Site: Beede Waste
Break: 13.5
Other: 27509

Beede Waste Oil

December 2001

NEW HAMPSHIRE DEPARTMENT OF Environmental Services

EPA New England

The U.S. Environmental Protection Agency and the N.H. Department of Environmental Services are working together to clean up the Beede Waste Oil Superfund Site located in Plaistow, NH. Periodic newsletters have been distributed to individuals interested in the investigation and clean-up of the site since removal activities begun in 1996. Below is the most recent update on activities.

Floating Oil Removal Continues

In February 2000, EPA installed a vacuum enhanced extraction (VEE) system to remove floating contaminated oil from the water table beneath much of the site. The VEE system consists of 143 shallow extraction wells which are installed a few feet into the water table.

Although the focus is on removing oil, some groundwater and air are simultaneously extracted. Once extracted, the mixture of oil, water and air is sent through an air and fluids separator. The air is sent through a carbon canister to filter out any contaminants prior to discharge to the atmosphere. The remaining oil and water mixture is first sent through an oil and water separator and then sent to separate holding tanks for off-site disposal. Individual wells are cycled to maximize system efficiency, and about one third of the 143 wells operate at any one time. Two 50 hp pumps are required to create the necessary vacuum pressure.

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Additional Enforcement Activities Under Consideration by EPA

Decisions on waste quantity review claims

Future negotiations with representative PRP groups

Offering an additional *de minimis* cash-out opportunity to another tier of the lowest volume PRPs

One Quarter of Beede PRPs Settle with EPA

As part of EPA's overall strategy to minimize legal costs and provide potentially responsible parties (PRPs) with an opportunity to resolve their financial responsibility quickly and equitably, a non-negotiable "cash-out" settlement offer was recently made to about 900 Small *de minimis* (276 to 1,000 gallons) parties. This settlement offer, called an early *de minimis* settlement, closed on August 20. The settlement is deemed to be "early" because offers were made to PRPs prior to completion of the Site Feasibility Study and prior to release of the proposed plan for final clean up of Beede. PRPs participating in the early *de minimis* settlement contributed between $1,612 to $5,840 each, depending on the volume of waste sent to Beede.

The early *de minimus* cash-out rate of $5.84 per gallon was determined based on known past costs, estimated future clean up costs and existing numbers of PRPs as of October, 2000. The largest component of the early *de minimis* cash-out rate was the estimated future costs associated with performing the remedy. The cost of the remedy was based on a weighted average of a number of possible clean up alternatives being examined pursuant to the Feasibility Study. A 50% premium was applied to the estimated future costs to account for uncertainty. Note that cash-out rates and associated premiums for any future settlement for remaining PRPs may be adjusted, upward or downward, based on costs at that time, and other settlement matters that may arise.

A total of 496 PRPs participated in this settlement, which was made effective on November 9, 2001, following a legally required comment pe-

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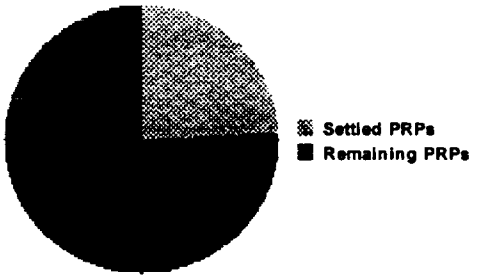
Early de minimis Settlement



496 of the 2,000 PRPs participated in this settlement, contributing a total of $1.66 million which will be applied to the clean up of the Beede Site.

What Happens Next?

Feasibility Study

EPA and DES, in a joint capacity under a cooperative agreement, will release a Feasibility Study report in late December. The Study evaluated a wide range of technologies to address site contamination and associated potential risks identified in the Remedial Investigation Report. Six source control alternatives, developed to address soil contamination, and four management of migration alternatives, developed to address groundwater contamination, have been compared against the following criteria:

- √ protection of human health and the environment
- √ compliance with federal and state regulations
- √ long-term effectiveness and permanence
- √ reduction of toxicity, mobility and volume
- √ short-term effectiveness
- √ implementability
- √ cost

The soil and groundwater alternatives evaluated range from limited action, including fencing and land use controls, to the active treatment of both contaminated soil and groundwater. The cost of implementing the alternatives considered ranges from $2 million to $70 million, based on the data compiled in the Remedial Investigation Report, and the evaluation of remedial alternatives, as will be presented in the Feasibility Study Report.

