



Bush Appoints Skinner Acting Assistant Administrator of OECA

On April 2, 2004, the White House announced that Thomas V. Skinner, Regional Administrator for EPA Region 5, will serve as Acting Assistant Administrator for the Office of Environmental Compliance and Assurance. Phyllis Harris, who has served as Acting Assistant Administrator since the departure of JP Suarez in January 2004, will continue to serve as Deputy Assistant Administrator.

EPA Administrator Mike Leavitt praised Skinner's selection, indicating that his expertise "will add strength to our work to motivate compliance by applying consistent and certain enforcement." Skinner has served as Regional Administrator for EPA Region 5 since 2001. He was director of the Illinois Environmental Protection Agency (IEPA) from 1999 to 2001. Prior to his work with IEPA, Skinner was a partner in the environmental law department of a Chicago firm, Winston & Strawn, and he served as a special assistant to Illinois Governor James Thompson from 1988 to 1991. Skinner holds degrees from Lawrence University and Northwestern University School of Law.

While serving as Acting Assistant Administrator, Skinner will continue to head the Great Lakes National Program, a federal program that seeks to protect, maintain, and restore the Great Lakes through lake monitoring; federal, state, and industry partnerships; habitat protection and restoration; pollution prevention programs; and stakeholder involvement.

For additional information, contact Dr. Richard W. Popino, OSRE, (202) 564-5136.

Marianne Lamont Horinko, Assistant Administrator of OSWER, Resigns

Effective June 1, 2004, Marianne Lamont Horinko will step down from her position as the Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER).

Ms. Horinko's tenure at OSWER saw many successes for environmental response and cleanup. From EPA's implementation of the Brownfields Revitalization Act to the Resource Conservation Challenge, she challenged the environmental community to form partnerships to promote flexible and innovative approaches to environmental improvements. A skilled political leader, she was successful in doubling the budget for the Brownfields program and boosting funds for Superfund to meet the demands of a shifting program.

Perhaps the greatest test of Ms. Horinko's leadership occurred following September 11, when she managed the EPA's role in the cleanup activities at Ground Zero and the Pentagon. She also oversaw EPA activities after the Space Shuttle Columbia disaster, and at the U.S. Capitol following the anthrax contamination incident.

Ms. Horinko is resigning from her position in order to spend more time with her family.

For additional information contact Dr. Richard W. Popino, OSRE, (202) 564- 5136.

Atlas Tack Consent Decree Entered

On March 1, 2004, the U.S. District Court for Massachusetts entered a consent decree for the Atlas Tack Corporation Superfund Site in Fairhaven. The agreement requires Hathaway-Braleley Wharf Company, Inc. to reimburse EPA \$501,575 and the Commonwealth \$51,125 for past and future response costs and reimburse the Department of the Interior \$4,990 and the National Oceanic and Atmospheric Administration \$510 for damage assessment costs. Hathaway-Braleley owns a three-acre unimproved parcel within the 24-acre Atlas Tack site and is just one of several potentially responsible parties.

Through the consent decree, Hathaway-Braleley has also agreed to have two easements placed on its property. The first easement is a Conservation Easement and Restrictions (CER) granted to a government entity or a non-profit corporation or trust for the purpose of conserving and protecting the natural habitat and scenic value of the property. The second easement, an Environmental Restriction and Easement (ERE), grants EPA a right of access to the property for performing and monitoring the selected remedy at the entire Atlas Tack site. The ERE also grants EPA the authority to enforce the land and water use restrictions imposed by the easement on the property. The CER also imposes land and water use restrictions on the property, but these restrictions are subordinate to restrictions set forth in the ERE. The restrictions imposed by both easements are legally binding on all current and future owners of the property.

From 1901 to 1985, the Atlas Tack Corporation manufactured steel nails, wire tack, and other fasteners at the facility. The Hathaway-Braleley property served as a disposal area, receiving approximately 4000 cubic yards of manufacturing wastes. The soils and debris on the Atlas Tack site are contaminated with volatile organic compounds, pesticides, PCBs, and polycyclic aromatic hydrocarbons from manufacturing processes. Cyanide and toluene in an onsite lagoon leached into the groundwater.

Atlas Tack was added to the National Priorities List in 1990 and a Record of Decision for the entire site was released in March 2000. The selected remedy includes excavation, treatment and disposal of soils and sediments; monitored natural attenuation of groundwater; and monitoring and institutional controls.

For more information, contact Stacy Greendlinger, EPA Region 1, (617) 918-1403.

