



# cleanup news

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CleanupNews is a quarterly newsletter highlighting hazardous waste cleanup cases, policies, settlements and technologies.

## Leavitt Nominated for Health and Human Services Post



WHITE HOUSE PHOTO BY ERIC DRAPER

*President George W. Bush looks on as Administrator Leavitt speaks during the nomination announcement.*

President George W. Bush has selected EPA Administrator Michael Leavitt for Secretary of the Department of Health and Human Services, a post previously held by Tommy Thompson who resigned December 3. During the December 13 announcement at the White House, the President thanked Leavitt for his service to EPA and said that while leading EPA Leavitt "enforced high standards and a spirit of cooperation and with good common sense."

Leavitt said that he felt "understandable regret" in leaving EPA and described the agency as "filled with dedicated people whom I have come to have great affection for." Leavitt has served as EPA Administrator since November 2003. During his tenure, EPA finalized

two significant Superfund settlements, a consent decree for the Fox River cleanup worth \$60 million and a \$40 million settlement for the groundwater cleanup at San Gabriel Valley. Leavitt also announced a record \$75 million in Brownfields grants; unveiled the Clean Air Rules of 2004; and oversaw the development of the Great Lakes Regional Collaboration, a collective of agencies dedicated to restoring the Great Lakes through an executive order.

Senate confirmation hearings are scheduled for mid-January. Deputy Administrator Stephen Johnson will serve as Acting EPA Administrator pending Bush administration nomination and Senate confirmation of a replacement.

# Supreme Court Rules No Contribution Rights For Voluntary CERCLA Cleanups

By Clarence Featherston, Office of Site Remediation Enforcement

The Supreme Court ruled in Cooper Industries, Inc. v. Aviall Services, Inc. (No. 02-1192) on December 13, 2004. By a 7-2 majority, the Court held that a private party who has not been sued under CERCLA Sections 106 or 107 is not permitted to bring a contribution action under CERCLA Section 113(f)(1) against other potentially responsible parties (PRPs) for response costs. Petitioner Cooper Industries, Inc., supported by an amicus brief filed by the United States, asked the Supreme Court to reverse an *en banc* decision by the United States Court of Appeals for the Fifth Circuit that CERCLA Section 113(f)(1) allows a PRP to conduct a "voluntary" cleanup and then seek contribution from other PRPs.

Congress amended CERCLA in 1986 to include Section 113(f)(1), which provides an express cause of action for contribution. Section 113(f)(1) states that any person may seek contribution from any other person who is liable or potentially liable under CERCLA Section 107 during or following any civil action under Section 106 or Section 107 of CERCLA. The last sentence of CERCLA Section 113(f)(1) states that, "[n]othing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under Section 9606 of this title or Section 9607 of this title."

Justice Thomas, writing the majority opinion, found that the natural meaning of Section 113(f)(1) is that

persons may only seek contribution subject to specified conditions, i.e., "during or following" a civil action under Section 106 or Section 107. The Court held a different reading would render the "during or following" language superfluous and eliminate the need for contribution rights for settlements un-

*The Court ruled 7-2 that private parties who have not been sued under CERCLA cannot bring contribution actions against other PRPs.*

der CERCLA Section 113(f)(3)(B).

The Court stated that the last sentence of CERCLA Section 113(f)(1) did not change the precondition for a civil action. Rather, the Court held the sole function of the savings clause is to ac-

knowledge that any other rights to contribution that may exist are not "diminished." The Court also explicitly affirmed that CERCLA created a separate right of contribution under Section 113(f)(3)(B) for a PRP who has resolved its liability to the United States or a State in a judicial or administrative settlement. The majority opinion did not address the question of whether a unilateral administrative order (UAO) under CERCLA Section 106 is a "civil action" that would trigger contribution rights. However, the United States' amicus brief filed in this case states that the position of the United States is that a UAO does not grant contribution rights. The Court left open the possibility that

*continued on page 5*

## Head of Region 2 Resigns

EPA Region 2 Administrator Jane Kenny resigned effective November 26, 2004. Kathleen Callahan, who has worked with EPA since 1971 and served as Deputy Regional Administrator under Kenny, is serving as Acting Regional Administrator. Prior to her selection as deputy last year, Callahan helped direct EPA's response to the World Trade Center attacks, and she was appointed Assistant Regional Administrator for New York City Response and Recovery Programs in May 2002. As Acting Administrator, Callahan will be oversee a \$750 million annual budget and manage 1,000 Regional employees.

