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BEACON HEIGHTS LANDFILL
MEETING OF POTENTIALLY RESPONSIBLE PARTIES

Gardner Auditorium, Massachusetts
State House
Beacon Street, Boston, MA 02203

May 20, 1985 - 10:00 A.M.

AGENDA

<u>TOPIC</u>	<u>SPEAKER</u>
I Introduction	Merrill Hohman
II Site History	Richard Cavagnero
III EPA Response Measures	Richard Cavagnero
IV Legal Responsibilities of Parties for EPA costs and cleanup activities	Philip Boxell
V Structure of Negotiations	Camille Connick
VI EPA Policy on Information Disclosures and Requests	Philip Boxell
VII Questions and Answers	John R. Moebs

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I. INTRODUCTION

Statement by
Merrill S. Hohman

Good morning ladies and gentlemen. My name is Mel Hohman. I am the Director of the Waste Management Division of the U.S. Environmental Protection Agency, Region I. As such, I am responsible for supervising this Region's hazardous waste site cleanup program.

On behalf of the U.S. Environmental Protection Agency (EPA), I would like to thank you for attending this meeting to discuss the Beacon Heights Landfill hazardous waste site located in Beacon Falls, Connecticut.

There are two purposes to this meeting. The first is to provide you with information about the Beacon Heights Landfill Site. EPA will describe the history of the site. Members of EPA will describe the Agency's efforts to investigate, control and eliminate the environmental hazards that the site has posed.

The second purpose of the meeting is to set up a negotiating structure for determining responsible party involvement in implementing remedial site measures and for settling Federal and State cost recovery claims. EPA will describe its legal basis regarding the extent of the responsibilities and liabilities that have been incurred by parties who have had involvement with the site in various capacities.

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The purpose of this meeting does not include the discussion of individual cases. We are here to discuss the general nature of responsible party involvement at the site. Later this morning, EPA will discuss the structure of negotiations.

This meeting is not open to the public. If there is anyone here who was not invited to attend as a potentially responsible party or as a representative of EPA, or the Connecticut Department of Environmental Protection, we ask you to leave at this time.

I would like to introduce to you the other Government participants. You will find a list of these people on the next page. For the purpose of these negotiations, please direct all technical questions to Camille Connick and all legal questions to Philip Boxell.

Now I will turn the microphone over to Richard Cavagnero of EPA. He will briefly describe for you the history of the Beacon Heights Landfill Site, and response measures EPA has taken and expects to carry out on the site. Philip Boxell will describe the legal responsibilities of parties for EPA Costs and Cleanup Activities. Camille Connick will describe the structure of negotiations. Philip Boxell will conclude with a discussion on EPA Policy on Information Disclosures and Requests. At that point, we will entertain questions from the floor. The materials for the technical presentations are Parts II and III in your information packet. Please turn to Part II at this time.

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REPRESENTATIVES OF EPA, and DEP

United States Environmental Protection Agency (EPA)

Merrill S. Hohman, Director
Waste Management Division, EPA, Region I

John R. Moebes, Chief
Superfund Branch, EPA, Region I

Heather M. Ford, Chief
Enforcement and Cost Recovery Section, EPA, Region I

Camille Connick, Site Manager
Enforcement and Cost Recovery Section, EPA, Region I

Richard Cavagnero, Site Manager
MA/CT/RI Site Response Section, EPA, Region I

Philip Boxell, Attorney
Office of Regional Counsel, EPA, Region I

Connecticut Department of Environmental Protection (DEP)

Edward Parker, Assistant Director
Hazardous Material Unit, DEP

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II. SITE HISTORY

Statement by Richard Cavagnero

My name is Richard Cavagnero. I am an Environmental Engineer in the Superfund Branch of the Region I office of the U.S. Environmental Protection Agency and serve as the Regional Project Manager for the Beacon Heights, Inc. hazardous waste site. I have the responsibility for carrying out EPA's role in the Remedial Investigation/Feasibility Study of this site. I will now provide a synopsis of the site history. A historical time line is provided in Appendix A.

The Beacon Heights, Inc. Landfill site is located in Beacon Falls, Connecticut, approximately 1.5 miles east of the intersection of State Routes 8 and 42. The site occupies approximately 83 acres atop a ridge bounded on the northeast by Blackberry Hill Road and on the west and northwest by Skokorat Road. The neighboring area consists of low density residential housing along with active and inactive gravel pit operations. Access to the site is from Blackberry Hill Road and is controlled by a locked gate.

