
November 1996

SUPERFUND

Status of Selected Federal Natural Resource Damage Settlements





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-274458

November 20, 1996

The Honorable Thomas J. Bliley, Jr.
Chairman, Committee on Commerce
House of Representatives

Dear Mr. Chairman:

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), a party responsible for the release of a hazardous substance is liable for injuries to natural resources resulting from the release. The regulations implementing the act designate certain federal agencies, state governments, and tribal authorities as natural resource trustees and authorize them to make claims against the parties responsible for the injuries. The federal trustees include the Department of the Interior's Fish and Wildlife Service (FWS), the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), and the Department of Agriculture's Forest Service.

In April 1996, we reported on the status of the settlements reached in the five largest federal natural resource damage cases.¹ As a follow-on to that report, you asked us to determine (1) the number and status of the remaining settlements under CERCLA and (2) the uses made of the collected funds.

Results in Brief

As of July 1, 1996, in addition to the settlements for the five largest cases, settlements had been reached at 62 sites, resulting in \$33.8 million in awards to federal trustees.² Of the \$33.8 million awarded, about 80 percent had been collected. Of the collected funds, about 19 percent had been allocated for performing damage assessments, planning, or restoration. One site had been restored, and seven were in various stages of restoration. The trustees' use of the remaining 81 percent of the collected funds was awaiting the completion of restoration plans or other activities, such as cleanups or settlements with other responsible parties at the same site.

¹Superfund: Outlook for and Experience With Natural Resource Damage Settlements (GAO/RCED-96-71, Apr. 16, 1996).

²We reported in April 1996 that the settlements for the five largest natural resource damage cases totaled \$83.8 million.

Background

Under CERCLA, the parties responsible for the release of hazardous substances into the environment are liable for their cleanup. In addition, CERCLA makes these responsible parties liable for the costs of restoring natural resources that have been injured by releases of hazardous substances. The law defined these resources broadly to include land, fish, wildlife, groundwater, and other resources belonging to, managed by, or otherwise controlled by federal or other governmental entities. Only natural resource trustees can file natural resource damage claims under CERCLA against potentially responsible parties.

A natural resource damage claim has three basic components:

- the necessary and reasonable costs of performing the damage assessment;
- the costs of restoring the resource to the condition that would have existed had the release not occurred (restoration costs), taking into consideration the effects over time of natural and human activities unrelated to the release of the contamination; and
- the costs associated with the loss of the resource and/or the benefits or services derived from the resource (e.g., a wetland's provision of habitat for animals and birds or a body of water's provision of opportunities for commercial or recreational fishing) from the date of the injury until the full restoration of the resource and/or the benefits or services.

Number and Status of Settlements

As of July 1, 1996, the federal trustees had reached settlements with potentially responsible parties for injuries to natural resources at 62 sites.³ Of the \$33.8 million awarded to the federal trustees in the settlements, \$27.1 million had been collected for 56 of these sites, leaving an uncollected balance of \$6.7 million. According to agency officials, most of the uncollected balance was either for recently concluded settlements or for settlements being collected under a structured payout schedule. (See app. I for additional details.)

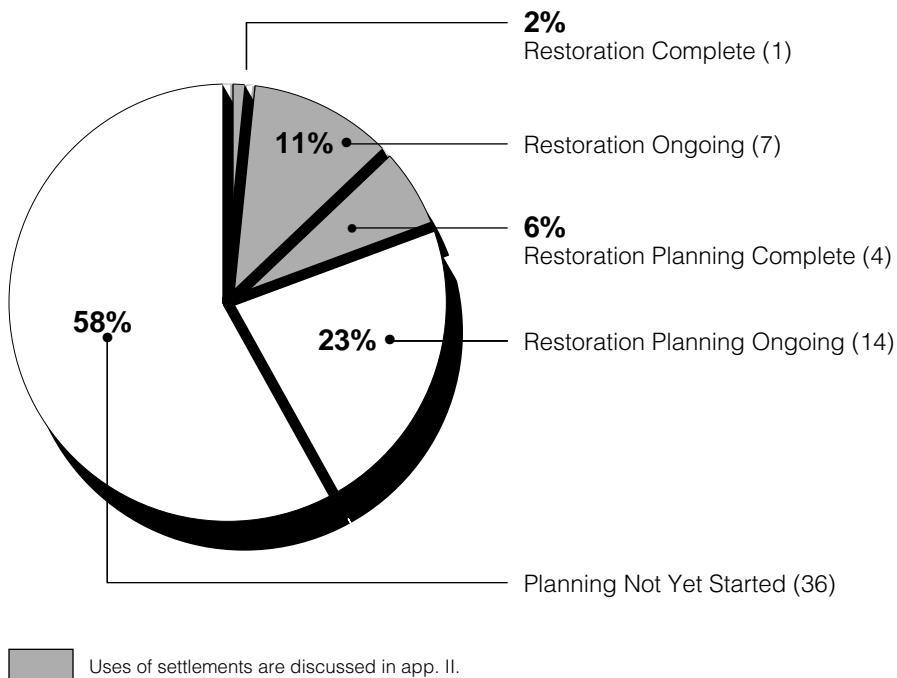
Uses of Collected Funds

Of the \$27.1 million in collected funds, \$5.2 million had been allocated (i.e., spent or made available for expenditure) as of July 1, 1996, to reimburse the trustees for performing past damage assessments, to prepare natural resource restoration plans, or to restore or replace the natural resources that had been injured. Restoration had been completed at one site—French Limited, located in Harris County, Texas. This restoration was accomplished by the responsible parties. Figure 1

³Again, this figure excludes the settlements for the five largest cases.

summarizes the status of restoration at the 62 sites as of July 1, 1996. The remaining \$21.9 million in collected funds had not yet been allocated for any purpose. (See app. II for information on how the agencies plan to use, or are using, the funds collected for the sites whose restoration plans have been completed.)

Figure 1: Status of Restoration at 62 Sites



Note: No damages had been collected for five of the sites where no planning had started as of July 1, 1996.

Source: GAO's presentation of data from FWS and NOAA.

FWS and NOAA officials, at headquarters and in the field, point to several factors that hamper their ability to begin planning and conducting a restoration effort after damages have been collected. These factors include the following:

-
- When a natural resource restoration project is associated with a Superfund site, the restoration usually cannot begin until the Environmental Protection Agency has completed its cleanup of the site.
 - Although one settlement may have been reached at a site, work usually cannot begin if litigation is pending against other potentially responsible parties at the site.
 - The money collected under a bankruptcy proceeding may not be sufficient to undertake a viable restoration effort. Therefore, it may be combined with other moneys to benefit natural resources in the same geographic area.
 - When a settlement includes a negotiated payment schedule, the trustees may have to wait to accumulate enough money to begin a restoration.
 - Agency staff may not be available to perform the necessary work and carry out the restoration.
 - Restoration projects may be complicated by environmental laws, permit requirements, or requirements for public participation.

Agency Comments

We transmitted copies of a draft of this report to the departments of Commerce and of the Interior for review and comment. In general, both agencies agreed with the facts presented in the report. The Department of Commerce noted that the topic is complex and described our analysis as complete and accurate. The Department of the Interior (DOI) described our review as detailed and fair. The agencies' comments appear in appendixes III and IV, respectively.

Both agencies generally elaborated on points already covered in the report. For example, the Department of Commerce said that several factors have hampered the trustees' ability to begin restoration. The Department stated that restoration could be slowed when payments are received over time or when environmental laws or requirements for public participation extend the process. We included these factors in the list of reasons that the agencies gave for slow restoration. The Department also provided technical and editorial comments, which we incorporated into the report as appropriate.