Callahan's biography is available online at: <http://www.epa.gov/region2/rabio.htm>.

# Small Contributors Resolve Beede Waste Oil Liability

**E**PA and the New Hampshire Department of Environmental Services (NH DES) announced a settlement with 276 parties to the Beede Waste Oil Superfund site in Plaistow, New Hampshire on December 6, 2004. This is the fourth settlement with *de minimis* parties (i.e., parties that contributed minimal amounts of hazardous waste at the site compared to other parties) and will provide \$10.7 million for the cleanup. EPA has collected about \$17 million in four settlements with 1,199 parties, and the monies raised are being held in a site-specific Superfund special account for application to costs associated with cleaning up the Beede site. To date, EPA and NH DES have spent \$22 million on site investigation and cleanup.

This settlement represents another EPA success with targeting small contributors first and working to make Superfund a simpler, more helpful process. Using this “bottom up” enforcement strategy, EPA ensures that parties will provide funds for the cleanup. Also, by offering small contributors early settlements, EPA saves litigation costs and focuses resources on pursuing major parties to site contamination. Small con-

*Targeting small contributors first ensures EPA will have funds for the cleanup.*



*The on-site oil recovery system, which has been in operation since February 2000, has removed over 85,000 gallons from the site.*

tributors benefit from early settlements because they are able to quickly resolve their liability and avoid lengthy and costly litigation.

From the 1920s to 1994, the 40-acre site was used for a variety of oil-related activities, including waste oil processing and resale. In 1995, groundwater sampling identified volatile organic compounds in on-site monitoring wells and two private residential wells. Additional testing found unhealthy levels of several contaminants, including PCBs, in groundwater and soils, and the site was added to the National Priorities List in 1996. In 1996

and 1997, EPA and NH DES removed approximately 100 above-ground storage tanks and 800 drums. The January 2004 Record of Decision calls for soil removal and disposal, a soil vapor extraction system, long-term monitoring, and institutional controls. The remedy allows for future redevelopment of the site for residential or recreational use.

Additional information about Beede Waste Oil Superfund site and the settlements is available online at: <http://www.epa.gov/ne/superfund/sites/beede/index.htm>.

*For additional information, contact Cynthia Lewis, EPA Region 1, [lewis.cindy@epa.gov](mailto:lewis.cindy@epa.gov).*

## Agreement Signed for Tri-Cities Barrel

**O**n November 26, 2004, the EPA Region 2 Regional Administrator signed a consent decree (CD) with Alcan Aluminum Corporation for the Tri-Cities Barrel Superfund site in Broome County, New York. Under the CD, Alcan has

agreed to reimburse EPA up to \$1.4 million for its past and future response costs and to pay a \$360 thousand penalty for violating a CERCLA cleanup order.

Alcan was among a large number of potentially responsible parties (PRPs)

at the site. EPA initially entered into early *de minimis* settlements with 28 PRPs. Then, in an August 2001 consent decree, 43 additional parties agreed to implement the remedial de-

*continued on page 6*

# "Return to Use" Initiative to Spur Reuse

On November 10, 2004, EPA launched a new initiative—"Return to Use"—that encourages reuse and redevelopment of Superfund sites. Through "Return to Use" (RTU), EPA will review implemented site remedies for unnecessary barriers to reuse and determine if small modifications will enable communities to reuse properties while protecting human health and the environment. EPA wants to remove the stigma typically associated with former contaminated sites and spur commercial, ecological and recreational use of fenced, abandoned, and underutilized properties.

RTU focuses on the approximately 500 National Priorities List sites where remedies were implemented before the 1999 launch of the Superfund Redevelopment Initiative (SRI). Prior to SRI, remedy selection was focused primarily on removing immediate threats to human health and the environment and less on how the site would be used after cleanup.

With the introduction of SRI, EPA encouraged considering future site use when determining a remedy and ensuring that the remedy would

*"Return to Use" will encourage the reuse and redevelopment of Superfund sites.*

be consistent with anticipated or potential use. When reviewing sites where remedies were initiated before 1999, EPA will consider modifying restrictive fences or deed limitations that go beyond what is required for the site to remain protective, issuing Ready for Reuse (RfR) determinations, and eliminating misleading signs.