From the 1920's until 1970, the site was known as "Betkoski's Dump" and consisted of approximately 6 acres of active dumping in the northwest corner of the existing site. Operations consisted primarily of open burning along with burial of non-combustibles. Available data indicates that a wide variety of wastes from municipal, commercial, and industrial sources were accepted. Problems of wind blown litter and smoke from open burning were reported during this period.

However, no site monitoring or inspections were performed by the Connecticut Department of Environmental Protection (DEP) during this period of operation, resulting in a lack of surface water, ground-water, and air quality data.

In 1970, the 83 acre site was purchased by the Martha Trucking Company and the name was changed to Beacon Heights, Inc. Landfill. The landfill area was expanded to approximately 30 acres using excavated soils for daily cover material. Site operations ceased in 1979 with two exceptions. Wastewater treatment plant sludge from the City of Naugatuck was spread over large areas of the site until 1983. Also a very small transfer station for Bethany residents remains in operation.

During this period of operations, both municipal wastes and industrial wastes and refuse were disposed of by landfilling. The Connecticut DEP monitored and permitted site operations during this period and issued a series of Administrative Orders to the facility owner/operator to perform engineering/geological studies and waste inventories and to remedy alleged permit violations related to unauthorized acceptance of industrial wastes, disposal in unauthorized areas, surface water contamination from leachate migration, inadequate cover, and others. These activities culminated in a permit requirement to close the facility on July 1, 1979 and a subsequent referral to the Connecticut Attorney General for the alleged failure of Beacon Heights, Inc. to comply with this deadline. No action was taken by the Attorney General and the landfill terminated operations in 1979.

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I will now discuss the chronology of EPA involvement with the site and will present the findings of the investigations undertaken.

In February 1981, a preliminary site assessment was undertaken by EPA to gather existing data and determine the potential for Superfund funded remedial action. Based on file information obtained from the Connecticut DEP and the landfill engineer up to 648,000 gallons of liquid and 7900 tons of solid hazardous waste were disposed of per year at the landfill during its most active phase 1973 to 1979. Based on hydrogeologic conditions inferred to exist at the site, the hazardous nature of materials disposed and the presence of chemical laden leachate flowing out of the landfill, the report recommended that a full site investigation be conducted.

In early 1983, this investigation was undertaken and a report termed a Remedial Action Master Plan (RAMP) was issued. This report expounded upon the hazardous materials present at the landfill and outlined a plan to install groundwater monitoring wells and conduct extensive sampling of soil and water media. In order to better direct further studies, the report also briefly listed several potential cleanup alternatives.

Sampling of media, installation of groundwater monitoring wells and all intensive field activity began in the spring of 1984. This field work was guided by a Remedial Investigation/Feasibility Study (RI/FS) Work Plan. The Remedial Investigation portion of this study included installation of 15 new groundwater monitoring wells.

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Sampling of these wells, 10 surface water and sediment stations, 5 air locations and 8 soil locations were conducted during May and September of last year. Residential wells along both Skokorat and Blackberry Hill Roads were sampled to determine if any residents were at immediate risk of exposure via contaminated water. Two residential wells were found to be contaminated and the residents were advised to discontinue drinking the water and were supplied bottled water by the Connecticut DEP. Benzene, the contaminant found in the residential wells was also detected in groundwater monitoring wells located between the landfill and the residential area. Chlorobenzene, chloroethane, ethyl benzene and bis(2-chloro-ethyl)ether were also detected in the monitoring wells. The leachate, which is visible at several locations around the landfill was heavily contaminated with a wide range of organic and inorganic compounds. The various chemicals detected in media on and adjacent to the landfill are outlined in Appendix B.

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APPENDIX A

HISTORICAL TIMELINE FOR THE BEACON HEIGHTS LANDFILL

- | | | |
|-------------|-----------|---|
| <u>1985</u> | May | - release final draft of the Feasibility Study |
| | | - 3 week public comment period to begin |
| | April | - release final draft of the Remedial Investigation |
| <hr/> | | |
| <u>1984</u> | December | - benzene detected in two residential wells.
residences begin to receive bottled water
from the Connecticut DEP |
| | June | - installation of wells began |
| | March | - property access to landfill granted for
for conducting of RI/FS studies |
| | February | - RI/FS workplan approval granted |
| <hr/> | | |
| <u>1983</u> | December | - draft RI/FS workplan submitted to EPA for
review |
| | October | - NUS Corporation tasked to undertake a
Remedial Investigation/Feasibility Study (RI/FS)
of the Beacon Heights landfill |
| | September | - site placed on National Priorities List (NPL) |
| | July | - Connecticut Department of Environmental Protection
requests EPA to pursue RI/FS studies under
CERCLA Act of 1980. |
| | June | - release final draft Remedial Action Master
Plan (RAMP) |
| | January | - Camp, Dresser & McKee submitted draft RAMP |

