

SUPERFUND SETTLEMENTS PROJECT

March 15, 2011

VIA ELECTRONIC MAIL TO:

Superfund.Docket@epa.gov

AND VIA U.S. MAIL TO:

U.S. Environmental Protection Agency
EPA Docket Center, Superfund Docket
Mail Code 28221T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-SFUND-2010-1086;
EPA's Notice of Opportunity for Public Input on the
Potential Addition of Vapor Intrusion Component to the
Hazard Ranking System, 76 Fed. Reg. 5370 (Jan. 31, 2011)

Dear Sir or Madam:

On behalf of the Superfund Settlements Project ("SSP"), I am pleased to submit these comments on the United States Environmental Protection Agency's ("EPA's") Notice of Opportunity for Public Input on the Potential Addition of Vapor Intrusion Component to the Hazard Ranking System ("Notice"), 76 Fed. Reg. 5370 (Jan. 31, 2011). For the reasons set forth below, we believe that EPA has yet to demonstrate any need to undertake a rulemaking to amend the Hazard Ranking System for this purpose, and we urge EPA not to initiate such a rulemaking.

I. Background on the Superfund Settlements Project

The SSP is an association of major companies from many different sectors of American industry. It was organized in 1986 in order to help improve the effectiveness of the Superfund program by encouraging settlements, streamlining the settlement process, and reducing transaction costs for all concerned.

Since its formation, the SSP has provided constructive input to EPA and other federal agencies on critical policy issues affecting the cleanup of contaminated sites. SSP representatives have also testified before Congress on many of these issues. The SSP also has played an active leadership role in the national policy debate over many

Superfund issues, and has been a strong supporter of EPA's Superfund Administrative Reforms since they were announced in 1995.

The members of the SSP have extensive experience in addressing the problems presented by contaminated sites. These companies have been involved at hundreds of Superfund sites across the country over the last 20 years. As just one indicator of the scope of their experience, the members of the SSP have spent well over \$6 billion to investigate and remediate contaminated sites since the federal cleanup programs began.

II. HRS Revisions for Vapor Intrusion Appear Unnecessary

In reviewing the EPA Notice and the limited information that EPA has made available to the public on this topic, we find scant evidence to suggest that a new Hazard Ranking System ("HRS") pathway is needed. In other words, EPA has not clearly defined the problem that it would seek to solve through HRS revisions. Because the problem definition is the foundation upon which this entire rulemaking would be built, we begin here by addressing this issue.

EPA's current consideration of a new vapor intrusion pathway is based primarily on a May 2010 report by the Government Accountability Office ("GAO"). Accordingly, it is essential to be clear about what GAO said – and what GAO did not say.

GAO noted in passing that if sites are not assessed for the National Priorities List ("NPL") using a vapor intrusion pathway, and are therefore not listed on the NPL, then there is a potential that some contaminated sites with unacceptable human exposure will not be acted upon.¹ GAO provided very little information to support this conjecture, merely remarking that "up to 37 additional sites could be eligible for NPL listing if EPA includes vapor intrusion assessments as part of the listing process."²

The GAO Report did not name these 37 sites or provide any details about them. GAO presented no information regarding the type(s) of sites, the nature or extent of any human or ecological risks posed by vapor intrusion, or the expected costs of addressing vapor intrusion. In fact, at the EPA public listening session held on February 24, 2011, EPA indicated that GAO obtained this estimate of 37 sites by calling EPA's Regional Offices and asking each Region how many sites might be eligible for listing. To this day, GAO does not have a list of the actual sites.

Moreover, GAO's conjecture regarding these sites was superficial. Basically, GAO noted (correctly) that many states are experiencing financial strain and are now trying to

¹ U.S. Gov't Accountability Office, *Superfund, EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites are Expected to Be Added to the National Priorities List* (GAO-10-751) ("GAO Report") 33 (2010).

² GAO Report at 31.

keep spending in line with revenues. Thus, GAO assumed, some states may find it difficult to clean up some vapor intrusion sites.

