



---

## **Supreme Court Issues Ruling in Eminent Domain Case**

On June 23, 2005, the Supreme Court ruled in the case of *Kelo v. City of New London* that New London's planned taking of private property from homeowners for the sake of private economic development does not violate the Takings Clause of the Fifth Amendment of the U.S. Constitution. That clause ("nor shall private property be taken for public use, without just compensation") places two checks on the power of eminent domain: first, that private property owners must be compensated for their taken property and, second, that the property must be taken for a "public use." The central issue in the case was whether economic development constitutes a valid public use. Writing for the Court, Justice Stevens affirmed that it does, and he was joined in his opinion by Justices Souter, Ginsberg, Breyer and Kennedy. Justices Rehnquist, Scalia, O'Connor and Thomas dissented.

The case involves nine petitioners who own various properties in the Fort Trumbull neighborhood of New London, Connecticut. None of the properties that were condemned by the city are considered blighted; petitioner Susette Kelo has made several improvements to her riverfront property and another property is the life-long home of Wilhelmina Dery who was born there in 1918. The city has purchased most of the property necessary for the development, which is to include a hotel convention center, retail shops and office space. When the petitioners in this lawsuit refused to sell, the city invoked a state statute that permits using eminent domain for economic development.

Justice Stevens cited a variety of precedents as a basis for interpreting "public use" broadly enough to include transferring ownership of land from one private party to another as part of a "carefully considered" development plan aimed at benefiting the public. He noted that the narrow understanding of "public use" as meaning "use by the general public" has been rejected by the Court for a century in favor of the broader interpretation that equates "public use" and "public purpose." And he argued that in the case at hand the public purposes included, among others, new jobs and increased tax revenues.

In her dissenting opinion, Justice O'Connor acknowledged that transfer of private property via eminent domain to another owner for subsequent private use can be constitutional in cases where taking the property directly benefits the public because the property's current use is harmful. But she pointed out that New London did not claim that the well-maintained private residences it condemned were the source of any social harm; and she emphasized that the intended public benefits of transferring the ownership of those properties are of the indirect sort that almost any private use might generate. O'Connor wrote: "Under the banner of economic development, all private property is

now vulnerable to being taken and transferred to another private owner so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process.”

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

## **Risk Assessments Finalized for GE Pittsfield/Housatonic River Site**

EPA has finalized two risk assessments—one for human health and one for ecological risk—for the “Rest of River” area of the GE Pittsfield/Housatonic River Site in Pittsfield, Massachusetts. The “Rest of River” area of the site includes Housatonic River sediments and the floodplain from the confluence of the East and West Branches in Pittsfield downstream into Connecticut. The risk assessments have been approved after careful review by an independent Peer Review Panel and the consideration of comments received during two public comment periods. With the risk assessments complete, GE is responsible for submitting a proposal for the Interim Media Protection Goals (IMPGs) for the “Rest of River” area, according to the terms of the 2000 Consent Decree. The IMPGs, which will be the target cleanup levels, are due to EPA in September.

GE manufactured a variety of products—including transformers, plastics, and ordnance—at its Pittsfield plant beginning in 1903. From 1932 to 1977, PCB-contaminated wastes from manufacturing activities entered onsite waste and stormwater systems that drain to the East Branch of the Housatonic River and Silver Lake.

A detailed site history and description, the Consent Decree, maps and photos, and other documents are available on the GE/Housatonic River Web site at:

<http://www.epa.gov/region1/ge/index.html>.

*For additional information, contact Susan Svirsky, Remedial Project Manager, EPA Region 1, [svirsky.susan@epa.gov](mailto:svirsky.susan@epa.gov).*

## **EPA Awards Six Brownfields Grants**

On June 24, 2005, the Office of Brownfields Cleanup and Redevelopment announced that EPA has selected six recipients to receive a total of \$1.4 million in brownfields training, research, and technical assistance grants. The grants will fund efforts to address issues of the environment and human health in socio-economically disadvantaged communities. The recipients are: the University of North Carolina Charlotte; National Center for Neighborhood and Brownfields Redevelopment, Rutgers University; American Planning Association; University of Louisville; Northeast Midwest Institute; and Duke University.

