



Eligible Response Site: Meaning, Impacts, and the Role for Site Assessment

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Why is this important?

- Site assessment decisions may now affect EPA enforcement authority
- Certain site assessment decisions will require consultation with EPA legal enforcement

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Eligible Response Site Defined

CERCLA Section 101(41)

- Section 101(41)(A)
 - Eligible Response Site – Brownfield Site §101(39)
- Section 101(41)(B)
 - EPA authority to include certain sites otherwise excluded by brownfield site definition
- Section 101(41)(C)
 - EPA authority to exclude certain sites from the definition of an eligible response site

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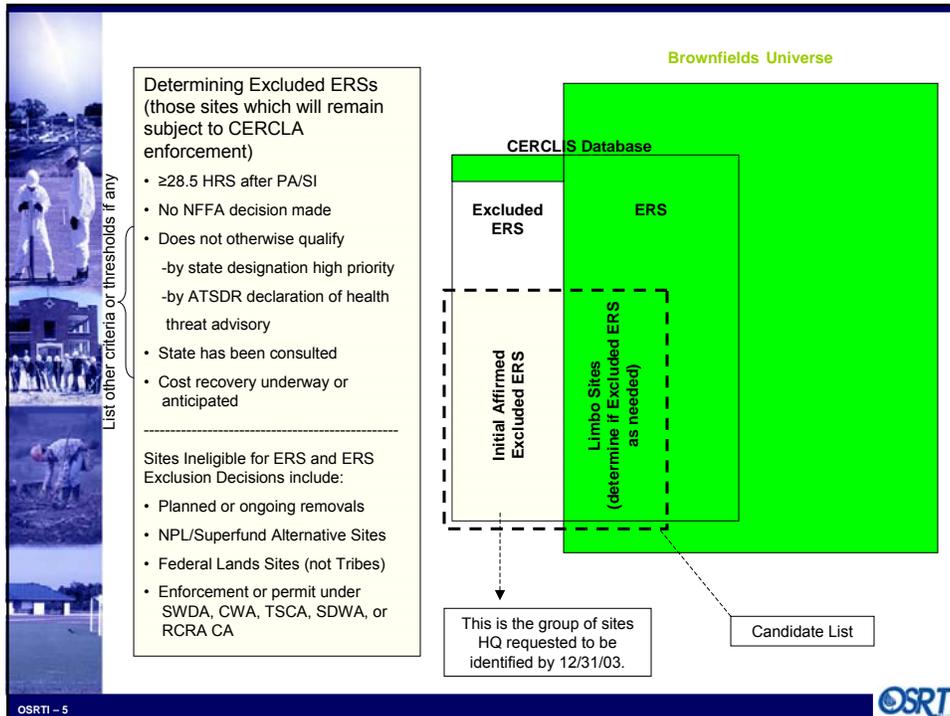


Impacts under CERCLA

Sections 105(h) & 128(b)

- Section 105(h)
 - EPA will generally defer listing an “eligible response site” if addressed by the state or other party in agreement with the state under a state response program
- Section 128(b)
 - Limits EPA authority to take enforcement and cost recovery actions against persons addressing a release under a state response program at an eligible response site
- Does not affect Brownfields grant funding

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The Role for Site Assessment CERCLA Section 101(41)(C)(i)

- **EPA can exclude sites from the definition based on site assessment**
 - After preliminary assessment (PA) or site inspection (SI); and
 - Consultation with State
 - Achieves a preliminary score sufficient for possible listing on the NPL; or
 - After preliminary assessment (PA) or site inspection (SI); and
 - Otherwise qualifies for listing on the NPL

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The Role for Site Assessment (con't.)