But from that generalization, GAO then made the unsupported leap to the conclusion that EPA should gather all of these sites under the Superfund program, specifically through NPL listings, and address them with federal funds instead. This idea has little to recommend it, for the reasons set forth below.

III. Superfund Cannot Readily Accommodate a Large Number of New Sites

One practical reason why EPA should not seek to list vapor intrusion sites on the NPL is that the Superfund program already has its hands full addressing its current workload, and it does not have surplus financial or manpower capacity for new discretionary projects. (As we show below, the NPL is also poorly suited to providing the necessary response at vapor intrusion sites.) Currently, many high-priority and high-cost NPL sites await remedy selection and construction completion. Many of these projects are progressing far more slowly than EPA's critics would like.

The Superfund appropriation has remained essentially flat and, based on current budgetary constraints, will likely remain flat for the foreseeable future. Under the circumstances, it would be self-defeating for Superfund to take on a new, ill-defined universe of vapor intrusion sites. Each new site added to the NPL will effectively impose significant long-term financial obligations on the already-strained Superfund budget, long before any appropriation is in place for the out-years.

As we have previously pointed out, every new site added to the NPL inevitably diverts resources from other sites, and thereby delays the completion of other high-priority projects. EPA has made it clear that Superfund should not be the "go-to program" for all contaminated sites, because the NPL is "the tool of last resort." See, e.g., U.S. General Accounting Office, GAO/RCED-97-20, *Superfund: Times to Complete the Assessment and Cleanup of Hazardous Waste Sites* 41 (March 1997) (EPA's Detailed Comments on the Draft Report). Vapor intrusion sites are a good illustration of that statement.

In sum, flooding the NPL with new vapor intrusion sites would be a poor use of Superfund's limited resources and would compromise the program's overall performance.

IV. Some Sites with Vapor Intrusion Issues Are Already Superfund Sites

A second reason to be skeptical about the need for a new vapor intrusion pathway in the HRS is that some sites with vapor intrusion issues are already in the Superfund pipeline. Thus, they are being addressed -- either through removal actions or through remedial actions -- even without a separate HRS pathway that allows scoring for vapor intrusion issues.

EPA currently conducts investigations that include vapor intrusion impacts in both the remedial and removal programs, even though vapor intrusion is not considered as a separate pathway for HRS scoring purposes.³ Indeed, GAO found that 13 sites are already being addressed for vapor intrusion under the Superfund removal program.⁴

If a vapor intrusion site is truly of “NPL caliber,” then it is likely to be captured and addressed under the Superfund remedial program even without a separate HRS pathway. This is because a site with major vapor intrusion issues probably will be listed on the NPL using one or more of the other HRS pathways – ground water, surface water, soil, and air migration.⁵

In fact, vapor intrusion issues are sometimes identified after sites have been listed – and are being addressed – for other issues. Thus, EPA itself has recognized that:

Samples of gas in the soil or groundwater are first collected near a contaminated site. If no contamination is found near a site, then vapor intrusion should not be a problem. If contamination is found, depending on the type, the search may be widened to include samples closer to or on individual properties. The next step is to take vapor samples from the soil under the home’s foundation⁶

For instance, GAO discussed the Lusher Street Groundwater Contamination Site in Indiana. Although EPA had not yet evaluated the vapor intrusion pathway at that NPL site, “officials said that they know the site could pose a vapor intrusion risk to human health because a contaminated groundwater plume is present in a mixed residential and industrial area.”⁷ This is a clear example of a vapor intrusion problem being detected at an NPL site via another exposure route. It underscores the point that adding a new vapor intrusion pathway to the HRS appears unnecessary.⁸

³ GAO Report at 15, 31.

⁴ GAO Report at 31.

