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SUPERFUND:

EPA/ICMA Superfund Revitalization Conference

Chicago, Illinois
November 12-13, 1992

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ICMA/EPA SUPERFUND REVITALIZATION CONFERENCE
VOLUNTARY CLEANUPS, THE SUPERFUND ACCELERATED CLEANUP MODEL, AND OTHER SUPERFUND REFORMS

November 12-13, 1992
Chicago, IL

EXECUTIVE SUMMARY

EPA's Superfund Revitalization Office (SRO), EPA's Region V Waste Management Division, and the International City/County Management Association (ICMA) organized a regional conference in Chicago to solicit suggestions from different constituencies on how to improve the current Superfund program. Attendees representing industry, local government, state government, environmental groups, and private citizenry, participated in break-out sessions focusing on three primary topics: voluntary cleanups, accelerated cleanups, and public involvement.

The following recommendations have been drawn from the groups' discussions. However, these suggestions do not necessarily reflect consensus among participants. The summary report outlines their comments in greater detail.

Voluntary Cleanups

Process: A voluntary cleanup program needs to be constructed in a way that assures the public of its soundness and assures the volunteering parties that their remedial actions will not be second-guessed at a later date. While resources at EPA and the states may be limited, voluntary cleanups are necessary, given the number of contaminated sites and the need to clean them up more quickly.

Oversight: Some type of oversight is necessary for all voluntary cleanups. The degree of oversight can vary according to site specifics such as the demonstrated capability of the volunteering party, volume and type of waste, difficulty of cleanup, and future use of the site. Fee and penalty systems might be used to ensure commitment and create incentives for timely cleanups.

Liability: Liability may be limited after the cleanup is completed—particularly when hazardous substances are removed from the site. Alternative financing schemes, such as increased landfill fees or additional federal taxes, might be used to pay for future cleanup costs at sites where liability is limited.

Incentives: EPA and the states need to define acceptable standards and the extent of future liability more clearly; both liability and standards need to be articulated from the start of the cleanup process. Regulatory agencies should play a more active and cooperative role in assisting volunteering parties in their searches for other responsible parties.

Accelerated Cleanups

SACM: Certain trade-offs are implicit in SACM. Regulatory agencies and PRPs may move too quickly with too little data. Some PRPs may not want to sign up for cleanups due to uncertainty associated with less thorough assessments. While

EPA and the states face shortages in resources, and particularly in staff, SACM places additional demands on the same number of people.

SACM rightly encourages some type of action. Even a partial solution is preferable to no action at all. However, quick action should not be the only goal, particularly if an expedited process leads us to disregard options such as alternative technologies. In some instances, long-term solutions may be best achieved if we wait for more effective technology.

Presumptive Remedies: While presumptive remedies may ultimately save time and money, some flexibility should remain in the process in order for site-specific information to be considered in the remedial plans. Regulatory agencies should ensure that remedies will not be systematically applied to sites where they might not be appropriate.

Presumptive remedies might be used as tools to approach the investigation and remediation at a site and should remain optional. At complicated sites, remedial investigations will still be necessary.

As a related point, more data on the cost of remedies is needed. A database, which includes information on after-construction costs, would help parties share more accurate information on remedies.

Remedy Selection: Society needs to make tradeoffs regarding risks and resources. Both ecological and public health risks somehow should enter into the risk assessment process. Risk communication and public education are fundamental to effective implementation of environmental decisions.

Soil Cleanup Levels: While standards might be useful in expediting the process, responsible parties should be able to appeal these standards. Appealing parties might be required to supply supporting data to justify their request for a waiver.

Public Involvement

Resource Issues: EPA should consider including local government representatives and citizens on the decision teams under SACM. Representation and involvement of all affected parties needs to be improved, perhaps through the early establishment of voluntary committees within a community. Such local advisory committees should have the authority to affect cleanup decisions and should include responsible parties, environmental groups, both elected and appointed local government officials, and citizens. By gaining early input from all of these parties, EPA would be able to consider all of these interests from the onset rather than learning of dissent and criticism after cleanup decisions have been made more exclusively.

Dispute Resolution: ADR techniques can be helpful. EPA and the states need to rethink their traditionally authoritative roles in the process. When possible,

mediators/facilitators should be used as truly neutral parties who can manage the process from the onset.

Public Involvement: Both the quality and quantity of outreach needs to improve. EPA and the states need to conduct more public outreach early in the process to involve local governments, the public, and the media. Local governments, citizens, and other interested parties might be involved even *before* the investigation begins as well as through the final stages of the remedy. All EPA and state personnel, especially project managers, should be trained to interact effectively with the public.

EPA's Follow-Up Actions

As a result of the input received from participants at the Superfund Revitalization Conference, EPA has developed the following list of actions to take with respect to attendees' suggestions.

1. EPA will review its current policies for communicating with potentially responsible parties, e.g., the policy revisions implemented last year by EPA Region I.

2. EPA will examine mechanisms to get citizens involved earlier in the Superfund cleanup process, and will examine its community involvement policies in this regard.

3. EPA will continue its efforts to develop a national voluntary cleanup strategy, utilizing the suggestions contained in this report.

4. In implementing SACM, EPA must find ways to assure sufficient data is collected to provide adequate certainty in accelerated cleanups to address the concerns of potentially responsible parties and affected citizens.

5. In developing presumptive remedy guidance, EPA will assure that it does not stifle the use of innovative technologies.

6. EPA will work with States and private parties to develop a construction cost data base, in order to obtain more accurate information on the cost of remedies.

7. EPA will develop and implement a strategy for better communicating Superfund risks and cleanup progress.

8. EPA will conduct a special meeting with representatives of local governments on SACM and other Superfund revitalization initiatives.

9. EPA will explore the feasibility of providing additional support, beyond the existing Technical Assistance Grant mechanism to the establishment of local advisory committees to better involve affected interest groups in the Superfund cleanup process.

10. EPA will assure that all Regional Superfund personnel, not just Community Relations Coordinators, are properly trained in community involvement procedures.

SUMMARY REPORT

EPA's Superfund Revitalization Office (SRO), EPA's Region V Waste Management Division, and the International City/County Management Association (ICMA) organized a regional conference in Chicago to solicit suggestions from different constituencies on how to improve the current Superfund program. Private citizens as well as representatives from industry, local governments, environmental groups, and state environmental agencies were invited to participate in the one and a half day meeting. Representatives from EPA Headquarters and EPA Region V also attended, but primarily as observers. The group consisted of the following participants: 19 from the private sector, 12 from local government, 9 from citizen and environmental groups, 17 from state agencies, 10 from EPA Headquarters, and 13 from EPA Region V.

This conference was the first of four regional meetings that SRO will conduct in collaboration with ICMA in 1992 -1993. While topics may vary, each conference will be designed to gather ideas from different interest groups on how the Superfund process can be improved. Following each conference, summary reports will be available to the public.

The Chicago conference began with brief presentations by representatives from EPA and the different constituencies. Attendees then participated in break-out sessions focusing on the three primary topics:

- Voluntary cleanups
- Accelerated cleanups
- Public involvement.

During each break-out session, attendees were divided into four small groups. Each group included members of the main constituencies—industry, local government, environmental groups, and private citizens—and addressed specific questions. Following each break-out session, all of the attendees reconvened and one member from each discussion group summarized the group's comments.

This summary report outlines the comments made by the introductory speakers as well as the conclusions drawn from the group discussions. This report highlights those recommendations that were strongly endorsed by a large number of attendees. This report also identifies points on which the different interest groups could not reach consensus.

Opening Remarks

Bill Muno, Acting Division Director, Waste Management Division, EPA Region V

Mr. Muno cited the cleanup of hazardous waste facilities and abandoned sites as one of the public's top priorities. The goals of Superfund will continue to be a primary concern for the public and the upcoming administration. Therefore, we must strive to improve the current process in order to facilitate these cleanups.

Mr. Muno also noted that the Superfund Accelerated Cleanup Model (SACM) will facilitate several important changes to the current Superfund program over the next few years. SACM will help streamline the program, eliminate immediate risk, improve decision-making, and extend the cleanup process for long-term contamination.

