



Suarez Resigns as Assistant Administrator

On January 5, 2004, John Peter Suarez, EPA Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA), announced his resignation, which was effective January 30, 2004. Suarez accepted an offer from Wal-Mart Stores, Inc. to serve as general counsel of its Sam's Club division at Wal-Mart's Bentonville, Arkansas headquarters. The team of six attorneys that will be under his charge represent 533 Sam's Club stores. Suarez was motivated by the opportunity to test his abilities in the private sector and spend more time with his family. Wal-Mart was pleased that he had accepted the offer. Sarah Clark, Wal-Mart company spokeswoman, said that Suarez would provide the company with "an invaluable source of new ideas and ways to continue to achieve and sustain strict compliance with the numerous complex laws and regulations that affect our business."

In his resignation letter to President Bush, Suarez, who served as assistant administrator for 18 months, highlighted recent achievements by OECA: "This past year, we recorded dramatic increases in environmental and public health benefits resulting from the enforcement cases we brought, and I fully anticipate that more such benefits will come in the years ahead." OECA recently released its FY2003 compliance and enforcement results data which showed a 131 percent increase in environmental benefits over FY2002, \$2.9 in injunctive relief, and 471 new cases initiated. During his time in office, Suarez developed the "Smart Enforcement" initiative, a commonsense enforcement approach that encourages targeting the most significant problems using the most appropriate compliance and enforcement tools to achieve significant results. In his letter to the President, Suarez noted the role Smart Enforcement played in achieving the FY2003 results and said that the program will continue to bring positive results.

Before being nominated by President Bush in April 2002 and confirmed by the Senate in August 2002, Suarez led New Jersey's Division of Gaming Enforcement, which regulated the casino industry within the state. He has also served as Assistant Counsel to then New Jersey Governor, Christine Todd Whitman, and was an Assistant U.S. Attorney in the District of New Jersey from 1992 to 1998.

To date, no replacement has been named.

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

Significant FY2003 Successes Announced

In December 2003, the Office of Enforcement and Compliance Assurance (OECA) and Office of Solid Waste and Emergency Response (OSWER) announced significant achievements in enforcement and hazardous waste cleanups for Fiscal Year 2003, which ended on September 30, 2003. The results demonstrate that both offices continue to excel in meeting the Agency's goals of ensuring cleaner air, purer water, and better-protected land.

OECA

The Office of Enforcement and Compliance Assurance reported a 131 percent increase in environmental benefits over FY2002. An estimated 600 million pounds of pollutants were reduced, treated, or managed, over double the amount addressed in FY2002. In criminal enforcement, OECA reported that 471 criminal cases were initiated. Beginning this year, OECA used a different procedure for counting initiated civil enforcement cases. Instead of counting cases with multiple facilities or environmental statutes as more than one case, they are now treated using a "one-for-one" count. Using this new counting system, OECA reported 268 civil judicial referrals, 1707 administrative penalty complaints, and 1582 administrative compliance orders for FY2003. Through enforcement settlements, violators will pay \$2.9 billion in injunctive relief.

Across the enforcement program, \$167 million was assessed in administrative, criminal, and civil judicial penalties. During FY2003, settlers agreed to implement nearly \$65 million worth of Supplemental Environmental Projects during enforcement settlements. Assistant Administrator JP Suarez said that the OECA numbers "demonstrate the Administration's commitment to a vigorous enforcement and compliance assurance program." The results demonstrate the gains made through EPA's policy of "enforcement first" and the recently implemented "Smart Enforcement" initiative, an effort to target the most significant problems using the most appropriate approach. OECA's FY2003 compliance assurance and enforcement results are available online at: <http://www.epa.gov/compliance/planning/results/press/2003eoy/index.html>

OSWER

The Office of Solid Waste and Emergency Response also announced significant accomplishments. The Superfund program completed cleanup of 40 high-priority Superfund sites in FY2003. In total, Superfund has cleaned 886 National Priorities List sites. The Superfund program's FY2003 results are available online at: <http://www.epa.gov/superfund/accomp/success/pdf/accomp03.pdf>. The Office of Underground Storage Tanks (OUST) announced that over 18,500 underground storage tank cleanups were completed, up 17 percent from FY2002. The achievement meets the new national goal, beginning with the FY2003 cycle, for achieving more than 18,000

underground storage tank cleanups a year from 2003-2007. Through improved leak detection techniques and prevention, the number of new reported leaks dropped dramatically, to 12,000. Historically, the average number of new confirmed leaks has been 27,000. OUST's FY2003 results are available online at:

