



cleanupnews

EPA Places Superfund Lien, Hopes to Recover \$27 Million in Costs

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

EPA has placed liens on 554 acres of land at a former mine in Clear Lake, California in order to recuperate \$27 million for past cleanup costs. EPA's response actions to-date include stabilizing waste piles, erosion control measures, removal of contaminated soil, site investigations, and the emergency closure of some geothermal exploration wells. The Agency estimates that it may cost \$40 million more to complete the remaining cleanup activities.

Liens are legal actions that can bar a property owner from selling a property without the lien enactor's permission. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at 42 USC 9607(l) provides EPA with the authority to enact a lien against the title of the property upon which response actions have been taken. Liens are placed on remediation sites to recover cleanup costs already incurred by EPA and to ensure that potentially responsible parties do not profit from the increased value of property improved by EPA through the cleanup process.

The property is part of the former Sulphur Bank Mercury

Mine and is owned by Bradley Mining Company and Worthen Bradley Trust. Mining activities at the site began in 1865 and continued off and on until the site was abandoned in 1975. Mercury ore was the primary product after the site was initially mined for sulfur. The remaining waste piles contain heavy metals including mercury, arsenic, and antimony and are the source of mercury polluting the local ground and surface water. The site also includes an open pit mine known

as the Herman Impoundment where acidic water contaminated with heavy metals has ac-

cumulated. The site has been on the National Priorities List since 1990.

The impact of contamination from the mine on the local environment has been documented primarily through the bioaccumulation of mercury found in plants, animals, and soils in the nearby Clear Lake ecosystem. The State of California has issued fishing advisories for Clear Lake due to the high mercury levels. The heavy metals contaminating the site, including antimony and mercury, are toxic to people and the environment.

For additional information, contact Larry Bradfish, EPA Region 9, bradfish.larry@epa.gov.

Liens help recover costs and ensure PRPs do not benefit from post-cleanup property value increases.

Settlements Will Help Clean Up Centredale Manor Restoration

Two proposed settlements worth approximately \$3.6 million will help clean up contamination at the Centredale Manor

Restoration Project Site in North Providence, Rhode Island. The owners of the Centerdale Manor and Brook Village apartment buildings—which provide low-cost housing to the elderly—agreed to the settlement through separate consent decrees. Both proposed consent decrees are sub-

ject to a 30-day public comment period. If the consent decrees are finalized, the settlers will “cash out” their liability, meaning that EPA will release the apartment complex owners of any further responsibility related to the existing contamination at the site. The settlements will be paid to EPA, the State of Rhode Island, and the Department of the Interior; a portion will also be placed in an escrow account.

The settlement agreements should ensure that the settlers remain financially viable, thereby ensuring that low-cost housing will continue to be avail-



View of the Centredale Manor Restoration Project looking North along the Woonasquatucket River.

able for 223 elderly residents.

From 1943 to 1971, Atlantic Chemical Company (renamed Metro-Atlantic, Inc. in 1953) operated a woolens mill on the site. The New England Container Company ran incinerators on the site as part of its drum-reconditioning operation at different times from 1952 to 1971. In 1972, a fire burned almost all of the existing buildings. The Brook Village and Centerdale Manor apart-

ments were constructed on the site in 1977 and 1983 respectively. Dioxin contamination was identified in the Woonasquatucket River, which is

adjacent to the site, in 1996, and the site was added to the National Priorities List on February 4, 2000.

The Woonasquatucket River was designated an American Heritage river in 1998 and has been the focus of cleanup efforts for several contaminants including dioxin since 1996. To date, EPA has completed several initial re-

moval actions to limit exposure to the contaminants and reduce downstream migra-

tion. These actions include constructing soil caps, reconstructing a dam, and fencing off contaminated areas. EPA continues to conduct its remedial investigation for the long-term cleanup of the site and seek assistance in cleaning up the site from other responsible parties.

For additional information, contact Eve Vaudo, EPA Region 1, vaudo.eve@epa.gov.

