



cleanupnews

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New Assistant Administrator Joins OSWER

On December 17, 2005, the Senate confirmed Susan P. Bodine as assistant administrator of the Office of Solid Waste and Emergency Response. Bodine assumed the post in early January 2006.

Prior to joining EPA, Bodine had served the Water Resources and Environment Subcommittee of the House of Representatives Committee on Transportation and Infrastructure since 1995, first as counsel and more recently as staff director and senior counsel. Before working with the subcommittee, she served six years as an environmental attorney with the DC-based firm Covington & Burling.

Bodine received her law degree from the University of Pennsylvania and her undergraduate degree from Princeton University.

House Members Propose Renewing Superfund Tax

On December 8, 2005, twenty-five members of the House of Representatives introduced the "Superfund for Hurricane Accountability and Recovery Act of 2005," a bill that calls for reinstating industry taxes to fund Superfund. The bill recommends that a portion of the industry taxes be directed to cleaning up sites impacted by Hurricanes Katrina and Rita. The bill's authors note the fifty-four National Priority List sites that may have been adversely affected by the hurricanes and the cleanup efforts that will be necessary at other sites where chemicals were manufactured, stored, or disposed.

Industry taxes were used to fund Superfund before the taxes expired in 1995 when Congress did not reinstate them.



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

The New Due Diligence Rules - The All Appropriate Inquiries Rule

By Sven-Erik Kaiser, Office of Brownfields Cleanup and Redevelopment

EPA published a final rule establishing standards and practices for conducting all appropriate inquiries on November 1, 2005. The rule will impact the estimated more than 250,000 Phase I environmental site assessments conducted annually.

All appropriate inquiries is the term for the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. It is a form of environmental due diligence and similar to a Phase I environmental site assessment. EPA was required to issue federal standards for conducting all appropriate inquiries under the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law).

Applicability

The final rule is effective on November 1, 2006 – one year after the Federal Register publishing date. Until the rule is effective, one can use either the new standard or the independent industry standards (ASTM E1527-97, E1527-00 or E1527-05). Once the rule is effective, one can use either the rule

or ASTM E1527-05.

The all appropriate inquiries rule is applicable to any party who may seek to claim protection from Superfund liability as a bona fide prospective purchaser, an innocent landowner or a contiguous property owner. In addition, anyone using an EPA Brownfields grant to assess and characterize property must comply with the all appropriate inquiries standard.

Conducting the Inquiries

All appropriate inquiries must be conducted or updated within one year of the date of acquisition of a property. If the inquiries are conducted more than 180 days prior to the acquisition date, certain aspects must be updated.

Many of the inquiry's activities must be conducted by or under the supervision or responsible charge of an environmental professional as defined in the rule. The inquiry of the environmental professional must include:

- interviews with past and present owners, operators and occupants
- reviews of historical sources of information
- reviews of federal, state, tribal and local government records,

- a visual inspection of the property and adjoining properties
- commonly known or reasonably ascertainable information
- the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination.

Additional inquiries that must be conducted by or for the prospective purchaser or grantee include:

- searches for environmental cleanup liens
- assessments of any specialized knowledge or experience of the prospective landowner
- an assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated
- commonly known or reasonable ascertainable information.

Finally, the rule does not require sampling and analysis, although it discusses that sampling can be valuable in determining the presence and extent of contamination at a property.

Environmental Professionals

The rule defines who qualifies as an environmental professional for pur-

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Priority Chemical Wastes Reduced

On December 20, 2005, the Environmental Protection Agency published its *National Priority Chemicals Trends Report*. EPA reported that, since 2001, the use of priority chemicals in waste has decreased by nearly six percent, more than half way to EPA's 2008 goal of reducing these chemicals by 10 percent. In addition, about half of the 23 priority chemicals showed decreases

“Since 2001, the use of priority chemicals in waste has decreased by nearly six percent.”

in use. These decreases were seen despite new EPA requirements that resulted in an increase in the number of reporting facilities, an increase in the number of priority chemicals reported and a decrease in the reporting thresh-

old of some chemicals.