Demolition of 47 Homes Complete at Escambia

On March 4, 2004, EPA announced the completion of a three-month cooperative demolition project near the Escambia Treating Company Superfund Site in Pensacola, Florida. EPA, the U.S. Army Corps of Engineers, Escambia County, and the City of Pensacola began removing vacant homes in December 2003 as part of the selected interim remedial action at the site. An additional 114 residential structures and a 200-unit apartment complex will be torn down during Phase II of the remedial action.

Escambia was placed on the National Priorities List in December 1994. In 1995, when it was evident that residents would need to be relocated, EPA selected Escambia as a national relocation evaluation pilot. As a pilot, Escambia provided EPA with valuable information about the process of permanently relocating residents that has helped inform a national interim CERCLA relocation policy for the Superfund program. Once finalized, the relocation policy will provide clear guidelines for when to consider relocation a viable site remedy. The interim policy has been in place since 1999.

The permanent relocation of residents was among the selected interim remedial actions outlined in the Record of Decision for the site, issued in February 1997. The selected interim remedy includes: permanently relocating approximately 358 households; demolishing the vacated homes; and establishing institutional controls to limit land use to industrial and commercial uses only. A number of factors led to the relocation decision including health risks posed by the presence of dioxin and benzo(a)pyrene in soils at and around the site and community concern over unknown health risks posed by a large onsite stockpile of contaminated soil. The contaminated soil stockpile resulted from an emergency removal begun by EPA in 1991 and completed in 1992. The removal involved excavating and securing 225,000 cubic yards of contaminated soil on-site under a high-density polypropylene cover.

Contamination at and around the site resulted from wood preservation operations conducted by the Escambia Wood Treating Company. From 1942 to 1963, coal-tar creosote was used as the main wood preservative. In 1963, the company began using pentachlorophenol, which became the only preservative used from 1970 until the company ceased operations in 1982. Wastes from preservation operations were diverted into unlined earthen pits and into impoundments constructed from concrete and treated wood. In addition to dioxin and benzo(a)pyrene, arsenic and lead have been detected at the site.

The final remedy will address groundwater contamination and contaminated soils at the site and in the former residential areas.

For additional information, contact Laura Niles, EPA Region 4, (404) 562-8353.

EPA Completes Cleanup at Stillwater Facility

In March 2004, EPA completed its removal of hazardous wastes and chemical drums from the Saratoga Radar Station in Stillwater, New York. The cleanup included disposing of 137 drums of hazardous material, 77 electrical transformers, 2000 gallons of PCB fluid, and asbestos insulation and floor tiles. In addition, EPA recycled approximately 6000 gallons of petroleum products from 16 storage tanks.

The history of the facility includes use as a U.S. Air Force radar base from the 1950s until the 1970s. In the 1970s, the General Services Administration sold the facility to the Federal Aviation Administration (FAA). Recently, Laquidara Construction Incorporated of Ballston Spa, NY acquired the majority of the property from FAA. FAA still owns small portions of the property that have communication towers. Currently, the Town of Stillwater and a development company are seeking to purchase the property from the now bankrupt Laquidara Construction Inc. There are approximately 30 buildings on the property, 10 of which contained hazardous wastes such as gasoline, waste oil, and asbestos.

In the fall of 2002, a chemical fire at the facility prompted the State of New York to request Superfund assistance for the cleanup. The facility qualified for assistance in December 2002, and removal activities began in October 2003. The New York State Department of Environmental Conservation has agreed to continue the cleanup of oil-contaminated soils and groundwater at the facility now that EPA-lead removal activities have been completed. Initial samples of the local water supply have not detected any volatile organic compounds.

Currently, EPA is determining which property owners are responsible for the hazardous materials left at the facility. EPA intends to seek reimbursement of \$675,000 for cleanup costs from the parties responsible for the contamination.

For additional information, contact Leo Rosales, EPA Region 2, (518) 747-4389.

A River Runs Through It – ADR Supports the Success of River Sediment Cleanups

By David Batson, Conflict Prevention and Resolution Center

Stretching for miles through once, and sometimes still, heavily industrialized areas, our nation's rivers are the final resting places for all varieties of hazardous substances and debris. This stark reality of modern life has created an increasing front in the effort to address areas of contamination – the cleanup of river sediment sites. Covering huge areas, affected by the continuous addition and movement of new contamination from sources potentially spread over an entire river's watershed, and requiring the efforts of multiple federal and state agencies, the cleanup of these sites creates a level of complexity for Agency staff and PRPs unprecedented in the history of Superfund.

