

Control Project, Implementation, Idaho Panhandle National Forest, Bonner County, ID and Pend Oreille County, WA.

*Summary:* Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F-AFS-L82015-ID, St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID.

*Summary:* Review of the Final EIS has been completed and the project found to be satisfactory. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F-FHW-J40138-UT, Norman H. Bangerter Highway (Previously Known as the West Valley Highway) 12600 South Street to I-15, Funding and COE Section 404 Permit, in the Cities of Bluffdale, Riverton and Draper, Salt Lake County, UT.

*Summary:* EPA continued to express concerns regarding mitigation measures for wetland areas and terrestrial animal access.

Dated: July 8, 1997.

**Ken Mittelholtz,**

*Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 97-18239 Filed 7-10-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5856-7]

**Announcement of and Request for Comment on Municipal Solid Waste Settlement Proposal**

**SUMMARY:** EPA is publishing the "Municipal Solid Waste Settlement Proposal" to inform the public about this proposal and to solicit public comment before developing a final policy. This proposal describes a methodology for calculating appropriate settlement contributions for municipal owner/operators (O/Os) and municipal and other generators/transporters (G/Ts) of municipal sewage sludge and municipal solid waste (collectively referred to as MSW) at co-disposal landfills under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), 42 U.S.C. 9601 *et seq.* The purpose of this proposal is to provide a fair, consistent, and efficient settlement methodology for resolving the potential liability of

municipal O/Os and MSW G/Ts at co-disposal Superfund sites. Specifically, EPA is proposing settlements based upon a unit cost formula for contributions by MSW G/Ts and a settlement range, based on historical data, for municipal O/Os of co-disposal sites.

**DATES:** Comments must be submitted no later than August 25, 1997.

**ADDRESSES:** Comments should be addressed to Leslie Jones, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement, Policy and Guidance Branch (2273A), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Leslie Jones, phone: (202) 564-5144; fax: (202) 564-0091.

**EPA Proposal for Municipality and MSW Liability Relief at CERCLA Co-Disposal Sites**

**Background**

Currently, there are approximately 250 landfills on the National Priorities List (NPL) that accepted both municipal solid waste (MSW) and other wastes, such as industrial wastes, containing hazardous substances (commonly referred to as "co-disposal" landfills). Co-disposal landfills comprise approximately 23% of the sites on the NPL. Many of these landfills are or were owned or operated by municipalities in connection with their obligation to provide necessary sanitation and trash disposal services to residents and businesses. The number of co-disposal sites on the NPL, and the problems associated with co-disposal of MSW and industrial wastes, have prompted EPA to address issues facing municipal owner/operators (O/Os) and MSW generators/transporters (G/Ts) at Superfund sites.

For the purposes of this proposal, EPA defines municipal solid waste as solid waste that is generated primarily by households, but that may include some contribution of wastes from commercial, institutional and industrial sources as well. Although the actual composition of such wastes varies considerably at individual sites, municipal solid waste is generally composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and may contain small quantities of household hazardous wastes (e.g., pesticides and solvents), as well as conditionally exempt small quantity generator wastes (i.e., a listed or characteristic waste under RCRA that is exempt from permitting because it is accumulated in quantities of less than

100 kilograms (kg)/month for hazardous waste and less than 1 kg/month for acute hazardous waste, 40 C.F.R. 261.5).

Sewage sludge is defined as any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sludge. For purposes of this proposal, municipal solid waste and municipal sewage sludge are collectively referred to as MSW; all other wastes and substances are referred to as non-MSW. The term municipality refers to any political subdivision of a state and may include a city, county, town, township, local public school district or other local government entity.

On December 12, 1989, EPA issued the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (the "1989 Policy") to establish a consistent approach to certain issues facing MSW G/Ts and municipalities. The 1989 Policy assists EPA in determining whether to exercise its enforcement discretion to pursue MSW G/Ts as potentially responsible parties (PRPs) under Section 107(a) of CERCLA. The 1989 Policy provides that EPA generally will not identify an MSW G/T as a PRP for the disposal of MSW at a site unless there is site-specific evidence that the MSW contained hazardous substances derived from a commercial, institutional or industrial process or activity. The 1989 Policy recognizes that, like private parties, municipal O/Os may be PRPs at Superfund sites. The 1989 Policy identified several settlement provisions, however, that may be particularly suitable for settlements with municipal O/Os in light of their status as governmental entities.