This year's report evaluates the progress made in reducing the presence of 23 priority chemicals in waste between 2001 and 2003, using the most recent data in the Toxic Release Inventory (TRI). TRI is a publicly available database with information on the use, release, and management of more than 650 toxic chemicals within industrial and federal facili-

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Katrina Sediments Resampled

Following the EPA's initial 430-site collection and sampling of Hurricane Katrina flooding sediments in Louisiana, EPA and the Louisiana Department of Environmental Quality (LDEQ) returned to about 145 locations where sediment testing showed elevated contamination levels. Resampling was conducted in areas where the sediment depth was greater than 1.5 centimeters or 0.5 inches. These criteria qualified 14 locations for re-sampling.

In St. Bernard Parish, one sample contained a diesel range organics level of 2100 ppm, which is well above the LDEQ Risk Evaluation / Corrective Action Program (RECAP) Standard of 650 ppm. This contamination level is believed to be a result of the oil spill at Murphy Oil USA's refinery in St. Bernard Parish. Murphy Oil, with the help of the EPA and the LDEQ, is addressing the spill.

In Orleans Parish, three samples showed an arsenic level above RECAP values, and one sample contained a

benzo(a) pyrene level above RECAP values. These levels fit within a risk range that is considered acceptable by EPA, with only a one-in-one-million to one-in-ten-thousand risk of a person developing cancer from exposure.

Initial testing of the sediments began on September 10, 2005, in Jefferson, Orleans, Plaquemines, and St. Bernard Parishes, with "sediments" being defined as residuals from receding flood waters, some of which included historical material such as soil, road debris, and matter from local bodies of water. The sediment sampling and re-sampling is just one part of the evaluation process taking place to determine the extent of contamination in the Louisiana areas affected by Hurricane Katrina. Other efforts by EPA have included testing of soil, surface water, flood water, and air.

The resampling results and other information are available on EPA's Hurricane Response 2005 Sediment Testing Web site at: <http://www.epa.gov/katrina/testresults/sediments/index.html>.

Priority Chemicals, continued from page 2

ties. Priority chemicals are chemicals that are persistent, highly toxic, and can accumulate in living organisms.

The Trends Report is published as part of the Resource Conservation Challenge (RCC). The RCC is a national effort to find more flexible, yet protective ways to conserve natural resources and energy. One of the RCC's goals is to reduce the presence of priority chemicals in products and waste. The Trends Reports tracks progress toward this goal and shows trends in the generation and management of these chemicals in industrial waste.

An electronic version of the *National Priority Chemicals Trends Report*, is available on the web at: <http://www.epa.gov/epaoswer/hazwaste/minimize/trends.htm>.

Corps Helps Clear Way for Great Development

By JoAnne Castagna, Ed.D.

Recently on a cool, breezy morning on the Glen Cove waterfront in New York, the city's Mayor enthusiastically looked at the public and media and said that as she stands before them the last truck load of radioactive waste is being hauled from this property, a portion of the Li Tungsten Superfund Site, clearing the way for the new waterfront development that will take its place.

Standing along side her at the po-

dium were members of EPA; U.S. Army Corps of Engineers (USACE), New York District; and state and local agencies

"The new waterfront development is expected to create as many as 1,700 full-time jobs and bring in new business that will generate an estimated \$200 million in annual sales."

who played major roles in making this milestone a reality for the small community.

The City of Glen Cove is located on

the north shore of Long Island, New York, approximately 28 miles East of New York City. Running inland from nearly Hempstead Harbor is the Glen Cove Creek, a 1-mile federal navigation channel that is dredged by the Corps every few years to ease boat travel. The city has 8 miles of waterfront, 1 mile of which has been used by industry.