Regional Perspective: Implementation of New Initiatives

Jodi Traub, Acting Associate Division Director, Office of Superfund, EPA Region V

Ms. Traub noted that the Superfund program has not lived up to public expectations: the cleanup process takes too long; is costly and sequential; public perception is that the process generates little environmental improvement. EPA recognizes the need to change the model currently used for managing the cleanup of Superfund sites. Therefore, the Superfund program is shifting its paradigm.

Ms. Traub described the Region V Office of Superfund Mission Statement as including core values such as innovation, risk taking, better teamwork, expeditious cleanups and enhanced public service. Region V views SACM as the philosophy or approach to achieving this mission, and is excited about the opportunity that change brings.

The region is conducting a number of SACM pilot projects to accelerate cleanup; including combined removal and site assessments to eliminate redundant studies by separate branches within the Office of Superfund. Site assessment teams, composed of a Remedial Project Manager (RPM), an On-Scene Coordinator (OSC), a site assessment manager, a geologist, an attorney, and other staff, will share their experience and expertise to characterize each site. A pilot Regional Decision Team (RDT) is being used to make policy and funding decisions on each site, to prioritize worst sites, and to recommend short and long-term actions. The pilot RDT will include the Associate Division Director for the Office of Superfund, removal, remedial, and site assessment Branch Chiefs, a state official, a Regional Counsel Section Chief, a Public Affairs coordinator and a Branch Chief from the Environmental Sciences Division.

Superfund Revitalization: An Overview of Goals and Initiatives

Tim Fields, Director, Superfund Revitalization Office, EPA Headquarters

Mr. Fields noted five major goals of Superfund Revitalization:

- Increase the number of "construction completions." This term refers to the actual construction of on-site facilities and equipment needed to conduct a cleanup. By the end of fiscal year (FY) 1991, construction completions numbered 63. The goal for end of FY92 was 130; 149 were completed. EPA is trying to complete 200 by the end of FY93.

- Accelerate the cleanup process. Currently, the whole process takes about 8 to 10 years. EPA is trying to expedite the process through the use of presumptive (or predetermined) remedies for municipal landfills, wood treating sites, solvent contamination, and groundwater contamination. EPA is also establishing soil cleanup levels for over 100 chemicals, which would thereby eliminate the current requirement for site specific analyses on soil. Finally, SACM, as mentioned earlier, will be used to expedite the process.

- Improve consistency among risk assessment decisions. EPA's Science Advisory Board is currently reviewing the Agency's guidance on risk assessment. In 1993, the Agency

plans to release guidance materials on future use and groundwater remediation schedules.

- Improve contract management. The Agency is currently implementing 32 recommendations on how to improve its remedial contracts.

- Enhance equity within the Superfund enforcement process. The new lender should limit liability for financial institutions. Municipal settlements, however, will be left up to Congress. EPA released a new de minimis guidance on June 2 and will release a guidance on mixed funding in 1993. The Agency is committed to undertaking more early de minimis settlements.

Additional concerns of the Superfund Revitalization Office include voluntary cleanups, application of SACM, public involvement, and communication between EPA and all affected parties.

Superfund Interest Group Perspectives: Potential Improvements

Richard O'Hara, Director of Remedial Projects, Waste Management, Inc.

Mr. O'Hara, formerly with the Wisconsin Department of Natural Resources, cited the need to forge a partnership between private parties and regulatory agencies. In his view, private parties, such as Waste Management Inc., are willing to cooperate and pay their fair share, but EPA needs to begin to identify environmental contamination, rather than other parties, as the "enemy."

His recommendations for improving the current Superfund process included the following comments:

Risk and Financial Resource Management

- The Agency and the nation as a whole need to make a choice between making slow decisions geared to 100% cleanup and making quick decisions geared to 90% cleanup. Are we willing to try to accelerate cleanups by doing partial engineering and then observing the effects?

- Many risks have been overstated, and the resources available are not necessarily being spent on the greatest risks first. We should maximize efficient use of our resources by not insisting on restoring every site to pristine conditions.

- We do not have endless resources and should not be working on problems that have already been solved. Many landfill problems are already rectified, yet we are still spending money on research studies at similar sites. We need to use our experience from old sites at new ones.

- The National Contingency Plan (NCP) allows for much flexibility and interpretation. EPA and the states should be using this flexibility when making decisions about investigations and cleanups.

- Landfill problems are readily solved and are ripe for the use of standard technologies.

- We need multi-media approaches to area-wide problems, rather than piece-meal solutions at individual sites.

EPA Oversight/Human Resource Management

- EPA oversight can nearly double the costs of the Superfund process in early stages. With such tremendous resources being spent, EPA needs to ensure that the Agency and its contractors bring their best people to a job. Inefficiencies are a financial drain.

- The Agency should obtain detailed cost information from contractors and should document these costs for participating PRPs.

- EPA needs to employ a management style that reconciles its different organizational goals and interests rather than allowing conflicting goals to delay decision-making. Currently, the agency tries to balance its program interests of cleaning up sites with its enforcement interests of litigating whenever necessary. The process becomes further delayed when remedial and enforcement staff need to consult with other offices prior to making decisions.

Enforcement Policies

- The model administrative order on consent and the model consent decree contain too many requirements and thereby create a disincentive to settle. Parties should be able to dispute the need for future work in model agreements. Dispute resolution clauses, stipulated penalties, and perpetual liability are all problematic.

- EPA should help potentially responsible parties (PRPs) identify other responsible parties. Region I now has a policy whereby it cooperates with involved PRPs to identify and enforce against other parties. Cooperative use of enforcement power is a low-risk way for EPA to assist PRPs in lowering their costs.

Better Communication

- EPA needs to educate its staff regarding appropriate attitudes toward PRPs and the public.

- EPA needs to improve its communication with all vested parties. As one step, EPA needs to be more open with PRPs and the public about budgets and workplans.

Tanya Cabala, Michigan Director, Lake Michigan Federation

As a private citizen living near two sites and as the Michigan Director of a non-profit regional environmental organization, Ms. Cabala stated her long-standing commitment to public involvement in the Superfund process. Citizens have a right to be involved with the future of their community. Yet, under the current system, getting involved is very difficult, particularly for rural residents.

Technical assistance grants are not effective. Citizens do not want to manage grants; they want to affect cleanup decisions. Furthermore, even people who have an interest and have committed their time to these issues have lost confidence in the program. The public is frustrated by the fact that millions have been spent on litigation, while contamination remains. Unexplained delays in the process increase public dissatisfaction, as in the case of a site that "slipped through the cracks for five years" according to a representative from Michigan's Department of Natural Resources.

Ms. Cabala also noted that partial cleanups are unsettling to the public. For instance, a well was closed and the site therefore may be delisted as a result of that closure even though

contamination is still present. Furthermore, containment is not a sufficient solution; citizens around the site will worry about whether an installed vault is leaking.

The following points are among Ms. Cabala's recommendations for improving public involvement:

- The public must be viewed as a partner. In one instance, a community relations coordinator began working with the community before formal public meetings by forming a community work group and providing comments and information. If involved from the outset, the community will be more willing to trust EPA and other parties later.

- EPA must develop a long-term view and recognize that the community must live with the site after the cleanup is completed.

- EPA needs to recognize the difference between *public involvement* and *public relations*. If citizens become true partners in decision-making, then they will support the process, get involved, and be more likely to support the final decision.

- EPA should understand that citizens can be an asset. They can bring valuable information about the locality to the process and provide a different and valuable perspective from the agency and the PRPs.

- In order to earn the public's trust, EPA and the states need staff members that provide straight answers. An ombudsperson may communicate with the public more effectively.

- EPA should consider including Superfund meetings with other government meetings to improve attendance.

- Speeding up the process will help increase public satisfaction with the program.

John Robinson, Former Mayor of Wausau, Wisconsin; President, John Robinson & Associates

Mr. Robinson began by stating that Superfund has been a failure on everyone's part. In addition to the general failure of all parties to work together, he noted the following problems:

- Insufficient attention to long-term solutions and future generations.
- Lack of cooperation on the local level.
- Insufficient commitment of resources.
- Antagonistic national policy.

