

Superfund Records Center
SITE: Beede
BREAK: 11.5
OTHER: 41640



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1 (NEW ENGLAND)

1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

FEDERAL EXPRESS

Current Company Name

Party's Contact Information

Party Identification Number: **Party Code**

Re: URGENT LEGAL MATTER — RESPONSE REQUIRED BY AUGUST 2, 2002;
SECOND DE MINIMIS SETTLEMENT OFFER AT THE BEEDE WASTE OIL SUPERFUND
SITE IN PLAISTOW, NEW HAMPSHIRE

Dear Contact Name :

By letter dated July 2002, the New England office of the United States Environmental Protection Agency ("EPA") formally notified **Current Company Name** (hereinafter referred to as "**Current Company Name**" or "you") of your potential liability for the cleanup of the Beede Waste Oil Superfund Site, as a potentially responsible party or "PRP" at Beede. Your responsibilities at the Beede Site are the result of hazardous substances **Current Company Name** generated that were sent there.

Note that your unique Party Identification Number is **Party Code**. Please keep this Party Identification Number in a convenient location so that, in all future communications with EPA about the Beede Site, you will be able to reference your Party Identification Number and help us ensure a timely and accurate response.

ENCLOSED OFFER AND OPPORTUNITY TO SETTLE

At this time, EPA and the State of New Hampshire, through its Department of Environmental Services ("NH DES"), wish to offer you an opportunity to resolve certain liabilities for the cleanup of the Beede Site. Accordingly, we strongly encourage you to review this entire letter and the settlement offer it contains, since your options with respect to the Beede Site may be significantly affected by your response. The settlement offer gives **Current Company Name** the opportunity to pay for a portion of EPA's and NH DES's costs and, by doing so, to settle your liabilities to EPA and NH DES associated with the Beede Site. Your settlement amount is **Settlement Amount**. The way the amount was calculated is explained later in this letter.

This opportunity to settle is being provided at this time only to lower-volume Beede PRPs such as **Current Company Name**. Your offer is part of a second, large-scale *de minimis* settlement effort at Beede (the "Second *De Minimis* Settlement") by EPA and NH DES. The

Second *De Minimis* Settlement follows the initial EPA settlement effort at the Beede Site, issued in June 2001.¹ The Second *De Minimis* Settlement uses a 5,000 gallon cutoff to define the group of potential *de minimis* settlers. In other words, no Beede *de minimis* generator PRP with a volumetric contribution of over 5,000 gallons is being provided with the opportunity to participate in the Second *De Minimis* Settlement. Use of a 5,000 gallon volumetric cutoff allows EPA and NH DES to target a group of PRPs which represents a large number of parties but only a small percentage of the waste known to have been sent to the Beede Site. Specifically, the parties targeted in the Second *De Minimis* Settlement include about 1,000 PRPs who, as a group, contributed about 15% of the total Site waste.

If you wish to join the Second *De Minimis* Settlement, please note the deadline for accepting the offer and submitting total payment is August 2, 2002.

By joining the Second *De Minimis* Settlement, you can play an important role in the cleanup of the Site, which will reduce the threat to human health and the environment. We are asking each party responsible for generating waste material that was sent to Beede to pay its fair share of the cleanup cost, although not all waste generators are eligible to receive a settlement offer this early in the enforcement process. Monies obtained from the Second *De Minimis* Settlement will be used to conduct or finance cleanup of the Beede Site (or to cover costs already incurred there), to ensure that contamination at the Site is fully addressed.

Since EPA and NH DES believe you meet established criteria which define a “*de minimis*” waste contributor, the enclosed settlement offer affords you an opportunity to resolve liability under each of these federal and state environmental laws:

- Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) — CERCLA is the law that authorizes the Superfund program to cleanup hazardous substances that may pose a threat to human health or the environment;²
- Resource Conservation and Recovery Act (“RCRA”) — RCRA provides for the management of solid and hazardous wastes; and,
- New Hampshire Revised Statutes Annotated 147-B:10 (“NH RSA 147”) — NH RSA 147 is the New Hampshire law that authorizes the NH DES to clean up hazardous substances that may pose a threat to human health or the environment.

1. The Early *De Minimis* Settlement at Beede was effective on November 9, 2001. The Early *De Minimis* Settlement included 496 PRPs from among the lowest-volume *de minimis* parties. In fact, more than two of every three PRPs who received an EPA offer as part of that settlement accepted the offer. The Early *De Minimis* Settlement generated more than \$1.6 million, held in the Beede Special Account for the Site.

