UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 10, 1992

MEMORANDUM

TO: William K. Reilly
Administrator

FROM: Don R. Clay
Assistant Administrator

SUBJECT: Environmental Growth Initiative

The President's announcement of a 90-Day Review of Regulations presents us with a unique opportunity to initiate far-reaching reforms. This memorandum sets forth my near-term proposal to restructure and streamline OSWER's regulatory programs. Having completed the RCRA Implementation Study and the Superfund 30-Day Review, OSWER is in a position to jump-start reforms while continuing to examine additional regulatory reforms and potential legislative initiatives. In understanding the near-term reforms, and in continuing work on other statutorily-required activities, we will strive to achieve the goals of protection of human health and the environment in a manner that reflects the risks posed, eliminates unnecessary burdens and duplication, stimulates technology developments, and maximizes market incentives.

I believe that we can achieve all of these goals swiftly and impressively, yielding substantial cost savings to the American public. We estimate savings from the first phase of our RCRA reforms alone to conservatively total over $1 billion annually. Most important, in addition to aiding local governments and increasing industry's competitiveness, I believe that we can increase the effectiveness of our environmental mandate.

Briefly, the first phase of my reform proposal includes:

RCRA Reform Initiative

Problem: The RCRA program is widely perceived as redundant, burdensome, and overbroad in its sweep.

Solution: The RCRA Reform Initiative, as described in more detail in Attachment A, is a sweeping set of regulatory reforms designed to make RCRA's prevention and cleanup programs more cost-effective and risk-oriented. These reforms will significantly decrease the regulatory reach of RCRA.

Prevention Reforms. We will first establish, using a consensus approach, across-the-board concentration-based exemptions to replace the overbroad "mixture" and "derived-from" rules. For many remaining wastes, we will tailor management standards to the unique nature of the industry practices.

We will develop one set of universal treatment concentration levels to replace the current web of inconsistent, unwieldy land ban treatment standards. We will also eliminate these standards for low-risk wastes, and significantly reduce paperwork burdens to save substantial costs without affecting protection. We will eliminate RCRA permit requirements for many activities, such as low-risk storage and post-closure, and create "class" permits for others.

Remediation Reforms. We will reform Corrective Action (and Superfund, as well). We will develop uniform cleanup standards that protect land uses and encourage speedy, cost-effective cleanups. We will allow the stabilization of wastes in place, without costly permitting, removal and treatment. We will exempt temporary storage and treatment at cleanup sites from the land ban. We will exempt petroleum-contaminated media from RCRA corrective action because of the existence of adequate state cleanup programs. Finally, we will recognize that our current technology doesn't allow us to achieve ultimate cleanup goals at RCRA and Superfund sites. Immediate guidance will alleviate the expenditure of costs at such sites.

Underground Storage Tanks

Problem: Localities, small businesses, and others are ill-prepared to deal with the costly UST requirements.

Solution: We will provide a "menu" of ways that municipalities can comply with our financial responsibility regulations (resulting in savings of $300 million over ten years), and allow states the flexibility to extend compliance for small businesses over ten years. We will issue a directive giving examples of how to streamline cleanups (in our Minnesota pilot project alone, we project over $1 billion in savings over ten years). We will also provide legal protection to banks that loan money for tank upgrades. Attachment B outlines these reforms in more detail.

Innovative Technology

Problem: Our regulations pose many roadblocks to innovation.

Solution: As Attachment C indicates, we will pursue expanding the "research" exemptions in RCRA and TSCA. We will scale back insurance requirements, and commit to rapid processing of R&D permits. We will exempt testing on bioremediation from RD&D permits. We will also allow Federal agencies to speed the transfer of new technologies to market.

Superfund

Problem: The Superfund program emphasizes bureaucratic distinctions and process, rather than fast results.

Solution: The Superfund Accelerated Cleanup Model will radically speed up and streamline cleanups. As described in Attachment D, rather than emphasize the National Priorities List, removals, and remedial actions, the new model provides results the American people value: speedy reduction of health risks, and longer-term restoration of damaged environmental media. We are scheduled to brief you and Hank on this concept on February 27.

In addition, the Superfund Revitalization Team will work to remove administrative and regulatory strictures that unnecessarily prolong the cleanup process.

Enforcement

Problem: Enforcement of RCRA and Superfund requirements can entail costly and wasteful litigation.

Solution: As described in Attachment E, we will minimize the costly involvement of municipalities and small waste contributors in Superfund litigation. We will work to modify the "enforcement culture" toward environmental protection by pursing increased use of mediation and alternative dispute resolution.

We will reduce compliance costs by initiating an Environmental Extension Service pilot, and encourage companies to use innovative technologies or permanent remedies by granting them complete releases from Superfund and RCRA liability in return. Finally, we will accelerate property transfers by providing, upon request, "tiered" review of voluntary cleanups.

My deputies, office directors and I are excited by the opportunities that these and additional longer-term reforms pose. In the spirit of TQM, I would note that these reforms enjoy the broad-based support of program staff – e.g., those closest to the work believe they can achieve significant efficiency without compromising environmental protection. We will need close cooperation and support from you, Hank, the Office of General Counsel, and others. To succeed, however, these reforms must be accompanied by internal reforms. Within EPA we must place a higher value on discipline and teamwork – we must be willing to take risks, avoid analysis-paralysis, and bar late-hitters from the process.

