

The Truth about Toxic Waste Cleanups

How EPA is Misleading the
Public About the Superfund
Program

February 2004



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Acknowledgements

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Executive Summary

Superfund is the nation's preeminent law designed to make polluters pay to clean up the nation's worst toxic waste sites. Superfund makes polluters pay to clean up contaminated sites for which they are responsible and also assesses "polluter pays fees" that fill a trust fund intended to clean up abandoned toxic waste sites. In 1995, Superfund's polluter pays fees expired.

The Bush administration has failed to include reinstatement of the polluter pays fees in its budget proposals, and Superfund's trust fund is now bankrupt. The Bush administration also has under-funded the program, cleaned up fewer toxic waste sites, and forced taxpayers to pick up more of the bill for the cleanups that are happening. In order to deflect criticism of the administration's record on toxic waste cleanups, the U.S. Environmental Protection Agency (EPA) has provided confusing, misleading, and even false information to the news media. This is designed to cloud the debate and convince policy makers and the public that the Bush administration is implementing the Superfund program as effectively as past administrations.

Spokespeople for EPA promote several pieces of misinformation:

EPA claims: EPA continues to aggressively clean up sites and list new sites to the Superfund National Priority List.

The facts: Cleanups have fallen by 50 percent during the Bush administration compared with the pace of cleanups between 1997 and 2000. Site listings have slowed down as well; the Bush administration has listed an average of 23 Superfund sites a year compared with an average of 30 sites from 1993 to 2000, a drop of 23 percent.

EPA claims: There is still money in the Superfund trust fund.

The facts: The General Accounting Office predicted in July 2003 that the trust fund would be bankrupt at the end of FY 2003. The President's FY 2005 budget confirms that the trust fund is now empty.

EPA claims: Funding for the Superfund program has not decreased in the past few years.

The facts: Superfund funding decreased by 25 percent during 2001-2004 compared with 1992-2000.

EPA claims: EPA remains committed to the polluter pays principle.

The facts: Taxpayers will pay the entire cost of cleaning up abandoned Superfund sites this year, compared with only 18 percent in 1995, the year Superfund's polluter pays fees expired. The Bush administration has opposed reinstating Superfund's polluter pays fees.

EPA claims: It doesn't matter who pays to clean up Superfund toxic waste sites.

The facts: Superfund was founded on the principle that those most closely associated with creating toxic waste sites should bear the financial burden of cleaning them up. Regular taxpayers are much less likely to be closely associated with the creation of toxic waste sites than industries that buy, use, or benefit from toxic chemicals.

EPA claims: Cleanups are slowing down because Superfund sites are more complex today than in the past.

The facts: The type of sites in the Superfund pipeline has not changed so dramatically in the past three years to warrant a 50 percent reduction in cleanups. The consistent under-funding of the Superfund program is a more likely factor in slowing or halting Superfund cleanups.

EPA claims: Criticism of the Superfund program harms communities awaiting cleanups.

The facts: Prolonging the time that communities are exposed to toxic waste sites is more detrimental to communities than exposing the Bush administration's failure to properly implement Superfund.

By responding to misleading statements made directly by EPA officials, this paper reveals a concerted effort by the Bush administration to mislead the media, public officials and the public at large. The purpose of this paper is to set the record straight.

Introduction

The facts are indisputable.

- § EPA cleaned up an average of 43 Superfund sites per year from 2001 to 2003, down 50 percent from an average of 87 per year for the years 1997 to 2000.¹
- § When adjusted for inflation, Superfund appropriations averaged \$1.3 billion from 2001 to 2004; from 1992 to 2000, appropriations averaged \$1.7 billion.²
- § In 1995, the year Superfund's polluter pays fees expired, only 18 percent of the annual appropriation for the Superfund program (which pays to clean up orphan sites) came from general revenues, or taxpayer dollars. Now that the trust fund is bankrupt,³ 100 percent of the appropriation for 2004 must come from general revenues.

These numbers tell a clear story. The Bush administration is cleaning up fewer toxic waste sites, underfunding the Superfund program, and forcing taxpayers to pay for more orphan toxic cleanups. EPA, however, has manipulated these numbers to tell a different story, one that is misleading and often false – that the Bush administration is committed to making polluters pay to clean up the nation's worst toxic waste sites.

¹ U.S. Environmental Protection Agency (EPA), NPL Site Status Information, "Construction Completions at National Priorities List (NPL) Sites" and "Number of NPL Site Actions and Milestones." Available at

<http://www.epa.gov/superfund/sites/query/queryhtm/nplcc1.htm> and <http://www.epa.gov/superfund/sites/query/queryhtm/nplfy.htm>.

² The Budget for Fiscal Year 2004, page 877, The White House, February 2003; Mark Reisch & David Michael Bearden, Congressional Research Service, *Superfund Fact Book*, available at <http://www.ncseonline.org/NLE/CRSreports/Waste/waste-1a.cfm#Appropriations>; Office of Management and Budget, Budget Appendix for the Environmental Protection Agency, 1994-2001, 2003; Making Appropriations to the Department of Veterans Affairs and Housing and Urban Development, 107th Congress, H.R. 2620, 2002.

³ General Accounting Office (GAO), *Superfund Program: Current Status and Future Fiscal Challenges*, GAO/RECD-03-850, July 2003.

Background on the Superfund Program

In 1980, in response to the massive contamination of Love Canal, a New York town built on top of an abandoned toxic waste site, Congress passed the Superfund law to clean up the nation's worst toxic waste sites. Superfund embodies the belief that innocent people and taxpayers should not bear the public health and financial burdens caused by toxic waste sites. Rather, Superfund makes polluters, industries that purchase and use toxic chemicals and petroleum, and other corporations pay to clean up these public health threats.