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- 1982 December - site placed on EPA proposed National
Priorities list
- October - recommendation to undertake RAMP based on
preliminary assessment
- June - information request letter sent to
owner/operator Harold Murtea
-
- 1980 September - site ranked using hazardous ranking score
(HRS Model)
- February - Ecology & Environment submitted a preliminary
assessment of site contamination
-
- 1980 January - site inspection/preliminary assessment
recommended for site by EPA
- Prior to 1980 - see attached sheets

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DEP REGULATORY HISTORY

Action	Date	Recipient	Directives	Result
1979	June, 1979		BHI appeals the DEP Permit closure date of July 9, and requested a revised contour plan.	<ol style="list-style-type: none">1. DEP issued a revised contour plan and designated July 1, 1979 as the final closure date for the BHI Landfill.2. BHI failed to meet the deadline and the case was referred to the Attorney General's office for action
	July, 1979			No action taken by the Attorney General. BHI closed the Landfill in July, 1979, as a result of failure to meet the terms and requirements set forth in the 1977 DEP Permit agreement.

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DEP REGULATORY HISTORY (continued)

Action	Date	Recipient	Directives	Result
Order SM-69H (continued)				<p>2. BHI changes landfill operation to a cell construction method, initiated by an engineering report submitted by Richard Sullivan, P.E., in January, 1977.</p> <p>3. Cover material continues to be applied to Landfill.</p> <p>4. However, inspections made by the DEP Solid Waste Unit in 1976 revealed several general permit violations on site, including the disposal of industrial waste and its disposal in unauthorized areas.</p> <p>1. Pregarman of the Solid Waste Unit reported that these violations were never investigated further, nor any compliance actions enforced.</p>
DEP Permit	September 1977	Beacon Heights, Inc.	<p>Approved new operating and closure plans, allowing BHI Landfill to reopen and operate for approximately two years, settling a final landfill closure date for July 9, 1979 for solid waste disposal.</p> <p>Permit restrictions were:</p> <ul style="list-style-type: none"> o limits on volume of waste disposal o prohibition of industrial waste disposal o prescribed limits on final contours 	
Connecticut Wetlands Commission	1977, concurrent with above DEP Permit	Beacon Heights, Inc.	Cease and Desist Order	<p>BHI defies Order, claiming that the Landfill had been operating from some 30 years prior to the 1974 operation, and therefore, was not subject to regulation.</p> <p>Case thrown out of court in 1977.</p>

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DEP REGULATORY HISTORY (continued)

Action	Date	Recipient	Directives	Result
Order SM-69	December, 1975	Beacon Heights, Inc.	<ol style="list-style-type: none"> BHI directed to close the landfill operation within 270 days of issuance of Order. Confine landfill operation to the area previously permitted by DEP (define area please). Dispose of solid waste by a cell construction method using daily and intermediate cover. Disposal of industrial liquids or other chemicals not permitted except by written approval from DEP. Install a V-gate weir below the slope (which failed in 1972); specifically, located in a position to measure the water volume leaving the site. Submit a comprehensive engineering report investigating geologic, hydrologic and operating characteristics of the landfill. 	<p>Order SM-69 appealed by BHI.</p> <p>DEP issues SM-69M to BHI -- a modified order as a result of an administrative hearing.</p>
Order SM-69M	November, 1976	Beacon Heights, Inc.	<p>This modified order identified exhibits for the State that showed, through laboratory analysis that contamination of well water and Hockanum Brook tributaries was the result of leachate migration from the BHI landfill. Excessive levels of contaminants included those from BOD, ammonia, nitrogen, iron, total suspended solids, volatile solids and coliform.</p>	<ol style="list-style-type: none"> BHI responds to SM-69M with an engineering report titled "Beacon Heights Landfill, Blackberry Hill Road, Beacon Falls, Connecticut, prepared by R.W. Waldo, P.E.&L.S. & Associates, P.C.

