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

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EPA Reaches Historic Agreement for Upper Columbia River

WASHINGTON — On June 2, 2006, the Bush Administration announced it had negotiated a significant settlement with Canadian smelter Teck Cominco to study contamination in the Upper Columbia River in northeast Washington state. The agreement was reached after several years of negotiations. Teck Cominco has a facility in Trail, British Columbia, 10 miles north of the U.S. border, and it is believed that contamination from this facility flowed downstream into the U.S. Under the terms of the agreement, Teck Cominco will conduct a Remedial Investigation and Feasibility Study (RI/FS) of a 150-mile stretch of the Upper Columbia River including Lake Roosevelt. The RI/FS will be conducted under EPA oversight and be consistent with U.S Superfund law.

Over the course of nearly 100 years, Teck Cominco discharged approximately 15 million tons of slag and liquid effluent into the river. After receiving a petition from the Colville Tribes re-environmentment, EPA sediment 2001. EPA's previous showed el-of heavy met-furan in Lake river sedi-Upper Co-is a popular nation, with



Contamination is visible in the Upper Columbia River.

After receiving a petition from the Confederated tribes requesting an tal assess-collected river samples in sampling and s a m p l i n g evated levels als, dioxin, and Roosevelt and ments. The lumbia Basin tourist desti-1.5 million

visitors annually. The RI/FS will give a more complete picture of the extent of contamination and assist EPA with selecting a cleanup plan.

The agreement may be viewed online at: <http://www.epa.gov/newsroom/pdf/teckcominco.pdf>.

For additional information, contact Kevin Rochlin, EPA Region 10, rochlin.kevin@epa.gov, (206) 553-2106.

\$50 Million Cleanup of Ashtabula River Begins

OHIO – On June 5, 2006, EPA Administrator Stephen Johnson, Ohio Governor Bob Taft, U.S. Rep. Steven C. LaTourette, and other state and local partners marked the beginning of the collaborative cleanup of the Ashtabula River, a tributary of Lake Erie. Over a three-year period, EPA and the Ashtabula City Port Authority will dredge 500,000 cubic yards of contaminated sediments and dispose them in a special landfill. Once dredging is complete, the habitat will be restored, and the U.S. Army Corps of Engineers will do navigational dredging downstream to improve shipping channels.

The cleanup is being funded in part through the Great Lakes Legacy Act of 2002, a federal initiative targeted at cleaning up the most contaminated sites around the Great Lakes. The Ashtabula City Port Authority and its



Ohio Governor Bob Taft and EPA Administrator Johnson speak at the Ashtabula River Cleanup

partners and the State of Ohio are also contributing cleanup funds. The Ashtabula cleanup is the most ambitious Great Lakes cleanup effort yet; the volume of contaminated sediments to be cleaned up is more than double the total combined volume of sediments addressed in the previous three projects.

Between the 1940s and 1970s, contaminants were discharged directly into the Ashtabula River and settled into the sediments. The contaminants of concern identified in the sediments include polychlorinated biphenyls (PCBs) and heavy metals. The contamination posed a potential risk to human health and prompted officials to post fish advisories in the area.

Proposed Legislation Encourages Voluntary Mine Cleanup

DISTRICT OF COLUMBIA — The Good Samaritan Clean Watershed Act, introduced May 10, 2006 in the U.S. Senate, seeks to remove some of the legal barriers that discourage non-liable parties from cleaning up abandoned mines. The proposed legislation was introduced on behalf of the Bush Administration. The Senate Committee on Environment and Public Works held a full committee hearing to discuss the legislation on June 14, 2006.

There are more than 500,000 abandoned hardrock mines in the U.S. Acid mine drainage from these mines pollutes watersheds and degrades water quality. In many cases, the mine own-

ers who contributed to the contamination no longer exist, so the onus of cleanup falls to the federal government or voluntary parties. Under existing laws, third parties can be liable under

“The Good Samaritan legislation would help remove the threat of liability and encourage volunteers to restore watersheds.”

the Clean Water Act (CWA) and/or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) even if they did not cause the pollution. The Good Samari-

tan legislation would help remove the threat of liability and encourage volunteers to restore the watersheds.

Before initiating cleanup, parties would be required to submit a permit application to EPA outlining their cleanup plan, financial resources, and other relevant information. EPA would evaluate the application, and if acceptable, issue a permit. The parties conducting the cleanup would be granted CWA and CERCLA liability protection only for actions taken under the permit. EPA would maintain enforcement authority which would allow the Agency to issue administrative orders for violations of the Act or pursue civil action in U.S. District Court.