Given these constraints, EPA and the states must utilize limited resources to address unlimited needs.

After pointing out these failures, Mr. Robinson described how his community undertook a voluntary cleanup of a local landfill. One key to this success was a cooperative relationship between the Wisconsin Department of Natural Resources (DNR) and the local PRP committee. All involved parties, including the State, committed staff and resources to the cleanup project. Furthermore, by forging agreements that protect voluntary contributors from third-party suits, the State DNR and Justice Department helped create an incentive for responsible parties to come forward. Finally, decision-making remained flexible and the community was involved throughout the process.

Based on his experience with EPA Superfund cleanups and this voluntary cleanup, Mr. Robinson made the following recommendations for reforming the Superfund program:

Information and Communication

- EPA needs to increase public access to information and guidance. Obtaining information through Freedom of Information Act requests can be frustrating and futile.

- Improved communication is essential between EPA Headquarters, regional EPA offices, private responsible parties, the public, state agencies, and local governments.

- The state agencies and EPA need to work together more closely to avoid a good guy/bad guy scenario. Furthermore, EPA needs to decentralize its authority, either through the regional offices or possibly through EPA offices in each state.

Incentives for Responsible Parties and Alternative Financing

- The Agency needs to create an incentive for parties to voluntarily come into the process. At this point, it is advantageous to stay out. Companies make business decisions, and under the current program it is better to stay out. As Mr. Robinson put it, "Don't shoot the volunteers."

- Take the mystery out of the process: Most companies will pay a share, but do not want to sign off on an unknown quantity. The Agency should be willing to carve out individual settlements.

- In order to eliminate the threat of future liability at remediated sites, EPA or another federal agency should consider designing a federal insurance program to cover future cleanup needs. Such insurance could be used to pay for contamination found at a later date or to comply with future standards.

- The program might be more effective if modeled after the Underground Storage Tank program, where a fund enables states to undertake the cleanup process.

After hearing the broad range of suggestions posed by the introductory speakers, the attendees divided into small groups to discuss some of these issues in depth. Each group focused on a specific set of questions, however, their comments did not always correspond directly to each question. Their recommendations have been reorganized under subheadings in this report. Comments made in one session, but relating to a different topic, are reported under the appropriate subject.

BREAKOUT SESSION # 1
VOLUNTARY CLEANUPS

The first break-out groups dealt with voluntary cleanups. EPA, state environmental agencies, and responsible parties grappled with how voluntary cleanups can be conducted. The groups considered questions concerning site eligibility, oversight, liability, and incentives.

Group A: Eligible Sites and the Overall Voluntary Cleanup Process

Discussion Questions. Which sites can/should go through a voluntary cleanup process? National Priorities List (NPL), State-listed, non-listed? Describe efficient and environmentally sound voluntary cleanup models for each type of sites.

- Should/does the process differ according to this status?
- What role should local governments, industrial responsible parties (PRPs), environmental groups, citizen groups, the State, and EPA play in these processes?
- What should the EPA role be at sites in States with voluntary cleanup programs?
- What are the potential advantages and disadvantages of voluntary cleanups from the perspectives of federal, state, and local governments, industry, environmental and citizen groups?

Recommendations and Comments

Definition of "Voluntary Cleanup"

The group defined "voluntary cleanup" as any cleanup in which a party comes forward to conduct the cleanup and agreed that any type of site, whether on the NPL or not, should be eligible for a voluntary cleanup. One purpose of voluntary cleanups is to encourage more cleanups, in a shorter period of time.

Process for Conducting Voluntary Cleanups

The current guidelines of the National Contingency Plan (NCP) can be used effectively for voluntary cleanups. The NCP is flexible and does not need to be altered for voluntary cleanups. Every site should *not* be taken through the exact same process. Instead, the process should reflect the nature and severity of each site.

Many of the same concepts that are being developed to revitalize the Superfund process for conventional sites can be applied to voluntary cleanups. For instance, voluntary cleanups might combine removal and remedial actions, as suggested in the Superfund Accelerated Cleanup Model (SACM). Site assessments might be streamlined by using presumptive remedies, however, citizens insisted that assessments must be thorough. They called for monitoring requirements, an eventual reassessment of the site, and some sort of stewardship.

Role of Regulatory Agencies

A regulatory agency, either EPA or the state, should be apprised of all voluntary cleanups and should provide some type of oversight. Private citizens called for oversight to ensure proper cleanup and avoid actions that conceal real problems at a site. The agency must also be involved in remedy selection. Some citizens preferred EPA oversight to state oversight. For EPA oversight, state and local governments should be consulted.

Private sector participants favored regulatory involvement because they wanted some certainty about expectations for the cleanup. Participants cited the approach taken in Illinois in which parties pay a $5,000 application fee up front to cover oversight costs, have access to state guidance during the cleanup, and receive a certificate of completion after the cleanup is done. Participants also noted that any applicable or relevant and appropriate requirements (ARARs) should be clarified up front, as should be the case at any site. Some participants argued that parties should be allowed to challenge these standards.

Although all participants noted their preference for some oversight, they acknowledged that EPA and the state agencies may not have sufficient resources to oversee every voluntary cleanup. Some participants noted that EPA could not possibly be involved in every "10-drum site" cleanup. Therefore, if a party does not request EPA involvement or assurances, the Agency should allow independent cleanups at non-NPL sites. The Agency must retain regulatory control to place previously non-listed sites on the NPL, if new information about the site justifies listing.

Role of the Public

The public should be involved in voluntary cleanups, as defined by the NCP. This comment was predicated on the assumption that public involvement at all sites, including non-voluntary cleanups, needs to be improved. Citizens wanted to have an opportunity to affect remedy selection for these cleanups. Public satisfaction with the quality of the voluntary cleanup should not be ignored. Citizens noted some concern over private parties' commitment to undertake *appropriate* cleanups, on an independent basis.

Conclusion

A voluntary cleanup program needs to be constructed in a way that assures the public of its soundness and assures the volunteering parties that their remedial actions will not be second-guessed at a later date. While resources at EPA and the states may be limited, the group noted that voluntary cleanups are necessary, given the number of contaminated sites and the need to clean them up more quickly.

Breakout Session #1: Voluntary Cleanups

Group B: EPA/State Oversight of Voluntary Cleanups

Discussion Questions. What type of oversight is necessary and appropriate for voluntary cleanups?

- How can/should oversight be tiered? escalated according to need?
- How can EPA or the State define the type of oversight necessary prior to cleanup?
- How can oversight be paid for? Up-front or through reimbursement? EPA or State funded? Should parties be required to pay some type of deposit? How much?
- Can/should voluntary cleanups be conducted with little or no oversight? Which ones? What safeguards can be incorporated to ensure that cleanup standards are appropriate and met with reasonable costs and in reasonable time frames?
- Should parties that do not meet certain deadlines or other criteria be penalized in a voluntary cleanup process? Should these cleanups follow some type of schedule?
- What are the implications in terms of future liability for voluntary cleanups undertaken with little or no oversight?

Recommendations and Comments

All of the participants in the group agreed that oversight is necessary and welcome. It protects the public interest, limits future liability, and attaches credibility to a cleanup. Some participants suggested that if a state has a credible program, it should take the lead. If not, EPA should be the lead agency. There should be no dual lead sites.

Tiered Oversight and Criteria for Determining Oversight

Oversight can be tiered if necessary. Escalation and tiering of oversight should be based on the size, complexity of a site, and probable remedial plans.

A rating matrix of different site factors can be developed to determine the extent and type of oversight needed. For example, a simple drum removal requires little oversight while an incinerator set-up requires much more.

Criteria influencing the level and type of oversight might include demonstrated capability of the volunteering party, volume of waste, type of waste, suggested remedy, estimated cost, difficulty of cleanup, suggested degree of cleanup, future use, and the motivation of the volunteering party.

In Minnesota, some of these factors are taken into consideration, but the oversight is generally dictated by a party's needs. Oversight may be conducted by city or county governments. One participant suggested developing a guidance manual, as used in Minnesota. This helps volunteering parties determine the preferred degree of oversight. Some citizens voiced concern over this approach. They were wary of giving the volunteer too much control over the cleanup

and also thought that local governments may allow politics to interfere with the quality of their oversight.