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DEP REGULATORY HISTORY

Action	Date	Recipient	Directives	Result
Order No. 1055	1972	Murtha Trucking Company	<ol style="list-style-type: none">1. Conduct a comprehensive engineering geological report and recommend procedures/facilities for eliminating pollution2. Inventory liquid and solid wastes.3. Construct and operate necessary facilities and/or procedures to eliminate pollution caused by the landfill.	<ol style="list-style-type: none">1. Order rescinded in February, 1973 when it was discovered that Murtha Trucking was not the legal owner of the Beacon Heights Landfill.2. Directives re-issued under Order No. 1104.
Order No. 1104	February, 1973	Beacon Heights, Inc.	Same directives as above (Order No. 1055)	<ol style="list-style-type: none">1. Engineering geological study prepared in April 1973 for Richard W. Sullivan, P.E., the DEP's consulting engineer, titled "Engineering Geology Study". Beacon Heights Sanitary Landfill - Beacon Falls, Connecticut." (prepared by Harry L. Siebert).2. Above-cited report provided the data and information for implementing corrective action.3. Reportedly, no pollution abatement program implemented by BHI, by Order requirements.

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APPENDIX B

REPRESENTATIVE CHEMICAL ANALYSIS OF VARIOUS MEDIA AT THE
BEACON HEIGHTS LANDFILL, BEACON FALLS, CONNECTICUT

GROUNDWATER

benzene
chlorobenzene
chloroethane
ethylbenzene
methylene chloride
xylenes
2-hexanone
bis(2-chloroethyl)ether
bis(2-ethylhexyl)phthlate
di-n-butyl phthlate
n-nitrosodimethylamine
manganese

SOILS

chlorobenzene
toluene
2-butanone
2-hexanone
4-methyl 2-pentanone
styrene
di-n-butyl phthlate
chloroethane
aluminum
lead
manganese
zinc

SURFACE WATER

2-butanone
benzene
chlorobenzene
benzoic acid
bis(2-chloroethyl)ether
manganese
aluminum
zinc

SOURCE: Remedial Investigation/Feasibility Study
prepared by NUS Corporation 1984-1985.

NOTE: This list does not include all contaminants identified,
nor all media sampled, at the Beacon Heights Landfill
site.

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III. EPA RESPONSE MEASURES

Statement by Richard Cavagnero

In 1981, the Agency contracted with Ecology and Environment, Inc. to conduct a Preliminary Site Assessment of the Beacon Heights Landfill based on reports by the Connecticut Department of Environmental Protection of potential and/or actual releases of hazardous substances to the environment. This Assessment was conducted in February 1981 and on February 27, 1981, a report was issued. This report identified the contamination of two tributaries of Hockanum Brook with hazardous organic contaminants from landfill leachate, noted the large amounts and variety of industrial wastes known or presumed to have been disposed there, and noted the potential for groundwater contamination which could threaten residential water supply wells.

Following the Preliminary Assessment, the site was evaluated using the guidelines of EPA's Hazard Ranking System. This ranking system takes into account the potential hazards posed by the release of hazardous chemicals via groundwater, surface water and air emission pathways. The site ranked high enough to be included on the proposed National Priorities List issued on December 21, 1982, making the site eligible for federal cleanup funding.

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On September 19, 1983, EPA appropriated \$400,000 for a Remedial Investigation/Feasibility Study (RI/FS) of the Beacon Heights Landfill to be undertaken by EPA's contractor NUS Corporation. To date \$406,170 has been appropriated and approved by EPA to be spent on the RI/FS Study.

The remedial investigation activities commenced at the site on October 26, 1983. The purpose of the remedial investigation was to determine better the nature and extent of contamination in the groundwater and surface water both on and off-site, the extent of contamination to the soil, and any possible exposures from air emissions. Throughout the next eight months, after the RI/FS Work Plan was approved in March of 1984, NUS and its subcontractors conducted extensive groundwater monitoring both on and off-site in order to determine and/or confirm the presence of contamination. The groundwater monitoring results confirmed that contaminated groundwater has and is migrating in a north westerly direction toward Skokorat and Blackberry Hill Roads. The mode of transport of contaminated groundwater is through the fractured bedrock and weathered bedrock unconsolidated zone interface. Surface water samples from the tributary of Hockanum Brook draining the site were collected, analyzed and volatile organic chemicals were detected. Soil samples were collected in the areas of several leachate seeps and were found to be heavily contaminated with a wide variety of organic and inorganic compounds. Air sampling showed only trace volatile organic chemicals which

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would be dispersed to background levels well before they reached residential areas. A representative list of contaminants detected in groundwater, soils and surface water is found in Appendix A of the Site History. Locations of the sample collection sites and specific measurements results are available in the RI/FS.

