



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

Improved Controls Would Reduce Superfund Backlogs

Report No. 08-P-0169

June 2, 2008

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
EPA	U.S. Environmental Protection Agency
NCP	National Contingency Plan
NJDEP	New Jersey Department of Environmental Protection
NPL	National Priorities List
OIG	Office of Inspector General
OSWER	EPA's Office of Solid Waste and Emergency Response
PRP	Potentially Responsible Party
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act
SMOA	Superfund Memorandum of Agreement



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The Office of Management and Budget requested us to evaluate the U.S. Environmental Protection Agency's (EPA's) management of the backlog of Superfund sites. Our objective was to determine why some hazardous waste sites in the Superfund program that existed prior to October 1986 have not yet had remedial construction completed. We also reviewed the impacts resulting from sites not yet achieving construction completion.

Background

As of February 2007, there were 144 non-federal sites that had been on the National Priorities List (NPL) for over 20 years but had still not reached construction completion. We focused our review on sites in New Jersey because that State has 38 of the 144 sites, or 26 percent, which is more than any other State.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2008/20080602-08-P-0169.pdf

Improved Controls Would Reduce Superfund Backlogs

What We Found

Neither EPA nor the New Jersey Department of Environmental Protection (NJDEP) took actions needed to ensure progress at seven New Jersey-led Superfund site clean-ups. These sites were listed on the NPL over 20 years ago but still have not had a final clean-up remedy constructed (construction completion). Delays occurred primarily because EPA Region 2 and New Jersey did not use available authorities to prevent delays and implement internal controls. Region 2 and NJDEP did not implement agreements on clean-up milestones, Agency responsibilities, and enforcement actions. As a result, Region 2 did not ensure proper oversight of these Superfund clean-ups. Over the past year, Region 2 and NJDEP have worked together to revise site clean-up schedules and complete clean-ups. Continued clean-up delays will result in increased costs, prevent appropriate land reuse and redevelopment, and perpetuate concern about the risks associated with living near these sites.

For the seven sites reviewed, various interim clean-up actions had been taken to address the impact of site contaminants on human health. However, the site progress profiles on EPA's public Website did not include these interim actions as part of the status of clean-up progress. As a result, progress being made on sites may not be readily communicated to the public.

What We Recommend

We recommend that the Region 2 Administrator direct staff to coordinate with NJDEP officials the clean-up of specified sites more than 20 years old. Region 2 should assume lead status from New Jersey for those sites where both agencies agree it would be beneficial and develop Letters of Agreement for those sites. We also recommend that the Assistant Administrator for Solid Waste and Emergency Response, where appropriate, improve site profiles in EPA's public Superfund Website to accurately depict EPA and State actions taken to protect human health and the environment. In its response to the draft report, EPA agreed with all of our recommendations and its proposed corrective actions should address our recommendations. However, the recommendations will remain open until the agreed-upon actions are completed.



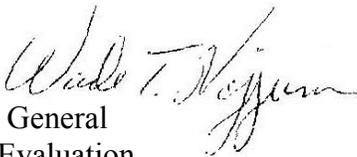
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

June 2, 2008

MEMORANDUM

SUBJECT: Improved Controls Would Reduce Superfund Backlogs
Report No. 08-P-0169

FROM: Wade T. Najjum 
Assistant Inspector General
Office of Program Evaluation

TO: Alan J. Steinberg
Region 2 Administrator

Susan Parker Bodine
Assistant Administrator
Office of Solid Waste and Emergency Response

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. The OIG responded to EPA's and New Jersey's draft report comments by making changes to the report and providing responses to EPA and New Jersey, as appropriate. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$986,320.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective action plan for agreed upon actions, including milestone dates. Please e-mail an electronic version of your response that complies with Section 508 of the Rehabilitation Act to Patrick Milligan at

milligan.patrick@epa.gov. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Carolyn Copper, Director for Program Evaluation, Hazardous Waste Issues, at (202) 566-0829, or copper.carolyn@epa.gov; or Patrick Milligan, Project Manager, at (215) 814-2326, or milligan.patrick@epa.gov.

Table of Contents

Chapters

1	Introduction	1
	Purpose	1
	Background	1
	Noteworthy Achievements.....	2
	Scope and Methodology.....	3
2	New Jersey and EPA Did Not Ensure Superfund Site Clean-ups Progressed Timely	4
	New Jersey and Region 2 Caused Unnecessary Delays in Clean-ups.....	4
	Region 2 and New Jersey Need to Implement Internal Controls to Avoid Clean-up Delays	7
	Region 2 Did Not Use Available Authorities to Ensure Progress at New Jersey-Led NPL Sites.....	9
	Conclusion.....	10
	Recommendations	10
	EPA Region 2 Comments and OIG Evaluation	11
	New Jersey Comments and OIG Evaluation	12
3	EPA’s Web Site Profiles Do Not Communicate All Actions to Ensure Superfund Site Safety.....	14
	EPA Understates Progress in Site Profiles.....	14
	Recommendation	15
	OSWER Comments and OIG Evaluation	16
	Status of Recommendations and Potential Monetary Benefits	17

Appendices

A	Details on Scope and Methodology.....	18
B	EPA Region 2 Response to Draft Report	20
C	New Jersey Response to Draft Report	27
D	OSWER Response to Draft Report	33
E	Distribution	34

Chapter 1

Introduction

Purpose

The Office of Management and Budget asked us to evaluate the U.S. Environmental Protection Agency's (EPA's) management of the backlog of Superfund sites. Our overall objective was to determine why some Superfund sites, listed on the National Priorities List (NPL) prior to October 1986, have not reached construction completion or achieved key environmental indicators. Construction completion occurs when physical construction of a final clean-up remedy is complete for an entire Superfund site. In October 1986, Congress had passed the Superfund Amendments and Reauthorization Act (SARA). We focused on pre-SARA sites in New Jersey because it has more of these sites on the NPL than any other State. For our review, we addressed the following questions:

- What are the causes for some pre-SARA sites still not reaching construction completion after being on the list for over 20 years?
- What impacts have resulted from sites not achieving construction completion yet?

Background

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), which authorizes EPA to respond to releases or threatened releases of hazardous substances that may endanger public health or the environment. The National Contingency Plan¹ (NCP) is EPA's implementing regulation for the Superfund program. It provides EPA and the States with guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants. SARA, a 1986 CERCLA amendment, emphasized the importance of permanent remedies at hazardous waste sites, increased State involvement in clean-ups, and focused attention on human health problems at hazardous waste sites.

Within the Superfund program, the NPL is EPA's list of national Superfund priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation. As of February 2007, there were 144 non-federal NPL sites which had not reached construction completion even though the sites have been on the NPL for over 20 years.²

¹ Formally, the *National Oil and Hazardous Substances Pollution Contingency Plan*.

² Federal NPL sites are owned and operated by federal agencies, which are responsible for clean-up costs. Non-federal NPL sites are owned and operated by non-federal government entities, such as businesses. Either EPA or a State may take the "lead" in overseeing non-federal clean-ups, with the other agency carrying out the "support" role.

All of the sites in our review are State-led, pre-SARA sites in New Jersey. We focused our review on sites in New Jersey because that State has 38 of the 144 pre-SARA sites, or 26 percent, which is more than any other State. The New Jersey Department of Environmental Protection (NJDEP) is the lead agency for clean-up at all sites reviewed.

The NCP identifies two levels of oversight for NPL clean-ups – the lead agency and the support agency. After a site has been listed on the NPL, EPA and the State jointly determine which agency will lead the clean-up and assume primary responsibility of the clean-up activities. The lead agency plans and implements the clean-up actions. The lead agency is required to consult with the support agency to establish priorities, and provide the support agency an opportunity to review key documents such as a remedial investigation/feasibility study, proposed plan, and the Record of Decision (ROD)³. The support agency also provides pertinent support-agency criteria and other assistance as requested by the lead agency.

EPA's June 2003 draft report, *Pre-SARA Sites: Analysis of Why Construction is Not Yet Complete at Certain Sites*, listed reasons for clean-up delays at pre-SARA sites. In addition, EPA's "120-Day Study"⁴ found that:

...EPA has seen varying degrees of success when States serve as the lead Agency for NPL remedial activities. EPA should re-examine its NPL State-led sites to determine if these are the most cost effective mechanism for site remediation...The use of State-lead in NPL site remediation should be based solely on good business decisions, such as cost effectiveness, past experiences and timeliness, etc.

Although the 120-Day Study made recommendations to improve State-led clean-ups, EPA's Office of Solid Waste and Emergency Response (OSWER) indicated that no action was needed because the regions were already implementing actions required by the recommendations.