Costs, Deadlines, and Penalties

A voluntary cleanup program must use a "carrot and stick" approach. An up-front application fee forces parties to commit to the process. If parties do not keep on a proposed schedule, then they should be penalized in some way--perhaps by being threatened with placement on the state or federal Superfund list. This approach will speed up the process and limit overall costs.

If the cleanup is relatively simple, however, a party should be allowed to conduct it with less oversight and thereby minimize costs and time commitment.

Conclusion

All of the participants agreed that some type of oversight is necessary. The degree of oversight can vary according to site specifics such as the demonstrated capability of the volunteering party, volume and type of waste, difficulty of cleanup, and future use of the site. Fee and penalty systems might be used to ensure commitment and create incentives for timely cleanups.

Breakout Session #1: Voluntary Cleanups

Group C: Possibilities for Reduced Future Liability

Discussion Questions. What type(s) of agreement or assurances can/should EPA, or the State, offer for voluntary cleanups?

- Should EPA or the State offer to limit future liability under various scenarios?
- What factors will influence the type of agreement available (e.g., degrees of oversight, types of remedies, types of processes, consistency with the National Contingency Plan (NCP))?
- Which agreements are enforceable by law? When does the Department of Justice need to be involved?
- Under what circumstances can EPA provide a covenant not to sue? By consent decrees, letters, administrative orders, or only through a "formal" approach?
- What types of obligations would parties need to fulfill in order to get a favorable agreement (e.g. Operation & Maintenance (O&M), five year review)?
- What type of agreement or approval do industrial parties and/or local governments want if they are going to undertake a voluntary cleanup?

Recommendations and Comments

General Policy Concerns

Many participants were in favor of limiting liability but noted that any limitations should be based on the nature of the response actions. For instance, if contaminants are removed, liability should be dissolved. However, if waste is contained on site, then parties should have longer-term responsibility. Even in these cases, liability should ultimately end. De minimus parties that enter into a settlement should not face liability at a later date. The group pointed out that a state guarantee is different from a federal guarantee.

Citizens agreed that limited liability was acceptable as long as the cleanup is "complete." Some citizens feared that a release from liability would lead to less environmental safety in the future. In response to this concern, private sector participants noted that common law is still available to the public if risks remain in the future and affirmed their commitment to eliminating risks to health and the environment. However, they, only wanted to be held responsible for "real" risks. Local government officials also vocalized their deep interest in reducing these dangers.

One participant raised the question of whether standing agreements should be grandfathered in if limited liability is allowed. Some participants stated that we need to move forward even though parties that have avoided agreements thus far might unduly benefit from a policy that only limits liability for agreements made in the future.

Sharing the Responsibility of Future Liability

Local government participants suggested that landfill user fees might cover some of this potential liability. Another option might be to ask that the public bear a portion of the operation and maintenance (O&M) expenses through additional federal taxes.

Benefits of Limited Liability

A limit on future liability will create an incentive for voluntary cleanups and might help untangle the gridlock in the current process. Many municipalities and industries currently are barred from undertaking redevelopment projects in "brown fields" for fear of incurring additional liability. Limiting liability in these instances will encourage the redevelopment of inner cities. In order to encourage redevelopment, the State of Minnesota provides a statutory release to developers and prospective buyers who are not liable parties.

Conclusion

Most of the participants favored limited liability—particularly when hazardous substances are removed from the site. The discrepancy between a state guarantee and an EPA guarantee was brought into question. Some participants suggested alternative financing schemes, such as increased landfill fees or additional federal taxes, to pay for future cleanup costs at sites where liability was limited.

Breakout Session #1: Voluntary Cleanups

Group D: Providing Incentives for Voluntary Cleanups

Discussion Questions. What can EPA and/or the States do to encourage voluntary cleanups?

- For unlisted sites in which many PRPs are involved, is there a disincentive for parties to undertake cleanups independently?
- Can EPA or the States provide some type of assistance which will compel reluctant parties to join in voluntary cleanups?

Recommendations and Comments

Limiting future liability and clarifying standards

Problems: Private sector participants noted that the combination of *unclear standards* and *future liability* hinders voluntary cleanups. Industry representatives fear that as new standards and technologies are developed in the future, parties that conduct cleanups now will be asked to clean up more in the future.

If a party chooses to clean up a site voluntarily, and the cleanup is later deemed insufficient, EPA has the authority to take enforcement actions against the party. Local government participants commented that they often do not have the resources to defend themselves in such instances.

Furthermore, if the voluntary cleanup is conducted under the state's oversight, it may not meet EPA standards and vice versa. Participants noted that they receive different information from EPA and state agencies.

The absence of contribution protection, at both the EPA and state levels, creates another opportunity for incurring future liability.

Solutions: EPA and the states need to define acceptable standards and the extent of future liability more clearly. From the start of the cleanup process, EPA or the state should clearly define the extent of oversight that will be used and the standards that will be expected. The overseeing regulatory agency should issue a certificate of completion when the cleanup is finished. Volunteer parties need to know what they will face in a voluntary program. Some participants called for a "clean bill of health" after a cleanup.

Allocating limited resources at EPA and state agencies

Problem: Most voluntary cleanup sites are low priorities for EPA and the state.

Solution: If EPA and the states want to encourage voluntary cleanups as a means to cleaning up more contaminated sites more quickly, they must devote resources to this issue. Some or all of this additional regulatory capacity could be paid for directly by oversight payments from PRPs.

If regulatory agencies would use less oversight when dealing with cooperative parties, more private parties might be willing to conduct voluntary cleanups to avoid higher oversight expenses.

Bringing other PRPs into the process

Problems: Most regulatory agencies have not been helpful in identifying other parties; therefore, PRPs have had to pay the cost of investigating other parties. Furthermore, parties that volunteer to clean up a site may find it more difficult to share costs with other PRPs.

Solutions: EPA and the states need to play a more active role in assisting volunteering parties in their searches for other responsible parties. At a minimum, the regulatory agencies should be more cooperative about sharing information and pool resources with the volunteering parties. EPA's enforcement authority could be a necessary and attractive tool used in conjunction with the voluntary cleanup.

Facilitating private cost recovery actions

Problem: A volunteering party needs to be able to recover its costs from insurance carriers on their policies.

Solution: In order for volunteering parties to be able to recover these costs, the remedial actions need to be formally defined as "necessary" or "mandatory," rather than optional.

Other points and recommendations

If parties are asked to fund the costs of oversight, then the regulatory agency should grant timely reviews and approvals.

Agencies should have the authority to use contractual agreements, other than enforcement mechanisms, to work with volunteering parties. The possibility of avoiding the traditional enforcement process may be perceived as a benefit by parties interested in cleaning up sites. EPA and the states should encourage cleanups by demonstrating a different mindset when handling voluntary cleanups. If a written agreement is needed, a unilateral order, rather than a consent decree, should be used.

Regulatory agencies should give some type of credit or reward to volunteering parties. Conversely, steps could be taken to shame recalcitrant parties in their communities or in the market.

A "timeout" in the middle of the standard cleanup process to perform a voluntary cleanup will serve as an incentive to responsible parties.

If the property values are likely to increase after the cleanup, parties are more likely to voluntarily clean the site. On a related point, local governments can pledge future taxes on a site to redevelop it. The ability to use tax increment financing (TIF) in some cases to cover a portion or all of remediation costs can help local governments initiate cleanups independently or encourage developers to conduct them. The connection between economic development and environmental cleanups should not be overlooked.

Conclusion

After identifying many existing *disincentives* to voluntary cleanups, the groups offered some solutions to create *incentives* to volunteer parties. They cited the need for EPA and the states to define acceptable standards and the extent of future liability more clearly, and to articulate these from the start of the cleanup process. Furthermore, they asked that these agencies play a more active and cooperative role in assisting volunteering parties in their searches for other responsible parties.

The group recognized the limited resources of EPA and the state agencies; some suggested enhancing the personnel resources by developing a voluntary program financed entirely by oversight fees. Others suggested that regulatory agencies should use less oversight when dealing with cooperative parties. In addition to saving the agencies time and money, more private parties might be willing to conduct voluntary cleanups to avoid higher oversight expenses.