District Court Asked to Approve Settlement for Hudson River

NEW YORK — On May 16, 2006, the U.S. Department of Justice asked the U.S. District Court for the Northern District of New York to approve the proposed consent decree with General Electric Company (GE) for the Hudson River PCBs Superfund site. The proposed consent decree, lodged with the Court on October 6, 2005, was subject to a 60-day public comment period, which ran from October 13 to December 14, 2005. The government made its request after reviewing the approximately 20,000 public comments submitted during the comment period and concluding that the consent decree remains appropriate. If the Court

approves the consent decree, it will become effective immediately. Dredging of the Hudson River will be done in two phases. The first phase of the dredging



General Electric's Hudson Falls Plant.

will last one year and will remove about 10 percent of the total volume of PCB-contaminated sediment slated for dredging during the full cleanup project. The remaining phase of the dredging is expected to take five years.

Under the terms of the settlement, GE has agreed to construct a sediment processing/transfer facility in Fort Edward, New York, and to implement Phase 1 dredging as outlined in EPA's 2002 Record of Decision. The facility construction and the Phase 1 dredging are estimated to cost between \$100 and \$150 million. After Phase 1 of the cleanup is complete,

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Non-Liable Party Proposes Cleaning Up and Redeveloping Houston Superfund Site

HOUSTON — Under the terms of a proposed agreement reached in June 2006, Clinton Gregg Investments, L.P., can purchase and clean up a 36-acre tract of the Many Diversified Interests, Inc. Superfund Site located just two miles from downtown Houston. If the settlement is approved, Clinton Gregg Investments, L.P., which is not liable for the site contamination, will conduct the remedy to address lead-contaminated soils outlined in a July 2004 Record of Decision and redevelop the site. This is the first time EPA has entered into an agreement with a non-liable party to clean up a Superfund site. The agreement will save \$6.6 million in Superfund funds, since there are no potentially responsible parties to clean up the site. The proposed

settlement is subject to a 30-day public comment period, which began June 1, 2006 with the publication of a Federal Register notice.

In 2005, the property was offered at auction by the bankruptcy trustee.

“This is the first time EPA has entered into an agreement with a non-liable party to clean up a Superfund site.”

Clinton Gregg Investments, L.P., was the winning bidder with a \$7.8 million bid. \$6.6 million of the final purchase price will go to either performing or paying for the remedy.

The area Clinton Gregg Investments, L.P., would clean up is the site of a former foundry. A metal casting

foundry operated on the site from 1926 until the early 1990s; during this period, the company produced mostly specialty molded products like large wheels and mining equipment. In 1992, site operations ceased and then-owner Many Diversified Interests, Inc. declared bankruptcy in 1994. On-site structures were demolished between 1995 and 1996, though some foundations remain. The site was added to the NPL in January 1999.

EPA will accept public comments on the proposed agreement through July 3, 2006. A copy of the agreement is available at www.epa.gov/earth1r6/6xa/pdf/mdi_agreed_order.pdf.

For additional information, contact Dave Bary or Cynthia Fanning, 214-665-2200 or r6press@epa.gov.

Dallas Brownfields Program Spurs City Redevelopment Efforts

TEXAS — The City of Dallas is being revitalized, thanks in part to the efforts of the Dallas Brownfields Program and grants from EPA's Office of Brownfields Cleanup and Redevelopment. The redevelopment effort is encouraging businesses and residents to consider downtown rather than moving out to the suburbs. The city has adopted a plan to encourage economic development, preserve neighborhoods, and spur private redevelopment in Dallas' poorest sectors west and south of the city.

The Dallas Brownfields Program (DBP) was started through a \$200,000 Brownfields assessment pilot grant from EPA in October 1995. Since then, the program has helped revitalize downtown Dallas by turning abandoned and underused properties into usable spaces. Victory Park, a mixed-use retail, office, and residential park that includes the American Airlines Center and new W Hotel, opened in 2001. The park received a Phoenix Award, a

national award for outstanding brownfields achievement. In south Dallas, DBP used funds to conduct site assessments of a former Sears



The American Airlines (AA) Center is located on the site of a former Dallas Electric Company generating plant, built in 1890.

