

**THE BEEDE WASTE OIL  
SUPERFUND SITE**

*The Fifth Settlement is Complete: Where are  
we now?*

*By: Attorneys Sherilyn Burnett Young  
and Tracy A. LaChance*

The efforts to clean up the Beede Waste Oil Superfund Site in Plaistow, New Hampshire (“Beede Site”) have been ongoing for more than a decade. The Beede Site is located in a residential Plaistow neighborhood that is served entirely by private drinking water supply wells. The facility was in operation from the 1920s through August 1994 as a waste oil storage and recycling facility. Over the years, Beede Oil accepted waste oil from thousands of companies, large and small, including automobile dealerships, independent auto repair shops, municipalities throughout New England, and federal agencies such as the U.S. Postal Service. The site is contaminated primarily with waste oil that seeped into the ground from a variety of sources, including a former unlined lagoon, underground storage tanks, aboveground storage tanks, and numerous drums located throughout the property. The site was added to the “Superfund” List in December 1996.

Because the site owner did not respond in 1996 to court orders to clean up the site, EPA and the State of NH stepped in. At the time, approximately 100 above ground storage tanks and 800 drums were located on the site with a combined storage capacity of about 3 million gallons. EPA and the New Hampshire Department of Environmental Services (NHDES) removed the tanks and drums in 1996 and 1997. EPA and NHDES also covered several large soil piles, containing varying levels of contaminants. There was considerable amounts of waste oil floating on top of the groundwater at the site, that would periodically seep into Kelley Brook. NHDES contained the seepage using booms

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and sorbents until 1997 when EPA installed an interceptor trench to prevent further seepage into the brook. In 2000, EPA also installed a vacuum enhanced extraction system to actively remove the floating waste oil. The extraction system removed over 90,000 gallons of free product from the subsurface through Fall 2005 when its operation was discontinued. Contamination in groundwater continues to migrate off site and has impacted adjacent residential wells.

In 2004 EPA issued its *Record of Decision* (“ROD”) that selected a final remedy for cleanup of the site. The major components of this remedy are:

1. Construction of an on-Site groundwater extraction and treatment system.
2. Excavation and off-Site treatment or disposal of about 80,000 cubic yards of contaminated surface and sub-surface soil and limited sediment.
3. Construction of a soil vapor extraction system to treat deep soil, which may include thermal-enhancement through steam injection.
4. Establishment of Activity and Use Restrictions (AURs) to prevent the excavation of soil deeper than 10 feet beneath ground surface.
5. Establishment of a Groundwater Management Zone in accordance with State of New Hampshire law to prevent consumption of groundwater.

In addition, EPA reviewed hundreds of thousands of documents relating to the shipment of wastes to the Beede Site to identify the potentially responsible parties liable for the cleanup costs. Starting in 1999, more than 6,000 companies received Information Request Letters under CERCLA (Superfund Act) §104(e) asking information about their operations, waste disposal practices, and detailed information about waste characteristics and volumes sent to the Beede Waste Oil Site. After reviewing and processing the information received, EPA compiled its list of approximately 2,000 Potentially Responsible Parties (“PRP’s”).

Parties who generated 275 gallons or less of hazardous waste sent to the Beede Site are considered to be “de micromis generators.” Because of the relatively small volumes of waste sent to the site, these generators were not pursued for cleanup costs or reimbursement, and are protected by EPA from contribution law suits. The de micromis group for the Beede Waste Oil Site includes almost one fourth of all the parties located, yet the total group volume represents less than 1% of the total waste sent to the Site. These are not counted among the 2000 PRPs.

EPA has completed four settlements with *de minimis* parties over the years. The first settlement offer was issued to generator parties who sent between 276 gallons and 1,000 gallons of

hazardous waste to the Site. The second settlement offer was issued to generator parties with a volume between 276 and 5,000 gallons. The Third *De Minimis* (ATP) Settlement was offered to 17 parties who submitted information in support of ability to pay claims during the second settlement round. The fourth settlement was issued to eligible parties who generated up to 20,000 gallons of hazardous waste to the Site. This fourth settlement was finalized in December 2004 at a price of \$6.83/gallon, while \$7.30/gallon was offered to those PRPs with volumes in the 276-5,000 gallon range who had declined to settle in previous *de minimis* settlements.

By the close of 2004, EPA had settled with 1,199 of the 2,000 original PRPs, and collected approximately \$17.1 million. \$320,000 was paid to the State of New Hampshire toward its response costs, and the remainder was held in a special EPA account to be applied to reimburse EPA for its past costs and for future clean up costs. The 1,199 parties who settled represented approximately 60% of all of the parties identified as generators and approximately 23% of the total waste contributed to the Site.

The fifth settlement with EPA, which took the form of the Remedial Design/Remedial Action Consent Decree (“CD”), was concluded in December 2008. Under the terms of the CD, 52 *de minimis* parties and one *de minimis* federal agency (those that contributed less than 40,000 gallons to the Site) settled at a rate of \$10.37 per gallon, while 9 *de minimis* parties who submitted information in support of ability to pay claims during the fourth settlement round settled for a combined settlement of \$15,500. In addition, 27 major parties and 4 federal agencies (those that contributed 40,000 gallons or more, the “Major Parties”) settled and agreed to take over the cleanup of the Site. Settling parties signed the CD in December 2006. It was filed by EPA in the U.S. District Court for the District of New Hampshire on April 11, 2007. However, procedural issues and an objection to the settlement resulted in significant delays in gaining Court approval.

On July 22, 2008, the Court finally approved the CD and EPA issued a Notice of Entry to all settling parties on November 3, 2008 with instructions to submit settlement payments within 30 days. The settling party payments totaled approximately \$8.3 million. EPA had previously collected about \$17.1 million from the prior settlements, for a total of \$25.4 million paid by the 1,261 cash-out parties. EPA does not plan to enter into any further settlements beyond 14 parties that previously filed ability to pay (“ATP”) claims. To date, more than 700 parties named by EPA as “PRPs” have chosen not to settle.

EPA has now turned over the clean up efforts to the Major Parties that settled under the CD, as well as the right to seek contribution from the non-settling parties. The Major Parties have now begun their collection efforts against the non-settling parties. They have issued hundreds of demand letters to these PRPs, as well as to others that EPA never named but who were also identified as PRPs through waste shipping documents related to the Site. The Major Parties are

pursuing settlements with as many parties as possible, and have stated their intentions to file a lawsuit against the non-settling parties in the near future.

If you have received a demand letter regarding the Beede Site and want additional information or guidance on how to respond, feel free to contact Sherry Young or Tracy LaChance of the law firm of Rath, Young and Pignatelli, P.C. at (603) 226-2600. Over the years, Sherry has served as legal counsel to a large number of parties involved in the Site, as well as serving as a member of the Steering Committee that negotiated the final global settlement. Sherry and Tracy have also assisted several auto dealers and former dealers in responding to the recent demand letters sent out by the Major Parties.

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