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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
215 Fremont Street
San Francisco, Ca. 94105

March 30, 1987

In Reply
Refer To: T-4-3

Colonel Danny D. Howard
Deputy Base Commander
George Air Force Base, CA 92394-5000

SUBJECT: Risk Assessment for Air Stripping Tower

Dear Colonel Howard:

Pursuant to my conversation with Ms. Denise Caron on March 13, 1987, the Environmental Protection Agency (EPA) requests that George Air Force Base (AFB) perform a much more rigorous Risk Assessment for Air Stripping Tower Releases than was submitted for our review on March 4, 1987.

EPA is concerned that releases from such a device may have significant impacts on a large number of people (17,500). It is clearly in the public's best interest that potential health effects be thoroughly analyzed before proceeding with any construction plans. Furthermore, careful review of your March 4, 1987 letter raises several concerns which question the validity of the conclusions drawn. For example, given the known concentrations of trichloroethylene (TCE) at George AFB, assuming a maximum concentration of 2 ug/m^3 may be unreasonable. Also, the excess cancer burden for TCE alone is not .04 in 1,000,000, as reported, but .04 in 14,000, which equals 2.86 in 1,000,000. If one also considers the effects of other carcinogens, as must be done, the use of air stripping may be found to be unacceptable at George AFB.

Consideration should, at any rate, be given to a carbon adsorption treatment system. If surface water discharge is anticipated, a National Pollutant Discharge Elimination System permit will be required. The discharge criteria for certain organics is Best Demonstrated Available Technology, which is considered to carbon adsorption, not air stripping.

I would like to also draw your attention to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), especially Section 120 (see Enclosures 1 and 2). As you are probably aware, this section requires compliance with all relevant guidelines, rules, regulations, and criteria established by EPA. Development of a ground water treatment system, as required by the California Regional Water Quality Control Board, may not be considered an acceptable remedial alternative until a feasibility study, consistent with CERCLA Section 121, and a public comment period, consistent with CERCLA Section 117, have been performed.

EPA is very pleased with the responsive and thorough environmental restoration activities occurring at George AFB, and we would like to support you in your efforts. However, we are also concerned that George AFB may not be fulfilling some of its requirements (as described above) as mandated by CERCLA.

If you would like to discuss the implications of the reauthorized CERCLA or any comments contained in this letter, please contact me 415/974-8603. If you have any questions with NPDES issues, please contact Ms. Robin Hewitt at 415/974-8269.

Sincerely,

Nicholas Morgan
Superfund Federal Facilities
Coordinator

Enclosures

cc: Mr. O. R. Butterfield, CRWQCB
Mr. Robert Dobbs, CRWQCB
Mr. Bill Gedney, DHS
Mr. Stuart Long, CSB DEHS
Mr. Scott Simpson, DHS
SBC DAPCD

SEC. 128. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States

may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

"(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

"(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A brief summary of the public comments regarding each proposed interagency agreement.

"(D) A description of the instances in which no agreement was reached.

"(E) A report on progress in conducting investigations and studies under paragraph (1).

"(F) A report on progress in conducting remedial actions.

"(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

"(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

"(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such

substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

"(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.".

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

(a) AMENDMENT OF CERCLA.—Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

"(A) the long-term uncertainties associated with land disposal;

"(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(D) short- and long-term potential for adverse health effects from human exposure;

"(E) long-term maintenance costs;

"(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

"(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for

BACKGROUND PAPER ON THE MAJOR PROVISIONS OF SUPERFUND REAUTHORIZATION

PUBLISHED BY THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
January 1987

INTRODUCTION

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, was enacted in 1980. This law provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or welfare or the environment. Costs for this program were originally covered by a $1.6 billion Hazardous Substance Response Trust Fund. This fund was designed to pay for cleanup operations, enforcement action, and the recovery of costs from responsible parties.