EPA has selected 11 demonstration projects for the initiative. One of the sites, HOD Landfill in Antioch, Illinois, is a former landfill where overly restrictive barriers and concerns about the site being a Superfund site were prevent-

ing reuse. EPA and stakeholders reviewed and updated the risk assessment, and EPA issued an Explanation of Significant Differences removing unnecessary parts of the remedy. EPA then issued an RfR determination assuring residents that the site can be used for recreation, and the former landfill is being turned into athletic fields for a high school adjacent to the site. The RfR determination for HOD Landfill was highlighted in *CleanupNews II - February 2004*, which is available online at: <http://www.epa.gov/Compliance/resources/newsletters/cleanup/cleanup15s.pdf>.

Additional information about the initiative, including a fact sheet and demonstration project descriptions, is available online at: <http://www.epa.gov/superfund/programs/recycle/rtu/index.htm>.

For additional information, contact Melissa Friedland, National Program Manager for Superfund Redevelopment, (703) 603-8864 or [friedland.melissa@epa.gov](mailto:friedland.melissa@epa.gov).

## Vacant Field to be Converted to Neighborhood Park

The Arlington Blending and Packaging site in Tennessee is one of 11 "Return to Use" demonstration projects. For seven years, the Arlington site was used for formulating and packaging pesticides, and spills led to soil and groundwater contamination. In 1996, 41,000 tons of contaminated soil were removed from the property. Over the past 10 years, vegetation has returned to the site.

Residents and community leaders had shied away from reusing the property because it had been a Superfund site. Through a "Ready for Reuse" determination and com-

fort letter, EPA assured the community that the property was safe to use for recreational purposes, and the city will be converting the land into a 2.3-acre neighborhood park. EPA has determined that the land can be used for this purpose without interfering with ongoing groundwater monitoring.

For additional information about the Arlington Blending and Packaging demonstration project, contact Derek Matory, Remedial Project Manager, [matory.derek@epa.gov](mailto:matory.derek@epa.gov).



*In a few months, the unused Arlington property will boast a playground, walking and biking trails, and a basketball court.*

# Agencies Respond to Oil Spill on Delaware River

On November 27, 2004, a vessel tanker heading for a Citgo facility in Paulsboro, New Jersey spilled approximately 30,000 gallons of crude oil into the Delaware River. The cause of the spill is still under investigation. The spill occurred as tugboats were assisting the *Athos I*, a 750-foot vessel with a Cyprus flag, to the Citgo facilities pier. *Athos I* listed 8 degrees to the left, and the engine cut off. The spill spread from just north of the Benjamin Franklin Bridge south to the Commodore Barry Bridge. A safety zone was established around the spill from the Tacony Palmyra Bridge to the Commodore Barry Bridge, and this section of the river was closed to all pleasure and commercial craft for approximately 24 hours after the spill occurred.

Many federal, state, and local agencies and contractor personnel came together to assist in cleanup of the spill

and protect wildlife including: EPA, the Pennsylvania Department of Environmental Protection, New Jersey Department of Environmental Protection, New Jersey State Police, the Coast Guard Marine Safety Office-Group, Delaware Department of Natural Resources, U.S.

**Responders have collected nearly 65,000 gallons of oil and oily liquid.**

Fish and Wildlife, National Oceanic and Atmospheric Administration, Tri-State Bird Res-

cue, and representatives from Citgo and the ship's owner. Thousands of feet of protective boom was laid out to help prevent the spread of crude oil to other areas of the river and wildlife habitat.

As of early January, responders have collected nearly 7,000 tons of oily solids, 65,000 gallons of oil and oily liquid, and 2,000 gallons of submerged oil. Also, 228 captured birds have been released. The cleanup effort will continue over the next several months.

Updates on the cleanup effort and the ongoing investigation into the cause of the spill are available online at:

<http://www.incidentinfo.com/external/index.cfm?cid=864>.

For additional information, contact the Joint Information Center, (267) 765-3441.

*Supreme Court, continued from page 2*

Aviall had a CERCLA Section 107 action and remanded the case for further proceedings on that issue consistent with its opinion.

In a dissenting opinion, Justice Ginsberg and Justice Stevens argued that the issue of whether Aviall had a right to file an action pursuant to CERCLA Section 107 should have been decided in this case by the Supreme Court and not remanded to a lower court. The court did not address whether a PRP has a cause of action against other PRPs under section 107, stating that the issue was not addressed by the courts below or fully briefed by the parties.

The implications of the Court's decision for EPA's site remediation enforcement and brownfields' programs and state voluntary cleanup programs will be monitored and assessed by EPA and states.

Case background was provided in *CleanupNews Spring 2004*, available online at: <http://www.epa.gov/Compliance/resources/newsletters/cleanup/cleanup16.pdf>. The Supreme Court decision is available online at: <http://www.supremecourtus.gov/opinions/04pdf/02-1192.pdf>.