2. See 42 U.S.C. § 9601 *et seq.*, as amended by the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118.

Because the amount of waste you sent to the Site is considered small relative to other *de minimis* parties at the Site, you are being offered an opportunity to settle earlier than many other, higher-volume *de minimis* parties. The offer provides you with assurance that if **Current Company Name** joins the Second *De Minimis* Settlement, your legal cleanup responsibilities with EPA and the State of New Hampshire are fulfilled. Note, however, that this offer does not address potential claims for natural resource damages under federal or state law. Also note that EPA is extending a settlement offer based on the understanding that you responded to any previous information request(s) you received under CERCLA and, therefore, that you can provide the necessary *de minimis* certification as part of the settlement.³

SETTLEMENT TERMS AND EFFECT OF SETTLEMENT

So that EPA can offer the most favorable settlement terms to a large number of parties, while at the same time minimizing transaction costs, the terms of the Second *De Minimis* Settlement are not negotiable. The settlement terms may be found in the enclosed Administrative Order on Consent ("AOC"). Please carefully review the terms of the AOC. When reviewing the AOC and Appendices, please note that Appendix C to the AOC (which includes C(1), C(2) and C(3)), the "*De Minimis* Generator PRP Settling Amounts," is not intended, and should not be construed, as an allocation of responsibility or liability by EPA but is included therein for settlement purposes only.

Although EPA may issue orders or bring lawsuits to require PRPs to perform or pay for Site work, the government generally prefers to settle its claims without resorting to expensive, often lengthy, legal action. **EPA and NH DES will assume that you have declined to participate in the remediation of the Site through this Second *De Minimis* Settlement and that you do not intend to resolve your potential liability at this time, if you do not accept this offer and make total payment by August 2, 2002. In addition, if you choose to request that EPA conduct a financial review, as described below, you also will not be able to participate in this settlement under the terms described in this letter.** Of course, involvement in a later settlement with EPA will likely be possible.

Joining the Second *De Minimis* Settlement will ensure that **Current Company Name** does not face federal or state enforcement actions under Superfund or New Hampshire law for cleanup costs or get drawn into lawsuits brought by other parties for contribution (i.e., "contribution lawsuits" where private parties seek to have you pay for Superfund cleanup costs *they* have incurred) (except for potential federal and state natural resource damage claims). You should be aware that once settlement efforts at Beede are largely completed, the government intends to take enforcement actions against non-settling parties to ensure that recalcitrant parties do not gain an unfair advantage over parties that participate in, or finance, the remediation. Specifically, the

3. As with the First *De Minimis* Settlement, EPA considers PRPs who failed to fully comply with prior-issued CERCLA information requests they received as ineligible to participate in the Second *De Minimis* Settlement. See Section IX of the AOC, entitled CERTIFICATION OF RESPONDENT.

government has authority, under appropriate circumstances to: 1) order non-settlers to perform cleanup work at the Site to protect human health and the environment; and 2) bring suit against non-settlers in federal court under CERCLA and/or RCRA. Note that any and all PRPs also may sue non-settling parties for contribution.

DE MINIMIS SETTLEMENT AND ITS BENEFITS

The particular type of settlement being offered to you is called a *de minimis* settlement. EPA has discretion under CERCLA to designate certain parties as “*de minimis*” waste generators. A potentially responsible party may qualify for a *de minimis* settlement if the following conditions are satisfied:

- The amount of waste contributed is minimal in comparison to the other waste at the Site;
- The toxic or other hazardous effects of the waste contributed are minimal in comparison to the other waste at the Site; and
- The settlement is in the public interest, and involves only a minor portion of the response costs at the Site.

At the Beede Site, EPA designates roughly the top 40 generator PRPs that contributed waste material to the Site as major parties, and the remainder of the waste generators who received a General Notice letter as *de minimis*. Because your waste contribution is considered small relative to most other *de minimis* parties, you are being given a chance to participate in the Second *De Minimis* Settlement at Beede. EPA and NH DES believe it is in your best interest to consider accepting this offer to settle. By participating in the Second *De Minimis* Settlement, you receive the following benefits:

- “Covenant Not to Sue” — This provision is a promise that EPA and NH DES will not bring any future legal actions against a settling party for the specific matters resolved in the AOC; and
- “Contribution Protection” — This provision offers a settling party protection from lawsuits brought by other Beede PRPs for contribution.