DOI said that in addition to the restoration activities performed through the settlements discussed in our report, restoration has been accomplished through settlements requiring work by responsible parties and through cleanup settlements containing restoration requirements. DOI officials told us they did not have data on the number of settlements requiring work by responsible parties (referred to as "in-kind" settlements) but said such

settlements were not common. Furthermore, DOI officials told us they could not readily provide information on the frequency of the cleanup settlements or the nature of the restoration activities; however, the officials believed that these settlements were more frequent.

For many of the cases we reviewed, DOI officials also indicated why restoration planning had not yet begun. They said, for example, that collections have only recently been made or that payments have been partially received. We agree that many of these reasons could cause delays, and we had already listed them in our report.⁴ However, one factor mentioned by DOI may not be sufficient to account for delays in restoration planning. DOI indicated that when collections in bankruptcy cases fall below the damages that the government has been awarded, restoration planning can be delayed. Although the trustees may need to wait until bankruptcy collections have been completed before starting a restoration, in most of the cases discussed in this report, DOI had received all or most of the moneys expected under the bankruptcy settlement.

Scope and Methodology

From information provided by the Department of Justice, FWS, and NOAA, we compiled a list of CERCLA's natural resource damage settlements that required a cash payment by a responsible party to a federal trustee.⁵ We considered a case settled if, as of July 1, 1996, a consent decree had been entered by a court or an administrative order on consent had been signed by the Environmental Protection Agency. To obtain information on how much money had been collected through June 30, 1996, under these settlements and how these funds were being used, we interviewed officials from FWS and NOAA—the principal federal trustees—in Washington, D.C., and officials from the Department of Agriculture's Forest Service in the field. We also interviewed responsible officials at (1) FWS' regional offices in Albuquerque, New Mexico; Portland, Oregon; Minneapolis and St. Paul, Minnesota; and Hadley, Massachusetts, and (2) NOAA's field office in Portland, Oregon. In addition, we interviewed representatives of the Coalition for Natural Resource Damage Reform—an industry-supported interest group. To see how funds are being spent to restore or replace injured natural resources, we visited the John Day River and Blackbird

⁴DOI also disagreed with the note to fig. 1 of the report, stating that no collections had been made at six, not five, of the sites where planning had not yet started. After we discussed this number with DOI officials, they agreed that five was the correct number.

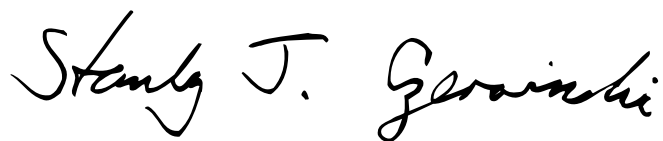
⁵The Department of Justice represents the federal trustees during negotiations of natural resource damage settlements and maintains information on the status of these settlements.

Mine sites—where restoration was ongoing—and French Limited—the only site where restoration is complete.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the appropriate congressional committees, the Secretaries of Commerce and of the Interior, and other interested parties. We will also make copies available to others on request.

We hope this information will assist you as you consider the reauthorization of the Superfund legislation. If you have any further questions, please call me at (202) 512-6520. Major contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink that reads "Stanley J. Czerwinski". The signature is written in a cursive, flowing style.

Stanley J. Czerwinski
Associate Director, Environmental
Protection Issues

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOI	Department of the Interior
EPA	Environmental Protection Agency
FWS	Fish and Wildlife Service
NOAA	National Oceanic and Atmospheric Administration
NPL	National Priorities List
NRD	natural resource damage
PRP	potentially responsible party
VOC	volatile organic chemical

Status of Federal Natural Resource Damage Settlements Under CERCLA at Selected Sites

Site	Damages			Activity	
	Settled	Collected ^a	Allocated ^b	Planning	Restoration
Applied Environmental Services, (Shore Realty) N.Y.	\$124,000	\$124,000	\$0	Complete	No
Army Creek Landfill, Del.	532,000	532,000	0	Complete	No
Arrowhead Refinery, Minn.	153,753	62,753	0	No	No
Asbestos Dump-Dietzman Tract, N.J.	3,500,000	3,397,475	0	No	No
Blackbird Mine, Idaho	4,545,100	4,880,146	3,470,902	Complete	Ongoing
Brown's Battery Breaking, Pa.	24,217	0	0	No	No
Bunker Hill Mining & Metallurgical, Idaho ^c	8,255,000	8,255,000	1,025,700	No	No
C & R Battery Co., Inc., Va.	93,384	93,383	27,000	No	No
Caldwell Trucking, N.J.	40,000	40,000	7,038	No	No
Carver Scrap Salvage Yard, Mo.	5,000	0	0	No	No
Charles-George Reclamation Landfill, Mass.	459,550	465,378	25,800	Ongoing	No
Cherokee County, Kans.	3,540,171	540,171	0	No	No
Cleveland Mill, N.M. ^c	165,000	165,000	0	Ongoing	No
Clinton Street (I. Jones Recycling) Ind.	55,000	31,309	1,722	Ongoing	No
Coakley Landfill, N.H.	225,502	221,547	12,000	Ongoing	No
Cokers Sanitation Service Landfills, Del.	80,000	80,000	3,750	Complete	No
Commercial Oil, Ohio	2,849	2,849	0	No ^d	No
Cortese Landfill, N.Y.	84,850	84,850	0	No	No
Crab Orchard NWR, Ill.	2,500,000	2,500,000	0	Ongoing	No
Douglass Road/Uniroyal, Inc. Landfill, Ind.	163,035	29,738	0	No	No
Energy Cooperative Inc., Ind.	100,000	100,000	100,000	No	No
Envirochem Corp., Ind.	32,500	31,804	31,804	Complete	Ongoing
Fisher-Calo Chemical, Ind.	20,000	20,000	20,000	Complete	Ongoing
Fort Wayne Reduction Dump, Ind.	5,000	0	0	No	No
French Limited, Tex.	29,980	29,980	29,980	Complete	Complete
G&H Landfill, Mich.	217,964	217,964	0	No	No
Great Lakes Asphalt, Ind.	30,730	28,830	28,830	Complete	Ongoing
H.O.D. Landfill, Ill.	15,000	14,561	0	No	No
Hardage/Criner, Okla.	4,567	4,567	0	No	No
Hi View Terrace, N.Y.	25,000	25,000	0	No	No
Hunterstown Road, Pa.	3,000	3,000	0	No	No
Jack's Creek/Sitkin Smelting and Refinery, Pa.	136,465	522	0	No	No
John Day River, Ore.	275,000	100,710	100,710	Complete	Ongoing
Kummer Sanitary Landfill, Minn.	22,000	22,000	22,000	Complete	Ongoing
Linemaster Switch Corp., Conn.	6,000	6,000	2,768	No	No
Midco I & II, Ind.	304,567	55,746	15,000	Ongoing	No

(continued)

Appendix I
Status of Federal Natural Resource Damage
Settlements Under CERCLA at Selected
Sites