26 organizations sent applications by the May 1 deadline. Brownfields training, research, and technical assistance grants are available to eligible government applicants and non-profit organizations.

*For additional information, contact Becky Brooks, Office of Brownfields Cleanup and Redevelopment, [brooks.becky@epa.gov](mailto:brooks.becky@epa.gov).*

## **Dredging Plan Approved for Willamette River**

In accordance with an Action Memorandum released June 20, 2005, Northwest Natural Gas Company (NW Natural) will dredge 15,000 cubic yards of tar-contaminated sediments from the Willamette River in Portland, Oregon and place a protective cap. The segment of river to be addressed through this action is the GASCO site, which is part of the Portland Harbor Superfund site. NW Natural will complete the site cleanup pursuant to the terms of an Administrative Order on Consent with EPA signed on April 28, 2004.

EPA requested that NW Natural prepare an Engineering Evaluation and Cost Analysis (EE/CA) for the site outlining alternative cleanup options. After reviewing the EE/CA, EPA determined that the dredging/capping option was most protective of human health and the environment. Based on comments received from the public about the EE/CA, a comprehensive containment system with silt curtains will be constructed to prevent the migration of solid particles during dredging, and additional monitoring will be conducted.

EPA is most concerned about addressing the “tar body,” visible tar contamination in river sediments that contain polycyclic aromatic hydrocarbons (PAHs), toluene, benzene, and other constituents. Addressing the tar body will help protect the Willamette River ecosystem, which includes 5 salmonid species listed as threatened pursuant to the Endangered Species Act; several fish, birds, amphibians, and wetland plant species considered endangered or sensitive by the Oregon Department of Fish and Wildlife; and species listed as species of concern by the U.S. Fish and Wildlife Service.

Portland Gas and Coke Company (GASCO), now NW Natural, operated an oil gasification plant on the site from 1913 to 1956. Until 1941, wastewater effluent and tar stills were discharged into a stream that drains into the Willamette River. The site was added to the National Priorities List on December 1, 2000.

*For additional information, contact Sean Sheldrake, Remedial Project Manager, [sheldrake.sean@epa.gov](mailto:sheldrake.sean@epa.gov).*

## **EPA Makes McCoy Field Documents Available Online**

EPA has posted documents regarding McCoy Field in New Bedford, Massachusetts in response to public comments requesting improved access. This information was previously available in paper copy at the New Bedford Free Public Library. The newly

posted information includes documentation of EPA's recent review and approval of New Bedford's plan to address PCB contamination at McCoy Field. Specifically, links are provided to correspondence containing the city's responses to EPA review comments as well as EPA's draft approval letter. The McCoy Field documents—including the draft approval, administrative record, a fact sheet about the proposed Keith Middle School, and a presentation—are available online at: [www.epa.gov/ne/mccoyfield](http://www.epa.gov/ne/mccoyfield). In addition to posting these documents online, EPA extended the deadline for public comments from July 15, 2005 to July 29, 2005.

In June, EPA made a preliminary decision to approve the city's plan to cleanup the PCB contamination. This decision centered on the city's proposed measures to remove contaminated materials from the site and install clean soil covers, solid barriers and a passive vapor ventilation system. The city's plans also include monitoring for threats to human health at the site; the city hopes to build a new middle school on the site after cleanup is completed. EPA's actions in this matter are pursuant to its authority to regulate PCBs and PCB contamination under the Toxic Substances Control Act (TSCA).

*For additional information, contact David Deegan, EPA Region 1, [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov).*

## **Union Pacific Required to Prevent Oil Spills**

EPA has issued an order requiring Union Pacific Railroad to address oil contamination from its train service and refueling area on the Suisun Bay in Martinez, California. EPA is requiring the company to prepare a plan and schedule to address the potential for future discharges from its tracks. In addition, the company must determine how much oil has already been released into Suisun Bay, which is part of San Francisco Bay.

EPA's order comes after emergency responders were called to investigate and address oil contamination from the Ozol Service Track Area, which is located adjacent to the water. It appears that oil from contaminated pads and soil discharged to the bay through a storm water drain. Discharges such as these can harm the delicate marine environment and threaten marine plants and animals. Although Union Pacific has taken some measures to correct the problem, it could face penalties of \$37,500 for each day it does not respond to EPA's order.