Taken together, the covenant not to sue, contribution protection and other terms associated with the Second *De Minimis* Settlement provide settling parties with a high degree of certainty that their responsibility, under federal and state superfund laws, is fulfilled and that they are protected from government enforcement actions and private party contribution actions related to the matters addressed in the settlement. (Note that this settlement offer does not include release(s) for potential federal and state natural resource damage claims.) To date, over 24,700 PRPs have entered into *de minimis* settlements with EPA to resolve their liability at hundreds of waste sites across the country.

DE MINIMIS SETTLEMENT PAYMENT (“CASHOUT”) AMOUNT

EPA used a cashout formula to calculate the amount that you must pay to participate in the Second *De Minimis* Settlement. This formula, which is explained below, is used to calculate each party's fair share of the total Site cleanup cost. The precise payment amount that EPA has calculated for **Current Company Name** is **Settlement Amount** and may be found in Appendix C (1), (2), or (3) to the AOC. **Note that Appendix C to the AOC sets forth both the EPA and NH DES component shares of the total settlement amount due for each PRP. Participation in this Beede Second *De Minimis* settlement includes the extra benefit of settlement with the State of New Hampshire, as well as EPA. Please remember that, to participate in this settlement opportunity, you must pay the TOTAL amount appearing after your PRP name in Appendix C (1), (2), or (3). A partial payment will disqualify you from participation in this settlement.**

Your payment amount is derived from the quantity of waste material that you sent to the Site. To determine your specific waste contribution, EPA used records from state files, information from waste transporters, and responses to CERCLA information requests, as well as records kept by the Site owners/operators. The waste disposal records mainly consist of hazardous waste shipment manifests. The payment amount is comprised of the following:

- “Basic Payment”—A basic payment which consists of your percentage share of the waste material at the Site (in gallons) multiplied by the total, estimated Site cleanup cost;
- “Premium”—A premium functions much like an insurance premium and is assessed because a *de minimis* settlement provides finality to the settling parties in the form of the covenant not to sue, contribution protection, and the absence of settlement reopeners.⁴ A *de minimis* settlement, in effect, shifts the risk that the cleanup will be more expensive than expected from the settling parties, to EPA and the remaining (nonsettling) PRPs. The premium was only applied to future remedy costs, and not past costs; and,
- “State Payment”—The Second *De Minimis* Settlement includes a release from NH DES for its past cost claims and, as a result, each payment amount includes about \$0.13 per gallon to account for the NH DES release.

EPA used the following basic cashout formula⁵ to calculate your payment amount:

4. Settlement reopeners, in essence, give the government the ability to seek additional cost reimbursements from a PRP at a later time and are typically found in non-*de minimis* settlements.

5. Further information about EPA's cost calculation will be available as part of the Administrative Record for this settlement.

<div> <div>Your Total Waste Volume (gals.)</div> <hr/> <div>Total Remaining Site Volume</div> <div>14.39 million gals.</div> </div>	X	<div>Non-Fixed EPA Site Response Costs</div> <div>\$48.02 million</div>	X	<div>1.5 (50% premium)</div>	+	
<div> <div>Your Total Waste Volume</div> <hr/> <div>Total Remaining Site Volume</div> <div>14.39 million gals.</div> </div>	X	<div>Fixed EPA Site Response Costs</div> <div>\$17.10 million</div>		<div>no premium assessed</div>	+	
<div> <div>State rate (\$0.13/gal) and EPA non-participation rate of (\$0.21/gal) as applicable</div> </div>					=	payment amount

The following factors were used to calculate the payment amount of each party to whom an offer has been extended as part of the Second *De Minimis* Settlement effort:

- The total, remaining,⁶ documented quantity of waste material sent to the Site is 14,391,574.52 gallons;
- EPA's total Site costs are estimated to be \$65 million, based on EPA past (fixed) response costs as well as EPA future (non-fixed) response costs;
- The State of New Hampshire's total Site costs are \$1,894,364.60.
- The premium is 50% and is established pursuant to EPA policy entitled "Standardizing the *De Minimis* Premium," July 1995.⁷

The cashout rates associated with the Second *De Minimis* Settlement incorporate all of the above factors and consist of one of the following three amounts:

✓ \$5.97 per gallon for *de minimis* PRPs with volumes of 1,000 gallons or less who did not participate in the Early *De Minimis* Settlement (the first Beede settlement) because they elected, in good faith, to pursue a request for waste quantity, or financial, review. This rate is therefore the sum of the EPA rate offered in the Early *De Minimis* Settlement, \$5.84 per gallon, plus the State rate of \$0.13 per gallon.

