

Greenberg Traurig

Reed D. Rubinstein
(202) 533-2314
rubinsteirr@gtlaw.com

August 30, 2004

Information Quality Guidelines Staff
(Mail Code 2811R)
U.S. EPA
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Information Quality Act Petition for Disclosure and Correction -
Devil's Swamp Lake, Scotlandville, East Baton Rouge, Louisiana
EPA ID No. LAD981155872**

Dear Sir/Madam:

This is a Petition for Disclosure and Correction under the Information Quality Act (the "IQA"), Section 515 of Public Law 106-554, 44 U.S.C. § 3516, note, and the information quality guidelines issued by the Office of Management and Budget, 67 Fed. Reg. 8459-60 (Feb. 22, 2002) (the "OMB Guidelines").¹ This Petition seeks: (a) disclosure of data and methods needed to determine whether influential information disseminated by the United States Environmental Protection Agency ("EPA") regarding the proposed National Priorities List ("NPL") listing of the property known as "Devil's Swamp Lake," in the parish of East Baton Rouge, Louisiana, EPA ID No. LAD981155872 (the "Property"), meets IQA quality requirements; and (b) correction of certain disseminated influential information that does not appear to meet statutory and OMB information quality requirements.

BACKGROUND

The petitioner is NPC Services, Inc., a Louisiana non-profit corporation ("NPC"), through its counsel Greenberg Traurig LLP, of Washington, D.C., and Taylor, Porter, Brooks & Phillips L.L.P., of Baton Rouge, Louisiana. NPC is legally obligated to

¹ EPA has issued its own set of IQA guidelines. See "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency," EPA/260R-02-008 (October, 2002)(the "EPA Guidelines"). However, the OMB Guidelines, and not the EPA Guidelines, are legally binding in this case. See 44 U.S.C. § 3516, note (Congress allowed agencies to create administrative review and correction mechanisms with OMB approval, but mandated agency compliance with quality standards contained in the OMB Guidelines).

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

remediate property known as the "Petro Processors Site" pursuant to a Consent Decree entered in the matter of *United States of America, Plaintiff, v. Petro Processors of Louisiana, Inc., et al, Defendants, and State of Louisiana, City of Baton Rouge, and Parish of East Baton Rouge, Intervenors*, Civil Action No. 80-358-B, United States District Court, Middle District of Louisiana, on February 16, 1984. The Petro Processors Site is located in the Parish of East Baton Rouge, Louisiana, and is adjacent to the Property. Actions taken by EPA regarding the Property directly affect the petitioner.

Property Ownership

Rollins Environmental Services, Inc. ("Rollins") owned and operated the Property from the early 1970's - 1997. In 1997, Rollins acquired Laidlaw Chem-Waste, Inc. and the resulting corporation was Laidlaw Environmental Services, Inc. Then, in 1998, Laidlaw Environmental Services, Inc. acquired Saftely-Kleen Corporation and the resulting corporation was renamed Safety-KleenCorp. Safety-KleenCorp. and several subsidiaries filed for Chapter 11 bankruptcy protection on June 9, 2000. (*In the matter of Safety-Kleen*, Case no. 00-2303 (PJW) Jointly Administered, U.S. Bankruptcy Court, District of Delaware.)

In 2002, Safety-Kleen Services, Inc. sold the Property to Clean Harbors Environmental Services, Inc. and Baton Rouge Disposal, L.L.C. These sales included and incorporated by reference the terms of an order of the bankruptcy court which includes the approval of the sale ("Sale Order") from Safety-Kleen to Clean Harbors (or its designees) and provisions on the assumption of certain enumerated environmental liabilities by Clean Harbors (or its designee). Clean Harbors and Baton Rouge Disposal are bound by the terms of the Sale Order. *See* Cash Sales at Original 120, Bundle 11392 (Sale to Clean Harbors Environmental Services, Inc.); and Original 642, Bundle 11401 (Sale to Baton Rouge Disposal, LLC), in the records of the Parish of East Baton Rouge, State of Louisiana.

Corrective Action History

On May 1, 1989, pursuant to Resource Conservation and Recovery Act ("RCRA") §3008(h), Rollins and the EPA entered into an administrative consent order that required Rollins to conduct a RCRA facility investigation ("RFI"), corrective measures study ("CMS") and any additional work deemed necessary. The order specifically required the RFI address the horizontal and vertical extent of any contamination that appeared to originate from the facility. *See In the Matter of: Rollins Environmental Services (LA), Inc.*, Administrative Order on Consent, U.S. EPA Docket No. VI-004(h)-88-H, May 1, 1989, p. 31.²

² 42 U.S.C. 6924(v) and 40 C.F.R. 264.101(c) require an owner or operator to implement corrective action beyond the facility property boundary where necessary to protect human health and the environment.

