



cleanupnews

Bush Selects Johnson as Administrator

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WHITE HOUSE PHOTO BY DAVID BOHRER

President George W. Bush announces Stephen Johnson as his nominee for EPA Administrator in the Roosevelt Room at the White House Friday, March 4, 2005.

Current Acting EPA Administrator Stephen Johnson has been selected for the permanent post by President Bush. At the March 4th nomination announcement at the White House, the President described Johnson as “a talented scientist and skilled manager with a lifelong commitment to environmental stewardship” and welcomed his experience as a scientist in helping “set clear, rational standards for environmental quality.” In his remarks, Johnson said that he was “deeply honored” by the nomination. He also acknowledged the contributions of

former Administrators Michael Leavitt, now head of Health and Human Services, and Christine Todd Whitman.

If confirmed by the Senate, Johnson would be the first EPA employee to become Administrator. In his 24 years of service with the Agency, he has held a number of posts, including Deputy EPA Administrator and Assistant Administrator of EPA’s Office of Prevention, Pesticides, and Toxic Substances.

Johnson’s biography is available at: <http://www.epa.gov/adminweb/administrator/biography.htm>.

EPA Marking 35th Anniversary of Earth Day

In a 1980 *EPA Journal* article, Senator Gaylord Nelson, Earth Day founder, said his main motivation for cre-

ating Earth Day “was to show the political leadership of the Nation that there was broad and deep support for the environmental move-

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

2005 National Notable Achievement Award Winners to be Honored

The Office of Superfund Remediation and Technology Innovation has announced the winners of the 2005 National Notable Achievement Awards. The recipients will be honored in a ceremony at 1:30 pm at the Crystal Plaza Hotel in Crystal City, Virginia on April 27, 2005. Award winners will receive a cash award and plaque.

The Notable Achievement Awards acknowledge individual and collaborative Regional achievements in: Brownfields, Emergency Management, Superfund, Superfund Enforcement, RCRA Corrective Action, Regional Science, Underground Storage Tanks, Federal Facilities Response, Environmental Justice, Cross Program Land Revitalization, and Resource Conservation Challenge. Here are some highlights:

Superfund - Legal Enforcer

Each year, the Agency gives four awards for Superfund Enforcement: Legal Enforcer, Technical Enforcer, Financial Management, and Enforcement Team. This year's Legal Enforcer award will be presented to John Kilborn of Region 1's Office of Environmental Stewardship, Superfund Legal Office. John used his real estate expertise to assist with the redevelopment of the Raymark Site in Stratford, Connecticut, including encouraging a local bank to use "green building" principles when constructing a new branch on the former site. He also crafted a "comfort letter" to municipalities that were concerned about converting former railroad tracks to bike trails for fear that EPA

would bring an enforcement action. For the GE-Pittsfield Site, he revised the consent decree's model deed restrictions to facilitate redevelopment while protecting human health and the environment.

Superfund - Technical Enforcer

Technical Enforcer of the Year Carlyn Winter Prisk of Region 3's Hazardous Site Cleanup Division. Carlyn is involved in all parts of enforcement, including PRP investigations and settlement negotiations. She has effectively used ability to pay evaluations to in-

The winners of the Enforcement Team award used mediation to achieve a consent decree for the Tennessee Products Superfund Site worth more than \$23 million.

vestigate potentially responsible parties (PRPs). For the AIW Frank Site, Carlyn discovered that the PRP was gambling significant sums of money while asserting an inability to pay EPA for costs at the site. In addition, Carlyn helped identify PRPs to the Maryland Sand Gravel & Stone Site and negotiated a consent decree worth over \$20 million.

Superfund - Financial Management Team

The Region 3 Special Accounts Management Team—Laura Janson, Barbara Borden, Linda Baric, Leslie Vassallo, Millie DeLeon-Ramos, Robin Faux—will receive the Financial Management Team of the Year Award for reviewing all Region 3 special accounts, with a combined worth of \$54 million.

Special accounts are Superfund sub-accounts containing settlement money to be used at particular sites, and in some cases money remains unused in accounts. The team held site-specific meetings for each account, identified more effective ways to manage the accounts, and produced comprehensive site-by-site analysis. They identified 24 out of the 32 accounts reviewed that could be paid down, for a payroll benefit of nearly \$1 million. They also developed procedures for managing special accounts that can be adopted by other Regions.