BREAKOUT SESSION #2
ACCELERATING CLEANUPS

The second set of break-out groups considered various methods for expediting cleanups and the advantages and disadvantages of these approaches. The groups identified and discussed trade-offs between accelerated cleanups, certainty, and extent of remediation as well as other issues.

Group A: The Extent of Cleanups

Discussion Questions. In expediting short-term cleanups, how can we ensure that sites will be sufficiently remediated?

- Under SACM, if regulatory agencies decide to promote early actions to reduce the greatest risks to human health and the environment, should EPA be concerned that sites may not be "fully" remediated?
- Are partial cleanups possible under existing law? For which type of sites? NPL or other?
- If partial cleanups are allowed, what are the implications for future liability? Who may be threatened with future liability (e.g. States, future owners, current owners)?
- Under what circumstances should regulatory agencies strive for containment rather than treatment?
- Will parties that partially clean up their sites be able to avoid being listed on the NPL because they can affect their Hazard Ranking System (HRS) score? Should this be a concern?

Recommendations and Comments

Goals of SACM

SACM strives to perform short-term remedial actions at sites as quickly as possible. Participants generally agreed that as a society we should focus first on removing the threat of source material and later on groundwater contamination. SACM also attempts to speed up the entire cleanup, including long-term treatment, such as groundwater remediation.

Affecting the hazard ranking system score

A party may be able to affect the hazard ranking system score and avoid listing on the National Priorities List by undertaking a partial cleanup at a site before a site inspection takes place. Under SACM, this loop hole will be enlarged because SACM will depend on site inspection data to a larger extent to determine NPL status.

Trade-offs made by SACM:
Speed vs. Certainty; Immediate Actions vs. Complete Cleanups

Quicker assessments may lead to less accurate assessments. If responsible parties are not confident that the assessments are accurate, then they will be less willing to settle. More

uncertainty in the assessment is directly correlated with more uncertainty in ultimate costs of cleanup.

Some participants noted that quick action is not always preferable. With regard to long-term remediation, some citizens are willing to wait for better technology as long as the contamination is contained temporarily. For example, better on-site treatments might be developed later for some types of contamination. These comments did not seem to suggest that citizens thought containment was ultimately sufficient. In fact, one participant stated his belief that containment goes against the statutory preference for treatment.

Citizens requested that EPA be committed to groundwater and other long- term remediation. However, they also preferred some type of action over inaction, even if a response constituted only a partial solution. Some citizens were concerned that the expedited process might lead to considering fewer options. They wanted regulators to still consider alternative technologies.

Conclusion

SACM faces the following challenges in balancing trade-offs:

- Regulatory agencies and PRPs may move too quickly with too little data.
- Some PRPs may not want to sign up for cleanups due to uncertainty associated with less thorough assessments.
- While EPA and the states face shortages in resources, and particularly in staff, SACM places additional demands on the same number of people.

Participants generally agreed on the following:

- Some type of action, even if only a partial solution, is preferable to no action at all.
- Quick action should not be the only goal, particularly if an expedited process leads us to disregard options such as alternative technologies.
- In some instances, long-term solutions may be best achieved if we wait for more effective technology.

Breakout Session #2: Accelerating Cleanups Through the Superfund Accelerated Cleanup Model (SACM), Presumptive Remedies, and Increased Flexibility

Group B: Presumptive and Standardized Remedies

Discussion Questions. Under what circumstances would standardized remedies help make the cleanup process more efficient and/or fair?

- What are pros and cons of presumptive remedies?
- Who will be affected, and what are those impacts?
- How can such prescriptions be used most effectively?
- To what types of sites should this approach be applied?
- Should PRPs be able to appeal the use of standardized remedies if they do not find them suitable?

Recommendations and Comments

Advantages of presumptive remedies

Whether one or several remedial options are designated for a specific type of site, presumptive remedies would streamline the remedial investigation and feasibility study (RI/FS). In addition to expediting the process, presumptive remedies would help all parties save time and money on investigations and would provide clearer direction. And, with fewer technologies being used, the cost of these presumptive remedies might decrease due to competition and enhanced efficiency.

Parties could avoid the frustration caused by investigating unnecessary options. Presumptive remedies would also clarify expectations and thereby might promote voluntary cleanups because volunteering parties would have a clearer sense of what they are undertaking. In terms of the public's interests, presumptive remedies could clarify the appropriateness of certain remedies for specific types of sites.

Disadvantages of presumptive remedies

If certain remedies are designated as standard technologies, innovation in new technologies may be stifled. Participants cited this factor as one of the most serious problems associated with using presumptive remedies.

While private sector participants expressed concern that EPA might nominate the most protective alternatives as presumptive remedies and thereby increase costs, citizens were concerned that better alternatives might be ignored. Most participants agreed that the process must remain somewhat flexible if predetermined remedies are to be tailored to suit site-specific characteristics. Some participants were concerned that presumptive remedies may preclude consideration of institutional controls, such as limiting future land use.

Conclusion

While presumptive remedies may ultimately save time and money, some flexibility should remain in the process in order for site-specific information to be considered in the remedial plans. The regulatory agencies should ensure that remedies will not be systematically applied to sites where they might not be appropriate.

Some participants suggested that presumptive remedies be used as tools to approach the investigation and remediation at a site and should remain optional. At complicated sites, remedial investigations will still be necessary.

As a corollary to this topic, participants requested that data be collected on the costs of remedies. A database, which includes information on after-construction costs, would help parties share more accurate information on remedies. Both public and private parties could provide such information. While EPA representatives suggested that such data is not available, industry participants disagreed and thought that parties would be willing to share such information. The Oregon Department of Environmental Quality requires monthly cost updates from private parties. This might provide a useful model.

Breakout Session #2: Accelerating Cleanups Through the Superfund Accelerated Cleanup Model (SACM), Presumptive Remedies, and Increased Flexibility

Group C: Risk Assessment/Remedy Selection

Discussion Questions. How can the risk assessment process be improved so that it takes into account the costs and benefits of remedial strategies?

- How can we define "real" risks?
- Should institutional controls, such as designating future land use, be taken into account in the remedy selection process?
- To what extent should local governments and/or other local decision-makers be able to affect remedy selection?

Recommendations and Comments

Allocating Scarce Resources on Risk Reduction

An industry representative noted that returning a site to pristine conditions is not always possible, nor sensible. Society as a whole must decide how best to use its resources. If it needs to spend 50% of its resources to eliminate the last 5% of risk, society must consider whether this is a worthwhile use of those resources. Participants also voiced frustration over the fact that higher risks such as vehicle emissions and agricultural runoff receive little attention. The group recognized that society, as a whole, needs to make tradeoffs regarding risks and resources. However, one participant pointed out that Superfund sites pose involuntary risks to citizens, and therefore should not be treated in the same way that we treat other risks.

Risk assessments are based on hypothetical risks and worst-case scenarios. For instance, groundwater must be considered as potential drinking water in risk assessments, even though the water may never be used for that purpose. Some participants felt that many risk assumptions by EPA are unreasonable. They questioned whether hypothetical risks ever reflect reality. EPA should have more reasonable maximum exposure levels.

Remedy Selection - Land Use Restrictions

Some participants suggested that local governments use land restrictions to put a barrier between risks and the public. By changing land use, we can influence exposure pathways and thereby reduce risk. They argued that some problems can be put on hold until better technology is available. Other participants were not in favor of such an approach, because it would indefinitely delay the agency's goal of permanent remedies.

More fundamental than the question of timing were issues of jurisdiction over cleanup and long-term enforceability of land-use restrictions. Some citizens felt that land-use restrictions do not suffice as a means of treating a site. While restrictions might be necessary, other remedial actions should be taken as well. Others advocated restoring property to the extent that would be required to reuse the land for a particular future purpose. In some cases, a certain amount of residual risk might remain depending upon the type of use. On the issue of long-term use, some participants questioned whether institutional controls will continue to be

enforced in the future, while others pointed out that some of these issues should be left up to future land-use planners.

