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Cleanup News ***is an occasional newsletter highlighting hazardous waste cleanup cases, policies, settlements, and technologies.***

Superfund Reforms Are Paying Off

A new EPA report on Superfund accomplishments finds that three rounds of reforms over the last five years have made the Superfund program "faster, fairer, and more efficient." The reforms have touched on every part of the program, from expediting cleanups and increasing liability fairness to promoting environmental justice and innovative technology.

A useful indication of the reforms' success is the number of sites on the Superfund National Priorities List (NPL) where the construction of cleanup remedies has been completed. In FY97 and FY98, EPA completed construction at 175 sites on the NPL, exceeding the target of 130 completed sites for those years. These 175 sites account for 30 percent of the total 585 sites completed since the program's inception in 1980.

In FY98, the Superfund enforcement program secured private party commitments that exceeded $1 billion. This brings the cumulative value of private party commitments since the program's inception to approximately $15.5 billion.

The Industri-Plex site in North Woburn, Massachusetts, illustrates Superfund's effectiveness in returning sites to productive use. Once a contaminated property that threatened human health and the environment, the site is now poised to become a major commercial and retail district.

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A Civil Action

It has been called "an American version of a Greek tragedy." The movie, "A Civil Action," opened on December 25, 1998, based on the award-winning book by Jonathan Harr of the same title. Both book and movie bring to life the lengthy and complex lawsuit surrounding the contamination of drinking water wells in Woburn, Massachusetts and the illnesses that developed among the families living nearby. The families sued W.R. Grace and Beatrice Foods, both of which had plants located close to municipal wells. W.R. Grace settled with plaintiffs for almost $9 million after the first phase of the trial, and the two companies ended up paying nearly $70 million for cleanup. The Wells G&H site was listed on EPA's National Priorities List in 1982.

Several websites are available online to provide the public with more information.

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Cashouts Available for Peripheral Parties

EPA and Justice Issue CERCLA Section 122(h) Guidance

In September 1998, EPA and the Department of Justice jointly issued guidance on CERCLA §122(h) administrative response costs settlements, along with five model settlement documents. EPA hopes that use of these models will lead to speedy and consistent settlements across the country. The guidance explains the various uses of the 122(h) authority, ranging from limited past cost recovery settlements to broad, site-wide "cashout" settlements for qualifying parties.

Expedited "cashout" settlements will be available for "peripheral parties." Peripheral parties are those parties who, for reasons of finances or fairness, are not the focus of CERCLA enforcement activities. Although not technically *de minimis* or *de micromis,* peripheral parties include those with a documented inability to pay and those for whom unresolved CERCLA liability is not only an extreme burden, but also whose request for settlement is supported by compelling equities. Offering these peripheral players an early cashout settlement will reduce their transaction costs, provide them with peace of mind, and make the Superfund process fairer for all concerned. The guidance discusses in more detail when these peripheral party settlements may be appropriate and when the administrative forum is the right one for such settlements.

The cashout option does not represent a change in EPA's enforcement policy. EPA's central goal has been and continues to be obtaining performance of site cleanups from potentially responsible parties. Most Superfund sites have multiple PRPs, and these parties are encouraged and expected by EPA to join together and undertake response action cooperatively pursuant to a judicial consent decree or, in instances where removal action is involved, an administrative order on consent. Cashout settlements are an additional CERCLA settlement tool, limited to situations in which EPA believes the settling PRP is not in a position to undertake a response action either individually or collectively with other PRPs, but is able to make a cash payment to address past and future response costs at the site.

The guidance, entitled, "Guidance on Administrative Response Cost Settlements under Section 122(h) of CERCLA and Administrative Cashout Settlements with Peripheral Parties under Section 122(h) of CERCLA and Attorney General Authority," includes model administrative agreements for past cost recovery, for cashing out ability to pay peripheral parties, and for cashing out non-ability to pay peripheral parties. For more information, contact Janice Linett (EPA/OSRE) at 202-564-5131, or Tom Mariani (DOJ) at 202-514-4620.

Model Language for Federal PRPs

EPA has been using a model consent decree for remedial design/remedial action since July 1995. However, revisions to the model were needed for CERCLA liability claims against the United States that are based on the actions of federal agencies that are potentially responsible parties (Federal PRPs). In December 1998, EPA and DOJ revised the model to address the most common settlement circumstance, where federal PRPs do not perform the work, but instead make a lump-sum payment to cover an allocated share of the costs of the work and other response costs at issue.

The key changes are in certain definitions, the payment provisions, the covenants, reservations, and contribution protection. Because they are cashing out, the federal PRPs' payment will generally include a premium to cover the risk that the work will cost more than expected, and a further premium to the extent that federal PRPs are excluded from liability for additional response actions. Where a different payment procedure for a federal PRP settlement is used (such as a "pay-as-you-go" settlement where private PRPs perform the work and bill the federal PRPs periodically), additional changes to the payment provisions will be necessary.

