

redesignation policy that was circulated to regional offices in May of 1995.

The court also found fault with the Sierra Club's claim that EPA set a dangerous precedent when it circumvented the redesignation process and granted the exemptions at hand. The court adamantly rejected this argument, stressing that EPA has "made it abundantly clear its determination to exempt the counties in question from certain requirements . . . is not a de facto redesignation to attainment status." Conversely, the court found that EPA's actions are unlikely to create an alternative, less rigorous, redesignation process, since states still have a compelling incentive to complete the formal redesignation process.

While EPA sources were unavailable to comment on the case, one industry observer believes that it is "a nice victory" that should give the agency additional confidence to pursue similar efforts in other parts of the country. Most importantly, this source says the court appears to have given "EPA the go ahead" to offer critical exemptions from what may be unnecessary Clean Air Act requirements.

## REGIONS ASK STATES TO TAKE LEAD IN SUPERFUND PROGRAM . . . begins page one

direct Superfund cleanups, and EPA has generally concluded it cannot delegate that authority to states, though many states have continued to press for new responsibilities from EPA. In the 104th Congress, states pushed for a Superfund reauthorization bill that would give states the authority to take over the federal program or to take control of specific sites within their borders. When that legislation died, several regional officials took on the task of examining the relative roles of states and EPA and looking for opportunities to expand state authority.

The regional task force developed a "near-term Superfund management framework" which was sent to headquarters last week. The paper describes the various tools that the regions are using to expand state authority, then goes on to make some suggestions for improving the process.

The paper concludes that "states should have the first chance to lead cleanup at a site," and adds that EPA should see its role as primarily assisting states in taking on cleanup activity. EPA should maintain authority at a site "(1) where a state requests it, (2) on petition from community or local government and when there is inadequate progress at the site, or (3) the site meets the criteria for the use of EPA's removal program or enforcement authorities." Even where EPA maintains its legal authority to oversee cleanup, that authority should be used in such a way as to provide an incentive for reluctant parties to get involved in state-run cleanup programs. The regional paper also calls for EPA to work with state voluntary cleanup programs, and to "provide clear signals that will give parties confidence that a cleanup under such programs will be sufficient for EPA."

Nevertheless, the paper suggests that at sites already on the Superfund National Priority List, "the fastest way to assure progress . . . is generally to maintain the established way of managing the site. . . . As a general rule, EPA and states should continue the existing division of labor (who is on lead) for current NPL sites."

A regional source says the paper is not really intended to recommend policies to headquarters as much as it is intended to relate to headquarters the trends that are going on in the regions, and give headquarters a regional perspective on how the Superfund program is evolving. Several regional sources declined to comment on the paper, saying that it should speak for itself as to regional views of the Superfund program.

## Environmentalists and industry groups attack process

### EPA UNVEILS FIRST MAJOR PROJECT XL PERMIT, BUT CRITICS SEE HUGE FLAWS

EPA this week announced the first major regulatory flexibility agreement reached under Project XL, the agency's flagship regulatory reinvention initiative, but critics said the announcement was more indicative of the weaknesses than the strengths of Project XL.

Project XL was launched as a consensus-based process that would allow companies to waive existing regulatory standards in exchange for achieving superior environmental performance. But the permit agreement announced by EPA Administrator Carol Browner this week touched off a hail of protest from environmentalists, did not allow the company to escape any regulatory restrictions, and left some question about whether or not it actually improves upon existing environmental performance. In addition, sources with the company and the agency admit that despite the 18 months spent negotiating the project, in the end, all of the flexibility in the permit could have been achieved without Project XL.

Nevertheless, EPA and industry sources agree that the project will give the company significant flexibility — allowing the construction of an entire new facility without requiring a new permit review process — which may set a dramatic precedent for other permit applicants.

Browner held a press conference in Arizona Nov. 19 to announce the first major Project XL final agreement for the Intel facility in Chandler, AZ. EPA has issued one other permit under Project XL, to a fruit juice facility in Florida, but sources say that project was neither particularly experimental nor very contentious. The agency has also published one other final project agreement for public comment, covering a Weyerhaeuser facility in Georgia.

*continued on next page*