Proposed Plan

The result of the comparative analysis performed in the Feasibility Study will be the proposal of a comprehensive clean up plan, called a Proposed Plan, for the Site. EPA will release the Proposed Plan to the public and Beede PRPs this winter, with a 60-day public comment period. Community acceptance of the Proposed Plan will be compared along with the critiera listed above, and the local community and PRPs are encouraged to comment on it.

Public Comment & Remedy Decision

The Proposed Plan will be mailed to all parties who receive this newsletter. Once the Plan is released, EPA and DES will hold informational meeting(s) to discuss the proposed cleanup. A public hearing will be scheduled during the 60-day comment period in order to receive verbal comments. Written comments will be accepted during the entire comment period. EPA and DES will consider all concerns prior to selecting and documenting a final clean up plan, called a Record of Decision. A written response to comments will be made available at the time the Record of Decision is finalized.

Superfund Companies

A "Superfund Company" is a private company which assumes the legal obligations to finance and/or perform the clean up of a site.

In the April 2000 Newsletter, EPA provided a general statement regarding the potential involvement of Superfund Companies at the Beede Site. EPA also released a May 4, 2000 memorandum titled, "EPA-NE's Position on Involvement of Superfund Companies at the Beede Waste Oil Superfund Site (Plaistow, New Hampshire)" (both documents are currently available on the Beede WEB site at "www.epa.gov/region01/superfund/sites/beede" or by calling the Beede Hotline at 1-888-294-6980). While the descriptions in these documents remain effective and applicable, the information set forth below further explains EPA-New England's position on Superfund Company involvement as it may relate to specific Beede case developments.

In June 2001, EPA-NE issued General Notice letters to about 2,000 potentially responsible parties ("PRPs") who now share financial responsibility for clean up of the Beede Waste Oil Superfund Site. EPA is aware that at least one Superfund Company has approached a number of the Beede PRPs about their program. As stated in the May 2000 memorandum, EPA-NE encourages the consideration of innovative settlement ideas, but neither promotes nor opposes the involvement of Superfund Compan(ies) at the Beede Site.

In future negotiations with the Beede PRPs, and any involved Superfund Company, EPA will seek to recover the federal government's full past cost amount. Negotiations with EPA will not occur until after issuance of the Record of Decision, since the full Site costs will not be known until then.

EPA New England will consider all comments prior to finalizing the Beede clean up plan in a Record of Decision. EPA cannot enter into discussions with the Beede PRPs or any Superfund Company regarding the developing clean up plan until after the Proposed Plan is released. This approach is necessary to ensure that no one party or group of parties is provided an unfair opportunity to unduly influence development of the Proposed Plan. All interested parties will be provided with an

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Where Sources of Contamination can be Found on the Site

Aerial view of site in 1991 prior to EPA and DES actions.

EPA and DES completed the Remedial Investigation (RI) report in February 2001. This report is the culmination of a comprehensive evaluation of the nature and extent of the contamination present at the Site and explains the potential human health and ecological risks associated with the contamination.

Several relatively extensive areas of shallow soil contamination and free product (oil) are present in the former operations area of the Site. The zone of groundwater contamination, consisting primarily of VOCs, extends over 2,000 feet from the source areas in an east to northeast direction towards Kelley Brook and downgradient water supply wells and monitoring wells.

Contaminants from the site have been detected in surface water and sediment at Kelley Brook and associated wetlands. Elevated concentrations of these contaminants are limited to two primary areas along Kelley Brook near the former oil breakout area and an isolated area farther downstream.