6. This is the total 'remaining' waste volume since the sum excludes waste volumes contributed by PRPs who settled with EPA during the Early *De Minimis* Settlement.

7. Further information about EPA's premium determination is included along with the Administrative Order on Consent.

- ✓ \$6.25 per gallon for *de minimis* PRPs with volumes over 1,000 gallons but not over 5,000 gallons. This rate is higher than the rate offered in the Early *De Minimis* Settlement because it reflects updated cost information.
- ✓ \$6.46 per gallon for *de minimis* PRPs with volumes of 1,000 gallons or less who chose not to accept an offer during the Early *De Minimis* Settlement at Beede.⁸

ABILITY TO PAY REVIEW

If **Current Company Name** wishes to settle, but would face a severe financial hardship by remitting the total payment amount, you may request that EPA review your financial ability to pay. Under EPA policy and CERCLA, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of EPA's financial review. **The deadline to apply for a financial review is August 2, 2002.** EPA's analysis of your ability to pay will occur after that date. To process a claim of financial hardship, EPA will require you to substantiate that claim by submitting detailed financial documentation, as outlined in the one page sheet included with this offer letter titled "Instructions for Applying for Financial Review," by August 2, 2002. Note that if you apply for an ability to pay review, you will be *declining* the enclosed settlement offer and the protections it affords you. However, in future potential settlements, it is EPA's intention to avoid disadvantaging parties who, in good faith, choose to seek an ability to pay review. A complete description of EPA's financial review process is enclosed along with the Administrative Order on Consent.

INFORMATIONAL WORKSHOPS

If you are interested in participating in an informational workshop with EPA concerning the Second *De Minimis* Settlement prior to the close of the offer period, please call the Beede Enforcement Hotline at 1-888-294-6980 **no later than June 15** to express your interest. When you call, indicate the topic(s) related to this Second *De Minimis* offer that you would like addressed in an informational workshop. These workshops will only be for parties who have received, and are considering, this Second *De Minimis* offer. Based on interest, EPA and NH DES plan to hold informational workshops at which members of the government's case team will be available to answer questions. After you express interest in the workshop, EPA Region 1 will contact you with more information. You are not required to participate in these workshops to join the Second *De Minimis* Settlement.

ADDITIONAL INFORMATION

8. The *de minimis* parties who received, but did not accept, an offer as part of the Early *De Minimis* Settlement are subject to a \$0.21 per gallon "non-participation" surcharge (added to the \$6.25 rate), using the Superfund interest rate in effect at the time the Beede Early *De Minimis* settlement closed (Aug 20, 2001), to account for interest lost on funds which could have been recovered through the early *de minimis* settlement and administrative costs associated with sending a second offer to non-settlers.

As you may be aware, EPA has a substantial amount of specific information concerning the Beede Site that is available to you from various sources, including the Beede Enforcement Hotline, EPA's Site-specific Web Page,⁹ and on CD ROM at the EPA New England Records Center in Boston, MA, the Plaistow Public Library in Plaistow, NH, or available upon request from the Beede Hotline. Some of the information you may wish to consider includes the PRP List [current list of PRPs to whom EPA issued General Notice], the Volumetric Ranking [list of the amount of waste contributed by each party identified, updated by EPA as of May, 2002], and other Site-specific Evidence [e.g., documents and other investigatory information gathered by EPA which indicate that **Current Company Name**, and each other listed party, is a PRP at Beede].¹⁰

The addresses and telephone numbers of the information repositories are:

U.S. EPA Superfund Records Center

One Congress Street

Boston, MA 02114

Phone: 617-918-1440

Fax: 617-918-1223

Contains documents related to listing the Site on the National Priorities List, EPA's removal actions, as well as documents relating to Site operations (1980s-1994) and EPA's enforcement activities (1997-present)

Public records may be viewed in the reading room which is open

Monday through Friday from 9:00am to 5:00pm.

The Records Center is closed on federal holidays and on the first Friday of every month.

Please schedule an appointment before coming in.

9. See "<http://www.epa.gov/region1/superfund/sites/beede>."

10. Inclusion on, or exclusion from, the PRP List does not constitute a final determination by EPA concerning the liability of any party for response actions at Beede. Also, under Section 122(e)(3)(C) of CERCLA, the Volumetric Ranking list does not constitute an apportionment or other statement by EPA on the divisibility of harm or causation in connection with the Site and is not admissible as evidence in any proceeding.