Federal PRP payments to resolve liability or judgments against the U.S. government generally are made by the Department of the Treasury from the Judgment Fund as soon as reasonably practicable after the consent decree is entered. With respect to response costs incurred by EPA, those payments will be made directly to the Hazardous Substances Superfund; the transfer will be made using the federal government's inter-agency electronic funds transfer system. If such payments are not made within the time period provided for private PRP payments, interest on the Federal PRP share will be paid to the Superfund commencing on the effective date of the consent decree (this is an earlier interest commencement date than for private PRP payments).

These model revisions should expedite the drafting and negotiation of settlements in which federal PRPs participate. For more information, contact John Wheeler, OSRE, 202-564-4284.

Superfund Takes Steps to Prepare Sites for Y2K

It seems nothing is out of the reach of the Year 2000 Millennium Bug, including Superfund sites. The Ott/Story Cordova Superfund site near Muskegan, Michigan was recently surveyed by the U.S. Army Corps of Engineers for Y2K problems. The Corps found that critical plant control software, if not updated, could disrupt the effective treatment of contaminated groundwater. "We are taking Y2K very seriously," said Steve Luftig, Director of EPA's Superfund Program. "We need to be able to assure the public that we have taken the appropriate steps to prepare all vulnerable sites for possible Y2K problems and are ready to respond in case of an environmental emergency," said Luftig.

A Superfund Y2K Steering Committee was formed to look at remedial and removal sites where there may be potential computer and equipment problems. The steering committee identified five basic steps the regions need to take to ensure that Superfund sites are Y2K prepared:

1. Notify PRPs of their responsibility to check sites.
2. Screen all fund-lead sites (O&M and Long-term Response Action sites).
3. Screen all other sites for potential problems (non-NPL removal sites, state-lead, federal facilities).
4. Use CERCLIS database to track sites that have been Y2K prepared.
5. Notify communities that sites in their area have been Y2K prepared.

The removal program is also taking steps to prepare for emergency response situations as a result of Y2K system failures. "One of the most critical elements during a Y2K response will be the reliability of our communication devices and response equipment," said Luftig. "We are asking the regions to check satellite phone systems and beepers for Y2K problems. The removal program is also developing an inventory of Y2K-prepared equipment they may need during an emergency response."

Communicating Y2K information to the public is also critical. Communities may want to know if the Superfund site in their town is Y2K prepared. Fact sheets about Y2K will be used to inform citizens of the status of Superfund sites. "We also need to pay special attention to those citizens who rely on alternate drinking water supplies as a result of a past Superfund removal or cleanup action," said Luftig.

"It's our goal to have all of these checks in place this summer," said Luftig. "We've done a good job identifying potential problems and response capability. We have also done a good job putting a lot of Y2K information on the Internet for the public to access. We certainly hope that all our preparations are not put to the test in the year 2000 but we're preparing in case they are."

For more information about Y2K preparedness in Superfund, please visit EPA's Y2K home page at *http://www epa.gov/year2000* or contact Helen DuTeau at (703) 603-8761.

For Y2K stories, articles, and ideas, check out OSW's new Web site: *www.epa.gov/epaoswer/osw/y2k/stories.htm*

Enforcement Y2K Policy

What happens if your Y2K computer testing results in environmental violations? Not to worry. EPA will waive civil penalties and recommend against criminal prosecution for any environmental violations caused during specific tests that are designed to identify and eliminate Y2K-related malfunctions. This policy is limited to testing-related violations disclosed to EPA by February 1, 2000, that also meet nine criteria (e.g., systematic design of testing protocols, conducting the tests for the shortest possible period of time necessary, correcting any testing-related violations immediately, and other conditions to ensure that protection of human health and the environment is not compromised). Regulated facilities that wish to test in advance of the Y2K dates are encouraged first to utilize any existing regulatory or permit procedures that would allow for timely and effective testing (e.g., RCRA trial burn testing of hazardous waste; R&D permits.

EPA's policy applies not only to the year 2000 problems but other related computer date problems, such as 9/9/99 (which may be interpreted by some computers as the end of a file or infinity). For more information, consult the full policy on the Web at *http://www.epa.gov/year2000.*

Superfund Reforms

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Here is a rundown of the report's findings.

Greater PRP Involvement

EPA has seen an increase in PRP involvement since implementing key fairness reforms. Prior to developing initiatives such as orphan share compensation and special accounts, EPA ordered PRPs to conduct remedial cleanup work in approximately 50 percent of all cases. Since the reforms, PRPs have agreed (in consent decrees) to conduct cleanup approximately 66 percent of the time; EPA has had to order cleanup only 34 percent of the time (through unilateral administrative orders).

Orphan Share

Through the orphan share reform, EPA shares the cost burden of the orphan share with settling PRPs at every eligible site. Through FY98, EPA offered approximately $145 million in orphan share compensation at 72 sites. Many of the offers made in FY98 were in the context of cost recovery negotiations, as EPA has expanded this reform to include these cases. These numbers demonstrate EPA's commitment to achieving greater fairness even where this commitment may result in a significant reduction of the amounts ultimately returned to the Fund.