I look forward to discussing my proposals with you.

ATTACHMENT A

RCRA REFORM INITIATIVE

The current RCRA system is essentially a series of checks and balances that ensure the safe management and cleanup of hazardous waste. Strong prevention measures, such as the land disposal (LDR) treatment standards, are overlain with strong engineering design requirements and cleanup standards. Like any system of checks and balances, there are situations in which the level of control is not commensurate with the environmental risks. It has always been difficult to design and implement an optimal waste management program given that, on the one hand, RCRA is highly prescriptive and detailed and, on the other, that the RCRA program was designed with far less information than we have today and under extremely tight time constraints.

This memorandum lays out the first phase of the RCRA Reform Initiative (RRI) – a broad set of reforms – on which EPA can act on swiftly and impressively. Taken together, the reforms of the RRI have the potential to reduce significantly the almost $ 13 billion in costs that the American public spends annually on RCRA. Since the largest portion of this expenditure is for site cleanup and waste treatment, the RRI has focused on providing relief in these areas. The RRI, once implemented, is estimated to provide savings in excess of $1 billion annually.

The first phase of the RRI includes reforms that can be taken in the short-term, and which will yield significant cost savings without sacrificing environmental protection. These short-term activities will each have substantial positive economic impacts across a wide spectrum of the regulated community. A second phase of the RRI is also under development. This second phase will make additional, more tailored changes to the RCRA program to achieve another increment of cost savings.

The RRI responds to the President's call for regulatory reforms in a manner that focuses on major problems with the current RCRA program. First, RCRA addresses too many low risk wastes, causing unnecessary regulatory burdens on segments of the American economy. At the same time, the more important environmental priorities do not receive the attention they merit. Second, current RCRA corrective action cleanup programs are likely to impose billions of dollars of costs on the American economy. Again, some of these cleanup costs are spent on low risk sites, an inefficient use of our economic resources. Third, because the current RCRA standards may not build on the existing practices of many industries, the need for industry to spend additional economic resources for compliance may not represent the most cost-effective means to achieve the appropriate levels of environmental protection. Finally, neither EPA nor the States have the resources to administer a program that is overly broad and which is not targeted towards the most important environmental risks.

It is around these four principal problem areas that the RRI reforms are structured.

What follows is a description of the major reform activities and how they address one or more of the principal problem areas.

I. RE-TARGETING RCRA TOWARDS WASTES PRESENTING SIGNIFICANT RISKS

We need to establish a system that captures high risk waste activities and that excludes low risk waste activities. This type of approach will significantly decrease the regulatory reach of RCRA. Many "as generated" wastes as well as cleanups actions will be freed from regulatory jurisdiction.

- To exclude low-risk waste activities, EPA will first need to establish across-the-board concentration levels in a rulemaking. These levels will reflect the risk presented by the hazardous waste or constituent. Any waste below these concentration levels will be exempted out of the RCRA hazardous waste system. Such concentration will allow a substantial portion of a low-risk wastes to exit from the RCRA hazardous waste management/cleanup system.

- Second, for a group of higher risk wastes that warrant some regulatory controls, we will undertake 4 rulemakings to create a set of reduced ,tailored management standards. There standards will be designed around the unique nature of the waste management practices used by industry. These standards will also be designed around the encouragement of recycling. Among the economic sectors we expect to benefit most from these reduced, tailored standards are the metal recovery industries, building and related industries using cement materials, recyclers that store incoming materials prior to processing, and collectors of common (or universal) wastes such as fluorescent bulbs and ni-cad batteries.

II. LOWERING THE COSTS FOR CORRECTIVE ACTION CLEANUPS

Perhaps the largest single burden on the American economy from RCRA is the enormous cleanup costs associated with the corrective action programs. Although the RCRA corrective action cleanups could have been limited to address failures of the RCRA prevention program for as generated wastes, Congress drafted the statute more broadly to capture old, historic wastes as well. The costs of cleanup for these old wastes are huge, and dwarf any other single element of the RCRA program.

We need, therefore, to break the old habit in RCRA of treating old waste cleanup situations the same as those associated with ongoing, industrial chemical operations. This theme – special rules for cleanups of old wastes – is the guiding principle behind the several changes to the corrective action programs contained in the RRI.

- First, we will shrink the jurisdiction of RCRA over these wastes by adopting concentration-based levels (described in first section above). This will take many old, low-risk wastes out of RCRA entirely. No corrective action will be required for these low-risk wastes.

- Second, we will finalized a proposal to allow temporary storage and treatment at cleanup sites to be exempted from more stringent LDR treatment standards that were designed with permanent disposal in mind. Imposition of LDR treatment standards on temporary units has discouraged voluntary cleanups and added significant extra costs to mandatory cleanups.

- Third, stabilization of wastes in place (and removing permit impediments from doing so) will allow reduction of risk at a minimum of cost without having to complete a much more expensive full remediation involving removal and/or treatment of the waste.

- Fourth, recognition that technical impracticability exists at some sites with regard to ultimate cleanup objectives needs to be recognized in our RCRA and CERCLA programs. Providing immediate guidance on this point will alleviate these expenditure of costs at such cleanup sites. These sites should be cleaned up to levels that are technically feasible.