CERCLA Section 101(41)(C)(i)

- EPA can include a site which it previously excluded
- If “not further federal action will be taken”

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EPA Guidance

Regional determinations Regarding White Site are Not Eligible Response Sties under 101(41)(C)(i)

- Signed March 6, 2003
- Only addresses §101(41)(C)(i)
- Available at
www.epa.gov/compliance/resources/policies/cleanup/index

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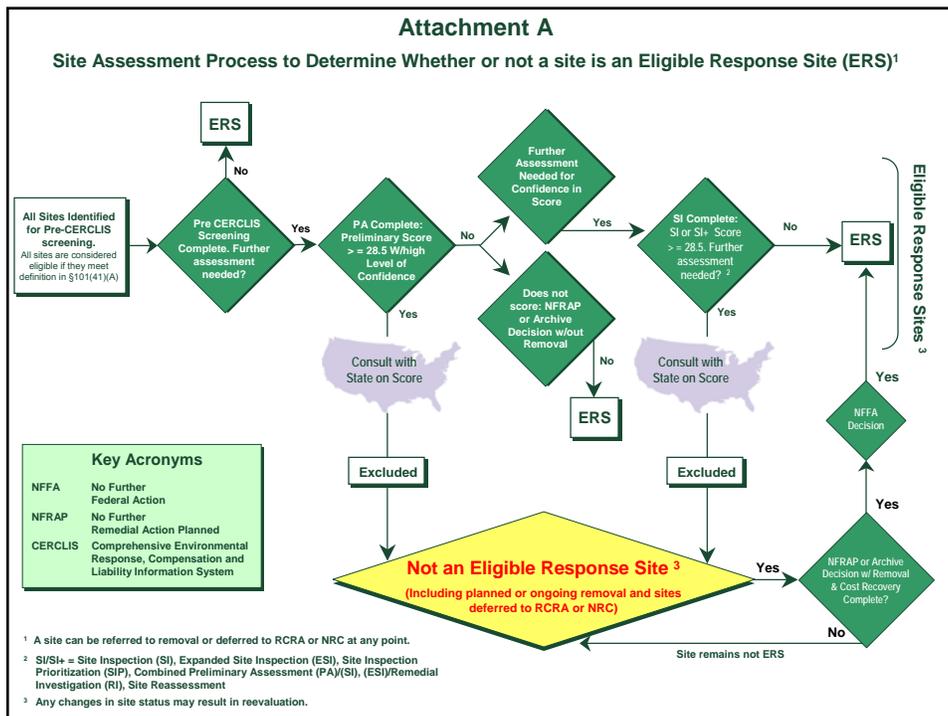


Key Points From Guidance

Directed Primarily at EPA and State Site Assessment Personnel

- When EPA will generally make a decision to exclude a site
- Consultation with State and Tribes
- When EPA will generally make a decision that “no further federal action will be taken”
- Making a determination for current CERCLIS sites already past the SI Stage
- Addressing new sites as they enter the system

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The Decision to Exclude

These sites will not be subject to NPL deferral or limitations on EPA enforcement

- EPA will continue to utilize the current process
- Strong preference for making the decision after the SI
- Pre-SI determinations only if nature and quality of the information allow for a decision with a high level of confidence
 - E.g., data indicating human exposure

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Consultation with States and Tribes

Prior to Excluding a Site

- Consult with State and Tribe if on or near Tribal land
- Regions should work with States and Tribes to develop a process
 - Where States and Tribes already conduct PA/Sis for EPA should be easy to satisfy through existing info exchange\
- Communications should be documented

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No Further Federal Action

These sites will again be subject to NPL deferral and limitations on EPA enforcement

- **One of Two Points in Current Process**
 - NFRAP – If not referred to removal or consultations with removal and enforcement do not reveal pending or potential removal, cost recovery or enforcement actions
 - Archive – If referred to removal or pending or potential removal, cost recovery or enforcement actions
- **Key – No further action under CERCLA**
 - No NFFA determination for sites deferred to RCRA or NRC and active CERCLA sites being addressed under State program



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Determinations for “Historical Sites”

Sites Where EPA has previously conducted a PA or SI

- **Many sites that are Post-SI and have a preliminary score sufficient for possible listing**
- **Regions will compile a list, share it with the States and Tribes, and make a single determination to exclude**
- **Key _ Sites that would have otherwise been excluded had the statute and guidance been in place at the time of the assessment determination**
- **HQ produced a CERCLIS logic sheet to help make the lists consistent across Regions**





Who will make these determinations?