Remedy Reform Saves Over $1 Billion

Several reforms were aimed at reviewing proposed high cost remedies and updating them with the most current science and technology. Since 1995, streamlining and improving the remedy selection process has saved over $1 billion in estimated cleanup costs for PRPs and the Superfund program. A National Remedy Review Board (NRRB) was created in January 1996 as a peer review group of EPA managers and technical experts who understand both the EPA regional and headquarters perspectives in the remedy selection process. NRRB reviews alone have reduced total estimated cleanup costs by more than $43 million at 33 high-cost remedies. As of October 1998, EPA and DOE have agreed that the Board will review all DOE non-time-critical removal actions estimated to cost over $30 million.

The Updating Remedy Decisions reform (see box) is one of EPA's most successful reforms, based on its frequent use and the amount of money saved. This reform encourages Regions to revisit selected remedy decisions at sites where significant new scientific information, technological advancements, or other considerations suggest an alternative remedy will protect human health and the environment while enhancing the cost effectiveness of the cleanup. From FY96 through FY98, EPA and other parties updated over 200 remedies and generated estimated future cost savings of over $1 billion. Only eight remedy updates generated cost increases (estimated at approximately $65 million). The average cost of cleanup construction has dropped by almost $4 million per project — a decline of over 20 percent — over the past four years.

In three years, EPA and other parties updated over 200 remedies and generated future cost savings estimated at over $1 billion.

Revitalizing the Land

A high priority is the reuse of formerly contaminated properties, which often gives an economic boost to depressed areas. EPA has developed a number of

Updating Remedies

- **Auburn Road Landfill,MA.** New performance data provided the necessary information to update the selected remedy at the Auburn Road Landfill. Two years of monitoring and modeling performance data from the site showed that the original pump and treat remedy successfully brought volatile organic compounds below the cleanup levels in most areas. Updating the remedy to monitored natural attenuation saved an estimated $12 million.
- **Allied Chemical/Ironton Coke Site, Lawrence County, OH.** The PRP at the site proposed the alternative remedy after data collected during the engineering design phase showed that contamination levels in the soils were not as high as previously thought. The revised remedy will replace in-situ bioremediation of over 450,000 cubic yards of soil with hot spot excavation and wetland development, and replace incineration of other lagoon materials with recycling, treatment, and/or disposal of waste materials in an approved off-site hazardous waste facility, with some remaining soils used as an alternative fuel mixture. The new remedy will save approximately $50 million while still achieving cleanup levels that are protective of human health and the environment, and the constructed wetland will create a valuable ecological habitat for the community.

different strategies to enable contaminated sites to be considered for redevelopment. They include the Brownfield Pilot Projects for non-Superfund contaminated sites, which play a major role in encouraging the redevelopment of potentially contaminated property; altering the inventory and listing status of sites in EPA's CERCLIS database to remove associated threats of Superfund liability; and use of EPA's enforcement discretion to remove liability barriers that might impede site reuse (through prospective purchaser agreements and comfort/status letters). To date, EPA has removed over 30,000 sites from CERCLIS and awarded 227 Brownfield Pilot grants. Another 16 "showcase communities" will receive up to $1 million in grants and other aid to support brownfield redevelopment.

Comfort Letter Success Stories

- **Woburn,MA.** A property owner adjacent to the Industri-Plex Superfund Site was receiving offers of less than half his asking price for his property due to potential ground water contamination. After EPA issued a comfort letter to the property owner, he received the amount he was asking.
- **Glendale, CA.** Dreamworks, the film studio founded by Steven Spielberg, showed interest in buying a large parcel of land on which to build sound stages. However, the land included a portion of the San Fernando Valley Superfund Site, a contaminated aquifer subject to EPA cleanup activities. EPA's comfort letter was able to address Dreamworks' concern over potential Superfund liability.

"EPA has demonstrated a steadfast commitment to reducing the anxiety of real estate investors interested in properties where contamination, or the threat of contamination, is present. Through a concerted series of EPA Superfund Administrative Reforms and associated Clinton Administration policy initiatives, a remarkable number of previously abandoned or underutilized properties are now being returned to productive use."

—Lawrence Jacobson, Director, Commercial Real Estate Finance, Mortgage Bankers Association of America

Getting the Little Guy Out

Since initiating the reforms program in 1993, EPA has removed thousands of small waste contributors from the Superfund liability scheme. Recognizing that third-party litigation can inordinately burden small parties, EPA has used its settlement authority to get small waste contributors out of Superfund litigation. This effort decreases transaction costs while increasing fairness and resolution speed. Through FY98, the government has completed settlements with over 18,000 small volume contributors (two-thirds since the *de minimis* reform was announced) at hundreds of Superfund sites.

EPA has also sought to protect *de micromis* contributors through policies that double previous eligibility cutoffs in an effort to discourage third party litigation against de micromis parties. For such small parties, the cost of legal and other representation services may actually exceed the party's settlement share of response costs. If private parties do threaten suit against these very small contributors, EPA enters into settlements providing contribution protection. By publicly offering parties a zero dollar settlement, EPA has deterred big polluters from dragging de micromis contributors into litigation. The real success of this method is measured by the untold number of potential lawsuits that the Agency has discouraged. The low number of sites using *de micromis* settlements (9 sites through FY98) illustrates how EPA's 1993 and 1996 *de micromis* policies have successfully deterred PRPs from pursuing small parties.