- Fifth, special treatment standards need to be finalized for cleanups involving contaminated debris and soils. The risks posed by these materials are generally less than those posed by discarded wastes themselves. In addition, the treatment technologies applied to contaminated soil and debris need to be adjusted to take into account the matrix involved, and not just the hazardous constituents that may be present. Such tailored treatment standards would avoid the more extensive costs generally associated with standards based on relatively "pure" waste streams.

- Sixth, petroleum contaminated media need to be handled separately from other wastes subject to corrective action primarily because of the ubiquitousness of the problem and the existence of adequate state petroleum cleanup progress. The RRI would address this by granting the State of New York petition to exempt petroleum contaminated media from RCRA corrective action if an adequate state cleanup program exists.

III. ADJUSTING MANAGEMENT STANDARDS TO FIT THE PROBLEM

RCRA's standards for treatment, storage and disposal facilities have been largely dictated by HSWA and their development constrained by court-orders and statutory "hammers." This drives the RCRA program towards generic management standards that place thousands of diverse materials and processes into one regulatory box. For many materials and practices, it would be far more economically efficient to tailor standards to the actual risk posed by that practice. Moreover, RCRA permitting itself can be an onerous process for certain types of operations. A simple waste treatment operation is treated the same as a major facility for permitting purposes. These problems affect not only industrial facilities, but also serve to discourage RD&D operations and experimental labs that are interested in developing innovative waste-related technologies.

Our RRI reforms focus therefore on two primary goals – first, to tailor management standards to the risks posed and, second, to adopt special streamlined permitting rules for less risky or complex operations. In addition to industrial facilities, we would ensure that these regulatory reforms would be extended to RD&D and experimental operations.

The reforms contemplated by the RRI in this area are broad in both scope and depth. Although they address various components of the waste world, taken together they represent a comprehensive attempt to remove unnecessary regulatory burdens and to introduce efficiencies into the RCRA program.

- First, universal LDR treatment standards based on constituent concentrations would be developed. This would eliminate the confusion and unnecessary costs associated with the current system in which the same constituents in different wastes are subject to different standards. This is because the current system focuses on treatment of the waste, not the constituents. We expect that this top priority reform will have a major impact on simplifying the regulatory burden on both the regulated community as well as the regulators. This simplification should greatly increase the ability of industry to comply with LDR standards and of EPA enforcement resources to be allocated in the most effective fashion.

- Second, a host of risk-based, tailored management standards would replace current overbroad requirements. These would be extended to closing facilities, contained waste piles, mixed waste facilities subject to NRC regulatory controls and existing sumps in industrial plant.

- Third, the current technology-based LDR treatment standards (as well as related permit requirements) would be amended to take into account the risks involved. Elimination of regulatory controls over wastes treated to below characteristic or delisting levels would be a priority. Other regulatory relief would extended to other treated wastes commensurate with risks in a manner that still provides sufficient environmental protection.

- Fourth, paperwork burdens associated with the LDR and permit process would be reduced. We already are aware of a number of requirements that can be reformed to save substantial costs without sacrificing the appropriate level of regulatory control, including enforcement.

IV. STREAMLINING THE RCRA PERMIT SYSTEM TO FACILITATE CLEANUPS, RECYCLING, INNOVATIVE TECHNOLOGIES, AND RISK-BASED HANDLING OF CLOSED FACILITIES

The current RCRA permit system is overly broad and does not contain mechanisms designed to minimize the costs of permitting for low-risk facilities. This is true not only for ongoing operations, such as low-technology treatment units used at cleanup sites, but is also true for RD&D operations and experimental labs working on

innovative waste technologies (particularly those involving waste treatment). In addition, storage of waste materials prior to recycling often poses risks small enough not to warrant imposition of full RCRA permit oversight. Requiring permits in this situation often discourages or eliminates the recycling of wastes, which is counter to one of the primary themes of the RCRA program today.

With regard to post-closure permits, such permits are often not the best mechanism to address facilities that have closed without the removal of all wastes (i.e., have not "clean closed"). In some cases, the closed facility cannot come into compliance with permit prerequisites for groundwater monitoring or financial responsibility. Yet, the current system now requires post-closure permits for a vast number of facilities that have not clean closed, regardless of the environmental risks involved. This needlessly drains EPA and State resources and imposes costs on the regulated community that bear no relationship to environmental risks at stake.

The RRI contains a number of measures to ease the financial burdens and to streamline the processing of permits in the types of low-risk situations described above. In addition to the benefits that would redound to the industrial sector, the States would also benefit. The States have a high stake in reducing the administrative resources needed to permit waste operations where those operations either pose little risk or would be beneficial to waste treatment at cleanup sites.

- First, class permits would be adopted for low-technology units (e.g., filtration, dewatering, etc.) conducting short term cleanups. This would allow corrective action costs to be minimized without sacrificing environmental protection.

- Second, mandatory post-closure permits would be eliminated. Many closed facilities simply do not need the level of oversight that a post-closure permit entails.

- Third, the RCRA program would develop a class permit system for RD&D and experimental facilities. This would dramatically ease the regulatory burdens associated with permitting and would ostensibly redirect the dollars towards research and away from the permit application process.