⁵ EPA, Overview of the Present Hazard Ranking System, *available at* http://www.epa.gov/superfund/sites/npl/overview_of_present_hrs_info_sheet.pdf; see also EPA, Rationale for the Potential Addition of a Vapor Intrusion Component to U.S. EPA’s Hazard Ranking System, *available at* http://www.epa.gov/superfund/sites/npl/rationale_for_adding_vi_to_hrs_info_sheet.pdf

⁶ EPA, What You Should Know About Vapor Intrusion, *available at* http://www.epa.gov/superfund/sites/npl/what_you_should_know_about_vapor_intrusion.pdf

⁷ GAO Report at 15-16.

⁸ Similarly, EPA recently proposed to list the Garfield Ground Water Contamination site and the CTS of Asheville, Inc. site on the NPL. Although some have suggested that these sites have vapor intrusion issues, the fact is that EPA has already begun the NPL listing process even without any HRS revisions to add a new pathway.

V. Few Vapor Intrusion Sites would be Appropriate for New NPL Listings

Still another reason why revising the HRS seems unnecessary is that the NPL is typically a poor fit for the issues posed by vapor intrusion problems. Therefore, reopening the Hazard Ranking System for the purpose of listing sites with these problems would be ill-advised.

According to GAO, “[i]ntrusion of contaminated gases into indoor air may lead to fire; explosion; and acute, intermediate, and chronic health effects.”⁹ Such imminent conditions as fire risk, explosion risk, and acute health effect risks obviously cannot be left in place for years during the NPL listing process, the negotiation of an administrative order for the performance of a Remedial Investigation/Feasibility Study, the conduct of the RI/FS itself, the development of a Proposed Remedial Action Plan, the selection of a remedy, the negotiation of a consent decree for performance of that remedy, and so on.

On the contrary, the response actions typically taken to mitigate vapor intrusion concerns are relatively straightforward. They certainly do not require years of costly studies under EPA oversight. Such measures include sealing potential vapor entry points, sub-slab depressurization, vapor barrier and passive venting for new construction, and (at commercial and industrial facilities) building pressurization/HVAC modifications. These mitigation activities are limited in nature and duration. In practice, they are most often addressed under state and local programs.

In fact, the NPL remedial program is extremely poorly suited to address immediate or acute risks. The listing process itself often consumes several years. The RI/FS process does not begin immediately, and once it begins, it typically consumes several years more. The development of a proposed remedial action plan, and the selection of a remedy, may each take another year or two. This is simply not the way to deal with vapor intrusion that actually poses an imminent threat to human health. Even though some community groups may want to encourage the NPL listing of vapor intrusion sites – thereby triggering their eligibility for Technical Assistance Grants – the long, drawn-out process of cleaning up an NPL site is simply not well-suited to address vapor intrusion concerns.

This very point was driven home – by EPA itself – at EPA’s February 24, 2011 public listening session. One New Jersey community group spoke at length of its support for listing the Pompton Lakes site on the NPL. But the Pompton Lakes site is already being addressed under the RCRA Corrective Action program, and listing it on the NPL would not provide a faster remedy or a better remedy. EPA Region 2 distributed a fact sheet (copy attached) on the site, making exactly this point.¹⁰

⁹ GAO Report at 11.

¹⁰ U.S. EPA, Qs & As on RCRA vs. CERCLA at the DuPont Pompton Lakes Works Site (Feb. 2011), *available at* http://www.epa.gov/region02/waste/duPont_pompton/RCRAvsSuperfund_factsheet.pdf

Moreover, most vapor intrusion sites do not belong on the NPL for still another reason. The NPL is meant to address the sites that are the highest priorities for long-term remedial action,¹¹ and the HRS reflects this by weighing the "population factor" that may be affected by a potential NPL site.¹² While vapor intrusion may sometimes affect large areas or multiple buildings, it is more often the case that vapor intrusion sites consist of a few buildings, whether they are residences or commercial buildings, with a very limited population of residents or workers. Sites in the former category will likely be captured under the existing HRS, whereas sites in the latter category are best dealt with under other, local corrective action programs.¹³