Community Involvement

EPA believes that communities must have meaningful opportunities for involvement early in the cleanup process and should stay involved throughout site cleanup. Initiatives such as Community Advisory Groups (CAGs), Technical Assistance Grants (TAGs), and job training programs are just a few of the ways that EPA is supporting this endeavor. In FY98, 14 new CAGs were created, bringing the total to 47. The CAG concept has been so successful that other EPA programs have adopted this approach. EPA released two versions of a Community Advisory Group Toolkit during FY98 to help communities set up and maintain a CAG.

Stakeholder feedback indicates that EPA's Superfund Reforms have already addressed the main areas of the program that needed improvement. EPA remains committed to fully implementing the reforms, refining or improving them where necessary, and broadening their impact by effectively communicating the scope, goal, and success of each initiative. As EPA evaluates each reform, it will continue to incorporate the most successful ideas into the entire Superfund program.

Copies of the Superfund Reforms Annual Report FY 1998 may be downloaded from the new **Superfund Reforms Web site** at *http://www.epa.gov/superfund/programs/reforms/index.htm*.

Fairmont Coke Works Site: Superfund XL Project Moves Forward

On March 30, 1999, EPA signed on to a final agreement on conducting a Project XL at the Fairmont Coke Works site in West Virginia. Participating in the project are: Exxon Corporation, as the project sponsor, EPA Region 3, West Virginia's Division of Environmental Protection, and the Fairmont Community Liaison Panel. A signing ceremony is scheduled for May 24, 1999.

The Fairmont site is approximately 50 acres in size, located along the Interstate-79 corridor, and has been listed on the NPL since December 1996. Exxon had agreed to conduct a remedial investigation and feasibility study, and risk assessment at the site, but will now conduct an engineering evaluation and cost analysis instead.

Under the agreement, Exxon is committing to:

- Without a prior finding of environmental risk, demolish and properly dispose of all onsite buildings and structures for the aesthetic value to the community as well as to facilitate redevelopment of the property;
- Attract interested developers for reuse of the property to facilitate the transfer of site ownership;
- Help demonstrate that early consideration of future beneficial uses is a desirable and practical aspect of a Superfund remedial response and may assist in raising the economic health of the local community;
- Ensure early local government involvement in the XL project to provide for future land use planning activities and the identification of potential land use determinations; and
- Support the dedication and partnering of the parties and stakeholders involved in the cleanup and as a result of the project (as well as programmatic remediation mechanisms) achieve a faster, more efficient cleanup of the site.

The agreement will be published in the *Federal Register* with a 30-day public comment period. For more information, contact Ben Lammie, EPA/OSRE, 202-564-7126.

Overview of the Fairmont Coke Works site.

New Technology Publications

The following publications of EPA's Technology Innovation Office can be downloaded from the Web site at (http://clu-in.org) or ordered free of charge from NSCEP, U.S. EPA, P.O. Box 42419, Cincinnatti, OH 45242, tel: (513) 489-8190 or (800) 490-9198, or online from *www. epa.gov /ncepihom/order-pub.html.*

Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water. Provides guidance for environmental managers on the steps that must be taken to understand the rate and extent to which natural processes are reducing contaminant concentrations at sites that are contaminated by chlorinated solvents. Data collected with this protocol can be used to evaluate natural attenuation through biological processes as part of a protective overall site remedy. The protocol is the result of a collaborative field and laboratory research effort involving researchers from U.S. EPA/ORD, the U. S. Air Force, and the U.S. Geological Survey. Order #EPA 600-R-98-128.

Field Applications of In Situ Remediation Technologies: Ground-Water Circulation Wells. This report is one in a series that document recent pilot demonstrations and full-scale applications that either treat soil and ground water in situ or increase the solubility and mobility of contaminants to improve their removal by other remediation technologies. It is hoped that this information will allow more regular consideration of new, less costly, and more effective technologies to address the problems associated with hazardous waste sites and petroleum contamination. Order #EPA 542-R-98-009.

A Civil Action

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They include: *http://wwwmovies. com/civilaction* (Touchstone Pictures); *www. civil-action.com* (W.R. Grace); *www2. shore.net/~dkennedy/woburn.html* (Daniel Kennedy, a Woburn reporter); and *http//www.geology.ohiostate.edu/court room* (a course by Dr. E. Scott Bair, Ohio State University, leading to a mock trial). For information from EPA, contact the Superfund Hotline at 800-553-7672.

Each issue of ***Cleanup News*** *highlights one of the participating offices*

CEPPO *"The Chemical Safety Continuum"*

According to EPA, more than 402,000 chemical accidents have happened in the last 12 years in the United States. These accidents resulted in nearly 4,000 deaths, 25,300 injuries, and 1,400 evacuations affecting 147,000 individuals. Eighty percent of these accidents occurred at industrial and commercial facilities that store, hold, mix, blend (or otherwise use) chemicals.