- Fourth, storage prior to recycling would be subject only to a risk-based system of class permitting. This would allow tailored standards to be imposed according to the environmental risks associated with particular storage practices. Elimination of the requirement to obtain a full RCRA Part B storage permit will encourage recycling, particularly where some per-processing storage is needed.

- Finally, another element needed to encourage innovative waste technologies is reassessment of the 1000 kg. Limit on treatability studies for contaminated soils, which are an important aspect of CERCLA cleanups. Allowing more wastes to be held at treatability study facilities will enhance the development of new or improved treatment technologies.

ATTACHMENT B

Office of Underground Storage Tanks

Descriptions of Projects proposed as part of the President's 90 Day Review of Regulatory Actions

1. Rule to Extend the Financial Responsibility Compliance Deadline to 199 for Certain Facilities which meet Federal Criteria

Background

While the law requires that tank owners demonstrate financial responsibility to pay for the cleanup of leaks from underground storage tanks, EPA has phased in the compliance of these requirements to minimize the economic impact on small businesses. Since the regulations were published in 1988, we have extended the compliance date for the smallest petroleum marketers (and small non-marketers) from October 26, 1990 to December 31, 1993 to allow more States to develop State financial assurance funds which can be used to demonstrate compliance with these requirements, and State financial assistance programs which enable tank owners (especially small businesses) to meet underwriting criteria by complying with the technical requirements such as leak detection and upgrading or replacement of their old tanks. EPA, however, is still concerned that the costs of meeting underwriting criteria associated with the technical requirements are an important factor underlying the inability of some owners to comply with the financial responsibility requirements. These technical requirements coupled with the lack of a State assurance fund, grant, or loan program could force some small business to close their tanks when the 1993 compliance date falls.

Recommendation

EPA is developing a rule which will give States the flexibility to extend the federal financial responsibility compliance date to 1999 (which is past the last date for complying with all the technical requirements) on a case-by-case or group basis. The determination on whether to extend the compliance date for any facility or group would be completely up to the State, provided that certain Federally-determined criteria are met. If implemented, this rule could save businesses over $600 million by not having to accelerate compliance with the technical requirements (before 1998) and not having to pay for private insurance premiums until the extended compliance date.

2. Financial Responsibility Requirements for Underground Storage Tanks - Additional Compliance Mechanisms for Local Governments

Background

When the final financial responsibility regulations were published in 1988, EPA realized that many local governments would not be able to use the compliance mechanisms allowed in the rule. EPA, therefore, developed and proposed (in June 1990) four alternative mechanisms that are better suited for use by local governments. Three of the mechanisms allow local governments to self-insure (without incurring any additional expenditures). The other mechanism (a governmental guarantee) allows a local government (especially small general purpose governments and special purpose governments, like school districts) to obtain a guarantee from the State or another local government. The final rule is expected to save local governments over $300 million over a ten year period.

Recommendation

Expedite completion of the work on the final rule and publish it as soon as possible, so that local governments can use these flexible mechanisms well before they have to comply by June, 1993.

3. Clarify Lenders' Liability for Underground Storage Tanks (USTs)

Background

The uncertainty of the liability of secured creditors ("lenders") regarding contaminated properties that they hold as collateral has had a chilling effect of lenders' willingness to make loans to UST owners. Many UST owners, particularly small businesses, are in need of capital to make improvements to their facilities to comply with a broad spectrum of environmental regulations (for example, regulations concerning USTs, Stage II Vapor Recovery, and UIC programs). Compliance with these regulations will result in greater environmental protection in the future. Without adequate financing, many of these facilities will be forced to close, which may further inhibit growth in communities that depend on these facilities.

Recommendation

Clarify EPA's position on the liability of UST lenders through Agency legal interpretation or rulemaking (similar to that currently in process under CERCLA). These approaches would clarify under what circumstances a lender incurs liability, thus removing a current barrier to the financing of UST facilities and resulting in greater capital availability for UST owners. In addition to the environmental benefits associated with UST facility improvements, the increased funding available to UST-related businesses would have a "ripple" effect. Equipment manufacturers, distribution companies, and contractors would benefit from the expenditures made by UST owners to upgrade their facilities.

4. Policy Directive on Reducing Costs of UST Correction Actions

Background

Underground storage tank cleanup programs are implemented by States and local governments, generally under their own regulations and procedures. Often, these regulations, policies and procedures are more stringent, less flexible, and more complex than required by federal law or regulations, significantly increasing the costs of UST corrective actions. For example, many States require costly site assessment plans that can be eliminated, specific technologies that are outdated or ineffective, or extensive cleanups at sites that pose minimal threats to human health or the environment. It is estimated that correction actions, if they are conducted under current practices, will cost approximately $32 billion over the life of the UST program. EPA believes this cost can be greatly reduced. One medium sized State has estimated that it's streamlined procedures and policies will save its regulated community hundreds of million of dollars over the next several years.

Recommendation

Publish an Agency policy directive that clarifies the flexibility that already exists in the federal corrective action regulations and promotes the use of cost-cutting opportunities. Such a directive can stimulate and effect desirable changes in State rules and policies more quickly than a new federal regulation which would take much longer to develop. Coupled with EPA-funded projects that help individual State and local programs "streamline" their cleanup procedures, these efforts will cut costs and red tape while speeding up necessary cleanups.