In April of 1991, EPA issued a HSWA permit to the Rollins facility. The permit required corrective action of continuing releases, and directed Rollins to continue with the RFI process. More particularly, it incorporated by reference the RFI/CMS requirements in the 1989 order, and required development of a draft RFI by July 15, 1991. *See* HSWA Permit issued to Rollins Environmental Services, Inc., I.D. Number LAD010395127, effective 4/15/91, Special Conditions – Sections B. and C.

The July 1991 Draft RFI discussed, among other items, the horizontal extent of contamination in Rollins' NPDES effluent ditch (the "ditch"). The report states that PCBs were present in all samples but that conclusions as to PCB concentrations along the entire length of the ditch could not be made based on the data. It recommended additional investigation to define further the extent of the constituents identified in the channel sediments. *See* Draft RCRA Facility Investigation at Rollins Environmental Services (LA), Inc., July 1991, p. 4.3-8.1.

Rollins again sampled the ditch in 1992. Low and medium concentration levels of certain speciations of PCBs were reported in all of the sampled transects, although not at all depths. With respect to the horizontal extent of contamination, the sampling report noted a slight decrease of total PCB concentrations with increasing downstream distance, concluding that concentrations of some constituents, particularly PCBs, remain elevated and, consequently, the horizontal extent of constituents in the effluent channel sediments had not yet been fully defined. *See* Report on the December 1992 Sampling of the NPDES Effluent Channel Sediments, September 1993, p. 9. Rollins again sampled the ditch in 1994. Samples were taken at the following distances from the outfall: 350 meters, 479 meters, 550 meters, 663 meters and 763 meters. Aroclor-1254 was detected; however, PCB concentrations decreased as distance from the NPDES discharge point increased. In Rollins' view, these concentrations indicated that the extent of contamination from the former outfall to the railroad tracks had been defined.

Currently, the Louisiana Department of Environmental Quality ("LDEQ"), with cooperation from the current owner and operator, Clean Harbors Environmental Services, Inc., is working to develop a remedy for the identified areas of concern, including the ditch. A proposed remediation plan, set forth in a 1995 Corrective Measures Study, calls for segregation of the contaminated sediment by removal, secure land-filling, and institutional controls. *See* Draft Corrective Measures Study, August 1995, p. 3-22. In December 2003, LDEQ issued an administrative order requiring Clean Harbors to submit a Corrective Measures Implementation Work Plan.

The Subject Information

EPA has disseminated influential information regarding the Property. The information that is the subject of this Petition includes the following:

1. Hazard Ranking System (“HRS”) Documentation Record dated February, 2004, and available on the EPA website (the “Record”).
2. NPL Site Narrative for Devil’s Swamp Lake, Scotlandville, Louisiana, dated March 8, 2004, and available on the EPA website (the “NPL Narrative”).
3. Devil’s Swamp Lake, Baton Rouge, Louisiana Update, dated July 2004, and available on the EPA website (the “Update”).

REQUESTED IQA DISCLOSURE AND CORRECTION

IQA requires government information to meet quality standards, affords “affected persons” with the right to seek and obtain correction of disseminated information, and directs agencies, including EPA, to provide those persons with an administrative mechanism to obtain such relief. The statute states:

(a) IN GENERAL – [OMB] shall...issue guidelines...that shall provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies....

(b) CONTENT OF GUIDELINES – The guidelines under subsection (a) shall - -

- (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
- (2) require that each Federal agency to which the guidelines apply-

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information(including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a)

IQA was enacted to ensure government information is objective and supported by scientifically sound data, and that the public has meaningful access to the data and methodological information needed to test and reproduce the government’s results. OMB Guidelines §§ III(2), (3); V(3); 67 Fed. Reg. at 8455-57. By mandating good science, IQA encourages sound government decision-making, and promotes scientific discourse

by deterring agencies from relying on flawed studies, drawing scientifically unwarranted conclusions, and disseminating inaccurate information. Correction is the congressionally-mandated remedy for dissemination of information that does not meet quality standards.