Facilities that use chemicals can have catastrophic accidents. They also provide products and services that are vital to our economy. EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) seeks to balance these factors by ensuring that facilities are doing all they can to thoroughly understand the chemical and process hazards at a facility, make sure all the elements necessary to operate a facility work together on a daily basis (i.e., process safety management), prepare to quickly minimize the consequences of accidents that do occur, and communicate this information to workers, the public and first responders.

How does EPA ensure that communities and facilities are doing all they can to prepare for — and prevent — catastrophic chemical accidents? How do we ensure that companies are looking at their activities as a safety continuum? We do it by working with our partners in state and local government, private industry and the community to implement the following collection of integrated chemical safety activities:

- **EPCRA.** The Emergency Planning and Community Right-to-Know Act is the first stop on the safety continuum. EPCRA created State Emergency Response Commissions and Local Emergency Planning Committees, and requires them along with facilities and communities to plan for chemical emergencies. The Risk Management Program will further the continuum by focusing on prevention of accidents in the first place.
- **Risk Management Program.** EPA will require approximately 50,000 facilities to provide important catastrophic accident prevention data to the public beginning June 21, 1999. The new information will help facilities identify and control on-site hazards through: hazard assessments, including worst-case release and alternative release scenarios; accident prevention activities, such as use of special safety equipment and employee training programs; a five-year accident history; and facility emergency response programs and plans. The information will allow community members to see how local facilities are working on a daily basis to prevent accidents.
- **Chemical Safety Audits.** The primary objective of the voluntary CSA program has been to promote hazard identification and accident prevention at facilities handling hazardous substances. The audits results — which evaluate chemical process safety management practices and technologies — are available to the public. The CSA program has succeeded by encouraging businesses to apply their own best judgment to their operations and to share their audit experiences and recommendations with other industry partners.
- **Accident Investigations.** CEPPO's accident investigators use existing EPA authorities to determine root causes of major accidents and then to issue "lessons learned" alerts for the chemical industry, or to consider new regulation.
- **General Duty Clause.** This clause makes all owners and operators of facilities that have extremely hazardous substances responsible for ensuring that their chemicals are managed safely. Facilities subject to GDC are required to: 1) identify hazards which may result in chemical releases; 2) design and maintain a safe facility; 3) take necessary steps to prevent releases; and 4) minimize the consequences of releases that do occur.

For more information, contact Julie Vanden Bosch, 202-260-7952.

EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) provides leadership, builds partnerships, and offers technical assistance to:

1. **prevent and prepare for chemical emergencies;**
2. **respond to environmental crises;**
3. **inform the public about chemical hazards in their communities; and**
4. **investigate chemical accidents.**

Homestake Mining

In United States v. Homestake Mining Company of California, Civ. 90-5101, (W.D.S.D. Feb. 19, 1999), the Court upheld EPA's final dispute decision to conduct an ecological risk assessment as part of its five-year review for the Whitewood Creek Superfund Site, and ordered modification of the consent decree to permit a limited assessment to address existing data gaps.

Whitewood Creek was deleted from the NPL in November 1995, and the consent decree was terminated in January 1996. The following January, Homestake prepared a five year review report and status report on the site and sent it to EPA. In September 1997, EPA requested that Homestake conduct an ecological risk assessment as part of the five-year review for the site. Homestake argued that EPA's request to conduct the assessment was outside the scope of the Record of Decision and consent decree.

After an informal period of dispute resolution, EPA, concerned about delays, withdrew its request that Homestake conduct the assessment and decided to proceed on its own. Homestake then filed a motion with the U.S. District Court for the District of South Dakota to enforce the terms of the consent decree or to modify that decree. The court first determined that a dispute existed under the terms of the consent decree and in a subsequent ruling, sent the issue back to the EPA for a final administrative decision.

In November 1998, EPA issued a Final Dispute Decision in accordance with the terms of the dispute resolution provision of the consent decree. EPA determined an ecological risk assessment was necessary because: (1) data gaps existed in the original assessment conducted for the site; (2) a large amount of contaminated tailings remained on-site; (3) the state and federal trustees were concerned about the need for an assessment: and (4) recent EPA guidance, which emphasizes site-specific considerations as a basis for further study of environmental conditions at a site, supported doing an ecological risk assessment here.

The court held that EPA's Final Dispute Decision was not arbitrary and capricious. It noted that neither the language of the consent decree nor the statement of work limited EPA's ability to perform further studies, including an ecological risk assessment, at the site. The court explained further, however, that it was going to grant Homestake's motion to modify the decree because EPA's finding that the original assessment was insufficient constituted a significant change in factual conditions such that a modification of the consent decree was necessary.

Nevertheless, the court held that "EPA has every right to conduct tests at the Site as part of the five-year review to ascertain the efficacy of the remedy chosen." It determined that EPA could conduct a limited study to fill in the data gaps of the original assessment. It also held that Homestake should either conduct the limited assessment or compensate EPA for reasonable costs. Finally, the court noted the modification did not limit Homestake's responsibility to address the findings of a the assessment or findings of other activities required under the five-year review.

For more information, contact Ben Lammie at 202-564-7126 or Richard Sisk at 303-312-6638.