<http://www.epa.gov/oust/cat/camarchv.htm>. The Federal Facilities Restoration and Reuse Office (FFRRO) reported that 148 federal facilities sites are final, 13 sites have been deleted, and six sites have been proposed for listing on the National Priorities List. FFRRO's Facts for Fiscal Year 2003 is available online at:
<http://www.epa.gov/swerffrr/documents/fy2003.htm>.

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

EPA Pursues Teck Cominco for Columbia Pollution

Lake Roosevelt, a reservoir on the Columbia River in Washington State, is a pristine recreation area that draws nearly 1 million visitors each year and feeds the local economy through tourism. When sediment studies found evidence that contamination had migrated from upstream on the Columbia to Lake Roosevelt, EPA entered a unique enforcement situation: pursuing a Canadian company for transboundary contamination.

In 2002, EPA conducted a sediment study of Lake Roosevelt and found slag contaminated with heavy metals, including lead, arsenic, and mercury. The contamination is attributable to several potentially responsible parties including a Canadian smelting company, Teck Cominco Metals Ltd., which has been identified as the largest contributor. Over the course of 100 years, 10-20 million tons of slag from the Teck Cominco Trail Smelter has traveled down the Columbia River to Lake Roosevelt. To date, Cominco has not been held accountable to U.S. environmental standards because it is a Canadian company.

The findings of the sediment study were sufficient to warrant more extensive study of the lake and the primary source river, the Columbia River. Initially, EPA has decided to treat the Upper Columbia as a Superfund Alternative site (SAS), at least for now. As a SAS site, the Upper Columbia will not be listed on the National Priorities List, but Superfund cleanup standards will apply.

Negotiations for the terms of the study and possible cleanup were initiated between Teck Cominco and EPA after the initial study findings. This past November, EPA ceased negotiations because Teck Cominco refused to enter into an Administrative Order on Consent to conduct a Remedial Investigation/Feasibility Study that met CERCLA standards. As Tom Eaton, Region 10's Washington Operations Office Director, stated, Teck Cominco "refused to meet the standards that other U.S. companies must adhere to when they assess the environmental damage their operations have caused." Teck

Cominco Deputy Chairman and CEO, David Thompson, argues that the company is not subject to CERCLA and is not within EPA's jurisdiction.

In a draft Order on Consent, Teck Cominco offered EPA \$10-13 million for past costs and the continuing assessment study, but EPA refused. Dave Croxton of Region 10's Office of Environmental Cleanup maintained that the agreement was "substantively inadequate" and that EPA would "have no faith in the results" of the study if conducted using Teck Cominco's proposed standards. According to Croxton, the studies proposed by Teck Cominco lack standard components of rigorous studies, including site characterization and fate and transport analysis. Also, Teck Cominco has not provided for financial assurance or indemnification.

On December 11, 2003, EPA issued a Unilateral Administrative Order (UAO) to Teck Cominco requiring an extensive site contamination study that meets EPA standards. Teck Cominco has since rejected the UAO. Also, the Canadian government has sent a diplomatic letter to the US State Department asking for the UAO to be rescinded and expressing concern that EPA is pursuing Teck Cominco under CERCLA. In its letter, the Canadian government suggests that the case may set an "unfortunate precedent" by fueling transboundary environmental liability cases by both countries. On January 14, 2004, US Senators Patty Murray (D-WA) and Maria Cantwell (D-WA) submitted a letter to EPA Administrator Leavitt expressing their support for EPA's issuance of the UAO. They support EPA Region 10's efforts to pursue an alternative approach that would "avoid costly, and possibly lengthy, litigation" but urge that CERCLA standards must apply, Teck Cominco should pay all study and cleanup costs, and stakeholders should "have a voice" regarding studies and the cleanup.

For additional information, contact David Croxton, EPA Region 10, (206) 553-6694.

