

**SUPPLEMENTAL COMMENTS OF
THE SUPERFUND SETTLEMENTS PROJECT AND
THE RCRA CORRECTIVE ACTION PROJECT
ON
EPA'S TWO GROUND WATER DISCUSSION PAPERS**

**John Quarles
Michael W. Steinberg
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5150**

**Counsel to the Superfund Settlements
Project and the RCRA Corrective Action
Project**

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On May 10, 2004 EPA released two documents regarding the remediation of contaminated ground water ("Discussion Papers"). Both were developed by a Cross-Program Ground Water Task Force established under the One Cleanup Program within the Office of Solid Waste and Emergency Response. Their stated purpose was "to promote dialogue" on the issues discussed among the various affected stakeholder groups. On July 21, 2004 The Superfund Settlements Project and the RCRA Corrective Action Project submitted joint comments to EPA in response to the invitation for public comment on the Discussion Papers.

A subsequent email from Jo Ann Griffith of EPA provided an extension of the public comment period until September 24, 2004 for the specific purpose of encouraging further comments on options and recommendations for moving forward in planning future activities of the task force. The Griffith email noted that the comments received had generally not addressed that important aspect. The Superfund Settlements Project and the RCRA Corrective Action Project appreciate this opportunity to supplement our earlier comments.

PRINCIPAL RECOMMENDATION:

The options set forth in the two Discussion Papers include a number of proposals to develop Fact Sheets on different aspects of remediation policy or practice. Some include suggestions to perform research or develop summaries. Other options would involve EPA preparation of "guidance" or a statement of policy on a specific topic. A number of these proposals could generate useful activities to advance cleanup of contaminated areas, but only if carried out as part of a fundamental reform initiative to establish new policy directives that would shift the ground water remediation program onto a sound foundation of practical, feasible and cost-effective cleanup objectives.

We believe that in order for the Groundwater Task Force to achieve real success, EPA must take a strong leadership role in establishing and implementing a new national ground water remediation policy that has rational and realistic goals. This policy could then be applied across all of the EPA's cleanup programs.

As RCAP and SSP have previously stated, up until now, the driving force in creating the current legal and policy framework of requirements for cleanup has been the goal of restoring contaminated ground water to satisfy drinking water MCL standards so that it could be directly utilized for public water supply. In fact, many states adopted special legislation during the 1980s declaring that all ground water belongs to the state, that all

ground water should be managed for drinking water supply, and therefore that all ground water should meet the MCLs. We respectfully suggest that experience has clearly demonstrated this is the wrong goal.

The need today is for EPA to expand the flexibility available for setting cleanup goals and selecting remedies so that officials making decisions for individual sites in the field will be able to propose remedies that meet a basic standard of common sense.

In our principal comments submitted last July, we emphasized the obstruction to progress and the waste of resources resulting from current policies and practices regarding remediation of contaminated ground water caused by the current disconnect between the regulatory requirements and the realities of feasibility, cost effectiveness and sound risk management. Sadly the regulatory requirements remain locked in a time warp. Only limited progress toward reasonable adjustments has occurred as experience and technical knowledge have accumulated over the past two or three decades.

Before any real progress can be made, this fundamental problem must be confronted. It make no sense to launch a flurry of separate activities to develop fact sheets and policy statements until the confusion over basic goals of the program is resolved.

EPA must provide effective leadership on this issue. To meet the challenge, EPA will need to make a major commitment to addressing this as a top priority. One essential is for top level support from senior officials in the Agency. Another need would be for EPA to work closely with the states, as well as other groups, including industry and federal agencies, to tap into their extensive experience.

COMMENTS ON SPECIFIC ACTION RECOMMENDATIONS

Turning briefly to the specific options set forth in the papers, we want to reiterate that a selection from among them can only be made after EPA defines a general approach to the next phase of the ground water dialogue. Our primary recommendation is that the central effort should be to prepare a single comprehensive document setting forth the vision for reform and a summary description of a new national framework for conducting ground water remediation. This document would include appropriate summary of factual information and policy discussion. In effect it would provide an overview of the broad subject of evaluating ground water contamination and selecting among alternative remedial actions. Within that context, certain specific issues could be addressed in greater depth and policy suggestions could be articulated.