NEJAC Subcommittee Holds Fact-finding Tour of Waste Transfer Stations

On February 16-17, 1999, the Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) hosted a two-day fact-finding tour and forum on Waste Transfer Stations in the District of Columbia (Region 3). This was the second such effort; a similar session was held in New York City (Region 2) in November. The meetings' purpose was to gather information from every level of stakeholder on the impact of transfer stations on the communities surrounding them. The subcommittee is preparing a report to NEJAC with recommendations for EPA as it develops national policy and guidance. Contact: Brenda M. Williams-Robinson, 202-564-4291.

$13 Million Settlement in Bayou Bonfouca Case, Slidell, LA.

In February, the U.S. and State of Louisiana settled a CERCLA Section 107 cost recovery litigation for $13 million against Alabama Great Southern Railroad Company in Region 6 (United States v. Braselman Corporation, et al., C.A. No. 96-0872). The court had found AGS liable as an owner (lessee) for the period 1882 to 1886, and as an owner of the tracks which were found to be CERCLA facilities from 1902 to 1972. Trial was scheduled to begin on February 23, 1999, to determine whether AGS was jointly and severally liable. The settlement occurred following intense negotiations supervised by U.S. Magistrate Judge Alma Chasez. The terms of the settlement will now be incorporated in a consent decree, which the parties have agreed will be based upon EPA 's model CERCLA consent decree.

ADR Closes the Deal at the Helen Kramer Landfill

Alternative dispute resolution was a useful tool in facilitating a settlement among the defendants at the Helen Kramer Landfill Superfund Site in Mantua County, New Jersey. The litigation was complex and contentious, but after the mediators became involved, the settlement talks were able to encompass a wider group of defendants.

A remedy at the site was performed by EPA through an interagency agreement with the Army Corps of Engineers. It involved capping over 80 acres of landfill, encircling the landfill with an impervious slurry wall about one and a half miles long, and installing gas and leachate collection and treatment systems. The cost of the work was estimated at $80 million. Study, design, and enforcement costs increased the United States' claim by an additional $15 million, plus enforcement costs and prejudgment interest of $29 million.

Cost recovery litigation was originally referred to the Department of Justice in 1989. However, the judge stayed the litigation for four years to allow approximately 250 direct and third-party defendants to perform an allocation of liability to facilitate a settlement. When the final allocation report was rejected by the participants after four years of work, EPA and the Department of Justice litigated the liability phase of the case vigorously to move it toward resolution, whether by adjudication or, as eventually happened, by settlement.

Active and zealous litigation by the government resulted in favorable rulings by the court which induced the defendants to begin serious settlement negotiations in 1997. A key court ruling in 1998 related to the statute of limitations allowed the United States to sue additional defendants. Agreeing with the United States arguments, the Court held that the United States' amendment of its complaint within three years of completion of remedial action was a "subsequent action" not barred by the statute of limitations. That decision brought several recalcitrant defendants with large allocated shares into the settlement process.

ADR was effective in helping the parties overcome substantial roadblocks to settlement, in a way that supported them in their efforts

Enter ADR

Notwithstanding their renewed interest in settling the case as the tide of litigation began to run against them, the defendants remained incapable of agreeing among themselves as to how much each should pay. At that point, EPA offered ADR to break the logjam, providing funding for a "convener." The efforts of the convener enabled a large group of defendants to set their priorities and to retain two experienced mediators. ADR proved crucial. The lead attorney for the defendants was so impressed by EPA's convener that he wrote a letter of appreciation to EPA's Administrator. The mediators were actively involved in the case and were instrumental in bringing various factions into the settlement. They had to find ways to get the defendants to deal with a large orphan share, *de minimis* parties, defunct companies, insurance companies, and 44 municipalities, including the City of Philadelphia. ADR facilitated the $95 million (plus interest) settlement that included all the United States' viable defendants and 220 third-party defendants, including all 44 municipalities.

The final settlement, entered by the Court on September 3, 1998, represents the recovery of approximately 100% of actual, out-of-pocket costs and about 80% of EPA's response costs, indirect costs, and interest of $28 million. In addition, a separate settlement of natural resources damage claims will protect 151 acres of wetlands to replace those lost at the site. In addition, the State of New Jersey will not have to perform long-term operation and maintenance for the next 26 years.