ATTACHMENT C

REDUCING THE BURDEN OF GOVERNMENT REGULATION
TIO PROPOSALS

Foster Technology Development and Treatability Testing

- Expand the 1000 kg RCRA sample exclusion to 10,000 kg.

  Problem: Under the existing exclusion only 250 kg of non-acutely hazardous waste may be treated in a day. This quantity (less than two drums) is insufficient for testing many pilot-scale technologies. When the sample exemption rule was first proposed, many commentors recommended an even higher quantity limit. EPA saw merit in this suggestion, particularly for contaminated media involving low concentrations of contaminants, but took the matter under advisement pending experience with implementation of the more restrictive rule. EPA is aware of no abuses of the existing rule. Numerous commentors continue to point out the utility of a higher ceiling. Developers also point out substantial administrative costs associated with ensuring that there are no exceedances of current storage and daily processing limitations.

  Proposal: Revise the Treatability Study Exemption Rule (40 CFR 261.4 (e)-(f))

- Apply the new 10,000 kg exclusion (or some variation) to PCB waste

  Problem: Current TSCA regulations provide relief from manifest requirements only for samples which are shipped for analysis. At the Norwood Superfund site, a 5 pound PCB sample cost $6-8,000 to manifest and ship prior to treatability testing.

  Proposal: In coordination with PTS, promulgate a rule which will provide regulatory relief for small scale PCB testing for technology development and treatability assessment. The rule would provide requirements which are consistent with those for RCRA waste (see above).

Technology Development and RD&D Permitting

- Tailor the financial assurance requirements for RD&D permits

  Problem: For RD&D permits under RCRA, the law allows a waiver of all requirements except public participation and financial assurance. The financial requirements are currently consistent with those for full-scale facilities.

  Proposal: Using administrative authorities, modify the financial assurance requirements to more realistically account for conditions associated with small-scale

treatability testing.

- Until the 10,000 kg rule is promulgated, issue a commitment to process RD&D permits within 120 days for sample sizes less than 1000 kg.

  Problem: The 1000 kg sample exclusion requires state adoption for states with RCRA delegation. Only 7 states have adopted the rule. For the remaining states, the RD&D permits are the only avenue available for testing new technology.

  Proposal: Set a goal of 120 days for the Agency to issue RD&D permits for small (less than 1000 kg) samples. This would apply to approximately 35 states which have not been delegated authority for RD&D permits.

- After promulgation of the 10,000 kg exemption, continue our commitment to process RD&D permits within 120 days

  Problem: Uncertainty regarding the future ability to conduct treatability testing will inhibit new technology development

  Proposal: Provide a long-term commitment to expedite permits for less than 10,000 kg of non-acutely hazardous waste. Another option would be to limit this offer to facilities that are currently operating under a TSD permit.

- Propose R&D Permitting By Rule for Bioremediation Studies

  Problem: The development of biological technologies for hazardous waste remediation is an Agency priority. These technologies pose very little risk for releases since they operate at standard temperature and pressure.

  Proposal: Propose a rule which would allow treatability testing for naturally occurring organisms to be exempt from RD&D requirements. This proposal would allow contaminated soil to be tested in a manner similar to research on wastewater prior to discharge.

Technology Development on Federal Facilities

- Self-Certification for Technology Development and Evaluation Centers Run by Federal Agencies

  Problem: Some EPA labs have spent years trying to get research facility permits. Other Federal agencies are also interested in developing research labs and pursuing active programs for developing new treatment technologies. Agencies would benefit by the ability to self-certify rather than go through the permitting process every time a new technology is tested.

Proposal: Promulgate regulations allowing self-certification for Federal agencies. A limitation of this proposal is that there is currently a shortage of guidance against which these agencies could self-certify. The RD&D permit mechanism lacks the necessary specificity, and the Subpart Y regulation designed to regulate R&D facilities has not been promulgated. State willingness to adopt such a provision in an area of uncertainty.

ATTACHMENT D

SUPERFUND'S FUTURE:
A NEW SUPERFUND PARADIGM

Introduction

The present Superfund program operates within a complex and, at times circuitous pattern that was designed ten years ago to accommodate a new and complicated law, then tinkered with as the program lurched from its infancy. The result has been a somewhat "jerry built" structure, altered to fit everyone's perceived needs and a host of conflicting expectations, but basically satisfying few. Early implementation focused on numerous intricate administrative and legal requirements. However, recent budget emphasis dramatically shifted towards construction; policy emphasis has moved from Fund to enforcement. Various committees and workgroups continue to suggest ways to speed up the process. Congress will soon consider many ideas for restructuring under Reauthorization.

Amidst this evolution, however, a few facts are unlikely to change - the public does not understand our present process or grasp the full scope of our work. It wants faster cleanups, and believes that enough money has been given to Superfund to get the job done. The bottom line is that we can expect neither a lowering of expectations into a new focus on radically speeding up and streamlining the program.

Background

The current system for Superfund cleanups is based on two discrete programs – remedial and removal. The remedial component is a series of steps to define and address long term cleanup sites on the National Priorities List (NPL). Separate and apart are the activities of the removal program. These sites enter our system through a different "door," usually the States (through the National Response Center) seeking our help at a specific release. Some are spontaneous "screaming emergencies," others are prioritized for short term action as money becomes available. While the removal program does not address ground water, man of the other risks and response actions associated with the two programs are similar. Yet, there are enormous differences between remedial and removal actions regarding the depth of investigation, and cost and time expended to complete a cleanup.

