

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2017

PHILADELPHIA, MONDAY, SEPTEMBER 18, 2017

VOL 256 • NO. 54 An **ALM** Publication

ENVIRONMENTAL LAW

Superfund Sites: Sweeping Up the Past, Present and Future

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Special to the Legal

Of the 1,343 current Superfund National Priority List (NPL) sites in the nation, over 15 percent are in New Jersey or Pennsylvania. One hundred and fourteen of the sites are in New Jersey, and 95 are in Pennsylvania, the first and third highest totals of any state. The NPL is intended to target and identify the most severe or complex contaminated sites in the country. Interested parties in these or other contaminated sites in the region should not be surprised, then, if the federal government's renewed focus on the Superfund program is particularly impactful on our region.

A change in presidential administrations offers federal regulators and the regulated community alike the opportunity to reflect on the progress of federal programs and refocus on goals for the future. The federal Superfund program, which the current administration has identified as a priority for improvement, is a prime example. In recent months,



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both the federal government and a major private coalition of regulated entities, the American Council of Engineering Companies (ACEC), issued reports evaluating the program and offering general recommendations for its improvement. Analyzing these reports and EPA data related to sites in Pennsylvania and New Jersey, this article takes an abbreviated look back at the 37-year progress of the program and examines how the public and private recommendations may affect our region.

THE PAST AND PRESENT

The NPL was created in 1983 and has steadily grown since, from 483 sites to 1,343 today. Every year new

sites are listed and some existing sites achieve milestones, key among them are the completion of construction of the selected remedy and ultimately deletion from the NPL. ACEC's report, authored by Katherine Probst, reviewed the set of nonfederally owned NPL sites by separating them into three progress-related categories: construction incomplete, construction complete and deleted. As of the end of fiscal year 2016, 375 (24 percent) of 1,555 nonfederal sites ever listed had been deleted, 739 (48 percent) had completed construction but had not yet been deleted, and 441 (28 percent) were in the pre-construction stage. While steady progress was being made in the early 2000s, since the middle of the last decade, the number of active sites with construction incomplete has stagnated. Notably, only an average of eight sites per year have been deleted since 2012, while greater numbers are added almost every year (between eight and 36 per year since 2000).

ACEC's report identifies a number of factors to explain the stagnation of progress. Not surprisingly, the list begins with

funding. Since 2000, funding for the Superfund program in inflation-adjusted dollars has declined in a trend that generally correlates to the decreasing progress in construction completions and deletions from the NPL. Moreover, the sites being added to the list today are often

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particularly complex. Many new sites have issues related to identifying solvent potentially responsible parties. Others present new complex technical issues or require more large-scale remediation than a state Superfund program can oversee. The contamination at newly listed sites tends to have different origins than most NPL sites in the past. While landfills and other waste management sites predominated the NPL in the 1980s and former manufacturing sites were the most frequent additions in the 1990s, since 2000 more mining sites and contaminated sediment sites—which tend to require more expensive remediation—were added than in the previous decades.

THE FUTURE

The administration's Superfund Task Force and the privately funded ACEC both set out to address some of these issues but landed on different approaches. The federal report focuses on immediate, expeditious results, while the ACEC report favors a long-term strategy of improving program health and working toward creative solutions. Interestingly, the private ACEC report's recommendations focus more on internal evaluation and improvements at the EPA, while the public report's recommendations focus more on ways in which EPA can boost private sector involvement.

ACEC's approach calls for a reinvestment into the Superfund program. It suggests that the EPA study both its successful and stagnating sites and develop new cost data, including the total cost of site completion, the varying costs associated with specific remedies, the relative costs associated with PRP- and EPA-led sites, and the costs of remediating different types of sites and contamination. It further recommends studying the sites at which human exposure is considered "not under control," and evaluating the effectiveness of state programs and the EPA's relationship with each state's regulators. As this new data is generated and evaluated, ACEC recommends that it be presented periodically and made publicly available. The report expresses frustration at the availability and organization of data related to the current NPL sites and argues that improved transparency would allow additional external insight into the program that may improve the ability of the EPA and the private sector alike to forecast costs and cleanups.

The EPA's Task Force Recommendations, on the other hand, focus on immediate, quantifiable progress. The report includes 42 recommendations for improvement, but three themes emerge: improve regulatory oversight and efficiency; identify ways to encourage private investment in redevelopment in order to expedite cleanup; and apply pressure to stakeholders at sites where progress has stagnated.

While the proposed solutions differ, both reports harp on issues that are prevalent in Pennsylvania and New Jersey. The already large lists of NPL sites in each state are not rapidly shrinking. Since 2000, 19 New Jersey sites have been deleted from the NPL and 20 have been added, with one more currently proposed. In Pennsylvania, just two sites have been deleted since 2010 and none between 2006 and 2010. Both states have long lists of sites that have been listed since the mid-1980s, in the era when primarily waste management and manufacturing sites were being added. With the increased attention, there may be opportunities to consider new approaches. •

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