Superfund applies the "polluter pays" principle in two ways. First, polluters must pay to clean up toxic waste sites for which they bear some responsibility, including contamination on their property or contamination elsewhere that resulted from their business activities or other ventures. Under Superfund, EPA can issue an administrative order that tells a polluter to clean up such contamination. If the polluter refuses to clean up the site, EPA can clean up the contamination—if it has the money. Thereafter it can hold the polluter liable for up to three times the cost of the cleanup, plus penalties. Both presently and historically, responsible parties have paid for about 70 percent of Superfund cleanups.

Second, Congress created a trust fund to ensure that EPA could clean up contamination at the approximately 30 percent of sites not funded by responsible parties. These are sites where polluters refuse to undertake cleanup actions, where EPA cannot find polluters associated with a site, or where polluters do not have enough money to conduct cleanup activities. Until recently, the trust fund paid for the majority of these "orphan" cleanups, with only a small amount of funding coming from general revenues. The trust fund also ensured a continuing supply of money for administration of the program.

Congress created three main fees that industries paid to fill Superfund's trust fund with money. The first is a fee on the purchase of dangerous chemicals commonly found at toxic waste sites. For example, mercury, a toxic chemical that can cause neurological and developmental damage to children, was taxed at \$4.45 per ton. The second fee is on the purchase of crude oil by refineries at 9.7 cents per barrel; oil is a substance that creates health threats at many Superfund sites.⁴ The third fee is called the Corporate Environment Income Tax, which applies to profits of large corporations in excess of \$2 million. These fees expired in 1995, and Congress and the Bush administration have failed to reinstate them.

After a slow start from 1980 to 1990, EPA began to increase the pace of Superfund cleanups. The agency used a surplus in the trust fund to pay for running the program and in particular to vigorously apply the "enforcement first" policy, initiated in 1989. Under this policy, EPA starts by finding the polluters responsible for a site and makes them pay to clean up the contamination before relying on trust fund monies and lawsuits against the polluting company to recover costs. This policy increased the number of polluters EPA has identified and made pay for cleanups and improved the pace of cleanups during the 1990s, while also saving funds, compared with earlier years.

⁴ In return for this fee, the oil industry lobbied Congress to eliminate liability for most types of oil contamination at Superfund sites. Since Superfund's fee system lapsed in 1995, not only does the oil industry continue to not be held liable for cleanups, it also does not pay into the trust fund. Thus the oil industry is generally absolved of any responsibility to contribute to cleanups at oil-contaminated Superfund sites.

The combination of EPA's growing experience and expertise in running the program, the agency's increased use of settlements to reduce liability for small contributors to toxic waste sites, and surplus money in the trust fund helped to reduce litigation, expedite the cleanup process, and spur the redevelopment of toxic waste sites.

By the late 1990s, EPA was cleaning up an average of 87 Superfund sites per year. However, the Bush administration has decreased the pace of cleanups by 50 percent over the last three years;⁵ under-funded the program by at least \$1.6 to \$2.6 billion from 2001 to 2004;⁶ and as of the end of FY 2003, the trust fund was bankrupt.⁷

⁵ U.S. EPA, NPL Site Status Information, "Construction Completions at National Priorities List (NPL) Sites" and "Number of NPL Site Actions and Milestones." Available at <http://www.epa.gov/superfund/sites/query/queryhtm/nplcc1.htm> and <http://www.epa.gov/superfund/sites/query/queryhtm/nplfy.htm>.

⁶ Katherine Probst and David Konisky, Resources for the Future. *Superfund's Future*. 2001. Calculations are based on the chart found on pages 264-265 and have been updated to reflect inflation.

⁷ GAO, *Superfund Program: Current Status and Future Fiscal Challenges*, GAO/RECD-03-850, July 2003. See also the Budget for Fiscal Year 2005, The White House, February 2004.

EPA's Misleading Statement #1: EPA Continues to Make Progress in Cleaning Up and Listing Toxic Waste Sites

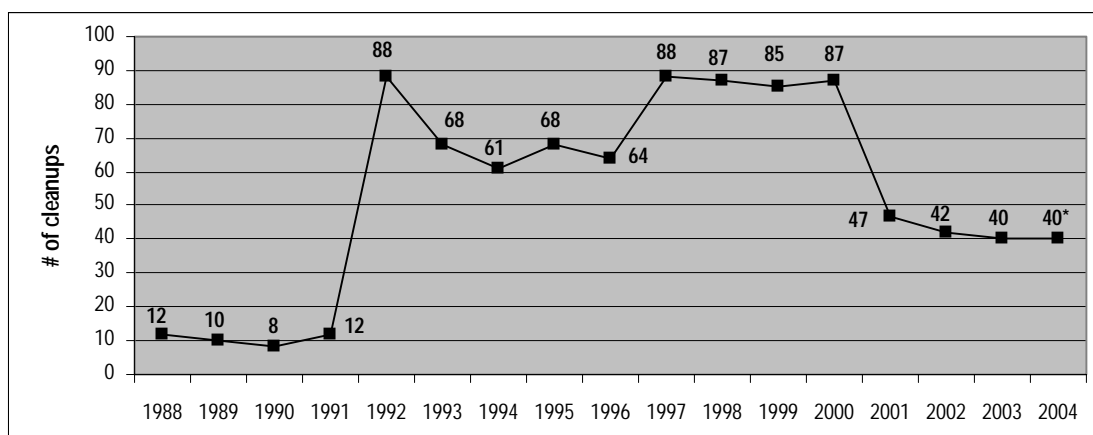
"To date, EPA has cleaned up 886 sites on the Superfund National Priorities List (NPL)."⁸

"The cleanup of contamination at these 40 sites is indicative of the continued progress the Superfund program has made over the years."⁹

EPA continues to defend its record on cleaning up the nation's worst toxic waste sites, often carefully selecting numbers that prove its case. For example, EPA's website highlights a statistic showing that as of the end of FY 2003, 886 Superfund toxic waste sites were designated construction complete.¹⁰ Construction complete means that the major construction of the cleanup remedy is complete, although long-term maintenance, such as pumping and treating, often will be required for many years in order to remove the contamination.

