



cleanupnews

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CleanupNews is a quarterly newsletter highlighting hazardous waste cleanup cases, policies, settlements and technologies.

EPA Reduced Pollution by Over One Billion Pounds in FY2005

EPA continues to achieve significant results in enforcement and Superfund cleanups, as indicated by the fiscal year 2005 accomplishments data released in November. EPA releases data about the past fiscal year to demonstrate EPA achievement of its goals of protecting human health and the environment.

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Superfund's 25th Anniversary: Capturing the Past, Charting the Future

By Jennifer M. Browne, Office of Superfund Remediation and Technology Innovation

On December 11, 1980, President Jimmy Carter signed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), creating the Federal government's program to clean up the nation's uncontrolled hazardous waste sites. Through the Superfund program, the U.S. Environmental Protection Agency (EPA) and its partners addresses abandoned, accidentally spilled, or illegally dumped hazardous waste that pose current or future threats to human health or the environment. There is at least one Superfund site in every State.

Congress passed the statute, but it was up to EPA to create the Superfund program. When national media brought attention to such sites as the Valley of the Drums in Kentucky and a chemical explosion in Elizabeth, New Jersey, EPA took immediate action. Drums were collected and removed. Fires were extinguished. Leaks from tanks and waste ponds were stopped.

However, responding to emergencies was not EPA's only challenge. Over the next twenty-five years, EPA developed new and innovative ways to conduct cleanups. Important research examined how contamination migrated into groundwater, and new technologies provided im-

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Office of Enforcement Compliance and Assurance

As a result of enforcement actions taken during FY 2005, OECA estimates that 1.1 billion pounds of pollution will be reduced, and an estimated 28.2 million cubic yards of contaminated soil and 1.6 billion cubic yards of contaminated water will be cleaned up. Violators have agreed to pay a record \$10 billion to reduce pollution and achieve compliance, more than double the amount of injunctive relief in the previous fiscal year. Criminal defendants will pay roughly \$100 million in fines and restitution and serve more than 186 years in jail. Violators agreed to perform \$57 million worth of supplemental environmental projects, projects violators voluntarily undertake as part of an enforcement settlement.

There were a number of significant civil enforcement cases in FY 2005. Through a consent decree for the Hudson River PCBs Superfund Site, GE agreed to begin the first phase of

dredging PCB-contaminated sediments, valued at \$100-150 million, and to reimburse EPA roughly \$78 million. EPA entered into a consent decree with Atlantic Richfield Company and NorthWestern Energy Corporation for the Milltown Reservoir Sediments/Clark Fork River Superfund Site in Missoula, Montana valued at \$102 million; the responsible parties agreed to remove Stimson Dam and to remove and stabilize contaminated sediments. Kerr-McGee agreed to complete the process of removing radioactive contamination from the Rare Earths Facility in Chicago, Illinois and to restore the ecosystem, at an estimated cost of \$74 million.

Enforcement Numbers at a Glance

- 1.1 billion pounds of pollution will be reduced as a result of FY 05 enforcement actions
- Private parties have committed to spend \$1.1 billion (\$857 million promised for future responses and \$248 million to reimburse EPA past costs)
- Violators have agreed to spend \$10 billion in injunctive relief
- Violators have agreed to complete Supplemental Environmental Projects (SEPs) worth \$57 million

Details about OECA's FY2005 accomplishments, including the "Numbers at a Glance" and results charts, are available on OECA's Compliance and Enforcement Annual Results - FY2005 Web site at: <http://epa.gov/compliance/data/results/annual/fy2005.html>.

For additional information, contact Rocky Kennedy of OECA, (202) 264-9968.

Office of Solid Waste and Emergency Response

In OSWER, the Office of Superfund Remediation and Technology Innovation reported that construction was completed at 40 sites in FY 2005. Overall, 966 sites on the National Priorities List (NPL) are now construction complete. Eighteen new sites were added to the NPL, and 12 were proposed for listing. A list of accomplishments is available on Superfund's FY05 National Accomplishments Summary Web site at: <http://www.epa.gov/superfund/action/process/numbers05.htm>.

For additional information, contact Jennifer Browne of OSRTI, (703) 603-8922.

New Deputy Assistant Administrator to Join OECA

On January 2, 2006, Catherine McCabe will begin serving as Deputy Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA). Since 2001, McCabe has served as Deputy Chief of the Environmental Enforcement Section of the Department of Justice's Environment and Natural Resources Division. She has worked at DOJ since 1983. Before joining DOJ, she was Assistant Attorney General in the New York State Environmental Protection Bureau.

