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## Bush Nominates Leavitt for Administrator

**D**uring remarks at the Marriott Hotel in Aurora, Colorado on August 11, 2003, President Bush announced his selection of Utah governor Mike Leavitt to head EPA. Bush, who met Leavitt when both were serving as governor, referred to Leavitt as “a trusted friend” and “a man who understands the obligations of environmental stewardship.” If confirmed, Leavitt would assume the post vacated by the departure of Christine Todd Whitman on June 27, 2003. At present, Marianne Horinko, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER), is serving as Acting Administrator.



In his acceptance speech, Leavitt expressed a desire to bring a moderate environmental policy approach to Washington: “There is no progress polarizing at the extremes, but there is great progress, there’s

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## EPA Signs Consent Decree with Weyerhaeuser

**O**n May 1, 2003, Winston A. Smith, Director of Region 4’s Waste Management Division, signed a consent decree for the Weyerhaeuser Company Plymouth Wood Treating Plant Superfund Site on behalf of EPA. The consent decree covers remedial design and remedial action for Landfill No. 1 or operable unit 1.

This consent decree is unique in that it is the first Region 4 agreement to include all four Superfund Alternative site provisions as well as a Region 4 provision. The Agency’s enforcement approach provisions were described in a guidance document released June 24, 2002 entitled “Response Selection and Enforcement Approach for Superfund Alternative Sites”

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

great environmental progress when we collaborate in the productive middle.” As a member of the Western Governors Association, Leavitt led the development of the Enlibra Principles, a list of environmental stewardship guidelines. Enlibra, which is Latin for “in balance,” encourages achieving results in federal government regulations through “neighborhood solutions,” collaboration between public and private groups, performance-based rewards for achieving environmental results, and environmental education. Since the principles were adopted by the Western Governors Association, the National Governors Association has added their endorsement. Leavitt noted the successful collaboration of 13 states, 13 tribal nations, three federal agencies, private industry, and stakeholder groups in the effort to improve air quality in the Grand Canyon. He currently serves as co-chair of the Western Regional Air

Partnership, a collective of western state and tribal governments and federal agencies seeking to improve air visibility.

*“I believe I can help protect this nation’s land, air and water by promoting a higher and more meaningful level of cooperation and the application of new technologies.”*

*— Mike Leavitt, Bush’s appointee for EPA Administrator*

Leavitt is currently serving his third term as Utah governor and was considering a run for a fourth when the Bush administration selected him to head the Agency. When originally asked by Bush administration officials

several months ago if he would accept the nomination, Leavitt had declined, citing his plan to run again. In a written statement to his constituents, Leavitt explained that his change of heart was driven by the President’s confidence that he would “make a unique contribution.” He also considered what he had set out to accomplish for Utah and determined that he had completed his agenda. He also felt a call to service in the role: “I believe as a nation we have an abounding capacity to continue our path of environmental progress, and an imperative to do so at less cost.”

The Senate returned from recess on September 2, 2003 and is expected to hold confirmation hearings early in the fall session. Confirmation requires a majority vote of the Senate.

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

## Innovative Remediation Strategy Planned for Emeryville

**A**cross the bay from the City of San Francisco, a once-thriving now abandoned industrial area is being restored to productive use. Emeryville, which is just one square mile in size and has a population of just over 7,000, is prime real estate given its proximity to San Francisco and Oakland. Despite the small size of the area, the damage done by industry was extensive. There are numerous cleanup sites within Emeryville, including a rubber plant, a 22-acre mixed industrial site with a lime and sulfur plant and insecticide-producing plant, and a chromium plating factory.

As part of the ongoing, city-wide remediation efforts, an innovative strategy is being used at two chromium contamination sites. At 1401 Park, the

site of a former chromium plating factory, Electro Coating Inc., an innovative remediation strategy is being used to degrade chromium in the groundwater. The former owner injected molasses into an on-site chromium plume to stabilize it. This remedy was found to be effective, but its broader use would have been expensive since the procedure has been licensed. Three pilot tests injecting a different substance—cheese whey—into chromium produced even more impressive results and presented a far cheaper solution. The cheese whey, a free by-product of cheese production that is readily available, reduced the chromium levels by 99% through degrading chromium-6 to chromium-3. Given the success of the pilots, cheese whey will be used to stabilize an on-site chromium plume at 1401

Park. Following the cleanup, a 72-unit residential mixed-use development will be built.