Unfortunately, the Bush administration has done a disproportionately small amount of this work. In the late 1990s, EPA cleaned up an average of 87 sites per year. In contrast, EPA cleaned up only 40 sites in FY 2003 and projects that it will clean up only 40 in 2004—a 50 percent drop in the pace of cleanups (Figure A).

Figure A: Superfund Cleanups Completed by EPA, By Year



Source: Environmental Protection Agency. *Figure for 2004 is an estimate.

⁸ U.S. EPA Press Release, "40 High Priority Superfund Sites Cleaned Up," November 4, 2003.

⁹ U.S. EPA Press Release, "40 High Priority Superfund Sites Cleaned Up," November 4, 2003.

¹⁰ U.S. EPA, NPL Site Status Information, "Construction Completions at National Priorities List (NPL) Sites." Available at <http://www.epa.gov/superfund/sites/query/queryhtm/nplccl1.htm>.

The Bush administration also has under-funded numerous cleanup projects. A 2002 EPA Inspector General's report showed that 78 Superfund sites that requested funding in FY 2002 received no or only partial funding. Forty-seven (47) of these sites had requested funding for remedial actions, with 16 receiving no funding at all; 31 sites had requested funding for long-term operation, maintenance, or cleanup activities such as groundwater treatment systems that run years after major site cleanup is complete, with 11 receiving no funding at all. Although EPA regions requested approximately \$510 million for remedial action cleanups, EPA headquarters obligated approximately \$281 million, a funding shortfall of approximately \$229 million, or 45 percent.¹¹

Similarly, a 2004 EPA Inspector General's report found that EPA insufficiently funded 29 cleanup projects in FY 2003. The report also noted that EPA regional offices have begun to ask for less money for cleanups, knowing that adequate funding may not be available. In response to the Inspector General's questions about how EPA develops site cleanup cost estimates, some regional officials admitted to taking budget limitations into consideration and stated that the agency conducts cleanup work differently now than when full funding was available.¹²

In FY 2003, EPA announced 10 new cleanups ("new starts") that would receive funding in 2003, and 10 sites that would not. Five of the sites not receiving funding also did not receive funding in FY 2002, including Jennison-Wright Corp. in Illinois, Continental Steel Corp. in Indiana, Atlas Tack Corp. in Massachusetts, and both Hart and Jasper Creosoting in Texas.¹³ EPA provided no information on how much money would be going to sites with cleanups that are already in progress.

"Sites continue to be added to the National Priority List for Superfund cleanup."¹⁴

Table 1. Number of Superfund Sites Listed, By Year

Year	# of Sites Listed
1993	33
1994	43
1995	31
1996	13
1997	18
1998	17
1999	43
2000	39
2001	29
2002	19
2003	20

EPA continues to identify sites for cleanup; however, the Bush administration has listed fewer Superfund sites to the National Priority List (NPL) on average in the last three years than the previous administration. From 1993 to 2000, EPA listed an average of 30 sites to the NPL, with the number of sites listed increasing dramatically to 43 sites in 1999 and 39 in 2000. In FY 2003, the Bush administration listed only 20 sites and has averaged 23 sites per year for the last three years—a 23 percent decline from the 1993-2000 average (Table 1).¹⁵

A congressionally requested report completed in 2001 projected that EPA would list an average of 35 sites per year to the NPL between 2000 and 2009. EPA made even more ambitious projections, estimating that it would list between 49 and 63 sites per year during that time.¹⁶

¹¹ Nikki L. Tinsley, U.S. EPA Inspector General, Letter to Senator Jim Jeffords, October 25, 2002.

¹² Nikki L. Tinsley, U.S. EPA Inspector General's Report, *Congressional Request on Funding Needs for Non-Federal Superfund Sites*, January 7, 2004.

¹³ Nikki L. Tinsley, U.S. EPA Inspector General, Letter to Senator Jim Jeffords, October 25, 2002.

¹⁴ EPA New England Region, Factsheet, "Superfund: Setting the Record Straight," October 1, 2003. Available at <http://www.epa.gov/region1/pr/2003/oct/031005.html>.

¹⁵ U.S. EPA, NPL Site Status Information, "Number of NPL Site Actions and Milestones." Available at <http://www.epa.gov/superfund/sites/query/queryhtm/nplfy.htm>.

¹⁶ Katherine Probst and David Konisky, Resources for the Future. *Superfund's Future*. 2001.

EPA also has indicated in press accounts that it has begun to use cost as a factor in determining whether to list sites to the NPL.¹⁷ Because the NPL serves as a tool for prioritizing the most hazardous sites, using cost as a listing factor undermines the purpose of the NPL. The Superfund program is designed to protect public health and the environment first and foremost. The cost of a cleanup should not influence whether a site is classified as a Superfund site. EPA asserts that it would be irresponsible to list sites to the NPL that, because of the required cost, will not be receiving cleanup funds in the near future. However, sites not listed to the NPL risk sitting in limbo between state cleanup programs that are often unable to fund expensive cleanups and the under-funded federal program.

¹⁷ Tom Avril, "Two PA Sites are Denied Federal Cleanup Funding," *Philadelphia Inquirer*. April 25, 2003; Rachel Urdan, "To Address Budget Woes, EPA Weighs Cost in New Superfund Listings," *Inside Washington Publishers*. April 24, 2003; Damon Franz, "EPA Nominates New Sites for Cleanup," *Greenwire*. May 7, 2003.