*For additional information, contact Dan Suter, EPA Region 9, [suter.daniel@epa.gov](mailto:suter.daniel@epa.gov).*

## **In The Courts**

### **Settlement Approved in Grace Fraudulent Transfer Case**

On June 27, 2005, the United States Bankruptcy Court for the District of Delaware approved a settlement in the W.R. Grace fraudulent transfer case. The suit was brought

against Sealed Air Corporation and Cryovac, Inc. (the makers of “bubble wrap”) by two creditors' committees overseeing the claims against W.R. Grace for asbestos-related damages; the federal government joined the suit as a party in June 2002. The government and committees alleged that W.R. Grace transferred funds to Sealed Air to hide assets in anticipation of coming asbestos claims. Under the terms of the agreement, Sealed Air will pay the Grace bankruptcy estate \$512.5 million and give the estate 9 million shares of Sealed Air stock. The settlement is valued at close to \$1 billion. In 1998, Sealed Air acquired W.R. Grace's Cryovac division in a merger worth several billion dollars. The settlement resolves Sealed Air's liability for all existing and future asbestos-related claims.

EPA is among the creditors seeking funds from the W.R. Grace bankruptcy estate. W.R. Grace is responsible for the widespread asbestos contamination at Libby Mine in Montana. In October 2003, W.R. Grace was ordered to reimburse EPA \$54 million in response costs at the site. The company filed for Chapter 11 bankruptcy in April 2001 and is currently working to come out of bankruptcy through reorganization.

*For additional information, contact Andrea Madigan, EPA Region 8, [madigan.andrea@epa.gov](mailto:madigan.andrea@epa.gov).*

## **DuPont and EPA Agree to Settlement for Necco Park and Newport**

In two settlements reached on June 20, 2005, DuPont has agreed to reimburse EPA \$2.7 million in past costs for the Necco Park site in Niagara Falls, New York and EPA and DuPont resolved a claim by EPA and a cross-claim by DuPont concerning litigation costs with respect to the Newport site in Newport, Delaware. DuPont will also drop its pending appeal of a district court judgment (341 F.Supp.2d 215 (W.D.N.Y.)) that awarded EPA past costs for Necco Park. In the appeal, DuPont argued that it should not have to reimburse the Department of Justice for enforcement costs, costs DuPont characterized as “attorneys fees” not allowable under CERCLA. This settlement completes the litigation for Necco Park. The Newport litigation may still be impacted by the Third Circuit Court of Appeals' reconsideration of its ruling in *U.S. v. Rohm & Haas* (2.F.3d 1265), the 1993 ruling in which the Third Circuit determined that the government was not entitled to recover all oversight costs. Hearings to review that ruling are scheduled for September 8, 2005.

Necco Park served as an industrial waste disposal site from the mid-1930s to 1977 when groundwater contamination was discovered. During that period, approximately 93,000 tons of waste—including fly ash, floor sweepings, sodium sludge waste salts and chlorinolysis wastes—from manufacturing at DuPont's Niagara Plant were disposed at the site. The disposal of these wastes resulted in volatile organic compounds and semi-volatile organic compound groundwater contamination. DuPont is completing the recommended site remedy pursuant to a 1998 Administrative Order under EPA oversight. DuPont developed a design plan for upgrading the clay landfill cap placed in the 1970s

and for installing a hydraulic groundwater containment system, and EPA has approved the designs for both. The groundwater containment system has been constructed and is now operational, and the landfill cap will be placed in 2006.

The Newport Landfill site in New Castle, Delaware included a pigment-manufacturing facility and two landfills for industrial waste. DuPont purchased the plant in 1929 and disposed of wastes from the production of Lithopone, organic and inorganic pigments, and chromium dioxide in the landfills. Heavy metals and chlorinated solvents were detected in groundwater. DuPont completed site cleanup—including sediment dredging, capping the landfills, installing groundwater treatment systems, and wetland/river bank restoration—in September 2002 under EPA oversight.