A second smaller band of chromium contamination was recently identified at 5801 Hollis. The new owner of the recently-purchased property will conduct the site remediation and is considering the cheese whey remedial process. Once remediation is complete at 5801 Hollis, the site will be redeveloped as office/retail space. Both sites, which are in low-income target areas, are working towards receiving Capital Incentives for Emeryville’s Redevelopment and Restoration (CIERRA) loans to fund the work. The CIERRA loans are funded using federal monies from the Brownfields Cleanup Revolving Loan Funds.

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# OSRE Releases Guidance on “Windfall Liens”

By Greg Madden, OSRE-PPED

**O**n July 16, 2003, EPA and DOJ issued an interim enforcement discretion policy entitled “Interim Enforcement Discretion Policy Concerning ‘Windfall Liens’ Under Section 107(r) of CERCLA.” (“Windfall Lien policy”). The Windfall Lien policy discusses implementation of new CERCLA § 107(r), the “windfall lien” provision of the Small Business Liability Relief and Brownfields Revitalization Act. CERCLA § 107(r) provides that bona fide prospective purchasers are not liable as owner/operators for CERCLA response costs, but the property they acquire may be subject to a windfall lien where an EPA response action increase the property’s fair market value.

As a threshold matter the Windfall Lien policy explains that, absent an EPA response action at a site, the

United States has no windfall lien on that property. For those situations where there is an EPA response action, the policy then covers three areas. First, the Windfall Lien policy sets forth factors that may lead EPA and DOJ to assert a windfall lien and provides examples of a number of situations where EPA will generally not pursue a windfall lien. Specific situations where EPA will generally not pursue a windfall lien include: a bona fide prospective purchaser acquires at fair market value after cleanup is complete; previous resolution of seller’s CERCLA liability included potential windfall from EPA’s response action at the site; or EPA’s only expenditures at the site are Brownfield monies. Additional situations are outlined in the guidance document.

The second area covered by the Windfall Lien policy is EPA’s and DOJ’s approach to settling windfall liens. EPA will generally seek only the increase in

fair market value attributable to EPA’s response action that occurs after a bona fide prospective purchaser acquires a property. The final area the Windfall Lien policy discusses are tools, “comfort/status” letters and windfall lien resolution agreements, that EPA may, in its discretion, provide to a bona fide prospective purchaser in order to address the bona fide prospective purchaser’s windfall lien concerns. Samples of these documents are provided as attachments to the policy.

The policy, attachments, and a frequently asked questions document are available from EPA’s Website at: <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

EPA notes that the Windfall Lien policy is an interim policy and it is seeking comments on the policy and its implementation.

## More Urban River Restoration Pilots Selected

**A**t the Brownfields Showcase Community Research Summit in Washington, DC on July 30, 2003, EPA and the US Army Corps of Engineers announced that four additional rivers had been selected as pilots under the Urban Rivers Restoration Initiative. Each of the designated pilots was selected through a competitive process based on project merits and will receive a \$50,000 grant. The selected rivers are the Passaic River in New Jersey, Gowanus Canal and Bay in New York, Fourche Creek in Arkansas, and City Creek in Utah. Pilot monies for the Passaic River, a 173-square mile watershed in northeast New Jersey, will fund a comprehensive remediation and restoration study. The Gowanus Canal and Bay pilot will bring non-profits together with businesses to help prevent pollution,



*EPA and Army Corps of Engineers officials at the recent pilot announcement.*

improve water quality, and restore habitat in the Borough of Brooklyn, New York. The pilot for Fourche Creek, which receives drainage from the City of Little Rock, includes helping businesses reduce pollution and restoring wetlands. For City Creek, some funds will be used to restore an ecosystem that has been enclosed beneath the streets of Salt Lake City for nearly a hundred years.