Automotive Store. Through a bond initiative, voters agreed to fund the redevelopment of the store as a new police headquarters. The City of Dallas used sustainable development practices to build the Jack

Evans Police Headquarters, which was the first "green building" constructed in Dallas.

On May 12, 2006, EPA announced the program would receive another \$200,000 to conduct environmental site assessments and perform community outreach. The monies will be used primarily to study sites in the southern sector of Dallas, including South Dallas/Fair Park, West Dallas, the Cedars and the South Side Public Improvement District.

To date, DBP has leveraged more than \$922 million for Brownfields cleanup and redevelopment and added more than 6,000 jobs. DBP boasts 37 Brownfields success stories since its inception. EPA has designated Dallas a brownfields showcase city.

More information about the Dallas Brownfields Program is available on the EPA Region 6 Web site at: www.epa.gov/region6/brownfields.

Brownfields Grant Will Help Restore Killam Lake Site

TEXAS—The City of Laredo, Texas has received a \$100,000 Brownfields cleanup grant from EPA. The city intends to use the grant funds to clean up the Killam Lake site in the Chacon Creek watershed and to conduct community outreach. The 18-acre site has potential contamination from illegal dumping activities. There is an ambitious plan to create a "greenbelt park" that will connect all of Laredo's creeks and river systems through a network of nature trails and recreational facilities.

New trade opportunities between the US and Mexico have spurred Laredo's rapid population growth. There are dozens of brownfields sites along creeks in the city; these abandoned and underutilized sites increase the risk of water pollution and degraded wildlife habitats.

For additional information, contact Dave Bary or Cynthia Fanning, 214-665-2200 or r6press@epa.gov.

Additional Murphy Oil Spill Sampling Results Posted

EPA has updated its Hurricane response Web site with new sampling results from the Murphy Oil Site in New Orleans. The results are available online at: <http://www.epa.gov/katrina/testresults/murphy/index.html>. Ten percent of the soil samples Murphy collects are split, and EPA sends the split samples for independent analysis. To date, Murphy has collected 8008 sediment samples from 4789 properties. Of the 8008 sediment samples collected, EPA has sent 834 split samples for separate analysis. EPA has received, evaluated, and posted results from the first 823 samples.

During flooding from Hurricane Katrina, a 250,000 barrel above ground storage tank was dislodged, lifted and damaged. Approximately 25,110 barrels (1,050,000 gallons) of oil were released. The spill has impacted 1700 homes in an adjacent residential neighborhood and several canals. The Federal Emergency Management Agency tasked EPA with conducting ongoing sampling of residential and other properties.

EPA Orders LA Company to Pay for Cleanup Following Fire

CALIFORNIA — EPA has ordered Advanced Packaging and Products to pay for the cleanup of the company's Carson, California facility. A January 2006 fire at the facility that killed the plant manager and injured two employees released hazardous substances onto the property. EPA estimates the cleanup will cost around \$450,000.



Abandoned drums of an ethanol solution inside the warehouse.

After the LA County Fire Department responded to the fire, the fire department's hazmat division initiated site clean-up before requesting assistance from EPA. EPA identified over 400 containers at the site containing isopropyl alcohol, toluene, xylene, and other flammable materials.

For additional information, contact Francisco Arcaute, EPA Region 9, (213) 244-1815.

EPA Responds to Hazardous Materials Release in Palo Alto

CALIFORNIA—EPA is responding to a hazardous materials release at the Romic facility in East Palo Alto, California. The release occurred June 5, 2006 at the company's facility at 2081 Bay Rd. Approximately 4,000 gallons of used mixed solvents in a tanker began reacting, and an aerosol/fine

mist was released over a 2-acre area. The local police issued a shelter in place around 10:45 pm; when it was determined an hour later that the release was contained, the order was lifted. The San Mateo County Environmental Health and County Hazardous Materials Team, the East Palo Alto Police Department, and County

Office of Emergency Services all responded to the incident.

Romic is working with EPA to cleanup the site and ensure the safety of the community. EPA contractors are collecting samples of deposited material for off-site analysis and characterization. Romic and EPA contractors are conducting air monitoring.