Noteworthy Achievements

As we identified the issues with Region 2's management of its Superfund backlog, the Region recognized the issues and immediately began to take corrective action. In June 2007, Region 2 officials began to meet with NJDEP officials to develop a plan for addressing the backlog of Pre-SARA New Jersey-led NPL sites. The Region and NJDEP have continued to make progress in developing site-specific clean-up schedules, and where both Agencies agree, Region 2 has assumed the lead agency role from New Jersey.

³ A ROD document provides the justification for treatment, the description of the site, community participation, enforcement actions, past and present clean-up activities, and the purpose of the remedy selected for clean-up.

⁴ *Superfund: Building on the Past, Looking to the Future*, EPA, April 22, 2004.

Scope and Methodology

We conducted our evaluation from July 2006 to January 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our evaluation. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives. We limited our review to compliance with those management controls related to the issues within our scope.

We sampled State-led sites where the clean-up is funded by the Potentially Responsible Party (PRP) and EPA is the support agency. We selected sites in New Jersey because that State had the highest percentage of sites meeting our initial selection criteria. We interviewed managers and program staff at OSWER, Region 2's Emergency and Remedial Response Division, and NJDEP to identify the causes for and the impact of seven New Jersey-led Superfund sites that still do not have a final remedy constructed after being on the NPL for over 20 years. The seven sites we reviewed are:

- Brick Township Landfill, Brick Township, Ocean County
- Evor Phillips Leasing Company, Old Bridge Township, Middlesex County
- Hercules, Inc., Gibbstown, Gloucester County
- American Cyanamid, Bridgewater Township, Somerset County
- Jones Industrial Services Landfill, Inc., South Brunswick, Middlesex County
- Universal Oil Products, East Rutherford, Bergen County
- Ventron/Velsicol, Wood Ridge Borough, Bergen County

We conducted a limited review of site files at Region 2 and NJDEP to further develop the causes for delay that we identified. We reviewed the NCP, CERCLA, and related policies and guidance applicable to EPA's Superfund process. To determine whether impacts resulted from delayed clean-ups, we reviewed Web-based, public, EPA information pertaining to the potential threat to human health and the environment from hazardous contaminants at Superfund sites. Specifically, we reviewed EPA's Superfund site progress profiles. We also reviewed the site profiles to determine whether the information presented to the public accurately reflects the clean-up status at the site.

There were no prior audits or evaluations that were applicable to this evaluation.

See Appendix A for details on our scope and methodology, including an explanation of how we selected our sample of sites.

Chapter 2

New Jersey and EPA Did Not Ensure Superfund Site Clean-ups Progressed Timely

Neither NJDEP nor Region 2 took actions needed to make progress on the seven New Jersey-led Superfund site clean-ups reviewed. These sites were listed on the NPL over 20 years ago but do not yet have a final clean-up remedy constructed. Delays occurred primarily because New Jersey and Region 2 did not use available authorities to prevent delays and provide internal controls. As a result, Region 2 did not ensure proper oversight of these Superfund clean-ups. Specifically, the Region did not:

- Review PRP documents within required timeframes;
- Effectively use meetings with New Jersey to prioritize these clean-ups;
- Develop and implement a Superfund Memorandum of Agreement with New Jersey to define Region 2 and State responsibilities;
- Develop site-specific enforcement agreements with New Jersey that contain clean-up schedules and define Region 2's level of involvement in these State-led clean-ups; and
- Initiate formal discussions with NJDEP to assume lead agency status to ensure progress.

Continued delays will result in an overall increase in clean-up cost, prevent land reuse and redevelopment opportunities, and perpetuate concern about the risks associated with living near these sites.

New Jersey and Region 2 Caused Unnecessary Delays in Clean-ups

During our review, managers from EPA's OSWER and Region 2 cited causes for delay in cleaning up Superfund sites. They said that legal and enforcement issues such as bankruptcy, multiple PRPs, recalcitrant PRPs, State regulatory requirements, resource constraints, and other State and EPA priorities can complicate clean-ups and cause delays. The managers said these causes were generally recognized among the Superfund community. They also said Superfund sites are very complex by nature, which results in a high level of uncertainty in selecting, designing, and implementing the remedy.

Nonetheless, we found that New Jersey contributed to clean-up delays by: not actively seeking timely comments from Region 2; not always reviewing PRP work products timely; and not ensuring PRPs performed timely and effective clean-ups. Also, as the support agency, Region 2 took too long to review key PRP documents.

As Lead Agency, New Jersey Did Not Take Steps to Ensure Progress

When Region 2 took too long to provide comments on key documents, NJDEP did not contact the Region and request comments. For State-led sites, the NCP allows States to exercise discretionary authority by moving forward with the clean-up without receiving concurrence from EPA on the approval of PRP documents. However, both NJDEP and Region 2 managers said it is not practical for NJDEP to move forward without the Region's concurrence because eventually NJDEP will need the Region to agree with the proposed clean-up approach. While waiting for Region 2 to comment, NJDEP directed its attention to clean-up of other sites.

New Jersey also contributed to delays by not reviewing work products submitted by PRPs in a timely manner. The NCP does not have a document review timeliness requirement for lead oversight agencies. However, we found instances where the State took an unreasonable amount of time to review documents and provide comments to the PRP. Specifically, we reviewed 49 documents to determine how long NJDEP took to respond to PRPs after receiving EPA comments. On average, NJDEP took 2½ months to respond to PRPs, but we noted instances where it took far longer. For example, NJDEP took:

- 15 months to respond to a supplemental remedial work plan submitted by Hercules, Inc.;
- 13 months to respond to a remedial investigation report/remedial investigation work plan for Brick Township Landfill; and
- 8 months to respond to Evor Phillips Leasing Company regarding a revised supplemental groundwater remedial investigation report.

NJDEP also could have held PRPs accountable for unnecessary delays in performing clean-ups. Specifically, NJDEP could have more strictly enforced the clean-up milestones agreed to by PRPs. NJDEP recently passed a rule that requires PRPs to perform more timely and effective clean-up actions. On September 18, 2006, NJDEP published the "Grace Period Rule," which addresses NJDEP's management of the PRP's submittal of remediation-related documents and activities. The rule states PRPs must address each deficiency within the timeframe established or NJDEP will issue a Notice of Violation. Noncompliance with the Notice of Violation will result in NJDEP assessing penalties. NJDEP and Region 2 also recently began an initiative to move the remaining 14 older State-led sites⁵ toward constructing a final remedy by developing revised site-specific clean-up schedules. These schedules will contain target completion dates for key clean-up phases, such as a remedial investigation/feasibility study, proposed plan, and ROD completion. NJDEP plans to negotiate these schedules with the PRPs and incorporate them into the existing agreements with PRPs.

⁵ The 7 sites we reviewed are included in these 14 sites.

As Support Agency, Region 2 Did Not Follow Document Review Regulations

In its support agency role, Region 2 took longer than required to review key PRP documents at four of the seven sites sampled. We examined Region 2's review time for 61 documents submitted by PRPs, covering a 10-year period from 1997 through 2006. The NCP requires that the Region review each document within 15 workdays. As shown in Table 2-1, Region 2 took more time than the NCP allowed for reviewing documents and providing comments to NJDEP. Moreover, Region 2 staff spent little time actually working on the documents compared to the total time the Region held the documents.

Table 2-1: Timeliness of EPA Document Reviews

Site Name	No. of Documents Reviewed	Number of Workdays:			
		Documents Were with Region 2	Allowed by NCP (No. of documents x 15 days)	Documents Remained at Region 2 Beyond NCP Criteria	Region 2 Staff Charged Time to NPL Site
Brick Township Landfill	9	1,762	135	1,627	66
Hercules, Inc.	18	1,040	270	770	186
American Cyanamid	20	729	300	429	147
Evor Phillips Leasing Company	14	2,817	210	2,607	290

Source: Office of Inspector General (OIG) analysis of documents obtained from NJDEP Superfund site files

For example, Region 2 held nine Brick Township Landfill documents for a total of 1,762 workdays. The NCP allows 135 workdays for this review. Region 2 collectively held these documents 13 times longer than it should have, exceeding the required turnaround time by a total of 1,627 workdays. During the 1,762 days Region 2 held these documents, regional personnel charged only 66 workdays to the Brick Township site, meaning that they only worked on the documents 4 percent of the time the documents were in the Region's possession.