Consider, by way of analogy, EPA's highly selective use of Superfund program funds to address abandoned methamphetamine laboratories. These facilities are often relatively small; they affect buildings (as well as land); they release hazardous substances; and they often present both indoor air issues and the potential for explosion. Yet EPA responds to only a very small percentage of instances, and only when local or state resources cannot address the problem.¹⁴ Most contamination resulting from methamphetamine laboratories is dealt with on a local level, and EPA has provided guidance for local entities to address such sites.¹⁵

In sum, most vapor intrusion sites should be dealt with by state and local governments, not by EPA. To the extent that such sites warrant federal attention, the Superfund NPL program will rarely be appropriate, because it simply does not provide the rapid response that is needed. There are exceptions, and those sites are apt to be listed anyway due to other concerns, such as ground water contamination. Because few vapor intrusion sites belong on the NPL, we believe that opening up the HRS for this purpose is unwarranted.

VI. Data Collection Would Present Major Technical Challenges

EPA is soliciting input on appropriate sampling procedures for vapor intrusion. 76 Fed. Reg. at 5373 (questions 4 and 5). We note that sampling of vapor intrusion is particularly difficult due to the extremely wide variety of building structures, consumer

¹¹ CERCLA §105(a)(8).

¹² See, e.g., 40 C.F.R. Part 300, App. A, § 3.3.2 (2009).

¹³ If a locality lacks funding, EPA's Local Governments Reimbursement ("LGR") program may be used. Local governments eligible to receive reimbursement of up to \$25,000 under the LGR program include any general purpose unit of local government, such as a county, parish, city, town, township, and municipality, that wants to address the release or threatened release of hazardous substances.

¹⁴ See, e.g., Testimony of James MacDonald, Federal On-Scene Coordinator, EPA, Before the Subcommittee on Criminal Justice, Drug Policy and Human Resources Committee on Government Reform, United State House of Representatives, June 28, 2004.

¹⁵ EPA, Voluntary Guidelines for Methamphetamine Laboratory Cleanup, August 2009, *available at*: http://www.epa.gov/oem/meth_lab_guidelines.pdf

products, and lifestyle choices that can cause or contribute to contamination of indoor air with hazardous substances.

According to EPA, the potential culprits include:

- paints, paint strippers or thinners;
- moth balls;
- new carpeting and furniture;
- stored fuel;
- air fresheners;
- cleaning products;
- dry cleaned clothing; and
- cigarette smoke.¹⁶

Obviously it is far beyond the purview of Superfund to deal with these sources of hazardous substances.¹⁷ In fact, “products which are part of the structure of, and result in exposure within, residential buildings or business or community structures” are specifically exempted from EPA’s response authority under Superfund.¹⁸

This is very much in line with the OSWER Directive 9360.3-12¹⁹, which addresses releases of hazardous substances, pollutants, or contaminants that are found within buildings. EPA’s Directive clarifies that “response to indoor contamination is not the primary focus of CERCLA” and that “it may be difficult to show that a release or threat of release from indoor contamination poses a threat to public health or welfare or the environment.”²⁰

It is not at all clear how EPA could devise reliable sampling procedures that would consistently differentiate between those vapors that result from building structures, household objects, or consumer products, on the one hand, and those vapors that result from a release from an external source. Yet unless EPA can somehow demonstrate that the vapor within a structure results from external sources, and not from objects or products used within the building, CERCLA should not apply.²¹

¹⁶ EPA, What You Should Know About Vapor Intrusion, *supra*.

¹⁷ As EPA itself has recognized, “response to indoor contamination is not the primary focus of CERCLA.” OSWER Directive 9360.3-12, Response Actions at Sites with Contamination Inside Buildings, from Henry L. Longest II, Director OER, to Directors of all Regions (August 12, 1993).

¹⁸ CERCLA § 104(a)(3)(b), 42 U.S.C. § 9604(a)(3)(b).

¹⁹ EPA, Response Actions at Sites with Contamination Inside Buildings, *supra*.