- Delegation from President to the Administrator – E.O. 12580
- Delegation 14-17
 - Regional Administrator with authority to redelegate to Branch Chief or first line supervisor
 - Consultation with legal enforcement
 - Regions will need to add language to site assessment determinations to capture the exclusion and NFFA determinations

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Tracking ERS Exclusion and NFFA Decisions at Sites in CERCLIS

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Tracking ERS Exclusion and NFFA Decisions at Sites in CERCLIS

Accomplishments

- EPA Data Management Workgroup Discussions Spring, '03 through Dec. '03
- CERCLIS Modifications made June, '03
- Superfund Program Implementation Manual (SPIM) updated Sep. '03
- Reports sent to Regions end of Oct. '03 with Dec. 31, '03 deadline for updating CERCLIS

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Tracking ERS Exclusion and NFFA Decisions at Sites in CERCLIS

Reports sent to Regions end of Oct. '03

- **Not applicable sites**
 - Federal Facilities
 - Ongoing/Planned Removals
 - Ongoing Enforcement Order
 - National Priorities List (NPL)
- **ERS Exclusion Candidates**
 - Site Inspection+ Needing Further Assessment
 - Included Other Cleanup Activity Sites

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Tracking ERS Exclusion and NFFA Decisions at Sites in CERCLIS

As of June 15, 2004:

2,805 CERCLIS Sites with ERS Exclusion Decisions

70 CERCLIS Sites with NFFA Decisions

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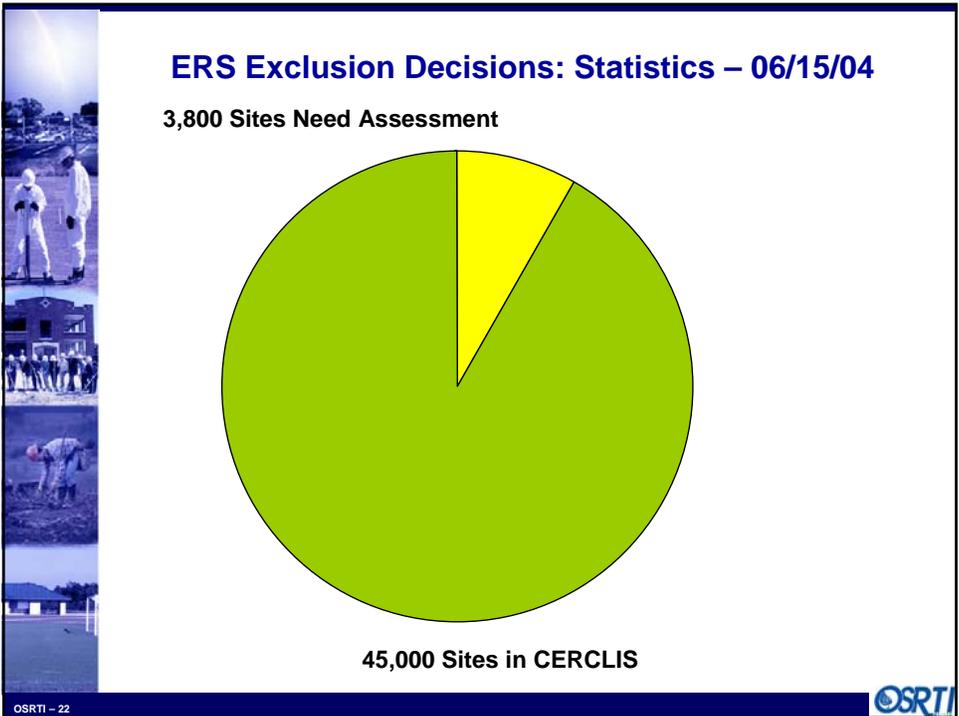
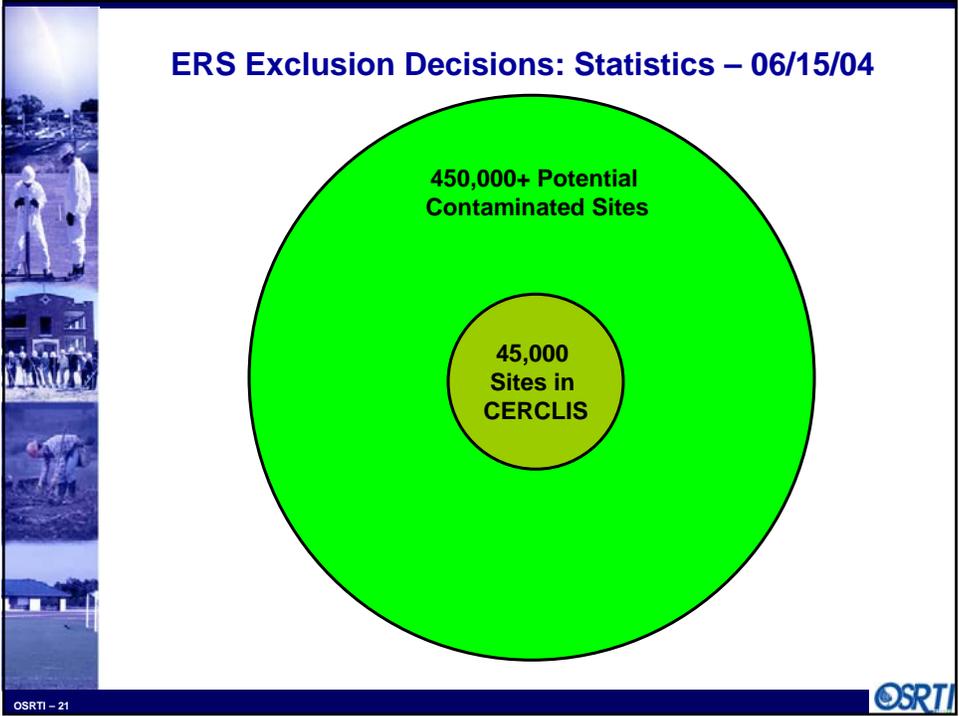