We also found there is confusion defining key documents subject to the 15-day review requirement. Region 2 managers asserted that not all of the documents we reviewed were key documents needing EPA's review and concurrence, and thus were not subject to the 15-day requirement. For example, the managers said that the Brick Township PRP submitted monitoring reports to EPA each year for 5 consecutive years and it was unclear why NJDEP would expect EPA to comment on these reports. Further, Region 2 managers said it was unclear why NJDEP did not direct the PRP to submit a draft comprehensive remedial investigation report, which is a key document. Despite the regional managers' confusion, they did not discuss these issues with NJDEP or issue directions regarding what was needed to ensure progress at the site. These situations

illustrate the need for more effective communication and coordination between Region 2 and New Jersey.

Region 2 and New Jersey Need to Implement Internal Controls to Avoid Clean-up Delays

During meetings between EPA Region 2 and NJDEP, the two agencies did not address the overall lack of progress on sites. Further, Region 2 did not enter into a Superfund Memorandum of Agreement with New Jersey to implement internal controls.

Region 2 Did Not Effectively Use Annual Meetings with New Jersey to Ensure State-led Sites Were Prioritized

Meeting notes from 1995 through 2001 show that the seven sites we reviewed were discussed at varying frequency, and all State-led sites were not addressed each year as required. Although some issues were addressed for State-led sites, neither Region 2 nor New Jersey addressed the overall lack of progress and what needed to be achieved to move the seven sites toward construction completion. Region 2 managers said that the meetings are intended to address Superfund-related issues. Discussions were on such topics as EPA-led sites that are nearing remedy selection, site deletion issues, sites with 5-year reviews, and site-specific issues such as proposed alternative remedies. However, meetings were ineffective because:

- The sites we reviewed were not a priority because they had not reached the remedy selection phase. Region 2 managers said sites nearing remedy selection take priority because progress is gaining momentum and a remedy decision is within reach.
- Region 2 managers do not believe it is possible to discuss all of the State-led sites annually.⁶

Neither Region 2 nor NJDEP indicated that additional steps were taken, such as having more frequent meetings or communications to discuss reasons why sites were not making progress toward clean-up goals. Had Region 2 made State-led sites more of a priority and emphasized in meetings with NJDEP the overall lack of progress at State-led sites, lengthy delays may have been averted. Region 2 and NJDEP managers acknowledged there is not an appropriate level of urgency to keep the State-led sites we reviewed moving forward.

Region 2 places less priority on State-led sites than on NPL sites for which the Region is the lead agency. Region 2 managers told us their role on State-led sites was primarily an advisory and assistance one because the Region is only the support agency for these sites. As a result, the Region is not delivering timely

⁶ NJDEP currently has 114 non-federal NPL sites, which include 14 State-led pre-SARA sites, financed by PRPs.

support to the State. Region 2 managers said that limited resources contribute to Region 2 prioritizing the sites that it leads.

An underlying factor in Region 2's priorities is OSWER's Government Performance and Results Act measures. According to one Region 2 manager, when most of the remedial investigation is completed, an EPA-led site is regarded as being within reach of signing a ROD. Sites that meet this definition rise in priority because the number of RODs signed each year is one of the measures by which the Superfund program is evaluated.

Region 2 Did Not Sign an Agreement with New Jersey

Region 2 did not implement internal controls that could have been achieved by entering into a Superfund Memorandum of Agreement (SMOA) with New Jersey. In addressing State-led sites, the NCP encourages States to enter into a SMOA with EPA. The purpose of a SMOA is to clarify the process necessary to implement the Superfund program at both the federal and State levels, and to define each agency's roles and responsibilities. A SMOA would establish:

- a timeframe and procedure for designating site-specific lead and support agencies;
- a process for reviewing and making appropriate lead/support changes;
- a process for identifying and documenting those sites where EPA and the State agree to seek support agency concurrence on a ROD;
- procedures both agencies will use to plan and coordinate tasks under the Superfund program;
- timeframes for support agency review of PRP documents and deliverables;
- enforcement expectations and the nature of the EPA-State relationship when pursuing PRP site clean-up commitments; and
- the degree of reciprocity between EPA and the State, and procedures for resolution of disputes.

When there is a SMOA, EPA and the State are also required by the NCP to implement site-specific enforcement agreements that would specify clean-up schedules and EPA involvement in enforcement activities.

Region 2 managers said they attempted to develop a SMOA with NJDEP in the 1990s, but the two agencies never reached agreement. Region 2 officials said New Jersey and Region 2 were unable to negotiate a SMOA because New Jersey had pre-existing regulations concerning federal statutory requirements.

A SMOA would have significantly benefited these State-led NPL sites because it would have improved communications and established clearer roles, responsibilities, and expectations between the two agencies. A SMOA would have also provided an opportunity for Region 2 and NJDEP to define mutually agreeable document review times for both the support and lead agencies. Without

a SMOA, Region 2 managers are held to the 15-day review requirement, which they said was unreasonable.

Region 2 recently began an initiative with NJDEP to move the remaining 14 older State-led NPL sites (including the 7 we reviewed) toward constructing a final remedy.⁷ Region 2 officials said that for 8 of the 14 sites, the lead will change from New Jersey to Region 2. After assuming the lead, the Region plans to develop and implement federal enforcement orders to ensure clean-up progress. New Jersey will continue to be the lead Agency for the other six sites because the sites are near construction completion. For each of these six sites, Region 2 officials said they are planning to develop a Letter of Agreement that will include site-specific clean-up schedules and define EPA involvement in enforcement issues. These schedules will contain milestones for completion of clean-up phases, such as remedial investigation/feasibility study, proposed plan, and final ROD completion, as well as document review turnaround times for EPA and NJDEP. NJDEP plans to negotiate these schedules with the PRPs and enforce the revised agreements. If New Jersey does not meet these critical milestones, Region 2 should initiate action to assume lead agency status from the State.

Region 2 Did Not Use Available Authorities to Ensure Progress at New Jersey-Led NPL Sites

Despite the absence of a SMOA, Region 2 still had the ability to ensure progress at the seven New Jersey-led Superfund site clean-ups we reviewed. When NJDEP did not take actions to move these sites toward construction completion, Region 2 did not use available authorities under CERCLA to prevent delays. EPA is responsible for ensuring clean-up of all NPL sites. For a State-led site, EPA needs to perform oversight to ensure that the State sufficiently plans and implements the clean-up actions. If Region 2 had prompted the State to move forward with clean-up and the State did not cooperate, the Region has recourse through NCP Section 300.515 (e) (1) to assume lead agency status from the State:

... Included in the proposed plan shall be a statement that the lead and support agencies have reached agreement or, where this is not the case, a statement explaining the concerns of the support agency with the lead agency's proposed plan. The state may not publish a proposed plan that EPA has not approved. EPA may assume the lead from the state if agreement cannot be reached.

NJDEP and Region 2 agree that EPA has authority over clean-ups at NPL sites and, if necessary, EPA may assume lead agency status from the State. However, the NCP does not specifically address what conditions should exist at the site before EPA assumes lead status. Region 2 managers told us the Region has never

⁷ NJDEP indicated the additional seven NPL sites were: Combe Fill South Landfill, Global Landfill, Shieldalloy, Landfill and Development Company, PJP Landfill, Price's Landfill, and LE Carpenter/Dayco.

assumed lead agency status from New Jersey without the State's agreement. Region 2 and NJDEP managers said that they generally prefer to work with each other in moving sites toward clean-up instead of the Region assuming lead status.

Conclusion

Delays occurred at State-led NPL sites in New Jersey because EPA Region 2 did not use available authorities under CERCLA to prevent delays or implement internal controls to establish roles, responsibilities, and expectations between the two agencies. Region 2 and NJDEP did not implement a SMOA or any site-specific agreements. Consequently, when EPA did not meet NCP requirements, and both agencies did not sufficiently discuss these sites during annual meetings, the sites simply fell through the cracks.

The recent focus on the 14 older NPL sites in New Jersey, and the actions Region 2 and New Jersey propose, should result in progress toward construction completion of these sites. Importantly, regardless of whether EPA is taking the lead or the lead is remaining with New Jersey, all 14 sites will have negotiated clean-up schedules between the PRP and the lead Agency. For the sites remaining as New Jersey-led, the proposed site-specific Letters of Agreement between Region 2 and New Jersey can be as effective as a SMOA. These agreements should contain the components of a SMOA that will clarify the process necessary to implement the Superfund program at both the federal and State levels, and to define each agency's roles and responsibilities. The ongoing initiative, if successful, should result in a formalized and transparent process that will hold all parties accountable toward achieving timely clean-up of the sites. Region 2 is responsible for cleaning up NPL sites. If the initiative does not succeed, the Region will need to take appropriate measures, which include assuming lead agency status for the remaining six NJDEP-led sites.

