The Evolution of the Superfund Program through Three Rounds of Reforms

U.S. Environmental Protection Agency
Timeline of Superfund Administrative Reforms

- "30-Day Study" Superfund 30-Day Study Task Force Implementation Plan
  - June 23, 1993

- Superfund Administrative Improvements Closeout Report
  - June 1991

- National Implementation Strategy for Superfund Administrative Reforms
  - February 13, 1995

- Superfund Reforms Implementation Plan
  - March 13, 1996

- "90-Day Study" A Management Review of the Superfund Program
  - June 1991

- Announcement of 1st Round of Superfund Administrative Improvements
  - February 1995

- Announcement of 2nd Round of Superfund Administrative Reforms
  - February 14, 1995

- Announcement of 3rd Round of Superfund Reforms
  - October 2, 1995

- Superfund Reforms Semiannual Report
  - December 6, 1995
Announcement of 1st Round - June 23, 1993
In this press release, Deputy Administrator Robert Sussman announces a comprehensive package of administrative changes to the Superfund program.
Robert Sussman, Deputy Administrator of the U.S. Environmental Protection Agency, today announced a comprehensive package of administrative changes to the Superfund program. The primary objective of implementing administrative change in Superfund is to address liability fairness under the law, to improve the pace and cost of cleanup, to augment the state role in cleanup decisions, and to readily involve local communities — particularly disadvantaged communities — in Superfund decision-making.

The Superfund administrative improvements, which will begin to be implemented immediately, are contained in a report compiled by an agency-wide task force established last month by EPA Administrator Carol M. Browner. Nine administrative improvements to Superfund are discussed in detail in the new report.

Browner observed that, "While Superfund has made significant progress in protecting human health and the environment from releases of hazardous substances, I am confident we can make it more efficient, more effective, and more fair. This is the first phase of the Clinton Administration effort to make Superfund work."

The report describes new and revised Superfund policy and identifies planned demonstration projects involving states, cost allocation, small volume waste contributor settlements, presumptive remedies, mixed funding, and environmental justice. The report also reaffirms continuing Superfund initiatives such as the Superfund Accelerated Cleanup Model (SACM). The report does not evaluate or suggest changes to the EPA Superfund removal program.
"The prospect of Superfund reauthorization presents the Clinton administration, Congress, EPA, and the public an excellent opportunity to evaluate how well the program has worked over the last dozen years and to make changes that will improve the program in the future," said Sussman. "By immediately implementing the improvements outlined in the report, EPA will be able to explore its flexibility under the current statute, and thus determine what legislative changes are necessary or desirable. We do believe that changes in the statute may well be warranted and EPA is actively reviewing possible changes in conjunction with the Congress."

Under the Superfund report's general goal of enhancing enforcement fairness and reducing transaction costs, EPA will identify approximately 20 sites where alternative dispute resolution can be used, update the guidance to provide greater flexibility and judgement in reaching settlements with small volume waste contributors, identify sites where settlements with small volume waste contributors can be encouraged, issue supplemental Federal Lien procedures for owners at Superfund sites, and fully evaluate the Superfund mixed funding policy.

Under the goal of enhancing cleanup effectiveness and consistency, EPA will develop standard specifications for some remedy design components, clarify the agency's Superfund land policy, promote the use of standard cleanup remedies at similar Superfund sites (landfills, wood-treater sites, grain storage sites, etc.), and develop soil "trigger" levels for a variety of chemicals.

Under the goal of enhancing public involvement in the Superfund program, EPA will prepare and implement a Superfund public participation plan by the end of 1993 and ask each EPA region to identify a site where environmental equity is of concern, and develop a site-specific strategy for addressing equity issues.

Finally, under the goal of enhancing the state role in the Superfund program, EPA will encourage more environmental cleanup sooner by state "deferral." EPA is encouraging states to address a large number of sites EPA has not listed on the Superfund priorities list. Deferring to states can accelerate cleanup, and minimize the risk of duplicative state/federal efforts.

The agency will continue to implement other Superfund management and enforcement initiatives already in effect, including Superfund construction completions, enforcement first, accelerated cleanup (including SACM), and improved contracts management.

In addition to discussing the new Superfund report, Sussman will announce the membership of the National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Evaluation Committee. The Committee's first meeting is scheduled to convene June 28-29 in Arlington, Va.
Announcement of 2nd Round - February 13, 1995

This press release announces the 2nd Round of Superfund Administrative Reforms. These twelve new reforms were intended to strengthen and improve the Superfund program.
SUMMARY OF ROUND 2
"SUPERFUND ADMINISTRATIVE REFORMS"
(FEBRUARY 1995)

On February 13, 1995, Elliot Laws, Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) announced the 2nd round of “Superfund Administrative Reforms.” This second set of reforms was intended to improve the Superfund program while EPA waits for Congressional action on a new law. These reforms consist of twelve initiatives, encompassing six general areas: enforcement, economic redevelopment, community involvement and outreach, environmental justice, consistent program implementation, and state and tribal empowerment. These new reforms followed the closeout of the 1st round of reforms launched in June 1993.

Some highlights of the twelve initiatives include: facilitating PRP searches, fostering expedited settlements, implementing Brownfields initiatives, issuing guidance on community advisory groups and technical assistance grants, issuing soil screening guidance and issuing guidance which promotes state/tribal voluntary cleanup programs.

On February 14, 1995, EPA released the National Implementation Strategy for Superfund Administrative Reforms. This detailed national implementation strategy was developed by EPA Headquarters, the Regions and other federal agencies. It identifies major milestones, leads and timeframes for each initiative. The Superfund Reforms Annual Report, FY 1995, issued on May 13, 1995, summarizes the objectives, status and next steps for each of the twelve initiatives between February 13, 1995 and December 31, 1995.

To name just a few of the accomplishments achieved by the reforms, EPA has:

- released more than 200 de minimis parties from enforcement activities through early expedited settlements, bringing the total number of de minimis parties that have settled with the Agency to over 12,000;

- invited over 500 PRPs to participate in allocation pilots at eight sites;

- initiated Brownfields activities at 29 sites;

- established a pilot to promote community participation in planning cleanup activities at 13 sites; and

- initiated a pilot, in coordination with States and Tribes, to test a funding concept at seven sites.
MEMORANDUM

SUBJECT: Announcement of Superfund Administrative Reforms

FROM: Elliott P. Law
Assistant Administrator
Office of Solid Waste and Emergency Response (OSWER)

Steven A. Herman
Assistant Administrator
Office of Enforcement and Compliance Assurance (OECA)

TO: Regional Administrators (Regions 1 - 10)

The purpose of this memorandum is to announce the Superfund Administrative Reforms for FY 1995 and FY 1996. These reforms are intended to strengthen and improve the Superfund program, while awaiting Congressional action on a new law, through twelve initiatives encompassing six major areas.