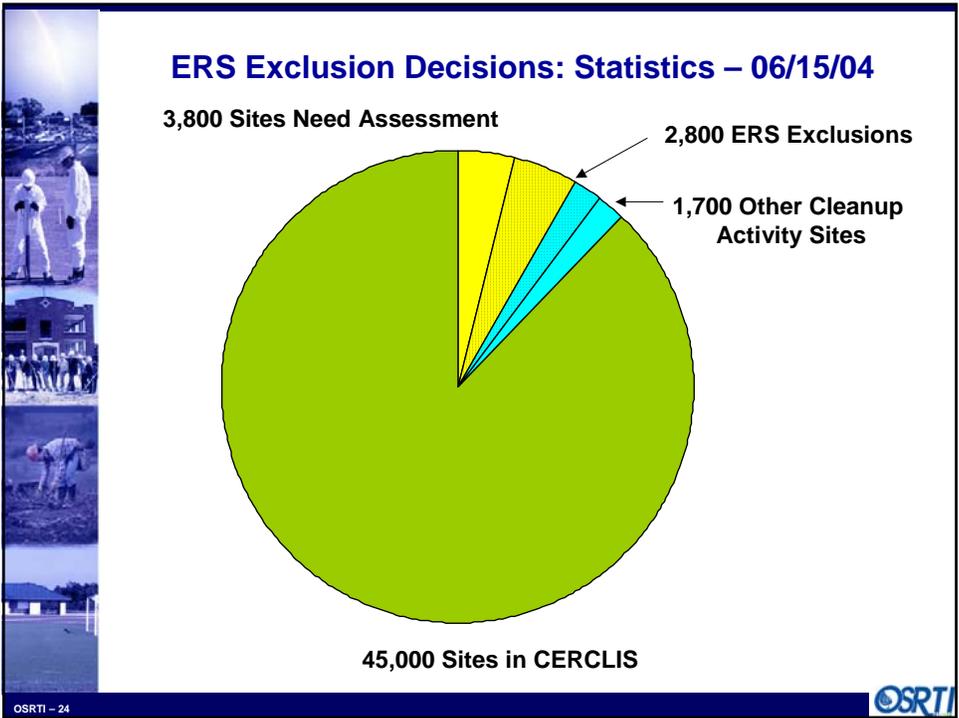
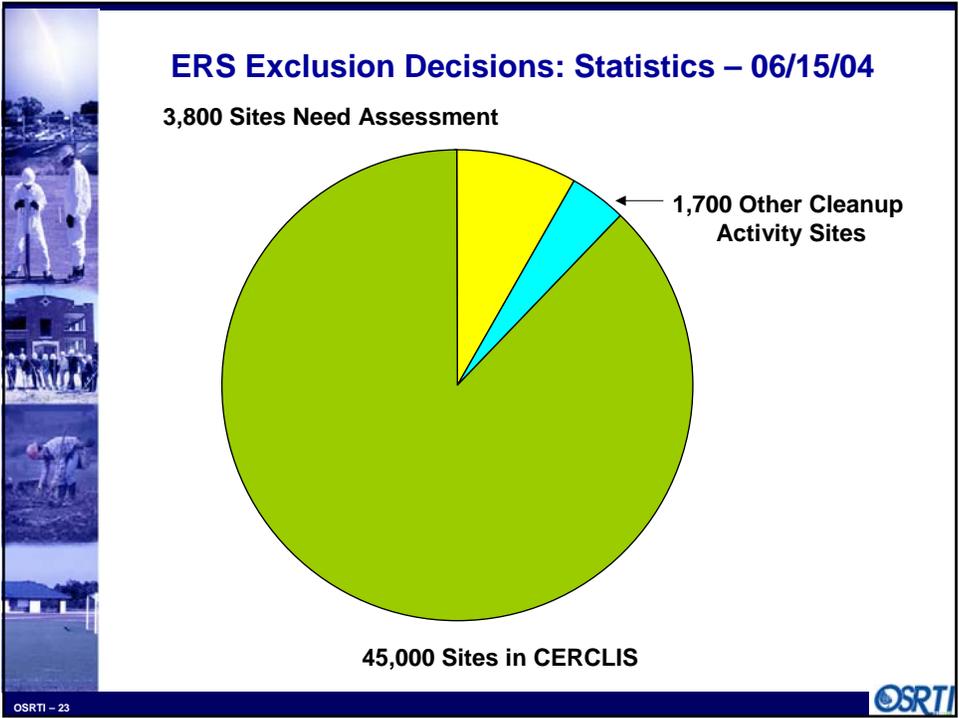
ERS Exclusion Decisions: Statistics - 06/15/04