Site	Damages			Activity	
	Settled	Collected ^a	Allocated ^b	Planning	Restoration
Missouri Dioxin, Mo.	200,000	200,000	0	No	No
Mobil Mining and Minerals Co., Tex.	76,901	0	0	Complete	No
Nemadji River Spill, Wis. ^c	140,000	140,000	0	Ongoing	No
Ninth Avenue Dump, Ind.	257,916	85,697	0	No	No
Northside Sanitary Landfill, Inc., Ind.	22,500	22,500	22,500	Complete	Ongoing
Oak Grove Sanitary Landfill, Minn.	150,327	149,018	0	No	No
Oronogo-Duenweg Mining Belt, Mo.	424,000	0	0	No	No
PSC Resources, Mass.	153,720	157,040	0	No	No
Peterson/Puritan Inc., R.I.	43,883	43,883	0	No	No
Pine Street Canal, Vt.	150,000	0	0	No	No
Portland Cement, Utah	200,000	196,626	0	No	No
Publicker Industries, Inc., Pa.	547,000	40,000	0	Ongoing	No
Saegertown Industrial Area, Pa.	94,510	94,510	10,102	Ongoing	No
Santa Clara I Cargo Vessel, N.J.	205,000	198,849	6,238	Ongoing	No
Sharon Steel Corp., Utah	2,300,000	2,300,000	120,000	Ongoing	No
Solvents Recovery Service of New England, Conn.	76,935	77,855	865	No	No
Somersworth Sanitary Landfill, N.H.	3,000	3,092	0	No	No
Southern Lakes Trap and Skeet, Wis.	36,190	26,190	26,190	No ^e	No
Southern Ohio Coal, Ohio	1,910,200	760,200	10,200	Ongoing	No
Sullivan's Ledge, Mass.	30,000	30,000	10,000	No	No
Syncon Resins, N.J.	25,000	25,000	0	No	No
Tar Creek, Okla.	716,150	142,150	0	Ongoing	No
Vertac Inc., Ark.	126,000	126,000	84,000	No	No
Wayne Reclamation & Recycling, Ind.	73,474	73,474	0	Ongoing	No
Wide Beach Development, N.Y.	57,974	40,000	0	No	No
Yeoman Creek, Ill.	5,000	4,854	0	No	No
Total	\$33,801,865	\$27,103,219	\$5,215,099		

Note: This table lists the sites at which (1) settlements for natural resource damages were reached as of July 1, 1996, (2) CERCLA authority was used, and (3) a federal trustee was a party. It excludes the five sites with the largest settlements—Elliot Bay, Wash.; Montrose, Cal.; New Bedford Harbor, Mass.; Commencement Bay, Wash.; and Cantara Loop, Cal. We reported in April 1996 that settlements for these five sites totaled \$83.8 million. The table also excludes a \$15.1 million dollar bankruptcy settlement with the Summitville Consolidated Mining Company, Colo., for which no money will be recovered.

^aThe amounts collected may exceed the amounts agreed upon in the settlements because of late payments. In addition, payments are not yet due for several recent settlements. Also, at the Southern Ohio Coal site, the payments are being made under a structured payout schedule.

Appendix I
Status of Federal Natural Resource Damage
Settlements Under CERCLA at Selected
Sites

^bAs used in this table, allocated funds are those moneys that have been used to pay for past costs or have been made available for future costs. Costs may be incurred to assess the damage, plan the restoration, or restore the injured natural resource.

^cThe amounts shown for these sites include the funds awarded to the states and tribes as natural resource trustees because the settlement agreements did not specify the monetary damages awarded to each trustee.

^dAccording to a Fish and Wildlife Service official, this settlement is too small to warrant a restoration plan.

^eAccording to agency officials, no restoration plan is required for this site, since the PRP agreed to restore the injured natural resource as part of the site's cleanup.

Source: The information in this table comes from interviews and documents obtained from the Department of the Interior's Fish and Wildlife Service, the Department of Justice, and the Department of Commerce's National Oceanic and Atmospheric Administration.

Uses of Collected Funds

As of July 1, 1996, restoration⁶ had been completed at one site (French Limited) and was ongoing at seven sites. Restoration plans were complete for four other sites. This appendix provides background information on each of these sites, as well as a brief description of the natural resources that were injured, the settlement that was reached with the responsible parties, and the actual or planned uses of the collected funds.

French Limited

Restoration is complete at the French Limited site. Located approximately 20 miles northeast of Houston, within Harris County, Texas, this site was a sand pit used to dispose of hazardous liquid chemicals between 1966 and 1971. The infiltration of liquid chemicals into the soil and the leaching of chemical residues at the bottom of the pit (referred to as a lagoon) contaminated groundwater and subsoils in the vicinity of the site. Among the contaminants identified in groundwater were polychlorinated biphenyls (PCB) and heavy metals. In 1982, the Environmental Protection Agency (EPA) placed the site on the National Priorities List (NPL), its list of sites eligible for cleanup under the Superfund program. The potentially responsible parties (PRP) at the site formed the French Limited Task Group in 1983 to manage the cleanup and later assumed responsibility for a marsh restoration project.

Injuries to Trust Resources

The migration of contaminated groundwater and subsoils to a nearby waterway injured trust resources, such as migratory birds, and damaged crab fisheries. A total of 21 acres of habitat that support trust resources was estimated to be injured. About 7 acres were lost when a cap was placed on the site to minimize the infiltration of water, and 14 acres were lost downstream through contamination from the site.⁷ The Department of the Interior (DOI) and the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) suggested that 21 to 25 acres of land, suitable for marsh restoration, should be acquired to replace the lost habitat.

Settlement With Potentially Responsible Parties

The federal trustees and the PRPs entered into a consent decree on March 16, 1993. Under this consent decree, the PRPs agreed to restore a

⁶The term "restoration" includes activities to restore, replace, or acquire the equivalent of the injured natural resource.

⁷A cap is an impermeable membrane or soil cover intended to prevent the movement of water through the contaminated area and into the groundwater.

marsh to provide for the replacement of natural resources that had been injured, destroyed, or lost. Specifically, they agreed to

- acquire a 21- to 25-acre site, suitable for restoration as a marsh, that could be connected to the tidal movement of the San Jacinto River and would, if possible, be located in the general vicinity of the French Limited site;
- draft a marsh restoration plan that would include the anticipated date for completing the project and identify a public entity that would accept title to the marshland;
- establish and maintain a \$30,000 marshland restoration fund to repair any damages to the site caused by hurricanes or floods; and
- establish a \$30,000 fund for the future maintenance of the project.

The consent decree also required the PRPS to reimburse the federal trustees and the state of Texas for the costs they incurred in assessing the injuries to natural resources and for any future costs they might incur in implementing and monitoring the restoration plan. At the federal level, DOI was to receive \$16,800 and NOAA was to receive \$13,180. Reimbursements at the state level provided \$2,520 to the Texas Attorney General's office, \$1,745 to the Texas Parks and Wildlife Department, \$1,077 to the Texas Water Commission, and \$460 to the Texas General Land Office. The PRPS agreed to reimburse the trustees for any future costs that exceeded these amounts and were incurred within 5 years of the project's completion.

Uses of Collected Funds

The federal natural resource damage collections were used to reimburse the trustees for the costs of performing damage assessments. The cost of the restoration was incurred by the French Limited Task Group.

On August 4, 1994, the French Limited Task Group signed an agreement with the city of Baytown, Texas, for the creation of a 60-acre wetland system in an area formerly occupied by the condemned Brownwood subdivision, a residential area that had been destroyed by a hurricane. The task group purchased part of the 60 acres, and the balance was provided by the city of Baytown, which owned a large portion of the condemned property. The task group considered the 60-acre site the most viable for providing the high-quality wetlands required by the consent decree.

