency cleanup program’s responsibilities. The first reality is that Superfund dollars buy less cleanup than it did over the past 10 or 20 years. The amount of money appropriated to Congress has remained about the same over the past 24 years, however, the purchasing power of the dollar has decreased from 20 years ago through inflation. The second reality is that this lower dollar value must be used to clean up more complex and expensive Superfund sites. Dunne noted the example of Bunker Hill, a former mining and smelting site in Idaho where EPA has already spent \$300 million of what will likely be a \$700 million, 30-year cleanup. Until now, 44 “megasites”—sites requiring \$50 million or more to cleanup—have been completed, and 90 megasites, not including federal facilities, are currently in the pipeline waiting to be completed. Another “fact of life” is the addition of biological and chemical anti-terrorism responsibilities for EPA’s emergency response team in the post-9/11 era.

Dunne also expressed concerns about emerging trends that may have long-term impacts on the program, including new laws reducing responsible party liability and unanticipated economic factors that leave businesses unable to pay for expensive cleanups. Also, dwindling state and local government funds for covering traditional cleanups may place a greater burden on the Superfund. Dunne posed for discussion that possible ways to tackle these challenges include tapping into the economic post-cleanup success of parties that benefit from a cleanup, creating a megasite cleanup fund that would be managed separately from the regular Trust fund, and adding new sites to the Superfund list only after all current sites are completed.

Dunne’s speech is available at:

http://www.epa.gov/oswer/docs/2004_1202_dunne_sf_speech.pdf.

New Initiative Encourages Responsible Redevelopment

EPA has made redevelopment of former contaminated sites a major priority. Redevelopment brings abandoned or underused properties back into use thereby preserving undeveloped land and revitalizing communities. But for all its virtues, redevelopment is not without cost. Building new structures requires the use of raw materials, and businesses and residences consume energy and resources and generate waste. According to Department of Energy estimates, the 76 million residential and 5

million commercial buildings in the US consume 37 percent of all US energy and 40 percent of all raw materials.

A new initiative called Environmentally Responsible Redevelopment and Reuse (ER3) seeks to “green” the redevelopment process by encouraging developers to adopt more environmentally-friendly building practices and materials. Through ER3, EPA will use existing tools, including comfort letters, prospective purchaser agreements, and green building supplemental environmental projects (SEPs), to give developers incentives. For example, a settler could agree to a green building SEP—a project which EPA will take into account in setting appropriate penalties—that aids a nearby redevelopment effort.

The Office of Enforcement and Compliance Assurance (OECA) launched this initiative in September with the Office of Site Remediation Enforcement taking the lead. In the near term, OECA is partnering with other EPA offices and the Regions to develop a catalogue of incentives. In the future, the program could grow to include other federal agencies, including the US Army Corps of Engineers, the Department of Housing and Urban Development, and the Department of Energy.

For additional information, contact K.C. Schefski, OSRE, (202) 564-8213, schefski.kenneth@epa.gov, or Phil Page, OSRE, (202) 564-4211, page.phil@epa.gov.

Vieques Proposed to NPL

The Atlantic Fleet Weapons Training Area (AFWTA) on the Island of Vieques and Culebra Island Archipelago, Puerto Rico was proposed for listing on the Superfund National Priorities List on August 13, 2004. The AFWTA consists of the eastern and western portions of the Island of Vieques and areas of the Culebra Archipelago and surrounding water bodies. The Governor of Puerto Rico has identified this area as the Commonwealth’s top priority facility for Superfund Response.

For over 100 years, the AFWTA has been used by the United States Navy as a training facility. The eastern portion of the island was used for military training exercises, and on the western portion, the Navy operated the Naval Ammunitions Support Detachment (NASD), which cover approximately 8,000 acres. Many areas of the eastern portion of the island, which were transferred to the U.S. Department of Interior in May 2003, are designated for the NPL. There are at least eight identified operable units at this site where investigation and remediation are not completed, however, the OUs have not been selected as No Further Action pursuant to CERCLA. Contamination of water bodies surrounding both sites includes unexploded ordnance and other hazardous substances.

Between 1902 and 1975, the Navy conducted a weapons training operation on portions of the Culebra Island Archipelago, which consists of Culebra Island and surrounding islands and keys. The Army is now addressing these areas through the US Army Corps of Engineers’ Formerly Utilized Defense Sites program.

Key operations on both islands included aircraft strafing, bombing and gunnery ranges, and amphibious landings. Large amounts of parts and unexploded ordnance have been discovered at the range areas of the islands, and low levels of contamination have been identified in the Vieques groundwater. Approximately 9,300 residents live on the island of Vieques while approximately 3,000 live on Culebra. Residents obtain their drinking water from Puerto Rico, only 8 miles away. Much of the facility is now being designated a wilderness area to protect the habitat of 25 federal and Puerto Rican endangered species.

A 60-day public comment period on the proposed listing ended October 12. EPA is currently evaluating all of the comments that were received and will consider their impact on this site before a final listing decision is reached.