Notwithstanding EPA's 1989 Policy, MSW G/Ts have sometimes been drawn into CERCLA contribution litigation. PRPs that contributed large quantities of hazardous substances at co-disposal landfills have sometimes sought to spread the cost of their CERCLA liability among large numbers of other parties, including those whose only contribution was MSW.

Numerous studies have demonstrated that hazardous substances are typically present in MSW in very low concentrations. The overwhelming majority of landfills at which MSW alone was disposed do not experience environmental problems of sufficient magnitude to merit designation as Superfund Sites. In the Agency's experience, with only the rarest of exceptions, MSW landfills do not become Superfund Sites unless other types of wastes containing hazardous substances, such as industrial wastes, are co-disposed at the facility.

In addition, the cost of remediating MSW is typically much lower than the cost of remediating industrial waste. In 1992, EPA performed a comparative analysis of the cost of remediating a representative MSW site versus the cost of remediating a representative industrial waste site. At that time, EPA found that on a per-acre basis, the estimated cost of remediating MSW was significantly lower than the cost of remediating industrial waste. Although costs have changed somewhat since 1992 and EPA continues to learn more about remediating different kinds of waste sites, the Agency does not believe that there has been a radical shift in the relative cost of remediating MSW versus industrial wastes.

### Introduction and Application

This proposal will provide revised national guidance on how to involve MSW G/Ts in the CERCLA settlement process and more detailed guidelines for Agency settlements with municipal O/Os. This proposal applies to municipal O/Os and to municipal and private MSW G/Ts. This proposal encourages settlements by setting forth a fair and efficient method for calculating an equitable and reasonable settlement contribution for such parties. Such settlements should encourage settlements with and reduce transactions costs for all parties at a site and should reduce third-party litigation. Specifically, this proposal contains a unit cost formula for contributions by MSW G/Ts and a presumptive settlement percentage and range, based on historical data, for municipal O/Os of co-disposal sites. In addition, a final policy will provide guidelines for evaluating a municipality's ability to pay.

This proposal builds on the 1989 Policy with respect to generators and transporters of MSW. The Agency will continue its policy of not identifying such parties as PRPs at Superfund Sites. As in the 1989 Policy, this proposal does not apply if there is site-specific evidence that the MSW contained hazardous substances derived from a commercial, institutional or industrial process or activity. In recognition of the strong public interest in reducing the burden of contribution litigation, however, EPA is proposing to supplement the 1989 policy by offering settlements to any such MSW G/Ts that wish to resolve their potential Superfund liability and to obtain contribution protection pursuant to Section 113(f) of CERCLA.

This proposal does not apply to MSW G/Ts who also generated or transported any non-MSW containing a hazardous

substance, except to the extent that a party can demonstrate that the MSW was completely and continually segregated from the non-MSW prior to and during disposal at the site. Such a party would be required to demonstrate to EPA's satisfaction that segregation occurred. In considering claims of segregated waste, EPA will consider whether the MSW and non-MSW were delivered to the site in separate loads and/or separate packaging, disposed of in separate units of the landfill, handled, packaged and disposed of separately within the disposing facility, and other relevant information. Where such segregation of waste is demonstrated, this proposal applies only to the MSW component of that waste stream; the party's liability for non-MSW would continue to be addressed under applicable EPA CERCLA policies (e.g., EPA's de minimis policy).

To address concerns that this proposal may result in the indirect inclusion in contribution litigation of MSW parties who have contributed small amounts of MSW, and in an effort to prevent creation of transaction costs for parties that EPA has tried to protect from lawsuits through the de minimis policy, EPA intends to amend the existing de minimis policy to modify the volumetric cut-off for MSW G/Ts.