For additional information, contact Clarence E. Featherston, OSRE, (202) 564-4234.



PHOTO BY PETTY OFFICER RUSS TIPPETS, USCG

Workers clean the shoreline December 2.



# Two Lavaca Bay Settlements Announced

On December 10, 2004, the U.S. Department of Justice, EPA, National Oceanic and Atmospheric Administration, Department of Interior, and State of Texas announced two settlement agreements with Alcoa Inc. and Alcoa World Alumina related to Lavaca Bay and the Point Comfort/Lavaca Bay Superfund Site.

Sediments in Lavaca Bay were contaminated with mercury from past operations at Alcoa Inc.'s Point Comfort facility. Alcoa owned the plant from 1948 until 1994 when it was purchased by Alcoa World Alumina. Alcoa operated a chlorine-alkali processing unit and discharged wastewater containing mercury into Lavaca Bay.

Under the two settlement agreements lodged with the U.S. District Court, Alcoa will undertake a variety of restoration actions. Alcoa has already spent approximately \$40 million for early response actions and will spend approximately \$11.4 million to complete the remaining cleanup actions. Alcoa will also pay governmental agencies for incurred costs. Under the cleanup consent decree, Alcoa will dredge contaminated sediments, operate a groundwater recovery system at the former chlorine-alkali plant, cap portions of the plant, and monitor sediments and fish.

Under the natural resource damages consent decree settlement, Alcoa will construct a 70-acre salt marsh on Powderhorn Lake's north shore and an 11-acre oyster reef in southeast Lavaca Bay; purchase and transfer approximately 730 acres of land to the U.S. Fish and Wildlife Service for addition to the Aransas National Wildlife Refuge. To

*Alcoa will help restore the bay by constructing a salt marsh and oyster reef.*

increase and enhance recreational fishing in Lavaca Bay,

Alcoa will replace the existing auxiliary boat ramp and construct a new timber dock; modify an existing jetty; and construct a new timber dock. Alcoa will provide funding to local entities for maintaining and insuring these structures against loss for the next 15 years.

Comments from the 30-day public comment period will be considered before the settlement is considered final.

*For additional information, contact Gary Baumgarten, EPA Region 6, (214) 665-6749.*

*Tri-Cities, continued from page 3*  
sign and remedial action (RD/RA), but Alcan refused to participate. In September 2001, EPA issued a Unilateral Administrative Order (UAO) to Alcan and to one other PRP directing them to participate in the RD/RA.

Alcan alone failed to comply with the UAO, and EPA sought recovery against Alcan of outstanding past and future costs plus a penalty for non-compliance with the UAO. With the Alcan CD, all financially viable PRPs are contributing to the site cleanup.

From 1955 to 1992, Alcan and other companies sent drums for reconditioning, and the resulting wastewater was discharged into unlined lagoons and on-site soils and groundwater became contaminated with volatile organic compounds, semi-VOCs, pesticides, metals and PCBs. Tri-Cities Barrel was proposed to the NPL on May 5, 1987 and listed on October 4, 1989. In a PRP-lead removal action in 1996, all drums, tanks, and on-site containers were removed; all structures were decontaminated, demolished, and disposed; and operational equipment was decontaminated and removed. A March 2000 Record of Decision outlined a remedy, then estimated at \$20.4 million, to address soils, sediments and groundwater. Under the CD, PRPs have completed the cleanup of the soils and sediments and are now evaluating the groundwater remedy. Approximately 350 drums and 93,000 tons of soil and sediment have been excavated and disposed offsite at appropriate disposal facilities. Some materials were incinerated prior to disposal.

The CD with Alcan was lodged with the United States District Court on December 14, 2004, and the 30-day public comment period began December 29, 2004.

*For additional information, contact Michael Mintzer, EPA Region 2, (212) 637-3168.*

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# PRP Search Enhancement National Conference Held in Denver

By Nancy Deck, Office of Site Remediation Enforcement

The Fourth National Conference on PRP Search Enhancement was held in Denver, Colorado, on August 10 through 13, 2004. The conference was planned and presented by EPA's PRP Search Enhancement Team. Conference participants ranged from subject matter experts to those new to the PRP search process. In addition to formal programs, the conference provided PRP search personnel an opportunity to meet and share experiences with their counterparts from other agencies and areas of the country. Participants included representatives of all ten EPA regions, the states of Arizona, California, Hawaii, Kansas, Mississippi, Oklahoma, South Carolina, and Tennessee, the Navajo Nation, the U.S. Department of Agriculture, and the U.S. Department of Justice.