In summary, the innate complexity of our process and our heretofore unsuccessful attempts to portray progress have left the Superfund program highly vulnerable to criticism. Therefore, we must focus attention on a few major outcomes that the public will value. – We must make sure we deliver these outcomes and do it in terms the public will understand. For this reason, the new Superfund paradigm must be:

- simple and flexible – to allow fastest possible, worst first, risk reduction;
- free of administrative contrivances that divide and diffuse the totality of reduced risk

at remedial and removal sites;

- realistically achievable in that we make realistic cleanup commitments and deliver them on time; and
- focused on rapid protection of people and the environment and disconnected from the single and unattainable goal of returning all groundwater to pristine condition.

The New Superfund Paradigm

Under this paradigm all sites on which Superfund takes any kind of cleanup action are Superfund sites. The distinctions between "remedial" and "removal" are eliminated. Rather than viewing these two entities as separate programs, they are viewed as separate legal authorities with different, but complimentary, application at Superfund sites.

Rather than entering the program through one of two doors marked "remedial" or "removal", all sites enter through one marked "Superfund". All site assessment takes place in one program, combining, as appropriate, elements of present removal assessments, PA/SIs, RI/FSs, and risk assessments. During the assessment process, a Regional Decision Team institutes short term activities that address all threats to the health and safety of the existing population. These actions include cleanup activities generally taking no more than three or, at the most, five years – a reasonable time frame based on the program's demonstrated ability to identify and address immediate risks to people and the environment within three to five years.

These activities are published in the Federal Register (for public information purposes only, not as a rulemaking) on an Early Action List. It is crucial to note here, that though these actions are "short term" and quickly implemented, they could eliminate the majority of human risk from Superfund sites. Enforcement activities would commence with immediate PRP notification, expedited orders/negotiation, and opportunity for voluntary cleanup. Because the vase majority of risk reduction occurs in this part of the program, most of EPA's public participation/information activities are focused here. Community relations and opportunities for Technical Assistance Grants (TAGs) continue as they do today. The State role is confirmed in its present configuration; further, they can continue with their own State-funded programs, resulting in a net increase of cleaned-up sites nationwide.

The Regional Decision Team can also determine if and when long term remediation (e.g., ground water restoration) is appropriate. Sites would then be placed on the Long Term Remediation List (formerly known as the NPL), and cleaned up over many years. Regional Decision Teams could also decide that no Federal action was appropriate or that the site should e deferred to RCRA or other response authority.

The major parameters of this concept are outlined below.

1. Single Site Assessment Function. There are a number of redundancies in the

beginning of the program as it is structured today. Hazardous waste sites can receive numerous similar, but sequential, assessments before any kind of cleanup begins. Sites are evaluated by the removal program (removal assessments), the site assessment program(PSs, SIs, Expanded SIs, and Hazard Ranking System (HRS) scoring), the remedial program (RIs, baseline risk assessments, and FSs), and even the RCRA program. ATSDR, State, local and private party assessments start from scratch, -- they do not necessarily take into consideration the information and data generated by the studies that preceded them. This happens not only because of the obvious financial incentives to the contractor community and the human inclination to distrust the work of others, but because each part of the program is gathering data to respond to its particular perceived need. The site-assessment program wants to know if it will score on the HRS; the removal program wants to know if the site is going to blow up; the remedial program wants to know the extent of the ground water plume, the size of the cap, etc.

Large amounts of time and money are expended on the process of executing separate contracts, mobilizing sampling teams, designing sampling strategies, modifying health and safety plans, etc., as each part of the program goes out to "feel a different part of the elephant." Assessment, in all of its forms, now absorbs far more time than any other part of the process. The public believes that the program has been cleaning up sites for ten years with little result. It does not know that much of this time has been spent in various parts of the assessment process. Whole steps in this redundant process must be combined if the goal of expediting cleanup is to be achieved. The FIT/TAT contract mechanism could support this combined assessment effort and thereby assist in blending the remedial/removal "cultures."

In some Regions, there will be no reason for a two-staged screening function (PA followed by SI) since there will be no backlog of sites to be screened. Discovered sites could be screened once and, if serious, go directly to RI level data collection and risk assessment. Appropriate short term cleanup activity, combined with public participation/outreach, and expedited enforcement action (i.e., PRP search, information gathering, and notification) could begin immediately. These changes in the assessment process could save several years, since the level and type of risk posed by the site would be understood and often eliminated prior to listing.

Placing all site assessment activities in one area would require the development of new protocols but the would serve many needs. Rigid QA/QC procedures would assure the integrity and multiple-usability of the data developed.