In the Winter 1998 issue of CleanupNews, an article on a settlement providing for cleanup of the Housatonic River by GE recounted the important role that alternative dispute resolution (ADR) played in achieving the long-sought agreement. Brought in when settlement efforts were at an impasse, mediators not only helped the parties to negotiate the historic settlement, they also created and facilitated an innovative process allowing representatives of citizen, environmental and business groups to present their concerns to the negotiators. In addition, ADR professionals assisted in the formation of a Citizens Advisory Council that provides an opportunity for continued community input in cleanup efforts.

The effective and timely use of ADR is proving critical to the success of the many river sediment cleanups initiated over the past few years. Of particular importance to the success of Superfund efforts has been the use of ADR professionals by PRP groups to resolve the complex allocation issues raised by these sites. The allocation of financial responsibility for the cleanup of sediment river sites raises unique legal and factual issues that stretch traditional Superfund practices. Fortunately, PRP groups have been able to turn to the experience of ADR professionals to assist them in reaching allocation agreements. Typical of these efforts is the work of the PRPs at the Hylebos Waterway site. An operable unit of the Commencement Bay Superfund Site in Region 10, the Hylebos Waterway presented many of the difficulties faced by PRPs in agreeing on an allocation at river sediment sites. The area had been heavily industrialized for over 120 years with many of the industrial contributors to the contamination no longer in existence or viable. The character of the waterway had changed over the years from a meandering stream and tidal basin to a dredged shipping channel for commercial use. A variety of conveyances for contaminants and daily tidal flows created an overlapping pattern of contamination. The installation of a municipal sewer system in the early 20th Century added drainage from a large developed community to the waterway. The costs of cleaning up the waterway and addressing the damage to natural resources were substantial.

The Hylebos Waterway PRP Group utilized the services of an ADR professional to help them in successfully reaching an agreement on the allocation of site costs. As for many complex Superfund sites, the PRPs were assisted in organizing and selecting an allocation specialist by ADR professionals of the EPA ADR Program. The allocation specialist designed a process for obtaining and evaluating information on historic industrial activities that could have impacted the waterway. This process allowed the PRPs to narrow the substantial number of contributors to the list of viable parties capable of participating in cleanup efforts. In addition, this allowed the PRPs to provide EPA staff with information for its determination of parties for additional enforcement action. The result was agreement on an allocation of responsibility which provided the basis for a RD/RA settlement with EPA and restoration agreement with federal and state trustees.

Experience shows that the success of future river sediment cleanups will be greatly increased by the effective and timely use of ADR by PRPs and government agencies.

For further information on ADR, contact the EPA Conflict Prevention & Resolution Center (<http://www.epa.gov/adr/>) or any of the regional EPA ADR Specialists. Contact information for CPRC staff and regional ADR Specialists is available on the website.

In The Courts

D.C. Circuit Rules Facial Constitutional Challenges Allowed Under CERCLA 113(h) in GE vs. EPA, No. 00CV02855 (D.C. Cir. March 2, 2004)

By Clarence E. Featherson, Office of Site Remediation Enforcement

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that CERCLA's Section 113(h) Pre-enforcement bar does not prevent judicial review of facial constitutional challenges to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The D.C. Circuit also stated that site specific "challenges" to EPA's administration of the statute [a systemic or an "as applied constitutional challenge"] may be subject to CERCLA Section 113(h)'s pre-enforcement bar.

However, the D.C. Circuit held that in this case, GE's claim did not challenge a specific removal or remedial action selected under CERCLA Section 104, or an order issued under CERCLA Section 106(a). Therefore, GE's amended claim set forth a facial constitutional challenge to CERCLA as a statute. Such challenges are not precluded from judicial review by CERCLA Section 113(h). The D.C. Circuit reversed the district court's decision (discussed below) and remanded the case back to the district court, for the district court to decide whether the administrative order provisions of Section 106, Section 107(c)(3) and Section 113(h) of CERCLA violate the Due Process Clause of the Fifth Amendment because they do not allow pre-enforcement review of administrative orders issued by the EPA.

Background

In 2002, GE filed an amended complaint in the District Court for the District of Columbia alleging that the administrative order provisions of Section 106, Section 107(c)(3) and Section 113(h) of CERCLA violate the Due Process Clause of the Fifth Amendment. On March 31, 2003, the district court dismissed GE's complaint for lack of subject matter jurisdiction. The district court held it was barred by CERCLA's Section 113(h)'s pre-enforcement review bar from addressing the merits of GE's case. GE appealed the district court's decision. On appeal, the D.C. Circuit reversed the district court's decision and remanded the case back to the district court to decide the merits of GE's facial due process claim challenging CERCLA's administrative order provisions.

For further information, contact Clarence E. Featherson, (202) 564-4234.