Recommendations

- 2-1 We recommend that the Region 2 Administrator direct its Emergency and Remedial Response Division staff to coordinate with NJDEP officials the clean-up of the 14 older NPL sites that are currently NJDEP-led. Specifically:
- a. Region 2 should assume lead status from New Jersey for those sites where both agencies agree it would be beneficial.
 - b. For those sites where both agencies agree that lead status should remain with New Jersey, Region 2 should develop site-specific Letters of Agreement between the Region and New Jersey to address developing and implementing internal controls. These agreements will include:

- the roles, responsibilities, and expectations of each agency;
- enforcement expectations when pursuing PRP site clean-up commitments;
- the degree of reciprocity between Region 2 and New Jersey, and procedures for resolution of disputes;
- the process and time requirements for support and lead agency review of key documents;
- annual meetings with NJDEP to establish priorities for each NPL site; and
- new milestones between New Jersey and the PRP for completion of clean-up phases.

2-2 The Regional Administrator, Region 2, should establish criteria for monitoring progress in meeting the milestones, and for actions taken when milestones are not met.

2-3 If milestones are not met for those sites that remain New Jersey-led, the Regional Administrator, Region 2, should take affirmative action by initiating formal discussions with NJDEP regarding the use of EPA's authority under CERCLA to assume lead agency status for these sites.

EPA Region 2 Comments and OIG Evaluation

Region 2 agreed with all OIG recommendations. We made changes to the report based on Region 2's comments where appropriate. Appendix B provides the full text of the Region's comments.

Region 2 agreed with recommendation 2-1(a) and stated that it intends to assume the lead at 8 of the 14 sites. For each of the eight sites, the Region will need to provide evidence of this lead change for the OIG to close out the recommendation. Region 2 agreed with recommendation 2-1(b) and stated that within 90 days of our final report, they will prepare one Letter of Agreement with mutually agreed-upon cleanup schedules for the six sites that will remain New Jersey-led sites. The Region hopes to have the Letter of Agreement with NJDEP finalized within 180 days.

Region 2 agreed with recommendation 2-2 and stated that they will establish criteria for monitoring progress in meeting the milestones, and for actions taken when milestones are not met. Region 2 also concurred with recommendation 2-3.

Region 2 stated that the OIG report failed to address a principal reason for delays in these projects – the overwhelming workload of the State remedial project managers. Claims about New Jersey's overwhelming workload were brought to our attention during the evaluation. At that time, we requested documentation from NJDEP to support this workload challenge. We specified that we would

need evidence that spanned the 20 year period since these sites were listed on the NPL. NJDEP did not provide this information.

The Region also stated that the OIG report focuses on document review times as the primary cause of delays. On page 4, the OIG report acknowledges several other potential causes for delay such as technical complexities, uncooperative PRPs, resource constraints, and other Agency priorities. This report identifies Agency review times as an additional cause of delay, which was not previously acknowledged by the Agency.

Region 2 stated that our report suggests that the development of SMOA would have shortened the length of Agency review times. Although we still believe that a SMOA would have improved the process 20 years ago when these sites were first listed on the NPL, we believe that developing a Letter of Agreement between Region 2 and New Jersey appears to be an effective solution today.

We plan to follow up on the progress made at sites discussed in this report to ensure that the agreed-upon actions are completed.

New Jersey Comments and OIG Evaluation

The OIG received comments from New Jersey and we made changes to the report where appropriate. Appendix C provides the full text of New Jersey's comments.

New Jersey officials stated that they have been participating with EPA Region 2 over the past year to achieve clean-ups faster at Superfund sites listed on the NPL more than 20 years ago. They also confirmed that they intend for Region 2 to assume lead agency status for 8 of the 14 NJDEP-led NPL sites.

New Jersey commented that the OIG review of seven sites hardly seemed "like a reasonable sampling of cases in order to draw conclusions on a national basis, as was your original charge." The OIG's charge was not to draw conclusions on a national basis and our report does not state this. We did not nationally generalize the findings and recommendations in this report. Due to the highly time consuming nature of obtaining and reviewing 20 years of records for seven Superfund sites, our work had to be appropriately scoped to manage the timeliness of our final report. Our sampling of New Jersey cases is reasonable to draw conclusions and make recommendations about these New Jersey Superfund sites. That is the stated focus of this report.

New Jersey commented that the OIG report contains an unsupported statement that residents living near these older NPL sites will have concern about the risks associated with living near these sites. The OIG obtained this statement from the EPA 1993 draft report entitled, *Pre-SARA Sites: Analysis of Why Construction is Not Yet Complete at Certain Sites*.

New Jersey also commented that the OIG does not mention in the report the significance of staffing resources that continue to hinder both agencies and cause delays when reviewing remedial documents. We address this comment in the fourth paragraph of the preceding section entitled *EPA Region 2 Comments and OIG Evaluation*.

Chapter 3

EPA's Web Site Profiles Do Not Communicate All Actions to Ensure Superfund Site Safety

For the sites reviewed that had not achieved construction completion, interim clean-up actions had been taken to address the impact of site contaminants on human health. However, we found that the site progress profiles on EPA's public Website did not include these interim actions as part of the status of clean-up progress. This occurred because EPA did not want to post information in the profile until a final remedial action had been implemented. As a result, progress being made on sites may not be readily communicated to the public.

EPA Understates Progress in Site Profiles

To determine the impacts of sites not reaching construction completion for 20 years, we identified the clean-up actions Region 2 and New Jersey had taken thus far on the seven sites we reviewed. The agencies had implemented interim clean-up actions to reduce or eliminate human health exposure to site contaminants until construction completion could be achieved. However, we found that EPA's public, Web-based, Superfund information (site profiles)⁸ did not include these interim actions as part of the status of clean-up progress. Instead, the site profile indicated that there is "insufficient information" to determine if exposure to site contamination is controlled. As a result, this statement does not reflect Region 2's and New Jersey's clean-up efforts to date. EPA uses "insufficient information" because it does not consider a site to be protective until EPA or the State implements a final remedial action for the entire site. However, communities have a right to know the nature and extent of risks that exist as a result of living near a Superfund site, and know what protections have been implemented thus far.

The information given to the public in EPA site profiles includes:

- the site's location,
- a clean-up progress summary,
- a clean-up impact summary, and
- information on site contamination and exposure.

We reviewed information in the clean-up impact summary and the site exposure sections. We found sites that have been listed for over 20 years contained the following statement in both sections of the profile: "There is insufficient information to determine if groundwater contamination and human health

⁸ EPA's profiles for the seven sites we reviewed can be found at <http://www.epa.gov/superfund/sites/npl/nj.htm>

exposure is controlled.” The statement, by itself, implies that EPA does not have sufficient information to inform the public about possible exposure to hazardous contaminants. To the contrary, EPA and/or NJDEP had collected much information on these sites over the years, and had taken interim steps to identify and reduce human exposure to hazardous contaminants. For the seven sites reviewed, EPA and/or NJDEP: sampled soil, groundwater, and surface water to measure the level of contamination; and implemented interim remedies to reduce, or eliminate human health exposure. Interim remedies included:

- conducting a removal action early in the process,
- providing municipal water to affected communities,
- installing a pump and treat system to remove contaminants from groundwater,
- continued monitoring of groundwater contamination levels,
- providing bottled water when necessary,
- installing fences, and
- posting signs to inform communities not to swim or eat fish from certain waterways.

OSWER managers explained that EPA takes a conservative approach to characterizing protection of human health at Superfund sites. They said it would be a much greater disservice to the public if EPA were to overstate human health protection when sites are still undergoing investigative studies. We agree that EPA does not know whether these sites are fully protective of human health and the environment. However, EPA does have information it can disseminate to the public that can more accurately depict the human exposure controls in place.

Communities living near Superfund sites have a right to know the actions taken to protect human health and the environment. It is understandable that EPA cannot provide a definitive answer on the level of risk at these sites because it is still conducting studies and gathering data. However, EPA could include a brief description of the interim remedies that have already been implemented at the site to protect human health, and describe the nature of ongoing studies. OSWER managers agreed that NPL site profiles could be revised to more accurately depict EPA’s efforts even while studies are still being completed.

Recommendation

- 3-1 For sites where interim remedies have been implemented, the Assistant Administrator for Solid Waste and Emergency Response should direct its staff to revise its clean-up impact summary and site exposure characterizations on its public, Web-based, Superfund site profiles to more accurately depict actions already taken to address risks to human health and the environment.

