

SUPERFUND SETTLEMENTS PROJECT

August 1, 2011

Alexander Cristofaro
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U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
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Re: Rulemaking re CERCLA Hazard Ranking System (RIN: 2050-AG67)

Dear Alex,

Thank you again for taking the time to meet with us on Thursday regarding EPA's newly announced rulemaking to revise the CERCLA Hazard Ranking System ("HRS") to consider vapor intrusion in scoring sites for listing on the National Priorities List ("NPL"). We found the candid discussion to be most informative.

Of particular interest was the clarification of EPA's goals in pursuing revisions to HRS at this time. As we now understand it, the primary goal here is not to address vapor intrusion per se – which EPA and the states already do, without listing sites on the NPL – but to address the underlying ground water (and soil) contamination, even if it affects no current or future drinking water supplies. A related goal apparently is to make the Superfund available to pay for those ground water cleanups.

We note that neither of these two goals was stated in EPA's public summaries of this rulemaking, including the recent entry in the Semi-Annual Regulatory Agenda. The extensive public comment process that EPA provided this spring would have been very different, and far more meaningful, if these two goals had been disclosed and made available for public comment.

After reflecting on Thursday's discussion, we remain puzzled that EPA is proceeding with this rulemaking even though it apparently has not identified any sites that fit its stated rationale, i.e., sites that cannot be listed on the NPL today but would become eligible if the HRS were revised. 76 Fed. Reg. at 5370, 5372 (Jan. 31, 2011). We appreciated hearing that the program office agrees with our comments on this point (in our July 21 letter to you) and agrees that it has a substantial burden of proof to carry in this regard. We were surprised, however, that EPA is devoting resources toward issuing a proposed rule in January before it has documented the existence or the extent of the "problem" it hopes to solve through this rulemaking.

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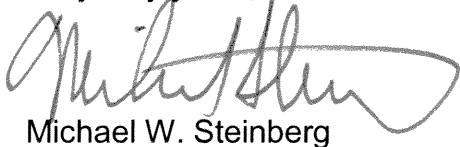
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Indeed, EPA's approach here puts the cart before the horse, particularly in the context of the Superfund program. We all know that Superfund continually struggles to make progress on its top-priority objective, i.e., completing work at hundreds of unfinished NPL sites. Each year, EPA is roundly criticized for not having achieved enough "construction completion" milestones. EPA management routinely reports that other important program elements are also compromised by resource limitations. PRP searches are delayed and/or limited in scope; orphan share funding is artificially constrained; non-time-critical removal actions are delayed; and so on.

Under these circumstances, it is not sound public policy to spend Superfund money on a purely discretionary rulemaking that -- at most -- might facilitate the future listing of a small number of additional NPL sites. This rulemaking will remain a poor policy decision even if EPA eventually identifies a list of sites that might become eligible for NPL listing if the HRS is revised.

In closing, we thank you for your consideration of our preliminary comments on this new rulemaking.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael W. Steinberg", with a large, sweeping flourish at the end.

Michael W. Steinberg

Counsel to the Superfund Settlements Project

cc: all Project members