The six areas include:

1. Enforcement Reforms designed to test-drive innovative, enforcement processes, reduce transaction costs for PRPs and promote more fair, effective and efficient settlements;

2. Economic Redevelopment initiatives which foster cleanup and reuse of properties;

3. Community Involvement and Outreach expanding efforts to ensure that cleanup objectives are responsive to the needs of the communities served;

4. Environmental Justice to ensure that people of color and the economically disadvantaged receive equal, prompt and effective environmental protection;

5. Consistent Program Implementation by applying lessons learned from past initiatives and lessons to be learned through the promotion of innovative technologies;

6. State Empowerment in recognition of the high quality of State cleanup programs and States' contributions to the Superfund efforts.

These Superfund administrative reforms have been approved by the Administrator and she endorsed their immediate adoption by all Headquarters and Regional offices, the Department of Justice and other stakeholders. The twelve initiatives are more fully explained in a two page fact sheet attached to this memorandum (see Attachment A).
This initiation of new Administrative Reforms follows our closeout of the Administrative Improvement initiatives launched in 1993. These initiatives also reinforce our commitment to the principles embodied in the Administration's reauthorization efforts last year (which enjoyed broad-based stakeholder support). We strongly support the reauthorization of Superfund in this Congress, and intend to implement these administrative reforms while actively pursuing reauthorization. Attachment B is a summary of major accomplishments under the Administrative Improvements initiatives. We are extremely pleased with the performance of the Regional managers and staff in implementing the first round of administrative improvements.

We join Administrator Browner in commending the Regions for the accomplishments of the Superfund program since its inception and its extensive contributions to environmental protection and pollution prevention. To date, the Regions in partnership with the States have assessed and determined that approximately 25,000 potential hazardous waste sites are no longer of Federal interest. The Regions also have completed over 3,200 early actions at more than 2,500 National Priorities List (NPL) and non-NPL sites to reduce immediate threats to human health and the environment. Cleanup or study is underway at 95% of the 1,300 NPL sites and, by the end of FY 1994, necessary construction was complete at 278 sites — four times the number of completions in 1991. Approximately three quarters of new cleanup work, valued at over $1 billion annually, is being performed by private parties, with settlements totaling over $10 billion since the beginning of the program. EPA continued its commitment to fairness in enforcement by settling with over 4,000 small parties this year, to bring the total number of settlements with de minimis parties to 9,400.

The Administrator committed, during her recent meeting with the U.S. Conference of Mayors, that EPA would undertake 50 Brownfields pilots in 1995 and 1996. As illustrated in the two page fact sheet, this is one of the major administrative reform initiatives to be launched by the Agency. Headquarters and the Regions will play a major role in fulfilling this commitment. Regional Administrators will receive a memo from Elliott Laws soliciting panel nominees to assist in the selection process. Regional pilots are a key element of the National Brownfields Initiative. In addition, the Administrator also committed each Region to at least one Brownfields Intergovernmental Personnel Assignment to local governments by December 1995.

The scope and implementation of these initiatives were discussed and thoroughly examined in the meeting with Waste Management Division and Regional Counsel personnel on January 31 - February 1, 1995. We very much appreciate the efforts already expended by the Regions on launching these new initiatives and ask your continued support in their implementation. We also wish
to note that the Department of Justice and the Agency for Toxic Substances and Disease Registry have endorsed and support our efforts on Superfund Administrative Reform.

Attachment C to this memorandum relays our management plan and followup action items resulting from our meeting with Regional and Headquarters personnel. A separate mailing to the Regions will contain the more detailed national implementation plan for each of the administrative reforms. It is designed to aid the Regions in planning (in cooperation and consultation with State counterparts) for the next critical steps in the process. Regional implementation plans are due to OSWER and OECA by no later than March 15, 1995.

We would urge you to communicate about these efforts with all Superfund stakeholders, including States, Tribes, local governments, communities and other stakeholders. If you have detailed questions, please contact either of us or Steve Luftig on (703)603-8960 or Bruce Diamond on (202)260-4814.

Attachments:
Superfund Administrative Reforms - Fact Sheet
Administrative Improvements Accomplishments - Fact Sheet
Superfund Administrative Reforms - Management Plan/Action Items/Implementation Plan Format

cc: Lois Schiffer (DOJ)
Bruce Gelber (DOJ)
Barry Johnson (ATSDR)
George Buynoeaki (ATSDR)
Waste Management Division Directors (Regions 1-10)
Environmental Services Division Directors (Regions 1-10)
Regional Counsels (Regions 1-10)
Public Affairs Directors (Regions 1-10)
Superfund Branch Chiefs (Regions 1-10)
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Bruce Diamond (OSRE)
Jerry Clifford (OSWER)
Robert Hickmott (OCLA)
ASTSWMO
NEW INITIATIVES

A. Enforcement Reform

1. Facilitate PRP Searches
   Improve the quality and timeliness of PRP searches, make information obtained more accessible, and conduct PRP searches sufficient for an allocation process at certain sites.

2. Foster Expedited Settlements
   Identify and offer eligible parties expedited settlements including ability to pay settlements and early, de minimis (pre-ROD) settlements at pilot sites.

3. Pilot Allocations
   Implement a process for allocation of responsibility for response costs among all parties (including the Trust Fund) at selected pilot sites.

B. Economic Redevelopment

4. Brownfields Initiatives
   Implement the Agency’s Brownfields initiatives related to beneficial reuse of Superfund sites, including: (a) expand the number of Brownfields pilots to 50 by the summer of 1996; (b) community outreach, involvement of Federal, State, Tribal and local stakeholders, financial assistance to political subdivisions (e.g., Brownfield grants), financial assistance to States and Tribes (e.g., limited financial assistance to encourage the development of Voluntary Cleanup Programs), and data collection; (c) issuing guidance that eliminates from the inventory of Superfund sites (CERCLIS) properties determined no longer of Federal interest; (d) issuing guidance that authorizes the Regions to clarify areas on or adjacent to NPL sites (including Federal facilities) determined to be uncontaminated; and (e) issuing guidance which identifies options to remove liability-based barriers to property transfers at certain sites (e.g., prospective purchaser guidance), and describes the circumstances under which the Agency will issue comfort/status letters.