On March 22, 1996, the task group issued a report on the completed restoration project—French Limited Wetlands Mitigation - Brownwood Marsh Restoration Project. This project was developed in response to the 1993 consent decree and the subsequent restoration plan, which provided

for establishing 40 acres of saline to brackish marsh, 10 acres of forested land containing freshwater pools, and 10 acres of stream channels allowing the tidal influence into the system from the surrounding bays, as well as creating suitable habitat for migratory birds and other trust resources. The task force has completed these enhancements to the property, having planted certain types of vegetation and removed the foundations, sewers, and power lines in the former subdivision. Nature is taking over, and the trust resources are returning to the restored marshland. The property will be maintained by the city of Baytown as a natural resource reserve that will be available for such uses as nature walks and fishing.

Blackbird Mine

Restoration at Blackbird Mine is ongoing. This site is located in the Salmon National Forest, approximately 20 miles west of Salmon, Idaho. Mineral deposits were discovered in 1893, and the production of gold, copper, and cobalt began in 1917. The most extensive period of production was from 1949 to 1967 and included both the underground and open-pit mining of cobalt. Cobalt is used to strengthen metals used in the production of military equipment and ammunition. As the largest cobalt deposit in the Western Hemisphere, this mine is considered strategic for U.S. defense purposes. Mining activity peaked in the late 1950s, and Blackbird Mine is currently inactive. Currently, most of the world's cobalt comes from Nigeria. According to a NOAA official, EPA is overseeing the cleanup.

Injuries to Trust Resources

According to documents from NOAA and the Forest Service, ore was removed from subterranean, surface, and open-pit workings at Blackbird Mine and was then processed to recover copper, cobalt, and other valuable minerals. Toxic metals, which leached from the exposed rock and tailings piles, migrated to the Blackbird and Big Deer Creek drainages. In addition, groundwater and surface water flowing through the underground tunnels at the mine constantly discharged contaminated water into these drainages.

The injuries found at Blackbird Mine include the following:

- All surface water resources in the Panther Creek watershed⁸ downstream from Blackbird Mine were found to be contaminated throughout both the

⁸The Panther Creek watershed represents about 37 miles of stream in Blackbird, Bucktail, Big Deer, and Panther creeks.

high flows of the spring snow melt and the low flows of the late summer and early fall.

- The population levels in the Panther Creek watershed for all species of salmonids were severely reduced downstream from the mine.

Settlement With Potentially Responsible Parties

In an April 1995 consent decree, one PRP agreed to a \$250,000 settlement with the federal and state trustees for natural resource damages associated with the Haynes Stellite Adit. (An adit is an opening to an underground tunnel.) In addition, in a September 1995 consent decree, other PRPs agreed to clean up the Blackbird site and to reimburse the federal and state trustees for the damage assessment costs (\$4.7 million) and oversight costs (\$1 million) associated with implementing the biological restoration and compensation plan included in the consent decree. The PRPs also agreed to place \$2.5 million in a federally insured bank to pay for the modification and operation of a hatchery facility; the design, construction, and operation of an adult fish trap; and the construction of two acclimation ponds for juvenile salmon.

Uses of Collected Funds

As stated above, most of the natural resource damage collections are to be used to reimburse the trustees for the costs of performing past damage assessments. The remaining money will be used by the trustees to (1) oversee the work being performed by the PRPs to restore the water quality to support all life stages of the salmon by the year 2002 and (2) restore salmon to the Panther Creek watershed to supplement the PRPs' cleanup activity. The PRPs will be responsible for constructing the facilities called for under the biological restoration plan, and the state of Idaho will reintroduce salmon, in consultation with the other trustees, by establishing a fish hatchery, adult fish trap, and juvenile acclimation ponds. To improve the survival of juvenile salmon, this restoration activity involves measures such as fencing degraded stream channels to exclude livestock and restore habitat, realigning a portion of the Panther Creek channel to restore a natural zig-zag pattern, and developing off-channel rearing habitat along Panther Creek.

Envirochem, Northside Sanitary Landfill, and Great Lakes Asphalt Sites

Restoration at the Envirochem facility, Northside Sanitary Landfill, and Great Lakes Asphalt facility is ongoing. Because all three sites, located in Boone County, Indiana, are within the Finley Creek watershed—which is, in turn, part of the Eagle Creek Reservoir watershed—the injuries to natural resources at all three sites are being addressed under a single

restoration plan. Envirochem was placed on the NPL in 1983. The Northside Sanitary Landfill was placed on the NPL in 1984. The PRPs at the Great Lakes Asphalt site entered into an administrative order on consent with EPA in 1992. The following discussion summarizes the activities at these sites.

Envirochem

This 6.5-acre facility was used as a solvent-processing and reclamation facility from 1977 to 1982. Wastes such as resins, paint sludges, waste oils, and flammable solvents were received and stored in drums and bulk tanks. Through the unauthorized discharge of contaminated stormwater, unapproved burning of chlorinated hydrocarbons and other solvents, and spills, both the groundwater and the soil at Eagle Creek Reservoir and Finley Creek were contaminated.

Northside Sanitary Landfill

The Northside Sanitary Landfill operated as an open dump during the 1950s and 1960s. In 1971, Indiana permitted this 70-acre site to accept hazardous wastes. However, the Indiana State Board of Health ordered the site to cease operations when problems associated with uncovered waste, surface and underground burning, and leachate occurred during 1972 and 1973. Sampling, both on and off the site, revealed that groundwater, soils, surface water (Finley Creek and Eagle Creek), and sediments were contaminated with pesticides, acids, oils, and volatile organic chemicals (VOC) from the site.

In 1979, this asphalt production facility began leasing several tanks located on its property to the operators of the Envirochem site for the storage of synthetic fuels. In 1989, approximately 80,000 gallons of hazardous liquid, containing VOCs and metals, was accidentally released from the leased tanks, contaminating soils, a drainage system, and a waterway. The released substances eventually entered Eagle Creek.

Injuries to Trust Resources

DOI performed a preliminary survey of the natural resources at the Northside Sanitary Landfill in 1988, simultaneously updating its findings for the Envirochem site. The study found that migratory birds using the wetland and river habitats near and downstream from the sites would be exposed to elevated levels of contaminants through the food chain. These species include mallards, spotted sandpipers, American coots, green-backed herons, northern orioles, and tree swallows. Moreover, the Eagle Creek reservoir was known to have nesting Canada geese and was used by migratory waterfowl and osprey. The preliminary survey also concluded that, in DOI's opinion, the off-site movement of contaminants

could affect habitat in the range of the endangered Indiana bat and bald eagle.

With respect to the Great Lakes Asphalt facility, DOI determined that trust resources, including migratory birds and endangered species and their habitat, had been significantly affected by contamination at the site.

Settlement With Potentially Responsible Parties

In three 1990 and 1991 consent decrees, the PRPs agreed to pay DOI's Fish and Wildlife Service (FWS) \$55,000 to settle natural resource damage claims at the Envirochem facility and the Northside Sanitary Landfill. In 1992 and 1994, EPA issued administrative orders on consent to settle the federal government's claim for natural resource damages at the Great Lakes Asphalt facility. Under the administrative orders, the PRPs agreed to pay FWS a total of \$29,800. FWS also received \$930 for a bankruptcy claim against a PRP at the Great Lakes Asphalt facility.

Uses of Collected Funds

Because contamination from the Envirochem, Northside Sanitary Landfill, and Great Lakes Asphalt sites injured the same resources and the three sites are located close to each other, FWS developed a single restoration plan for the three, which it issued in February 1996. This plan provides for restoring and enhancing wetlands near the contaminated sites—which provide habitat similar to that lost through residual contamination at the three sites—by purchasing easements from landowners or acquiring land. Because several landowners have expressed interest in selling easements or land, the trustees hope to have specific properties identified by the end of 1996. Of the \$85,730 available to FWS, about \$80,730 will be used to purchase land or easements and/or restore wetlands, and the remaining \$5,000 will be used to cover administrative costs.