Seneca
Meadows, Inc. v.
ECI Liquidating,
Inc. 2006 WL
1030321
(W.D.N.Y. Apr. 20
2006)

By Josh Epstein, OSRE

The U.S. District Court for the Western District of New York held that state-level “consent orders” qualified as a contribution-conferring “settlement” for the purposes of CERCLA Section 113(f)(3)(B). The defendant argued that the state lacked authority to settle CERCLA liability because EPA never “delegated” CERCLA authority to the state. However, taking into account *Aviall’s* progeny on this issue, including *Con Ed v. UGI*, *W.R. Grace v. Zotos*, and *Bedford Affiliates v. Sills*, the Court ruled that plaintiff SMI could seek contribution. As support for its holding, the court observed that “the consent orders here expressly state that the parties agreed that SMI had resolved its liability to the state for purposes of CERCLA,” and that “the consent orders amount to a settlement of SMI’s liability to the State not just under state law, but under CERCLA as well.”

The Court also found that SMI had at its disposal a Section 107 cost recovery claim because, even though SMI signed onto three consent orders, the Court deemed SMI to be a nonliable party for the purposes of Section 107(a)(4)(B). The Court reasoned that “the consent orders expressly provided that SMI admitted no liability or fault. . . . In addition, SMI had not been sued, and there was no threat that SMI might imminently be held liable . . . under an administrative or

court order or judgment.’ . . . SMI may not have acted entirely out of altruistic motives, but neither had it been found liable, or even [been] sued at that point.”

Despite the Court’s determination that SMI had both a Section 107 and a Section 113(f)(3)(B) claim, the Court refused to effectuate such rights because it held that SMI failed to establish that the defendant caused the contamination at issue.

For additional information, contact Josh Epstein, (202) 564-6009 or Tina Skaar, (202) 564-0895.

United States Files Motion to Dismiss Ford Motor Company’s Second Amended Complaint

On May 22, 2006, the Department of Justice (DOJ) filed a motion to dismiss (MTD) on behalf of the United States, in the United States District Court for the Eastern District of Michigan, against Ford Motor Company’s (Ford) Second Amended Complaint for CERCLA, RCRA and state hazardous waste management response costs incurred by Ford at its Rouge Complex Industrial Facility (the Site) in Dearborn, Michigan. Ford’s claims against the United States are being brought pursuant to an amended administrative agreement between Ford and the Michigan Department of Environmental Quality under which Ford incurred response costs for hazardous wastes that Ford alleges resulted from activities of the United States at the Site. In its MTD the United States argued that Ford’s Second Amended Complaint should be dismissed because Ford asserts CERCLA Section

107(a) and 113(f)(3)(B) claims over which the court lacks subject matter jurisdiction. The United States also argued that Ford is barred from asserting its previously dismissed CERCLA Section 107(a) claims by the law of the case and binding Sixth Circuit authority that potentially responsible parties do not have claims under CERCLA Section 107. The United States also argues that Ford has not resolved its CERCLA liability to MDEQ because: (1) the administrative agreement between FORD and MDEQ never sufficiently resolved Ford’s liability to constitute a valid settlement under CERCLA Section 113(f)(3)(B); (2) the amended agreement lacked consideration sufficient to constitute a bona fide settlement under Michigan contract law; (3) there has not been a determination that the United States has incurred a joint-liability to the State of Michigan with Ford for the Site; and (4) that even if a valid agreement exists for some of the response costs incurred by Ford that Ford’s complaint seeks recovery of costs greater than allowed under the amended agreement. The United States also explicitly reserved the right to argue in future court pleadings that to be a valid settlement under CERCLA Section 113(f)(3) (b), an administrative agreement resolving CERCLA liability must specify that it is to resolve CERCLA liability. The United States’ MTD also argues that the court lacks subject matter jurisdiction under RCRA to address Ford’s RCRA Citizen Suit claims because Ford has failed to allege that an imminent and substantial endangerment to health or the environment is present at the facility and that RCRA with one exception (not alleged by Ford in its complaint) does not constitute a waiver of sovereign immunity from state hazardous waste laws.

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

Region 10 Administrator to Join Interior Department

Regional Administrator Michael Bogert has accepted an invitation to serve as counselor to Secretary of Interior Dick Kempthorne.

In a letter to EPA employees announcing Bogert's resignation, EPA Administrator Johnson said that he



“brought enormous energy, a sense of urgency, and an ethic of collaborative problem-solving to his work on behalf of the Region and the Agency.” Since being sworn in as RA in August 2005, Bogert has overseen a number of significant Region 10 accomplishments, including the landmark agreement with Teck Cominco for the Upper Columbia River. He also served as the federal representative on the Coeur d'Alene Basin Commission.