C. Community Involvement and Outreach

5. Community Advisory Groups and Technical Assistance Grants
   Issue guidance encouraging the Regions to establish CAGs, implement early community involvement at more sites, and amend the TAG rule to facilitate community involvement (e.g., authorize training and earlier funding of community groups).

6. Community Involvement in the Enforcement Process
   Identify and pilot enhanced, innovative approaches to community involvement in technical settlement issues.
NEW INITIATIVES (Continued)

D. Environmental Justice

7. Training and Health Services Assistance to Communities
   Implement, in coordination with HHS, a pilot program that provides health services assistance to
   citizens in proximity to Superfund sites, and develop interagency pilots to train and employ community
   residents.

E. Consistent Program Implementation

8. Guidance for Remedy Selection
   Issue the Soil Screening Levels Guidance and Land Use Guidance, initiated under Administrative
   Improvements, and complete additional presumptive remedy guidance for ground water, wood treater
   sites, PCB sites, manufactured gas plants (MGP), and grain storage sites.

9. Risk Sharing in Implementing Innovative Technology
   Explore programs to share risks associated with implementing innovative technologies by:
   (a) agreeing to share the risk for a limited number of approved projects by "underwriting" the use of
   certain promising, innovative approaches, and (b) exploring and identifying concerns that are affecting
   the selection and use of innovative technologies by contractors.

F. State and Tribal Empowerment

10. Voluntary Cleanup Program
    Issue guidance which promotes State/Tribal Voluntary Cleanup Programs, encourages other States and
    Tribes to create such programs, and, in conjunction with the Brownfields Initiative, authorizes limited
    financial assistance to such programs.

11. Integrated Federal/State/Tribal Site Management Program
    Issue the State Deferral Guidance, initiated under Administrative Improvements, continue and expand
    the current projects, and explore options for further delegation of authorities to States and Tribes.

12. State/Tribal Superfund Block Funding Options
    Explore the interest of States and Tribes in a project to examine the feasibility of using a single
    cooperative agreement to finance for Superfund activities within State or Tribal boundaries (e.g., PA/SI
    Core Program, site-specific enforcement and cleanup activities).

ENHANCED AND CONTINUING INITIATIVES

- De Minimis Settlements
- Alternative Dispute Resolution
- Continuation of Limited Number of Mixed Funding Pilots
- Enforcement First and Cost Recovery
- Environmental Justice Initiative
- NPL Construction Completions
- Superfund Accelerated Cleanup Model
- Military Base Closure Initiative
- Strengthening Contracts Management
INTRODUCTION

On June 23, 1993, the U.S. Environmental Protection Agency (EPA) issued the Superfund Administrative Improvements Final Report to strengthen the Superfund program. The 17 initiatives outlined in the report have improved the pace, cost, and fairness of the Superfund program, and have expanded public involvement.

The report established nine new initiatives to

- Increase enforcement fairness and reduce transaction costs
- Improve cleanup effectiveness and consistency
- Expand meaningful public involvement
- Enhance the state role in the Superfund program

In addition, the Agency adopted eight continuing initiatives that improve the efficiency, effectiveness, and fairness of the Superfund program.

Progress under each initiative was tracked through administrative improvements quarterly reports. The final quarterly report, covering performance from June 23, 1993, to September 30, 1994, was issued on December 23, 1994. In February 1995, EPA issued the Superfund Administrative Improvements Closeout Report which provides a description of the initiatives, a summary of the achievements or performance with regard to the milestones, the benefits of each initiative, and the lessons learned by Agency personnel through implementing the initiatives.

OVERVIEW OF PROGRESS

The Agency, in coordination with Superfund stakeholders, was successful in achieving or exceeding most of the goals and targets set for itself by the September 30, 1994, deadline. In two key areas of performance, construction completions and de minimis settlements, EPA exceeded targets that had been set at significantly higher levels than historical performance.

To implement the administrative improvements, EPA established specific performance targets, action items, and long-term commitments. By September 30, 1994, EPA had:

- Exceeded all 4 numerical performance targets
- Completed 90, and was still addressing 13, action items
- Continued to implement all 13 long-term commitments

Through the administrative improvements, EPA took significant steps to address key areas of concern to Superfund stakeholders. Many of the initiatives are already providing measurable benefits to Superfund stakeholders, public health, and the environment. Performance highlights are provided below.

**EPA increased enforcement fairness and reduced transaction costs**

- Completed 86 de minimis settlements with over 5,500 potentially responsible parties at 69 sites in the last two years, which is more than the total number of de minimis settlements obtained in the prior history of the Superfund program
- Employed non-binding liability allocation and alternative dispute resolution at over 20 sites
- Issued a report on allocation methods and implementation issues to facilitate future settlements
- Reached settlements at six mixed funding pilot sites
- Issued supplemental federal lien guidance that specifies procedures for owner notice and comment.
OVERVIEW OF PROGRESS (Continued)

EPA Improved Cleanup Effectiveness and Consistency

- Issued guidance on presumptive remedies for municipal landfills and volatile organic compounds in soil
- Implemented presumptive remedies at seven sites, saving both time and money. (At one municipal landfill site, EPA has saved at least three years from the start of the remedial investigation/feasibility study to construction initiation.)
- Issued guidance on dense non-aqueous phase liquid contamination problems and technical impracticability waivers for groundwater contamination to reflect advances in technical understanding of groundwater remediation
- Issued draft guidance with methodologies for developing soil screening levels for 107 chemicals to reduce the time and cost of completing soil investigation
- Completed a desk-top pilot study of ten sites, which determined the comprehensiveness of the soil screening levels

EPA Expanded Meaningful Public Involvement

- Arranged a national meeting in September 1993, sponsored by the National Advisory Council on Environmental Policy and Technology, to listen to citizens’ opinions on environmental justice and community involvement at Superfund sites
- Established the Office of Solid Waste and Emergency Response Environmental Justice Task Force, which issued a report that greatly expanded the commitment to, and efforts in, addressing environmental justice issues at Superfund sites
- Identified ten sites for environmental justice initiatives
- Established community working groups or advisory boards comprised of members of the community and other stakeholders, at eight sites
- Improved access to funds for citizen groups by issuing simplified Technical Assistance Grant materials that describe the functions of the grant and how to apply for a grant

EPA Enhanced the State’s Role in the Superfund Program

- Developed draft criteria for States to participate in deferral of Superfund caliber sites
- Initiated 22 deferral pilots in 7 states
- Established a deferral work group to address implementation issues and to assess pilots