Site Work Completed at Pioneer Smelting

EPA has removed 24,000 tons of contaminated soil and debris from the Pioneer Smelting site in Chatsworth, New Jersey. Although no groundwater contamination was detected, concentrations of lead in the surface soil were between

67 ppm and 18,200 ppm. Cleanup activities began in July 2003 and included the dismantling, decontamination and disposal of several buildings and structures as well as the excavation and treatment of lead-contaminated soil. An onsite pug-mill was

used to treat 24,000 tons of contaminated material. 4,000 tons of waste were sent off-site to a regulated hazardous waste disposal facility. Cleanup efforts also included recycling 340 tons of scrap metal and removing 300 feet of asbestos contain-

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Innovative Cleanup Strategies Proposed for Nease Chemical

EPA Region 5 is advising use of nanotechnology to clean up groundwater contamination at the Nease Chemical Site in Columbiana County, Ohio. The plan involves using iron nanoparticles, which range in size from 1/500th to 1/5,000th the width of a human hair. Because of their microscopic size, nanoparticles can reach contamination in small spaces more effectively than some traditional treatments. When the nanoparticles come into contact with ground water contaminants, oxidation occurs, producing harmless or less toxic by-products. In addition to the ground water remedy, EPA is recommending “stripping/stabilization/solidification” or S/S/S to address contamination in several former ponds. The process involves stripping chemicals and solidifying the soil using a cement-like sub-

stance to prevent migration of remaining contaminants. The other ponds would be covered with plastic to prevent the spread of contaminants, and

Iron nanoparticles are a less expensive, highly effective new treatment strategy. These microscopic particles come into contact with contaminants and produce harmless by-products.

shallow groundwater would be pumped and treated. Comments on the remedies received during the public comment period, which ended in June, will be considered before the cleanup plan is finalized.

From 1961 to 1973, Nease Chemical produced household cleaning agents, fire retardants, and pesticides at the site. Some of the products contained mirex, a chemical banned for use in the US in 1978 because of detrimental

health effects. Mirex, volatile organic compounds, and other contaminants seeped into groundwater and soil from unlined ponds and leaking drums. In 1977, Ruetgers Organics Corp. acquired the property, though the company never used the site. Ruetgers has been evaluating on-site contamination through EPA and Ohio EPA guidance and assisted both agencies in selecting the site remedies. Nease Chemical has been on the National Priorities List since 1983.

The proposed cleanup strategies are explained in a Region 5 fact sheet entitled “Cutting-Edge’ Techniques Proposed for Nease Cleanup” available online at: <http://www.epa.gov/region5/sites/neasefs200506.pdf>.

For additional information, contact Mary Logan, Remedial Project Manager, (312) 886-4699.

U.S. Army Uses PBC to Clean Up Hazardous Waste Sites

By Janet Kim, U.S. Army Environmental Center’s Technical Lead for PBC Implementation

The U.S. Army is dedicated to cleaning up contaminated property from past practices by promoting the use of safe, effective, and efficient cleanup and procurement methods. To that end, the Army has turned to Performance-Based Contracting (PBC) to expedite portions of its remediation work.

Under PBC guidelines, a contractor must achieve identified cleanup

objectives for a fixed price. PBC contractors must meet these objectives,



which are detailed in the Performance Work Statement, as well as comply with existing Federal Facility Agreement schedules and commitments. Contractors have an incentive to work proficiently and complete remedial work on or ahead of schedule because shorter timeframes generally translate into increased corporate profits. Most often the work is awarded to

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Employee Pleads Guilty to Mail Fraud and Making False Statement

On May 31, 2005, Michael Klusaritz of Whitehall, Pennsylvania, pleaded guilty in district court to mail fraud and making false statements. Klusaritz could be sentenced to up to 30 years in prison, a \$750,000 fine, three years supervised release, and a mandatory \$300 special victim/witness assessment.

While an employee of Boyko's Petroleum Services, Inc., Klusaritz falsified laboratory reports, forged signatures, and prepared false underground storage tank (UST) closure reports. Between October 2001 and October 2003, Boyko's billed its customers more than \$110,000 for the false reports.

Klusaritz had a previous conviction for falsifying environmental test results.

Army Uses PBC, continued from page 3

contractors at a price that is lower than the Army's planned cost-to-complete; as such, PBC allows the Army to increase the buying power of its annual cleanup budget, which in turn accelerates the overall cleanup program as cost avoidances can be reinvested to clean up sites at other installations.