*For additional information, contact George Shanahan, EPA Region 2, (212) 637-3171, or Mary Rugala, EPA Region 3, (215) 814-2686.*

## Tidbits

### Update: New Bedford Harbor Cleanup

In an innovative approach, EPA is taking clean sand from the navigational dredging of New Bedford Harbor in Massachusetts and using it as a “clean cap” over PCB-contaminated sediments in the Cornell-Dubilier area of the harbor. The pilot capping study is saving money because clean sand from dredging that would otherwise be disposed of at sea is being used for a beneficial purpose. This approach is also accelerating the cleanup of the harbor; the area being capped has lower levels of PCBs than the upper harbor and would likely be addressed after areas with higher concentrations. EPA will conduct yearly monitoring of the cap to ensure it effectively prevents contaminants from migrating.

The PCB contamination of the harbor, which resulted from the disposal practices of two capacitor manufacturing plants, is extensive and impacts recreational and commercial fishing. EPA has already addressed 30 acres of PCB-contaminated sediments, and another 240 acres will be handled at the newly opened sludge dewatering facility.

Two articles about the New Bedford Harbor cleanup—one about the state Portfields grant received to fund the navigational dredging and another about the opening of the sludge dewatering facility—appeared in the Fall 2004 issue of *CleanupNews*, available online at: <http://www.epa.gov/Compliance/resources/newsletters/cleanup/cleanup18.pdf>.

*For additional information, contact Dave Dickerson, EPA Region 1, (617) 918-1329 or [dickerson.dave@epa.gov](mailto:dickerson.dave@epa.gov).*

## Calendar

### August 23-26, 2005

Waste & Recycle 2005 Conference & Exhibition

[http://www.environmentaljobs.com.au/events\\_db/view.php?job\\_ID=84](http://www.environmentaljobs.com.au/events_db/view.php?job_ID=84)

Fremantle, Western Australia

### September 18-23, 2005

North American Hazardous Materials Management Association 2005 Conference

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

Tacoma, WA

### September 28-30, 2005

ICOPCE 2005

<http://www.abc-asia.com/Chemical-Oil-Pollution/ICOPCEIntro.htm>

International Chemical & Oil Pollution Conference & Exhibition

Shangri-La Hotel, Singapore

### October 3-7, 2005

ConSoil 2005

9th International FZK / TNO

Conference on Soil-Water Systems

<http://www.consoil.de/>

Bordeaux, France

### October 9-12, 2005

8th Annual Florida Brownfields Conference and Exhibition

<http://www.floridabrownfields.org/>

Jacksonville, FL

### November 2-4, 2005

Brownfields 2005

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

Denver, CO

## Glossary

CERCLA      Comprehensive Environmental Response, Compensation, and Liability Act

EE/CA      Engineering Evaluation and Cost Analysis

EPA      Environmental Protection Agency

GASCO      Portland Gas and Coke Company



IMPGs	Interim Media Protection Goals
OSRE	Office of Site Remediation Enforcement
PAHs	Polycyclic aromatic hydrocarbons
PCB	Polychlorinated biphenyls
TSCA	Toxic Substances Control Act

## Subscription Information

Richard W. Popino, PhD REM, editor-in-chief

Review Board: Diane Bartosh, Sandra Connors, Karen Ellenberger, Elliott Gilberg, Jeff Heimerman, Kenneth Patterson, Neilima Senjalia, Suzanne Wells

Christine Rueter, Cheryl Mueller, DPRA, Inc., writers

Mary Spencer, DPRA, Inc., designer

To comment on the newsletter, contact Richard W. Popino, PhD REM, at MC-2271A, US EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460, email:popino.rick@epa.gov.

*CleanupNews* is a publication of EPA's Office of Site Remediation Enforcement, in cooperation with the Office of Superfund Remediation and Technology Innovation, Office of Underground Storage Tanks, and Office of Emergency Prevention, Preparedness and Response. Past issues of *CleanupNews* can be found at <http://www.epa.gov/compliance/resources/newsletters/cleanup/cleanupnews.html>

To be added to or deleted from the hardcopy list, contact Christine Rueter at [christine.rueter@dpra.com](mailto:christine.rueter@dpra.com).

To receive *CleanupNews* by email, join the listserv at <http://www.epa.gov/compliance/resources/listserv/cleanup.html>.