EPA's Misleading Statement #2: There is Still Money in the Superfund Trust Fund

"Additionally, the balance in the Trust Fund is continually replenished with monies recovered from polluters and interest payments from the federal treasury."¹⁸

EPA has made several statements claiming that the Superfund trust fund is not bankrupt, as reported by the General Accounting Office (GAO) in July 2003 and confirmed in the President's FY 2005 budget proposal in February 2004.

EPA has the authority to pay for a cleanup up front using trust fund money (if it is available) and then to recover costs later from the responsible parties. These "cost recoveries" are deposited into the trust fund as they are collected, then recycled and may be used for future cleanups. So, there always may be a small amount of money flowing in and out of the trust fund. For example, in FY 2003, \$147 million in cost recoveries and \$119 million in interest and profits on investments were deposited into the trust fund.¹⁹ However, the President's FY 2005 budget shows that there was no money left in the trust fund at the end of FY 2003, even including cost recoveries and interest. A July 2003 report by the GAO stated that "unless EPA receives additional funds from revenue sources such as cost recoveries, the balance of the trust fund available for future appropriations will be negative at the end of the FY 2003...."²⁰ There is currently no money going into the trust fund from the polluter pays fees, which expired in 1995.

"EPA spokesman Dave Ryan said the trust fund still has a \$3 billion balance, which has been obligated to pay for some 700 cleanups."²¹

The \$3 billion alluded to above is money that has already been obligated, or committed, to Superfund cleanups, but has not been spent. This is not comparable to a measure of how much money is left in the trust fund. This money is not available for future cleanups as it is already committed to current cleanup projects.²² The un-obligated balance of the trust fund as of September 30, 2003 is zero.²³

¹⁸ U.S. EPA, Factsheet, "Superfund Trust Fund and Taxes: Setting the Record Straight," October 7, 2003.

¹⁹ The Budget for Fiscal Year 2005, The White House, February 2004.

²⁰ GAO, *Superfund Program: Current Status and Future Fiscal Challenges*, GAO/RECD-03-850, July 2003.

²¹ Bruce Henderson, "Mecklenburg site joins list of America's most toxic," *Charlotte Observer*. October 2, 2003.

²² Personal Communication, Randy Dietz, U.S. EPA, January 28, 2004.

²³ GAO, *Superfund Program: Current Status and Future Fiscal Challenges*, GAO/RECD-03-850, July 2003.

EPA's Misleading Statement #3: Funding for the Superfund Program Has Not Decreased in the Past Few Years

"Annual appropriations by Congress for Superfund have remained relatively steady at approximately \$1.3 billion during both the Clinton and Bush Administrations."²⁴

In several statements, EPA has claimed that the Bush administration has provided adequate funding for the Superfund program through the annual appropriations process. In fact, appropriations to the Superfund program have decreased by 25 percent during the Bush administration. When adjusted for inflation (a practice EPA often fails to do in its analyses), Superfund appropriations averaged \$1.7 billion from 1992 to 2000 and only \$1.3 billion from 2001 to 2004. This is a difference of more than \$400 million dollars—a decrease of 25 percent (Table 2).

Table 2: Superfund Appropriations by Year (millions)

Year	Total Appropriations	Adjusted for Inflation (2003 \$)	Year	Total Appropriations	Adjusted for Inflation (2003 \$)
1981	\$40	\$81	1993	\$1,601	\$2,038
1982	\$180	\$343	1994	\$1,497	\$1,858
1983	\$230	\$425	1995	\$1,354	\$1,634
1984	\$465	\$823	1996	\$1,311	\$1,537
1985	\$620	\$1,060	1997	\$1,395	\$1,599
1986	\$406	\$681	1998	\$1,500	\$1,693
1987	\$1,034	\$1,675	1999	\$1,492	\$1,648
1988	\$1,127	\$1,753	2000	\$1,400	\$1,496
1989	\$1,425	\$2,114	2001	\$1,286	\$1,336
1990	\$1,560	\$2,196	2002	\$1,310	\$1,340
1991	\$1,629	\$2,200	2003	\$1,265	\$1,265
1992	\$1,633	\$2,141	2004	\$1,257	\$1,257

Sources: 1) Congressional Research Service, Superfund Fact Book, 1998 (for years 1981-1993), 2) Office of Management and Budget, Budget Appendix for the Environmental Protection Agency (for years 1994-2004). Adjusted for inflation to 2003 using the Department of Labor's Inflation Calculator.

²⁴ EPA New England Region, Factsheet, "Superfund: Setting the Record Straight," October 1, 2003. Available at <http://www.epa.gov/region1/pr/2003/oct/031005.html>.

“The Bush Administration requested an additional \$150 million for Superfund in the FY 2004 budget to help address the backlog of unfunded Superfund cleanups.”²⁵

Even the Bush administration has acknowledged a shortfall in funding, despite its statements to the contrary.

The Bush administration did not receive its \$150 million request for Superfund in 2004; in fact, EPA’s Superfund budget fell nominally (by \$8 million) in FY 2004 to \$1.257 billion. Moreover, while an additional \$150 million would have helped to clean up a few more toxic waste sites, it is a small band-aid for a larger funding problem. Since the trust fund went bankrupt, any additional money expended for the program must now come from general funds. This means that this modest increase would have been paid for solely from (already scarce) taxpayer funds and would come at the cost of other important environmental programs. In its FY 2005 budget, the Bush administration again requested an increase of \$124 million for the Superfund program; it is unclear whether Congress will honor this request.