John Day River

Restoration at this site is ongoing. On February 8, 1990, a tanker truck skidded off Highway 395 down an embankment into the North Fork of the John Day River in north central Oregon. An estimated 3,500 gallons of hydrochloric acid was discharged into the river and flowed downstream at an approximate rate of 1 mile per hour.

Injuries to Trust Resources

According to the Final Joint Environmental Assessment and Restoration Plan for the John Day River Acid Spill prepared by FWS, the state of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation,

the spill drastically changed the river's acidity, injuring fish habitat and killing an estimated 98,000 to 145,000 fish, including 4,000 anadromous fish, 300 bull trout, and 9,500 Pacific lamprey. Additionally, the spill killed an estimated 50 percent of the young chinook salmon in the river at that time. Aquatic mammals, waterfowl, and endangered species that use the John Day River basin may also have been directly or indirectly damaged by the spill. According to an FWS official, the river's acidity returned to normal approximately 2 weeks after the spill.

Settlement With Potentially
Responsible Parties

In 1992, FWS, the state of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation settled claims against the Thatcher Trucking Company for \$275,000. The consent decree established a trust fund to be used only for the restoration, replacement, or acquisition of resources equal to those injured by the spill. Restoration activities are currently ongoing.

Uses of Collected Funds

A restoration committee, whose members represent each of the three natural resource trustees, was established to solicit proposals for natural resource restoration projects and to select from those proposals restoration activities to be funded with moneys available in the trust fund. The trustees developed a list of potential projects to be implemented on the North Fork, Middle Fork, and other tributaries of the John Day River. Projects were selected on the basis of their potential to restore resources injured during the spill, their applicability to the affected watershed, and their potential for attracting matching funds.

The final restoration plan identifies 12 potential restoration projects. The selected projects will improve spawning and rearing habitat for both resident and anadromous fish. The trustees sought matching funds to help finance the projects. According to one FWS official, the restoration dollars collected from the settlement with the trucking company will be increased fourfold with matching funds from entities such as the Bonneville Power Administration, the Forest Service, and the Nature Conservancy. Two of the projects currently under way include redistributing dredge tailings in the North Fork of the John Day River and fencing 3 miles of Camas Creek. Both of these projects will improve spawning and rearing habitat for salmonids by (1) reducing erosion and the buildup of sediment in the river; (2) increasing streamside vegetation, thereby reducing water temperatures and providing additional shelter; and (3) restoring the natural pond and riffle characteristics of the streams.

Kummer Sanitary Landfill

Restoration at the Kummer Sanitary Landfill is ongoing. This 35-acre site, located north of Bemidji, in north central Minnesota, accepted municipal waste from 1971 to 1984. EPA placed the site on the NPL in 1984 after hazardous substances (chlorinated organic compounds) were identified in groundwater under the property and in nearby residential wells.

Injuries to Trust Resources

The injuries to natural resources at the site resulted primarily from cleaning up the site. The selected remedy required, among other things, placing a low-permeability cap over the site. To transport the capping material to the landfill, a road was constructed through a wetland to connect the landfill to the source of the capping material. FWS determined that a total of 6.7 acres of forested wetland was lost as a result of constructing the road. The affected trust resources included the threatened bald eagle and gray wolf and breeding habitat for the American woodcock, sharp-shinned hawk, and numerous songbirds.

According to FWS' restoration plan, dated February 23, 1995,

"The injured (lost) habitat could not be restored, and because direct 'in-kind' replacement of this wetland was not possible, a multiplier of two was used to calculate the acreage necessary to replace the lost ecological functions. The multiplier was determined to be appropriate and necessary because many years would elapse before the replacement habitat would match the functions of the lost habitat. Thus, the final claim was based on the cost to replace 13.4 acres of wetland . . . plus administrative expenses."

Settlement With Potentially Responsible Parties

A consent decree was entered into on March 1, 1994, under which the PRPs agreed to reimburse the federal government \$5,112,000 for the direct and indirect costs it incurred or will incur in implementing and overseeing remedial actions at the site. In addition, the PRPs agreed to pay FWS \$22,000 for injuries to natural resources.

Uses of Collected Funds

FWS is currently searching for wetland similar to the wetland lost at the Kummer Sanitary Landfill to benefit wildlife similar to that formerly found at the site. FWS plans to acquire easements on this proposed property to ensure that it is permanently reserved as a wildlife habitat. In addition, existing easements over suitable areas may be expanded.

Fisher-Calo Chemical Superfund Site

Restoration at this 250-acre site in LaPorte County, Indiana, is ongoing. The Fisher-Calo Chemical Company, along with the Solvents Corporation, operated a solvents reclamation and waste storage facility at the site from late 1972 through mid-1978. The chemicals produced, packaged, and disposed of on the property were sodium hypochlorite, sulfur dioxide, chloride, ammonia, and various solvents. Cyanide, acids, and metal-plating wastes were also accepted from other industries, stored in metal drums, and stockpiled on the site or dumped on the ground. In 1974 and again in 1978, fires on the property destroyed drums containing chemical waste and bulk storage tanks. Because groundwater and soils were contaminated at the site, EPA in 1983 placed the Fisher-Calo Chemical site on the NPL.

Injuries to Trust Resources

This site is a grass and prairie ecosystem with associated wetlands. The discharge of contaminated groundwater from the site has injured 8 acres of wetlands in the southwest portion of the site. These wetlands provide feeding, nesting, and resting areas for migratory birds and federally designated endangered species. In addition, the trustees estimated that at least 150 acres of grassland and old-field habitats were adversely affected by the contamination. This acreage provides the same kinds of benefits as the wetlands to migratory birds (under both federal and state trusteeship) and to mammals, amphibians, reptiles, and state-designated endangered species.

Settlement With Potentially Responsible Parties

Under the February 27, 1992, consent decree, the PRPS agreed to pay \$200,000 to the state of Indiana for injuries to state and joint federal/state natural resources at the site and \$20,000 to DOI for injuries to federal natural resources. The state's claim was based on injuries to the 150 acres of grasslands and old-field habitats. The federal claim included an estimated \$16,000 for acquiring and/or restoring 8 acres of wetlands (to replace the number of acres injured), \$2,500 for indirect costs, and \$1,500 for past assessment costs.

Uses of Collected Funds

According to FWS' restoration plan, dated February 1996, the wetlands and grasslands at the site could not be restored because of the land's significant alteration and the presence of residual contamination. Therefore, the plan calls for FWS and the state to acquire—through easement or direct purchase—restorable habitat similar to that lost at the site. The restoration will be implemented cooperatively by FWS and the

Indiana Department of Natural Resources. Indiana has begun to acquire agricultural lands for the use of wildlife and restorable wetlands. FWS will use its funds to enhance wetlands in the area. The project is expected to be completed by the end of 1996.

Applied Environmental Services Site (Shore Realty)

The restoration plan for the Applied Environmental Services site is complete. This site, approximately 3.2 acres in size, is located in Nassau County, New York, on part of a peninsula that is surrounded by the waters of Motts Cove and Hempstead Harbor off Long Island Sound. At one time, the site was used primarily for storing petroleum products. During the 1970s and into the early 1980s, the site was also used by various owners and operators to store and distribute chemical solvents and to store hazardous waste. Spills of organic chemicals are reported to have occurred while the site was used to store and distribute chemical solvents. The site is included on the NPL.