This proposal is designed for co-disposal sites on the NPL. Co-disposal sites contain both MSW and non-MSW. Although this proposal has its most direct application at co-disposal sites with multiple, viable non-de minimis G/Ts, EPA may elect to apply all or part of a final policy to other appropriate sites. Because this proposal is a draft and is subject to public comment before finalization, EPA will not apply it until the proposal is issued as a final policy.

EPA does not intend in any circumstances to reopen settlements already entered into or to reconsider Unilateral Administrative Orders (UAOs) issued prior to issuance of this policy. At sites for which prior settlements have been reached but where MSW parties are subject to third party litigation, EPA will recommend that the principles set forth in the final policy be followed by the private litigants to reach a settlement involving the MSW parties. To the extent that such a settlement is not reached, the U.S. may settle with MSW G/Ts based on the formulas established in this proposal and place those settlement funds in a site-specific special account. At sites where no parties have settled to perform work, where the U.S. is seeking to recover costs from private parties, and where the private parties have

initiated contribution actions against municipalities and other MSW G/Ts, the U.S. will seek to apply the most expeditious methods available to resolve liability for those parties pursued in third-party litigation, including, in appropriate circumstances, application of this proposal. In no circumstances does EPA intend to bestow a benefit on recalcitrant parties.

This proposal is intended for settlement purposes only and, therefore, the formulas contained in this proposal are relevant only where settlement occurs. Except as specifically provided below, this proposal will not supersede any of EPA's existing policies (e.g., orphan share, residential homeowner, etc.), and is intended to be used in concert with those policies. For example, those parties eligible for orphan share compensation under EPA's orphan share policy will continue to be eligible for such compensation.

### Procedure

EPA believes that this proposal can promote global settlements at co-disposal sites. In some cases, site circumstances may warrant a series of settlement negotiations with different parties. Because this proposal is designed to achieve fair and equitable settlements, settlements with the U.S. will generally provide contribution protection for settling parties and require parties settling under this proposal to waive contribution claims against all other PRPs at the site. In addition, the U.S. will accept settlements from parties based on limited ability to pay, where appropriate. Where beneficial to settling parties, the U.S. will place the proceeds of settlements under this proposal into a special account to help fund cleanup at the site.

### MSW Generator/Transporter Settlements

One purpose of this proposal is to facilitate settlements with MSW G/Ts who seek settlements with the U.S. This proposal recognizes the differences between MSW and the types of wastes that typically give rise to the environmental problems at Superfund Sites. Consistent with the 1989 Policy, EPA will generally not actively pursue MSW G/Ts absent site-specific evidence that the MSW contained a hazardous substance derived from a commercial, institutional or industrial process or activity. However, in recognition of the fact that the potential for small amounts of hazardous substances in MSW may result in contribution claims against MSW G/Ts, EPA intends to use its enforcement discretion to offer

settlements based on the process and formulas contained in this proposal to parties that have not been issued special notice letters but that wish to enter settlement negotiations with EPA. It will be incumbent upon such parties to notify EPA of their desire to enter into settlement negotiations pursuant to this proposal. Absent the initiation of settlement discussions by an MSW G/T, EPA may not take steps to pursue settlements with these parties.

#### Proposed G/T Methodology

EPA's proposed methodology for calculating settlement offers to MSW G/Ts requires multiplying the known or estimated quantity of MSW contributed by the G/T by an estimated unit cost of remediating MSW at a representative MSW-only landfill. This method provides a fair, reasonable and efficient means of completing settlements with MSW G/Ts that reflects a reasonable approximation of the cost of remediating MSW.

The unit cost methodology is based on the costs of closure/post-closure activities at a "clean" MSW landfill (i.e., a RCRA Subtitle D landfill, not subject to RCRA corrective action or CERCLA response authorities) and increased slightly if certain site conditions exist. EPA's estimate of the cost per unit of remediating MSW at a representative MSW-only landfill is \$3.05 per ton.<sup>1</sup> That unit cost is derived from the cost model in EPA's "Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills," (RIA) and then adjusted to reflect 1997 dollars. The Subtitle D landfill cost model was run to extract only the costs associated with closure/post-closure activities (thus excluding siting and operational costs). The closure criteria specified in the Solid Waste Disposal Facility Criteria (40 CFR, pt. 257-258) include a final cover system that minimizes erosion and infiltration with an erosion layer underlain by an infiltration layer. Post-closure requirements consist of cover maintenance, maintenance and operation of a leachate collection system, groundwater monitoring, and maintenance and operation of a gas monitoring system, all to be conducted for 30 years.