One participant raised the question of whether imposing land-use restrictions constituted "a taking" of private property. In such an instance, owners should be compensated for property restricted or taken over. Another participant suggested that a property owner could be presented with the choice of paying cleanup costs or containing contamination and giving up certain property uses through a deed restriction.

Health vs. Ecological Risks

In the EPA report Unfinished Business, Superfund risks were ranked as a low public health threat, but a high environmental threat. However, the public perceives Superfund as a high public health threat as well.

The group discussed the difference between ecological and public health risks. The current risk assessment process is driven by health risks, even though ecological risks are less understood and actually may be a greater area of concern. The inclusion of ecological risks in the risk-assessment process will not necessarily lead to more stringent action plans, but might target remediation more effectively.

A representative from the state of Minnesota suggested that health agencies concentrate on health risks while the environmental agencies handle environmental risks. However, such a stratification is not provided for in the current statute and most health agencies are not well prepared to work on Superfund cases. Minnesota is beginning to consider environmental risks more closely and recently hired a staff member to focus on natural resource damages.

Risk communication and education

Risk communication and public education are fundamental to effective implementation of environmental decisions. EPA could help support the agency's shift from enforcement to prevention by undertaking a campaign to educate the public about its policies and environmental priorities. Participants noted that people fear what they do not understand. At this point, the public is not certain whether decisions are based on financial considerations or on public health concerns.

The public needs to have access to reliable information. Information from industry and local governments is suspect, according to some citizens. A community team approach to risk assessment with different interests involved and early involvement by responsible parties may be helpful in communicating risk. EPA Headquarters representatives noted that EPA has developed a risk assessment workshop designed for citizens. This workshop is available through the EPA Regional offices.

Conclusion

The group acknowledged the need to make tradeoffs regarding risks and resources. On the topic of future land use of sites, some participants questioned whether institutional controls will continue to be enforced in the future, while others pointed out that some of these issues should be left up to future land-use planners. The group also discussed the difference between ecological and public health risks and how both should enter into the risk assessment process. The group generally agreed that risk communication and public education are fundamental to effective implementation of environmental decisions.

Breakout Session #2: Accelerating Cleanups Through the Superfund Accelerated Cleanup Model (SACM), Presumptive Remedies, and Increased Flexibility

Group D: Soil Cleanup Levels

Discussion Questions. Under what circumstances would soil cleanup levels make the process more efficient and/or fair?

- Are the various State cleanup levels reasonable?
- Can current technologies meet these standards in all cases?
- What actions should EPA take in this area?
- Should PRPs be allowed to appeal these standards? Through what type of process?

Recommendations and Comments

Some participants thought that state soil cleanup levels should be based on protection of human health and the environment rather than best available technology or economic feasibility. One participant stated that current technologies are likely to meet current standards. In some cases, land use controls may be appropriate to limit the effects of residual contaminants.

The group generally agreed that responsible parties should be able to appeal standards. However, they should be required to plug additional data into an accepted risk assessment model to justify their request for a waiver. The public should be allowed to comment on any deviations from the standard.

Oregon, for example, has set conservative, presumptive soil cleanup levels which usually lead to soil excavation. These standards generally apply to small sites. In cases where the presumptive levels do not apply, a more site-specific analysis—similar to an RI/FS—is used. A party can opt to use presumptive levels, but retains the option to consider site-specific data to justify applying a different standard.

EPA can provide standards and formulas to help states and other parties with the risk assessment process. EPA needs to develop additional resources to make risk assessment more accurate.

Conclusion

The group generally agreed that while standards might be useful in expediting the process, responsible parties should be able to appeal these standards. Appealing parties might be required to supply supporting data to justify their request for a waiver. On a more general point, EPA should work to make the risk assessment process more accurate.

BREAKOUT SESSION #3
HOW TO INVOLVE ALL PARTIES MORE EFFECTIVELY

The final set of break-out groups considered the issue of how regulatory agencies can involve all parties more effectively. The groups discussed how EPA and the states can improve their outreach efforts as well as how all affected parties might work together more cooperatively.

Group A: Resource Issues

Discussion Questions. At different types of sites (e.g., NPL, state listed, non-listed), what roles should EPA Headquarters, EPA Regional offices, State agencies, Department of Justice, local governments, citizens, and others play in the process to achieve the most cost-effective and timely results?

- How can Regional Decision Teams improve the current system?
- Are there other ways to improve consistency, continuity, and use of existing resources?

Recommendations and Comments

Possible improvements under SACM

Under SACM, EPA is trying to expedite cleanups while attempting to involve the public earlier in the process, however, some tension exists between these two goals. SACM attempts to create a contiguous assessment process by using a regional decision team and a site assessment team. The regional decision team, which includes a public information staff person, should be aware of public concerns throughout the process.

Local governments noted that they are often left out of the decision-making process. In fact, the regional decision teams formed under SACM create no role for local government representatives, despite EPA and state participation. EPA should rely more on local governments to organize the public and to disseminate information to citizens. Some citizens recommended having citizen representation on these decision teams as well.

While local government participants stressed the need for their input, some citizens noted that they were sometimes uncomfortable with the interaction between local governments and PRPs. They maintained that local governments do not always represent their entire communities, particularly in rural areas.

Set up local advisory committees

Many participants favored the establishment of voluntary committees within the community. Such a committee should be involved from the onset of the process and should have the authority to affect cleanup decisions. They could be modeled after those used effectively in solid waste planning.

These local advisory committees should include responsible parties, environmental groups, both elected and appointed local government officials, and citizens. With early input from all of these interest groups, EPA will be able to consider such important considerations as future use from the onset, rather than waiting until too late in the process to take such factors into

account. A neutral party, such as a university expert, could act as the spokesperson for the group and interact frequently with the lead regulatory agency.

EPA could facilitate the organization of such committees by redirecting its resources to assist these volunteers. The group pointed out that technical assistance grants (TAGs) are neither effective nor sufficient. Some other mechanism—such as financing a local voluntary committee to track the process and provide input—should be developed. The committee, in turn, could serve as a resource to the process and help free up some of the regulatory agencies' limited staff resources.

Citizens and other non-PRPs need to have a decision-making function in the process. If a mixed-interest local advisory committee is not effective, citizens might act as members of PRP groups. Otherwise, they might serve on a separate citizen advisory committee that would report back to the PRP group or to the regulatory agency.

Participants agreed that community groups should meet regularly, whatever the format. Responsible parties might help fund these groups. However, if industry pays to fund these meetings or other activities associated with public involvement, steps must be taken to assure the public that no one is being "paidoff."

Conclusion

With regard to SACM, participants noted the absence of local government representatives and citizens from the decision teams. In general, the group called for improved representation and involvement for all affected parties. Many favored the early establishment of voluntary committees within the community. Such local advisory committees should have the authority to affect cleanup decisions and should include responsible parties, environmental groups, both elected and appointed local government officials, and citizens. By gaining early input from all of these parties, EPA would be able to consider all of these interests from the onset rather than learning of dissent and criticism after cleanup decisions have been made more exclusively.

Breakout Session #3: How to Involve the Public and Other Parties More Effectively in the Cleanup Process

Group B: Dispute Resolution

Discussion Questions. Should/can alternative dispute resolution (ADR) techniques be more widely used in the process?

- How can mediators be involved more effectively?
- At what stage of the process and in which cases would they be useful?
- Are mediators best suited for negotiations between PRPs and EPA or among PRPs themselves?

Recommendations and Comments

Definition of ADR

For the purpose of this report, the terms "mediator" and "facilitator" are used to refer to a neutral party who discusses issues with a group of PRPs and/or EPA and helps them reach an agreement over their dispute. The term "arbitrator" is used to describe a neutral party who considers the issues of a case and then provides either a non-binding or binding decision to settle a group's issues.

Preferred application of ADR

While the group thought that ADR techniques can be helpful, they thought that PRPs and EPA should attempt to come to agreements either on their own or with the aid of a facilitator or mediator. Participants were somewhat opposed to the use of arbitrators—neutral parties that formulate binding decisions for the parties. This form of ADR should only be used when the parties cannot reach a settlement independently or with the help of a more informal mediator.