OSWER Comments and OIG Evaluation

OSWER officials agreed with our recommendation and stated that they have already implemented it. For the OIG to close out this recommendation, OSWER needs to provide a list of site names where the site profiles were revised based on our recommendation.

We made changes to the report based on OSWER's comments where appropriate. Appendix D provides the full text of OSWER's comments.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	10	<p>Direct its Emergency and Remedial Response Division staff to coordinate with NJDEP officials the clean-up of the 14 older NPL sites that are currently NJDEP-led. Specifically:</p> <p>a. Region 2 should assume lead status from New Jersey for those sites where both agencies agree it would be beneficial.</p> <p>b. For those sites where both agencies agree that lead status should remain with New Jersey, Region 2 should develop site-specific Letters of Agreement between the Region and New Jersey to address developing and implementing internal controls. These agreements will include:</p> <ul style="list-style-type: none"> • the roles, responsibilities, and expectations of each agency; • enforcement expectations when pursuing PRP site clean-up commitments; • the degree of reciprocity between Region 2 and New Jersey, and procedures for resolution of disputes; • the process and time requirements for support and lead agency review of key documents; • annual meetings with NJDEP to establish priorities for each NPL site; and • new milestones between New Jersey and the PRP for completion of clean-up phases. 	O	Region 2 Administrator			
2-2	11	Establish criteria for monitoring progress in meeting the milestones, and for actions taken when milestones are not met.	O	Region 2 Administrator			
2-3	11	If milestones are not met for those sites that remain New Jersey-led, take affirmative action by initiating formal discussions with NJDEP regarding the use of EPA's authority under CERCLA to assume lead agency status for these sites.	O	Region 2 Administrator			
3-1	15	For sites where interim remedies have been implemented, direct its staff to revise its clean-up impact summary and site exposure characterizations on its public, Web-based, Superfund site profiles to more accurately depict actions already taken to address risks to human health and the environment.	O	Assistant Administrator for Solid Waste and Emergency Response			

¹ O = recommendation is open with agreed-to corrective actions pending;
C = recommendation is closed with all agreed-to actions completed;
U = recommendation is undecided with resolution efforts in progress

Appendix A***Details on Scope and Methodology***

To gain an understanding of the causes of sites not reaching construction completion (Objective 1), we interviewed EPA managers at OSWER, program staff in Region 2, and NJDEP managers and program staff. We reviewed the NCP, CERCLA, and other applicable Superfund policies, guidance, and studies. We obtained legal assistance from the OIG's Office of Counsel for clarification of EPA's authority over State-led, PRP-financed sites, which were the focus of our evaluation. To gather information on all NPL sites, we analyzed data from EPA's Superfund database, the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). To analyze EPA time charged to working on the site, we obtained data from EPA's Superfund Cost Recovery Package and Image On-Line System (SCORPIOS) database. We did not perform a review of the quality of the data in either data system.

To identify the causes of delay, we reviewed site files maintained by NJDEP. We reviewed site documents and reports from a 10-year period (1997 through 2006) for four of the seven sites (Brick Township Landfill; Evor Phillips Leasing Company; Hercules, Inc.; and American Cyanamid). We completed a limited review of the remaining three NPL sites by analyzing periods that NJDEP program staff informed us that EPA took long time periods to respond (Jones Industrial Services Landfill, Inc.; Universal Oil Products; and Ventron/Velsicol). For the seven sites, we reviewed the Administrative Consent Orders between New Jersey and the PRPs. We reviewed notes from meetings held between Region 2 and NJDEP between 1995 and 2001, and between April 2006 and November 2007.

To address the effects of the sites not reaching construction completion (Objective 2), we reviewed site fact sheets, a list of work completed, technical documents, a short explanation of the federal clean-up process, a clean-up impact summary, contamination and exposure information, and Agency for Toxic Substances and Disease Registry reports. We also reviewed Government Performance and Results Act information as it related to our scope and objectives. Specifically, we identified the human health and environmental protection goals of the Superfund program in EPA's Strategic Plan Goal 3, Objective 3.2, and related performance measures. We held discussions with OSWER and Region 2 managers and program staff. We evaluated site profiles on EPA's Superfund Information System Website to determine how this information is presented to the public.

In July 2006, we conducted an analysis of the CERCLIS database for 1,378 sites listed on the NPL, including the sites that have been deleted. We found 144 sites that were non-federal Superfund sites listed before October 1986 and that were not yet construction complete. We eliminated 55 of the 57 mega-sites from our sample, recognizing that these sites were either exceptionally large and/or complex, in determining a suitable remedy for clean-up. For the remaining 87 sites, we sorted by the following criteria: sites that had not reached construction completion; sites that have at least one operable unit where final clean-up plans were not completed (no ROD); groundwater contamination and human health exposure not controlled; or insufficient information to determine if groundwater contamination and human health exposure

are controlled. Our review of the sites meeting the selection criteria indicated that most of the sites were in New Jersey.⁹ From the 87 sites, we selected seven NJDEP-led sites where the clean-up was being paid by the PRP.

⁹ It should be noted that in 1986, New Jersey had more sites on the NPL than any other State.

Appendix B***EPA Region 2 Response to Draft Report*****UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2****DATE:** May 22, 2008**SUBJECT:** Region 2 Comments on OIG Draft Report - Superfund Backlogs**FROM:** Donna J. Vizian
Assistant Regional Administrator for Policy and Management**TO:** Carolyn Copper
Office of Inspector General

EPA Region 2 welcomes the opportunity to comment on the Office of the Inspector General's draft report on Superfund Backlogs, and we thank you and your staff for listening to our input to remedy the backlogs in question.

Region 2's responses to each recommendation in the draft report are as follows:

OIG Recommendation #2-1

"We recommend that the Regional Administrator, Region 2, direct his Emergency and Remedial Response Division staff to coordinate with NJDEP officials the cleanup of the 14 pre-SARA NPL sites that are currently NJDEP-lead. Specifically:

- a. Region 2 should assume lead status from New Jersey for those sites where both agencies agree it would be beneficial.
- b. For those sites where both agencies agree that lead status should remain with New Jersey, Region 2 should develop site-specific Letters of Agreement between the Region and New Jersey to address developing and implementing internal controls. These agreements will include:
 - the roles, responsibilities, and expectations of each agency;
 - enforcement expectations when pursuing PRP site cleanup commitments;
 - the degree of reciprocity between Region 2 and New Jersey, and procedures for resolution of disputes;
 - the process and time requirements for support and lead agency review of key documents;
 - annual meetings with NJDEP to establish priorities for each NPL site; and
 - new milestones between New Jersey and the PRP for completion of cleanup phases.

Region 2 Response

Region 2 concurs. As you are aware, Region 2 has been meeting regularly with NJDEP to discuss the status of the subject fourteen sites (although the OIG refers to them as pre-SARA, only twelve were listed final on the NPL prior to SARA; however, Region 2 considers all fourteen sites “teenagers,” having not yet achieved construction completion, which is why both Region 2 and NJDEP have a high level of interest in these sites). In a recent meeting with NJDEP, Region 2 stated that it intends to assume the lead at eight of the fourteen sites

(see attached letter from NJDEP; although the letter references nine sites, based on further discussions, Region 2 and NJDEP agreed on eight, because one of the sites, Ventron/Velsicol, is very close to beginning construction at the last operable unit. Both Agencies agreed that transferring the lead now to EPA would delay the project).

Within ninety days of the OIG’s Final Report, Region 2 will prepare one Letter of Agreement with mutually agreed-upon cleanup schedules for the six remaining NJDEP-lead sites attached, in addition to discussing the aforementioned areas. We hope to have the Letter of Agreement with NJDEP finalized within six months.

OIG Recommendation #2-2

“The Regional Administrator, Region 2, should establish criteria for monitoring progress in meeting the milestones, and for actions taken when milestones are not met.”

Region 2 Response

Region 2 concurs. The Regional Administrator will direct the Director of ERRD to establish such criteria and include in the above-mentioned Letter of Agreement.

OIG Recommendation #2-3

“If milestones are not met for those sites that remain New Jersey-led, the Regional Administrator, Region 2, should take affirmative action by initiating formal discussions with NJDEP regarding the use of EPA’s authority under CERCLA to assume lead agency status for these sites.”

Region 2 Response

Region 2 concurs.

General Comments

EPA and NJDEP jointly bear responsibility for all of the sites on the National Priorities List (NPL), however, the degree of responsibility for each site is determined by which agency has been designated the lead. Once the lead is assigned, that agency has the day-to-day responsibility to ensure that the work gets done. It is important to note that over the years, we have engaged in

regular, high-level discussions with the State (often at the RA/Commissioner level) where the status of sites is discussed as part of our effort to advance the overall Program. More recently, we have undertaken an effort to move many of the older NPL sites forward. In fact, we have taken the lead back on a number of sites from our states over the past few years.