The Urban Rivers Restoration Initiative is part of the EPA’s Land Revitalization Agenda, a program to clean waste sites and return them to produc-

tive use as commercial, industrial, green space, or residential properties. A Memorandum of Understanding between EPA and the Army Corps of Engineers entered July 2002 gave funding to eight urban river pilot projects. The initiative gives funding for “start-up costs” for new projects, including conducting studies and fostering coordination among stakeholder organizations, business communities, and agencies. An article on the Anacostia River pilot, a first-round recipient of grant funding, appeared in the Summer 2003 issue of *CleanupNews*. This and other past issues can be viewed online at: <http://www.epa.gov/compliance/resources/newsletters/cleanup/cleanupnews.html>.

*For additional information, contact Stephen Luftig, Senior Advisor for Reuse Programs, (703) 603-9931.*

# Bikes Hit the Trail at Coeur d'Alene

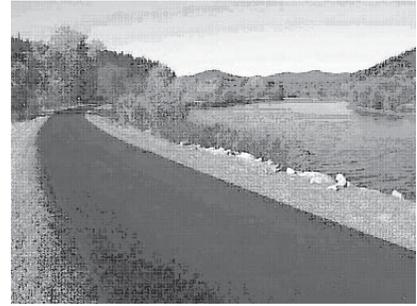
**T**hrough an innovative reuse strategy, 72 miles of former Idaho railroad right-of-way is being reused as bike trails. The nearly completed Trail of the Coeur d'Alenes, which winds alongside the Coeur d'Alene Lake and Coeur d'Alene River, offers views of isolated Idaho countryside, historic mining towns, and the Bitterroot divide. There are a variety of conveniences along the trail including picnic tables, benches, and toilets. The trail is being managed by Idaho State Parks and the Coeur d'Alene Tribe.

The Trail of the Coeur d'Alenes was created using an existing railway right-of-way owned by Union Pacific Railroad. The original railway was built in the late 1800s when silver was discovered, and they were used to move ores and concentrates from the mining sites. To construct the railway, the company used readily available materials, including mine tailings and waste rock that contained low levels of heavy metals.

In an Engineering Evaluation/Cost Analysis, determined that the most effective way to address the heavy metal contamination would be to install asphalt and/or vegetative barriers,

remove or dispose of some contamination, and control access to the trail through signs, outreach materials, and education. The reuse of the railway was a cost-effective, safe solution that eliminated the need to remove low-level contamination. The asphalt barrier poured on top of the tailings and waste rock protects riders from interacting with the contamination and limits contamination migration. For the area of trail near Chatcolet Lake on the Coeur d'Alene Tribe Reservation, it was determined that waste materials should be removed and replaced with non-contaminated materials. To ensure public safety, a trail guide offers common sense suggestions for limiting exposure including remaining on the trail, washing hands and face before eating, and removing dirt from clothing, shoes, equipment, children's toys, and pets.

Once complete, the trail will cover almost the entire width of the northern Panhandle of Idaho, from Plummer to Mullan. Fifteen miles of trail are still under construction. As part of the remaining construc-



*The Trail of the Coeur d'Alenes snakes alongside the Coeur d'Alene River.*

tion, the historic Chatcolet Bridge is being retrofitted to allow a 30-foot clearance for marine traffic. The original bridge was only 18 feet above the lake and needed to rotate to allow boats to pass.

The Rails to Trails project involved the coordination of EPA, the Idaho Department of Environmental Quality, and the Coeur d'Alene Tribe. The Wallace-Mullan Branch right-of-way is just one of a number of Superfund sites being addressed in this former mining area, including the Coeur d'Alene Basin and Bunker Hill Superfund sites.