McCabe received her law degree from Columbia and an undergraduate degree from Barnard College.

Capturing Superfund

The following photos were among the final selections in the 25th Anniversary Photo History Project. All the final photos can be viewed on the Superfund Web site at: <http://www.epa.gov/superfund>.



MATTHEW T. MELLON,
EPA REGION 3

A fish with a tumor from exposure to environmental toxins at the Koppers Co., Inc. site, in Newport, Delaware.



MARC CALLAGHAN,
EPA REGION 10

Testing drums at the Columbia American Plating site, Portland, Oregon.

Superfund, continued from page 1

proved methods to treat, store, and dispose of wastes. EPA took steps to ensure that communities near hazardous sites had a strong, meaningful voice in cleanup decisions, including determining how to reuse land after a cleanup. Finally, the Superfund program pioneered methods to ensure that the parties responsible for contamination were held responsible for the cleanup as well. Since 1980, EPA's enforcement program has secured private party funding commitments of nearly \$24 billion.

Over time, Superfund evolved into a strong and effective construction program. Today, construction work is complete at 966 or 62% of Superfund private and federal sites, and work is underway at an additional 422 sites. Strong partnerships ensure that Federal properties are addressed and that communities are part of the process. Superfund's emergency response program has taken action at thousands of sites to reduce the immediate threats to human health, including substantial roles in the World Trade

Center and Pentagon Attacks, the 2001 Anthrax Attacks, the Columbia Space Shuttle Disaster, and Hurricanes Katrina and Rita. Through Superfund's Redevelopment Initiative, today,

Since 1980, EPA's enforcement program has secured private party funding commitments of nearly \$24 billion.

Superfund sites are model airplane fields, airports, major department stores, soccer fields, golf courses, wildlife refuges and much more.

However, work remains. Even today, 1 in 4 Americans live within 3 miles of a Superfund site. Each year, Superfund assesses potentially hazardous waste sites and finds previously unknown chemicals and wastes that require research and new technologies to properly address potential threats to human health and the environment.

EPA undertook two activities to commemorate Superfund's 25th Anniversary. The 25th Anniversary Photo History Project visually captures the people

and places of Superfund, the human and environmental impacts of Superfund sites, and the changes in communities resulting from site cleanups. The photos, two from each EPA Region, were selected from 300 submissions, and were first displayed at the National Museum of Natural History December 10 – 12, 2005, in Washington, DC. The photos can also be viewed on Superfund's website at <http://www.epa.gov/superfund>.

EPA also developed the 25th Anniversary Oral History Project. The project will serve as a permanent, accessible record of interviews with almost 40 people who have shaped the Superfund program, including crafters of the legislation, community members who live near hazardous waste sites, people who implemented the program at the Federal, State, Tribal and local levels, and industry representatives. The transcripts from these interviews will also be available on Superfund's website once they are all completed.

A Staff Attorney Looks Back at 25 Years of Superfund

by Helen Keplinger, Office of Site Remediation Enforcement

Helen Keplinger has been doing Superfund Enforcement since 1981. She conducted interviews for the Superfund 25th Anniversary Oral History Project, and her comments below reflect ideas gathered during those interviews, but are her views and do not reflect EPA policy.



Today, twenty five years after Superfund became law, the concept of “Enforcement First” is well known. And, because of the twenty five year history of EPA enforcing the Superfund liability scheme with strict joint and several, as well as retroactive liability, those legal theories are also well known. But at the very beginning, things were much different. First, joint and several was not actually written into the law. There seems to be consensus among the pioneers of Superfund that legislative compromises agreed to leave the words joint and several out of the Superfund law, with the understanding that such an approach already being used under the Clean Water Act would somehow carry over into Superfund enforcement. It took early litigation to establish precedent for strict, joint and several liability that is today well understood.

Then there were the early efforts to begin implementing the new law which, for the first time in EPA experience (bear in mind that EPA itself was only ten years old when Superfund became law) gave EPA a Fund to spend to perform cleanup. This freed up enforcement resources that might otherwise have been spent in labor intensive litigation seeking injunctive re-

lief to force polluters to perform cleanup. The concept of the “polluter pays” was also not well known at the beginning, and even today, while it is a “mantra” for EPA enforcers, those words still upset some of the regulated community who believe that they began to act responsibly

“And enforcement--where is enforcement today. The answer is, enforcement is still doing what it started doing in 1980, and probably doing things it never contemplated in 1980.”

when Superfund appeared, and who believe that the original tax that partly funded Superfund targeted some industries to the benefit of others. So to say that Superfund was controversial at the beginning is only to acknowledge that it remains controversial even today.