Plaistow Public Library

85 Main Street
Plaistow, NH 03865
603-382-6011

Contains documents related to listing the Site on the National Priorities List, EPA's removal actions, as well as those related to Site operations (1980s-1994) and EPA's enforcement activities (1997-present)

Library hours are: 9:00am to 8:30pm Mon. - Thu.;
9:00am to 5:00pm Fri.; and, 9:00am to 2:00pm Sat.

EPA and NH DES encourage you to learn more about the Site and the Second *De Minimis* Settlement by reading the materials enclosed with this letter and accessing other sources of information available to you. The answers to many frequently asked questions can be found on the Beede website at "<http://www.epa.gov/region1/superfund/sites/beede>." You can e-mail inquiries to the EPA Beede Site address at "beede@bah.com." Also, questions about this Site or the Second *De Minimis* Settlement can be directed to EPA's toll-free Beede Enforcement Hotline (1-888-294-6980) which is staffed Monday through Friday from 9:00am-5:00pm Eastern Standard Time (note that you should expect to leave a voice mail, as Hotline specialists may be busy with other callers). A voice mail system is available 24 hours a day. Please allow up to five (5) business days for a response to any e-mail or Hotline voice mail request. Responses to requests for documents may take two (2) weeks or longer.

Although you may order paper copies of selected Site documents, EPA strongly encourages you to exercise one of the other informational mechanisms instead of requesting hard copies of documents. Preferred methods include, for example, reviewing the information on CD ROM at the EPA Superfund Records Center in Boston, MA or the Plaistow Public Library, or requesting your own copy of the CD ROM from the Beede Enforcement Hotline. If you must order paper copies, please contact the Beede Enforcement Hotline at 1-888-294-6980. EPA cannot guarantee how long it will take for you to receive hard copies of documents and any delay in receipt will NOT extend the August 2, 2002 deadline within which to respond to this settlement offer.

CONCLUSION

Acceptance of this offer and **total** payment must be made by **August 2, 2002**. To accept the offer and secure a place in this Second *De Minimis* Settlement, you must sign the Administrative Order on Consent and remit the full payment of your calculated share of the response costs to EPA by August 2, 2002. Participation in this settlement means that you are

settling directly with EPA and NH DES as soon as it is currently possible to do so.¹¹ Instructions for joining the Second *De Minimis* Settlement are included along with the AOC.

We encourage you to consider this offer and to contact us if you have any questions. We look forward to participation by **Current Company Name** in the Second *De Minimis* Settlement at the Beede Site.

Very truly yours,

Richard Cavagnero, Acting Director
Office of Site Remediation and Restoration
U.S. EPA - Region 1 (New England)

cc: Cynthia A. Lewis, Lead Case Attorney, EPA Region 1
Hugh W. Martinez, Assisting Case Attorney, EPA Region 1
Jim DiLorenzo, Remedial Project Manager, EPA Region 1
Martha Bosworth, Enforcement Coordinator, EPA Region 1
Jennifer Patterson, Senior Assistant Attorney General, NH Office of the Attorney General
Richard Pease, Project Manager, NH DES
Patricia McKenna, Trial Attorney, U.S. Department of Justice

Enclosures:

- *Administrative Order on Consent (AOC)*
- *Appendices to AOC*
 - A- List of Settlers (to be completed after August 2, 2002)
 - B- Site Map
 - C- List of Respondents and Cashout Amounts
 - D- Declaration of Trust
 - E- Payment Invoice
- *Other Materials included in this settlement package* [Signature Instructions, Signature Page to AOC pre-printed with party-specific information, Settlement Instructions, Premium Explanation Document, Instructions for Applying for Financial Review]

11. After the offer close date of August 2, 2002, the AOC enters a required notice and comment period, and barring any unforeseen circumstances, you will be notified of its effective date shortly thereafter.

ADMINISTRATIVE ORDER BY CONSENT
SECTION 122(g)(4) DE MINIMIS CONTRIBUTORS

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of CERCLA-01-2002-0025, relating to the Beede Waste Oil Superfund Site in Plaistow, New Hampshire:

Name of PRP: **Current Company Name**
Party Identification Number: **Party Code**

NAME OF RESPONDENT:* _____

Signature of Representative: _____

Date of Signature: _____

Name of Representative: _____
(please print)

Title: _____

Address: _____

Telephone No.: _____
Facsimile No.: _____

If there is a predecessor or successor company that is also settling its liability for Respondent's disposal of hazardous substances at the Beede Waste Oil Superfund Site, that company's name must be included on this signature page. Any such entity agrees thereby to be bound by the terms of this settlement.