Effective uses of mediators and facilitators

A mediator can help parties listen to each other or can act as an intermediary between parties. By hearing each party's perspective, a facilitator can elucidate points of agreement and issues where compromise can be achieved. Effective facilitators can help the parties set goals and objectives, particularly if they are involved early on in the process. By encouraging cooperation and honesty, a mediator can expedite the process.

Although early involvement is preferable, mediators can also enter the process after disputes have already arisen to try to break stalemates. Since parties generally would rather not go to court, mediation can be used as a "last resort". The group also suggested that mediators play a role in community relations.

Mediators might be used to settle debate over technical questions, although technical experts will still need to provide information. The State of Illinois is using a panel of three experts—one chosen by the state, one chosen by the responsible party, and one chosen jointly—to consider technical disputes on a trial basis. If the parties are dissatisfied with the panel's

decision, they can appeal the decision in court. Under this process, however, some parties may use ADR to reinterpret the law and state requirements.

Mediators are most effective when they work with PRPs, regulatory agencies, and the public. Some participants claimed that EPA usually takes the lead with ADR and then dictates the process because they know the law and the process. Participants called for EPA and the states to rethink their traditionally authoritative roles in the process and be more open to using mediators/facilitators as truly neutral parties who can manage the process.

One local government representative expressed concern over whether the mediators were qualified. EPA participants attested to the qualifications of mediators listed by the agency. Some participants also felt that outside mediators, perhaps identified through the American Arbitration Association or other groups, might be more impartial than those used or identified by EPA.

Conclusion

The group thought that ADR techniques can be helpful, however, participants were somewhat opposed to the use of arbitrators—neutral parties that formulate binding decisions for the parties. The group called for EPA and the states to rethink their traditionally authoritative roles in the process and be more open to using mediators/facilitators as truly neutral parties who can manage the process, from the onset when possible.

Breakout Session #3: How to Involve the Public and Other Parties More Effectively in the Cleanup Process

Groups C & D: Public Involvement

Discussion Questions. How can the public be included more constructively in the process?

- What are examples of EPA/State successes in this area in the past?
- In local government cases, how do we balance public concerns about human health and the environment with taxpayer concerns about paying for environmental protection?
- Can technical assistance grants be used more effectively and easily?
- Can we create a method by which the public can be involved from the onset? Does this make sense?

Recommendations and Comments

Involving the public and local governments more effectively

All of the participants agreed that EPA and the states need to conduct more public outreach early in the process to involve local governments and the public. Regulatory agencies need to include local governments, citizens and other interested parties before the investigation begins. The public should have a role in the investigation and communication needs to be maintained through the final stages of the remedy. Citizens stressed that they deserve equal representation in the process.

Reactive community relations does not work. Regulatory agencies need to take their message to the community rather than wait for citizens to make inquiries. Incomplete disclosure of information breeds distrust. Furthermore, the regulatory agencies need to seek out community groups that truly represent the public. Communication with the public must be an ongoing and frequent part of the process.

Public education and dissemination of information

Community involvement should include educating both the public and the media. Many people do not understand the Superfund process and law. Citizens are dissatisfied with inaccessible and incoherent information. Furthermore, the press needs to be contacted early and kept informed in order to ensure accuracy and to guard against misinformation.

Agencies should consider publishing a periodic site-specific newsletter which avoids technical jargon and acronyms. An early survey of interested parties in the community can improve participation. Community interviews are another useful tool, though they can be over-formalized.

EPA should use widely read newspapers, electronic media, mass mailings, and pamphlets to notify the public of contaminated sites and any investigations. Cable and public access television and radio channels may be effective means of reaching the public.

The use of mass mailings was a controversial suggestion. Distribution within a five-mile radius of the site might be cost effective, but citizens may not read the information. Some participants suggested a brief notice before investigations begin; otherwise, EPA's message may cause undue alarm.

Regulatory agencies should conduct community hearings at regular town or county meetings. This will ensure additional media coverage and may get the message to more people, although some participants noted that coordinating hearings with town meetings might present legal problems.

Train all EPA and state personnel in community relations

Community relations is everyone's business. All personnel, especially project managers, should be trained to interact effectively with the public. Citizens are interested in talking directly with project managers. Since EPA and state community relations coordinators carry a heavy workload, other personnel should play a more active and responsible role in community relations. The ability to work well with citizens and the media should be a requisite for all agency personnel. However, improved relations is not sufficient; regulatory agencies must remember that public relations is not equivalent to community involvement.

Restructure public meetings and other interaction with the public

Public meetings need to be more interactive, perhaps through a roundtable format. Regulatory agency representatives need to talk with the community, rather than at them. Participants remarked that EPA representatives frequently speak for too long and lose the public's interest. EPA might have more success if they met with industry and community leaders before public meetings. Community meetings should also be held on an "as-needed" basis.

Improving the Technical Assistance Grant program

Technical Assistance Grants (TAGs) should be smaller and simpler to apply for and manage. Less reporting should be required and forms should be shorter. Smaller amounts of money at more frequent intervals would be preferable to the current method of allocating resources. EPA noted that the TAG Final Rule, dated October 1, 1992, significantly simplifies the TAG Program; TAG guidance is being revised to reflect these changes.

Conclusion

The group agreed that both the quality and quantity of outreach needed to improve. All participants agreed that EPA and the states need to conduct more public outreach early in the process to involve local governments, the public, and the media. Some suggested that local governments, citizens, and other interested parties should be involved even *before* the investigation begins as well as through the final stages of the remedy. All EPA and state personnel, especially project managers, should be trained to interact effectively with the public.

Closing Remarks

Jodi Traub, EPA Region V

Ms. Traub noted that while each of these parties brings different interests to the table, they all share a common agenda of cleaning up contaminated sites. EPA alone can not fulfill that goal. All of these groups have a role to play.

She noted that Region V would conduct a follow-up meeting about six months after the summary report has been issued and after further progress has been made on the pilot studies.

Tim Fields, EPA Headquarters

Mr. Fields discussed EPA's public meeting, led by Clean Sites, on June 24, 1992. The meeting led to ten primary recommendations, including the need to formulate a policy on voluntary cleanups. EPA has begun to act on those recommendations and intends to act on the conclusions drawn from this meeting as well. The report from the June meeting, publication # PB 92-963-288, is available from the National Technical Information Service (NTIS) at 1-800-553-6847.

EPA's Follow-Up Actions

As a result of the input received from participants at the Superfund Revitalization Conference, EPA has developed the following list of actions to take with respect to attendees' suggestions.

1. EPA will review its current policies for communicating with potentially responsible parties, e.g., the policy revisions implemented last year by EPA Region I.

2. EPA will examine mechanisms to get citizens involved earlier in the Superfund cleanup process, and will examine its community involvement policies in this regard.

3. EPA will continue its efforts to develop a national voluntary cleanup strategy, utilizing the suggestions contained in this report.

4. In implementing SACM, EPA must find ways to assure sufficient data is collected to provide adequate certainty in accelerated cleanups to address the concerns of potentially responsible parties and affected citizens.

5. In developing presumptive remedy guidance, EPA will assure that it does not stifle the use of innovative technologies.

6. EPA will work with States and private parties to develop a construction cost data base, in order to obtain more accurate information on the cost of remedies.

7. EPA will develop and implement a strategy for better communicating Superfund risks and cleanup progress.

8. EPA will conduct a special meeting with representatives of local governments on SACM and other Superfund revitalization initiatives.

9. EPA will explore the feasibility of providing additional support, beyond the existing Technical Assistance Grant mechanism to the establishment of local advisory committees to better involve affected interest groups in the Superfund cleanup process.

10. EPA will assure that all Regional Superfund personnel, not just Community Relations Coordinators, are properly trained in community involvement procedures.