Ecological Soil Screening Level Guidance Released

The Office of Solid Waste and Emergency Response released the final version of *Guidance for Developing Ecological Soil Screening Levels (Eco-SSLs)* this past November. The guidance is the result of collaboration between federal and state agencies, industry, consulting, research institutes, and universities through an Office of Superfund Remediation and Technology Innovation workgroup. Prior to releasing the guidance, the workgroup consulted the EPA's Science Advisory Board for commentary, and the draft guidance underwent a formal peer review at a public workshop.

Eco-SSLs are contaminant concentration levels that are protective of ecological receptors (e.g., mammals, birds, or plants) that might have contact with the soil, directly or indirectly. The need to establish Eco-SSLs and document the derivation process arose from the lack of peer-reviewed soil screening values and from the desire to streamline the

ecological risk assessment (ERA) process at hazardous waste sites. The Eco-SSLs will make the ERA process more efficient and cost-effective by reducing redundancy, increasing consistency, and decreasing potential oversight. The derivation process is outlined in the guidance, allowing other parties to develop additional Eco-SSLs for contaminants for which Eco-SSLs have not been established.

In setting out to draft the guidance, the workgroup established a list of 24 contaminants comprised of 17 metals (including arsenic, chromium, and lead) and seven organics (including polycyclic aromatic hydrocarbons). EPA created the contaminant list using contaminants of concern reported in recent Records of Decision for National Priority List sites and contaminants recommended for inclusion by the EPA regional Biological Technical Assistance Group Coordinators. If contaminants of concern are present in soil at concentrations above the derived Eco-SSL, the environment may be adversely affected, and the soil contaminants may require further evaluation in the baseline ecological risk assessment. The Eco-SSLs can be used to make the screening-level risk calculation for a Superfund Ecological Risk Assessment. They are not intended to be used as cleanup levels nor is it appropriate to use or modify the Eco-SSLs as cleanup standards.

Eco-SSLs have not been established for all of the contaminants. To date, interim Eco-SSLs and documentation are available for aluminum, antimony, barium, beryllium, cadmium, cobalt, dieldrin, iron, and lead.

The guidance is available online at: <http://www.epa.gov/ecotox/ecossil/index.html>.

For additional information, contact Stephen Ells, Office of Superfund Remediation and Technology Innovation, (703) 603-8822.

H.O.D. Landfill Designated Ready For Reuse

Thanks to the vision and commitment of Antioch, Illinois community leaders and many others, high school athletic fields and wetlands will occupy land once used as a landfill. When complete, the athletic fields will give Antioch Community High School much needed field space, and the wetlands will be used for educational purposes.

During a November 12, 2003 ceremony, Region 5 Administrator Tom Skinner presented the town of Antioch with Ready for Reuse documents for H.O.D. Landfill, thereby allowing the redevelopment of the site for recreational use to begin. The Superfund site was the second site to receive the RfR designation, and the first such site in the Midwest. An RfR determination indicates that a site is ready to be redeveloped or reused for a particular purpose. The designation is given when site remedies are considered protective of human health and environment and are consistent with its intended future use. As long as the conditions of land use and remedial standards established in the

cleanup decision and land title documents continue to be met, the RfR determination remains effective.

The athletic fields and cross-country trails are being developed with help from a Superfund Redevelopment Initiative Program grant and the cooperation of local stakeholders and sponsors. Through a \$550,000 grant from the Illinois Department of Commerce and Community Affairs, \$850,000 in revenue bonds, and a partnership with Waste Management, Inc., the school is already using a methane-gas conversion station. The station uses flare gas from the landfill to generate electricity, and the exhaust fumes from the gas-driven turbines are used to pre-heat the school's boiler water. Any excess electricity generated when the school is closed is sold to ComEd, the local utility company. Overall, the school will save an estimated \$100,000 per year in natural gas costs. Antioch Community High School is only the second school in the nation to generate heat and electricity using landfill gas.

The H.O.D. Landfill Superfund site was a municipal and industrial waste landfill from 1963 to 1984. While in operation, the landfill collected approximately 1.5 million cubic yards of wastes, including wastes containing heavy metals and solvents which contaminated groundwater. The landfill stopped accepting waste in 1984, and the site was officially closed and capped with a clay cover in 1989. The site owner, Waste Management, Inc., performed the selected remedy under EPA oversight. The remedy included waste cap improvements, natural groundwater attenuation with monitoring, and leachate and gas extraction to prevent migration. In June 2001, cleanup of the site was considered complete.