EPA further increased Superfund efficiency, effectiveness, and fairness

- Increased the number of construction completions at Superfund sites from 61 to 278
- Streamlined the decision-making process and site cleanup through implementation of the Superfund Accelerated Cleanup Model
- Conserved Federal tax resources through the use of enforcement authorities – Almost 50 percent of new cleanup work was initiated by private parties in FY 1994 – Private party commitments to site studies and cleanup work is expected to exceed $1 billion for FY 1994, and the cumulative value of these commitments since 1980 exceeds $9 billion
- Enhanced the effectiveness of enforcement actions by establishing Regional CERCLA Compliance Monitoring Procedures, instituting Regional enforcement response policies and procedures, and developing the Cost Recovery Targeting Report
- Improved outreach and coordination efforts with federal, private, and community stakeholders by issuing Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities, continuing Department of Defense partnerships in innovative technologies, and continuing efforts to mobilize private firms to participate in additional partnerships on the use of innovative technologies
- Improved cost control by issuing cost management guidance for remedial and enforcement Superfund contracting
Announcement of 3rd Round - October 2, 1995
In this press release, Administrator Browner announces the final round of Superfund Reforms. These twenty new common sense reforms are the final changes that can be made to the Superfund program without reauthorizing the law.
SUMMARY OF ROUND 3
"SUPERFUND REFORMS" (OCTOBER 1995)

On October 1995, EPA Administrator Carol Browner announced the 3rd and final round of "Superfund Reforms." This introduced 20 new "common sense" reforms to the Superfund program designed to make the Superfund program faster, fairer and more efficient. Administrator Browner called upon Congress to complete the reform of Superfund through legislative changes, noting that these administrative improvements represent the final changes that can be made to the program without reauthorizing the law.

These highlights of the 3rd round of Superfund Reforms are intended to assist state and local governments, communities, and industries involved in cleanups to more easily:

• Make cost-effective cleanup choices that protect public health and the environment by: assuring more consistency; streamlining processes to save time and money; and creating new choices for cost-effective cleanup options and encouraging economic development. Another reform will be to establish cost-effectiveness "rules of thumb" and an EPA National Remedy Review Board that will ensure that costs are appropriate to cleanup needs.

• Reduce litigation so more time can be spent on cleanup and less on lawyers through increased fairness in the enforcement program by: compensating settling parties for a portion of the "orphan shares," or cleanup costs that are attributable to insolvent parties; and reducing transactions costs by doubling the number of "small party" entities potentially liable at Superfund sites.

• Help communities become more informed and involved so that cleanup decisions make the most sense at the community level by: establishing a greater role for states and tribes in remedy selection; providing clearer information on remedy selection decisions through simple summary sheets; promoting pilot efforts to create cleanup options in communities; and providing forums for stakeholder concerns by establishing an ombudsman in each Region to help resolve stakeholder concerns.

On December 6, 1995, EPA released the Superfund Reforms Implementation Plan for the 3rd Round of Superfund Reforms. This plan includes contacts, participants, a brief summary, and milestones.
Twenty new “common sense” administrative reforms to the Superfund toxic waste cleanup program were announced today by U.S. Environmental Protection Agency Administrator Carol M. Browner, culminating the Clinton Administration’s two-year effort to fundamentally redirect Superfund to make it faster, fairer and more efficient. Browner called on Congress to complete the reform of Superfund through legislative changes, noting that these administrative improvements represent the final changes that can be made without new reauthorizing legislation.

Today’s reforms — the third round of Clinton Administration reforms — intend to assist state and local governments, communities, and industries involved in Superfund cleanups to more easily: 1) make cost-effective cleanup choices that protect public health and the environment; 2) reduce litigation so more time can be spent on cleanup and less on lawyers; and 3) help communities become more informed and involved so that cleanup decisions make the most sense at the community level.

“The Clinton Administration believes that Superfund is broken and needs to be fixed — that’s why we’ve worked for two years on administrative reforms to make Superfund faster, fairer and more efficient,” Browner said. “But administrative reforms can only do so much. Ultimately, Congress must change the law if we are to protect public health and the environment for the one in four Americans who live near a toxic waste dump.”

Browner added, “We believe Congressional reforms must include three principles: First, polluters, not taxpayers, must pay for cleanup. Second, we must speed cleanups and lower costs to return more property to communities for their productive use. And third, communities should have a role in selecting cleanup plans that protect public health and make economic and environmental sense.”
Some of the new reforms will aim to control costs while protecting public health by assuring more consistency, streamline processes to save time and money, create new choices for cost-effective cleanup options, and encourage economic redevelopment. Among these reforms will be the establishment of cost-effectiveness “rules of thumb” and an EPA National Remedy Review Board that will ensure costs are appropriate to cleanup needs; setting criteria for reopening remedy decisions at select sites where new and better science will achieve the same level of protection with potential cost savings; directives to ensure rigorous attention to costs in the development of cleanup options and remedy selection; and national risk-based priority setting to select sites for funding based on the principle of cleanup of “worst sites first.”

The cost-effectiveness reforms also include specific efforts to ensure appropriate health protection in the decisionmaking process, through involving stakeholders in designing accurate, site-specific risk assessments. To make Superfund sites more attractive for economic redevelopment, the reforms include an effort to pilot the deletion of “clean” parcels of Superfund sites and establishing guidance to ensure that all cleanup actions are considered when listing sites on the Superfund National Priorities List — which is expected to keep some sites off the list, a factor that will help make them more attractive for redevelopment.

Reforms that aim to reduce litigation and reduce both costs and conflict delays include efforts to increase fairness in the enforcement process by compensating settling parties for a portion of the “orphan shares,” or cleanup costs that are attributable to insolvent parties; and efforts to reduce transaction costs by doubling the number of “small party” entities — typically small businesses and individuals whose contribution to pollution at Superfund sites is who are protected from lawsuits. To provide a positive incentive to reduce litigation, EPA also will reward cooperative parties at sites that consistently perform high quality work by significantly reducing EPA oversight.

A third set of reforms aims to provide more and better information and opportunities for involvement to citizens, state and local governments, and industry in cleanup decisions, to encourage responsible cleanup choices that reflect local needs and preferences. Among these reforms will be efforts to establish greater roles for states and tribes in remedy selection; providing clearer information on remedy selection decisions through summary sheets; promoting pilot efforts to create consensus on cleanup options in communities; and providing forums for stakeholder concerns by establishing an ombudsman in each Region to help resolve stakeholder concerns and increasing use of tools such as electronic bulletin boards to improve communications among stakeholders.