2. Regional Decision/Management Teams. Regions often know the most likely course of action to remediate a site well before the decision process allows them to act. In future years that capacity certainly will expand. The Region Decision Teams would "traffic cop" sites onto the Early Action List and/or score long term restoration actions such as groundwater sites for inclusion on the Long Term Remediation List. In addition, standards for both remediation levels and technologies are likely to have been developed and accepted. This move toward standardization will both speed up the decision making process and allow increased flexibility in the staging or timing of various activities. The

chief benefits are the ability to:

make early action decisions while studies continue;
carry out relatively short term cleanup steps that may in many cases be all that is necessary without triggering the site listing process;
stay flexible while various activities are going on, rather than keeping functions in rigid and sequential boxes; and
effectively utilize the decision making expertise in the Regions, delegating where appropriate (e.g., standard remedy selection), to the project manager lever to speed cleanups.
realize time and cost economies

Regional Decision/Management Teams would require that skills of the most experienced managers (Fund and Enforcement), site and risk assessors, on-scene coordinators (OSC), remedial project managers (RPM), community Relations coordinators and State officials, as appropriate. The OSC and RPM individual site management function would eventually become combined, which would further increase the efficiency of the process. Enforcement orders and negotiations would be conducted within strict deadlines. Voluntary cleanup could be performed by PRPs and appropriately overseen by the Agency (depending on capability and track record of PRPs). Training and commitment on the part of Superfund Headquarters and Regional management can help overcome different cultures that now exist and use the combined expertise in the remedial, removal, and enforcement programs to achieve the common goal of risk reduction.

3. Early Actions. Risks at NPL sites fall into a number of categories, but mostly commonly are associated with the direct contact with wastes or contaminated soil, or drinking contaminated water from ground water sources. Source control steps taken early in the remedial process, such as drum removal, soil cleanup and access restraints, as well as alternate drinking water provision, frequently provide substantial risk reduction to existing populations. Actions taken under removal authorities are designed to address just such risks.

Early Actions would be an expansion of current removal activities. In fact, we have already interpreted and expanded removal authority to allow continuing cleanup actions at NPL sites if consistent with remedial actions (e.g., Radium Chemical, White Chemical, Avtex, Publicker). True emergency situations such as train derailments would continue to be handled as they are today. All remedial actions, (other than long term ground water pump and treat or extensive site restoration technologies such as large mining site cleanups, wetlands/estuaries remediation, or extended incineration projects), would be carried out through the Early Action phase of the program. This would include such activities as:

- waste and soil removal,
- preventing access,
- capping landfills,

- moving people
- providing alternative drinking water sources.

Most important, all immediate threats to public health and safety would be addressed in this part of the process. While standardized cleanups for similar sites would expedite many cleanups, innovative technology would be used whenever it is faster, more efficient, more acceptable to the public, less expensive, or less environmentally impactive. Both standardized and innovative treatment technologies offer opportunities for cost efficiencies.

The public could be notified of activities at these Superfund sites through a quarterly Federal Register not -- the Early Action List. Sites would be listed when the decision to cleanup was made, then documented and delisted when the work was completed. Public input would be achieved through all the mechanisms (including TAGs) that are now used by the program's community relations professionals. Most important, Superfund progress would be measured against all of its risk reduction activities and most of those activities would be completed rapidly. Under the New Superfund Paradigm, the Agency would commit itself first and foremost to substantially reducing or eliminating threats to public health and the environment within a specified time fame and that time frame would be short. This commitment would be EPA's primary measure of success.

4. Long Term Remediation. Sites requiring ground water restoration or long term remediation (e.g., mining sites, extended incineration projects, wetlands/estuaries) would be published in the Federal Register on the Long Term Remediation List. They would not be placed there until the need for such remediation activities was clearly established by the site assessment function. Many sites would already have been addressed under the Early Action phase, eliminating the need to evaluate many of the issues that hold up RODs today. Enforcement opportunities would be vigorously pursued using the full arsenal of Enforcement tools to obtain PRP participation. Community Relations would be performed and public participation fostered. Innovative technologies and standardized cleanups would be used, as appropriate. Of greatest benefit, the public would understand that the actions placed on this list would require many years, if not decades, to clean up, but would pose no immediate threat at all to existing populations. Removing the groundwater restoration question to a separate part of the decision making process would also allow for a more reasonable evaluation of the benefits and costs of such restoration. Public policy makers could then more reasonably decide which ground water resources warrant priority action given limited funding.

Implementation

This concept has been developed in Headquarters and discussed with several Regions. The next step is to hypothetically run some sites through the proposed process and see if there are any unforeseen "stoppers." After receiving Agency management approval, as well as DOJ endorsement, appropriate White House, OMB and Congressional contacts would be briefed. The next step would be tested on a pilot basis in one or two Regions. Various Regional pilots are being reviewed for utility in the

execution of the process. The timing is very opportune considering the congruence of current recommendations for improving and streamlining Superfund.

Conclusion

A program guaranteeing prioritized public health protection at all sites, without programmatic distinction, within five years of site identification, and having, as a separate activity, the long and difficult job of environmental media restoration, has a better chance of being understood, appreciated, and, therefore, publicly supported.

Counting the totality of risk reduction rather than focusing on NPL site deletions, is a simple, uncontrived, and true expression of the work of the program. It fulfills several of our most basic needs in building public confidence. First and most important, it focuses the program on the very substantial risk reduction that is now achieved, and achievable. Second, it focuses on the distinction between sites with the risk reduced to safe levels because of completed surface cleanup and those sites presenting no immediate threat, but requiring decades to complete. And third, it supplies what the public expects, and has every reason to expect from a program called "Superfund" - the achievement of appropriate cleanup at large numbers of sites.