*For additional information, contact Ed Moreen, EPA Coeur d'Alene Basin Representative, (208) 664-4588.*

## CERCLA Municipal Solid Waste Exemption Guidance Released

**O**n August 20, 2003, EPA and DOJ issued guidance on the CERCLA Municipal Solid Waste Exemption. The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA), signed in January 2002, gave relief from liability for response costs under CERCLA Section 107 to certain residences, small businesses, and non-profit organizations who generated

municipal solid waste (MSW) at Superfund sites on the National Priorities List. The interim guidance discusses the statutory exemption, identifies some factors to be considered in the exercise of enforcement discretion under the exemption, and addresses the relationship of the exemption to existing EPA policies regarding MSW parties. The newly released guid-

ance, titled "Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA § 107(p)," is available online at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf>.

*For additional information, contact Susan Boushell, OSRE-PPED, (202) 564-2173 or Doug Dixon, OSRE-RSD, (202) 564-4232.*

# RCRA National Meeting Focuses on Resource Conservation Challenge

**A**t the 2003 Resource Conservation and Recovery Act National Meeting on August 12-15 in Washington, D.C., participants attended more than one hundred sessions, including a mock trial, roundtable discussions, and lively debates. This year's meeting highlighted the Resource Conservation Challenge (RCC), a national effort to find flexible resource conservation strategies through pollution prevention, waste reduction and energy recovery activities.

The keynote speaker, internationally renowned designer William McDonough, asserted that system and product design can be environmentally sound as well as socially and economically valuable. In his opening remarks, Barry Breen, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response, told participants that the RCC infuses waste reduction efforts "with a deeper sense of shared responsibility and partnership." "We've developed a whole new attitude toward waste,"



*Barry Breen, Acting Assistant Administrator of OSWER, offered opening remarks at the conference.*

Breen said. "In many cases it's not inevitable. It can be reduced, minimized, eliminated, sometimes in ways that pay for themselves. And

in some cases waste can be reused, thus saving the cost of disposal."

EPA honored new Waste Minimization Partnership Program members, including Dupont, GE, Uniseal Incorporated, U.S. Steel, Hewlett Packard Caribe, and the Tobyhanna Army Depot (the program's first federal facility). The program encourages generators of secondary materials and waste materials to partner with EPA and States to establish goals to reduce and minimize waste generation, particularly waste containing 39 priority contaminants.

Also, Ashland Incorporated was recognized for taking the Environmental Indicator pledge and committing to meet both the "human exposures" and "groundwater migration" indicators at all 21 of their facilities.

The conference proceedings will be available through the Air and Waste Management Association website at: <http://www.awma.org>.

*For additional information, contact Janette Petersen, OSW, (703) 308-7242.*

## Update: Lower Fox River and Green Bay

On July 28, 2003, EPA and the Wisconsin Department of Natural Resources announced a second Record of Decision for the Lower Fox River and Green Bay site. The Record of Decision outlines the remedies for the remaining operable units (OUs): Little Rapids to De Pere (OU3), De Pere to Green Bay (OU4), and Green Bay (OU5). The recommended remedy includes dredging and disposing of

6.6 million cubic yards of sediment from the portion of the river between Little Rapids and Green Bay. Natural attenuation has been selected for Green Bay since the sediment removal upriver will reduce the migration of PCBs into the bay. The cost for implementing these remedies is expected to reach \$400 million.

A detailed article about the Lower Fox River and Green Bay site appeared in the Winter 2003 issue of *CleanupNews*. 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 James Hahnenberg, EPA Region 5, (312) 353-4213.*



Weyerhaeuser, continued from page 1

(OSWER 92-08.0-17). According to the guidance, Superfund Alternative sites are sites where the site hazard ranking is sufficient to warrant a Superfund listing, but EPA has decided to delay listing so an agreement can be negotiated with the potentially responsible party (PRP). In such an agreement, the PRP agrees not to challenge EPA if the Agency decides to list the site after only partial cleanup. The PRP must also agree not to challenge a natural resource damage claim using a Statute of Limitation defense. Other provisions allow for technical assistance funding for communities in the absence of Superfund funding and financial assurance that the cleanup work will be completed. In this consent decree, the PRP, Weyerhaeuser, agreed to the four provisions. For additional protection, Region 4 added a provision that further limits Weyerhaeuser's right to contest listing, and the company signed off on this provision as well.