But, where are we on Superfund enforcement today. The Fund is shrinking because the tax expired a decade ago. There are still many sites on the National Priorities List, but there are some voices that question the continued need for such a list. These voices aren’t saying that there aren’t sites that need to be ad-

ressed by federal funding, but they are saying that especially in the beginning, sites may have been placed on the list for the wrong reasons. There are even some people who say, when asked if there will be a time when Superfund will no longer be needed, well, probably, but not any time soon, and probably we’ll always need emergency response authority with cleanup funds, but, NPL listing—maybe it will eventually no longer be necessary.

When asked if Superfund was inevitable, many people say, yes, it was because the nation and Congress were becoming aware of the problems posed by uncontrolled hazardous waste sites and past disposal practices. These people say that whether it was Love Canal in upstate New York, or Times Beach in the St. Louis, Missouri area, both early Superfund buy-outs of entire communities necessitated by hazardous waste

disposal practices, the problems exemplified by those sites were playing out across the country. So the consensus seems to be that even though Superfund was passed in the waning days of one administration, and a new administration assumed the task of implementing the fledgling Superfund law, the national sentiment to do something about hazardous waste problems was too strong to be ignored any longer.

We’re still negotiating consent decrees with potentially responsible parties to perform RD/RA at NPL sites. We’re still issuing removal orders, and building cost recovery cases

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EPA Continues Katrina Efforts

On November 17, 2005, EPA Administrator Steve Johnson visited Louisiana to meet with EPA Regional Administrator Richard Greene and Secretary Mike McDaniel from the Louisiana Department of Environmental Quality (LDEQ). During his visit, the Administrator also toured several of the sites where EPA staff

is working along with other federal, state and local officials to manage the potential or real threat posed by hazardous materials. Sites visited included the Murphy Oil spill in St. Bernard Parish and a household hazardous waste collection site in Jefferson Parish.

Cleanup work is ongoing at the Murphy Oil Meraux Refinery in St.

Bernard Parish, LA. Flooding damaged an above ground storage tank spilling approximately 25,110 barrels of mixed crude oil into the surrounding area. The spill dumped oil into adjacent canals and a 1,700 home residential neighborhood. The US Coast Guard (USCG) and EPA are working together to monitor the oil spill cleanup. The USCG is monitoring Murphy Oil's efforts to clean oil from canals, the tank containment area and from residential streets and storm drains. EPA and the LDEQ are working with Murphy Oil to cleanup public parks, school yards and other residential areas with public access. As of December 2005, approximately 18,000 barrels of oil have been collected. Murphy Oil sampling in affected residential areas has shown polycyclic aromatic hydrocarbons (PAHs) in concentrations above acceptable limits for long-term exposure set by the LDEQ.

Efforts to collect household hazardous waste continue. Almost 20,000 electronic devices have been processed through the site. On December 3, 2005, EPA, Dell, Inc., and other partners in the recycling effort held a free drop-off event in the New Orleans area at the Pontchartrain Center.

The Personal Side

In the large scale devastation to entire towns and the significant impact to the environment, it is easy to overlook the suffering (and triumphs) of individual survivors. EPA employee Seth Low shared the story of his mother, an 84-year-old resident of Slidell, Louisiana—one of the towns hardest hit by Katrina. She lost almost everything but was grateful for the hot meals provided every day by the Red Cross. She found her American flag among her belongings, and Seth reports that she flew it “as a symbol of her faith in America and the American people who came to help her in her time of need.”



Seth Low of EPA's Federal Facilities Restoration and Reuse Office is currently on detail with the National Treasury Employees Union.

Brownfields Conference Draws More than 5,600 to Denver

On November 2, 2005, EPA Administrator Steve Johnson spoke to Brownfields 2005 attendees in Denver, Colorado. He announced the final “All Appropriate Inquiries” rule, which was published in the Federal Register on November 1, 2005; the rule will become effective November 1, 2006. The rule establishes requirements for conducting all appropriate inquiries into previous ownership and property use when seeking Superfund liability protection. Johnson praised the collaboration of the diverse group of stakeholders (including realtors, bankers, and environmental interest groups) that helped craft the rule. The final rule, a fact sheet, and other information are available on the Office of Brownfields Cleanup and Redevelopment’s “All Appropriate Inquiries” Web site at: <http://www.epa.gov/brownfields/regneg.htm>.

A number of OSRE staff participated in the conference. Several served as panelists on panels about the recent US Supreme Court eminent domain decision in *Cooper v. Aviall*, institutional controls, Ready for Reuse, and other enforcement-related subjects. OSRE also had a booth and distributed outreach materials.