As a followup to previously announced reforms, EPA also has issued a new policy that adopts as guidance the provisions of the lender liability rule; and issued model de minimis settlement agreements designed to further streamline the de minimis settlement process.
A. **Make smarter cleanup choices that protect public health at less cost.**

1. **Control Remedy Costs and Promote Cost-Effectiveness**

   - **Establish Cost-Effectiveness Thresholds and New "Rules of Thumb"**
     Establish a new EPA National Remedy Review Board, composed of senior Agency experts, to review proposed high cost remedies at specific sites to ensure that costs are not disproportionate to cleanup benefits. EPA will develop additional "Rules of Thumb" to further ensure the appropriate review of the cost-effectiveness of remedies.

   - **Update Remedy Decisions at Select Sites**
     Revisit remedy decisions at certain sites where significant new scientific information or technological advancement will achieve the same level of protectiveness of human health and the environment.

   - **Clarify the Role of Cost Throughout the Remedy Development Process**
     Clarify the role of costs in developing cleanup options and selecting remedies, and promote consistent use of policies and guidances on land use, ground water, and presumptive remedies to assure cost-effectiveness.

   - **Clarify Information Regarding Remedy Selection Decisions**
     Require a summary sheet clearly demonstrating the basis for remedy selection at each site. The summary will present the relationship between site risks and response actions, including the costs and benefits of cleanup alternatives.

2. **Ensure All Risk Assessments are Grounded in Reality**

   - **Institute New Role for Stakeholders in Designing Reasonable Risk Assessments**
     Solicit early stakeholder input to identify and make consistent use of current information about the site and site inhabitants. Reaffirm EPA's commitment to allow parties at a site to perform risk assessments under the proper circumstances.

   - **Ensure Reasonable and Consistent Risk Assessments**
     Standardize those components of the risk assessment process that vary little from site to site, and issue national criteria to the Regions for the review, approval, and reporting of Superfund risk assessments. Utilize Expert Workgroups on specific contaminants to ensure application of developing risk information.

3. **Foster Integration of Overlapping Cleanup Programs**

   - **Establish a lead regulator at each site undergoing cleanup activities under competing Federal and State authorities to eliminate overlap and duplication.**

4. **Reform Listing and Deletion Policies**

   - **Ensure that response actions that have been taken up to the time of listing are considered when listing sites on the National Priorities List.**

   - **Delete "clean" parcels of certain Superfund sites from the National Priorities List.**
5. **Conduct National Risk-Based Priority Setting**

   - Establish formal national priority-setting systems for funding federal facility and Superfund cleanups based on the principle of "worst problems first." These systems would incorporate input from States and other stakeholders in determining the appropriate priority.

B. **Reduce litigation by achieving common ground instead of conflict.**

1. **Increase Fairness in the Enforcement Process**

   - **Compensate Settlors for a Portion of Orphan Share**
     Seek to compensate parties for a portion of the costs attributable to insolvent parties (orphan share) at sites where parties agree to perform the cleanup, subject to the adequacy of funding for the cleanup program.

   - **Ensure Settlement Funds are Dedicated to Specific Sites**
     Direct settlement funds designated for future site costs to be placed in site-specific accounts.

   - **Issue Cleanup Orders to Parties in an Equitable Manner**
     Ensure that issuance of cleanup orders is not limited to a few responsible parties but includes all appropriate parties where there is a sufficient basis to include them.

2. **Reduce Transaction Costs**

   - **Increase Number of Protected Small Contributors**
     EPA will not seek costs from thousands of additional small volume contributors (de minimis parties) by, at a minimum, doubling the level previously identified for small party protection. If a party is threatened with litigation by private parties, EPA will settle with that party for one dollar.

   - **Adopt Allocations Proposed by Parties at a Site**
     Adopt private party allocations, including those that identify an orphan share, as the basis for settlement, where such allocations are approved by EPA. Compensation for a portion of the orphan share may be provided, subject to the adequacy of funding for the cleanup program.

   - **Reduce Oversight for Cooperative Parties**
     Reward parties that consistently perform high quality work by significantly reducing or tiering oversight.

C. **Ensure that States and communities stay more informed and involved in cleanup decisions.**

1. **Establish Greater Stakeholder Role in Remedy Selection**

   - **Shift Remedy Selection Process to Selected States**
     Implement a process whereby qualified States and Tribes (at Tribal sites) would select remedies at certain Superfund sites, consistent with applicable law and regulations governing cleanups.

   - **Pilot New Community-Based Remedy Selection Process**
     Assist community groups, site parties, local governments and other stakeholders in achieving consensus to propose protective remedies at select sites.

2. **Provide a Meaningful Forum for Stakeholder Concerns**

   - **Establish an Ombudsman in each Region to serve as a point of contact to facilitate resolution of stakeholder concerns at the Regional level.**

   - **Use tools such as electronic bulletin boards and private and educational institutions to improve communication between all Superfund stakeholders.**
SUPERFUND ADMINISTRATIVE REFORMS:
REFORM INITIATIVES

A. Make smarter cleanup choices that protect public health at less cost.

1. Control Remedy Costs and Promote Cost-Effectiveness

EPA believes significant cost savings can be obtained through the institution of a combination of management and policy measures without jeopardizing a remedy's reliability or protection of human health and the environment.

- Establish Cost-Effectiveness Thresholds and New "Rules of Thumb"

EPA will establish a National Remedy Review Board to help control costs of future remedy decisions. Composed of senior experts from EPA's Headquarters and Regional offices, the Board would review proposed cleanup actions at sites where: (1) estimated costs for the preferred alternative are over $30M; or (2) proposed remedy costs are over $10M and 50% greater than the costs of the least-costly, protective, ARAR-compliant remedy (i.e., choosing among remedies that meet statutory requirements for Superfund remedy selection). This 50% "cost-effectiveness yardstick" will reflect the Agency's desire to select remedies that fall within this cost-control measure. The Board would consider the nature of the site, the accuracy of the cost estimate, the risk posed by the site, and additional relevant factors. The Board would make recommendations of an advisory nature, although Regional decisionmakers will be expected to give the Board's recommendations substantial weight in making their final remedy selection decisions following public comment. Additional measures ("rules of thumb") will be developed by EPA during the winter and spring of 1996 to highlight potentially "controversial" cleanup decisions for senior management review to ensure that the preferred option is not disproportionately costly to other proposed options.