The current and future public health and environmental impacts posed by the site were evaluated for the three possible pathways of migration, air, groundwater and surface water. The results of data gathered during the Remedial Investigation clearly indicate current and future public health risk to residents who ingest water from their domestic wells located within the affected area. The two residences where benzene was detected are currently receiving bottled drinking water as a temporary alternate water supply.

Surface water monitoring data indicates that the tributary of Hockanum Brook which drains the perimeter of the landfill has contaminant levels which exceed EPA ambient Water Quality Criteria for Human Health. Considering dilution upon entering Hockanum Brook the discharge is not expected to pose an acute impact to aquatic species in Hockanum Brook or the Naugatuck River. However, chronic exposure may result in impacts on aquatic life and the recreational use of Hockanum Brook. Therefore, elimination of leachate discharge to the landfill drainage brook has been proposed in the Feasibility Study.

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Once the Remedial Investigation portion of the study was completed, the Feasibility Study was conducted to evaluate remedial action alternatives for cleaning up any on-site or off-site problems. Based on the results of the Remedial Investigation, identified public health and environmental concerns were factored into the Feasibility Study in order to determine the most effective long-term remedy for the site, considering first, human health and environmental effects and secondly, cost.

The development and analyses of twelve possible alternatives was performed by NUS Corporation, following the guidance established by the EPA National Contingency Plan. The National Contingency Plan indicates that the most cost-effective remedial system is the lowest cost system that is technically feasible, reliable, and adequate to protect public health, welfare and the environment.

EPA has designated five categories or levels of evaluation to use in identifying remedial alternatives for Superfund hazardous waste sites. These categories are related to the degree of remedial action, ranging from total removal to no action, and to the compliance with various levels of regulatory requirement. The twelve remedial alternatives are contained within the five groupings. In order to keep the presentations moving along I will only outline the five general levels of evaluation. Additional information on each of the twelve alternatives may be found within the draft feasibility study report.

Category 1 - Alternatives specifying offsite storage, destruction, treatment or secure disposal of hazardous substances at a facility

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approved under RCRA and in compliance with all other applicable EPA standards. Under this category two remedial alternatives were considered, offsite disposal in an approved landfill and offsite incineration at an approved facility.

Category 2 - Alternatives that attain all applicable or relevant federal public health or environmental standards, guidance or advisories. This has been interpreted to mean, primarily, compliance with RCRA requirements. The two alternatives considered here were first RCRA closure with a cap, leachate collection and treatment to NPDES standards and secondly construction of a double lined onsite RCRA approved landfill and treatment of leachate to NPDES standards.

Category 3 - Alternatives that exceed all applicable or relevant federal public health and environmental standards, guidance or advisories. Again this has been interpreted to mean, primarily, exceeding the requirements of RCRA legislation. The one alternative considered was an onsite RCRA landfill with treatment of leachate beyond NPDES limits.

Category 4 - Alternatives that meet the CERCLA goals of minimizing present or future migration of hazardous substances and protect human health and the environment, yet may not attain all the applicable or relevant standards. The remedial alternative outlined here is cover of the landfill with soil and treatment of leachate to NPDES standards.

Category 5 - No action will be implemented. Considered in this category are limited no action alternatives where no disposal or

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treatment is implemented, but measures are put into effect to monitor the spread of contamination and identify a point at which remedial actions may be required. A risk assessment was completed as part of the feasibility study to identify any health risks that may be left unattended with implementation of this alternative. The two alternatives considered here were strict no action and no action with long term monitoring.

The four remaining remedial alternatives address providing alternative water supplies to residents adjacent to the landfill and remediation of groundwater contamination. Any of these four alternatives may be combined with the options already presented. To be brief the water supply alternatives include provision of municipal water to only those residents in the affected area or provision of water to an extended area. The groundwater remediation alternatives were a pump and treat alternative or additional studies to further define flow in the deep bedrock.

I realize these alternatives may be difficult to digest the first time around, therefore I will again refer you to the draft feasibility study for further information.

I must stress that no final decision has been made as to what the final remedy will be. At the end of this month a public meeting will be held to present the results of the RI/FS. The comments received by EPA from the state, interested citizens, and responsible parties, regarding the findings of the RI/FS will be factored into EPA's decision as to the final remedial action.

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I will now turn the microphone over to Phillip Boxell, EPA attorney for the site. He will speak on legal responsibilities of parties for cleanup costs.

