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Horinko Dedicates Condor Street Urban Wild Park

On October 4, 2003, Acting Administrator Marianne Horinko participated in the opening ceremony for the Condor Street Urban Wild Park on the Chelsea Creek waterfront in East Boston, Massachusetts. Horinko, a Boston-native, praised the cooperative efforts of federal government officials and local interest groups in accomplishing the redevelopment and described the park as "a jewel being unearthed after years of neglect obscured her beauty." During the ceremony, Acting Administrator Horinko handed the Chelsea Creek Restoration Project, led by the Chelsea Creek Action Group, a Healthy Communities Grant check for $28,457 for developing educational programs and for maintenance support. EPA has given $300,000 in funding for East Boston and Chelsea area community projects since 1997.

The new park, which includes an urban salt marsh and public art, is a complete transformation of once-contaminated land that was fenced off from the public. For almost 50 years, a sand and gravel company used the 4.5-acre site along Chelsea Creek for cleaning and storage. In 1980, the City of Boston purchased the site in hopes that it could be used as a park. They discovered that the site was contaminated and determined it would have to be fenced to prevent public access.

In 1998, the Chelsea Creek Action Group, a community group, began advocating for cleanup and restoration of the area with EPA, Boston City Parks, the Urban Ecology Institute, and Neighborhood of Affordable Housing. In that same year, Waste Management was cited for Clean Air Act violations for unsafe appliance disposal which had resulted in the release of CFCs (chlorofluorocarbons) and HCFCs (hydrocholorofluorocarbons). In the settlement, Waste Management agreed to pay a $775,000 fine and to finance two Supplemental Environmental Projects (SEPs). Fortuitously, the Chelsea Creek Action Group was seeking approximately $1 million in funding to help restore the park. Waste Management agreed to contribute $1.2 million to the Condor Street Urban Wild project as one of its SEPs. Kristi Rea of EPA New England's Urban Environmental Program described the collaboration to join Chelsea Creek Action Group's need and Waste Management's available SEP as "incredibly synergistic." Waste Management's SEP is being used for construction and to support park operations and maintenance for the next 15 years. In addition to the SEP funding received for the park, the City of Boston contributed $400,000 for cleanup and construction costs. With the Condor Street Urban Wild Park now completed, the Chelsea Creek Action Group is working on a "master vision" for the entire area on Chelsea Creek.

For additional information, contact Kristi Rea, EPA Region 1, (617) 918-1595.

New Luxury Apartments Stand On Former Petroleum-Contaminated Site

by Barbara Howenstine, Office of Underground Storage Tanks

A new luxury apartment complex at Clarendon Triangle in Arlington, VA, a close suburb of Washington, D.C., betrays nothing of the site's humble history. The lobby of the 11-story building offers residents and visitors a taste of Washington class with divans, crystal vases, and a fireplace. There are classic touches throughout the building, with floor-to-ceiling windows and an upscale clubroom with pool table and large-screen TV. Amazingly, just a few years ago this same location was shunned by developers and deplored by nearby residents, despite its proximity to D.C. Since the 1920s, several gasoline stations, a car wash, an automobile dealership, and an office building had occupied the site. At least four facilities in the area had had petroleum leaks, and some plumes were decades old. By the late 1980s, the site was rundown, vacant, and contaminated with petroleum, site conditions that persisted until the recent cleanup and revitalization effort.

The JPI Apartment Development, LP (JPI), became interested in the site because of its proximity to D.C. and recent revitalization efforts in the area. JPI specializes in the creation and management of luxury residential communities throughout the U.S. JPI acquired the Clarendon site in 2001 and began the multi-faceted task of working with Arlington County and the Commonwealth of Virginia to clean up and redevelop the property. JPI and its consultants, Environmental Consultants and Contractors (ECC), and lending institution First Union worked closely with the Northern Virginia Regional Office of the Virginia Department of Environmental Quality (VDEQ) to resolve environmental, regulatory, and financial issues concerning the site. Work at the site began in 2001.

Although site assessments had already been completed, ECC performed its own assessment and produced a Corrective Action Plan to address the contamination as well as safety issues at the site. The plan was approved by VDEQ, discharge permits were issued to handle treated excavation water, and reimbursement from the Virginia Petroleum Storage Tank Fund was approved for certain petroleum remedial activities. Contaminated materials were addressed to VDEQ's requirements, and work at the site progressed on schedule.

The site remediation required the onsite cleanup and control of water in a 50-foot deep trench and soil removal and disposal, all accomplished in tight working space in a busy urban area. Over 32,000 cubic yards (or 49,000 tons) of soil and 1.4 million gallons of water were remediated. By April 2002, the foundation and subsurface structure of the residential and commercial building had been completed and the environmental issues successfully resolved with VDEQ. By December 2002, the brick shell was up and interior work had begun. In mid-2003, construction continues on the aboveground portion of the building. Approximately 55% of the 252 residential units have been rented though not all

are completed yet, and several commercial ventures will occupy the 14,000 square foot first-floor retail space, including a coffee shop, video rental store, dry cleaner, and restaurant. The total project cost is expected to exceed $47 million. JPI estimates that this project will result in as many as 2,600 temporary and 50 full-time jobs.

This Clarendon Triangle apartment complex is one of many cleanup and revitalization efforts currently underway to address petroleum-contaminated properties. This particular venture was not an EPA project, but it exemplifies redevelopment efforts across the country. EPA's Office of Underground Storage Tanks (OUST) actively promotes the cleanup and reuse of sites like this, including the estimated 200,000 petroleum-contaminated brownfields sites nationwide, most of which are old unused gas stations. A new law has expanded the use of EPA Brownfields funds to include petroleum-contaminated sites, opening up new resources to accomplish this work. EPA encourages public and private entities to become partners in addressing these sites and turn dilapidated, contaminated properties into new housing, retail businesses, parks, public buildings, wetlands, or revitalized riverfronts that provide both environmental and economic benefits for surrounding communities. OUST wants to hear of other efforts to clean up and reuse petroleum-contaminated properties: please send information to Steven McNeely, mcneely.steven@epa.gov, (703) 603-7164. Additional information on EPA's program for cleaning up and reusing petroleum-contaminated tank sites and examples of other current reuse projects are available at: http://www.epa.gov/oust/ustfield/index.htm. For more information on the Clarendon project, see the VDEQ website at http://www.deq.state.va.us/brownfieldweb/success.html.

The venture described in this article was not an EPA project. The views expressed in this article do not necessarily reflect the position of EPA. EPA does not endorse the commercial ventures mentioned in the article.

Parceling Northwestern Steel Provides Economic Benefit

Due to bankruptcy, the Northwestern Steel and Wire Company closed the doors of its Sterling, Illinois plant in May 2001. As a key employer for Sterling residents and a main industrial property holder, the loss of Northwestern Steel and Wire significantly impacted the local economy. In addition to the economic loss, the community had the spectre of groundwater and soil contamination at the site that would require CERCLA and RCRA action.

Given the size of the Northwestern Site—700 acres—and the manageable site contamination, EPA determined that the site was a candidate for parceling. "Parceling" involves dividing large contaminated sites into smaller parcels, if the contamination does not significantly impact the entire site, and placing the parcels on the market. Any potential purchaser enters into an agreement with EPA to cleanup the parcel in exchange for permission to buy the land and establish a business. Parceling has a number of advantages: portions of idle properties are redeveloped which spurs cleanup and

redevelopment of other parcels, funds from the purchase can be used to fund cleanup of other contaminated parcels, and the local economy is stimulated. EPA's Land Revitalization Agenda, a recent major initiative to spur redevelopment, encourages Regions and other parties to consider parceling large properties.

The City of Sterling worked hard with State of Illinois officials and prospective purchaser Leggett and Platt to redevelop the site. The city's aggressive efforts led to an Illinois EPA Municipal Brownfields Redevelopment Grant of $200,000 in March 2002. In May 2002, Leggett and Platt, Inc., a mattress manufacturer and former customer of Northwestern Steel and Wire, entered into a Resource Conservation and Recovery Act (RCRA) Prospective Purchaser Agreement (PPA) with EPA to purchase parcels of the property. Leggett and Platt formed the subsidiary of Sterling Steel to resume mill operations at the site. The company is assuming cleanup responsibilities and received a total of $1.2 million in Brownfields assessment grants and revolving loan fund grants for cleanup activities and community involvement. Presently, Sterling Steel is one of seven companies sitting on a combined 70% of the 700-acre district. The estimated $45 million in capital investment by Sterling Steel Company and the Sterling Rail Company has created 150 jobs with 350-600 projected future jobs.

Wal-Mart recently purchased adjacent land, which will be used for a distribution center employing 600 workers by 2006. The taxes paid by Wal-Mart as part of the purchase enabled the city to upgrade 4.5 miles of water and sewer pipelines. These infrastructure improvements will increase the value of the western portion of the site, which was previously unusable. The City of Sterling hopes to redevelop the remaining 30% of the original 700-acre site through the use of Illinois EPA grant funds and PPAs to obtain Brownfields revolving loan funds. In the interest of gaining further grant funds from EPA, the City of Sterling is incorporating a number of sources, including the U.S. Army Corps of Engineers, the US Fish and Wildlife Service and the US Economic Development Administration, into its long-term redevelopment strategy.

Without parceling, this 700-acre tract of land could still be sitting idle. Instead, it is generating funds for further remediation and jobs for area residents.

For additional information, contact James Vanderkloot, EPA Region 5, (312) 353-3161.

Former Murray Smelter Replaced by a Hospital

With the demolition of Murray Smelter's two prominent smokestacks in August 2000, the City of Murray, Utah moved closer to being Utah's home for a new $362.5 million health care facility. Ironically, the potentially world-class hospital complex is being built on land that once posed a significant health risk. The former American Smelting and Refining Co. property once contained elevated levels of arsenic and lead in the soil, groundwater, and surface water.

In November 1995, a time-critical removal action was completed by the site owner, Asarco, through an Administrative Order on Consent with EPA. In an extraordinary

move for a local government, the City of Murray indicated to EPA that it wanted to contribute significantly in the remediation process in the hopes of accelerating cleanup and redevelopment of the site. The City of Murray and EPA entered into a Memorandum of Understanding in 1996 that designated the City of Murray as lead agency while EPA maintained oversight authority. In 1998, contaminated soils were removed and disposed off-site as required by EPA's Record of Decision. EPA made recommendations on how to address the two structurally-unsound smokestacks in an August 19, 1998 Consent Decree, and the owner subsequently determined to demolish them. EPA oversaw Asarco's demolition of the smokestacks and ensured human health and the environment were protected.

EPA and the Utah Department of Environmental Quality entered into a Prospective Purchaser Agreement with Intermountain Health Care (IHC), a non-profit health care organization, and in December 2000, IHC gained ownership of the majority of the site. In September 2003, a ground-breaking ceremony opened construction of the new complex, which will cover 100-acres of the original smelting and refinery site and contain 1.2 million square feet of space. The complex will include an ambulatory and outpatient diagnostics hospital; a birthing center; a tertiary inpatient, critical care level one trauma hospital; a cancer treatment hospital; and a heart-and-lung hospital. Besides the direct health benefit of having high quality care, the hospital will also provide additional tax revenues and stimulate the local economy through new jobs.

The remaining 42-acres of the site is being used by Utah Transit Authority, which built a TRAX light rail station to provide community residents with transportation to and from Salt Lake City, and by two local developers interested in commercial opportunities. In addition, IHC rented a segment of their original share of land to Costco, a major membership warehouse club, to pursue retail development.

The smelter, which operated between 1872 and 1949, was one of many industrial facilities in Murray. At one time, as many as sixteen smokestacks could be seen on Murray City's horizon. Since the two smokestacks symbolized such a significant period in city history, on their demolition, the residents of Murray commemorated them in a wall mural and integrated them into the new city logo.

For additional information, contact Bonnie Lavelle, EPA Region 8, (303) 312-6579.

Senate, House Debate Including MTBE Liability Protection in Energy Bill

With the recent East Coast blackouts and other significant energy issues to address, both the House and Senate are working towards separate versions of a broad-ranging compromise Energy Bill. A number of issues have proved contentious, including modernizing the power grid, drilling in the Arctic National Wildlife Refuge, and whether or not to ban the use of the gasoline additive MTBE. EPA has been closely monitoring the debate on MTBE since a ban on MTBE could mean future enforcement of violators.

One option being considered in committee is including a "safe harbor provision" for MTBE, which would protect manufacturers from liability. Thus far, only the House version of the bill contains a safe harbor provision for MTBE manufacturers.

MTBE (methyl tertiary-butyl ether) is an oxygenate that was first used in underground storage tanks (USTs) in the 1970s. In the early 1990s, it was used as an additive in reformulated gasoline (RFG) to reduce ozone discharges in compliance with the Clean Air Act Amendments of 1990. The amendments required RFG, with an oxygenate additive, to be phased into the fuel used in ten of the largest U.S. metropolitan areas. By the late 1990s, studies began to detect MTBE in groundwater, and there was emerging concern about levels of the oxygenate in drinking water. MTBE in drinking water was found to cause an unpleasant taste and odor. Further studies on MTBE's impact on human health have been inconclusive, but there is some data to substantiate that it is a potential carcinogen. To avoid potential problems with MTBE in groundwater, some states like California have passed legislation to eradicate MTBE from gasoline sold within state lines. A "Summary Report on a Survey of State Experiences with MTBE and Other Oxygenate Contamination at LUST Sites" performed in August 2003 by the New England Interstate Water Pollution Control Commission through a grant from EPA's Office of Underground Storage Tanks reports that as many as 43 states have, or plan to have, measures for MTBE cleanup and drinking water benchmarks. Of these 43, fifteen can legally enforce these standards.

Between the late 1990s and today, many communities have collected reparations from MTBE producers. The safe harbor provision of the energy bill currently being debated in the Senate would no longer allow communities to prosecute the manufacturer simply because MTBE is part of their product. Essentially, the provision grants MTBE manufacturers immunity from allegations that their product is faulty in production or design. As a solution to the loss of MTBE as the oxygenate in our gasoline, the legislation also includes a phase-in strategy for ethanol, an alternative oxygenate.

Commenting on a possible safe harbor provision, Bob Slaughter, president of the National Petrochemical and Refiners Association, noted that the petrochemical and refiners group simply followed government mandates by including MTBE in their product.

For additional information, contact Ann Strickland, (202) 564-6224.

In the Courts

Favorable Ruling Granted in Libby Cost Recovery Trial

In a significant victory for EPA, Judge Donald W. Molloy of the District Court of Montana ruled that W.R. Grace and Co. must reimburse EPA $54.5 million for cleaning up asbestos contamination in Libby, Montana. The ruling covers all cleanup activities at the site through December 31, 2001. Costs incurred after that date will have to be

recovered either through negotiations between the parties or through additional litigation. This is the largest post-trial award under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) since the inception of the Superfund program in December 1980.

During the trial, Grace called into question EPA's new accounting procedures for calculating indirect costs. Judge Malloy found that EPA had demonstrated that their accounting methods met compliance standards and found Grace's argument to be without merit. This is the first federal ruling in favor of EPA's new process for calculating indirect costs. EPA's indirect costs at the site to date have exceeded $11 million.

From 1963 to 1990, W.R. Grace mined and processed vermiculite at the site. The naturally-occurring vermiculite contained asbestos fibers, which were released into homes, businesses, and schools within the community. Testing of current and former Libby residents by the Agency for Toxic Substances and Disease Registry found a number of lung abnormalities commonly associated with asbestos exposure, including lung cancer, mesothelioma, and asbestosis. A review of medical records and death certificates found a rate of asbestosis 40-80 times the average and higher lung cancer mortality rates. EPA undertook a number of measures to protect human health and the environment, including removal of soils and vermiculite.

Because W.R. Grace filed for bankruptcy in April 2001, any payments to EPA under this judgment must be approved by the bankruptcy court.

For additional information, contact Matt Cohn, EPA Region 8, (303) 312-6853.

First No Action Assurance Letter Issued to a "Contiguous Property Owner"

On September 12, 2003, the Regional Administrator for Region 9 issued the Agency's first No Action Assurance Letter, a letter assuring a "contiguous property owner" that EPA will not pursue enforcement action. The letter was granted to the Fowlers, long-time residents of Salinas, California whose family ranch is adjacent to the Firestone Tire & Rubber Co. Superfund site. The Fowlers are considered "contiguous property owners" because the groundwater underlying their property was contaminated yet they were not considered potentially responsible parties (PRPs) and were not affiliated with the PRP.

Between 1963 and 1980, Firestone conducted tire manufacturing operations on the site that resulted in the release of solvents and other chemicals into the soil and groundwater, resulting in 1,1,1 trichloroethane and 1,1 dichloroethylene contamination. Firestone was identified as the potentially responsible party and required through a 1989 Record of Decision to excavate 65,000 cubic yards of contaminated soil and 9,000 gallons of hazardous liquids. They were also required to install a pump-and-treat system for treating contaminated groundwater and preventing contamination migration. A 5-year review of the system found that the remedy was protective of human health and the environment.

The Fowlers requested the assurance letter from EPA so they could secure bank loans to redevelop their property. During a recent attempt to secure a loan, a bank had questioned the Fowlers' potential liability for contamination on their property. CERCLA Section 107(q), a new CERCLA provision added through the Small Business Liability Relief and Brownfields Revitalization Act of January 2002, allows EPA to grant contiguous property owners assurance through a No Action Assurance letter that EPA will not pursue enforcement action. To be granted this assurance, the owner must demonstrate that they did not contribute to site contamination, be cooperative, and not be a potentially responsible party (PRP) or affiliated with the PRP. The Fowlers cooperated with the remediation of the Firestone Superfund site in a number of ways, including allowing monitoring wells on their own property for assessing groundwater contamination.

For additional information, contact Bill Keener, Region 9 Office of Regional Counsel, (415) 972-3940.

Tidbits

Newly-Revised PRP Search Manual Is Available

The Office of Site Remediation Enforcement (OSRE) has completed the first comprehensive revision and update of the Potentially Responsible Party Search Manual since 1987. OSRE Director Susan Bromm announced the distribution of the 2003 Potentially Responsible Party Search Manual (Manual) in a memorandum to Superfund national policy managers and regional counsel on September 10, 2003. The revision is the culmination of several years' work by the national PRP Search Enhancement Team in collaboration with regional and headquarters subject matter experts.

The Manual, comprised of four chapters, is a working document intended to provide information to those persons involved in the PRP search process. Procedures and information contained in the Manual are based on current, existing EPA statutes, policy, and guidance. For the users' convenience, any model letters, references and/or guidance documents mentioned in the Manual are supported by a web-site address or hard copy found in the Appendices. The Manual also introduces users to the Superfund Enforcement Directory, the PRP Search Enhancement Team's on-line guide to enforcement personnel who are involved in the PRP search enforcement process. The Superfund Enforcement Directory can be accessed online by EPA personnel at: https://cfpub.epa.gov/sfed.

OSRE plans to post the Manual on the Internet and perform ongoing, on-line updates to keep it current.

For additional information, contact Nancy Deck, OSRE, (202) 564-6039 or deck.nancy@epa.gov.

OSRE and OSW Issue Financial Assurance Interim Guidance

On September 30, 2003, Susan Bromm, Director of the Office of Site Remediation Enforcement (OSRE), and Robert Springer, Director of the Office of Solid Waste (OSW), released new guidance on financial responsibility for facilities subject to Resource Conservation and Recovery Act (RCRA) Corrective Action (i.e., interim status and permitted hazardous waste treatment, storage, and disposal facilities). The guidance is directed to the Regional personnel who implement the RCRA program with authorized states, including senior policy advisors and enforcement managers.

EPA requires facility owners and operators to provide assurances of financial responsibility for completing corrective action as may be necessary to protect human health and the environment. Financial assurance is required in permits and in corrective action orders. The primary purpose of the financial responsibility requirements is to assure that funds will be available when/if needed to fund cleanup activities so that Superfund money will not be required. The guidance acknowledges the difficulties regulators face in determining when financial assurance for corrective action should be established and offers decision-makers advice on how to approach the timing and amount of financial assurance to require. It had been the Agency's policy to require a demonstration of financial assurance for corrective action at the time of remedy selection. The guidance suggests a flexible approach to financial assurance requirements based on facility specific circumstances. Under this flexible approach, financial assurance may be required to cover the estimated costs of investigations and significant interim measures. The guidance lists the advantages and disadvantages of implementing financial assurance requirements at each of these stages. The document also suggests ways for working with facility owners and operators that claim an inability to provide financial assurance or that file for bankruptcy.

This guidance gives regulators wide discretion for implementing financial responsibility requirements and encourages selecting methods for ensuring compliance on a facility-by-facility basis. Additional guidance will be released to address other corrective action financial responsibility issues, including recommended language for administrative orders.

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

Calendar

November 5-7, 2003
NACEPT Superfund Committee
Washington, DC
Contact: Angelo Carasea, (703) 603-8828
http://www.epa.gov/oswer/SFsub.htm

November 17-19, 2003
RCRA Enforcement Managers (REM) Meeting
Austin, TX
Contact: Caroline Ahearn, (202) 564-4012

November 18, 2003
Environmental Insurance Forum
Los Angeles, CA
Contact: Cindy Statz, (877) 735-0800
http://www.erraonline.org

November 20, 2003
Environmental Insurance Forum
Sacramento, CA
Contact: Cindy Statz, (877) 735-0800
http://www.erraonline.org

Glossary

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPA	Environmental Protection Agency
IHC	Intermountain Health Care
MTBE	Methyl tertiary-butyl ether
OSRE	Office of Site Remediation Enforcement
OSW	Office of Solid Waste
OUST	Office of Underground Storage Tanks
PPA	Prospective purchaser agreement
PRP	Potentially responsible party
RCRA	Resource Conservation and Recovery Act
RFG	Reformulated gasoline
SEP	Supplemental Environmental Project
UST	Underground Storage Tank
VDEQ	Virginia Department of Environmental Quality

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We have developed an electronic supplement to the *CleanupNews* print edition called *CleanupNews II*. The print issue will still be available four times a year, and the newsletter will be delivered electronically eight times a year (four issues consisting of the print edition text and four issues consisting of supplemental news).