²⁰ *Id.*

²¹ EPA’s Notice does not address what approach the HRS could sensibly use to evaluate vapor intrusion sites for NPL listing. Would a single residence with vapors above health-based levels for a single contaminant automatically score high enough for NPL listing? If so, how will EPA manage the many thousands of potential new sites that could technically be candidates for NPL listing? If not, what HRS calculations would EPA devise to prevent this from happening?

VII. Stigma and Related Impacts on Building Owners

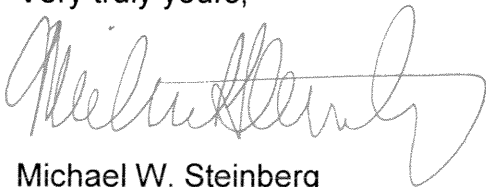
Listing sites on the NPL based upon vapor intrusion would tend to stigmatize the properties in question and impose economic and emotional burdens upon the owners and/or tenants. The mere suggestion that a property *might* have vapor intrusion concerns can, in some situations, tend to depress the property value. Even if EPA is simply at the data collection stage and is searching for a vapor intrusion pathway, Government activity on the property could alarm building owners and inhabitants regarding their safety and possible health problems.

Building owners and residents could be spared these financial and emotional burdens if other HRS pathways are first investigated, e.g., if soil and groundwater sampling is completed at nearby sites. If the data indicate that vapor intrusion concerns are significant, then further investigation in those structures may be warranted. This is exactly the sequential sampling procedure that EPA discusses in its vapor intrusion informational document, wherein samples of gas in the soil or groundwater are first obtained, and then additional samples are taken closer to buildings as needed.²²

VIII. Conclusion

A new rulemaking to amend the HRS in order to list vapor intrusion sites would be an arduous undertaking that would consume millions of dollars and require multiple FTEs, yet would likely yield very modest benefits. The Superfund NPL process, with its lengthy studies, protracted investigations, and highly adversarial process is not at all well suited to addressing most vapor intrusion sites. Most vapor intrusion sites are appropriately dealt with, and more quickly, by state and local government corrective action programs than by Superfund. Finally, listing sites on the NPL due to vapor intrusion would tend to stigmatize the properties (and likely drive collateral tort claims). In sum, until EPA can better define the problem it seeks to solve, and demonstrate exactly how the NPL is well suited to solve that problem, we view such a rulemaking as a poor use of Superfund's limited resources.

Very truly yours,



Michael W. Steinberg
Counsel to the Superfund Settlements Project

Attachment ("Qs & As on RCRA vs. CERCLA," EPA Region 2 fact sheet)

²² EPA, What You Should Know About Vapor Intrusion, *supra*.



Qs & As on RCRA vs. CERCLA at the DuPont Pompton Lakes Works Site

Pompton Lakes, New Jersey

February 2011

The U.S. Environmental Protection Agency (EPA) is working closely with the New Jersey Department of Environmental Protection (NJDEP) and partnering health agencies to ensure that contamination from the DuPont Pompton Lakes Works site is properly addressed and that people living in the community are protected, informed and involved in important site cleanup decisions. These efforts are being administered by the agencies under the Resource Conservation & Recovery Act (RCRA). In response to a number of questions from the Pompton Lakes community about the differences between RCRA and CERCLA (the Comprehensive Environmental Response, Compensation & Liability Act, also known as Superfund) EPA developed the answers below to some of the more frequently asked questions about how things may or not be different if the efforts were administered under CERCLA rather than RCRA.

If the status of the DuPont Corporation's work here changed from RCRA remediation to CERCLA (Superfund) remediation, would there be any change to what is occurring here in our town? Negative or positive?