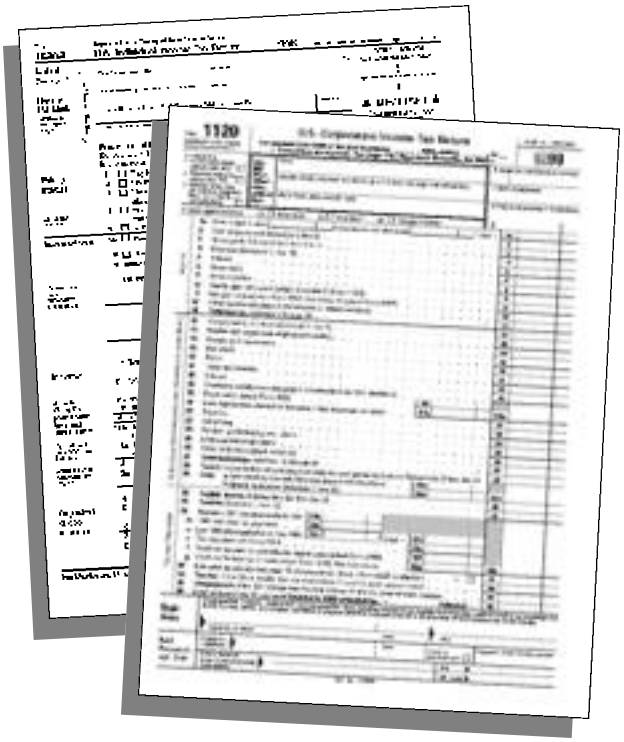
"ADR was effective in helping the parties overcome the substantial roadblocks to settlement, in a way that supported them in their efforts," noted David Batson, EPA's ADR Coordinator. "It was also a very innovative situation, in that Judge Simandle, to his credit, brought in and supported the use of ADR. Through the convening process, he gave the parties the time to explore how to appropriately use ADR in the case, and then gave them the time and flexibility to design an effective ADR process."

Brownfield Cleanups Sweetened by the Tax Code

by Karl Alvarez & Becky Brooks

EPA's efforts toward redeveloping lands which are abandoned, idle, or underutilized because of real or perceived contamination have received support from a very unlikely source: the U.S. tax code. Well, perhaps it's not so unlikely. The tax code can offer financial incentives on a scale which defies all other sources. Section 198 of the tax code seeks to bring thousands of brownfields properties back into productive use.

Current environmental liability can serve as a disincentive to redevelopment of a former industrial site; less uncertainty exists on suburban or rural greenfields. With high density in the urban core and existing infrastructure (roads, sewers, schools, mass transit), property values and taxes are usually higher in our inner cities. Demolition or restoration of existing buildings and structures is often more expensive than new construction. The bottom line: all of these trends serve as incentives to abandon the city core in favor of less developed suburban areas outside of town.



In an effort to minimize such trends and encourage brownfields redevelopment, on August 5, 1997, President Clinton signed into law the Taxpayer Relief Act of 1997, which included the Brownfields Tax Incentive provisions. The changes to the tax code are designed to "level the playing field" for brownfields properties. The brownfields incentive allows taxpayers to deduct from their net income the costs of certain cleanup activities in targeted areas in the year incurred. Four eligibility criteria focus the incentive's impact on lower income, urban, commercial/industrial areas. Eligible property must fall into at least one of the following four categories:

1. Census tracts with a poverty rate of 20% or more.
2. Census tracts with populations of less than 2,000 people which are more than 75% zoned commercial/industrial and adjacent to a census tract with a poverty rate of 20% or more.
3. All federally designated Empowerment Zones or Enterprise Communities.
4. EPA Brownfields Pilot sites designated prior to February 1997.

To assist taxpayers in determining the eligibility of their specific property, EPA has developed a fact sheet which details all available sources of criteria information. This fact sheet can be found, along with a series of additional tax incentive information, on the Brownfields home page at *http://www.epa.gov/brownfields*.

On March 5, 1999, OSWER's Outreach and Special Projects Staff, which is responsible for implementing the Brownfields program, hosted a National Brownfields Tax Incentive Roundtable in Chicago, IL, to hear from brownfields stakeholders on the incentive. Bankers, lawyers, community activists, developers, accountants, insurers, engineers, analysts, and public officials from federal, state, and local governments began a dialogue on strategies to educate taxpayers on the incentive, increase use of the incentive, and strengthen the incentive based on market and business needs. A summary of the Roundtable proceedings and tools for educating taxpayers and stakeholders will soon be available on the Brownfields home page.

The Brownfields Tax Incentive is an additional tool in local efforts to marshal funding for revitalization and redevelopment efforts. We recognize that the incentive will not create redevelopment of brownfields, but at least it can help "sweeten" a potential real estate redevelopment project.

Karl Alvarez & Becky Brooks work on the Outreach and Special Projects Staff of the Office of Solid Waste and Emergency Response.

1999 National Notable Achievements Awarded

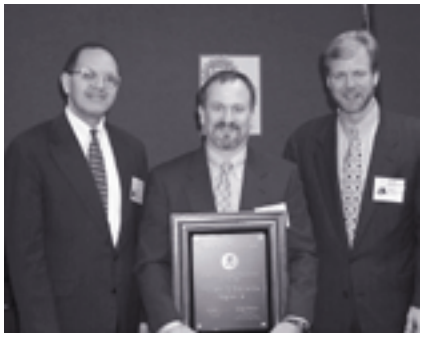
On April 15, EPA awarded the 1999 National Notable Achievement Awards to outstanding perfomers in the Superfund, RCRA Corrective Action, and Superfund Enforcement programs.

Superfund Enforcement winners included the all-star cast of the **Helen Kramer Landfill in EPA Region 2:** Kathleen Abdus-Salaam, David Batson, Lawrence Granite, Delmar Karlen, Beverly Kolenberg, and Deborah Schwenk, with assistance from Department of Justice staff John Joseph, Francis Lyons, and Deborah Reyher, and John Poserina from Army Corps of Engineers. (See story on page 9.)

