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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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April 27, 2006

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

On February 6, 2006, the President released the Administration's FY2007 Budget. The President's FY07 budget request overall for the Superfund program is \$1.259 billion or \$20 million less than the \$1.279 billion requested by the President in FY2006. The President's budget request also represents a \$131 million reduction from his budget request for Superfund in FY2004.

These significant reductions in budget requests for the Nation's premier toxic waste cleanup program come as the backlog in unfunded and underfunded site cleanups continues to grow. On January 24, 2006, Ms. Kate Probst of Resources for the Future, who was the principal author of a 2001 Congressionally-mandated report entitled "Superfund's Future," described the shortfall in an E&ETV Media interview as follows:

"I think if we wanted the program to be able to clean up all the sites that they have right now, they'd probably need an extra \$300 million to \$500 million a year at least for the next five or 10 years."

On December 2, 2004, Mr. Thomas Dunne, then EPA Acting Assistant Administrator for the Superfund program, confirmed that unfunded cleanup work could be in the range of several hundred million dollars. Mr. Dunne made the following observation in a speech at Charlottesville, Virginia:

“For the last three years, we haven’t started cleanup at some new sites. If we assume that EPA’s budget will remain flat for the foreseeable future, construction funding could be delayed at more and more sites. Within a few years, unfunded cleanup work could total several hundred million dollars.”

The Environmental Protection Agency Inspector General and others have also documented a significant and growing funding shortfall over the past several years limiting cleanup actions. Funding shortfalls have grown from \$114.8 million in FY2002 to \$174.9 million in FY2003 to a reported \$250 million in FY2004.

In light of the huge funding shortfall which is undermining progress and expeditious cleanups of sites in the Superfund program, a program you described on February 15, 2006, as one of the three EPA “programs that have delivered some of the greatest environmental successes,” why is the Administration asking for \$20 million less in FY2007 than was requested in FY2006? Is the reduced budget request tied to the fact that all of the funding must come from general revenues since President Bush has opposed reinstalling the taxes on industry which originally were the predominant source of funding for the Superfund program?

In addition to the reduced FY2007 budget request for the overall program, the President’s budget is actually seeking a \$7 million cut out of the heart of the cleanup program - the remedial program. The Congressional Research Service prepared the following chart that compares budget requests to enacted amounts for the Remedial program from FY2004 to FY2007:

Appropriations for Superfund Remedial Actions
FY2004 through FY2007 — Comparison of Requested to Enacted Amounts
(amounts in thousands of dollars)

FY2004		FY2005		FY2006		FY2007
Requested	Enacted	Requested	Enacted	Requested	Enacted	Requested
\$732,042.6	\$600,000.0	\$725,483.8	\$597,139.0	\$599,396.0	\$588,905.0	\$581,594.9

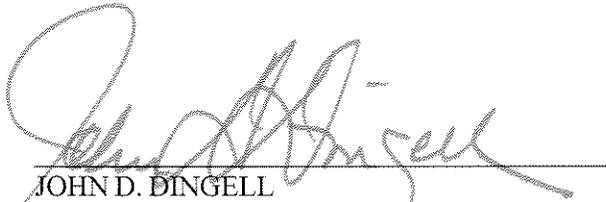
Why is the President’s Budget for FY2007 requesting a budget cut of more than seven million dollars in the remedial program from the enacted level in FY2006? Because cleaning up NPL sites is the core purpose of the Superfund program, why isn’t the remedial program being given priority over other Superfund program activities?

To further evaluate the President’s FY2007 budget request for the Superfund program, we request that you also provide responses to the attached questions by no later than Monday, May 15, 2006.

The Honorable Stephen L. Johnson
Page 3

If you have any questions concerning this request, please contact me or have your staff contact Richard A. Frandsen, Minority Senior Counsel to the Committee on Energy and Commerce at (202) 225-3641. Thank you for your attention to this matter.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE



HILDA L. SOLIS
RANKING MEMBER
SUBCOMMITTEE ON ENVIRONMENT AND
HAZARDOUS MATERIALS

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Paul E. Gillmor, Chairman
Subcommittee on Environment and Hazardous Materials

**Questions for the Honorable Stephen L. Johnson
Administrator, U.S. Environmental Protection Agency**

1. According to the Environmental Protection Agency (EPA) Justification of Appropriation for FY2007, the “Superfund Innovative Technology Evaluation (site) program has conducted high-quality field demonstrations of remediation technologies at sites that pose high risks to human health and the environment.”

Section 311(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 provides as follows:

(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY
RESEARCH AND DEMONSTRATION PROGRAM. -

(1) ESTABLISHMENT. The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the (“program”) which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment). (Emphasis supplied.)

ADMINISTRATION.- The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emerging Response and the Office of Research and Development.

In the President’s FY2007 Budget, however, the SITE program is terminated. Since Congress not only “authorized” but also “directed” that this program be carried out, please provide your legal justification, if any, for terminating this program.

Is it your position that the Superfund program is no longer in need of innovative treatment technologies that can be utilized to achieve more permanent protection of human health and the environment?

2. On March 15, 2006, the EPA issued a press release entitled “19 Toxic Legacies Reborn” that stated the EPA is helping communities reuse “19 cleaned-up Superfund sites.” One of the 19 sites listed by the EPA is the California Gulch site in Leadville, Colorado.

For the California Gulch site, please describe the specific reuse project that has been accomplished or planned and indicate whether it is in an area that has been cleaned up or in an area where no cleanup was required. If the demonstration project is in an area where cleanup has occurred, what is the residual contamination, if any, that remains?

3. Is it correct that Resurrection Mining Company, a subsidiary of Newmont Mining Corporation, and ASARCO are the potentially responsible parties at the California Gulch site? With respect to Operable Unit 11 (OU) which deals with contamination in a 500-year flood plain of the Upper Arkansas River from the confluence of the river with California Gulch, is it correct that a final Record of Decision (ROD) was signed in September 2005? Is the estimated cost to implement the ROD for OU11 approximately \$5.5 million? Has Resurrection Mining Company and/or ASARCO entered into a consent decree to carry out and pay for the cleanup called for in the ROD for OU11? If not, please explain why not, as well as when EPA intends to undertake enforcement action.
4. Please identify all of the Superfund NPL sites where ASARCO, Newmont Mining Company, or Resurrection Mining Company are potentially responsible parties and the status of cleanup at each of these sites.
5. For FY2003, FY2004, and FY2005, the EPA has attained construction complete status at only 40 sites per year. Forty is also the number projected for FY2006 and FY2007. Is it just happenstance that 40 is the number of cleanups obtained in each of the last 3 years and/or projected for FY2006 and FY2007 or is EPA arbitrarily choosing the number 40 and budgeting accordingly?