Based on the findings of a congressionally requested report completed in 2001, the administration underfunded the Superfund program by a total of \$1.6 to \$2.6 billion from 2001 to 2004 (Table 3). The study used EPA data and interviews with federal and state officials to determine the expected future costs of Superfund. The study projects a “low,” “baseline,” and “high” estimate of projected costs, concluding that the program needs \$15.6 to \$18.3 billion from 2000 to 2009, with annual needs of between \$1.4 and \$2.1 billion. In addition, after four consecutive years of under-funding, the amount of money needed for the program has increased.²⁶

Table 3: Under-Funding of the Superfund Program, 2001-2004

Year	Superfund Budget \$	Low-end Estimate of Superfund Program Needs	Difference Between Superfund Budget & Low-end Estimate	High-end Estimate of Superfund Program Needs	Difference Between Superfund Budget & High-end Estimate
2001	\$1,336,000,000	\$1,632,000,000	-\$296,000,000	\$1,740,000,000	-\$404,000,000
2002	\$1,340,000,000	\$1,759,000,000	-\$419,000,000	\$1,988,000,000	-\$648,000,000
2003	\$1,265,000,000	\$1,760,000,000	-\$495,000,000	\$2,130,000,000	-\$865,000,000
2004	\$1,257,000,000	\$1,605,000,000	-\$348,000,000	\$1,921,000,000	-\$664,000,000
	Total Under-Funding 2001-2004		-\$1,558,000,000		-\$2,581,000,000

Source: Numbers compiled from the Resources for the Future 2001 congressionally requested report and then adjusted for inflation (to 2003 dollars). Numbers for 2003 and 2004 are constant.

²⁵ EPA New England Region, Factsheet, “Superfund: Setting the Record Straight,” October 1, 2003. Available at <http://www.epa.gov/region1/pr/2003/oct/031005.html>.

²⁶ Katherine Probst and David Konisky, Resources for the Future. *Superfund's Future*. 2001.

"EPA is confident that Congress will continue to provide funding for the Superfund program, and it is likely that the Superfund appropriation will increase in FY 04."²⁷

Given the current budget crisis and the competition for appropriations that the Superfund program now faces with every other government program, it is unrealistic to expect that Superfund will receive increases in appropriations in the future. As mentioned above, even though the Bush administration requested additional funding in FY 2004, Congress funded Superfund at a lower level than the previous year. It is more likely that funding will decrease in future years. In the past, the trust fund had provided a dedicated source of funding for the program.

²⁷ EPA New England Region, Factsheet, "Superfund: Setting the Record Straight," October 1, 2003. Available at <http://www.epa.gov/region1/pr/2003/oct/031005.html>.

EPA's Misleading Statement #4: EPA Remains Committed to the Polluter Pays Principle

"EPA remains committed to the polluter pays principle. The lapsed Superfund taxes have no bearing on the Agency's support for the polluter pays principle."²⁸

EPA has argued that the expiration of the polluter pays fees in 1995 has not affected the agency's success in securing funds from polluters to clean up toxic waste sites. It also argues that while letting the fees lapse, it still whole-heartedly supports the polluter pays principle.

The ratio of trust fund to general revenue inputs has changed dramatically since 1995, when the trust fund contained \$3.5 billion. In 1995, the year Superfund's polluter pays fees expired, 82 percent of the Congressional appropriation for the Superfund program came from the trust fund, and only 18 percent came from general revenues. Since the expiration of the fees, more and more of the Superfund appropriation must come from general revenues. Now that the trust fund is bankrupt, as both the White House²⁹ and the GAO recently reported, 100 percent of the Congressional appropriation for the Superfund program in 2004, and in future years unless the fees are reinstated, will come from general revenues.

The Bush administration opposes reinstatement of Superfund's fees, taking a position contrary to Presidents Reagan, George H.W. Bush, and Clinton, who all collected or supported reinstatement of the fees.

"EPA uses congressionally appropriated funding to pay for cleanup at Superfund sites not cleaned up by the parties responsible for the toxic waste. EPA has never had direct access to Superfund tax or Trust Fund revenues."³⁰

Congress historically appropriated money for the Superfund program from two sources – the trust fund (which is now bankrupt) and general revenues. EPA uses this money to clean up orphan Superfund sites and pay for oversight, enforcement, and other program costs. EPA's statement that it does not have direct access to the trust fund seems intended to cause confusion. As with any government agency, EPA may only use money (from the trust fund or otherwise) that Congress appropriates to it.

²⁸ U.S. EPA, Factsheet, "Superfund Trust Fund and Taxes: Setting the Record Straight," October 7, 2003.

²⁹ The Budget for Fiscal Year 2005, The White House, February 2004.

³⁰ U.S. EPA, Factsheet, "Superfund Trust Fund and Taxes: Setting the Record Straight," October 7, 2003.

“EPA continues to manage the Superfund enforcement program to generate 70 percent of Superfund cleanups from private parties that bear the responsibility for cleaning up contaminated waste sites. To date, EPA has secured more than \$20 Billion in cleanup commitments from private parties.”³¹

EPA has carefully chosen these numbers to illustrate the agency's success in cleaning up toxic waste sites. However, these numbers do not tell the whole story. While EPA is quick to point out that 70 percent of cleanups are paid for by responsible parties, it fails to mention that taxpayers are now paying for the other 30 percent of cleanups, a dramatic shift in policy.

Responsible parties (RPs) have historically paid for approximately 70 percent of Superfund cleanups. For example, in 1997, then EPA Administrator Carol Browner reported that responsible parties perform or pay for approximately 75 percent of long-term cleanups.³² This is money provided by RPs – it is not part of the congressional appropriation for the Superfund program. So what has changed? The 30 percent of sites lacking responsible parties used to be paid for largely by the trust fund that was filled by the polluter pays fees. Taxpayers now must fill the hole left by the expiration of the polluter pays fees.

Furthermore, the number of cleanups paid for by polluters is likely to decline in the future. Superfund's success in compelling polluters to conduct 70 percent of all cleanups depends heavily on EPA's ability to pay for cleanups up front. EPA cannot clean up a site and sue a responsible party for the costs if it does not have the funding to initiate the remediation.