In particular, there are many situations where traditional groundwater treatment technologies do not work or are not cost effective relative to the value of the resource being restored. However, due to lack of affirmed guidance on how to proceed in such situations, other alternatives are not considered. As a part of the national policy, we suggest EPA prepare guidance with case studies, and perhaps pilot studies to demonstrate how lost services (environmental, agricultural and economic) related to the groundwater contamination can be restored more effectively in such situations.

Within this context we offer brief comments on the various options set forth in the Discussion Drafts, as follows:

Ground Water Use, Value and Vulnerability Discussion Paper:

1. Educational Fact Sheets and Internet Training Seminars – Rather than a number of fact sheets, we would recommend a single document of a more comprehensive nature. It would be important to stress the differences among different sites and aquifers, pointing out why some have particular value or vulnerability, but with balance to indicate that those same factors may cut the other way in other situations.
2. Research in Other Developed Nations – The experience of other countries, particularly in Europe, may be helpful where they have taken a more pragmatic approach to ground water remediation, though careful management would be needed to conduct such research in a cost-effective way.
3. Summaries of EPA and State Cleanup Programs – This is an important topic that would fit naturally in an overview document. Programs to be summarized should be chosen selectively, not comprehensively, to focus on examples that illustrate beneficial practices.
4. EPA Policy Memo on Various State Approaches – Without converting the whole document into a policy report, it would be natural and appropriate to include comments on practices that are sound and beneficial. This is where the tasks of drafting a report intersect with the need for extensive outreach and education, so that the development of the document becomes as important as the finished document itself to achieve education and consensus objectives.
5. Framework to Prioritize Sites – The purposes for which such prioritization would be used are somewhat unclear – it would be important to clarify the anticipated use of the framework before investing a significant effort to develop it.
6. Source Water Assessment Program – A general description of the SWAP program would be feasible and helpful to include. A detailed state-by-state analysis would be beyond the scope of the initial report.
7. Funding Assistance – It seems unlikely that federal funds would be available to support the uses that are suggested.

Cleanup Goals for DNAPL Source Zones Discussion Paper:

Before discussing the “Options” set forth in this paper, we want to express support for “Projects” A B, and D listed on page 10 of the paper.

1. Fact Sheet on Benefits and Drawbacks of DNAPL Mass Removal – A summary description on this topic would be feasible and helpful. It should note the need for careful evaluation of actual benefits and cost effectiveness, without trying to spell out specific criteria for mass removal decisions.
2. Program Flexibilities and Alternative Cleanup Goals – This is an important topic that should be included.
3. Supplemental Guidance on TI Decisions – Continuing explanation of the availability of Technical Impracticability determinations is extremely important along with efforts to encourage their use in appropriate circumstances.
4. Policy Memo on Restoration – A reiterated statement that DNAPL source zones need not be restored to drinking water standards is required. The fact that a similar statement in 1995 had little impact merely reinforces the need for further attention to the topic.
5. Guidance for Delineating the DNAPL source zone – This topic would warrant summary description but is too technical for full development.
6. Guidance on Source Depletion – This also is a technical subject that should be addressed when appropriate as a separate effort. The priority for this topic is unclear.
7. Guidance on Performance Measures for Mass Removal – This suggestion also goes deeply into technical detail, and should be considered in a second priority group of follow up projects.
8. Guidance for Comparing Long-Term Remedies – It is unclear that there is a real need for guidance on this topic.

Conclusion:

In summary, we believe that several of the options for future action would be beneficial, but we reemphasize that the development of the sound national framework is the first priority and will provide the foundation needed for the specific options to be fully useful. We applaud EPA's effort to open up a public dialogue on ground water cleanup issues. We hope that EPA will pursue this effort as a high priority. We urge that initial activities focus on elevating public understanding on broad policy issues rather than committing heavy resources to topics of concern to technical experts. The reason for that priority in our view is, once again, the disconnect between public expectations and realistic practicalities. In other words, even though ground water remediation is highly technical and very complicated, that is not where the biggest problem lies. Instead, the greatest need is to educate a broader sector of leaders of public opinion on what those realities are. The effort to develop a general summary of the major questions, alternatives, technologies, risks, costs, timetables, and benefits holds promise of a far greater return.

That approach will be particularly promising if EPA carries out this project in collaboration with state agencies and with extensive interaction with other stakeholders.

Only by elevating the level of understanding by a broad sector of the public will EPA be able to shake loose from the shackles of an unsound program held in place by simplistic and erroneous concepts on the character of ground water contamination and the feasibility of its restoration.