Superfund - Enforcement Team

The winners of the Enforcement Team Award accomplished a consent decree for the Tennessee Products Superfund Site in Chattanooga, Tennessee worth over \$23 million. The consent decree requires the potentially responsible parties to perform the remedy and reimburse EPA for some of its past costs. The team members from EPA Region 4—Nestor Young, Janice Thomas, Cheryl Smout, Kent Mayo, William Sapp, and Stacey Haire—were able to convince the defendants to settle because they assembled and presented compelling evidence in the negotiations. The team, assisted by David Batson of EPA's Conflict Prevention and Resolution Center, also effectively used alternative dispute resolution to negotiate the consent decree, thereby affording lengthy and costly litigation.

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

ment.” Reflecting back on that first Earth Day, April 22, 1970, and the nearly 20 million people that participated, Nelson said that even he was surprised by the overwhelming public support.

Today, several hundred million participants from over 100 countries join in Earth Day activities each year, from cleanup efforts to environmental film festivals. If you are interested in a volunteer opportunity or participating in an Earth Day event, the Earth Day Network, available online at: <http://www.earthday.net/programs/find/searchEvent.aspx>, offers an extensive list of US and international events.

EPA will be involved in many events across the United States. EPA Region 3 and the Fairmount Park Commission will host a special 35th Anniversary Earth Day Celebration in Center City, Philadelphia. The educational event, featuring regional environmental organizations and interactive exhibits, will take place in Love Park (15th and JFK Boulevard) between 10 am and 2 pm on April 22, 2005. For additional information, contact Jordan Parman at parman.jordan@epa.gov. And EPA



Earth Day founder Gaylord Nelson (right) with Administrator William K. Reilly, Earth Day 1990.

EPA HISTORY OFFICE

Region 2 will present its Environmental Quality Awards honoring individual and group achievements in late April.

Information regarding the awards is available at: <http://www.epa.gov/region2/news/2005/05006.htm>.

Earth Day Resources

- EPA's Earth Day website at: <http://www.epa.gov/earthday> provides a variety of information resources.
- EPA's Superfund Office has a kids Earth Day page with a recommended reading list at: <http://www.epa.gov/superfund/kids/earthday.htm>.
- Region 5 has a "Happy Earth Day Coloring and Activities Book," <http://www.epa.gov/region5/publications/happy/happy.htm>
- US Army Environmental Center's Earth Day website at: <http://aec.army.mil/usaec/publicaffairs/earthday00.html> offers educational materials, including a "disaster cleanup exercise."

Institutional Controls Implementation Strategy Announced

The Office of Site Remediation Enforcement, the Office of Superfund Remediation and Technology Innovation and the 10 EPA Regional Offices have launched a nationwide effort to review institutional controls (ICs) at all Superfund sites where remedy construction activities have been completed. ICs are non-engineered instruments, such as administrative and legal controls, that help minimize hu-

man exposure to contamination and protect the integrity of the remedy. The offices and Regions announced a strategy to review ICs in a September 2004 memorandum, "Strategy to Ensure Institutional Controls Implementation at Superfund Sites." The strategy calls for identifying priority sites with potential IC issues and developing Region-specific action plans; outlines site-specific follow-up activities; establishes a new IC coordination and communica-

tion structure; and describes steps to improve EPA's capacity for evaluating IC effectiveness. Through a combination of priority reviews and regularly scheduled Five-Year Reviews, EPA anticipates a five-year schedule to evaluate all potential IC issues at Superfund sites where remedy construction activities are complete.

Recently, EPA has improved its approach to ICs by issuing guidance,

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adding IC-related language to model documents (e.g., the Model RD/RA Consent Decree), developing the Institutional Controls Tracking System (ICTS), identifying both program and legal IC coordinators for each region, and forming the national Management Advisory Group for ICs. These improvements, however, have tended to benefit recently remediated sites. The strategy ensures that sites addressed earlier in the Superfund program also receive the benefit of subsequent IC experience. Because IC information at older sites is sometimes not centralized or reliable, EPA gathered baseline information about ICs at 899 construction complete sites, and identified and prioritized sites where IC

implementation either had not occurred or might have been performed incorrectly.

EPA expects that evaluation and corrective measures will be initiated at priority sites within one year after issuance of the strategy. EPA is also working on improving IC use and ensuring that all construction completion sites are critically evaluated in the next five year review and all sites in the future receive adequate IC evaluations. In FY 2005, EPA plans to supplement the five-year review and operation and maintenance plan guidance, provide focused training on ICs and ICTS, and conduct outreach activities to involve other parties in identifying

and resolving IC-related issues. EPA has also begun developing guidance for Institutional Controls Implementation and Assurance Plans, developing guidance for calculating the full life-cycle costs of ICs, and revising model CERCLA and RCRA enforcement documents to reflect new IC guidance.