³¹U.S. EPA, Factsheet, “Superfund Trust Fund and Taxes: Setting the Record Straight,” October 7, 2003.

³² Written testimony of EPA Administrator Carol Browner before a Hearing by the House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, March 12, 1997. Available at <http://www.epa.gov/superfund/action/congress/summ0312.htm>.

EPA's Misleading Statement #5: It Doesn't Matter Who Pays to Clean Up Superfund Toxic Waste Sites

"In calling for a resumption of this tax, which is levied mainly on oil and chemical companies, your editorial ignores the changing nature of Superfund. At one time, most sites had contamination linked to chemical production and wastes. Now mining sites and contaminated harbors and river bottoms are an increasingly large part of the Superfund budget."³³

"The tax has no connection with these sites. Superfund is the cleanup party of last resort — a government function properly paid for by taxpayers."³⁴

EPA implies that Superfund has changed such that oil and chemical companies should no longer be required to pay the polluter pays fees.

Superfund's polluter pays fees put the onus for cleanup on those who are most closely associated with the creation of toxic waste sites—specific polluters, industries that purchase and use toxic chemicals and petroleum, and other large corporations. The oil and chemical industries are two of the nation's most polluting industries, and companies in these industries are much more closely associated with, for example, contaminated harbors and river bottoms than are regular taxpayers.³⁵

When Superfund passed into law in 1980, the House Commerce Committee believed that this tax would "more accurately and equitably internalize the costs of the risk posed to society by hazardous wastes."³⁶ The report further stated that the Commerce Committee believes the costs for cleaning up contamination:

"generally should be borne by the party responsible for the waste, and alternatively by the industries which create the items most frequently located in inactive waste sites. To accomplish these goals, the committee has decided that it is appropriate to impose excise taxes on certain items which may result in environmentally hazardous pollution from inactive waste sites or which are used to produce hazardous material. The committee also has decided that revenues from these taxes should be earmarked for inclusion in a newly constituted trust fund for payment of cleanup costs for hazardous waste sites."

³³ Marianne Horinko, *New York Times*, Letter to the Editor, November 3, 2003.

³⁴ Marianne Horinko, *New York Times*, Letter to the Editor, November 3, 2003.

³⁵ In addition, in return for paying the polluter pays fees, the oil industry lobbied Congress to eliminate liability for most types of oil contamination at Superfund sites. Since Superfund's fee system lapsed in 1995, not only does the oil industry continue to not be held liable for cleanups, it also does not pay into the trust fund. Thus the oil industry is generally absolved of any responsibility to contribute to cleanups at oil-contaminated Superfund sites.

³⁶ House Report No. 1016, Part II, see 5 U.S.C.A.N 6153 (1980).

"Moreover, it is entirely appropriate for those cleanup funds to be taken from general Treasury revenues, rather than a tax on industry, because Superfund is a public works program. 'The idea that general revenue should pay for it is not an earthshaking development,' Horinko said."³⁷

The public has always paid for a portion of Superfund's program costs. Before Superfund's polluter pays fees expired in 1995, general revenues paid for about 18 percent of the congressional appropriation for Superfund. However, as discussed previously, the proportion paid for by general revenues has increased dramatically.

In addition, by requiring Superfund appropriations to come completely from general revenues, we are pitting Superfund toxic waste cleanups against other environmental programs, other programs within the VA-HUD spending bill, and other important government programs. Until recently, Superfund did not have to compete with these other programs. Especially in these tight budget times, it is unlikely that the Superfund program will receive adequate funding.

³⁷ Rachel Urdan, "Horinko Argues Criticisms Of Superfund Harms Communities Needing Cleanup," *Inside Washington Publishers*. October 23, 2003.

EPA's Misleading Statement #6: Cleanups are Slowing Down Because Superfund Sites are More Complex Today than in the Past

"Construction projects at Superfund sites are taking longer, are more costly, and require a greater amount of construction work to complete than in prior years... Currently, eight large and very complicated clean up sites account for 40 percent of the yearly cleanup construction budget."³⁸

The Bush administration has slowed down Superfund cleanups by 50 percent in the last three years. EPA often defends the decline in the pace of Superfund cleanups by arguing that the sites are becoming more expensive and complex while providing little evidence to document this fact. The complexity of the Superfund sites does not account for this dramatic change.

Between FY 1998 and FY 2000, before the Bush administration took office, EPA cleaned up 259 Superfund sites, including 15 "megsites." Between FY 2001 and FY 2003, the Bush administration cleaned up 129 Superfund sites, a 50 percent decrease—while cleaning up only 13 megasites.³⁹ If the overall slowdown was due to an increase in megasites, one would expect to see an increasing number of megasite cleanups as the number of non-megasite cleanups went down. However, that is not the case, as non-megasite cleanups plummeted during this time period while the number of megasite cleanups also declined by two.

It is true that EPA has *listed* slightly more megasites as a percentage compared with the earlier years of the program. According to EPA, 15 percent of sites listed in the last three years are megasites, compared with nine percent for all the earlier years of the program – a modest increase.⁴⁰ First, this may be because EPA is using the brownfields program and other toxic waste cleanup programs to address a number of non-megasites previously relegated to the Superfund program — even though the brownfields program is not meant to address the nation's most hazardous toxic waste sites.⁴¹ This would cause the ratio of more complex sites in the Superfund program to shift.⁴²

Second, an increase in the number of megasites *listed* to the NPL now should not affect EPA's ability to maintain its current pace of activities. The average cleanup at a Superfund site takes between 11 and 12 years to complete.⁴³ This suggests that the composition of Superfund sites under construction—especially sites nearing the construction complete phase—would take a good deal of time to shift even if sites newly listed to the NPL were more complex.

³⁸ U.S. EPA, Factsheet, "Superfund Trust Fund and Taxes: Setting the Record Straight," October 7, 2003.