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IV. LEGAL RESPONSIBILITY OF PARTIES FOR EPA COSTS
AND CLEANUP ACTIVITIES AT THE BEACON HEIGHTS SITE

Statement by
Philip Boxell

Good morning. My name is Philip Boxell. I am an attorney with the EPA Region I Office of Regional Counsel in Boston. I am the lead legal negotiator working on the Beacon Heights case. We look forward to working with you to resolve the issues before us relating to the cleanup process on the Beacon Heights site and to the involvement of potentially responsible parties in this cleanup process.

In this portion of the presentation, I want to discuss four legal matters. First, I want to describe how Superfund became engaged legally on the Beacon Heights site. Next, I'll discuss the liability of responsible parties for costs incurred by EPA in the cleanup process on the site. Thirdly, I'll discuss EPA's legal position concerning the nature of the liability of responsible parties under CERCLA. Finally, I'll discuss the involvement of responsible parties in any further site cleanup activities that may be required.

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SUPERFUND INVOLVEMENT ON THE BEACON HEIGHTS SITE

As most of you know, the Superfund law, CERCLA, was passed in 1980 to provide the funds and the legal authority for EPA to become involved in the cleanup of deteriorating or abandoned hazardous waste facilities. As a first step in deciding which sites to clean up, EPA, in October 1981, issued an interim list of 115 priority hazardous waste sites for Superfund assistance, pursuant to CERCLA §105(8). That section requires the Agency to determine priorities among all the sites in the country on which releases or threatened releases of contaminants are occurring.

CERCLA requires these priorities to be based upon the relative risk or danger to the public health or welfare or to the environment. This risk assessment takes into account the population at risk, the hazard potential of the hazardous substances, the potential for contamination of drinking water supplies, and certain other factors. This interim list was expanded to include 160 sites in August of 1982, and further expanded in December, 1982 to 418 sites. The Beacon Heights site was on this expanded list. As a result, the site became available for EPA Superfund involvement in the site cleanup activities.

Even prior to the listing of the site as eligible for Superfund assistance, EPA was involved with the Beacon Heights Landfill. In 1981 and 1982, EPA conducted several inspections to evaluate site conditions, collect preliminary sample data, and identify

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the potential for adverse immediate health effects as a result of site.

In September of 1983, EPA authorized the NUS Corporation to prepare a work plan for a two part study called a Remedial Investigation and Feasibility Study, or RI/FS. Actual work on the RI/FS commenced in February, 1984. The purpose of the RI/FS is to determine what measures, if any, may be required to remedy any soil and groundwater contamination that may exist at the site. Both parts of the RI/FS are available today.

LIABILITY FOR EPA CLEANUP COSTS

For all aspects of the site investigation and cleanup undertaken by EPA, CERCLA §107 provides for recovery of costs incurred from responsible parties. As some of you may know, the Superfund is a rotating fund, initially funded by a combination of general tax revenues and a special tax on certain chemical manufacturers. The amount of money that the Superfund is initially authorized to accumulate, \$1.6 billion, is far less than the cleanup costs for the many hazardous waste problem sites throughout the country. Therefore, Congress provided that the Superfund could be replenished through cost recovery actions against responsible parties under Section 107 of CERCLA, thereby minimizing the burden on the taxpayers of cleaning up these sites. As a result, EPA considers that a necessary legal corollary of any Superfund expenditures to clean up a site is an action to replenish the fund by recovering costs from responsible parties.

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Section 107 of CERCLA also defines the four classes of responsible parties who are liable for costs associated with governmental responses to the hazards on Superfund sites. The four statutory classes of responsible parties at the Beacon Heights site translate into the following parties:

- (1) The present owner or operator of the Beacon Heights site;
- (2) All operators, or owners in the chain of title since hazardous waste activities were initiated on the site who maintained ownership or operation at a time when disposal occurred;
- (3) All persons who arranged for disposal or treatment of hazardous substances or who arranged with a transporter for disposal or treatment of hazardous substances at the Beacon Heights site; and
- (4) All persons who accepted hazardous substances for transport to the Beacon Heights site.

To date we have issued mailings to about 68 generators and transporters and five parties who owned or operated the site at time when disposal occurred.

NATURE OF LIABILITY UNDER CERCLA

The next subject that I want to cover in this portion of the presentation is EPA's legal position on the nature of liability under CERCLA of the responsible parties on the Beacon Heights site. There are two important components to EPA's position - strict liability and joint and several liability.