For additional information, contact Terry Jeng, OSRTI, jeng.terry@epa.gov.

Consent Decree Accomplishes Cleanup and Facilitates Redevelopment of Lake Michigan Waterfront

By Cate Tierney, Office of Site Remediation Enforcement

Soil cleanup at the Waukegan Manufactured Gas and Coke Plant (WCP) Site along Lake Michigan in Waukegan, Illinois, is underway pursuant to a Consent Decree entered by the Northern District of Illinois on October 13, 2004. Under the Decree, North Shore Gas and General Motors will perform soils and groundwater remedial action at an anticipated cost of \$27,000,000. The City of Waukegan will assume soil operation and maintenance responsibilities upon EPA's determination that the soil remedial action has been satisfactorily completed. The City may redevelop the WCP site after the soil remedial action is completed.

The Record of Decision (ROD) remedy is based on a commercial/industrial future use assumption. However, in an innovative attempt to facilitate redevelopment at the Site, the Decree provides that the City may refrain from placing the industrial/commercial reuse cap called for by the ROD for a finite time. During that time, the City may try to find a developer that will pay for extra soils work at the Site, so that it may be redeveloped for residential use. Additional cleanup or protective measures necessary to support residential use will be subject to EPA review and approval. If the City is unable to find a developer within the specified time, the Decree requires the City to place the industrial/commercial reuse cap on the Site.

The Consent Decree obligates the Owner Settling Defendants, the City and Larsen Marine Service, Inc., to provide the access agreements and institutional controls required to implement the selected remedy. The Decree requires the Buyout Settling Defendant, Elgin Joliet & Eastern Railway Co., to pay GM and North Shore 10% of the cost of the remedial action, pursuant to a separate agreement among the Settling Defendants.

The WCP site is an operable unit of the Outboard Marine Corporation Superfund site, and was discovered during the Waukegan Harbor dredging remedial action. In 1990 EPA and the North Shore Gas Company entered into an Administrative Order on Consent for completion of the RI/FS at the WCP site. Analysis of the RI data showed that past wood treating and manufactured gas and coke plant activities had contaminated the soil and groundwater at the site. The soil contaminants of concern include PAHs, phenols, and volatile aromatics. The groundwater contaminants of concern are arsenic, phenol, benzene, and ammonia derived from the manufactured gas and coke plant processes. The contaminated ground water discharges to Waukegan Harbor to the west and Lake Michigan to the east. The discharge to Lake Michigan has resulted in exceedences of Illinois Open Lake Surface Water Quality Standards.

For additional information, contact Susan Tennenbaum, Office of Regional Counsel (312-886-5825); Kevin Adler, Superfund Division (312-886-7078); or Cate Tierney, OECA (202-564-4254).

In The Courts

DuPont Ordered to Pay \$1.8 Million for Necco Park

The Western District of New York issued a decision in United States v. DuPont, a CERCLA Section 107 cost recovery case concerning the Necco Park hazardous waste landfill. In response to the United States' claim for cost recovery, DuPont challenged EPA's issuance of an administrative order requiring DuPont to implement remedial design and remedial action for the site as being arbitrary and capricious. DuPont has owned Necco Park—a twenty-four acre landfill in an industrialized section of Niagara Falls, New York—since 1930. By 1977, the company had disposed of approximately 93,000 tons of industrial waste at this site, resulting in hazardous waste contamination.

In this case, the court rejected DuPont's contention that EPA's use of RCRA response authority at the site was inconsistent with the NCP because the NCP does not contemplate the use of response authority other than CERCLA. The court held that although the particular response action selected by EPA may have been "unavailable under CERCLA does not mean it was inconsistent with the NCP." Specifically, the response action was not arbitrary or capricious because EPA determined "that the release or threatened release might pose a danger to human health or the environment." The court also rejected DuPont's assertion that the U.S. cannot recover Department of Justice (DOJ) enforcement costs which included both direct and indirect costs. The Court held that the "distinction between the recoverability of litigation and non-litigation costs" detailed in the Key Tronic case (Key Tronic Corp. v. United States, 511 U.S. 809, 113 S. Ct. 1960) does not apply to claims for enforcement costs brought by the federal government. In Key Tronic, the court held that private party expenses incurred solely in preparation for litigation cannot be recovered as response costs unless it significantly

benefited the entire cleanup effort. Thus, DOJ's enforcement costs incurred in connection with the Necco litigation are recoverable.

DuPont's challenges to the validity of the issued unilateral administrative order (UAO) were also denied. Specifically, the court held that DuPont failed to demonstrate that EPA's decision to issue the UAO was arbitrary and capricious. The court cited the past use of groundwater in the areas for domestic purposes and the classification by New York State of the aquifer as a potential drinking water source as a basis for the support of its holding. Specifically, EPA determined that Necco Park was "a continuing source of contamination to the surrounding groundwater, that the contamination posed a significant level of risk, and that the groundwater might be used as a source of drinking water." With these facts, it was determined that Necco Park "may present an imminent and substantial endangerment to human health."