³⁹ EPA National Advisory Council on Environmental Policy and Technology Superfund Subcommittee, November 5, 2003.

⁴⁰ Dr. Elizabeth Southerland, U.S. EPA, Presentation for the NACEPT Superfund Subcommittee, November 5, 2003. Available at <http://www.epa.gov/swerrims/docs/naceptdocs/megasites.pdf>.

⁴¹ Personal Communication, Dr. Elizabeth Southerland, EPA, February 3, 2004.

⁴² It should be noted that using a program such as the brownfields program, which is designed to remediate less heavily contaminated sites, to remediate heavily contaminated sites would be an inappropriate use of that program.

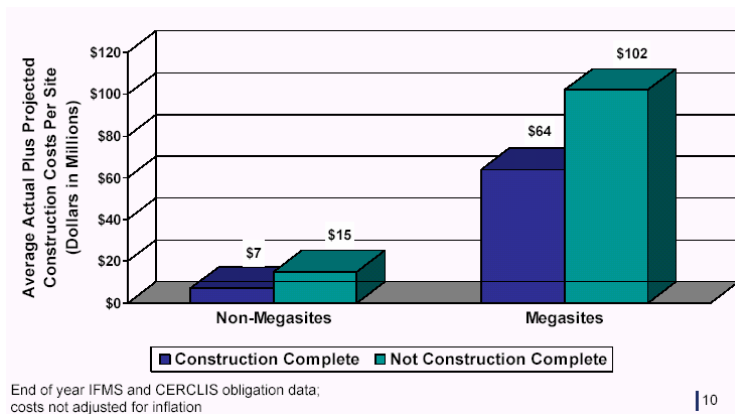
⁴³ Katherine Probst and David Konisky, Resources for the Future. *Superfund's Future*. 2001.

Further, EPA's own estimates showed that it would keep pace with previous cleanup levels. In 2000, using timely and accurate data, EPA stated that it would reach the target of 900 cleanups by the end of 2002.⁴⁴ At the end of 2003, we stood at 886 cleanups.⁴⁵ In 2001, EPA estimated that it would clean up 75 Superfund sites but only completed construction at 47 sites.⁴⁶ In 2002, EPA estimated it would clean up 65 sites, but then revised its estimate down to 40 and cleaned up 42.⁴⁷

Finally, a congressionally requested report on Superfund found that the vast majority of sites that Superfund is slated clean up in the early part of this decade will be similar to sites that EPA has 20 years of experience cleaning up.⁴⁸

"Moreover, all cleanups are becoming more expensive and more complex. For instance, the average Superfund cleanup used to cost roughly \$7 million, while it now costs \$15 million, and the average for mega-site costs was \$57 million but it is now over \$100 million, she said."⁴⁹

Figure B: EPA Estimates of Cost of Remaining Superfund Sites



EPA also uses cleanup costs that are not adjusted for inflation (Figure B). In charts given to reporters for reference, EPA attests that the cost of remaining Superfund cleanups are more than double the cost of Superfund cleanups that are already construction complete. However, as EPA states at the bottom of the chart, the past construction costs are not adjusted for inflation. A cleanup that cost \$57 million in 1980, for example, would cost \$128 million in 2003 dollars. While cleanups occurred throughout the life of the program and not just in 1980, failing to adjust the numbers for inflation can skew the results dramatically.

Source: EPA National Advisory Council on Environmental Policy and Technology Superfund Subcommittee, 5 November 2003.

⁴⁴ U.S. EPA, *EPA's FY 2000 Annual Performance Report*, found at http://www.epa.gov/ocfo/finstatement/2000ar/ar00_goal5.pdf.

⁴⁵ U.S. EPA, NPL Site Status Information, "Construction Completions at National Priorities List (NPL) Sites." Available at <http://www.epa.gov/superfund/sites/query/queryhtm/nplcc1.htm>.

⁴⁶ U.S. EPA, *EPA's FY 2000 Annual Performance Report*, found at http://www.epa.gov/ocfo/finstatement/2000ar/ar00_goal5.pdf.

⁴⁷ Letter to EPA Administrator Whitman from Congressman John Dingell, February 13, 2002. Available at http://www.house.gov/commerce_democrats/press/107ltr143.htm; The Budget for Fiscal Year 2002, The White House, February 2001; U.S. EPA, *EPA's FY 2000 Annual Performance Report*, found at http://www.epa.gov/ocfo/finstatement/2000ar/ar00_goal5.pdf.

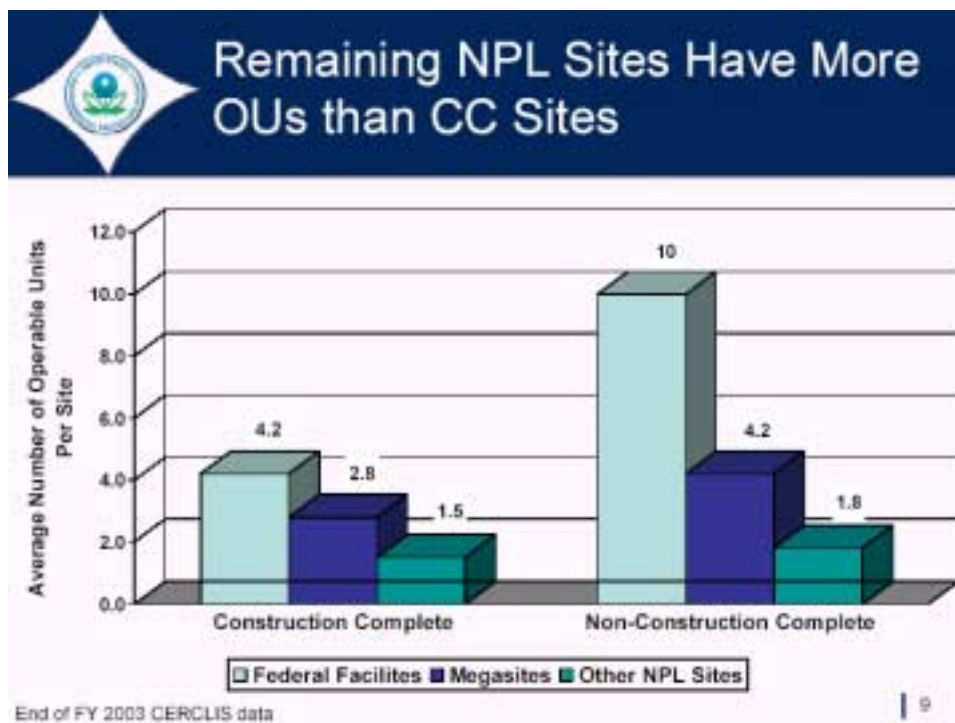
⁴⁸ Katherine Probst and David Konisky, Resources for the Future. *Superfund's Future*. 2001.