Regulators also benefit

under PBC. For example, benefits to regulators include streamlined and consistent documentation produced by "A-team" contractors who have an incentive to finish the cleanup work rapidly and correctly. Regulators also have the confidence of knowing that the Army maintains ultimate liability for the remediation.

While PBC may be used in privatization projects, it is not a

privatization effort. The Army uses these contracts on land that will be turned over to local authorities as well as land the Army will retain for its own use. The Army piloted the program at several installations in Fiscal Years 2000 and 2001. To date, almost 50 PBC contracts, covering projects in all 10

EPA regions, have been awarded for work at Base Realignment and Closure (BRAC) sites and ac-

tive installations. By using PBC, the Army has procured more than \$400 million in environmental requirements and achieved a cost avoidance of approximately 20 percent while safely conducting cleanup.

PBC provides advantages to the three main parties involved in contracted environmental remediation projects – the Department of Defense, regulators and contractors.

By using PBC, the Army has procured more than \$400 million in environmental requirements and achieved a cost avoidance of approximately 20 percent while safely conducting cleanup.

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Syosset Landfill Deleted from National Priorities List

On April 28, 2005, EPA removed the Syosset Landfill Superfund site in Nassau County, New York from the National Priorities List (NPL) because the site no longer poses a threat to human health or the environment. The Town of Oyster Bay worked with EPA to design and install a synthetic landfill cap, a project that was completed in October 1996. The cap covers 6.7 million tons of contaminated material left onsite. The town also improved the existing gas venting system in order to lower landfill gas emis-

sions to non-detectable levels. EPA certified that construction for the cleanup was complete at the site in September 1998. A fence was installed around the perimeter of the property and restrictions put in place to prevent human exposure to the capped landfill material.

The Town of Oyster Bay operated Syosset Landfill from 1933 to 1975. Various types of wastes were disposed at the site, including industrial sludges contaminated with heavy metals. The landfill stopped accepting waste when Nassau County de-

tected ground water contamination. At the time the site was listed on the NPL, two private wells and one public well had elevated levels of volatile organic compounds. Although the town of Oyster Bay continues monitoring the local ground water, EPA determined that no ground water remediation was necessary because limited offsite contamination did not pose a threat to the surrounding community.

For additional information, contact Sherrel D. Henry, Remedial Project Manager, henry.sherrel@epa.gov.

EPA Outlines Strategies for Ensuring Post Construction Completion Activities are Effective

In May 2005, the Office of Solid Waste and Emergency Response (OSWER) released its recommendations for ensuring the long-term effectiveness of post construction completion activities at Superfund sites. The draft document, entitled “National Strategy to Manage Post Construction Completion Activities at Superfund Sites” (PCC Strategy), has been sent to stakeholders for review and may be revised based on comments received. The final strategy should be released in late summer 2005.

After a site remedy is constructed, post construction completion activities are sometimes implemented to ensure that the remedy remains protective of human health and the environment (e.g., site fencing) or to achieve greater

protection levels (e.g., ongoing groundwater treatment). Post construction completion activities include, but are not limited to, operation and maintenance, five-year reviews, institutional

recommending the review of ICs to ensure they give long-term protectiveness and are not so restrictive as to prevent redevelopment of a site, where feasible. With regard to funding, EPA

Five goals of the draft PCC Strategy

- ensure that remedies remain protective and cost-effective
- ensure that institutional controls required as part of the remedy are implemented and effective
- assure adequate financing and capability to conduct post construction completion activities
- support appropriate reuse of sites while assuring remedy reliability
- improve site records management to better ensure remedy reliability

controls (ICs), NPL deletion, and reuse. The PCC Strategy outlines five goals for ensuring post construction completion activities are effective. First, EPA is encouraging the review of remedies over time and to allow for changes in remedy decisions where appropriate to achieve protection and cost-effectiveness. EPA is also rec-

ommending the review of ICs to ensure they give long-term protectiveness and are not so restrictive as to prevent redevelopment of a site, where feasible. With regard to funding, EPA will see that potentially responsible parties (PRPs) fulfill their O&M responsibilities and that the states—who are often responsible for guaranteeing that long-term O&M occurs at Fund-financed sites—have long-term O&M funding available. EPA will also support site reuse by ensuring that unnecessary barriers to reuse are eliminated and encouraging the use of “Ready for Reuse” determinations, easy-to-read reports that notify developers of a site’s

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District Court Recognizes Private Party Contribution Claim Under Section 107 of CERCLA

Adobe Lumber v. Taecker, (No. CV S02-186 GEB GGH, E.D. Ca. (May 24, 2005).