The court awarded \$1.8 million in past EPA and DOJ response costs, declaratory judgment for all future response costs not inconsistent with the NCP, and prejudgment interest on all costs. DuPont has appealed the Court's decision to the Second Circuit.

For additional information, contact George Shanahan, EPA Region 2, shanahan.george@epa.gov.

Tidbits

EPA Issues Model Application/Information Request for CERCLA Service Station Dealer Exemption

by Susan Boushell, Office of Site Remediation Enforcement

In the November 15, 2004 Federal Register, EPA announced the availability of the "Model Application/Information Request for CERCLA Service Station Dealer Exemption" (69 FR 65596). This model will be another valuable tool in the implementation of the Service Station Dealer Exemption (SSDE) under section 114(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Under CERCLA Section 114(c), certain service station dealers may be exempt from "generator" or "transporter" liability for a release or a threatened release of recycled oil. A party may be eligible if it: (1) is a "service station dealer"; (2) accepts "do-it-yourselfer" used oil; (3) does not mix hazardous substances with used oil generated or collected by the service station dealer; (4) complies with EPA's RCRA used oil management standards in 40 C.F.R. Part 279; and (5) transported or sent used oil to a Superfund site after March 8, 1993. The SSDE is intended, in part, to encourage service station dealers to accept "do-it-yourselfer" used oil for recycling.

Under CERCLA, EPA typically issues general information requests to parties at a Superfund site to help decide which parties it should or should not treat as responsible parties. To expedite EPA's review of a service station dealer's status, EPA developed a model application/information request directed at service station dealers. The model generally will be used for any party EPA has reason to believe may be eligible for the SSDE. EPA finalized the model after providing two opportunities for public comment and a public meeting.

The model is available at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/ssde-mod-appinfo.pdf>. Additional information about the SSDE is available online at: <http://www.epa.gov/compliance/cleanup/superfund/find/liability.html#dealers>.

For additional information, contact Susan Boushell, OSRE, (202) 564-2173 or boushell.susan@epa.gov.

OSRE Releases Corrective Action Financial Assurance Tools

In September 2003, OSRE and OSW jointly transmitted the "Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action." That guidance recommended a flexible, facility-specific approach to requiring financial assurance for corrective action, where appropriate, and encouraged regulators to require financial assurance earlier in the correction action process such as for the RCRA Facility investigation (RFI) or for significant interim measures.

On November 1, 2004, OSRE released three documents intended to assist Regional and state offices in evaluating the appropriate level of financial assurance that may be required for an RFI or interim measure.

Average Cost of Remedial Investigation Derived from Fund-lead Superfund Costs: This document provides information on completed fund-lead actions at 28 different types of sites. Because the Superfund and RCRA programs have similar investigation and remediation processes, Superfund RI costs can be used as a proxy for RFI costs and serve as a general guideline for cost estimating efforts. Users of this document can determine the "site type category" for a facility and then locate an estimate in 2004 dollars for assessing the appropriate amount of financial assurance.

Interim Measures Cost Compendium: This document provides cost estimating information for 12 different types of interim measures. Cost information was developed by using RACER cost estimating software, which was originally developed for the US Air Force. Each interim measure discussion provides cost estimating information for multiple scenarios to address contamination problems of varying sizes. Cost estimating information is provided in a tabular format as well as cost equation format. The cost

equations include both capital and annual operation and maintenance terms expressed in 2004 dollars.

Compendium of Related Guidance Documents: This document identifies Superfund and RCRA remediation guidance documents that address remediation cost estimating tools, remediation procedures and guidelines, and investigations and interim measures. A document summary is provided for each document along with a hypertext link to the document or information about ordering the document from NTIS.

OSRE's transmittal memorandum along with copies of these documents are available online at <http://www.epa.gov/compliance/resources/publications/cleanup/rcra/avg-cost-investig-cmplt.pdf>

Calendar

January 24-27, 2005

Third International Conference on Remediation of Contaminated Sediments
New Orleans, LA

<http://www.battelle.org/environment/er/conferences/sedimentscon/default.stm>

Glossary

AFWTA	Atlantic Fleet Weapons Training Area
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
DOJ	Department of Justice
EPA	Environmental Protection Agency
NASD	Naval Ammunitions Support Detachment
NCP	National Contingency Plan
NPL	National Priorities List
OECA	Office of Enforcement Compliance and Assurance
OSRE	Office of Site Remediation Enforcement
OSRTI	Office of Superfund Remediation and Technology Innovation
OSW	Office of Solid Waste

OSWER	Office of Solid Waste and Emergency Response
OU	Operable unit
OUST	Office of Underground Storage Tank
PCB	Polychlorinated biphenyls
RCRA	Resource Conservation and Recovery Act
RFI	RCRA facility investigation
UAO	Unilateral administrative order

Subscription Information

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“We have developed an electronic supplement to the *CleanupNews* print edition called *CleanupNews II*. The print issue will still be available four times a year, and the newsletter will be delivered electronically nine times a year (four issues consisting of the print edition text and five issues consisting of supplemental news).”