Redevelopment of the landfill was made possible through the collaborative efforts of the Antioch Community High School District 117, Antioch Township, ComEd, Illinois Department of Commerce and Community Affairs, Illinois EPA, U.S. Soccer Foundation, Village of Antioch, and Waste Management, Inc.

For additional information, contact Thomas Bloom, EPA Region 5, (312) 886-1967.

In the Courts

Brief Opposes Alcan's Petition for Writ of Certiorari

On December 8, 2003, Solicitor General Theodore Olson filed a brief with the United States Supreme Court on behalf of the United States and the State of New York opposing Alcan Aluminum Corporation's petition for a writ of certiorari. The petition requested that the Supreme Court review a January 7, 2003 Second Circuit Court of Appeals ruling. The circuit court agreed with a district court decision that Alcan is jointly and severally liable for approximately \$13.6 million in cleanup costs. On January 12, 2004, the Supreme Court denied Alcan's petition for writ of certiorari.

In its brief in opposition, the United States concurred with the Second Circuit Court of Appeals' decision that Alcan is jointly and severally liable for EPA's remaining cleanup costs at two sites, the Pollution Abatement Services (PAS) site in Oswego, New York, and the Fulton Terminals site in Fulton, New York. In its petition, Alcan questioned the lack of a quantity requirement in the CERCLA definition of a "hazardous substance." The United States noted that this standard has been upheld without exception in court since even trace amounts of some hazardous substances can impact the environment. Alcan also asserted that the harm was divisible among the potentially responsible parties. The United States concurred with the court of appeals' finding that Alcan failed to meet the necessary burden of proof that the harm was divisible through sufficient evidence at trial. Alcan also argued that a special exception to liability should apply, claiming that PCBs (which are man-made, not naturally occurring) can occur at background levels and that the PCB contamination identified was within background levels. The United States found this claim to be without fact, noting that Alcan presented no evidence of the pre-disposal PCB background levels. Also, one of Alcan's cleanup contractors testified that the concrete at Alcan's Oswego plant contained significant levels of PCBs and that the concrete contaminated the oil emulsion.

Alcan was one of 83 parties found responsible for the contamination at PAS and Fulton. All parties but Alcan settled. Alcan admitted disposing more than 4.6 million gallons of waste oil emulsion containing PCBs and nickel at PAS, which represented roughly 25 percent of the total waste volume. Settlements by the other parties resolved the other 75 percent of the cleanup costs.

The brief in opposition is accessible online through the US Department of Justice's website at: <http://www.usdoj.gov/osg/briefs/2003/0responses/2003-0433.resp.pdf>.

For additional information, contact Steve Botts, OSRE-RSD, (202) 564-4217.

Consent Decree Lodged for Palmerton Zinc Pile

On November 21, 2003, Judge Kosik of the United States District Court for the Middle District of Pennsylvania entered a consent decree for the Palmerton Zinc Pile Superfund Site in Palmerton, Pennsylvania. The consent decree settles the cost recovery case between the United States and the two potentially responsible parties (PRPs), Horsehead Industries, Inc. and Viacom International Inc. One of the parties, Horsehead, filed for bankruptcy protection in August 2002; therefore the consent decree was forwarded to and has been approved by the United States Bankruptcy Court for the Southern District of New York.

The consent decree requires that the parties reimburse EPA \$13 million and the Department of the Interior \$400,000 for past costs; implement the remedies specified in the Records of Decision (estimated at \$27 million); and pay for future response costs.

For future response costs up to \$1.75 million, the parties will use proceeds from a special account created by a 1999 *de minimus* settlement for the site. Also, Horsehead agreed to drop its counterclaims under Sections 107 and 113 of CERCLA; to complete cleanup of the cinder bank as required by a 1995 consent decree; and to pay EPA for past oversight costs for revegetating Blue Mountain.

Over 70 years of zinc smelting operations, a predecessor to Horsehead and Viacom deposited 33 million tons of slag, which resulted in a 2½ mile long cinder bank that is 100 feet high and 500 to 1,000 feet wide. Emissions from the smelting operations, which were laden with heavy metals, killed 2,000 acres of vegetation on Blue Mountain. To protect human health and the environment, EPA recommended revegetating Blue Mountain; securing the cinder bank and treating the contaminated leachate; decontaminating metals-contaminated soils throughout the Borough of Palmerton, which is home to 5,000 residents; and an area-wide Remedial Investigation and Feasibility Study (RI/FS) on the groundwater and surface water. The RI/FS was not addressed in the consent decree. Horsehead and Viacom have begun implementing some of the recommended remedies. To date, construction has been completed on the cinder bank, and EPA and the PRPs are reviewing test plot data for the revegetation of Blue Mountain.