By David Dowton, Office of Site Remediation Enforcement

Ruling on cross-motions for partial summary judgment, the district court for the Eastern District of California has recognized that a private party may bring a contribution action under Section 107 of CERCLA. After dismissing Adobe's claim under Section 113 as Adobe had not been the subject of a civil action under Sections 106 or 107 as required under *Cooper Industries, Inc. v. Aviall Services, Inc.* (125 S. Ct. 577 (2004)), the Court went on to address whether Adobe could bring a claim under Section 107. The district court found that Adobe could not proceed on a claim for joint and several liability under Section 107 but noted that Adobe is not prevented from pursuing a recovery action on some form of liability other than joint and several.

The Court started its analysis by pointing out that the Supreme Court in *Aviall* did not rule on whether contribution is available for a private party under Section 107 and therefore, Ninth Circuit precedent governs. The Court turned to the Ninth Circuit's decision in *Pinal Creek Group v. Newmont Mining Corp.* (118 F.3d 1298 (1997)), where the Ninth Circuit found that "the essence of a claim for contribution . . . is imbedded in the text of § 107." This was further explained by the Ninth Circuit in *Western Properties Service Corp. v. Shell Oil Co.* (358

F.3d 678). Quoting *Western Properties* the district court wrote, "*Pinal Creek* held that the enactment of § 113 in 1986 did not replace the implicit right to contribution many courts recognized in § 107(a); rather, § 113 determines the 'contours' of § 107, so that a claim for contribution requires the 'joint operation' of both sections." Based on this Ninth Circuit precedent, the district court denied defendant's motion for partial summary judgment finding that in the wake of *Aviall*, Adobe's Section 107 claim is construed as it was before the enactment of Section 113. The district court, however, also denied Adobe's motion as it did not address all the elements of a Section 107 contribution claim.

Second Circuit Acknowledges Dilemma for Parties Seeking Contribution under CERCLA for Voluntary Cleanup Costs

Syms v. Olin, 2005 U.S. App. LEXIS 8885 (2nd Cir. 2005).

By David Dowton, Office of Site Remediation Enforcement

Finding that plaintiffs had not been sued under Section 106 or 107 of CERCLA, the Second Circuit ruled that plaintiffs were not eligible to seek contribution under Section 113(f) pursuant to the Supreme Court's decision in *Cooper Indus. v. Aviall Servs.* (125 S. Ct. 577 (2004)). The Court, however, remanded to the district court the issue of whether a liable party may bring an action under Section 107(a) to recover costs. The Second Circuit had previously ruled in *Bedford Affiliates v. Sills* (156 F.3d 416 (1998)) that

a liable party may not bring a cost recovery action under Section 107(a) but noted that the rule put forth in *Bedford* might no longer be viable in light of the Supreme Court's ruling in *Aviall*.

In a lengthy footnote, the Court acknowledged the dilemma created by the Supreme Court's decision in *Aviall* and the Second Circuit's previous ruling in *Bedford*. The Court noted that together the two decisions "leave a PRP with no mechanism for recovering response costs until proceedings are brought against the PRP. This might discourage PRPs from voluntarily initiating a clean-up, contrary to CERCLA's stated purpose." The Court went on to say that a PRP that remediates a facility on its own initiative reduces the likelihood that it will be the subject of a Section 106 or 107 action and thereby jeopardizes its opportunity to seek contribution from other PRPs. The Court concluded in the footnote that if the *Bedford* decision remains unchanged it would "create a perverse incentive for PRPs to wait until they are sued before incurring response costs."

Although the Court acknowledged the dilemma parties like the plaintiffs face, they declined to rule on whether the *Bedford* decision is still viable in light of *Aviall* due to the fact that *Aviall* was decided after oral argument was held and the parties did not have an opportunity to brief the issue. Therefore, the Court elected to vacate the judgment and remand the issue to allow the district court an opportunity to address the plaintiffs' eligibility to sue under Section 107(a) of CERCLA.