Injuries to Trust Resources

The federal trustees—DOI and NOAA—determined that the release of hazardous substances injured trust resources at and around the site. Contaminants from the site were detected in sediments sampled from Hempstead Harbor and nearby Motts Cove. The contamination harmed marine life and wetlands and mudflats at the site. These habitats would normally support a variety of indigenous plants and be used for spawning, feeding, and foraging by aquatic life and waterfowl. The trustees determined that the major problem was the continual leaching of hazardous substances from the site onto the adjacent mudflats, eliminating or significantly diminishing the natural functions and the aesthetic and recreational uses of the area. In addition, the federal trustees believe that a wooden bulkhead at the site may be contaminated with chemicals and that these chemicals may be released to the adjacent mudflats. They recommended that the bulkhead be monitored to determine whether it poses a problem.

Settlement With Potentially Responsible Parties

In 1984, the state of New York initiated a lawsuit against the owner of the property at that time. This action was later expanded to include other entities, such as the site's previous owners and customers who sent hazardous substances to the site for storage. While not initially a party to these actions, the federal natural resource trustees, in response to requests from the PRPs for covenants not to sue for natural resource damages, negotiated a settlement for natural resource damages. This settlement was

included in the consent decree, entered into on June 18, 1992, under which the PRPS agreed to restore wetlands along the site's western and southern shores. The restoration will include preparing specified locations for planting certain species of vegetation to ensure that the planted areas will support marine life indigenous to Hempstead Harbor and Motts Cove. The PRPS had to provide a \$25,000 contingency fund to cover the costs of replacing the plantings if they fail within 5 years of the initial restoration. In addition, the PRPS agreed to place \$50,000 in escrow for the federal trustees to replant 2 acres of mudflats adjacent to the site if it is determined that the appropriate time for replanting is after the expiration of the PRPS' obligations.

The PRPS were required to pay a total of \$124,000 to the federal trustees—\$60,000 to NOAA for designing and implementing a postplanting monitoring program to determine the functional success of the wetlands restoration; \$50,000 to DOI for past injuries to wetlands adjacent to the site and for restoring, replacing, or acquiring the equivalent of the affected natural resources; and \$14,000, to be split evenly between NOAA and DOI, for past costs incurred in assessing the natural resource damages. Finally, the PRPS agreed to renovate, replace, or remove the bulkhead at the site, as necessary, if it is determined during the life of the consent decree that the bulkhead is a source for the release of hazardous substances.

Planned Uses of Collected Funds

The consent decree includes a restoration plan that describes the requirements governing the PRPS' performance of the restoration work. According to an attorney in the office of DOI's Solicitor, an attachment to the consent decree maps out specific locations for planting certain species of vegetation and the PRPS are expected to start the planting in mid-1997. FWS plans to use its \$50,000 payment to create and enhance wetlands in the Oyster Bay National Wildlife Refuge or other appropriate wetlands in the region. According to the lead attorney representing the federal trustees, NOAA is still formulating its plan for using the \$60,000 designated for designing and implementing a monitoring program.

Army Creek Landfill

The restoration plan for the Army Creek Landfill, located in New Castle County, Delaware, is complete. During the 1960s, New Castle County operated this sand and gravel pit as a landfill for municipal and industrial wastes. In 1971, contaminants from the landfill were discovered in nearby private drinking water wells. To prevent further migration of the contaminants to public drinking water wells, the county began to pump

out the contaminated groundwater. The contaminated groundwater was, however, discharged without treatment directly into Army Creek—a 3.9-mile-long tributary of the Delaware River. EPA placed the Army Creek Landfill on the NPL in 1983.

Injuries to Trust Resources

According to the restoration plan for the Army Creek Landfill, the natural resources of concern “include migratory and other bird species; anadromous and other fish species; the upland, aquatic and wetland habitats utilized by those species . . . and groundwater.” The discharge of untreated groundwater into Army Creek resulted in high concentrations of metals in the surface water and sediments of the creek, which injured the habitat of fish and birds and restricted the access of fish to valuable nursery habitat. In addition, approximately 60 acres of upland habitat was destroyed when a cap was placed on the landfill as part of the site’s cleanup.

Settlement With Potentially Responsible Parties

On September 12, 1991, the natural resource trustees—NOAA, FWS, and the Delaware Department of Natural Resources and Environmental Control—reached an \$800,000 settlement with certain PRPs for injuries caused to natural resources. Of the \$800,000, \$266,000 went to FWS, \$266,000 went to NOAA, and \$268,000 went to the state of Delaware.

Planned Uses of Collected Funds

The natural resource trustees completed a restoration plan for the Army Creek Landfill in February 1996. Of the \$800,000, \$200,000 is to be used solely by the state of Delaware to protect and restore the groundwater. Because the cap placed on the site prevents the restoration of the injured wetlands, the plan outlines two projects for enhancing off-site habitats.

Wetlands Restoration Project

This two-part project will improve the wetland habitats of Lower Army Creek. The water management part of the project will modify an existing water control structure (at the confluence of Army Creek and the Delaware River), adding automated tidegates to respond to various water level cues from both Lower Army Creek and the Delaware River. This control structure will manage the flow between these bodies of water to allow the movement of fish to the marsh for spawning and feeding and to enhance the quality of the habitat. The vegetation management part of this plan will suppress unwanted vegetation and increase the diversity of the marsh plants, thereby improving the habitats of waterfowl, wading birds, shore birds, and aquatic mammals.

Upland Restoration Project	This project is designed to enhance ecological values, encourage use by wildlife, and provide a buffer between developed upland areas and Army Creek. The trustees intend to acquire and rehabilitate approximately 60 acres of upland habitat to compensate for the loss of similar upland acreage caused by constructing an impermeable cap on the Army Creek Landfill.
Cokers Sanitation Service Landfills	The restoration plan for the Cokers Sanitation Service Landfills is complete. This site, which consists of two former landfills, is located 1.3 miles northwest of Cheswold, Delaware. The 10-acre Cokers Landfill Number 1 was used as a disposal site for latex rubber production wastes from 1962 to 1976, and the 15-acre Cokers Landfill Number 2 was used as a disposal site for dewatered latex sludge from 1977 to 1980. The contaminants found in leachates from the site included acrolein, ethylbenzene, and zinc. EPA and the natural resource trustees found that contaminants could migrate off-site to the Willis Branch, a tributary to the Leipsic River, which discharges into the Delaware Bay at the Bombay Hook National Wildlife Refuge, potentially injuring the natural resources using the wetland habitats. EPA placed the Cokers Landfills site on the NPL in 1987.
Injuries to Trust Resources	A cap placed on the site during its cleanup (remediation) resulted in the loss of 3 acres of wetland. The cap, which was constructed to encapsulate the waste, prevented the restoration of the wetlands at the site. These wetlands provided valuable habitat for waterfowl and other wildlife and created an important buffer for the Leipsic River watershed.
Settlement With Potentially Responsible Parties	In April 1992, certain PRPs agreed to pay the federal trustees—DOI and NOAA—\$80,000 as full reimbursement for injuries to natural resources at the site caused by past disposal or by any work performed under the consent decree. The trustees entered into a memorandum of agreement that allocated the settlement as follows: (1) \$71,350 to DOI for use on nearby FWS lands, (2) \$7,500 to NOAA for past costs and anticipated expenses at the site, and (3) \$1,150 to the FWS' Annapolis field office for past assessment costs.
Planned Uses of Collected Funds	FWS finished preparing the restoration plan on May 8, 1996. The plan's stated goal is to enhance and provide for biodiversity in the wetland

habitats within the Leipsic River watershed. These habitats are similar to those destroyed at the Cokers site. To accomplish this goal, FWS intends to combine funds received under the Cokers settlement with funds yet to be provided by Ducks Unlimited, a nongovernmental conservation organization, to enhance the value of the wetland habitat in Shearness Pool (a freshwater pond located within the Bombay Hook National Wildlife Refuge). According to the restoration plan, this project will provide more than enough benefits to replace the natural resources injured at the Cokers site.