Li Tungsten Superfund Site

For decades, the one mile industrialized portion of the Glen Cove wa-

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Agreement Will Encourage Brownfields Redevelopment in Florida

In December 2005, EPA and the Florida Department of Environmental Protection signed a Memorandum of Agreement (MOA) that will help accelerate brownfields redevelopment in Florida. This new MOA not only recognizes the Florida Brownfields Redevelopment Program, as did the previous 1999 MOA between the

Agencies, but it also expands the applicability of the former MOA and incorporates the requirements of the 2002 federal Brownfields Law. This new MOA outlines the federal and state roles at Brownfields and provides for coordinated and consistent technical and regulatory guidance to property owners, prospective purchasers, public and private developers, citizens, local governments and elected officials. The agreement will streamline the brownfields redevelopment process and allow for more projects to be initiated in Florida and to be completed more quickly.

The MOA also included language that recognizes cleanups conducted under Florida's brownfields program may satisfy the requirements of the federal Resource Conservation and Recovery Act. That recognition was designed to allow property owners to take advantage of tax and other benefits available under Florida's Brownfields Redevelopment Program. The Florida program provides tax credits, and limited legal immunity and

strict liability protections, to companies that locate new businesses at designated brownfield sites.

The Small Business Liability Relief and Brownfields Revitalization Act of 2002 allowed states that have a MOA with EPA for a voluntary response program to receive federal funds, as long as they maintain and annually update a public record



Johnnie Ruth-Clarke Health Center in St. Petersburg, Florida, EPA Region 4 winner of the 2005 Phoenix Award.

of brownfields that are addressed under the State program. Since 1999, the Florida Brownfields Redevelopment Program has spurred nearly \$400 million in capital investment through brownfields projects.

For additional information, contact Philip Vorsatz, EPA Region 4, vorsatz.philip@epa.gov.

AAI Rule, continued from page 2

poses of conducting the all appropriate inquiries. For the purposes of conducting all appropriate inquiries, an environmental professional must have sufficient education, training and experience to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property. Specific requirements include:

- a Professional Engineer's (P.E.) license, a Professional Geologist's license (P.G.), or other federal, state

or tribal issued certification or license, and three years of relevant full-time work experience; or

- a Baccalaureate degree or higher in science or engineering and five years of relevant full-time work experience; or
- Ten years of relevant full-time work experience.

Superfund Connection

Conducting all appropriate inquiries prior to property acquisition is the first step for obtaining relief from Superfund liability. Once a property is acquired, the owner must take due care regarding any contamination at the property. In particular, landowners must undertake reasonable steps to stop any continuing releases. Failure to meet the continuing obligations could result in a court denying protection from Superfund liability.

All appropriate inquiries may contribute to, but do not substitute for, site assessment activities conducted under the Superfund program. An EPA preliminary assessment (PA) or site investigation (SI) leads to a determination about whether a site qualifies for potential listing on the National Priorities List. Information and data from previous all appropriate inquiries might be useful for conducting a PA or SI but the purposes and methods significantly differ. Similarly, information from past PA or SIs could contribute to but not replace all appropriate inquiries.

Contact Information

For more information about the all appropriate inquiries regulation including the rule, fact sheets, and additional materials, visit the Office of Brownfields Cleanup and Redevelopment Web site at: <http://www.epa.gov/brownfields>.

Great Development, continued from page 3

terfront was occupied by various industries and a portion was used as a dumping ground. Wah Chang Corporation and Wah Chang Smelting and Refining Company were two of these companies. Wah Chang, ironically means “great development” (in part) in Chinese, and these companies, along with others such as the Li Tungsten Corporation, ran a tungsten-processing facility on different portions of the site from the 1940s to the mid 1980s. Heavy metals and radioactive ore residues contaminated the property.

In the mid 1980’s, Li Tungsten, the last in a series of site operators, went bankrupt and the property was purchased by the Glen Cove Development Corporation.

New York State asked EPA Region 2 to investigate the property’s land and nine buildings and remove any contaminated waste left by the company. EPA found large quantities of hazardous materials, such as laboratory chemicals and PCB contaminated waste, in hundreds of rusted drums and in above and underground tanks. In addition, they also discovered asbestos, transformers, and gas cylinders containing compressed liquids and gases and elemental mercury spilled on the property. An EPA contractor had the site remediated

and the most serious chemical and radioactive hazards at the former facility were removed.