Consent Decree Lodged for San Gabriel Valley Superfund Site

On March 5, 2004, a consent decree for the El Monte operable unit (OU) of San Gabriel Valley Area 1 Superfund Site was lodged with the U.S. District Court for the Central District of California. The consent decree settles the cost recovery case between EPA, the California Department of Toxic Substances Control (DTSC), and 38 settling parties. The parties have agreed to implement the approximately \$44 million in remedies specified in the 1999 Interim Record of Decision (IROD) and the 2002 Explanation of Significant Differences (ESD), which modified the IROD. The 2002 ESD was necessary after additional contaminants (e.g., perchlorate and hexavalent chromium) were discovered; these contaminants require different remedies than those outlined in the IROD, therefore treatment options for these contaminants were proposed in the ESD. In addition to implementing the remedies recommended in the IROD and ESD, the parties have agreed to reimburse EPA approximately \$2 million and DTSC \$50,000 for past response costs and to pay for future response costs.

San Gabriel Valley Area 1 Superfund Site is located in Los Angeles County, a densely populated area with some industrial activity. The El Monte OU, one of eight OUs within the San Gabriel Valley Area 1 Superfund Site, covers a 10-square-mile area in the south central section of the San Gabriel basin. The remedy includes pumping out and treating approximately 2.4 million gallons a day of contaminated groundwater and constructing new extraction wells and treatment facilities. The goal is to prevent migration of the contamination and protect downstream wells.

San Gabriel Valley Areas 2-4 are separate Superfund sites that also address groundwater contamination within the 170-square-mile valley. The contamination, primarily from volatile organic compounds used by the settling parties for degreasing, metal cleaning, and other purposes, was first discovered in the valley in 1979. All four sites were added to the National Priorities List in 1984.

The groundwater underlying the San Gabriel Valley basin is the primary drinking water source for over 1 million people. There are nine active production wells at the El Monte OU that draw groundwater from the deep aquifer for the municipal water supply.

For additional information, contact Francisco Arcaute, EPA Region 9, (213) 452-3378.

Tidbits

Proposal to Reduce Toxic Air Emissions from Hazardous Waste Combustors

By Diane Bartosh, Office of Solid Waste

On March 31, 2004, Administrator Leavitt signed a notice proposing national emission standards for hazardous air pollutants (HAPs) from hazardous waste combustors. The combustors affected by this rule detoxify or recover energy from hazardous waste, and include incinerators, cement kilns, lightweight aggregate kilns, boilers and process heaters, and hydrochloric acid production furnaces. The proposed standards will implement section 112(d) of the Clean Air Act by requiring hazardous waste combustors to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Currently, the Agency estimates 150 facilities operate 276 devices that burn hazardous waste.

By proposing technology-based standards for these devices, EPA aims to reduce emissions of hazardous air pollutants, including lead, mercury, arsenic, dioxin and furans, and hydrogen chloride and chlorine gas. In conjunction with these pollutants, emissions of particulate matter will also be reduced. Better control over air pollutants from these devices will result in fewer cases of chronic bronchitis, reduced hospitalizations for severe respiratory conditions and cardiovascular problems in adults and children, and fewer cancer cases. Populations residing near hazardous waste combustion facilities—especially children and minority groups—may benefit the most from these proposed standards.

The proposed rule includes a compliance alternative provided for in the Clean Air Act (section 112(d)(4)) for hydrogen chloride and chlorine gas, whereby sources can comply with risk-based emission levels rather than levels determined by performance of technology. These risk-based emission levels must be protective of human health with an ample margin of safety.

This proposal is part of EPA's effort to comply with a settlement agreement reached over the first MACT standards promulgated for incinerators, cement kilns, and lightweight aggregate kilns that combust hazardous waste. According to that agreement, the Agency must finalize all the MACT standards by June 14, 2005.

EPA is accepting comments on this proposal for 75 days following publication in the Federal Register.

More information on the MACT rule is available at:

<http://www.epa.gov/epaoswer/hazwaste/combust/newmact/hazmact.htm>

11 Sites Proposed for National Priorities List

On March 8, 2004, EPA proposed adding 11 sites to its list of Superfund priorities, the National Priorities List (NPL). These sites present an array of cleanup challenges. At the Jacobsville Neighborhood Soil Contamination site, lead-contaminated soils were identified in a residential area 10 years after soils were removed from a former plating facility. Lead levels on some residential properties were as high as 6,150 mg/kg.