The memorandum outlining the strategy is available at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/ic-strategy-04.pdf>.

For additional information, contact K.C. Schefski, OSRE, (202) 564-8213 or Michael E. Bellot, OSRTI, (703) 603-8905.

Plymouth State University Fined for Hazardous Waste Violations

EPA has proposed penalizing Plymouth State University \$171,050 for hazardous waste violations observed during a June 2003 inspection. Through the inspection, EPA found that the university was not making hazardous waste determinations or properly storing waste. There was also a lack of “no smoking” signs, and spill and fire control equipment were not maintained.

Universities and colleges typically store hazardous waste for use in laboratories and university operations. Region 1 has been aggressively identifying college non-compliance and encouraging schools to conduct self-audits through its College and University Initiative, an initiative that recently closed. Schools in the Region

can still take advantage of EPA’s Audit Policy to ensure that they are meeting all federal requirements.

For additional information, contact Sheryl Rosner, EPA Region 1, (617) 918-1865 or rosner.sheryl@epa.gov.

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Triad Approach Streamlines Site Activities and Reduces Costs

By Ann Eleanor, Office of Superfund Remediation and Technology Innovation

EPA's waste programs, and a number of other practitioners in the waste cleanup community, are exploring the Triad approach to site cleanup. Triad replaces the traditional prescriptive approach to site characterization, cleanup, and monitoring with a more dynamic and comprehensive approach that is flexible and recognizes site-specific decisions and data needs. This approach incorporates advancing science, technology, and lessons-learned from the field. EPA's Technology Innovation Program mined practitioner experiences for techniques leading to successful, efficient and less expensive remedial projects. The Triad approach was assembled around the common factor that made projects successful: management of all sources of uncertainty in project data.

The three elements of Triad—systemic project planning, dynamic work strategies, and real-time measurement technologies—are integrated to attain more efficient and affordable project management. By including 'if-then' approaches, scientifically sound site models can be developed and corrected in real-time, streamlining site activities and cutting life-cycle costs and lifespan by a third or more. Sys-



tematic planning keeps all concerned parties informed, involved, and focused on project objectives throughout the cleanup process.

Triad was used successfully for the

The Navy estimates it saved \$2.5 million using the Triad approach for a chlorinated solvent source investigation at Camp Pendleton.

Milltown Redevelopment Project for the New Jersey Department of Environmental Protection. Through systematic planning, stakeholders were continuously involved which enabled efficient resource distribution between planning phases, and the sample collection phase was streamlined. EPA's Environmental Response Team used a freeware database decision-support tool to manage

data and direct real-time sampling for organic compounds and metals. After more than a year of planning, the actual field work took only eight weeks. The redevelopment company is very pleased with the Triad approach and the time saved. The continuously-refined conceptual site model has allowed the developer to re-examine site reuse and efficiently align reuse designs with site conditions.

For a chlorinated solvent source investigation at Camp Pendleton Marine Corps Base, this approach helped manage decision uncertainty and expedite the site management process. Direct-push deployed *in situ* sensors provided real-time, high-density data sets to delineate subsurface contamination, confirming a very small solvent mass that regulators readily agreed posed no threat to receptors. The Navy estimated that Triad saved \$2.5 million and cut the project schedule by three years.

Additional information on Triad is available through the Triad Resource Center at: <http://www.triadcentral.org>. The center contains a growing selection of resources for design, implementation, and legal defensibility of the Triad approach.

EPA Proposes Groundwater Remedy for Southeast Federal Center

EPA is proposing long-term treatment and monitoring of groundwater and institutional controls preventing use of groundwater for drinking water for the Department of Transportation parcel of Southeast Federal Center. The proposed remedy will eventually restore groundwater at the site to drink-

ing water standards. Drinking water is currently pumped in from a local utility.

The Department of Transportation (DOT) parcel constitutes 11 acres of the 55-acre Washington Navy Yard, a former military ordnance production site on the Anacostia River in DC that is being cleaned up and rede-

veloped. Construction of a new 1.35-million-square-foot DOT headquarters at the site began in 2004, following the excavation and removal of contaminated soils. The building is scheduled to open in 2006.

The public comment period for the proposed remedy ends March 28, 2005.