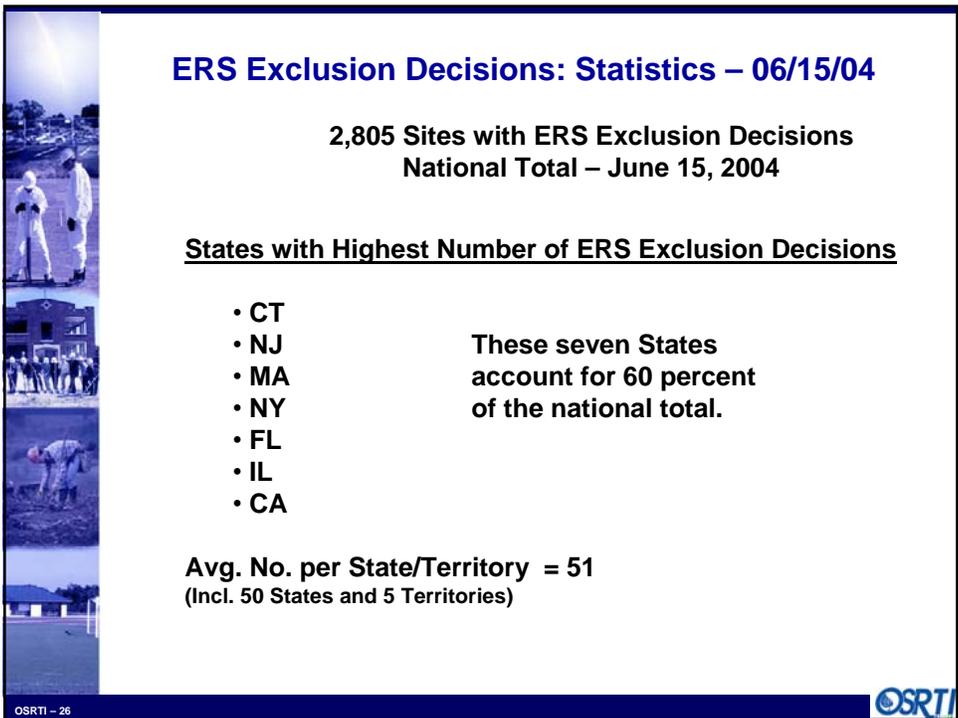
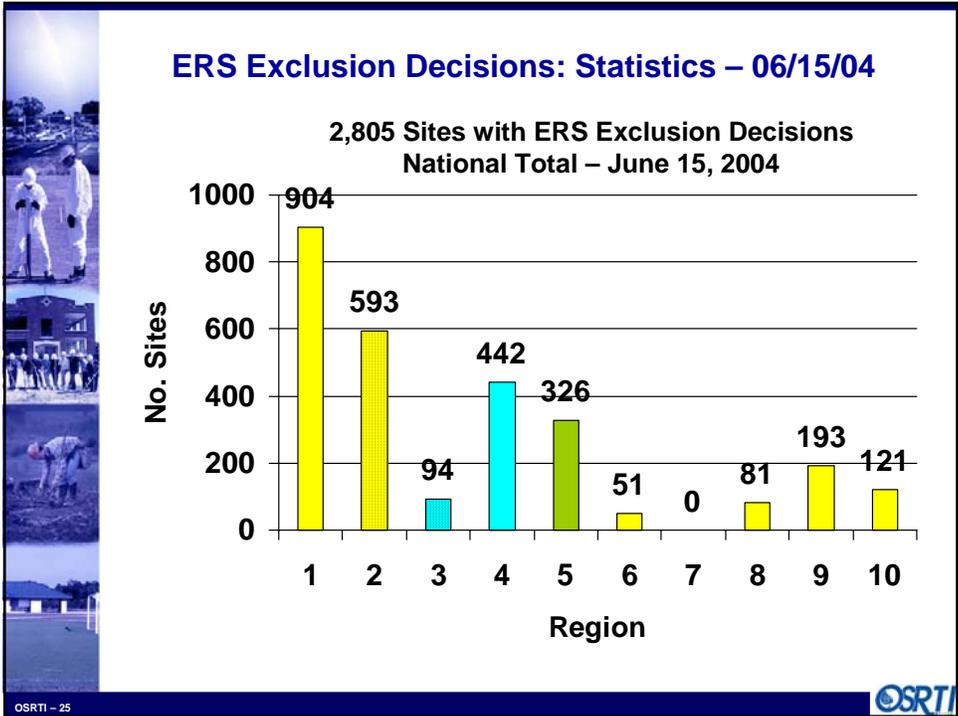
**450,000+
Potential
Contaminated
Sites**