Different Statutes, Consistent Outcome:

RCRA and CERCLA are two different statutes that govern the federal management of hazardous waste facilities (RCRA) and response to abandoned, uncontrolled hazardous waste sites (CERCLA). They are not identical statutes but there are many similarities and consistent outcomes. DuPont is conducting the investigative and cleanup work at the DuPont Pompton Lakes Works site in accordance with a federal RCRA permit issued by EPA, since the facility was in operation until 1994 and there is a responsible party that is willing to conduct the investigation and remediation. DuPont has also signed an Administrative Consent Order (ACO) with NJDEP. The ACO includes reimbursement of NJDEP oversight costs. In addition, New Jersey has issued permits governing air stripper emissions and discharges of treated ground water to the aquifer.

If this became a Superfund site, and DuPont continued to conduct site investigation and remediation as a responsible party, DuPont would be subject to many of the technical requirements and remediation standards that apply under the RCRA process. However, the enforcement documents would be different. DuPont would undertake investigative work under an agreement with the EPA Superfund Program under an ACO, and cleanup work would be conducted under a judicial Consent Decree rather than through the existing EPA RCRA Permit. A change from RCRA to Superfund would take time since an ACO and a Consent Decree would have to be negotiated. If DuPont and EPA were not able to reach agreement on the terms of the agreements, EPA would have the option of issuing a CERCLA Unilateral Administrative Order to DuPont, requiring DuPont to perform the required work.

Similar Process, Different Nomenclature:

The Superfund program uses different terminology from the RCRA process. For example, in CERCLA a field investigation (with sampling) is called a "Remedial Investigation" (RI) and an evaluation of the relative feasibility of different remedy options is known as a "Feasibility Study" (FS). In RCRA, these are a "RCRA Facility Investigation" (RFI) and a "Corrective Measures Study" (CMS). Under CERCLA, when the investigation has been completed and EPA is ready to select a cleanup plan, it issues a Proposed Plan identifying the preferred cleanup approach for the site or an element of the site (referred to as an "operable unit"). After soliciting public comment, EPA issues a final decision in a document known as the Record of Decision. The RCRA program relies on a permit modification process to incorporate the selected remedies but, also solicits public comment before a remedy is selected.

Public Outreach:

Public outreach would be essentially the same at this site whether work is done under RCRA or CERCLA. The CERCLA process anticipates and encourages public involvement throughout the investigation and cleanup, and requires public participation during the selection of response actions. EPA develops a community relations plan, and makes documents available to the public throughout the investigation and cleanup in a public document repository, typically in a public library in the affected community. During the investigation and cleanup, EPA may also facilitate the formation of a Community Advisory Group (CAG). When EPA presents the Proposed Plan to the public, the Superfund program holds a public meeting, and prepares a transcript to record the comments. The public may also submit written comments during the public comment period. EPA then prepares a responsiveness summary to respond to the public comments, and that becomes part of the record for the remedy selection. This public comment process is somewhat similar for RCRA proposed remedies but, in routine cases may not be as comprehensive.

For the DuPont Pompton Lakes site, EPA has committed to making the public outreach and involvement similar to the process used in CERCLA, such as through formation of the CAG, assignment of a community involvement coordinator and holding of numerous public meetings. Many of these elements of public outreach are not required under RCRA, but EPA has decided they are appropriate for this site.

Different Program Administration:

Superfund is managed at EPA Region 2 by the Emergency and Remedial Response Division. The RCRA Corrective Action Program is managed by the Division of Environmental Planning and Protection. Both divisions report to the EPA Region 2 Administrator. Site technical staff and managers and legal personnel would likely change if the site were to be managed under CERCLA in the future.

Technical Assistance Differences:

Under CERCLA, eligible community group(s) could be awarded \$50,000 in federal assistance funds for technical assistance to help the community understand site reports and decisions. The technical assistance grant (TAG) program is not offered under RCRA, however, the Technical Assistance Support for Communities (TASC) program is available under both CERCLA and RCRA. The TASC funding is not limited to \$50,000, although the assistance is managed by EPA's contractor rather than through a community group technical advisor under TAG.

Would our town receive Natural Resource Damages (NRDs) from the DuPont Corporation because of this change?