There are several advantages to both EPA and the PRP to designating a site Superfund Alternative. For one, the PRP agrees to fund site cleanup therefore EPA avoids using Superfund Trust funds. Since the provisions ensure that an effective cleanup will be conducted, the cleanup is as effective as if Superfund funds were used. The benefit for the PRP is that they avoid the stigma of having a "Superfund" site, and they can demonstrate to the public that they are cooperating with EPA.

The Weyerhaeuser site is located on 2,400 acres in Martin County in eastern North Carolina. The site includes the landfill, a former chlorine production plant, and Welch Creek. The contamination of the

landfill resulted from their illegal dumping of mercury cells from the chlorine production plant. The remedy for Landfill No. 1 will likely cost \$12 million.

*For additional information, contact Elizabeth Davis, Region 4, (404) 562-9696.*

## Judge Approves Consent Decree for Anniston PCBs

On August 4, 2003, the Honorable U.W. Clemon of the US District Court for the Northern District of Alabama approved a consent decree for the Anniston PCBs site. Through the agreement, Solutia, Inc. and Pharmacia Corporation (formerly Monsanto) agreed to develop a work plan for the accelerated cleanup of properties in residential areas. The parties will submit the work plan to EPA, which will ensure the plan meets strict standards for protecting human health and the environment. Given the significant risk to human health posed by the PCB contamination, EPA will require Solutia and Pharmacia to meet the stringent requirements for Superfund sites and push for accelerated cleanup. Based on public comment, the revised agreement added the removal of PCBs from northeast Alabama neighborhoods.

In the 1990s, site assessments by EPA, the Alabama Department of Public Health, the Alabama Department of Environmental Management, the Agency for Toxic Substances and Disease Registry (ATSDR) identified a human health risk. Soil on many residential properties tested positive for PCBs, and blood tests showed elevated PCB levels. ATSDR recently

released the final blood sampling results from 2,700 Anniston residents and found that nearly one-fifth of residents had high levels of PCBs. An October 2002 Administrative Order on Consent required Solutia to sample for PCBs in west Anniston and remediate any property where short-term exposure might present a health risk.

PCB production at the Anniston site occurred from 1929 through 1971. During that time, wastewater containing PCBs was discharged into a ditch, and a variety of hazardous and nonhazardous wastes were improperly disposed of in landfills. These disposal methods caused the contamination to migrate from the 70-acre plant to the surrounding community.

*For additional information, contact Helena Healey, OSRE-RSD, (202) 564-5124.*

## Update: Administrative Order on Consent Signed for Hudson River

On August 13, 2003, EPA signed an Administrative Order on Consent (AOC) with General Electric Company (GE) for remedial design and cost recovery at the Hudson River PCBs Superfund Site. As part of the agreement, GE agreed to design a dredging project to meet the specifications of the February 2002 Record of Decision and to immediately pay EPA over \$15 million as partial payment for oversight and work performed. As part of developing the plan, the AOC requires GE to create a Baseline Monitoring

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Program Scoping Document, Habitat Delineation and Assessment Work Plan, and Cultural and Archeological Assessments.

An article on the Community Involvement Plan for Hudson River appeared in the Summer 2003 issue of *CleanupNews*. To view this and other past articles, go to the *CleanupNews* website at: <http://www.epa.gov/Compliance/resources/newsletters/cleanup/cleanupnews.html>.

The AOC and other information are available on EPA's Hudson River website: <http://www.epa.gov/hudson>.

For additional information, contact Dave Kluesner, Region 2, (212) 637-3653 or [kluesner.dave@epa.gov](mailto:kluesner.dave@epa.gov).