Of the Subtitle D landfill types addressed in the RIA, EPA selected the type most representative of the landfills encountered within the Superfund program: a closed, unlined, 55.53-acre landfill. Regions may increase the unit cost not to exceed \$3.25/ton if the

presence of one or more of the following factors exist:

- Shallow aquifer beneath the landfill.
- Unusually high annual rainfall in the area.
- Cold ambient air temperature in the area.
- Affected groundwater beneath the site is classified as drinking water.
- Low-permeability cover material (e.g., clay) is unavailable onsite.

The presence of one or more of these factors may result in greater closure/post-closure costs at any MSW-only landfill due to the additional precautionary and monitoring technology generally utilized in those instances.

In the instance where a party's contribution is known in cubic yards rather than tons, the following density conversion scales should be used to convert the site-specific cubic yard data into tons:

- (1) Loose refuse ("curbside")—100 lbs./cu. yd.;
- (2) Refuse in a compactor truck—550 lbs./cu. yd. and
- (3) Refuse in a landfill (after degradation and settling)—1200 lbs/cu. yd.<sup>2</sup>

In the instance where a party's contribution is MSS, Regions should use a conversion formula of 8.33 pounds/gallon.<sup>3</sup>

In order to use such density conversions, Regions should first identify whether the MSW cubic yard "waste-in" data represents MSW at the time of collection from places of generation, or MSW at the time of transport in or disposal by a compactor truck. Next, Regions should convert the cubic yards to pounds (tons) by multiplying either 100 (for curbside MSW) or 550 (for compactor truck MSW) times the number of cubic yards that a G/T contributed. For cases where site-specific conversion information is already available, Regions may use those conversions rather than the presumptive conversion scales provided in this proposal.

Once the adjusted unit cost is established, the Region will multiply that cost/ton by an individual G/T's quantity contribution to produce a total settlement amount for that party. In order to be eligible for settlements under this proposal, an MSW G/T must

provide all information requested by EPA to estimate the quantity of MSW contributed by such party. EPA may solicit information from other parties where appropriate to estimate the quantity of a particular G/T's contribution of MSW. Where the party has been forthcoming with requested information, but the information is nonetheless imperfect or incomplete, EPA will construct an estimate of the party's quantity incorporating reasonable assumptions.

MSW G/Ts settling pursuant to the final policy will be required to waive their contribution claims against other parties at the site. In situations where there is more than one generator or transporter associated with the same MSW, the settling party will not be required to waive its contribution claims for that waste against any non-settling parties associated with the same waste.

#### Municipal Owner/Operator Settlements

A second purpose of this proposal is to provide a consistent methodology for constructing proposals for municipalities that are potentially liable as past or present owners or operators of co-disposal landfills. Pursuant to this proposal, the U.S. will offer settlements to municipal O/Os of co-disposal facilities who wish to settle; those municipal O/Os who do not settle with EPA will remain subject to site claims by EPA and other parties.

EPA recognizes that some of the co-disposal landfills listed on the NPL are or were owned or operated by municipalities in connection with their governmental obligation to provide basic sanitation and trash disposal services to residents and businesses. In many cases municipalities opened the landfills initially solely to serve their own communities. EPA believes that those factors, along with the non-profit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal O/Os with reasonably consistent and equitable settlements.

#### Proposed O/O Methodology

EPA proposes 20% of total response costs for a site as a baseline presumption to be considered as settlement amount for an individual municipal O/O to resolve its liability at the site. Regions will have the discretion to deviate from the presumption (not to exceed 35%) based on a number of site-specific factors. The 20% baseline is an individual cost share and pertains solely to a municipal O/O's liability as an O/O. EPA recognizes that, at some sites,

<sup>2</sup> "Estimates of the Volume of MSW and Selected Components in Trash Cans and Landfills," Franklin Assoc., the Garbage Project (1990); prepared for the Council for Solid Waste Solutions.