Conference sessions addressed numerous issues encountered by PRP search personnel. For example, in the Environmental Liability Insurance session two EPA subject matter experts and representatives of the Insurance Archaeology Group and the law firm Anderson, Kill & Olick discussed insurance law issues that are commonly encountered at CERCLA and RCRA cleanup sites, EPA's role in seeking insurance coverage for such cleanups, and the sometimes difficult process of identifying insurance policies that may provide coverage at older sites. Other session topics included Bankruptcy and Ability to Pay, PRP Search "Best Practices," Superfund and Corporate Liability, Sites with Numerous Generators, Conducting Title Searches, Real Property Law, Windfall Liens & Bona Fide Prospective Purchasers, Interviewing Tech-

niques, FOIA Procedures & PRP Searches, and Alternative Dispute Resolution & PRP Searches. In addition, an important interactive session provided an opportunity for representatives of EPA, states, tribes, and other federal agencies to discuss ways to enhance their partnerships in the PRP search process.

By all accounts the conference was a success, in large part due to the participation of a broad spectrum of the PRP search community and the well-rounded expertise of the presenters. During FY05, the PRP Search Enhancement Team will follow up on ideas discussed at the conference for facilitating enhanced communication and training for PRP search personnel.

For additional information about the conference or the PRP Search Enhancement Team, contact Team Leader Nancy Deck, OSRE, (202) 564-6039.

## EPA Recommends Safer Disposal Methods for Used Syringes

By Diane Bartosh, Office of Solid Waste

EPA recently issued new publications that encourage people to dispose of used needles through community drop-off programs, household hazardous waste facilities, sharps mailback programs, or at-home needle destruction devices. *Protect Yourself, Protect Others: Safe Options for Needle Disposal* (EPA530-F-04-004) and *Protecting Your Community from Sharps: Options for Safe Disposal of Sharps* (EPA530-K-04-001) were developed in collaboration with the Coalition for Safe Community Needle Disposal. The first document aims to re-educate self-injectors about better management of used needles,

and the second is designed for use by states to help keep used syringes out of all trash collections. The Coalition for Safe Community Needle Disposal is a collaboration of businesses, community groups, nonprofit associations, and state, local, and federal government entities committed to promoting public awareness of the hazards posed by improperly disposed sharps.

The purpose of the documents is to encourage people to think about used needles from a health standpoint rather than as a waste management or disposal issue. Approximately 8 to 9 million people use syringes for a wide range of medicinal purposes,

which creates about 3 billion used needles a year. The Agency is distributing the new publications not only to promote safer disposal alternatives, but also to encourage people to reduce the amount of this waste. The new publications are free and available online at: [www.epa.gov/epaoswer/other/medical/sharps.htm](http://www.epa.gov/epaoswer/other/medical/sharps.htm). They can be ordered online at: <http://www.epa.gov/ncepihom/ordering.htm>; by email: [ncepimal@one.net](mailto:ncepimal@one.net); or by calling 800/490-9198. Self-injectors should request EPA530-F-04-004; state and local governments should request EPA530-K-04-001.

**February 27 – March 3**

WM'05, the 31st Waste Management Symposium  
Tucson, AZ  
<http://www.wmsym.org/>

**May 18 – 20**

Solid/Hazardous Waste Conference and Exhibition  
Gatlinburg, TN  
<http://www.state.tn.us/environment/swm/conference/>

**July 12 – 15**

2005 Community Involvement Conference and Training  
Buffalo, NY  
<http://www.epancic.org/2005/overview.cfm>

# Glossary

<b>CD</b>	Consent decree	<b>PCBs</b>	Polychlorinated biphenyls
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act	<b>PRP</b>	Potentially responsible party
<b>EPA</b>	Environmental Protection Agency	<b>RTU</b>	Return to Use Initiative
<b>NH DES</b>	New Hampshire Department of Environmental Services	<b>SRI</b>	Superfund Redevelopment Initiative
<b>OECA</b>	Office of Enforcement Compliance and Assurance	<b>UAO</b>	Unilateral administrative order
<b>OSRE</b>	Office of Site Remediation Enforcement	<b>USCG</b>	United States Coast Guard
<b>OSWER</b>	Office of Solid Waste and Emergency Response	<b>VOCs</b>	Volatile organic compounds

## cleanupnews

<http://www.epa.gov/compliance/about/offices/osre.html>

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