For additional information, contact David Dowton, OSRE, (202) 564-4228.

Partners with Expertise in Sustainable Development Sought for ER3

The Office of Site Remediation Enforcement (OSRE) is organizing a network of organizations with sustainable development expertise as part of the Environmentally Responsible Redevelopment and Reuse (ER3) Initiative. OSRE announced the plan to form the network in an April 22, 2005 Federal Register notice. ER3, an effort to encourage sustainable redevelopment of former contaminated sites, was launched in September 2004. The envisioned ER3 partner network will include non-profit organizations, universities, and other entities that will provide assistance to redevelopers wishing to incorporate conservation-minded practices. Partners have to have experience in various areas of sustainable development such as the use of renewable resources for energy, reduction of pollution and energy use, and the promotion of recycling. Participating entities will not be given financial compensation by EPA for the assistance they provide. They may choose, however, to contract for paid services to incorporate recommendations into a project design.

Organizations wishing to participate were asked to submit statements of interest by June 22, 2005. These include details on their qualifications to help redevelop contaminated land with sustainable methods. OSRE will select partners in the weeks following the deadline and post its partners on the ER3 website at: www.epa.gov/com-

[pliance/cleanup/redevelop/er3/](http://www.epa.gov/compliance/cleanup/redevelop/er3/)

For additional information, contact Phil Page, Office of Site Remediation Enforcement, page.phil@epa.gov.

Pioneer Smelting, continued from page 2

ing material.

The facility was built in 1939 by the New Jersey Zinc Company, which conducted zinc smelting and metal reclamation activities at the site. Several entities owned the facility prior to its purchase by the Pioneer Smelting Company in 1973. The facility was used by several lessees for various recycling and metal recovery operations until it was abandoned in 1996. In June 2001, the New Jersey Department of Environmental Protection (NJDEP) responded to a fire and found hundreds of deteriorating drums and a massive slag pile. NJDEP asked EPA to conduct an assessment of the site, and in July 2002, EPA's Emergency Response Team conducted an Expedited Removal Assessment.

The site is located within the New Jersey pinelands, and there was evi-



Aerial view of Pioneer Smelting prior to site cleanup.

dence of public use prior to cleanup including motorcycle and all-terrain vehicle tracks. Access to the site continues to be restricted although the contamination and structural hazards have been abated. Future site use is under consideration by the current owner, local government, and EPA attorneys.

Additional information is available on the EPA's On-Scene Coordinator website at: http://www.epaosc.org/site_profile.asp?site_id=SJ.

EPA Strategies, continued from page 5

status. And EPA is recommending improving recordkeeping through standardizing recordkeeping procedures and managing data electronically.

The draft PCC Strategy is available on Superfund's Post Construction Complete web site at:

<http://www.epa.gov/superfund/action/postconstruction/index.htm>.

For additional information, contact Tracy Hopkins, OSRTI, hopkins.tracy@epa.gov.

July 12-15, 2005

2005 Community Involvement Conference and Training

<http://www.epancic.org/2005/overview.cfm>

Buffalo, NY

August 7-10, 2005

College & University Hazardous Waste Conference

<http://center.uoregon.edu/conferences/CUHW/CUHWC05/>

Portland, Oregon

September 19-23, 2005

20th Annual Hazardous Materials Management Conference on Household & Small Business Waste

<http://www.nahmma.org/2005conference/>

Tacoma, Washington

November 2-4, 2005

Brownfields 2005

<http://www.brownfields2005.org/en/index.aspx>

Denver, CO

Glossary

BRAC	Base Realignment and Closure	OECA	Office of Enforcement Compliance and Assurance
EPA	Environmental Protection Agency	OSRE	Office of Site Remediation Enforcement
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	OSWER	Office of Solid Waste and Emergency Response
DOD	Department of Defense	PBC	Performance-Based Contracting
ER3	Environmentally Responsible Redevelopment and Reuse	PCC	Post construction completion
ICs	Institutional controls	PRPs	Potentially responsible parties
NPL	National Priorities List	USAEC	US Army Environmental Center
O&M	Operation and maintenance	UST	Underground storage tank

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

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