For the sites evaluated by the OIG, NJDEP has the lead and, for almost all of the sites, an enforcement agreement with potentially responsible parties (PRPs). EPA is not a party to any of these enforcement agreements and therefore has no legal authority to direct the PRPs in any way.

The OIG report suggests ways to expedite the completion of state-lead projects, focusing on document review times as the primary cause of delays. However, the report fails to address what is, in our opinion, the principal reason for delays in these projects, i.e., the overwhelming workload of the state remedial project managers (RPMs). As noted by the OIG staff who conducted the state interviews, the NJDEP RPMs manage over 20 sites each. The NJDEP Commissioner recently acknowledged to the media that it is an unworkable number of sites. The delays attributable to the workload burden of NJDEP RPMs, in our opinion, dwarf the issue of document review times by either EPA or NJDEP. The site-specific writeups that follow this general discussion will bear this out. It is unclear as to why the OIG overlooked this issue in the draft report, but we believe it is critical that it be addressed in the final report.

Other important issues with respect to site delays, as noted in the report, include technical complexities and uncooperative PRPs. Again, the draft report focuses on Agency review times as a significant delay factor and suggests the development of a Superfund Memorandum of Agreement (SMOA) as a means to shorten delays. While review times are important and in need of improvement, it is unrealistic to suggest that the development of a SMOA will fully address the delays. The NCP, a federal regulation, already specifies review times for various Superfund documents, which are acknowledged to be unreasonable. Specifying different review times in another document, which is not enforceable, will not change the dynamics of the review process nor provide EPA with more leverage in dealing with the state, or vice-versa. In addition, the site-specific schedules being developed by EPA and NJDEP are not enforceable (with the PRPs). The only way to enforce schedules is for the state to incorporate them into the site-specific enforcement agreements, a process which requires negotiation with the PRPs. Neither the state, nor EPA, can demand that unilateral schedules be met, and even when schedules are agreed to by both parties, there are always legal provisions that allow for extensions (for good cause).

I would also like to highlight that thirteen of the sixteen sites in the initial inventory have had a Record of Decision and, in many instances, much more work has been accomplished. This is detailed in the site-specific comments. These comments also expand on well-documented reasons for delay such as difficulty with the PRPs and resource constraints. It also notes activities EPA is conducting to help move sites forward (e.g., writing the ROD).

Lastly, the Report identifies GPRA measures as an influencing factor. The Region evaluates all NPL sites when setting its out-year targets. It is fair to say, however, that EPA places a greater focus on activities that are targeted within that year, whether they are at a Federal or a State lead site.

In addition to the previous general comments, below are site-specific comments that relate to the data on document review times presented in Table 2-1 of the draft report.

American Cyanamid

The primary issues at this site are its size and complexity. The longest review times identified by the OIG were related to the risk assessment reports for this site, which required extensive and intricate review by EPA. This site is a good example of the difficulty in remediating sites of this magnitude. It has seven operable units (OUs); three Records of Decision (RODs) have been signed for the disposal lagoons on the 400-acre parcel, but selecting and implementing the remaining RODs (to address groundwater, soils, and sediments) have not been completed. In 2004, NJDEP and the PRP started working toward a new remedial strategy encompassing the entire site. A draft Feasibility Study (FS) was released earlier this year. EPA and NJDEP provided substantial comments, and the PRP expects to submit the revised FS in late-June 2008. If EPA and NJDEP comments have been satisfactorily addressed, the proposed plan could be released for public comment in fall 2008.

Brick Township Landfill

This site has a long history, having been placed on the NPL in 1983. In 1992 NJDEP's Decision Document called for remedial actions at the site; in 1994, NJDEP announced it was rescinding the 1992 decision for a "no-action" alternative; then in 1999, monitoring data showed that groundwater contamination had migrated farther off-site than thought, which led NJDEP to reconsider its "no-action" alternative.

Additional sampling was done in subsequent years to collect data for the comprehensive Remedial Investigation (RI) report, FS, and a Human Health Risk Assessment. The sampling results were submitted in annual reports labeled either "Remedial Action Report" or "Remedial Action Report/Workplan."

Region 2 disagrees with the OIG that EPA took an excessively long time to review key documents (i.e., RI/FS reports), and that this was a prime reason the site still has no ROD. EPA did not receive a draft comprehensive RI report during this time period; rather, documents labeled "RI Reports" were actually monitoring reports, not RI Reports as required by CERCLA. EPA provided timely guidance to the PRPs on technical issues and commented on the monitoring reports as needed throughout this period.

EPA also made several efforts to move the ROD forward. In 2003 EPA and NJDEP met with the PRPs to clarify what was needed to complete a ROD. In 2007, again at EPA's request, NJDEP and EPA met with the PRPs. This meeting resulted in a re-drafted FS submitted in October 2007. EPA commented on the report, and we are working with NJDEP and the PRPs to produce an acceptable document. EPA expects to issue a ROD in 2008.

Evor Philips Leasing Company

EPA has reviewed the chronology of site activities at Evor Philips Leasing, to place in context the site documents reviewed by OIG staff in the course of their review. We found gaps in the review chronology prepared by the OIG for this site, resulting from information not provided or missing from the NJDEP files, or because meeting notes, e-mails and other less formal documentation were not reviewed by the OIG. When this additional information is incorporated, EPA's involvement

with NJDEP and the PRP throughout the ten-year period evaluated by the OIG is seen as much more extensive.

During this ten-year period, the PRP submitted five RI reports, three FS reports, and five Risk Assessment reports, all for Operable Unit 2, and none has been acceptable to either the support or lead agency. (Since that period one of the two outstanding risk assessments has been approved.) EPA believes that the poor quality of the submittals and poor performance by the PRP's consultant are the primary reasons for delays at this site.

Hercules, Inc.

Some of the delays cited by the OIG in EPA's review of site-related documents have been due to Hercules' failure to provide sufficient copies of deliverables to EPA (often we were not copied on key documents or only one copy was sent to EPA even though we requested multiple copies). This problem continues to be an issue, causing EPA to need to ask NJDEP to request additional copies for our review. This has delayed by months our reviews of many of the key documents cited by the OIG.

Regardless of document review times, the lengthy timeframe for this site's cleanup is primarily due to the site's size and complexity, as well as the inability of Hercules' former environmental consultant to generate the data necessary to completely characterize the nature and extent of contamination. Hercules also recognized this issue, given its 2004 decision to select a new environmental consultant.

Attachment

Attachment to Region 2 response:JON S. CORZINE *Governor*LISA P. JACKSON *Commissioner***State of New Jersey**
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MAR 31 2008

Mr. George Pavlou, Director
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region II 290 Broadway
New York, New York 10007-1866

Re: Superfund Site Tracking and Remedial Progress

Dear Mr. Pavlou:

I am writing in response to your letter of February 5, 2007 to provide an update on remedial progress at Superfund sites on the National Priorities List (NPL) where the New Jersey Department of Environmental Protection (DEP) provides lead oversight with support from the U.S. Environmental Protection Agency (EPA). Since renewed efforts began in April 2007, DEP and EP A continue to make progress in their actions to attain a final construction completion milestone at the 14 Superfund sites noted in your letter that have been on the NPL prior to 1986

Recently, the two agencies met on March 5, 2008 to update project schedules for the 14 sites and discuss new support from EPA remedial project managers assigned from Region II's New York Remediation Branch to work on four of the pre-1986 DEP-lead sites and one site recently added to the NPL. In addition, DEP and EP A managers worked on developing methods to address land use concerns encountered during remedial work and other permitting compliance issues. Finally, agency managers discussed your issue of EP A assuming the lead oversight role for nine of the 14 pre-1986 DEP-lead sites. At the recent meeting, EP A stated it intends to pursue the lead role with the various responsible parties now conducting remedial work at the nine sites under state enforcement actions. DEP will continue to work with the parties involved to ensure remedial progress continues at these NPL sites.

Overall, the nearly year-long effort by the two agencies to improve management of remedial work at the 14 sites is a positive achievement that has brought us closer to construction complete milestones. Specifically, on the three sites of particular interest to you - PJP Landfill, Global

Sanitary Landfill and Landfill & Development (L&D) Company - I am pleased to note that DEP believes remedial work is on track to meet the individual construction complete schedules. Construction at PJP is scheduled to begin spring 2008. Global is scheduled to start in early 2009. Property purchases/new wells offered for residents nearby L&D should be accepted by the end of 2008. At the recent meeting, EP A indicated these three sites along with Price's Landfill and Combe Fill South Landfill will remain as DEP-lead sites.