In the category of Technical Enforcer, the award went to **Leo J. Mullin** who has been involved in some of the largest, most complicated, and most publicly prominent sites in Region 3, including the Keystone Sanitation Site and Palmerton Zinc Pile Superfund Site. Leo has been a leader in implementing Superfund administrative reforms, often in a creative manner. In the Keystone case, Leo was able to share his analysis of a PRP's financial condition with other PRPs, thereby convincing them that the ability-to-pay settlement represented a fair payment based on limited financial resources.

The Legal Enforcer winner was **Peter M. Felitti** of Region 5 for handling an almost superhuman workload and achieving superlative results. Peter's work at Superfund sites has incorporated as many administrative reforms as possible, in an effort to accelerate work at sites, allay community frustration, eliminate transaction costs for peripheral parties, and expeditiously recover Superfund monies.

In addition to handling six Superfund cases, Peter led a TSCA initiative that resulted in the filing of over 60 administrative penalty actions, filed a multi-media complaint at the LTV Steel site, negotiated two administrative orders for air violations by General Motors, and negotiated administrative settlements in both an EPCRA and RCRA matter.



Superfund On-Scene Coordinator of the Year: Bill Steuteville, Region 3, flanked by Tim Fields, Acting Assistant Administrator for OSWER, and Peter Robertson, Acting Deputy Administrator of EPA.

William Steuteville, Region 3, received the 1998 On-Scene Coordinator award for his remarkable control over complex cleanup and community issues during two removal actions in 1998 at the Diamond Salvage site in Wilmington, DE, and the Unattributed Residential Lead site in Portsmouth, VA. These complex sites required high profile removal actions and concerned multiple environmental justice issues. Ensuring open communication and quickly determining the source of contamination, Bill won the trust of the Mayors' offices, City Council, community groups, and residents in Wilmington and Portsmouth.

Remedial Project Manager of the Year was **Robert L. Stites,** Region 8 for his outstanding efforts at the Hill Air Force Base in Ogden, Utah, and Warren Air Force Base in Wyoming. Recipients of the Outstanding Administrative Innovation Award (RCRA CA) included **Carl Warren,** Region 9, who turned a complex cleanup assignment at the Chevron refinery site in Hawaii into a resounding success. Working in partnership, Chevron, EPA, and the State of Hawaii moved from diagnosis to remedy in just three years — several years faster than at comparable sites — which saved Chevron $7-10 million. Word of the partnership's collaborative efforts has spread through the regional industry and another Hawaii refinery has inquired about doing a similar voluntary corrective action.

Congratulations to the other EPA award winners as well:

RCRA

Stakeholder Involvement: Stephanie Carr, Region 1

Leader/Mentor of the Year: Maureen Essenthier, Region 3

Administrative Innovation: Estena McGhee, Region 3 (joint)

Teams of the Year: Safety Kleen Chester Remediation Team, Region 3, and RCRA Amoco-Casper CA Team, Region 8

Environmental Indicator: Lael Butler, Region 4

Technical Innovation: Carol Ann Witt-Smith, Region 5

Friend of the State: Ray Saracino, Region 9

SUPERFUND

Site Assessment Manager: Dennis Munhall, Region 2

Grants/Contracts: Carol Hemington, Region 2

Teams: Tar Creek, Eagle Picher, Region 6

Community Involvement Coordinator: Diana Hammer, Region 8

Lead/Mentor: Laura Williams, Region 8

announcements

Upcoming Internal EPA Meetings

Contact: Bob Cianciarulo, 617-918-1330 or cianciarulo.bob@epa.gov.

June 22-24

Superfund Focus Forum
Albuquerque, NM

July 20-22

Brownfields Coordinators
Boston, MA

July 27-29

National Superfund Policy Managers
Kansas City, MO

August 17-19

Wildlife Applications to Remediation Decision-Making
Denver, CO
Sponsors:NIEHS, Texas Tech University, ATSDR, US Air Force,EPA Region 8, DOE. Focus on wildlife exposure and effects, and their role in remediation prioritization success criteria. Contact: Ellen H. Roots, Institute of Environmental and Human Health, 806-885-4549 x230,http://www.iehh.ttu.edu/wildlife.

Sept. 13-15

Industrial Site Recycling Conference
Pittsburgh, PA
Sponsors:EPA, PA Dept. Env. Protection, Society of Western PA.Contact: Engineering Society of Western PA,412-261-0710,http://www.eswp.com.

Glossary

ADR	Alternative Dispute Resolution	**NPL**	National Priorities List (Superfund)
CERCLA	Comprehensive Emergency Response, Compensation, and Liability Act (Superfund law)	**OSRE**	Office of Site Remediation Enforcement (EPA)
		PRP	Potentially Responsible Party
DOE	Department of Energy	**RCRA**	Resource Conservation and Recovery Act (hazardous waste)
DOJ	Department of Justice		
EPCRA	Emergency Planning and Community Right-To-Know Act of 1986	**SEP**	Supplemental Environmental Project

cleanupnews

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