- Update Remedy Decisions at Select Sites

Cleanup decisions made in the early years of the Superfund program were based on the "state-of-the-knowledge-and-practice" available at that time. Though these cleanup decisions were designed to provide appropriate levels of protection of human health and the environment, new technologies are making their way into the market that allow for more efficient and cost-effective cleanups, while achieving the same level of protection for human health and the environment. As such, some cleanup systems that were selected and constructed in the past might not be the cleanup method EPA would propose today under similar circumstances. Accordingly, the Agency intends to
entertain requests by parties to update earlier decisions such as those discussed below where significant new scientific information or technological advancement will achieve the same level of protectiveness.

EPA has seen the most dramatic increase in understanding of the factors affecting cleanup decisions in the field of ground water restoration. By the early 1990s, experience indicated that sites contaminated with dense nonaqueous phase liquids (DNAPLs) could require an inordinate amount of time to restore the ground water to drinking water levels using conventional pump and treat technology alone. Updating these older decisions could incorporate current policy for dealing with sites with DNAPLs (current policy is to isolate and contain the DNAPL source, removing that source only to the degree practicable). Updates to these remedies to allow for more attainable cleanup goals will occur only where the same level of protectiveness of human health and the environment will be achieved. In less common instances, new technologies may now also be available that could greatly improve the cost-effectiveness of ground water source control cleanups. In addition, EPA may consider changes in technology for source control cleanups in limited cases.

- **Clarify the Role of Cost Throughout the Remedy Development Process**

This year, EPA will issue two new directives aimed at ensuring rigorous attention to cost throughout the formulation of cleanup alternatives. The first directive will highlight the role of cost and cost-effectiveness in the remedy selection process as established in the Superfund law and the National Contingency Plan. This directive will outline how cost factors into the screening of alternative remedies as well as how cost factors into the balancing of tradeoffs among options in remedy selection. The directive will also describe how selected remedies must be determined to be "cost-effective" as required by statute, and emphasize how disproportionately costly remedies are to be avoided.

The second directive will promote consistency among EPA Regional offices in the application of current national policies and technical guidance. These include policies on land use that encourage early community involvement (including local land use authorities) in the development of assumptions about what future land use may be reasonable to anticipate. These assumptions should provide a practical foundation for the baseline risk assessment, the development of cleanup alternatives and the detailed analysis of those alternatives. Also, recent ground water guidance calls for the evaluation of the restoration potential of contaminated ground water prior to establishing final cleanup objectives, which may involve combinations of containment and
restoration. In addition, the directive will foster use of presumptive remedy
guidances that identify frequently selected, proven effective and cost-effective
response actions for common categories of sites (e.g., municipal landfills) and
are powerful tools which dramatically improve the efficiency of the remedy
selection process and the cost-effectiveness of the remedies resulting from it.

• Clarify Information Regarding Remedy Selection Decisions

Summary sheets for Records of Decision (RODs) will accompany each ROD
and will provide, in a standardized format, the nature of the threats
encountered and the cleanup actions taken to address these threats. This brief,
easily understandable "summary" would be developed to describe clearly and
concisely the tradeoffs that were balanced in choosing the selected remedy
from available options, i.e., the judgments that were made to link the risk
posed by the site to the remedy EPA selected. The summary sheet will be
designed to foster greater transparency in EPA's remedy selection decisions
and to facilitate the input of data into the technical data base that will become
part of CERCLIS III, EPA's national Superfund data system.

2. Ensure All Risk Assessments are Grounded in Reality

The following projects are designed to ensure that both the design and conduct of all
Superfund risk assessments are sound and consistent by making good use of "real
world" information about the site and site inhabitants. Ultimately, stakeholder input
on the likelihood that people may be exposed to hazardous substances can ensure a
more realistic context for decision making.

• Institute New Role for Stakeholders in Designing Reasonable Risk
Assessments

Two projects will be conducted to empower stakeholders to participate in the
design and implementation of Superfund site risk assessments. The first
involves piloting a process that solicits early stakeholder input on land use
assumptions, (e.g., for homes, retail stores, parking lots, playgrounds),
reasonable exposure pathways, (e.g., drinking water from a well, eating fish
from the stream), and characteristics of affected populations (e.g., workers,
young children at play). For Superfund risk assessments scheduled this fiscal
year (FY '96), the site manager would seek input up front on which exposure
pathways are most likely to occur and which human behaviors and activities
are most reasonably expected (or are not expected) at this site. This up-front
discussion provides both the "blueprint" for conducting the risk assessment,
and a realistic foundation on which to build cleanup options. The second
The project will reaffirm EPA's commitment to allowing PRPs to conduct risk assessments under proper circumstances as part of the overall site study (RI/FS).

• Ensure Reasonable and Consistent Risk Assessments

There will be three initiatives aimed at developing reasonable exposure pathways and assumptions on a consistent basis. The first project will establish, in FY 96, national criteria for the Regions to review, approve, and report Superfund risk assessments which promote consistency, transparency, clarity, and reasonableness. Standard review practices, checklists, and formal sign off by appropriate Agency personnel will ensure that unlikely exposure scenarios are eliminated from consideration. Standard reporting requirements will facilitate review of assessments for consistency and reasonableness at the national level.

The second project seeks to standardize those "pieces" of the risk assessment process that vary little from site to site (e.g., exposure models or assumptions that may be appropriate for most sites). This longer term project includes developing reasonable default assumptions about expected pathways and routes of human exposure for different types of land uses or activities. Other parts of the risk assessment for a site will require the collection and use of site-specific information from that site.

The third project utilizes an expert workgroup to ensure application of consistent approaches for lead-contaminated Superfund sites. Lead is one of the most commonly occurring contaminants at Superfund sites. It is also a contaminant of great concern because of its potential to affect neurological development in children, and its prevalence in economically disadvantaged and minority-populated areas. This project employs an inter-Agency workgroup of experts in lead toxicity and exposure assessment to provide timely and consistent analyses, reviews or advice to Regional staff on the most current methods for assessing lead health risks. The Workgroup is available now to provide information and advice on a wide range of issues, though it will generally focus on sites with complex or nationally-precedent-setting lead issues.
3. **Foster Integration of Overlapping Cleanup Programs**

- Establish a lead regulator at each site undergoing cleanup activities under competing Federal and State authorities to eliminate overlap and duplication

Some cleanups, particularly those at federal facilities, are often subject to multiple regulatory authorities such as Superfund or RCRA Corrective Action, as well as State laws. This is more often true for Federal agencies due to EPA's policy to continue listing Federal Facilities on the National Priorities List, regardless of their RCRA status. Although the end goal of the various regulatory authorities is to achieve protectiveness, the specifics of achieving that end may be slightly different. Clearly identifying the roles of the various regulators should help simplify the required cleanup process as well as provide for more efficient staffing.