APPENDIX A

EPA/ICMA Regional Focus Group
Voluntary Cleanups, the Superfund Accelerated Cleanup Model, and other Superfund Reforms
Chicago, IL
November 12-13, 1992
Final Agenda

Day I

8:45 - 9:15
Registration/Breakfast

9:15 - 9:30
Opening Remarks
Joan Glickman, Project Manager, ICMA
Bill Muno, Acting Division Director, Waste Management Division, EPA Region V

9:30 - 10:00
Superfund Revitalization: An Overview of Goals & Initiatives
Tim Fields, Director, Superfund Revitalization Office, EPA Headquarters

Regional Perspective: Implementation of New Initiatives
Jodi Traub, Acting Associate Division Director, Office of Superfund, EPA Region V

10:00 - 11:00
Superfund Interest Group Perspectives: Potential Improvements
Richard O'Hara, Director of Remedial Projects, Waste Management, Inc.
Tanya Cabala, Michigan Director, Lake Michigan Federation
John Robinson, Former Mayor of Wausau, Wisconsin

11:00 - 11:15
Break

11:15 - 12:45
Break-out Session #1
- Voluntary Cleanups

12:45 - 1:45
Lunch/Wrap Up #1
- Nominated teams from each focus group -- the facilitator and one or two elected group members -- work together to summarize comments.
- Other attendees have lunch on their own.

1:45 - 2:45
Summary Presentations
- One representative of each focus group team will speak for no more than 10 minutes. Discussion will follow presentations.

2:45 - 3:00
Break

3:00 - 4:30
Break-out Session #2
- Accelerating Cleanups Through SACM, Presumptive Remedies, and Increased Flexibility

4:30 - 5:15
Wrap Up #2
- Elected teams from Session #2 groups meet to summarize comments.
- Other attendees adjourn for the day.

Day II

8:00 - 8:30
Breakfast

8:30 - 9:30
Summary Presentations

9:30 - 11:00
Break-out Session #3
- How to Involve the Public and Other Parties More Effectively in the Cleanup Process

11:00 - 11:30
Break/Wrap Up #3
- Elected teams from Session #3 groups meet to summarize comments.

11:30 - 12:30
Summary Presentations

12:30 - 12:45
Closing Remarks

APPENDIX B

EPA/ICMA Regional Focus Group Meeting
Superfund Revitalization
Chicago, Illinois
November 12–13, 1992
Final Attendee List

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APPENDIX C

EPA/ICMA Regional Focus Group
Voluntary Cleanups, the Superfund Accelerated Cleanup Model, and other Superfund Reforms
Chicago, IL
November 12-13, 1992

Readings List

1. Environmental Fact Sheet - The Superfund Enforcement Process: How it Works
2. Regional Pilots and Applications of Superfund Accelerated Cleanup Model (SACM)
3. Promoting Voluntary Site Cleanups
4. DEQ Explains Cleanup Program
5. Improving Superfund Remedy Selection
6. Do Superfund Settlements Make Sense Anymore?
7. The Process of Selecting a Remedial Action Under CERCLA

APPENDIX D

GLOSSARY OF TERMS AND ACRONYMS

ADR (Alternative Dispute Resolution) -- A process which uses a neutral third party to help resolve disputes. ADR methods include facilitation, mediation and arbitration.

AOC (Administrative Order on Consent) -- A legal agreement signed by both EPA and a responsible party that is used to agree on the roles, responsibilities, and payment for conducting removal and RI/FS actions.

ARARs (Applicable or Relevant and Appropriate Requirements) -- The federal and state standards that are legally applicable or relevant and appropriate under the circumstances. ARARs include standards for cleanup, control and prevention.

CD (Consent Decree) -- A legal document, approved and issued by a state or federal district court, that formalizes an agreement between EPA and PRPs in which the PRPs agree to perform all or part of a site clean-up. A CD details the actions the PRPs are required to perform and must be used in settlements dealing with remedial action.

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) -- The formal name for "Superfund". This law was originally passed in 1980 and then reauthorized and amended in 1986 under the Superfund Amendments and Reauthorization Act (SARA). Reauthorization is due again in 1994, and observers expect many significant changes to be proposed.

ESD (Environmental Sciences Division) -- An EPA regional division that provides data validation and quality control functions.

HRS (Hazard Ranking System) -- The method EPA uses to determine which sites belong on the National Priorities List. The HRS ranks sites by means of a score (between 0 and 100), based on risks to human health and the environment. A site scoring 28.5 or above may be listed on the NPL.

NCP (National Contingency Plan) -- The primary federal policy framework guiding the Superfund program. It outlines the hazard ranking system as well as the procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants.

NPL (National Priorities List) -- An EPA list enumerating the toxic waste sites in the nation that warrant long-term remedial responses. Any site with a Hazard Ranking System score of 28.5 or greater is a candidate for placement on the NPL. As of October 1992, the list numbered 1,208 final and 28 proposed sites.

PRP (Potentially Responsible Party) -- Any individual, local government, or company that is potentially liable at a Superfund site. PRPs include past or present (1) owners or operators of a site, (2) generators of hazardous substances disposed at a site, or (3) transporters of such substances to a site, when the transporters selected the site for disposal.

PA/SI (Preliminary Assessment/Site Inspection) -- The initial two-phase study of a potential Superfund site. The preliminary assessment, conducted by either EPA or the state environmental agency, gathers data on how the public could be exposed to hazardous substances at a site, determines if any short-term clean-up work is needed, and eliminates from further consideration sites that do not pose risks to public health or the environment. The SI builds upon the data collected in the PA and includes on-site and off-site sampling and field investigation. From this data, EPA scores the site according to the Hazard Ranking System.

ROD (Record of Decision) -- A government document published after the completion of the remedial investigation/feasibility study explaining which cleanup alternative(s) will be implemented at a Superfund site. The ROD is part of the written administrative record.

RDTs (Regional Decision Team) -- (RDTs) are being used as part of the Superfund Accelerated Cleanup Model (SACM) to assess whether a team approach will expedite the process. These RDTs might consist of a team leader; senior remedial, removal, and site assessment representatives; a community relations coordinator; and representatives from regional counsel, the Environmental Sciences Division (ESD), and the state environmental agency.

RD/RA (Remedial Design/Remedial Action) -- The two phases in the Superfund cleanup process following the record of decision, consent decree, and remedial investigation/feasibility study. In the remedial design, engineers develop technical drawings and specifications for subsequent long-term site cleanup. In the remedial action, the remedial design is implemented.

RI/FS (Remedial Investigation/Feasibility Study) -- Two distinct but related studies, conducted by either the government or PRPs. The remedial investigation determines the type and extent of contamination at a Superfund site and establishes criteria for clean-up. The Feasibility Study identifies and evaluates clean-up alternatives (consistent with the National Contingency Plan) and their costs.

SACM (Superfund Accelerated Cleanup Model) -- A model process designed by EPA to help streamline cleanups at Superfund sites. SACM separates remediation into short-term and long-term response actions, uses Regional Decision Teams (RDTs) to help manage cleanup decisions, and integrates site assessment activities.

TAG (Technical Assistance Grants) -- Grants available to citizen groups which provide up to $50,000 to help them obtain information and technical assistance at a site.

APPENDIX E

INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION (ICMA): BACKGROUND INFORMATION

ICMA is the professional and educational association for top appointed administrators in local government. For 78 years, ICMA has worked to strengthen the quality of local government through its support to professional local government administrators with a wide range of publications, training programs, and research and information services.

With assistance from foundations and federal and state agencies, ICMA has established its Environmental Programs Division to help local government managers with their environmental problems. The *Superfund Assistance Program*, funded in part by an EPA grant, plays an important educational and support role for local governments facing potential liability under Superfund. The program also strives to enhance communication between federal, state, and local governments, the private sector, environmental groups, and private citizens.

In addition to mixed interest group conferences, such as the one summarized in this report, *Superfund Assistance Program* offers seminars, written materials, and one-on-one meetings for local government managers and other interested parties. In 1992-1993, ICMA conducted four Superfund conferences in Boston, Chicago, San Francisco, and Portland to provide local government officials an opportunity to learn more about how Superfund can affect their communities. A seminar on "Developing Contaminated Properties" will be held in Chicago on April 1–2, 1993. Additional seminars will be offered on a continuing basis.

In January 1993, a manual titled *Managing Superfund's Impact: A First Aid Kit* was published as a *ICMA MIS Report* to help local government managers and others effectively manage their involvement in Superfund. Finally, the *Superfund Peer Exchange Program* enables elected officials and top managers to obtain free advice from local government peers in one-on-one meetings.

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