The major contaminants on the site include volatile organic compounds (VOCs), petroleum hydrocarbons (PHCs), polychhlorinated biphenols (PCBs) and metals, lead in particular. Less significant contaminants on the site include polynuclear aromatic hydrocarbons (PAHs), semi-volatile organic compounds (SVOCs), and pesticides and dioxins / furans .

Originals in color.

Superfund Companies, Continued from page 2

equal opportunity to comment after release of the Proposed Plan.

EPA New England provided the Small *De Minimis* generators (276 to 1,000 gallons) with a settlement opportunity concurrent with the issuance of General Notice. This settlement opportunity closed on August 20, and was made effective on November 9, 2001. The offer was based on an estimated remedy cost, and resulted in a $5.84 per gallon cash-out rate. A 50% premium was applied to the estimated future costs to account for uncertainty. The early *de minimis* settlement did not include application of the EPA Orphan Share Policy (see "Orphan Share" description below) at Beede because it was determined that such consideration was premature at the time. Cash-out rates and associated premiums for any future settlement provided to the remaining Beede PRPs will be adjusted, based on costs at that time, and other cost or settlement matters that may arise.

Although it is still too early to calculate the final orphan share amount at Beede, EPA expects to maximize its financial contribution under the Orphan Share Policy at this Site covering a portion of the "orphan" shares. Final calculation and application of an orphan share amount for Beede will be determined through the course of negotiations and following issuance of the Record of Decision.

To ensure adherence to the principles stated in this Newsletter, the April 2001 Newsletter, the May 4, 2000 Superfund Company memorandum, or to meet the government's enforcement and remedial goals at the Site, at any time, EPA New England may change the requirements, or impose others, governing the involvement of a Superfund Company at Beede. Questions about this update or developments at the Beede Waste Oil Superfund Site should be directed to the Beede Enforcement Hotline at 1-888-294-6980. Hotline staff will further direct inquiries to members of the EPA-NE Beede Case Team, as appropriate. ☆

PRP Case Overview

In general, under the federal Superfund law, an owner/ operator of a site, generator of hazardous waste, or transporter of hazardous waste to a site, is a potentially responsible party and may be required to share in the cost of financing or performing the site clean up. More specifically, under Superfund, a generator of hazardous waste is responsible for their waste from "cradle to grave." As a result, if any waste generated by a party ends up at a location that becomes a Superfund site, that party may be required to share in the cost of financing or performing the site clean up.

On June 8, 2001, EPA identified 2,700 generators who shipped hazardous waste to the Beede site while it was in operation, 2,000 of which received General Notice letters advising them of their potential liability. These 2,700 potentially responsible parties include government agencies, businesses and individuals in New Hampshire, Massachusetts and Rhode Island. EPA developed a *volumetric ranking list* [1] which ranks the generator PRPs according to the volume of waste each brought to the Site for disposal. In the EPA *volumetric ranking list*, generator parties are divided into the following four groups:

Major

Generators in this group each contributed over 40,000 gallons of waste to the Site and include about 50 parties responsible for about half of the overall known waste brought to the Site.

Large *De Minimis*

Generators in this group each contributed less than 40,000 but more than 1,000 gallons of waste to the Site and include about 1,000 parties responsible for about half of the overall known waste at the Site.

Small *De Minimis*

Generators in this group each contributed 1,000 gallons or less but more than 275 gallons of waste to the Site and include about 1,000 parties responsible for a minor portion of the overall known waste at the Site. These parties received an early offer for settlement, as described earlier in this Newsletter.

De Micromis

Generators in this group each contributed less than 275 gallons of waste to the Site. The total volume of waste generated by the *de micromis* group of about 650 parties is very minor in comparison to the total known waste at the Site. EPA will neither seek reimbursement for any clean up costs from this group, nor ask the parties in this group to assist in the clean up.

EPA also identified the owner/operators of the Beede Site and a small number of transporters, who are required to share in the cost of site clean up.