The EPA’s investigation also found low-level radiation and heavy metal contamination, posing a public health risk, in the soil throughout the 26-acre Li Tungsten facility as well as in the nearby 23-acre Captain’s Cove property, that was long used as a dumping ground by area businesses and residents.

Corps Assists EPA

In spring of 2005 the EPA issued an Interagency Agreement with the Corps’ New York District to perform remediation work at Captain’s Cove. The work was awarded to and performed by the Corps’ Kansas City District.

“Our responsibility was to excavate the soil, separate the radioactive and metal-contaminated soil from the non-contaminated soil and transport the contaminated soil to appropriately licensed disposal facilities,” said Richard Gajdek, Project Manager, New York District, USACE.

Approximately 87,500 tons of radioactive soils and 35,000 tons of metals contaminated soils have been removed from the site and transported to disposal facilities in remediation work began in spring 2005. This cleanup—which is nearly complete—along with the future cleanup of other areas of the site will clear the way for the new wa-

terfront redevelopment.

New Waterfront Development

The Li Tungsten Superfund Site properties are the centerpiece for the community’s plans to revitalize 214-acres of the city’s waterfront. Glen Cove Industrial Development Agency’s goal is to link the city’s nearby downtown shopping area with the waterfront. Thirty percent of the development will be comprised of parks, public squares, nature walks and botanical gardens. Pedestrian friendly walking paths will be lined with restaurants, art galleries, stores and hotels. In addition there will be luxury condominiums and various modes of public transportation including - trolleys, electric carts, water taxis and ferry service to New York City.

The new waterfront development is expected to create as many as 1,700 new full-time jobs and bring in new business that will generate as estimated \$200 million in annual sales. The Glen Cove waterfront development is expected to be completed in a decade.

Additional information about the waterfront development is available on the City of Glen Cove Web site at: <http://www.glencove-li.com>.

Dr. JoAnne Castagna is a Technical Writer/Editor with the U.S. Army Corps of Engineers, New York District. She can be reached at joanne.castagna@usace.army.mil

EPA and J.H. Baxter Reach Settlement

On September 28, 2005, EPA reached a settlement with J.H. Baxter & Co., a wood treating company, resolving alleged hazardous waste violations at Baxter’s Arlington, Washington facility. J.H. Baxter has agreed to pay a penalty of \$13,259, spend \$64,624 to implement two supplemental environmental projects (SEPs) that will help minimize the amount of hazardous waste generated, close units where waste was handled or disposed of improperly, and implement institutional controls to further limit the risk of contamination. The SEPs involve adding a roof over two areas of the facility to reduce hazardous storm water. These changes will lower hazardous waste generation by up to one ton a year.

J.H. Baxter’s violations include accumulation and disposal of a listed waste without a permit or interim status, and failure to have a written plan and cost estimate for closure. The company’s wood treating wastes contain the chemical pentachlorophenol, which is classified as hazardous because it is a suspected carcinogen and it can cause organ damage if there is significant exposure.

For additional information, contact Cheryl Williams, EPA Region 10, williams.cheryl@epa.gov or (206) 553-2137.

W.R. Grace Liable for Response Costs at the Libby Asbestos Site

By David Dowton, Office of Site Remediation Enforcement

The Court of Appeals for the Ninth Circuit has affirmed a lower court decision holding W.R. Grace (Grace) responsible for \$54 million in response costs for the cleanup of the Libby Asbestos Site. The court also affirmed the district court declaratory judgment for future costs and upheld the district court award of indirect costs.

Grace did not dispute that it was a liable party but rather alleged that EPA circumvented regulatory safeguards by conducting the cleanup as a removal action rather than a remedial action. In the alternative, Grace alleged that even if the action was properly performed as a removal, it was inappropriate for the work to exceed the 12-month, \$2 million cap for removal actions. Grace also challenged EPA revised methodology for calculating indirect costs (which accounted for slightly more than \$11 million of the total costs).