It is important to note that DEP provided the lead to EP A in 2007 for final cleanup work at two additional publicly funded sites, Imperial Oil and Syncon Resins, where remedial work requires significant federal and state funding. It was determined that the best method to meet the funding needs for both sites is through incremental funding as federal lead sites. I fully support funding Imperial Oil site's final cleanup project this year to address the source of contamination in the Marlboro Township neighborhood where the business has since filed for bankruptcy. At Syncon Resins, DEP supports continued plans to remove on-site buildings and development of an appropriate soil cleanup alternative for large quantities of PCB contamination that remain on site.

DEP and EP A plan to periodically update the remedial progress schedules for the 14 sites, conduct site visits and case team meetings as needed, as well as raise any concerns to upper management to avoid significant delays that may affect meeting construction complete milestones. Also, DEP is reviewing schedules you sent for EP A-lead sites that are maintained in your CERCLIS database for discussion at a future meeting between agencies.

I look forward to our continued coordination of cleanup actions at these NPL sites. If you have any questions or would like to discuss these issues in further detail, please call me at (609) 292-1250.

Sincerely,

Irene, S. Kropp, Assistant Commissioner
Site Remediation Program

CC: Ed Putnam, NJDEP
Len Romino, NJDEP
Fred Mumford, NJDEP
Carole Petersen, USEPA
John Lapadula, USEPA

Appendix C***New Jersey Response to Draft Report***

Ms. Carolyn Copper, Director
Program Evaluation, Hazardous Waste Issues
Office of the Inspector General
United States Environmental Protection Agency
Washington, D.C. 20460

Re: Superfund Evaluation Report

Dear Ms. Copper:

I am writing in response to your letter of April 14, 2008 to provide comments from the New Jersey Department of Environmental Protection (DEP) concerning a report prepared by your office titled “Improved Controls Would Reduce Superfund Backlogs.” Overall, as you know, DEP’s Site Remediation Program in 2006 began an extensive effort to improve the cleanup process at contaminated sites in New Jersey. So, while the draft report’s recommendations are appreciated, we have been working on the issue of cleanup delays for the past two years as it relates to all types of sites under the state’s purview, not just Superfund sites. Just last month I testified with DEP Commissioner Lisa Jackson before a joint hearing of state legislative committees on reforming the remedial process to speed up the pace of cleanups, to provide the state more leverage on remedy selection and to improve public notification.

New Jersey’s new proposed reforms may be a model for other states when looking to improve their cleanup programs and also can be part of model federal efforts that other regions can derive benefits from during program reviews. The reforms developed by DEP are the result of meetings with stakeholders that include environmental groups, environmental justice advocates, political leaders, re-developers, and business and industry groups. These meetings led to a series of white papers that allowed the stakeholders to provide considerable input into the reform process. I invite you to view them on our Website at <http://www.nj.gov/dep/srp/> as my staff has already done with your investigators.

Setting New Jersey’s Site Remediation Program on the right course to achieve cleanups faster at sites that have been on the state’s inventory for too long, including the Superfund sites listed on the National Priorities List (NPL) more than 20 years ago, is one of the primary goals of the state’s ongoing reform efforts.

In terms of the report, I believe that it is unnecessarily biased in that only a select type of sites in only one state were examined, which may result in findings with limited relevance to other regions. Of the more than 50 states, territories and Indian tribes, the Inspector General's office focused on just one state, New Jersey. Then within that state, the report includes only state lead sites, ignoring federal lead sites, which in Region II represent the majority in this category. The report is further limited in scope by the inclusion of only responsible party funded sites. Additionally, the report's stated reason that New Jersey had 38 of the 144 pre-SARA (1986) sites, or 26 percent, fails to take into account that New Jersey had by far the most sites on the NPL in 1986. New Jersey had 97 sites either final or proposed for the NPL by 1986, 31 sites more than the next state at that time, or 47 percent more than the next highest state.

The report also states that "mega sites" are excluded because of the inherent recognition that these large, complex sites may be expected to take many years to remediate, yet two of the seven sites included, American Cyanamid and Ventron Velsicol, clearly are mega-sites, and UOP will probably achieve that level soon. If the two sites are excluded from the report, just five pre-SARA sites are represented out of the original group of 144 sites. That hardly seems like a reasonable sampling of cases in order to draw conclusions on a national basis, as was your original charge.

I disagree with the broad statement that neither the EPA nor the DEP took actions need to ensure progress at the seven state-led Superfund site cleanups. This statement should be removed. All of the sites are well along in the cleanup process. The report should highlight that numerous final actions at various Operable Units have been taken at these sites, even though not all work is complete; this is much different than stating only interim actions were taken. This distinction may seem subtle, but it gives the reader the impression that only "Band-Aids" have been used to date. When a site is complex with many areas of concern to address from a remedial perspective, the approach often leads to a phased cleanup plan, with most being permanent actions for specific locales at a site.

It also is important to more clearly note that your investigators did not find any public health issues related to human exposures to any site contamination from any of the sites mentioned in the report. And the mention of "perceived risk" in the report by "residents living near these sites" is not supported in the report. Specific attribution should be made to determine what issues remain at each site that have not been properly communicated to the public. Otherwise, vague implications should be removed.

In terms of specific actions related to Superfund sites and efforts to reach EPA's final construction completion milestone, DEP managers and its federal Region II counterparts have been revising project schedules, discussing outstanding technical issues and coordinating enforcement action for 12 NPL pre-SARA sites where the state is the lead oversight agency. These discussions also included two other sites on the NPL for more than 15 years, both nearing construction completion. The focus of the effort is to meet certain milestones, most importantly construction complete, within an established schedule. Both agencies have agreed to take extraordinary steps to ensure remedial progress at these sites that is briefly outlined below.

Schedules: Revised milestone project schedules either have been or will be developed for the 14 sites. Technical issues on some sites require resolution before projected schedules on reaching milestones can be developed; interagency discussion and document reviews are underway to allow development of new schedules.

Quarterly Meetings: The milestone project schedules and outstanding technical issues will be discussed between agencies quarterly to ensure appropriate follow-up and to document any issues that remain in need of resolution.

Enforcement: DEP is tracking four of the 14 sites currently for enforcement actions. This effort against responsible parties began in summer 2007 when DEP issued Notice of Deficiencies. If appropriate, the enforcement actions could lead to DEP requesting EPA issue a 106 Order, which would result in a lead switch from state to federal. In addition, at these sites and four others, EPA will seek actions by the responsible parties to enable a change in oversight, as noted below.

Agency review time: DEP and EPA will prioritize document reviews to avoid delays in remedial progress. The report references use of available authorities as a primary factor to prevent delays. Staffing resources has always been a significant issue in implementation and delays. Overall, staffing issues continue to hinder both agencies and cause delays when reviewing remedial documents.

The two agencies last met on March 5, 2008 to update project schedules for the 14 sites and discuss new support from EPA remedial project managers assigned from Region II's New York Remediation Branch to work on four of the pre-1986 DEP-lead sites and one site recently added to the NPL. In addition, DEP and EPA managers worked on developing methods to address land use concerns encountered during remedial work and other permitting compliance issues. Finally, agency managers discussed EPA assuming the lead oversight role for eight of the 14 DEP-lead sites. EPA is working with DEP to pursue the lead role with the various responsible parties now conducting remedial work at the eight sites under state enforcement actions. DEP will continue to work with all the parties involved to ensure remedial progress continues at these NPL sites during lead transition.

Overall, the nearly year-long effort by the two agencies to improve management of remedial work at the 14 sites is a positive achievement that has brought the cleanups closer to construction complete milestones. At four sites – PJP Landfill, Global Sanitary Landfill, Landfill & Development (L&D) Company and Ventron Velsicol – DEP believes remedial work is on track to meet the individual construction complete schedules developed by the agencies. Construction at PJP is scheduled to begin spring 2008. Global capping is scheduled to start in early 2009. Property purchases/new wells offered for residents nearby L&D should be accepted by the end of 2008. Ventron Velsicol soil remediation is set to start summer 2008. EPA indicated these four sites along with Price's Landfill and Combe Fill South Landfill will remain as DEP-lead sites.