The Agency is developing a guidance, targeted for issuance in early 1996, that will specify roles and outline the general principles and guidelines that the Federal and State partners should assume in regulating cleanup responses that are being undertaken under multiple legal authorities. The guidance will be developed by an interagency workgroup chaired by EPA, including States as co-implementers.

4. **Reform Listing and Deletion Policies**

- Ensure that response actions that have been taken up to the time of listing are considered when listing sites on the National Priorities List

Current policy established a “cutoff date” for information used to evaluate sites for the Superfund National Priorities List (data from the EPA/State site investigation is used to score and rank NPL candidates). Revising the guidance by early 1996 would allow EPA to take current or recent response actions into consideration when determining whether a site should be placed on the National Priorities List. EPA would determine a site's status based on whether site contamination after such response action is at a level protective of human health and the environment. EPA would consult with the State, tribe (where appropriate), ATSDR, and the potentially affected community in making this decision. EPA expects that this will have a positive effect by providing incentives for voluntary cleanup, and encouraging reuse or redevelopment of the property.
• Delete "clean" parcels of certain Superfund sites from the National Priorities List

As part of efforts to encourage redevelopment of contaminated sites (EPA's Brownfields Initiative) and in support of the President's Five Point Plan, the EPA NPL Partial Deletion Workgroup is developing a pilot program to delete "clean" portions of sites on the NPL. Presently, EPA's policy is to delete entire sites from the NPL when no further CERCLA response is appropriate at the entire site. This pilot program will begin in 1995 in response to the concerns of some potential homeowners, investors or developers who may be reluctant to undertake economic activity at a site on the NPL. EPA believes that remediated portions of closing military bases may make excellent candidates for a partial deletion program.

5. Conduct National Risk-Based Priority Setting

• Establish formal national priority systems for funding federal facility and Superfund cleanups based on the principle of "worst problems first." These systems would incorporate input from States and other stakeholders in determining the appropriate priority.

Federal agencies are encountering resource limitations in their cleanup budgets. Until recently, no systematic tool for comparing risks across large numbers of sites and facilities existed to help in the process of building an Agency budget and distributing available funding appropriately. EPA will issue guidance to the EPA Regions affirming the use of federal agency-developed risk-based priority setting systems to evaluate federal agency cleanup sites. The guidance will address the use of risk-based priority setting for determining federal facility cleanup milestones. It also will discuss the role of regulators and stakeholders in identifying the priority projects.

As to non-federal facility sites, individual Regions have established the relative priority of their cleanup projects and Headquarters has issued Superfund monies to each Region's highest priorities on a first-come, first-served basis. In the face of significant budget shortfalls, this initiative will ensure that available funds in FY '96 are directed to the highest priority response projects on a national basis. The national priority of projects will be assessed by an expert panel of senior HQ/Regional program managers in consideration of documented information on five criteria: (1) Risks to Humans, (2) Ecological Risks, (3) (In)Stability of Contaminants, (4) Contaminant Characteristics, and (5) Economic, Social and Program Management considerations.
• Issue Cleanup Orders to Parties in an Equitable Manner

There has been much criticism by industry that EPA routinely issues cleanup orders under section 106 (unilaterally: administrative orders or UAOs) only to a subset of the parties that have been identified for a particular site. EPA's 1990 guidance on orders ("Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions" (OSWER Directive No. 9833.0-1a)) explicitly directs enforcement staff to issue orders to the largest manageable number of parties following consideration of the adequacy of evidence of the party's liability, the party's financial viability, and the party's contribution to the site. EPA believes that, consistent with this guidance, order issuance generally has been reasonable and fair and that decisions not to include parties at a site have related to legitimate matters of enforceability. EPA recognizes, however, that at some sites, order issuance may have not been to the "largest manageable number" due to resource constraints.

EPA is committed to ensuring that orders are issued to all appropriate parties (other than small volume contributors such as de minimis and de micromis), where there is a sufficient basis to include them. EPA will identify, for internal management review purposes only, parties excluded from any order proposed to be issued. Enforcement staff in the Region will ensure that information sufficient for the regional decisionmaker to review the issuance decision is placed in the package sent to him or her for approval. Specifically, enforcement staff will identify the total number of parties EPA has discovered at a site. Where enforcement staff recommend that an order not include certain parties, they will include an explanation of the basis for such exclusion in the package.

2. Reduce Transaction Costs

• Increase Number of Protected Small Contributors

In previous administrative reforms, EPA issued policies providing that EPA will not bring enforcement actions against the smallest waste contributors for response costs, and will enter into settlements with these parties — commonly referred to as de micromis parties — if they are threatened with litigation by other private parties. This policy resulted in the avoidance of hundreds of small volume contributors being brought into the Superfund process by private parties. Building on this success, EPA plans to increase this cut-off to protect thousands of additional parties. At a minimum, EPA will double the level
previously identified for small waste contributor protection and will continue to explore other potential levels. If any of these parties are threatened by private parties with litigation, EPA will settle with these parties for one dollar to protect them from such suits.

- Adopt Allocations Proposed by Parties at a Site

In some instances, parties at sites have taken the initiative in conducting an allocation of the shares that can be attributed to each party at a site. EPA seeks to reward the initiative of such parties by adopting allocations that meet certain standards as the basis for settlement. EPA will review private party allocations that have attributed shares to all participating parties, including an identified “orphan share,” (i.e., the known shares of insolvent parties) looking at factors such as methodology, inclusion of all parties, and fairness. If EPA accepts the private party allocation, the Agency will try to provide compensation for a portion of the orphan share, through the same mechanisms considered in compensating parties at future cleanup negotiations, subject to the adequacy of funding for the cleanup program.

- Reduce Oversight for Cooperative Parties

As the Superfund program has matured, parties have developed a considerable body of experience in conducting response activities at sites. Some not only have used this experience to perform high quality work but have acted cooperatively with EPA throughout the cleanup and enforcement processes. In recognition of this development, and to promote further cooperativeness, EPA will reward such parties by significantly reducing or tiering oversight while continuing to exercise sufficient oversight to ensure that the work is performed properly and in a timely manner. Reduction of such oversight will result in decreased transaction costs for EPA and cooperating parties.

C. Ensure that States and communities stay more informed and involved in cleanup decisions.

1. Establish Greater Stakeholder Role in Remedy Selection

- Shift Remedy Selection Process to Selected States

EPA and selected, qualified States would enter into agreements during FY '96 through which those States would conduct the remedy selection process, consistent with applicable law and regulations (the National Contingency Plan), at certain National Priorities List sites. Participating States would supervise
the entire remedy selection process with minimal EPA oversight or involvement, giving the State significantly more control than usual over NPL site cleanups.