The Ninth Circuit employed a two-part analysis to assess EPA actions at the site. First, the Court determined that EPA initial decision to conduct the cleanup as a removal must be upheld unless Grace can demonstrate on the administrative record that the decision was arbitrary and capricious. Finding that EPA had carefully documented the imminent and substantial threat to human health and the environment, the Court concluded that EPA was not arbitrary and capricious in deciding to conduct a time critical removal action. Turning to the second step, the Court ex-

amined whether the actions actually taken at the site were removal activities or were, as Grace alleged, remedial activities.

The Court started its analysis by acknowledging that Congress did not draw a clear line between removal and remedial actions. The Court also noted that there was overlap between the two statutory definitions. Turning to internal Agency documents, the Court was persuaded by EPA interpretation that a removal action encompasses an interim, time-sensitive response taken to counter serious threats to the public health. The Court also noted that the bulk of activities performed at Libby fall within the scope of removal activities listed in the NCP. This led the Court to conclude that, "given the sweeping language in the definition of 'removal,' the significant deference due to EPA interpretation of this language, and the scope of the interim cleanup, we hold that the EPA cleanup in Libby falls within the bounds of a removal action." The Court added that it was not impractical for EPA to exceed the statutory caps placed on removal given the "urgency, magnitude and long-standing nature of the problem."

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

Third Circuit Overrules Previous Decision Barring Recovery of CERCLA Oversight Costs

By David Dowton, Office of Site Remediation Enforcement

On December 22, 2005, the Court of Appeals for the Third Circuit held that the United States is authorized under CERCLA to recover costs incurred over-

seeing a hazardous waste cleanup performed by a liable party. The decision overrules *United States v. Rohm & Haas Co.*, 2 F.3d 1265 (3rd Cir. 1993).

In its 1993 *Rohm & Haas* decision, the Third Circuit relied on the Supreme Court's decision in *National Cable*, 415 U.S. 336 (1974), which struck down the imposition of user fees by the Federal Communications Commission. In *National Cable*, the Supreme Court held that Congress must indicate clearly its intent to delegate to the Executive branch the discretionary authority to recover administrative costs by imposing additional financial burdens, such as fees or taxes, on a regulated party. Finding a lack of any explicit statutory reference authorizing recovery of oversight costs in CERCLA and concluding that oversight costs were akin to a fee or a tax, the Third Circuit barred the United States' recovery.

Reconsidering the issue twelve years later, the Third Circuit overruled its previous decision holding that *National Cable* no longer governs the analysis of the recovery of oversight costs under CERCLA. The court held that, "CERCLA neither imposes user fees or taxes, nor imposes them on a regulated industry. CERCLA response costs are restitution payments, imposed on those responsible for contamination to cover costs of the contamination's cleanup." Finding that *National Cable* no longer applied, the court turned to the plain meaning of the statute and concluded that a plain reading of the statute authorized the recovery of oversight costs. Specifically, the court agreed with the United States that oversight activities fall comfortably within the definitions of "removal action" and "remedial action."

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

New Guidance Issued on Contaminated Sediment Remediation

In December 2005, EPA released "Contaminated Sediment Remediation Guidance for Hazardous Waste Sites," a document intended to provide technical and policy advice for selecting remedies at contaminated sediment sites. The guidance is primarily directed at project managers and management teams responsible for conducting feasibility studies and selecting remedies at Superfund sites where there are contaminated sediments, though there is also some technical information that may be helpful for RCRA sites. The document includes factors to consider when conducting remedy investigations or feasibility studies or selecting a remedy. It gives technical information about three remedies commonly used to address contaminated sediments—monitored natural recovery, in-situ capping, and dredging and excavation—and lists the advantages and limitations of each. The document also provides suggestions for developing a monitoring plan for long-term monitoring.