Under the first phase of the restoration project, FWS will repair an existing water control structure so that the water level in the pool can be adjusted and managed to promote the growth of the vegetation that serves as food for waterfowl. After completing this improvement, FWS can begin to implement the second phase, which will divide Shearness Pool into two separately controlled impoundments. This division will allow the manipulation of water levels to enhance the habitats of waterfowl, wading birds, and fish. The total cost of the project is estimated to be \$594,000.

Mobil Mining and Minerals

The restoration plan for this site is complete. Mobil Mining and Minerals Company, an operating division of Mobil Oil Corporation, is located in Pasadena, Texas. On April 6, 1992, a retaining wall failed, releasing 45 million gallons of gypsum and acidic processing water, considered hazardous because of its corrosivity. The released material flowed into flood control ditches, an open field, the Cotton Patch Bayou, and eventually the Houston Ship Channel, covering large areas of terrestrial and aquatic habitat.

Injuries to Trust Resources

The release affected numerous natural resources. Injuries occurred to wildlife, fish, invertebrates, plants, and sediments, as well as the food, shelter, and nursery values of the affected habitats in the Houston Ship Channel. The Cotton Patch Bayou—a habitat for birds, terrestrial reptiles, amphibians, mammals, and invertebrates such as crayfish—was severely degraded. Important aquatic resources affected by the release, especially in the Houston Ship Channel, included commercially and recreationally important finfish and shellfish, mollusks, invertebrates, and plankton.

Settlement With Potentially Responsible Parties

Under a consent decree entered into on June 13, 1996, Mobil Mining agreed to undertake a wetlands restoration project. This project is

designed to replace the natural resources injured by the release by providing for the creation of approximately 17 acres of intertidal estuarine marsh and approximately 15 additional acres of freshwater wetlands and enhanced upland habitat at Mobil Mining's Pasadena facility. Mobil Mining also agreed to (1) meet specific performance standards and (2) provide a maximum of \$100,000 in additional funds to the state and federal trustees for rehabilitating the restoration site if it is damaged by hurricanes, high water flows, or floods and for maintaining the project for 3 years after its completion.

In addition, the consent decree required that the state and federal trustees be reimbursed for the costs of investigating the release and the resulting injuries to natural resources. The federal trustees—NOAA and DOI—were to receive \$73,140 and \$3,761, respectively. Acting as the state trustees, the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission, and the Texas General Land Office were to be reimbursed in the amounts of \$15,892, \$31,384, and \$5,925, respectively. Finally, Mobil Mining agreed to reimburse the state of Texas and the federal trustees for their future administrative costs and expenses incurred to oversee the project's development, implementation, and monitoring.

Planned Uses of Collected Funds

According to the Mobil Mining and Minerals Company's Wetland Restoration Plan, dated September 10, 1995, the company will upgrade a 33-acre tract of currently degraded land located south of the Houston Ship Channel at Mobil Mining's plant site. Specifically, the company will construct approximately 17 acres of good quality, tidally influenced wetlands that will provide brackish water to serve as nursery habitat for finfish. In addition, the plan calls for the company to create another 16 acres of freshwater wetlands. This combined brackish/freshwater wetland project will include grading the land and planting desirable, site-adapted vegetation, including trees, scrub, and wetland plants. According to an FWS official, Mobil Mining has applied for permits, and the restoration was expected to begin by October 1996.

Comments From the Department of Commerce



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

001 17 1996

Mr. Peter F. Guerrero
Director, Environmental Protection Issues
Resources, Community, and Economic
Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Guerrero:

Enclosed is a copy of the Department of Commerce's reply to the General Accounting Office draft report entitled "SUPERFUND: Status of Selected Federal Natural Resource Damage Settlements."

These comments are prepared in accordance with the Office of Management and Budget Circular A-50.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Kantor", is written over the typed name.

Michael Kantor

Enclosure

COMMENTS:

The General Accounting Office draft report entitled "Superfund: Status of Selected Federal Natural Resource Damage Settlements" describes the status of natural resource damage cases settled under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA) has been a party to some of these cases.¹ This topic is complex and the GAO analysis is complete and accurate. We appreciate this opportunity to clarify and emphasize some of the important information generated by the GAO study in several areas, while reiterating some points made in earlier responses to the previous report, GAO/RCED-96-71. Our general comments deal with three areas: the use of recovered damages; the time required for restoration; and the timing of restoration planning. We are also providing specific comments and clarifications.

General Comments:

Trustees are using funds for restoration. The purpose of assessing injuries and recovering damages is to restore public resources that are harmed by releases of hazardous materials. In CERCLA, Congress placed this responsibility on the Federal, state and tribal natural resource trustees that act on behalf of the public. The GAO report clearly shows that, while restoration progress has been measured, the trustees are diligently pursuing meaningful restoration with funds recovered from those who injured the resources. Recovered moneys have not been used for any purposes other than those allowed under CERCLA. Trustees are carefully managing the use of recovered funds to ensure that monies are applied in a way that is consistent with the legislative intent to protect and restore natural resources for future generations of Americans.

Restoration Takes Time. As GAO described on page 4 and 5, several factors have hampered the trustees' ability to either begin restoration planning or restoration project implementation. It is important to highlight and further explain the following impeding factors:

Where a natural resource restoration project is associated with a Superfund site cleanup, specific restoration planning is often delayed until a decision about the level of cleanup or remediation is made. In some cases, restoration implementation cannot begin until remediation is completed.

GAO limited the study to CERCLA natural resource damage assessment (NRDA) cases and did not look at all NRDA activities including efforts under the Oil Pollution Act and the National Marine Sanctuaries Act.

In situations where a settlement has been reached with one responsible party and there are other parties that are liable for damages, it may not be possible to implement restoration until settlements with remaining responsible parties are reached.

In cases where there is a negotiated payment schedule, trustees may not have received all of the restoration funds. Therefore, even if the planning was done as part of the assessment, restoration cannot begin until adequate funding is available.

Restoration projects must comply with the National Environmental Policy Act and all relevant and appropriate permit requirements. Also, trustees encourage public participation in the restoration planning process. These activities require time.

Timing of restoration planning. In the past, restoration planning was generally undertaken after a settlement was completed. New regulations under NOAA's Oil Pollution Act for assessing natural resource damages prescribe restoration planning as part of the damage assessment process. As a result, restoration implementation can begin as soon as settlements are reached and funding is available (i.e., Blackbird Mine).

Comments From the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

OCT 1 1995

Mr. Stanley J. Czerwinski
Associate Director
Environmental Protection Issues
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Czerwinski:

The Department of the Interior reviewed GAO's Draft Report on the Status of Selected Federal Natural Resource Damage Settlements. We provide the following comments for inclusion in the final document.