On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA). These Amendments increase Superfund revenues to $8 5 billion, and strengthen the EPA's authority to conduct short-term (removal), long-term (remedial) and enforcement actions. The Amendments also strengthen State involvement in the cleanup process and the Agency's commitment to research and development, training, health assessments, and public participation. A number of new statutory authorities, such as Community Right-to-Know are also established.

This background paper summarizes the major provisions of the new Superfund law. Figure 1 provides a comparison of the original law and SARA.

THE REMOVAL PROGRAM

A "removal action" is generally a short-term action intended to stabilize or clean up a hazardous incident or site threatening human health and welfare or the environment. Specifically, removal actions may include removing and disposing of hazardous substances; constructing a fence around a site; collecting and analyzing soil, air and water samples; providing alternative water supplies to local residents; or temporarily relocating residents from the area. Removal actions were originally limited to 6 months and a total cost of

$1 million. Exemptions to these limits could be granted if continued Federal response was necessary to prevent, limit, or mitigate an emergency, if there was an immediate risk to public health, welfare or the environment, and if such assistance was not otherwise available on a timely basis.

New Statutory Requirements

The Superfund Amendments of 1986 raise the dollar amount and time limitations on removal actions to $2 million and 12 months. In addition, the law adds a fourth independent condition under which EPA may waive these limitations. A removal action may continue beyond the $2 million/12 month limits if it meets the three exemption requirements outlined above or if it is consistent with the long-term remedial action to be taken at the site.

THE REMEDIAL PROGRAM

A "remedial action" is a long-term remedy for a release or threatened release of a hazardous substance at a hazardous waste site. Specific remedial actions may include the removal of drums or soil containing wastes from the site; the construction of a cap over the site; the construction of dikes to control surface water; incineration of wastes; subsurface cleanup of contamination; treatment of contaminated water or provision of alternate water supplies; or the permanent relocation of residents from the area. Superfund-financed remedial actions may be taken only at sites included on the National Priorities List (NPL), the Agency's list of the Nation's most serious hazardous waste sites. The Superfund Amendments of 1986 provide new requirements for the remedial program.

Cleanup Standards

The original Superfund law did not address cleanup requirements but directed EPA to analyze the cost-effectiveness of the remedial action alternatives. The revised National Contingency Plan did establish a compliance with other environmental statutes policy and directed EPA to consider the use of alternative technologies in choosing a remedial action. Under the new Superfund Amendments, EPA must continue to consider the cost-effectiveness of the clean-up alternatives as well as the following new statutory requirements:

- Standards: EPA is required to select remedies that meet standards under any Federal or State environmental law that apply to the hazardous substance being addressed or are relevant and appropriate under the circumstances. These standards may be waived under certain limited conditions.

- Permanent Solutions: EPA must select cost-effective remedial actions consistent with the National Contingency Plan (NCP).* These actions must also, to the maximum extent practicable, be permanent solutions to protect human health and the environment, and use alternative treatment or resource recovery technologies.

- Off-Site Actions: All hazardous substances transported from hazardous waste sites must be taken to a facility that is operating in compliance with the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), or other applicable Federal and State laws.

. Mandatory Schedules

The Superfund Amendments establish goals for the evaluation of sites contained in CERCLIS (an inventory of potentially hazardous waste sites), as well as mandatory schedules for beginning new Remedial Investigations/Feasibility Studies (RI/FS) and new remedial actions for sites on the National Priorities List (NPL). For example, EPA must start Remedial Investigation/Feasibility Study work at 275 Superfund sites by October 1989. In addition, actual remedial cleanup activities must begin at 175 sites by October 1989, with an additional 200 remedial cleanup activities during 1990 and 1991.

. Health-Related Authorities

These new provisions significantly expand the health-related authorities under SARA to include a list of hazardous substances, toxicological profiles, health effects research and health assessments at all NPL sites. The responsibility for

* Officially known as the National Oil and Hazardous Substances Pollution Contingency Plan, the NCP is the central Superfund regulation and outlines the responsibilities and authorities for responding to releases into the environment of hazardous substances and other pollutants and contaminants under the statutory authority of CERCLA and section 311 of the Clean Water Act.

conducting these tasks rests primarily with the Agency for Toxic Substances and Disease Registry (ATSDR) within the Department of Health and Human Services (HHS), in consultation with EPA. Specifically, these new provisions include:

- List of Substances: Within six months of enactment, EPA and ATSDR must prepare a list of at least 100 hazardous substances, commonly found at NPL sites, posing the most significant threat to human health.

- Toxicological Profiles: ATSDR must prepare toxicological profiles for each of the listed substances according to a mandatory schedule. A toxicological profile includes a summary of available information on the toxic effects to humans from exposure to a substance.

- Health Effects Research: If ATSDR and EPA determine that adequate information is not available for any of the listed substances, ATSDR must undertake a research program, including laboratory studies, to determine the health effects of those substances.

- Health Assessments: ATSDR must perform health assessments at every NPL site according to a mandatory schedule. ATSDR, in consultation with EPA, sets the priorities for health assessments at NPL sites based upon potential risk to human health, adequacy of existing data, and EPA's NPL and RI/FS schedules.

Citizens also may petition ATSDR to perform a health assessment at any site based upon exposure to the public and environment from a release. As a result of an assessment, followup activities may include pilot health effects studies, full-scale epidemiological studies, development of a registry of exposed persons and health surveillance programs. If the health assessment determines a significant risk to human health, EPA is required to act to reduce exposure and mitigate risk.

. State Involvement

SARA expands an already extensive State participation process. Under the new law, States are more formally involved in the initiation, development and selection of remedial actions . State involvement regulations will provide for a number of opportunities to participate including:

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- Participation in pre-remedial activities to assess and investigate sites prior to listing on the NPL

- Participation in identification of and long-term planning for all remedial actions in a State

- Opportunity to review and comment on planning documents, technical data, engineering designs or proposed findings and decisions to waive requirements

- Opportunity to participate in negotiations

- Notification of and opportunity for comment on the proposed plan for remedial action

- Concurrence in deleting sites from the NPL

States are also more formally involved in the settlement process. If the State disagrees with EPA's settlement decision not to require compliance with certain State standards, the State may legally challenge EPA's decision.

ENFORCEMENT AND LEGAL ISSUES

Enforcement is a major EPA activity under Superfund. When Congress passed the original Superfund law, it intended that polluters who create environmental problems should correct them whenever possible. EPA can obtain cleanup action by taking the potentially responsible parties (PRPs) to court, reaching an out-of-court settlement or issuing direct administrative orders where there is an endangerment to public health or the environment. The Superfund Amendments clarify and expand enforcement authorities in the areas of settlements with PRPs, citizen suits, criminal and civil penalties, development of an administrative record, and access and information gathering.

- Settlements: EPA is authorized to enter into settlement agreements with PRPs to conduct site investigations and cleanup actions. In addition, EPA can notify PRPs when EPA determines that negotiations would facilitate reaching an agreement.

- Citizen Suits: Any person may sue any other person, including the United States or individual states, for an alleged violation of any standard, regulation, condition, requirement or order under CERCLA or for failure to perform "non-discretionary duties" such as a health assessment.

- Penalties: The new law increases the criminal penalties for failure to provide notice of a hazardous waste release and makes the submission of false or misleading information a criminal offense.

- Administrative Record: The Superfund Amendments require EPA to establish an Administrative Record upon which the selection of a response action will be based. The record must be available to the public at or near the facility at issue. EPA must promulgate regulations for public participation in the development of the Administrative Record for removal and remedial actions.

- Access and Information Gathering: The new law strengthens EPA's ability to obtain access to sites to perform investigations and site cleanup.

Federal Facilities

The Superfund Amendments add a new section to CERCLA dealing with hazardous substance releases at Federal facilities. This provision confirms CERCLA's applicability to Federal agencies and requires Federal agency compliance with CERCLA requirements. The Amendments clearly define the process Federal agencies must follow in undertaking remedial action, including a requirement that EPA make the final selection of the remedy if there is a disagreement between the Federal agency and EPA. State and local officials also must be given the opportunity to participate in the planning and selection of any remedial action, including the review of all relevant data. States are given a formal opportunity to review remedies to ensure that State standards are incorporated. The Amendments also set forth a schedule for response actions at Federal facilities including a schedule for preliminary assessments, listing on the National Priorities List, remedial investigations/feasibility studies and remedial actions.

COMMUNITY RELATIONS

The original Superfund law did not explicitly address the issue of community involvement and public participation in the Superfund program. Agency policy, however, has established a citizen participation program. The Superfund Amendments strengthen existing procedures for public participation.

Public Participation Requirements

The Amendments require EPA to:

- Publish a notice and brief analysis of the proposed remedial action plan and make the plan available to the public

- Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting

- Keep a transcript of the public meeting and provide it to the public

- Publish a notice of the final remedial action plan and make it available to the public before the beginning of any remedial action

- Prepare a response to each of the significant comments, criticisms and new data submitted on the proposed remedial action plan.

Technical Assistance Grants

This provision represents new program authority under SARA. The Superfund Amendments allow EPA to make grants available to communities affected by a release or threatened release at a National Priorities List (NPL) site. Community members may use these grants to obtain assistance in interpreting technical information on the nature of the hazard and recommended alternatives for investigation and cleanup throughout each stage of the Superfund process. Grants are limited to $50,000 per site. In addition, the grant recipient is required to contribute at least 20 percent of the total cost of the expert advice.

OTHER ISSUES

The Superfund Amendments of 1986 mandate several ongoing program initiatives that will expand the scope of cleanup operations and EPA's planning and response authorities.

- Research and Development (R&D) and Training

The Amendments establish a comprehensive Federal program for research and development, demonstration and training. SARA promotes the development of alternative and innovative treatment technologies for Superfund response and directs EPA to improve capabilities for evaluating human health effects from exposure to hazardous substances.

The provisions represent new and/or expanded authorities for training and R&D not found in the original law. While many training and R&D activities have been ongoing for the past five years, these new provisions clearly increase and define the scope of future activities and provide new research authorities.

. Emergency Planning/Community Right-To-Know

Chemical release incidents such as Institute, West Virginia and Bhopal, India, heightened Congressional awareness of the critical need for effective emergency planning. EPA also has recognized this need by establishing the Chemical Emergency Preparedness Program (CEPP). These efforts are mandated in a separate title of the CERCLA Reauthorization Amendments, known as the Emergency Planning and Community Right-to-Know Act of 1986. This title, Title III, includes provisions related to emergency planning, notification and reporting requirements.

Emergency Preparedness

- Planning Entities: States are required to establish State emergency response commissions, emergency planning districts and local emergency planning committees to coordinate and provide technical expertise in planning for responses to emergency releases of hazardous chemicals.

- List of Substances: EPA must publish a list of extremely hazardous substances and publish in regulation form a threshold planning quantity for each substance that if released at a facility would likely pose a hazardous substance emergency. This list provides a focus for local emergency response plans.

- Facility Participation in Planning: Facilities that produce, use or store extremely hazardous substances in excess of established thresholds must notify the State emergency response commission that they are subject to Title III planning requirements. Such facilities must designate a facility emergency coordinator to work with and provide information to the local emergency planning committee.

- Comprehensive Emergency Response Plans: Each local emergency planning committee must prepare an emergency plan within two years of enactment and review that plan at least once a year.

- Emergency Notification: Facilities are required to provide immediate notice of the release of a hazardous substance to the local planning committee and the State commission.