The guidance and other information about contaminated sediments at Superfund sites are available on OSWER's Contaminated Sediments in Superfund Web site at: <http://www.epa.gov/superfund/resources/sediment/>.

For additional information, contact Leah Evison, OSRTI, evision.leah@epa.gov.

Doboy to Pay Over \$50,000 in Settlement with EPA Region 5

On December 22, 2005, EPA Region 5 filed a Consent Agreement and Final Order (CAFO) requiring Doboy, Inc., to pay a penalty of \$52,246 for allegedly failing to determine whether certain solid waste it generated was hazardous. For a period of four years beginning in 2000, Doboy did not investigate whether the wet paint spray booth's waste filters generated at its New Richmond, Wisconsin package-making facility were hazardous following a change that was made to its paint and primer materials. The Doboy site was inspected by EPA and the Wisconsin Department of Natural Resources in

March 2004, and an Administrative Complaint was filed on July 1, 2005. Testing showed that the filters were hazardous. Though Region 5 initially requested a penalty of \$189,372, legal issues raised by Doboy and the company's cooperation led the Region to reduce the penalty. Doboy is no longer in violation of these regulations.

For additional information, contact Karen Thompson, EPA Region 5, (312) 353-8547.

EPA Corrects MACT Compliance Date for Hazardous Waste Combustors

On December 19, 2005, EPA amended the National Emission Standards for Hazardous Waste Combustors, commonly known as MACT, to correct the implementation date. Hazardous waste combustors must implement new or revised bag leak detection system monitoring provisions by October 14, 2008, not December 12, 2005 (70 FR 75042). For more information, see: <http://www.epa.gov/epaoswer/hazwaste/combust/index.htm>.

Hurricane Response Informational Handouts Made Available to Gulf Coast Residents

EPA has released a series of handouts to assist residents affected by Hurricanes Katrina and Rita. Topics include a guide to potential environmental concerns for residents returning to homes and businesses, mold, wells, drinking water, and household hazardous waste collection.

The handouts are available on EPA's Hurricane Response Web site at: <http://www.epa.gov/katrina/outreach/handouts.html>. Anyone interested in being notified when new information is provided on the site can sign up to receive email updates.

March 15-18, 2006
Padua 2006 - International
Ecotechnologies Exhibition
<http://www.environmental-expert.com/events/padua2006/padua2006.htm>
Padua, Italy

March 20-23, 2006
Joint Services Environmental
Management Conference &
Exposition
<http://www.jsemconference.com/2006/index.htm>
Denver, CO

March 26-29, 2006
21st International Conference
on Solid Waste Technology and
Management
http://www.wastenews.com/elib/event_details.html?id=285
Philadelphia, PA

March 27-29, 2006
National Environmental H&S
Conference 2006
http://www.nehsconference.org/NEHS_Site/nehhome.html
Indianapolis, IN

May 3-5, 2006
35th Annual Solid/Hazardous
Waste Conference & Exhibition
http://www.wastenews.com/elib/event_details.html?id=297
Gatlinburg, TN

June 27-30, 2006
Community Involvement
Conference and Training
<http://www.epa.gov/superfund/action/community/ciconference/2006/index.htm>
Milwaukee, WI

Glossary

CAFO	Consent Agreement and Final Order	OSRE	Office of Site Remediation Enforcement
CD	Consent decree	OSW	Office of Solid Waste
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	OSWER	Office of Solid Waste and Emergency Response
EPA	Environmental Protection Agency	PA	Preliminary Assessment
GCDC	Glen Cove Development Corporation	PCBs	Polychlorinated biphenyls
MACT	Maximum achievable control technology	RCC	Resource Conservation and Recovery Act
NPL	National Priorities List	RCRA	Resource Conservation and Recovery Act
OBCR	Office of Brownfields Cleanup and Redevelopment	RECAP	Risk Evaluation/Corrective Action Program
OECA	Office of Enforcement Compliance and Assurance	SEP	Supplemental environmental project
		SI	Site investigation
		TRI	Toxic Release Inventory

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

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