

# **Lessons Learned While Providing Technical Assistance to Our Community**

December 31, 2006

## **Summary**

The most significant problem encountered during the administration of the Hercules 009 Landfill Superfund Site EPA Technical Assistance Grant was that information and representations made by the EPA to the community could not be trusted as being truthful. Repeatedly, representations made to the community by EPA Remedial Project Managers (RPM) were not fulfilled. Contrary to the assertions of the first RPM that the Record of Decision would be the guidance document, the ROD was fundamentally changed and agreements between the EPA and Hercules were made without implementing the community participation requirements of Superfund law. The GEC utilized significant grant resources in trying to decipher what agreements had been made between the EPA and Hercules, and the implications to our community. The following are examples of problems encountered while trying to provide technical assistance to our community for the Hercules 009 Landfill Superfund Site.

## **Toxaphene Analytical Method Changed**

The analytical method was changed in 1993 to one that only reported ~10% of the toxaphene present in our community. The EPA Office of Inspector General found that the toxaphene analytical method was inappropriate. This inappropriate and biased toxaphene analytical method was used to delineate areas for contaminated soil removal in neighborhoods, adjoining properties, and Altama Elementary School that abut the Hercules 009 Superfund Site. Due to the significant under-quantification of toxaphene, it is unknown if the removal actions resulted in protection of human health and the environment in areas where toxaphene was found outside the Site.

## **EPA's Broken Promises**

Changes in EPA RPMs resulted in one making promises to the community that the next RPM did not feel bound to fulfill. For example, the first RPM said the ROD would be the guidance document for the remediation of the Site, whereas the second said the ROD was only of historical interest and had no bearing on actual remediation of the Site. The subsurface soil remedial action level was raised from 76 Parts Per Million (PPM) to 2000 PPM, which is a fundamental change to the ROD that requires a reopening of the ROD and community involvement in the decision-making process. The RPMs actions were calculated to exclude the community from the decision-making process and circumvent Superfund law.

## **EPA Produces Fairy Tale to Cover Up Agreements with Hercules**

An Explanation of Significant Differences (ESD) was issued by the EPA to explain some of the many deviations from the legally binding agreement to contain all toxaphene on and around the Site. No data was ever produced that supported the premise of the ESD that water was up-welling under the Site. The EPA repeatedly asked Hercules to produce the data in support of the ESD, but this was never done. The ESD was based upon speculation and hearsay to support the many agreements made

between the EPA and Hercules which resulted in only part of the toxaphene manufacturing wastes being contained. Site data clearly shows that the EPA's ESD was no more than a fairy tail.

### **EPA Deceit and Deception**

The EPA asked the GEC to enter into the EPA mediation program to resolve questions, comments, and concerns about EPA failure to follow the legally binding decision for containment of the Site and community input into the decision-making process required under Superfund law. After numerous delays, the EPA withdrew from the program one week prior to the mediation session. The EPA explained that they had delayed the GEC long enough to complete the remedial work at the Site and our concerns were no longer valid to them!

### **EPA Headquarters Ignores Community's Rights Under Superfund Law**

The GEC submitted our concerns to EPA Headquarters (HQ) about EPA failure to be truthful to the community and comply with the ROD. Even though EPA HQ repeatedly said they would respond to the GEC, no response was received.

### **EPA Ombudsman Promises, Inspector General Breaks Promises**

Due to no response to the GEC from EPA HQ, our concerns were sent to the EPA Office of the Ombudsman. The EPA Ombudsman asked that we put our concerns into the form of questions and assured they would be answered. The EPA Ombudsman's office was closed and put under the EPA Office of Inspector General (IG). The IG did not feel bound by the assurances given by the EPA Ombudsman and limited their response to only questions about the analytical method developed to under quantify toxaphene. Once again, the lack of continuity in the EPA resulted in the response given to the GEC not being truthful. The GEC did extensively document our concerns with the IG.

### **EPA Grant Kept Community Informed, But Not Involved in the Decision-Making Process**

The purpose of the EPA Technical Assistance Grant program is to keep the community informed about the Superfund process and involved in the decision-making process. It was our experience that the grant did not meet all the objectives and goals of the EPA technical assistance program due to the efforts of EPA Remedial Project Managers to circumvent Superfund law. While the community was kept informed, EPA actions excluded our community from the decision-making process.

### **EPA Failed to Resolve Ongoing Human Health Threats**

The data collected at the Site was flawed due to the inappropriate toxaphene analytical method used to delineate soil removal actions in neighborhoods, schoolyards, and surrounding properties. The IG focused upon toxaphene analysis of Site water but failed to address the human health risks from contaminated soil. In addition, no soil sampling was recommended, or has been conducted, to resolve if an ongoing human health threat continues at Altama Elementary School, or surrounding neighborhoods and properties.

### **The EPA Has Consistently Not Been Truthful or Responsive to Our Community**

The EPA has demonstrated that they will tell a community one thing and do another. Community support for containment of the Hercules 009 Landfill Superfund Site was forthcoming because the community was assured that ALL toxaphene would be immobilized, the Site would not be excavated, and the community would be involved in the decision-making process if any changes were made to the assurances given to the community. The EPA failed to keep its promise on any of the assurances given, and engaged in activities explicitly planned to exclude our community from the decision-making process. Furthermore, the EPA mediation program, appeal process to EPA HQ, EPA Ombudsman, and EPA Office of Inspector General all failed to address the concerns about failure of the EPA to fulfill the legally binding Record of Decision for the Site. At all levels, the EPA failed our community.

### **The EPA Cannot be Trusted to do What is Right for Our Community**

Repeatedly and constantly, the EPA has failed to be truthful and made deals with the polluter at the expense of our community's health and environment. With three more Superfund Sites to be contained or cleaned up in our community, the question is whether we have learned anything from our experiences with the Hercules 009 Landfill Superfund Site. Maybe we, as a community, should advocate for no less than a complete removal of the toxic mess at all our Superfund Sites.