Requested Disclosure

Information quality is a direct function of objectivity and reproducibility. *Id.* §V(3). As the OMB Guidelines make clear, the public's capacity to test objectivity and reproducibility depends entirely upon the full and accurate disclosure of an agency's scientific data and research methods. 67 Fed. Reg. at 8455-58; §V(3)(a)(agency must identify sources of disseminated information so public can assess for itself the objectivity of that information, and have access to full, accurate, transparent documentation and error sources affecting data quality).³ In order to test the objectivity and reproducibility of the disseminated information, NPC needs and requests the following information:

1. The underlying data and methods EPA used to determine that the formula and calculations set forth on lines 5 and 6 of the Worksheet for Computing HRS Site Score in the Record satisfy the quality requirements of §V(3)(ii)(C) of the OMB Guidelines.
2. The underlying data and methods EPA used to determine that the values reported at lines 14-21 of Record Table 4-1 are accurate.
3. The underlying data and methods EPA used to determine that the scoring system set forth in Record Table 4-1 is consistent with the quality requirements of §V(3)(ii)(C) of the OMB Guidelines.
4. The underlying data and methods EPA used to determine that procedures for setting the maximum values, and assigning site-specific values, reported at Table 4-1, are accurate and consistent with the quality requirements of §V(3)(ii)(C) of the OMB Guidelines.
5. The underlying data and methods EPA used to determine that procedures for setting the maximum values and assigning the site-specific values reported at

³ Agencies responsible for disseminating influential scientific, financial, or statistical information (such as the information at issue here) must provide a "high degree of transparency about data and methods to facilitate reproducibility of such information by qualified third parties." *Id.* at §V(3)(b)(ii). EPA's data and methods must be sufficiently transparent that "an independent reanalysis could be undertaken by a qualified member of the public." *Id.* Consequently, agencies must generally make available the "data and methods needed" to determine whether scientific results reported in government information are reproducible in any given case. *Id.* at §V(3)(ii)(B). This standard applies both to agency analysis of data from a single study, and to analyses that combine information from multiple studies. *Id.*

Table 4-1, are consistent with the quality requirements of §V(3)(ii)(C) of the OMB Guidelines.

6. The underlying data and methods EPA used to determine that the PRC data, collected and reported over a decade ago, is accurate, reliable, and consistent with the quality requirements of §V(3)(ii)(C) of the OMB Guidelines.
7. The underlying data and methods EPA used to evaluate and determine whether, and to what extent, the releases of PCBs in the NPDES effluent ditch were federally permitted releases.

Basis For Correction

NPC seeks correction of the disseminated influential information identified in this petition because EPA failed to reference or rely on a 1999 Techlaw, Incorporated Risk Assessment Report prepared at EPA's request. *See* Human Health Risk Assessment Devil's Swamp, Baton Rouge, Louisiana, Techlaw, Incorporated, EPA contract No. 68-W4-0016, Work Assignment No. ESS06024, December 8, 1999 (the "Techlaw Report"). In other words, EPA has failed to rely or report the more recent risk data (which, notably, is itself almost five years old), relying instead on data collected and reported over a decade ago, in a study known as the "PRC Risk Assessment." Consequently, the disseminated, influential information fails to meet quality requirements. Furthermore, neither the PRC Risk Assessment nor the Techlaw Report appear to comport with either the letter or the spirit of §V(3)(ii)(C) of the OMB Guidelines, or meet quality standards. Additionally, if, as NPC believes, the releases in question were in fact federally permitted releases, then the disseminated, influential information is incorrect.

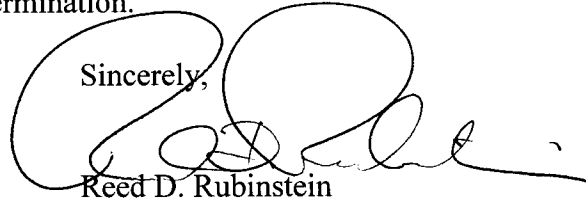
RELIEF REQUESTED

NPC requests the following relief:

1. Production of the information requested above.
2. Retraction of the cited disseminated information, until (a) EPA reviews and determines that the referenced risk assessments comply with §V(3)(ii)(C) of the OMB Guidelines; (b) EPA reports and incorporates the Techlaw Report results

into the Record, and all other related documents, as appropriate; and (c) EPA evaluates whether the releases in question are federally permitted releases, and reports the data and methods used to make its determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed D. Rubinstein", written over a large, stylized circular flourish.

Reed D. Rubinstein

RDR:jmj