For additional information, contact Cynthia Nadolski, EPA Region 3, (215) 814-2673.

Tidbits

PRP Search Manual Available Online

The Office of Site Remediation Enforcement (OSRE) recently posted the September 2003 PRP Search Manual online. The manual was announced by OSRE director Susan Bromm in a memorandum to Superfund national policy managers and regional counsel on September 10, 2003, and hard copies were provided to EPA's regional and headquarters offices. OSRE will keep the manual current through regular online updates. Users can download the entire manual or individual chapters and appendix items at: <http://www.epa.gov/compliance/resources/publications/cleanup/superfund/prpmanual/index.html>

An article on the manual appeared in the *CleanupNews II* November 2003 issue. To view this and other past articles, go to the *CleanupNews* website at: <http://www.epa.gov/Compliance/resources/newsletters/cleanup/cleanupnews.html>.

For additional information, contact Nancy Deck, OSRE, (202) 564-6039 or deck.nancy@epa.gov

\$2.7 Million for Superfund Cleanup Studies Awarded

On December 11, 2003, the Office of Research and Development announced that \$2.7 million in grants would be awarded for risk assessment and cleanup methods for Superfund sites. The grant recipients were University of California, Riverside (\$200,000); Florida A&M University (two grants totaling \$796,000); St. Thomas University (\$192,000); Lincoln University (\$398,000); College of Mount Saint Vincent (\$389,000); Central State University (\$337,000); and the University of Texas, San Antonio (\$391,000). The selected projects include an analysis of risk communication and how it impacts community participation, a study of arsenic's properties and the potential use of phytoremediation, and a risk assessment study of using phosphate-based remedial technology at sites with metals or mining waste.

Additional details about the studies that received grant funding are available through the National Center for Environmental Research website at:

http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/recipient.display/rfa_id/308.

2004 National Corrective Action Conference Scheduled

The 2004 National Corrective Action Conference will be held May 11-12, 2004 in Orlando, Florida. This annual conference brings together industries subject to RCRA regulation, consultants, state regulators, and EPA regional project managers to discuss corrective action progress. Through the conference, EPA fosters the effort to find faster, flexible, and more focused approaches to successful remediation activities.

This year's conference will focus on the most significant RCRA corrective action issues including: 2005 and 2008 Environmental Indicators, streamlining RCRA reforms, state cleanup programs, emerging technologies, policies and guidance, regional success stories and strategies, and partnerships with industry.

Conference details and online registration are available through the conference website at: <http://www.nationalcaconf.com/2004/>.

Calendar

May 11-12, 2004

2004 National Corrective Action Conference

Orlando, FL

<http://www.nationalcaconf.com/2004/>**June 15-17, 2004**

Accelerating Site Closeout, Improving Performance, and Reducing Cost Through Optimization Conference

Dallas, TX

Contact: Alina Martin, SAIC

(703) 318-4678

http://www.clu-in.org/siteopt/CFA_v1.pdf**June 15-18, 2004**

2004 Community Involvement Conference

Denver, CO

Contact: Theresa Trainor

(202) 566-1250

<http://www.epancic.org/2004>

Glossary

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
Eco-SSL	Ecological soil screening level
EPA	Environmental Protection Agency
ERA	Ecological risk assessment
FFRRO	Federal Facilities Restoration and Reuse Office
OECA	Office of Enforcement and Compliance Assurance
OSRE	Office of Site Remediation Enforcement
OSWER	Office of Solid Waste and Emergency Response
OUST	Office of Underground Storage Tanks

PAS	Pollution Abatement Services
PCBs	Polychlorinated biphenyls
PRP	Potentially responsible party
RCRA	Resource Conservation and Recovery Act
RfR	Ready for Reuse
RI/FS	Remedial Investigation and Feasibility Study
SAS	Superfund Alternative Site
UAO	Unilateral Administrative Order

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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).