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## Mixed Ownership Mine and Mill Sites Policy Announced

On June 24, 2003, the Federal Facilities Enforcement Office announced that most mixed ownership mines and mill sites should not be included in the Comprehensive Environmental Response, Compensation, and Liability Act Section 120(c) Federal Agency Hazardous Waste Compliance Docket. The Docket provides the public with a published list of federal facilities along with any action taken. Exceptions could be made on a site-by-site basis by the lead agency.

Mixed ownership sites have both federal and private owners. This complex ownership pattern at some sites results from the General Mining Law of 1872, which gave private party claimants use of properties for mineral mining. Under the law, the claimant had the right to mine the land, but the federal government retained the title. The Federal Land Policy and Management Act of 1976 established that private parties could continue to use federal land under the regulations of the managing agency. Under the act, a "claim" was private property subject to taxes and could be sold, leased, or bequeathed. For abandoned claims, property rights were restored to the controlling Federal Land Managing Agencies, typically the Forest Service or Bureau of Land Management. Through "patenting," some claimants purchased their properties. When abandoned, patented properties remain private property rather than reverting to federal control. As a result, there are thousands of private property abandoned mine or mill sites within federal boundaries.

The mixed ownership policy acknowledges that most contamination

at mine and mill sites results from private parties, often involving multiple parties. Rather than being listed as federal facilities on the Docket, all sites will be listed in CERCLIS, a database of reported releases of hazardous substances. The policy does not obviate the federal government's responsibility as a potentially responsible party.

This policy is not legally binding and is only intended to guide federal personnel through the decision-making process.

For additional information, contact Joe Tieger, OSRE, (202) 564-4276.

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*Emeryville, continued from page 2*

EPA has acknowledged the positive progress at Emeryville by providing the city with brownfields funding three times. In 1996, the city was selected as a Brownfields Assessment Pilot and provided a \$200,000 grant. More recently, the site was given a \$500,000 brownfields loan, referred to as a Brownfields Cleanup Revolving Loan, which is being used for certain target areas of the city where income levels are the lowest. In 2003, Emeryville was selected for a brownfields assessment grant, a designation that brings \$350,000 for assessing hazardous substances and \$200,000 for petroleum.

The redevelopment of the city has generated over \$700 million in new investments over the past ten years, spurred job growth, and enticed technology corporations to consider moving to the area. Pixar Animation Studios, the animation company that created *Toy Story* and *Finding Nemo*, chose to build its \$88 million headquarters in Emeryville.

For additional information, contact Ignacio Dayrit, Emeryville Project Manager, (510) 596-4350.

**October 11-15, 2003**

76<sup>th</sup> Annual Water Environment  
Federation Technical Exhibition  
and Conference

Los Angeles, CA  
<http://www.weftec.org/>

**October 22-24, 2003**

ASTSWMO Annual Meeting  
Washington, DC

Contact: Tom Kennedy, (202) 624-5828

**October 27-29, 2003**

Brownfields 2003: "Growing a  
Greener America"

Portland, OR  
<http://www.brownfields2003.org>

**November 17-18, 2003**

The Business of Brownfields  
Conference: Technical, Legal  
and Financial.

Pittsburgh, PA  
<http://www.eswp.com/brownfields/>

**November 17-21, 2003**

National Registry of  
Environmental Professionals  
Orlando, FL

[http://www.nrep.org/conference/  
conference1.html](http://www.nrep.org/conference/conference1.html)

# Glossary

<b>AOC</b>	Administrative Order on Consent	<b>OU</b>	Operable unit
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act	<b>OSRE</b>	Office of Site Remediation Enforcement
<b>CIERRA</b>	Capital Incentives for Emeryville's Redevelopment and Restoration	<b>OSWER</b>	Office of Solid Waste and Emergency Response
<b>DOJ</b>	U.S. Department of Justice	<b>PRP</b>	Potentially responsible party
<b>EPA</b>	Environmental Protection Agency	<b>RCC</b>	Resource Conservation Challenge
<b>FLMA</b>	Federal Land Managing Agencies	<b>RCRA</b>	Resource Conservation and Recovery Act
<b>OECA</b>	Office of Enforcement and Compliance Assurance		

## cleanupnews

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

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