⁴⁹ Rachel Urdan, "Horinko Argues Criticisms Of Superfund Harms Communities Needing Cleanup," *Inside Washington Publishers*. October 23, 2003.

“In addition, the sites have more units of contamination, known as operable units (OUs), than they did in the past. Federal facilities have on average 10 OUs and mega-sites 4, which is double the number of OUs for those sites in the past, according to Horinko.”⁵⁰

In Figure C and in the statement above, EPA compares operable units (OUs) of construction complete sites and sites that are not yet construction complete, arguing that Superfund sites in general are much more complex now versus in the past. Ms. Horinko states that the number of OUs per megasite has doubled; in fact, the number of operable units per megasite has increased by just over one unit. Figure C shows that operable units have gone up much more dramatically (more than doubled) for federal facilities than for megasites or other NPL sites. This suggests that federal facility sites in particular are increasing in complexity. However, federal facility cleanup funding does not come from EPA’s appropriation for the Superfund program – the federal agencies that created these sites are financially responsible for cleaning them up. The complexity and cost of these federal sites do not reflect the types of sites confronted by EPA. In this context, grouping federal facilities with other Superfund sites is misleading.

Figure C: EPA Analysis of Operable Units at Remaining Superfund Sites



Source: EPA National Advisory Council on Environmental Policy and Technology Superfund Subcommittee, 5 November 2003.

⁵⁰ Rachel Urdan, “Horinko Argues Criticisms Of Superfund Harms Communities Needing Cleanup,” *Inside Washington Publishers*. October 23, 2003.

EPA's Misleading Statement #7: Criticism of the Superfund Program Harms Communities Awaiting Cleanups

"Acting EPA Administrator Marianne Lamont Horinko is arguing that criticisms directed at the Bush administration over the pace of Superfund cleanups is harming communities awaiting cleanups and the EPA staff seeking to clean them up. 'The price is really paid by the communities the program serves' when Superfund is criticized, she said."⁵¹

Criticism of the Superfund program does not hurt communities; prolonging the time that families and businesses must live and operate near toxic waste sites hurts communities.

Superfund cleanups are down by 50 percent, and communities all across the country are living in close proximity to toxic waste sites for prolonged time periods. One in four people in America, including ten million children, still lives within four miles of a Superfund site.⁵² Toxic chemicals at these sites are linked to birth defects, neurological defects, and cancer. For example, a California study showed that children born to women within a quarter mile of a Superfund toxic waste site are at an increased risk of birth defects, including heart defects.⁵³ In addition, more 80 percent of Superfund sites have contaminated groundwater.⁵⁴ Fifty (50) percent of people in our nation—and virtually 100 percent of those living in many rural areas—rely on groundwater for drinking water.⁵⁵

Toxic chemicals found at Superfund sites include:

- § Arsenic: Arsenic is known to cause cancer of the lungs, bladder and skin and is linked to kidney cancer and other health impacts such as diabetes and high blood pressure. Arsenic is found in at least 44 percent of Superfund sites.⁵⁶
- § Lead: Lead causes damage to the brain and kidneys and is linked to lowered IQ scores, impaired hearing, and slow growth among infants and children. Lead is found in at least 47 percent of Superfund sites.⁵⁷

⁵¹ Rachel Urdan, "Horinko Argues Criticisms Of Superfund Harms Communities Needing Cleanup," *Inside Washington Publishers*. October 23, 2003.

⁵² Statement of Senator Barbara Boxer Accompanying Introduction of S. 173, Congressional Record, January 15, 2003, Pages S859-S860.

⁵³ L.A. Croen et al, "Maternal residential proximity to hazardous waste sites and risk of selected congenital malformations," *Epidemiology* Vol. 8, No. 4 (July 1997), pgs. 347-354.

⁵⁴ Calculated using EPA's CERCLIS database, January 28, 2004, <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.

⁵⁵ Sandia National Laboratories, Sandia Water Initiative, <http://www.sandia.gov/water/waterFacts.htm>.

⁵⁶ Calculated using EPA's CERCLIS database, January 28, 2004, <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.

⁵⁷ Calculated using EPA's CERCLIS database, January 28, 2004, <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.

- š Benzene: Benzene is known to cause cancer and is linked to anemia and other adverse health impacts. Benzene is found in at least 52 percent of Superfund sites.⁵⁸
- š Mercury: Mercury causes permanent damage to the brain and kidneys. Mercury is found in at least 27 percent of Superfund sites.⁵⁹

Prolonging the time that communities are exposed to toxic waste sites is more detrimental to communities than exposing the Bush administration's failure to properly implement Superfund.

⁵⁸ Calculated using EPA's CERCLIS database, January 28, 2004, <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.

⁵⁹ Calculated using EPA's CERCLIS database, January 28, 2004, <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.