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Section 101(32) of CERCLA reads as follows:

"liable" or "liability" under this title shall be construed to be the standard of liability which obtains under Section 311 of the Federal Water Pollution Control Act.

Without going into a detailed analysis, let me state that the Water Act imposes strict liability and so, therefore, does CERCLA. What this means is that liability is imposed under both acts without regard to the fault or negligence or culpability or lack thereof of the responsible parties. Thus, although a party may have behaved in accordance with the highest standards of behavior in dealing with the Beacon Heights site, if that party falls within those classes of responsible parties that I have just outlined, the statute will impose liability without regard to any "good faith" defenses the party might raise.

An important corollary to the strict liability feature of CERCLA is the fact that the Act provides no quantity threshold to trigger liability. Therefore, under CERCLA, if a party shipped hazardous substances to the site in any amount, strict liability will be imposed. This is very important when viewed in combinations with the joint and several character of responsible party liability under CERCLA.

It's EPA's position that CERCLA imposes joint and several liability. This is certainly a subject on which those of you who are not lawyers will want to be advised by counsel. The doctrine of joint and several liability treats those damages or hazards for which

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liability cannot reasonably be allocated to particular responsible parties as the legal responsibility of all responsible parties. Because this responsibility cannot, by definition, be appropriately allocated among responsible parties, any court judgment for the entire amount of damages can be enforced in toto against any individual responsible party or group of responsible parties.

The doctrine of joint and several liability shifts the burden of allocating responsibility for the hazards on the site from the injured party to the responsible parties. However, it is not the Agency's goal to seek unjust results. The purpose of joint and several liability is to place on the identifiable responsible parties the twin burdens of paying the entire cost and of finding a method for dividing liability among responsible parties. Our initial goal in settlement negotiations will be to have the responsible parties come up with an agreement among themselves as to apportionment. In several settlements to date, this apportionment formula has been based on the volumetric rankings of waste contributed to the site. However, we will not litigate on the basis of a volumetric formula. If EPA has to litigate to recover the costs of cleaning up unallocable hazards on the site, EPA's legal position will be that joint and several liability will apply to the defendants in order to transfer these costs onto the responsible parties.

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RESPONSIBLE PARTY INVOLVEMENT IN CLEANUP

The final topic I want to discuss in this portion of the presentation is the role of responsible parties in any remaining site cleanup activities.

Section 104(a) of the Superfund statute authorizes EPA to conduct cleanup measures on the Beacon Heights site, unless it is determined that such action will be done properly by any responsible party. Thus, one of EPA's major objectives in these negotiations will be to determine if responsible parties will undertake the design and implementation of any final cleanup action on the site recommended by the Feasibility Study.

It is our hope that whatever negotiating structure is used to address the question of cost recovery liabilities will also be used to structure any involvement that responsible parties might desire in conducting any final cleanup activities.

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V. STRUCTURE OF NEGOTIATIONS

Statement by
Camille Connick

Good morning. My name is Camille Connick. I am a Site Manager in the Enforcement & Cost Recovery Section in the Superfund Branch, EPA Region I. I will be the lead technical negotiator for EPA in this case, and Philip Boxell will be the lead legal negotiator for EPA. I would now like to discuss the structure of negotiations which will follow today's meeting. Because we will be negotiating with a large group and because we are seeking a comprehensive agreement to address future remedial site measures, we will not conduct negotiations with individual responsible parties. We do not have the resources to conduct individual negotiations and we believe that individual negotiations would undermine the process of achieving a comprehensive group agreement. Therefore, we ask that all proceedings after today's meeting be conducted through a negotiating committee of manageable size representing all responsible parties interested in pursuing an agreement in this matter. To assist you in forming the committee, we have provided a list of potentially responsible parties. As we update the list of potentially responsible parties, we will make it available to the Negotiating Committee.

In order to address the agencies and citizens concerns regarding a timely Remedial Response for the Beacon Heights Landfill Site, we are seeking a commitment for design and construction of the

chosen Remedial Action by July 1, 1985, the chosen Remedial Action will be specified upon the signing of the ROD by August 1, 1985. Alternatively, the commitment for construction only of the Remedial Action is September 1, 1985. The dates of these milestones are specified in the attached Beacon Heights Schedule.

Given these deadlines, we suggest that a committee be organized and that this committee contact EPA to arrange for a negotiating session as soon as possible. I am the EPA contact for this purpose and can be reached at (617)223-1954. We recommend that the first negotiating session take place in mid-June. In addition to involvement with the Remedial Action, the negotiations will also address the the question of cost recovery liabilities for EPA expenditures.

