

Tri-Cities Dioxin Cleanup

Presented January 15, 2009
Saginaw Valley State University



Regulatory Strategy

- Addresses multiple areas of this large and complex site.
- Applies multiple authorities to best address the site.
- Uses both Superfund and RCRA at the site.





SITE WIDE MANAGEMENT STRATEGY

RCRA CORRECTIVE ACTION PROCESS

DOW MIDLAND PLANT

CITY OF MIDLAND SOILS

SUPERFUND ALTERNATIVE APPROACH

TITTABAWASSEE RIVER

SAGINAW RIVER

SAGINAW BAY

Why Integrate Superfund Authority at the Site?

- Provides collaborative Agency approach.
- Allows EPA and MDEQ to bring additional resources and their unique experiences to the site.
- Uses the proven enforcement tool of Superfund agreements.
- Accelerates comprehensive, upstream-to-downstream approach for addressing the rivers and bay.
- Incorporates adaptive management concepts – “learn from doing”.



Superfund's Options for Sites Needing Long-Term Cleanup

- List the site on Superfund's list of sites - National Priorities List
- Use a Superfund Alternative Approach



What is a Superfund Alternative Approach?



Superfund Alternative Approach Threshold Criteria

- Site contamination is significant enough that the site would be eligible for listing on the NPL.
- Long-term cleanup is anticipated.
- Potentially Responsible Party (PRP) that will sign an agreement with EPA to perform the investigation or cleanup.



Superfund Alternative Approach

- An alternative to listing a site on the National Priorities List (NPL).
- NOT an alternative to the Superfund process.
- Uses the same investigation, cleanup and enforcement processes and standards as sites listed on the NPL.



Participants in the Superfund Alternative Approach

- EPA
- State Agencies
- Natural Resource Trustees
- Community



EPA's Negotiation Process



Enforcement Principles

- EPA has a long-standing policy of “enforcement first”
 - Promotes “polluter pays” principle
 - Conserves federal and state resources
- EPA gets Superfund sites investigated and cleaned up by negotiating with potentially responsible parties (PRPs) to do the work



Notice Letters

- EPA uses notice letters to communicate with PRPs regarding:
 - potential liability at a site, and
 - site information
- Special notice letter begins the start of a “negotiation moratorium”:
 - Gives the PRPs 60 days to provide EPA with a good faith offer to do site work or pay for the work.
 - Extends negotiation period if the PRPs provide a good faith offer.



Superfund Enforcement Agreements

- EPA uses Administrative Orders on Consent (AOCs) and/or judicial Consent Decrees (CDs) as settlement agreements
- AOCs and CDs include language specific to the Superfund Alternative Approach to ensure equivalency with sites on the NPL
- Nationally standardized language is used to address:
 - Technical assistance for communities
 - Natural resource damage claims
 - Financial assurance for work continuance
 - NPL listing after partial cleanup



Confidentiality

- EPA restricts communicating with outside parties about enforcement actions and settlement agreements
 - Policy is not limited to Superfund
 - Confidentiality applies to information on the status and content of negotiations
- Confidentiality does NOT apply to the work conducted after a successful settlement



Special Notice Letter to Dow

- Issued December 15, 2008
- EPA and MDEQ jointly entered negotiations
- Addresses the Tittabawassee and Saginaw Rivers and parts of Saginaw Bay
- Preserves the existing rights of stakeholders
 - Public
 - State
 - Trustees
- Includes a draft settlement agreement and statement of work



Draft Settlement Agreement/ Statement of Work

Required work would include:

- Assessing site conditions, building on existing information
- Developing and evaluating cleanup options
 - *Cleanup standards and options are NOT being negotiated*
 - *Future proposals on cleanup standards and options will be subject to public comment*
- Designing future selected cleanup



Next Steps

- Extend negotiations if a good faith offer arrives no later than February 13, 2009.
- Continue negotiations until March 15, 2009, if extended.
- Accept public comments on the proposed settlement agreement before the agreement is finalized.



Transition Period

- Work will continue during the negotiations and transition period.
- EPA and MDEQ are committed to ensure a smooth transition.
- MDEQ will have substantial continued involvement after the transition.



Involving the Community



What is community involvement?

Community involvement is what we call our program to inform and involve communities affected by Superfund sites.



What is community involvement?

Community involvement is not a public relations effort to sell the Agency or its plan for the community. And it's not just the communication of information.



What is community involvement?

We believe people affected by Superfund sites have a right to know what the Agency is doing in their community and to have a say in the decision-making process.



Integral part of Superfund

Congress was clear in the Superfund law about its intent for residents to be active participants in the process and to have a say in the decisions that affect them.



Our regulations say:

“(A) Ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy; and (B) Determine based on community interviews, appropriate activities to ensure such public involvement.”



Integral part of Superfund

EPA policy goes beyond the letter of the law. We've learned that extra efforts to involve people lead to a better cleanup.



Integral part of Superfund

The role of community involvement coordinators is to work with the community, but it's the responsibility of everyone on the site team.



Making a plan

Superfund Alternative approach is not an alternative to the Superfund process.

The foundation of EPA's community involvement process is the "community involvement plan."



Making a plan

MDEQ and MDCH have worked for years with the community so we aren't starting from scratch.

We want to build upon that work and look for ways to involve more people.



Making a plan

One of the first steps is talking to people to find out how much they want to be involved and how they want to get their information.



Plans for involving communities can include:

- Providing independent technical and educational assistance
- Working with an advisory group
- Repositories, Web sites, updates

Community involvement in the Superfund process

The community is involved throughout the Superfund process. And there are some key points.



Community involvement in the Superfund process

The Superfund process officially begins if an agreement is finalized. Here's what we're doing right now:

- Today's meeting and fact sheet
- Information repositories
- Web site
- Update and comment period at end of negotiations before it is final.



Stay informed

Lots more information and links to
Agency policies:

www.epa.gov/region5/sites/dowchemical