The Superfund Law's strict liability scheme is *without regard to fault* and, in this case, includes such a large number of PRPs because Beede Waste Oil Inc. operated over a long period of time. There is not necessarily an allegation of misconduct in being identified as a PRP at Beede, it is a matter of responsibility under the law. By locating as many PRPs as possible to assist in the clean up of the Beede Site, the financial burden is spread out most equitably and fairly. This approach also ensures that adequate funds are available to clean up this highly contaminated property. ☆

One Quarter of PRPs Settle with EPA, Continued from page 1

riod. The $1.66 million raised by this settlement will be applied to the clean up of the Beede Site.

Remaining PRPs, including those who chose not to participate in the early *de minimis* settlement, are enouraged to contact other similarly situated parties to form into group(s) and then to convene a steering committee to facilitate negotiations with EPA. Once PRP groups form and the proposed plan is released, EPA can discuss remedy issues, in addition to other settlement concerns, with these steering committees.

EPA is seriously considering offering an additional *de minimis* cash-out opportunity to the lowest volume PRPs in the winter / spring of 2002. In addition, at this time, the Beede Case Team is beginning to consider "waste quantity review" claims submitted to EPA in response to issuance of General Notice. It is EPA's plan to address lower volume waste quantity review claims first. EPA will also address clear instances of mistaken identity, beginning with lower volume parties. EPA response to the large number of complex legal issues raised by PRPs after General Notice must be defered until later in time. Parties are encouraged to consider beginning to address such issues on their own. Also note that EPA is meeting with representatives of the Major parties on December 18, solely to discuss preliminary procedural matters of interest to the Major PRPs.

To date, EPA has incurred over $15 million in costs at the site. These costs include the time-critical removal action which addressed over 100 above ground storage tanks at the site; the non-time critical removal action which is addressing oil which is floating on the groundwater under the site; the ongoing characterization of contaminants on the site; and the ongoing potentially responsible party search. The total amount of past costs associated with the site are anticipated to reach $16.3 million or more at the time that these activities are concluded and EPA issues a Record of Decision for the site.

There are a significant number of potential "orphan" share parties at Beede. Under the EPA Orphan Share Policy ("Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time Critical Removals," June 3, 1996), orphan parties include insolvent, defunct or unlocatable parties. The Orphan Share Policy was developed to promote greater fairness, reduce litigation and transaction costs, and foster private party clean up of Superfund sites. Under the Orphan Share Policy, EPA will cover a portion of the these parties' share of the Beede clean up costs.

The State of New Hampshire's Department of Environmental Services has incurred approximately $2 million to investigate and address concerns at the Beede Site. Additionally, DES, along with the United States Fish & Wildlife Service and the National Oceanic and Atmospheric Administration, also serve in the role of "Environmental Trustees." As Environmental Trustees, these three government entities may seek to recover damages associated with degraded environmental conditions at Superfund Sites, and in this case, at Beede. When applicable damage assessments for Beede, if any, are articulated by the Environmental Trustees, they may seek to recover their costs. In addition, NH DES will also likely seek to recover their past costs.

[1] *The EPA volumetric ranking list does not constitute a non-binding preliminary allocation of responsibility under CERCLA Section 122(e)(3) and it should not be construed as an allocation of responsibility or liability by EPA. The volumetric ranking list was developed for settlement purposes only and is subject to revisions based upon new information and future consideration of "waste quantity review" claims already submitted by PRPs.*

Floating Oil Removal, Continued from page 1

Despite the unusually cold winter and a very dry summer over the past year, the VEE system continues to operate effectively. To date, over 50,000 gallons of oil have been removed. An estimated 30,000 gallons of floating oil remain beneath the site and the system will continue to operate until it is all recovered.

In 1999, EPA installed a 120 foot oil recovery trench to capture floating oil which was seeping into Kelley Brook, adjacent to the site. The trench continues to collect oil and remains an effective barrier.

For More Information

Please Call the Beede Toll Free Information Hotline First
1-888-294-6980

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Technical documents are available for review on-line at: www.epa.gov/region01/superfund/sites/beede. In addition, the web site contains lists of potentially responsible parties, and a volumetric ranking list developed for settlement purposes only. Documents are also available for review at EPA's regional office records center in Boston and at the Plaistow public library.