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

Third Circuit Rejects Exide's Rehearing Request

On November 4, 2005, the United States Court of Appeals for the Third Circuit denied Exide Corporation's petition for rehearing and rehearing *en banc* in *United States v. Exide Corp.* (No. 03 - 3515). In its September 6, 2005 decision, the Third Circuit upheld the February 27, 2002 ruling of the U.S. District Court which found that Exide, a successor to Price Battery, was liable for response costs at the Hamburg Lead Superfund Site in Berks County, Pennsylvania. The district court agreed with the government that federal common law governing successor liability should be used to determine Exide's potential liability, not state law, and that Exide was liable as a successor under the "de facto" merger test.

From the 1930s until 1966, Price Battery Corporation operated a manufacturing plant in Pennsylvania which produced lead acid batteries. Battery casings containing lead and arsenic were disposed at various locations around Hamburg. General Battery Corporation purchased the site in 1966 and merged with Exide Corporation in 2000.

Exide has 90 days from the issuing of the Third Circuit's decision to appeal the decision to the United States Supreme Court.

For additional information, contact Clarence Featherson, OSRE, (202) 564-4234.

Grand Pier Center's Reimbursement Petition is Denied by Appeals Board

On October 28, 2005, EPA's Environmental Appeals Board (EAB) released its Final Decision denying Grand Pier Center's CERCLA 106 (b) Petition. Grand Pier Center was seeking reimbursement from the Agency for \$200,000 in response costs the company incurred complying with an EPA amended unilateral administrative order (UAO) requiring it to clean up an off-site sidewalk area adjacent to property owned by Grand Pier Center. Grand Pier Center agreed that it was responsible for costs incurred cleaning up contamination on its own property, but it argued that it was not responsible for cleanup costs for the sidewalk area, since it was not the owner. EPA Region 5 argued that the "facility" encompasses all areas where the thorium contamination had come to be located, including both Grand Pier Center's property and the adjacent off-site sidewalk area. EAB determined that Grand Pier Center had failed to demonstrate it was not liable for the response costs as a present owner under CERCLA Section 107(a).

Early in the 20th century, Lindsey Light Company produced incandescent gas lights at facilities in Chicago, Illinois. In the 1990s, EPA identified thorium radionuclide contamination on many properties in the Streeterville neighborhood that resulted from Lindsey Light's production activities. In December 1999, Grand Pier Center was preparing the site for construction of some buildings;

during the site excavation, some soils removed from the site were deposited on property owned by Grand Pier Center and an adjacent off-site sidewalk. EPA issued an amended UAO requiring Grand Pier Center to clean up the off-site sidewalk area, and Grand Pier Center complied.

For additional information, contact Clarence Featherson, OSRE, (202) 564-4234.

Superfund, continued from page 4

after the Fund has addressed contamination. But, we're doing things we never dreamed of in 1980. Since the passage of the Brownfields Amendments in 2002, we are dealing with a whole new class of parties beyond the original set of PRPs who had only three defenses to liability—act of war, act of God, act of a third-party with no contractual relationship to the PRP. Today, we are spending time dealing with brownfields sites, and parties with liability protections afforded *bona fide* prospective purchasers, contiguous owners, and to a lesser extent the innocent landowner. It is no longer just a question of who is a potentially responsible party, but rather, in addition, a question of who is not a potentially responsible party and what is that person doing at a Superfund Site. Just like at the beginning, there is a whole new world of legal issues posed by the Brownfields Amendments of 2002, and the enforcement office, unlike at the beginning where organizationally it was bounced back and forth between Enforcement and Program several times in as many years, is well organized to take on the challenges of the next twenty five years of Superfund. Happy Birthday Superfund, and Good Work Enforcers!

Protocol Finalized for Prioritizing Responses at Munitions Response Sites

On October 5, 2005, the Department of Defense (DoD) published a final rule establishing the Munitions Response Site Prioritization Protocol (herein after called, the Protocol) as part of the Military Munitions Response Program (70 FR 58016). The Protocol, which was initially proposed on August 22, 2003, has been finalized after consideration of public comments. The DoD was required by the National Defense Authorization Act for Fiscal Year 2002 to develop, in consultation with representatives of the States and Indian Tribes, a protocol for assigning defense sites containing military munitions a priority for response activities. In response to this requirement, DoD developed the Protocol as the methodology for prioritizing sites known or suspected to contain unexploded ordnance, discarded military munitions, and/or munitions constituents for response actions. DoD will be offering training on the Protocol starting early Spring 2006. The training is intended for DoD personnel and contractors, as well as environmental regulators, tribal members, and other stakeholders.