Agency Comments

In general, we thank you for the detailed and fair review you have made of the issue. As a result of discussions we have had with you in the course of this review, we have already made several improvements to our tracking process for settlement funds, and are in the process of improving several other areas. We would like to emphasize that the focus of this Report was solely on restoration activities conducted principally by the Fish and Wildlife Service pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, for which damages have been received into the Natural Resource Damage Assessment and Restoration Fund. Recognizing that, we would like to mention that not only the Service but also other departmental bureaus have been actively involved in restoration activities under CERCLA and other authorities, such as the Oil Pollution Act. In addition, there is a separate category of site restoration efforts that did not fall within the scope of your inquiry because restoration efforts were either accommodated during site remediation actions based on recommendations from the natural resource trustees, or the potentially responsible parties themselves conducted restoration actions in accordance with consent decrees or administrative orders. In such instances, no damages were requested or received by the natural resource trustees for the completion of the work.

There are three specific areas where we feel some additional clarification would be helpful to those receiving your Report: bankruptcy procedures; in-kind settlements; and, the graph of "restoration status" (figure 1). Our comments are provided below.

Partial Settlements and Bankruptcies

Many of the sites presented in the table are the result of partial settlements of natural resource damages. In these partial settlements, there are additional non-settling PRPs with whom negotiations may be entered at a later date, or they represent settlements of natural resource damages that are part of larger bankruptcy cases, where natural resource damage claims are registered as one of many bankruptcy claims. In the case of partial settlements with willing PRPs, the amount of damages received may be held until additional funds are available to effect a more complete restoration action at a site.

In many bankruptcy actions, the amount "collected" is for a percentage of the cash available upon completion of the bankruptcy, or a percentage of securities owned by the debtor at the time the bankruptcy action is completed. Depending on the terms of the bankruptcy, debts may be discharged in several ways. Often, payment of "unsecured claims" will be as a percentage of total funds available, subject to a subsequent determination of that total amount, resulting in only a portion of the payment identified in the consent decree actually being paid. If payment is made in shares of stock or other securities, the actual value may be more or less than the damage award, depending on the price of the shares when they are sold. Also, in some bankruptcy cases, settlements may be "structured" in a way that results in payments (either in cash or unsecured obligations) being transferred over a period of several years to maintain the viability of the reorganized company. Therefore, the amount "due" in a natural resource bankruptcy settlement may be substantially different than the amount collected.

In-Kind Settlements

The review on which this Report is based focused on cases and sites where cash amounts had been collected into Federal accounts or were due to the trustees. As a result, it does not represent cases where in-kind settlements have been negotiated, since not all of these involve any direct payment or transfer of funds to trustees. In-kind settlements include those settlements where the PRPs, rather than the trustees, carry out restorations. This can be a very efficient process and can result in much quicker restorations. The example described in the Report, the French Limited Site, was included because funds were provided for trustee oversight. The major cost of the restoration was borne by the PRPs and does not appear in the accounting. (Trustees do not generally get an accounting by the PRPs of the amount they spend for such restorations.)

There are a number of other examples of restorations carried out by PRPs that do not appear here because they were in-kind, and no oversight funds were negotiated. These include the Motco Superfund Site in La Marque, Texas, where the PRPs created a replacement salt marsh habitat that is now managed as a local park, and the Wildcat Landfill Superfund Site in Delaware, where a marsh was created by the PRPs to replace the one filled in the remedial process. The Department participated in negotiated settlements for natural resource injuries sustained at the Midco I and II Superfund sites in northern Indiana, which resulted in the acquisition of 253.75 acres of dune and swale wetland habitat by the potentially responsible parties at the sites. The Midco sites are located in a dune and swale wetland area along the southern tip of Lake Michigan, which was formerly a 10,000 acre ecosystem, but is now limited to several hundred

acres. The dune and swale habitat formed over the course of three Ice Ages, is globally rare, and has not been successfully reproduced. This land will be managed by the Indiana Department of Natural Resources and will be incorporated into the State park system. In Ohio, the Department participated in consent decree negotiations that involved no monetary damages, but which resulted in the creation of 80 acres of wetlands at the New Lyme State Wildlife Area. This project was completed in 1990.

Such cases, where the consent decree actually references or includes a separate agreement with trustees for a restoration project, are the most obvious examples. Less obvious, but even more frequent, are cases where, due to trustee involvement in the remedial process, restoration and natural resource protection measures are incorporated into the remediation, although these may be less formally recognized in the consent decree.

Restoration Planning and Restoration Status Graph (Figure 1)

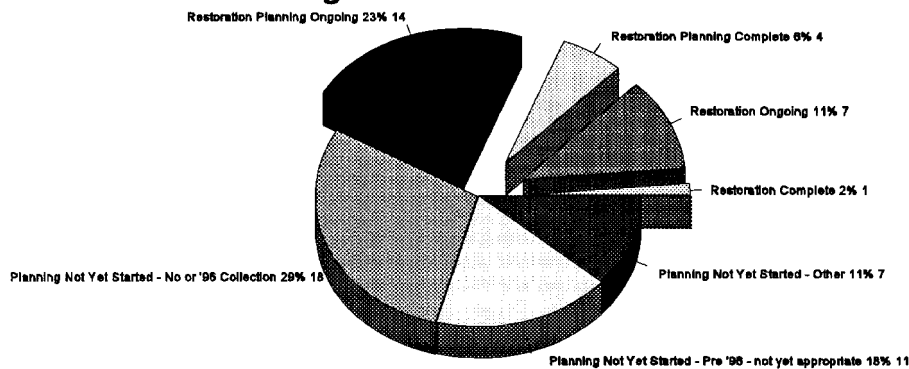
Both the Department and the National Oceanic and Atmospheric Administration identified several factors that affect our ability to begin planning and conducting a restoration effort after damages have been collected into the NRDAR fund. We would like to take this opportunity to highlight that planning and implementing restoration of natural resources is a time consuming process that requires consideration and evaluation of many biological, physical, chemical, and ecological factors, in addition to engineering considerations. Many sites involve multiple trustees, including State and Tribal trustees with whom coordination and consensus must be reached prior to implementing restoration efforts. Restoration planning by trustees also involves giving the public opportunities to participate in proposed restoration activities. The Report confirms that restoration of living natural resources and complex ecosystems is not a simple process amenable to quick engineering solutions.

Figure 1 shows 36 sites, or 58 percent, as having had no restoration planning started. Although a footnote has been added, and some explanation has been provided, we feel it necessary to further clarify the categories for these sites. Of the 36 sites, 6 (not 5 as cited in the footnote) were too recently settled for any collections to have occurred yet, and 12 had collections in 1996, or within 6 months prior to the date of this report. Thus, half of those 36 sites either had no collections or had recent collections within the previous 6 months.

Of the remaining 18 sites with collections prior to 1996, 6 were bankruptcies and therefore partial payments, one was awaiting completion of a remedial action on a National Wildlife Refuge, one was identified in Table 1 as not requiring restoration planning because the responsible party was to carry out the work, and three were for less than \$5,000 and are candidates for combining with other settlements. Under our count, only 7 sites remain where restoration planning was not started.

The table below reflects further delineation of the categories of sites where restoration has not yet started for the above stated reasons. We believe this clarifies the Department's uses of collected funds in natural resource damage settlements.

Figure 1 - Clarification



We appreciate the opportunity to work closely with your auditors during the gathering of information contained in the draft report, and also for the opportunity to review the document and provide comments on issues that we believe needed clarification. If you have questions regarding these comments, please contact the Director, U. S. Fish and Wildlife Service (Attention: Assistant Director, Ecological Services), at (202) 208-4646.

Sincerely,

George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks

Major Contributors to This Report

Resources,
Community, and
Economic
Development
Division, Washington,
D.C.

James F. Donaghy, Assistant Director
Karen L. Kemper, Evaluator-in-Charge
Edward E. Young Jr., Senior Evaluator

Boston Field Office

Maureen T. Driscoll, Senior Evaluator

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