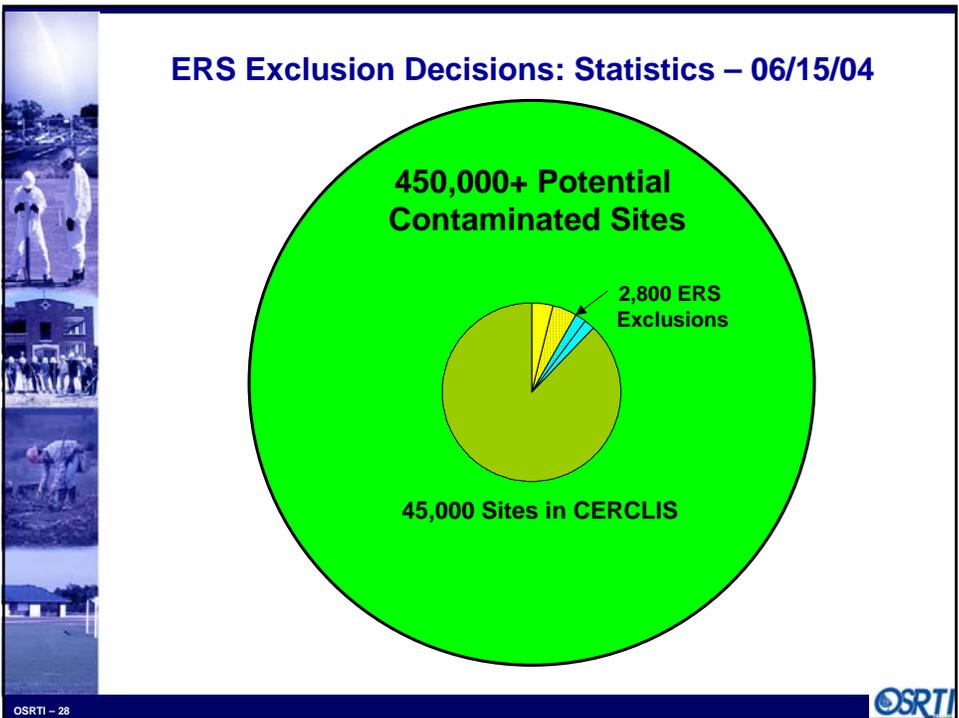
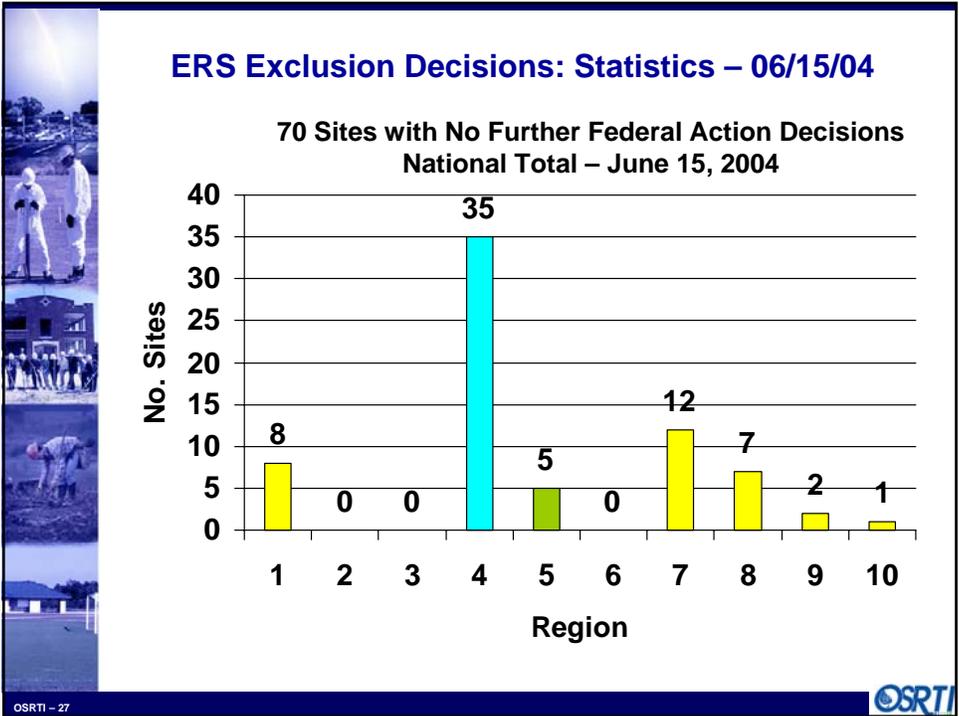
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ERS Exclusion Decisions: New Sites

- **State/Tribe-Lead Assessments: PA/SI Transmittal Letters from States/Tribes to EPA may include ERS exclusion recommendation**
- **EPA-Lead Assessments: EPA to continue consulting with States/Tribes on new sites**
- **Many EPA Regions capturing decisions on internal site decision forms for documentation purposes**



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ERS Exclusion and NFFA Decisions: Outreach and Tools

- **EPA will begin posting ERS exclusion and NFFA decisions on HQ's Superfund public web site (via Search CERCLIS feature) within next few months**
- **EPA to use Superfund e-Facts application to track:**
 - **ERS exclusion and NFFA decisions in CERCLIS**
 - **Updated ERS exclusion candidate and Not Applicable site reports based on current CERCLIS data**
 - **Data quality reports**





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Questions??

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