The MMRP is part of the Defense Environmental Restoration Program (DERP) which was initially established by the Superfund Amendments and Reauthorization Act of 1986. The DERP is charged with identifying and addressing contamination at DoD installations and formerly used defense sites.

For additional information, contact Doug Maddox, FFRRO, maddox.doug@epa.gov or Vic Wieszek, Department of Defense, victor.wieszek@osd.mil.

EPA Surpassed Two Environmental Indicator Goals

In September 2005, EPA exceeded its RCRA Corrective Action Environmental Indicator goals to control the migration of contaminated groundwater at 70 percent of contaminated facilities and control human exposures at 95 percent. The two Environmental Indicators are stabilization measures used to reduce risk—to both human health and natural resources—until final cleanups can be achieved.

The 2005 Environmental Indicator goals measure progress toward meeting EPA's long-term corrective action goals of achieving final cleanups at all 1,714 facilities. EPA surpassed the 2005 goals by successfully controlling human exposures at 1,649 of 1,714 facilities and the migration of contaminated groundwater at 1,341 of the 1,714 facilities. "By embracing comprehensive reforms that promote flexible and creative solutions," said Tom Dunne, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response, "EPA has shifted the focus from process to outcomes and measurably expedited cleanups."

RCRA requires hazardous waste management facilities to take responsibility for cleaning up leaks, spills and other environmental damage at their sites. Working closely with EPA and state environmental agencies, facility operators take an important step toward final cleanups when they satisfy both Environmental Indicators.

For more information, please visit EPA's corrective action Web site at: <http://www.epa.gov/correctiveaction/>.

Attend the 2006 Waste Management Meeting: Learning From the Past—Preparing for the Future

EPA is celebrating more than a quarter century of effective waste management and disposal at the 2006 Waste Management National Meeting. Please join the Air and Waste Management Association and the EPA on January 18-20, 2006, at the Hyatt Regency Crystal City, Arlington, VA for this important meeting.

The conference will feature discussions covering a variety of technical, policy, regulatory and economic topics related to RCRA and CERCLA. It will review accomplishments and chart a path for how issues under these laws will be addressed in the future.

For more information, including schedule and registration details, visit the Air and Waste Management Association's Website at <http://www.awma.org/>.

Brownfields 2006 is set for November 13-15, 2006 at the Boston Convention and Exhibition Center in Boston, Massachusetts. The call for presentations will go live on the Brownfields 2006 Web site, <http://www.brownfields2006.org>, in December.

January 18-20, 2006
RCRA National Meeting
Arlington, VA

January 26 and 27, 2006
2nd Waste Management
Finance Forum
[http://
www.euromoneyenergy.com/
default.asp?Page=11&eventid=
ECK122&site=energy](http://www.euromoneyenergy.com/default.asp?Page=11&eventid=ECK122&site=energy)
London, England

February 13-17, 2006
Groundwater Pollution and
Hydrology Course
[http://www.wastenews.com/elib/
event_details.html?id=239](http://www.wastenews.com/elib/event_details.html?id=239)
Orlando, FL

March 20-23, 2006
Joint Services Environmental
Management Conference &
Exposition
[http://www.wastenews.com/elib/
event_details.html?id=304](http://www.wastenews.com/elib/event_details.html?id=304)
Denver, CO

June 21-23, 2006
Waste Management 2006: Third
International Conference on
Waste Management and the
Environment
[http://www.wessex.ac.uk/
conferences/2006/waste06/](http://www.wessex.ac.uk/conferences/2006/waste06/)
Malta

Glossary

CD	Consent decree	MRSPP	Munitions Response Site Prioritization Protocol
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	NPL	National Priorities List
DERP	Defense Environmental Restoration Program	OBCCR	Office of Brownfields Cleanup and Redevelopment
DoD	Department of Defense	OECA	Office of Enforcement Compliance and Assurance
DOJ	Department of Justice	OSRE	Office of Site Remediation Enforcement
EAB	Environmental Appeals Board	OSW	Office of Solid Waste
EPA	Environmental Protection Agency	OSWER	Office of Solid Waste and Emergency Response
FFRRO	Federal Facilities Restoration and Reuse Office	PAHs	Polycyclic aromatic hydrocarbons
MMRP	Military Munitions Response Program	PCBs	Polychlorinated biphenyls

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<http://www.epa.gov/compliance/about/offices/osre.html>

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