ATTACHMENT E

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Another promising area to pursue is the increased use of mediation and alternative dispute resolution. This would be consistent with the direction of the new executive order on civil justice reform and with the regulatory review objective of reducing the burden on small businesses. If the Agency shows its willingness to resolve compliance issues or cost recovery cases through mediation, it would build more positive relationships with the private sector and reduce time spent and transaction costs on both sides. Although the Agency has a long-standing policy of support ADR, ADR has not received the level of attention nor realized the benefits hoped for. A renewed emphasis on ADR through more training for the Regions, offering training to State enforcement partners; peer exchanges using Regions that have been successful e.g., Region 5 in cost recovery - would be a good way to re-vitalize this area. But more and new support would have to be added; some ideas are 1) to engage outside experienced mediators on retainer to the Agency, give them appropriate program training and make the service available "free of charge" to the Regions and, 2) work to modify the "enforcement culture" within the Agency (including the IG), on the Hill and in the environmental community to make ADR more acceptable and less of a risk.

Reducing the Burden on the Economy

Superfund and Small Contributors

The Superfund process may involve responsible parties in extensive negotiations with EPA and, possibly, in protracted litigation. To relieve those who made only small contributions of hazardous substances to a site from these burdens, Congress gave EPA the authority to reach quick de minimis settlements. EPA began an initiative in FY 1991 to achieve more de minimis settlements (about 50 have been done to date) and to do so at an earlier stage in the cleanup process, thereby minimizing the involvement of small contributors. A draft strategy for early de minimis settlements has been developed and widely distributed for review, which has been predominately favorable; the strategy will be made final shortly. EPA is also working with DOJ to develop an administrative mechanism to achieve quick resolution of the liability of extremely small contributors. Together these initiative should help significantly to reduce transaction costs for small contributors, who are frequently small businesses, and thus reduce their economic burden.

Superfund and Municipalities

Municipalities are involved at about 25% of sites on the National Priorities List. EPA's policy to date has been not to pursue municipalities (or other parties) whose only involvement at a Superfund site is that they generated or transported municipal solid waste from households. Parties, however, that EPA has pursued, such as generators of

industrial hazardous waste, have recently sued municipal generators and transporters for contribution costs. These suits have incurred large transaction costs for municipalities as well as the threat of large payments for cleanup. Last July the Administrator announced an initiative to relieve municipalities of this economic burden by developing guidelines for allocating a fair share for generators or transporters of municipal solid waste; with this allocation the parties can obtain contribution protection from the United States. The guidelines are to be published shortly.

ENVIRONMENTAL EXTENSION SERVICE (EES) PILOT

We will initiate an Environmental Extension Service (EES) pilot program to be administered through a university grant. The EES will build a network of non-Federal Environmental Extension Agents to provide services related to both solid and hazardous waste. These services would include regulatory outreach to the RCRA universe, transporters, conditionally exempt generators. In addition, EES would develop multi-jurisdictional recycling centers, environmental outreach programs and college environmental sciences curriculum, and information dissemination programs to the general public and business communities. Specifically, outreach to small businesses will include assistance in finding markets for recycled material and new technologies, assistance in implementing efficient waste minimization and pollution prevention, and outreach on regulatory compliance requirements. As a one-year pilot, a single EES program will be established at a university with academic and practical experience in solid and hazardous waste management, community outreach, and economic development.

Regulatory Relief Ideas

Voluntary Cleanup

Current "best" estimates suggest that there are several thousand potential Superfund sites which are several years away from being evaluated, proposed for and placed on the NPL. Many of these are connected with active businesses, which, for reasons of good business practice and corporate liability, are eager to start and complete appropriate cleanup measures. For many reasons, they also strongly desire some avenue of "official EPA approval" of their cleanup endeavors. The press of work at sites already on the NPL (and/or where cleanup is underway) makes diversion of traditional negotiation/oversight resources impossible. OSWER believes it is most appropriate to pilot test alternative forms of "tiered" oversight for sites at which potentially responsible parties volunteer to undertake cleanup. If successful, expansion of the concept could increase the number and pace of site cleanups, reduced transaction costs associated with NPL listing and negotiation for cleanup, and reduce the burden of protracted and uncertain "liability" status an operating businesses.

Unconditional covenant not to sue

Under Section 112 (f)(2) of SARA, the Agency may grant a very broad covenant not to sue to parties which undertake treatment of site contaminants which results in permanent elimination of health or environmental health threat. Such covenants are very desirable to private industry as a clear end to potentially expensive corporate exposure. OSWER has also been exploring the use of innovative technologies which produce just such permanent risk reduction. In addition, OSWER is developing some "standard" remedy approaches for certain site types, and some of these will be permanent treatment. These events offer an ideal laboratory for exploring more aggressive use of 122 (f)(2) waivers, as an inducement to private parties to choose a permanent treatment approach. Substantial savings could be realized in transaction costs (reduced negotiation time, less "second guessing" of EPA's site characterization or choice or remedy). In addition, site cleanups might get underway (and completed) faster, benefiting both the environment an corporate ledgers. In addition, more permanent solutions would mean reduced long-term operation and maintenance costs.

FaxBack # 11665