District Courts Digest *Cooper v. Aviall* Ruling

By David Dowton, Office of Site Remediation Enforcement

On December 13, 2004, the Supreme Court held in *Cooper Industries v. Aviall Services*, 125 S. Ct. 577, that the plain language of CERCLA Section 113(f)(1) allows a potentially responsible party to seek contribution only “during or following” a “civil action” under CERCLA Sections 106 or 107(a). Two recent district court decisions cited the Supreme Court’s decision when denying private party claims to recover cleanup costs.

In *AMW Mat’ls Testing, Inc v. Town of Babylon*, 348 F.Supp.2d 4 (E.D.N.Y., 2004), the district court denied AMW and the property owner’s claim to recover costs from the cleanup of hazardous substances discovered after a fire in AMW’s paint room. The plaintiffs argued that the Town and local fire department were liable as operators under CERCLA. The plaintiffs asserted causes of action under

CERCLA Sections 107 and 113 and certain common law theories. The court held that the plaintiffs: (1) had not offered material evidence that the defendants were CERCLA operators; (2) could not bring a claim under Section 107 because they were not inno-

Two recent New York District Court decisions cite Cooper v. Aviall when denying private party claims to recover cleanup costs.

cent parties; and (3) pursuant to *Aviall*, could not bring a contribution claim under Section 113 because they had incurred cleanup costs voluntarily and in the absence of “judicial or administrative measures to compel cleanup.”

The Southern District of New York reached the same conclusion on the issue of whether a liable party can bring a claim under Section 107. In *Elementis Chems., Inc. v. TH Agriculture & Nutri-*

tion, 2005 U.S. Dist. LEXIS 1404 (S.D.N.Y., 2005), the district court found that Elementis could not bring a claim under Section 107 to recover costs it had incurred performing a voluntary cleanup. Following the Supreme Court’s *Aviall* decision, the Plaintiff acknowledged in a supplemental brief that it could not recover its voluntary costs under Section 113(f) because it had not been subject to a Section 106 or 107 action. Elementis maintained, however, its claim under Section 107, arguing that the *Aviall* decision effectively overruled prior Second Circuit case law holding that a liable party could not bring such a claim. The Court disagreed and held that Elementis had no valid CERCLA claim under Section 107.

For additional information, contact David Dowton, OSRE, (202) 564-4228.

Companies Fined for Violations of RCRA Order

A group of current and former owners of a south Seattle, Washington industrial site will be required to pay \$720,250 to EPA for the failure to abide by the cleanup terms of a 1993 Administrative Order. This industrial site manufactured and processed a wide variety of chemicals until closing in April 1991. From the 1930s through 1986, chemical products were manufactured at the site including glues, resins, and hardeners. Beginning in 1952, the facility was used to make vanillin, which is used in flavoring foods and manufacturing drugs. These manufacturing processes have resulted in a long history of above and below ground releases of contaminants such as tolu-

ene, arsenic, cadmium, copper, mineral oil, sulfuric acid, and other pollutants. Sampling at the site has detected contamination of groundwater flowing into the Lower Duwamish River, a Superfund site.

The group of companies which include the current site owner Container Properties LLC., as well as Bayer CropScience (the successor of Rhone-Poulenc Inc.) and Rhodia, Inc., were required by the 1993 Administrative Order, issued under the authority of the Resource Conservation and Recovery Act, to follow a work plan to construct and operate facilities to prevent contaminants from entering the Lower Duwamish River. The companies failed to comply with several require-

ments of the Order, including failing to construct the approved groundwater treatment system and to conduct sampling in accordance with the approved Work Plan. EPA will now consider each company as a Significant Non-Complier, a term used to identify chronic violators or those who deviate substantially from the terms of an order. In both 1998 and 2000, the same companies paid penalties of \$320,000 and \$159,500, respectively, for failing to conduct required cleanup work at this site.

For additional information, contact Shawn Blocker, EPA Region 10, blocker.shawn@epa.gov.

Two New Hazardous Waste Rules Finalized

By Diane Bartosh, Office of Solid Waste

Hazardous Waste Manifest Streamlined

On January 27, 2005, EPA improved the tracking of hazardous waste shipments by establishing a nationally standardized manifest form. This new form makes the nation's hazardous waste tracking system more efficient by replacing differing state formats with one national form. This streamlined approach will benefit waste handlers and regulators by reducing the costs and time associated with managing multiple forms, while maintaining the safety of EPA's well-established cradle-to-grave hazardous waste tracking system.