In the event that negotiations do not result in a commitment by the responsible parties to conduct the necessary work, EPA intends to evaluate its enforcement options and choose the most appropriate course of action. Options include ordering or bringing suit against some or all of the responsible parties to conduct the activity under CERCLA §106 and/or RCRA §7003 authority, or using Superfund monies to finance the necessary remedial activities, and subsequently bringing a cost-recovery action against the responsible parties.

I would like to make clear that our intention to negotiate with a committee rather than single parties should not be taken as an unwillingness to communicate with parties who are not on

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the committee. While we are not willing to enter into individualized agreements, we are concerned that all parties believe that they are adequately represented on the committee. Any settlement in this case must be a comprehensive one in which all identified parties have a fair opportunity to participate. The Government's role is to ensure that the negotiating process is equitable to all those concerned. Therefore, please do not contact us individually unless you feel you are not being fairly represented on the committee.

As a final note, I would like to share with you some suggestions which may assist you in forming a negotiating committee. These suggestions have come about as a result of other responsible party meetings conducted by the Agency. First, we suggest that all types of companies be represented on the committee. For example, while large volume generators may be candidates for taking the lead in negotiations, we suggest that there also be representation on the committee for small volume contributors. Secondly, we would like to see some formal indication to the Government of the authority of individuals purporting to negotiate on behalf of the entire group. This would be beneficial so that we can know the authority of the people we are talking to and how far this authority extends. Lastly, we suggest that the responsible parties might want to consider setting up an administrative fund at the outset of negotiations. This fund could be used by those participating on the committee who shoulder the burden of coordinating and exchanging information with the rest of the participating companies. Communication between all parties

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interested in negotiating is important to the development of an equitable settlement.

Philip Boxell will now briefly discuss EPA's policy on information disclosures and requests.

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BEACON HEIGHTS SCHEDULE

<u>ACTIVITY</u>	<u>DATE</u>
First Negotiations Meeting	May 20, 1985
Press Release RI/FS available for Public Meeting	May 17, 1985
Public Comment Period Opens	May 22, 1985
Public Meeting	May 29, 1985
Public Hearing	June 11, 1985
Close Record	June 14, 1985
Deadline Design and Construction Commitment	July 1, 1985
ROD Signed	August 1, 1985
Consent Agreement Signed for Design and Construction or alternatively PRP Commitment for Construction Only	September 1, 1985
Consent Agreement Signed for Construction Only	November 1, 1985

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VI. EPA POLICY
ON
INFORMATION DISCLOSURES AND REQUESTS

Statement by
Philip Boxell

The final areas that I wish to discuss before taking legal questions concern the disclosure of EPA information and the compliance with EPA information requests. One question which has arisen is whether the records on which EPA has relied in identifying responsible parties will be disclosed. EPA intends to disclose to those parties who have complied with EPA's information request all records EPA possesses linking those parties to the Beacon Heights site. We expect these releases will begin on June 3, 1985. To be eligible to receive EPA's documents, a party needs to have: (1) responded to the specific questions propounded in the letter notifying the party of potential liability; (2) submitted to EPA all documents relevant to the propounded questions; and (3) submitted an affidavit from a responsible company official or representative stating that a diligent search of the company's records has been made and that all documents responsive to the information request have been forwarded to the Agency.

EPA INFORMATION REQUESTS

In the original notice letters that we sent to potentially responsible parties, EPA requested that parties provide information

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relating to their involvement with the Beacon Heights site. As indicated in our notice letters, it is EPA's position that timely compliance with these requests is enforceable with penalties under Section 3008 of RCRA, and that if we do find it necessary to take legal action to enforce our request, the administrative cost of that action would be recoverable under CERCLA §107.

We wish to conclude the information gathering process as soon as possible. As information arrives, we are adding it to our data base and we would like to complete our data base in order to be able to generate an accurate and comprehensive listing of all parties involved with the site.

In the event that your company is unable to locate any documents, you are requested to provide EPA with an affidavit to that effect in order to avoid any enforcement actions that might be taken against parties in noncompliance with these information requests. Your affidavit should be signed by the company official responsible for the company's response to the information requests, and it should indicate that a diligent search of the company records has been conducted, and that all relevant information discovered in that search, if any, is being presented to EPA.

We will now accept questions on EPA's legal portion.

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