At Devil's Swamp Lake, located just 10 miles from Baton Rouge, a commercial hazardous waste disposal facility released PCBs and other contaminants to an outfall ditch. The contamination entered the lake and impacted onsite wetlands and fisheries. The Louisiana Department of Environmental Protection issued fish consumption advisories for Devil's Swamp Lake after fish tissue analysis found significant levels of PCBs and other contaminants.

At the Diaz Chemical Corporation site in New York, a long history of releases to the air and soils left the groundwater and soil contaminated with volatile organic compounds and semivolatile organic compounds. In 2002, Diaz accidentally released 2-chloro-6-fluorophenol to the air, a release which necessitated the temporary relocation of 15-20 families. In addition to the soil and groundwater contamination, Diaz abandoned many onsite chemical tanks and drums when it declared bankruptcy in 2003; EPA is addressing the tanks and drums through a removal action.

EPA promulgated the original NPL of 406 sites in 1983 to give priority to hazardous waste sites where human health and the environment were most at risk. Today, there are 1,240 final sites on the NPL including 148 federal facilities. Construction has been completed at 892 sites and is currently in progress at 360 sites.

The sites proposed for listing are:

- Jacobsville Neighborhood Soil Contamination, Evansville, Indiana
- Devil's Swamp Lake, Scotlandville, Louisiana
- Annapolis Lead Mine, Annapolis, Missouri
- Picayune Wood Treating, Picayune, Mississippi
- Grants Chlorinated Solvents Plume, Grants, New Mexico
- Diaz Chemical Corporation, Holley, New York
- Peninsula Boulevard Groundwater Plume, Hewlett, New York
- Ryeland Road Arsenic, Heidelberg Township, Pennsylvania
- Cidra Ground Water Contamination, Cidra, Puerto Rico
- Pike Hill Copper Mine, Corinth, Vermont
- Ravenswood PCE Ground Water Plume, Ravenswood, West Virginia

More information is available at <http://www.epa.gov/superfund/sites/npl/newnpl.htm>

Earth Day Resources Every Day

Earth Day was celebrated in late April with observances across the country. In Washington, DC, federal agencies sponsored a variety of events including an electronics recycling event, and a volunteer-driven Anacostia Watershed cleanup effort. The Federal Aviation Administration held an old shoe recycling event where old shoes were collected for recycling as playground blacktop. In other parts of the country, EPA Region 5 co-sponsored the Earth Day celebration in Cincinnati, and EPA Region 6 partnered with other organizations to host "EarthFest 2004," an Earth Day event in Dallas with exhibits demonstrating environmentally-friendly practices.

EPA's Earth Day website, <http://www.epa.gov/earthday/>, demonstrates that "every day is Earth Day" through tips and resources on energy efficiency, saving water, recycling, reducing waste, and conserving gasoline. And just in time for summer, there are tips for "greenscaping" lawns and gardens through more environmentally-friendly practices (e.g., grasscycling, mulching, and composting of yard waste). EPA's Earth Day site also points to a variety of other online resources including the federal government's main Earth Day site at <http://www.earthday.gov>, a list of international Earth Day events through the Earth Day network, and volunteer opportunities.

Calendar

May 11-12, 2004

2004 National Corrective Action Conference

Orlando, FL

Contact: Lael Butler, (404) 562-8453 or

Karen Tomimatsu, (703) 605-0698

<http://www.nationalcaconf.com>

July 12-14, 2004

ASTSWMO 2004 State Hazardous Waste Managers Conference

Washington, DC

Contact: Jocelyn Scott, (202) 564-4795

<http://www.astswmo.org>

September 20-22, 2004

Brownfields 2004: Gateway to Revitalization

St. Louis, MO

<http://www.brownfields2004.org>

Glossary

ADR	Alternative Dispute Resolution
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CER	Conservation Easement and Restrictions
DTSC	Department of Toxic Substances Control
EPA	Environmental Protection Agency
ERE	Environmental Restriction and Easement
ESD	Explanation of Significant Difference
FAA	Federal Aviation Administration
HAP	Hazardous Air Pollutant
IROD	Interim Record of Decision
MACT	Maximum Achievable Control Technology
NPL	National Priorities List
OSRE	Office of Site Remediation Enforcement
OSWER	Office of Solid Waste and Emergency Response
OU	Operable Unit
OUST	Office of Underground Storage Tanks
PCB	Polychlorinated Biphenyls
PRPs	Potentially Responsible Parties
UST	Underground Storage Tank

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“We have developed an electronic supplement to the CleanupNews print edition called *CleanupNews II*. The print issue will still be available four times a year, and the newsletter will be delivered electronically eight times a year (four issues consisting of the print edition text and four issues consisting of supplemental news).”