• Pilot New Community-Based Remedy Selection Process

EPA and States have had a variety of experiences in recent years empowering local citizens and other stakeholders to arrive at their own mutually acceptable proposals for aspects of remedy selection decisions. EPA would like to build on these experiments to bring meaningful community and stakeholder involvement to life at select additional sites through similar or related techniques. Guidelines would be developed during the first-half of FY '96 presenting various options for empowering affected parties to play a direct role in finding protective, cost-effective remedy at their sites that meets statutory requirements and makes common sense. Under CERCLA, EPA will retain ultimate decisionmaking authority for remedy decisions. However, the Agency would hope to equip participants in consensus-based decision pilots with a clear understanding of statutory, regulatory and policy objectives such that EPA would expect to be able and willing to select a stakeholder supported remedy.

2. Provide a Meaningful Forum for Stakeholder Concerns

• Establish an Ombudsman in each Region to serve as a point of contact to facilitate resolution of stakeholder concerns at the Regional level

EPA will establish a facilitator in each Region during the first-half of FY '96 to serve as a direct point of contact to address stakeholder concerns which reside at the Regional level. The Ombudsman would report to a top regional management official, e.g., Regional Administrator or Deputy Regional Administrator, and would facilitate resolution of these concerns which cannot be resolved between Regional personnel and the stakeholder through informal means. The Ombudsman also could serve as a repository for information related to recurring Superfund concerns.

• Use tools such as electronic bulletin boards and private and educational institutions to improve communication among all Superfund stakeholders

This reform would create, during the first-half of FY '96, a bulletin board via the Internet to allow communication among all Superfund stakeholders. The bulletin board would also include an easily accessible guide to current State
and Federal guidances. The bulletin board would promote consistency among site cleanup decisions, and provide access to information for organizations that maintain site information repositories and administrative records within communities. Entities such as universities and the Hazardous Substance Research Centers may be utilized to provide additional information, technical expertise, and support to communities located close to Superfund sites.
UPDATE ON EPA'S PREVIOUS ADMINISTRATIVE REFORM EFFORTS
October 2, 1995

EPA initiated two prior rounds of initiatives (June 1993 and February 1995) focused on fundamentally reforming the Superfund program by maximizing and refining the use of the authorities that exist in the current law.

Promoting Economic Development

- EPA has awarded 18 Brownfields pilots and plans to award 50 pilots, at up to $200,000 each by the end of 1996. In February of this year, EPA gave a boost to property owners, bankers, developers and others concerned that their property was a potential Superfund by removing 24,000 or about two-thirds of the sites from the CERCLIS inventory to help clarify that the Agency has no further interest in these sites.

- EPA issued a revised policy and a model settlement agreement in May of 1995 aimed at providing protection from lawsuits to parties planning on purchasing Superfund properties. Today, EPA announces the issuance of a new policy that adopts the provisions of the previously-promulgated "Lender Liability Rule."

Protecting Small Volume Contributors

- EPA has protected well over 10,000 small volume contributors of hazardous waste at approximately 162 Superfund sites by entering into de minimis settlements. EPA indirectly provided relief to untold numbers of even smaller contributors (de micromis parties) by issuing a guidance in July 1993 clearly stating EPA's intention not to pursue such parties. In addition, EPA is today issuing Model De Minimis settlement agreements designed to further streamline the de minimis settlement process.

Streamlining Remedy Selection

- EPA drastically streamlined the remedy selection process by issuing "presumptive remedy" guidances for municipal landfill sites and sites with volatile organic compounds in soil. To address concerns that remedy selection consider "reasonably" anticipated future land uses at sites, EPA has established a policy to solicit early community involvement in determining the future uses of the properties to be cleaned up. In September 1993, EPA issued guidance for evaluating "impracticability for ground water re" and, in January 1994, issued guidance for consistent implementation.

Promoting the Use of Allocations

- In the second round of reforms, EPA is 'test-driving' an allocation process outlined in last year's legislation to reauthorize Superfund in which a neutral party will conduct a streamlined out-of-court allocation and will assign shares of responsibility for cleanup costs among all the parties at a site.

Increasing the Role of the States

- EPA instituted pilots that deferred 22 sites to States for appropriate response activity under the first round of administrative reforms. In May 1995, EPA issued guidance for deferring the consideration of sites for listing on the NPL while qualified States and Tribes oversee PRP response actions.

Fostering Community Involvement and Environmental Justice

- The Agency for Toxic Substances and Disease Registry (ATSDR) is funding the Del Amo medical assistance project in Torrance, California, which is a pilot program for providing health services assistance to citizens in proximity to Superfund sites.
B. Reduce litigation by achieving common ground instead of conflict.

1. Increase Fairness in the Enforcement Process

   • Compensate Settlers for a Portion of Orphan Share

   To promote a fairer distribution of the cost of cleanups that parties agree to perform, EPA will seek to compensate performing parties for a limited portion of the known shares attributable to nonviable parties (orphan share) in future cleanup negotiations. This compensation may be in the form of forgiveness of past costs, provision of proceeds from other settlements at the site, or a reduction in oversight costs. Any such compensation will necessarily be subject to the adequacy of funding for the cleanup program.

   Where these mechanisms are not available at a site, EPA will look to what limited funds may be available to provide payments to the parties performing the work (mixed funding) or to perform some severable portion of the work (mixed work). EPA's mixed funding policy and regulations will be revised to appropriately reflect the priority of this initiative. EPA will commit to providing additional orphan share funding in the event Congress specifically appropriates additional dedicated funds for orphan share funding. EPA may provide limited compensation for some portion of the orphan share at other appropriate sites, depending on the availability of resources for cleanup, size of the orphan share, the degree of cooperation shown by the parties, and other relevant factors.

   • Ensure Settlement Funds are Dedicated to Specific Sites

   At some sites, parties have criticized EPA's practice of placing settlement proceeds for future work received from certain parties at the site, such as settlements with small volume contributors (de minimis parties), into the general Superfund. Although these settlement proceeds are intended for use in future cleanup activities at the site, there is no guarantee that the funds will not be expended from the Superfund at another site. To remedy this situation, EPA plans to utilize site-specific special accounts, in which all settlement funds designated for future costs will be placed. EPA is in final discussion with the Department of Treasury and the Office of Management and Budget to ensure that these accounts will be interest-bearing. These monies will then be available exclusively at that site.