With Bogert's departure on July 8, 2006, Deputy Regional Administrator Ron Kreizenbeck will become Acting Regional Administrator.

OSRE Conducts Pilot Financial Assurance Training

In fiscal years 2006 and 2007, ensuring compliance with financial assurance requirements is an Office of Enforcement and Compliance Assurance (OECA) national priority. To that end, the Office of Site Remediation Enforcement (OSRE) provided a two and a half day pilot CERCLA financial assurance training course in Washington, DC on May 2, 3 and 4th 2006. The training provided a comprehensive look at CERCLA financial responsibility mechanisms.

One of the most significant parts of the financial responsibility enforcement strategy is capacity building. To further that priority, OSRE staff developed a number of tools, including tip/fact sheets, checklists, sample instruments, and revised model CERCLA RD/RA Consent Decree language for financial assurance, this material was the basis of the training.

The training was very well received by training participants. Based on feedback from training participants and observations from OSRE staff and management, portions of the training will be revised and the training course will be offered again later this fiscal year in a regional office.

For additional information, contact Mary Bell, OSRE, (202) 564-2256.

Hudson River, continued from page 3

the dredging-to-date will be evaluated by an independent peer review panel, which will consider possible changes to the engineering performance standards that were established by EPA. EPA will seek public input during the peer review process. EPA will consider the conclusions of the peer review panel and determine whether changes to the performance standards should be made and will inform GE of any modifications that would be required during Phase 2 of the dredging program. GE will then have the option to agree to conduct Phase 2 of the dredging. If the company agrees to perform Phase 2, the work would be carried out under the terms of the consent decree. Because the settlement is comprehensive and addresses both phases of the dredging, it allows for a seamless transition in the event that GE elects to perform Phase 2. If GE does not agree to conduct the Phase 2 dredging, the EPA fully reserves all of its enforcement authorities, including its right to direct the company to perform the dredging and/or sue in district court to require GE to perform Phase 2 or to reimburse the EPA for its costs if the Agency conducts Phase 2 using government funds.

For additional information, contact: Doug Garbarini, Team Leader, Hudson River Team, EPA Region 2, garbarini.doug@epa.gov; Leo Rosales, EPA Region 2, (518) 747-4389; or Douglas Fischer, EPA Region 2, fischer.douglas@epa.gov.

Guidebook for Cleaning Up Scrap Tires Released

EPA Region 5 and the State of Illinois have created the Scrap Tire Cleanup Guidebook, A Resource for Solid Waste Managers Across the United States. The book provides information about scrap tire cleanup programs and available funding, markets for scrap tires, legal issues, cost recovery, and other practical details. The guidebook was written for tire manufacturers, state and local governments, regulators, auto recyclers, and others.

Scrap tire stockpiles endanger human health and the environment. Water sometimes collects in stockpiled tires and provides a good breeding ground for mosquitoes which can carry West Nile and other diseases. Also, tire fires can start from lightning strikes, arson, and other causes. The market for recycling used tires is improving; for instance, tires can now be used as fuel, recycled or used in civil engineering projects, converted into ground rubber.

The guidebook is available on EPA Region 5's Web site at: www.epa.gov/reg5rcra/wptdiv/solidwaste/tires/guidance.

August 28 - 31, 2006
2006 HMMS User's Conference
 Portland, Oregon

September 6-7, 2006
 EPA Nanotechnology for Site
 Remediation Workshop
 Chicago, Illinois (Region 5 offices)

September 19-21, 2006
WASTECON 2006
 Charlotte, North Carolina

October 22-25, 2006
National Recycling Coalition
 25th Annual Congress and Expo
 Atlanta, Georgia

January 22-25, 2007
Fourth International Conference
 on Remediation of Contaminated
 Sediments
 Savannah, Georgia

Glossary

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	OSRE	Office of Site Remediation Enforcement
CWA	Clean Water Act	OSRTI	Office of Superfund Remediation Technology Innovation
DBP	Dallas Brownfields Program	OSWER	Office of Solid Waste and Emergency Response
DOJ	Department of Justice	PCBs	Polychlorinated biphenyls
EPA	Environmental Protection Agency	RCRA	Resource Conservation and Recovery Act
GE	General Electric	RI/FS	Remedial Investigation/Feasibility Study
NPL	National Priorities List	ROD	Record of decision
OECA	Office of Enforcement and Compliance Assurance		

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

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