- Material Safety Data Sheets (MSDS): Any facility which is required to prepare or have available an MSDS under Occupational Safety and Health Administration (OSHA) regulations must submit an MSDS or a list of MSDS chemicals to the appropriate local emergency planning committee, State emergency response commission and fire department. The MSDS contains information on chemical name, chemical characteristics and health hazards.

- Emergency and Hazardous Chemical Inventory Forms: Any facility required to prepare or have available an MSDS under OSHA regulations shall also complete and submit annually to the appropriate emergency planning entities an inventory form. This form contains information on the amount and general location of chemicals at the facility.

- Toxic Chemical Release Forms: Any facility which produces, processes or otherwise uses "toxic chemicals" in amounts over the published threshold quantity must submit a form to EPA and the designated State official describing all releases that occurred during the year. "Toxic chemicals" are the combined Maryland and New Jersey lists.

Figure 1
Comparison of the Original Law to SARA

ORIGINAL LAW	SARA
Removal Program	**Removal Program**
. Sets limits at 6 months and $1 million.	. Raises limits to 1 year and $2 million.
. Includes waiver to limits based upon three criteria.	. Adds additional waiver criterion for consistency with long-term remedial action.
. No provision.	. Requires removals to contribute to the efficient performance of any long-term remedial action.
Remedial Program	**Remedial Program**
. No mandatory schedules or goals.	. Contains goals for preliminary assessments and site inspections and mandatory schedules for new RI/FS starts and new remedial action starts.
. Requires the development and use of criteria and methods for determining extent of remedy. Remedial actions must also be cost-effective and consistent with the National Contingency Plan (NCP).	. Requires remedies to: - Be protective of human health and the environment - Be cost-effective - Attain applicable Federal and State standards - Utilize permanent solutions and alternative technologies to the maximum extent practicable. . Treatment which reduces the volume, mobility and toxicity of the waste is preferred.

Figure 1 (page 2)

ORIGINAL LAW	SARA
. Provides for ATSDR to establish disease registry, health effects literature inventory, list of restricted areas and to provide health screening and medical care.	. Requires ATSDR (with EPA) to prepare list of hazardous substances, to prepare toxicological profiles, and to conduct health effects research and health assessments. A disease registry may also be established.
. Provides for State involvement in response actions through cooperative agreements and contracts.	. Requires establishment of formal State participation regulations providing for document review and comment and participation in every phase of the program.
Enforcement Program	**Enforcement Program**
. No provision.	. Authorizes citizen suits.
. No specific provisions in statute. Settlements authorized under Agency policy.	. Authorizes settlement agreements with PRPs and establishes procedures and tools for reaching settlements.
. No specific provisions in statute. Review of remedy decisions has been on the record.	. Establishes an administrative record upon which a response action will be based.
. Authorizes criminal penalties for failure to provide required notifications.	. Provides civil and increases criminal penalties for these activities.

Figure 1 (page 3)

ORIGINAL LAW	SARA
. Prohibits the use of Fund money for remedial action at Federal facilities.	. Confirms CERCLA's applicability to Federal agencies and requires Federal agency compliance with CERCLA requirements. Also prohibits use of Fund money for remdial actions.
Community Relations	
. No specific provisions in statute. Community relations is authorized under Agency policy.	. Establishes public participation requirements and authorizes technical assistance grants.
Research and Development and Training	Research and Development and Training
. No specific provisions in statute.	. Establishes a comprehensive research, development and demonstration program for alternative technologies; training programs for hazardous substance response; and hazardous substance research.
Emergency Planning/Community Right-to-Know	Emergency Planning/Community Right-to-Know
. No specific provisions in statute. Emergency planning and preparedness activities are authorized by the NCP and Agency policy.	. Establishes a State and local planning structure, emergency notification and reporting requirements for facilities.

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ADMINISTRATIVE RECORD
COVER SHEET

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