EPA estimates the change in paperwork burden resulting from this rule will save states and industry between \$12-20 million annually. More than 139,000 businesses in approximately 45 industries are expected to achieve time and cost efficiencies through the new tracking system. These businesses ship approximately 12 million tons of hazardous wastes annually and use between 2 and 5 million Hazardous Waste Manifests.

By using a streamlined and consistent national standard, hazardous waste handlers can better track complicated shipments, such as container residues, rejected wastes and international shipments. The new form also makes it easier to collect data for hazardous waste reporting. The new form will be phased in over an 18-month transition period. Once the new form is in place, handlers will be able to obtain new forms from any source that has registered with EPA to print and distribute them. The rule was published in the *Federal Register* March 4, 2005. More information is available at: <http://www.epa.gov/epaoswer/hazwaste/gener/manifest/index.htm>.

Some Dye and Pigment Production Waste Is Listed as Hazardous

In a final rule signed on February 15, 2005, EPA took steps to better protect ground water resources and human health by listing certain wastes generated by the dye, pig-

ment, and food, drug and cosmetic industries as hazardous waste K181. While listed hazardous waste must be strictly managed under Subtitle C of the Resources Conservation and Recovery Act (RCRA), the Agency is using a flexible regulatory approach that focuses on total quantities of chemical constituents of concern in a waste that present the greatest risk. The K181 listing focuses on seven hazardous constituents.

Waste that contains less than the specified threshold levels of constituents of concern are not hazardous (e.g., aniline levels below 9,300 kg/yr). Moreover, regulatory exemptions are provided for waste either sent for disposal in landfills that meet specific design standards or treated in an approved combustion unit. Waste that does not qualify for these exemptions, and that meets or exceeds the specified thresholds for any of the specific constituents of concern, must be managed as listed hazardous waste K181. These dye and pigment classes are commonly used for coloring textiles, paper, plastics, leather, inks, paints/coatings, food, drugs, and cosmetics. EPA estimates that about 36 facilities annually generate about 36,000 metric tons of potentially affected waste. This rule was published in the *Federal Register* on February 24, 2005.

This regulation is a major milestone for EPA because it is the final action resulting from a lawsuit filed by the Environmental Defense Fund (now Environmental Defense) in 1989. The lawsuit was filed to enforce EPA's legal deadlines under the 1984 Hazardous and Solid Waste Amendments for listing hazardous waste. Additional information is available online at: <http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm>.

Call for Presentations for Brownfields 2005

Brownfields 2005 will be held in Denver, Colorado, November 2-4. Conference co-sponsors EPA and ICMA are seeking suggestions for presentations, sessions, marketplace roundtables, and best practice case studies. Ideas can be submitted online, or there is a "Call for Presentations" form that can be downloaded at: <http://www.brownfields2005.org/en/Ideas.aspx>. The submission deadline is April 29, 2005.

April 13, 2005

Waterfront Redevelopment
Conference and Deal Flow
Exhibition
New York, NY
[http://ny-brownfields.com/
index.htm](http://ny-brownfields.com/index.htm)

April 20-21, 2005

ASTSWMO Mid-Year Meeting
Keystone, CO
<http://www.astswmo.org>

May 3-4, 2005

National Corrective Action
Conference
Denver, CO
[http://www.nationalcaconf.com/
home.html](http://www.nationalcaconf.com/home.html)

May 15-19, 2005

2005 International Oil Spill
Conference
Miami Beach, FL
<http://www.iosc.org/index.asp>

July 12-15, 2005

2005 Community Involvement
Conference and Training
Buffalo, NY
[http://www.epancic.org/2005/
overview.cfm](http://www.epancic.org/2005/overview.cfm)

Glossary

ASTSWMO	Association of State and Territorial Solid Waste Management Officials	OSRE	Office of Site Remediation Enforcement
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	OSRTI	Office of Superfund Remediation and Technology Innovation
DOT	Department of Transportation	OSWER	Office of Solid Waste and Emergency Response
EPA	Environmental Protection Agency	PRP	Potentially Responsible Party
ICs	Institutional controls	RCRA	Resource Conservation and Recovery Act
ICTS	Institutional Controls Tracking System	RD/RA	Remedial Design/Remedial Action
OECA	Office of Enforcement Compliance and Assurance		

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

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

To be added or deleted from the subscriber list, contact Christine Rueter at: christine.rueter@dpra.com

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