It is important to note that DEP provided the lead to EPA in 2006 and 2007 for final cleanup work at two additional publicly funded sites, Imperial Oil and Syncon Resins, where remedial work requires significant federal and state funding. It was determined that the best method to meet the funding needs for both sites is through incremental funding as federal lead sites. I fully

support funding Imperial Oil site's final cleanup project this year to address the source of contamination in the Marlboro Township neighborhood where the business has since filed for bankruptcy. At Syncon Resins, DEP supports continued plans to remove on-site buildings and development of an appropriate soil cleanup alternative for large quantities of PCB contamination that remain on site.

DEP and EPA will update the remedial progress schedules for the 14 sites, conduct site visits and case team meetings as needed, as well as raise any concerns to upper management to avoid significant delays that may affect meeting construction complete milestones. Also, DEP is reviewing schedules for EPA-lead sites that are maintained in EPA's CERCLIS database for discussion at a future meeting between agencies. Some site specific comments are presented below:

American Cyanamid Company

The report does not portray an accurate picture. To date, 65 percent of the site has been remediated at a cost of \$175 million. To remediate the remaining 35 percent of the site, it will cost an additional \$300 to \$600 million, dependant on the remedy selected. Having several contractors on site at one time to remediate multiple areas of concern would be problematic. In addition, achieving air permit equivalents would be difficult under the state's air pollution control program given the multiple sources generating discharges.

The report states that the remedies completed at the American Cyanamid site are interim. In fact, American Cyanamid completed the following actions: permanent remediation of Impoundments 5, 6, 7, 8, 11, 19 and 26 (approximately 700,000 cubic yards of contaminated material removed); removed pumpable tars from Impoundments 4 and 5 (3,800,000 gallons of tar removed), which was used as supplemental fuel; and, de-listed a portion of the site on which a minor league baseball field and shopping area were constructed. There is no human health exposure at this site and contaminated ground water is under control via an extraction system that sends 650,000 gallons per day to the local treatment works plant, which has been operating since 1982.

The report states that EPA should update its web site to accurately reflect the status of a site and that the public is not aware of site conditions. At the American Cyanamid site, the public and local government officials are actively involved in all decisions concerning remediation. The local environmental commission, CRISIS, has a technical assistance grant from EPA and retained the expertise of a technical advisor to monitor the progress of remediation at the American Cyanamid site. DEP holds periodic meetings with local government officials, CRISIS, and the community and issues Superfund updates, requesting input from all stakeholders. DEP also established three public repositories that contain all approved reports for the site.

Brick Township Landfill

NJDEP issued a Notice of Deficiency in 2007 to the responsible party requiring changes in a Remedial Investigation report and Feasibility Study report. More recently, EPA is working with the responsible party and DEP to prepare a proposed plan for a return to a more comprehensive cap at this site. A schedule for the site calls for a Record of Decision by September 2008 to enable design and construction to follow.

Evor Phillips Leasing

NJDEP issued a Notice of Deficiency in 2007 to the responsible party requiring a revised Focused Feasibility Study for ground water on Operable Unit 2 (on-site ground water). Currently, the schedule calls for a proposed plan and Record of Decision by spring 2009. Also, DEP is reviewing a Focused Feasibility Study for soil on Operable Unit 2 (on-site soil) with a Proposed Plan scheduled for early fall and a Record of Decision to be issued by end of calendar year 2008. A Feasibility Study for OU3 (off-site ground water) is scheduled for completion by summer 2008 followed by a Proposed Plan and Record of Decision for the end of the calendar year. It is estimated that construction will start in 2009 for the on-site ground water and soil operable units and by 2011 for the off-site ground water operable unit.

Hercules, Inc., Gibbstown Plant

Process Area

DEP issued a Notice of Deficiency to the responsible party in 2007. A revised Focused Investigation Workplan and Revised Screening-Level Environmental Risk Assessment were received in August 2007. Following review of the revised work plan, it was determined by DEP that sewers in the process area (still in use) may be acting as an ongoing source. The responsible party in April 2008 proposed closure of all active sewers and replacement with above ground open trenched sewers. This action for sewer replacement is underway at the site. DEP and the responsible party had meetings on three occasions between February and April 2008 to discuss a change in scope of the Remedial Investigation due to the discovered ongoing source issue. The responsible party submitted an addendum to the revised work plan in April 2008 with additional materials due in May 2008. Following approval of the revised work plan, the responsible party proposes to initiate field investigations in June 2008 and complete the work by September 2008.

Solid Waste Disposal Area

A Record of Decision calls for this area to be capped. The responsible party is working on final permitting including purchase of wetlands credits. The site schedule calls for implementation of a Remedial Design this winter starting with pre-loading of the area during months when the aniline still bottom material is hard and frozen.

JIS Landfill

Main Plume

A Record of Decision was signed for a pump and treat ground water system. A second Administrative Consent Order was signed approving a pilot for biosparge treatment technology. The biosparge is continuing to operate on site. DEP receives quarterly update reports on the system; groundwater is responding to the treatment technology with consistently decreasing contaminant trends. DEP will soon issue final monitoring requirements and results that must be demonstrated. DEP will request a new schedule after technical issues are resolved on the biosparge treatment technology. A Record of Decision amendment will be required if a change in the ground water remedy is approved.

Secondary Plume

The responsible party completed delineation of the secondary ground water plume and reported results in February 2008. Continued monitoring for natural attenuation will proceed. A final Remedial Investigation report for the secondary plume is due in May 2008. A Record of

Decision amendment would not be required if monitoring for natural attenuation is not changed as a final remedy.

Universal Oil Products

Work continues on a new train line to attractions at the Meadowlands that runs through this site that both DEP and EPA are reviewing. As part of a revised schedule, a Record of Decision for site ground water and Area 4 is planned for third quarter 2010 with construction complete to follow in fourth quarter 2012. Construction is complete for Areas 1, 1A, 2 and 5. Work on Berry's Creek will continue with EPA as the lead agency.

Ventron/Vesicol

Construction will be underway at this site in 2008 by the responsible party. A revised schedule reflects this site achieving construction complete in 2010 and work on Berry's Creek will continue with EPA as the lead agency.

I look forward to the issuance of your report and DEP and EPA's continued coordination of cleanup actions at NPL sites. If you have any questions or would like to discuss these issues in further detail, please call me at (609) 292-1250.

Sincerely,

Irene S. Kropp, Assistant Commissioner
Site Remediation Program

C: Alan J. Steinberg, Regional Administrator, Region II, EPA
George Pavlou, Deputy Regional Administrator, Region II, EPA

Appendix D

OSWER Response to Draft Report

May 12, 2008

MEMORANDUM

SUBJECT: OSWER Response to OIG Draft Evaluation Report “Improved Controls Would Reduce Superfund Backlogs” Assignment No. 2006-01433

FROM: Susan Parker Bodine /s/
Assistant Administrator

TO: Bill A. Roderick
Deputy Inspector General
Office of Inspector General

Thank you for the opportunity to review the OIG draft Evaluation Report “Improved Controls Would Reduce Superfund Backlogs, Assignment No. 2006-01433.” The draft report was sent to the Office of Solid Waste and Emergency (OSWER) and Region 2 on April 14, 2008 for review and comment. In this memorandum, we are responding to Recommendation 3-1. Region 2 will be responding under separate cover to Recommendations 2-1 through 2-3.

Recommendation 3-1: For sites where interim remedies have been implemented, the Assistant Administrator for Solid Waste and Emergency Response should direct its staff to revise its cleanup impact summary and site exposure characterizations on its public, Web-based, Superfund site profiles to more accurately depict actions already taken to address risks to human health and the environment.

Response: OSWER agrees with this recommendation and has already implemented it. The Superfund site profiles that are on the Superfund home page (www.epa.gov/superfund) currently depict information about site exposure characterizations and any actions taken to address human health and the environment at sites that have not reached Construction Completion. The site profiles page summarizes cleanup progress to date, including any early actions, such as a removal action, that have been initiated or completed. In addition, the site profiles provide a list of all actions taken at a site (on the secondary pages of the profiles), links to detailed site narrative fact sheets, Records of Decisions, five year reviews, and for some sites, a link to a detailed web site. The site profiles are designed to be a brief summary of site activities and to direct users to other existing documents for more information.

If you have any questions concerning this response, please contact Melanie Hoff at (703) 603-8808.

Appendix E***Distribution***

Office of the Administrator
Assistant Administrator, Office of Solid Waste and Emergency Response
Regional Administrator, Region 2
Associate Assistant Administrator, Office of Solid Waste and Emergency Response
Deputy Regional Administrator, Region 2
Director, Office of Site Remediation and Innovation Technology, Office of Solid Waste
and Emergency Response
Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
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Audit Follow-up Coordinator, Region 2
NJDEP Assistant Commissioner, Site Remediation Program
Deputy Inspector General