Federal and state natural resource trustees could pursue claims for natural resource damages regardless of whether a site was being addressed by EPA as a CERCLA or RCRA site. Examples of federal trustees are the Department of the Interior (e.g., U.S. Fish & Wildlife Service) and the Department of Commerce (e.g., National Oceanic and Atmospheric Administration). The trustees, and not EPA, perform natural resource damage assessments and pursue claims, according to their statutory authority.

Would the federal government buy our homes or move us during the remediation?

Section 104j of CERCLA limits the acquisition of real property, which is necessary as part of a permanent relocation, to only that property that the President determines is "needed to conduct a remedial action ..." EPA does not have authority to acquire property for relocation under a CERCLA removal action (a short term, urgent or time sensitive type of cleanup). Thus, EPA can incorporate relocation into a CERCLA remedial action only when EPA has made a finding that relocation of residents is required to successfully conduct the remedial action.

At the DuPont Pompton Lakes site, the installation of the vapor mitigation systems in the plume homes at DuPont's expense as part of the RCRA cleanup is providing an effective remedy from any real or threatened vapor intrusion. For the long term RCRA remediation, a ground water remediation pilot will test enhanced anaerobic bioremediation to treat the contaminants, and if the pilot is successful, remediation of the ground water contaminant plume will commence within a couple of years. EPA does not anticipate that it will be necessary to relocate residents during the implementation of the long term remedy. Conducting the cleanup under CERCLA rather than RCRA would not lead to a different result.

Note that relief from real or perceived reductions in property values because of vapor intrusion does not provide a legal basis for relocation under the Superfund program.

Are there more stringent standards for the remediation under CERCLA that DuPont would be held to if we change? Or do Federal standards supersede the NJDEP standards here already

There is broad overlap in the process for establishing cleanup standards under CERCLA and RCRA. Both programs stress protection of human health and the environment, and both require that a cleanup meet applicable substantive provisions of State law. The sediments in Pompton Lake do not exceed human health standards, so standards for the dredging are being set based on ecological considerations. The long and short term remedial actions being carried out under RCRA at the site would be consistent [with the kind of remedial actions that would likely be required under CERCLA].

Can the USEPA request a thorough investigation of the entire site (all areas of concern) without changing the status?

Yes. Under RCRA, EPA can require investigative work or submission of information it determines necessary to effectively remediate the site. EPA has been doing this. EPA has incorporated the required plans and reports and schedule into the federal RCRA permit that DuPont must comply with or risk penalties.

Does the community get to decide how the remediation is conducted if we change?

EPA and the State of New Jersey have decision-making authority over site cleanup decisions, in consultation with the community. Input from the community throughout the decision making process at both CERCLA and RCRA sites is extremely important to achieving effective cleanups. Although the processes are at times different, public participation is important under both statutes. For the DuPont Pompton Lakes site, EPA has committed to making the outreach and input equivalent to that which would occur under CERCLA, to the extent feasible.

Will the USEPA do the remediation and send DuPont the bill if the status were changed?

The substantial majority of Superfund cleanups are performed by potentially responsible parties under EPA oversight. EPA's Superfund program has an enforcement first principle and seeks to have the responsible parties pay for and perform necessary work, rather than using taxpayer funds. EPA-funded cleanups are generally performed only when there are no viable parties in existence to perform the work. Thus, if this were a Superfund site, EPA's approach would likely be to allow DuPont to perform the cleanup work, either under a CERCLA Consent Decree or, failing that, under an EPA-issued Unilateral Administrative Order.

EPA Site Contact

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Need More Information?

EPA's DuPont Pompton Lakes Works Web site @ http://www.epa.gov/region02/waste/duPont_pompton/index.html

New Jersey DEP Web Site @ http://www.state.nj.us/dep/srp/community/sites/duPont_pompton_lakes/

"EPA's Pompton Lakes/DuPont" group page @ www.facebook.com for community discussions, links to recent news articles, events and more.