<sup>3</sup> "Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA," OSWER Directive 9835.16 (Feb. 22, 1991).

<sup>1</sup> This cost will be adjusted over time to reflect inflation.

there may be multiple liable municipal O/Os and the Region may determine that it is appropriate to settle for less than the presumption for an individual O/O. A group or coalition of two or more municipalities with the same nexus to a site, at the same time or during continuous operations under municipal control, should be considered a single O/O for purposes of developing a cost share (e.g., two cities operated together in joint operations or in cost sharing agreements). In cases where a municipal O/O is also liable as an MSW G/T, EPA would offer to resolve such liability for an additional payment amount developed pursuant to the MSW G/T settlement methodology.

EPA proposes the 20% baseline settlement contribution on the basis of several considerations. EPA examined the data from past settlements of CERCLA cost recovery and contribution cases with municipal O/Os at co-disposal sites where there were also PRPs who were potentially liable for the disposal of non-MSW, such as industrial waste. In examining that data, EPA considered that such historical settlements also typically reflected resolution of the municipality's liability not only as an owner/operator, but also as a generator or transporter of MSW. Under the final policy, such liability will be resolved through payment of an additional amount, calculated pursuant to the MSW G/T methodology. The 20% baseline does not reflect this separate basis for liability and the respective additional payment.

The 20% baseline figure also reflects the requirement that municipal O/Os that settle under the final policy will be required to waive all contribution rights against other parties as a condition of settlement. By contrast, in many historical settlements, municipal O/Os retained their contribution rights and hence were potentially able to seek recovery of part of the cost of their settlements from other parties.

In addition, the 20% baseline figure reflects EPA's evaluation of public interest considerations relating to municipalities. For example, Section 122(e)(3) of CERCLA authorizes the President to perform "nonbinding preliminary allocations of responsibility" for the purpose of promoting settlements and to include "public interest considerations" in developing such allocations. EPA believes it is in the public interest to consider collectively: the unique public health obligation of municipalities to provide waste disposal services to their

citizens; the municipalities' non-profit status; and the unique fiscal planning considerations for municipalities that require multi-year planning.

Under this proposal, the Regions may adjust the settlement in a particular case upward from the presumptive percentage, not to exceed a 35% share, based on consideration of the following factors:

(1) Whether the municipality performed specific activities that exacerbated environmental contamination or exposure (e.g., the municipality permitted the installation of drinking wells in known areas of contamination);

(2) Whether the O/O received operating revenues net of waste system operating costs during ownership or operation of the site that are substantially higher than the O/O's presumptive settlement amount pursuant to this policy; and

(3) Whether an officer or employee of the municipality has been convicted of performing a criminal activity relating to the specific site during the time in which the municipality owned or operated the site.

The Regions may adjust the presumptive percentage down based on whether the municipality, on its own volition, made specific efforts to mitigate environmental harm once that harm was evident (e.g., the municipality installed environmental control systems, such as gas control and leachate collection systems, where appropriate; whether the municipality discontinued accepting hazardous waste once groundwater contamination was discovered; etc.). The Regions may also consider other equitable factors at the site.

#### *Financial Considerations in Settlement*

In all cases under this proposal, the U.S. will consider municipal claims of limited ability to pay. Municipalities making such claims are required to provide Regions all necessary documentation relating to the claim. Recognizing that municipal O/Os may be uniquely situated to perform in-kind services at a site (e.g., mowing, road maintenance, structural maintenance), EPA will carefully consider any forms of in-kind services that a municipal O/O may offer as partial settlement of its cost share.

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement and Compliance Assurance.*

[FR Doc. 97-18247 Filed 7-10-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[PF-748; FRL-5728-7]

### Notice of Filing of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF-748, must be received on or before August 11, 1997.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** The product manager listed in the table below: