



cleanup news

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Leavitt Sworn In as Administrator

Mike Leavitt, former governor of Utah, was sworn in as the 10th administrator of the Agency on November 6, 2003 in a small ceremony at EPA headquarters. Leavitt was confirmed by a significant margin in the Senate on October 28, 2003 and moved quickly to tender his resignation as Utah governor. He preferred the smaller, immediate ceremony to waiting for a presidential ceremony, further reflection of his desire to begin work immediately as Administrator.

In a memo to EPA employees released shortly after the swearing in, Administrator Leavitt expressed his "great admiration for the dedicated



Marianne Horinko and Stephen Johnson swear in Mike Leavitt.

professionals" working for the Agency and explained that his first task would be to "listen and learn from you." Since assuming office, Leavitt has focused on meeting with headquarters and Regional staff to solicit their input as he determines the course of his agenda.

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Record Turnout Reported for Brownfields Conference

Brownfields 2003: Growing a Greener America drew a record 4,235 attendees to Portland, Oregon. Participants were treated to over 130 educational sessions, mobile workshops, the Marketplace of Ideas, and 50 extra events, including day-long excursions and eco-tours.

At the opening plenary session, then Acting Administrator Marianne Horinko awarded \$400,000 in Smart Growth grants to the communities of

Allegan, Michigan; Toledo, Ohio; Lancaster County, Pennsylvania; Emeryville, California; and the Downriver Community Conference in Southgate, Michigan. The grant money will encourage the communities to incorporate smart growth considerations into community planning and development.

The Brownfields 2004 conference is scheduled for September 20-22, 2004 in St. Louis.

For additional information, contact Tony Raia, Office of Brownfields Cleanup and Redevelopment, (202) 566-2758.



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

Environmental Response Team Marks 25th Anniversary

EPA's Environmental Response Team (ERT), a team of experts that responds to environmental emergencies, was created in 1978 under the Clean Water Act to address oil and hazardous substance releases. EPA tasked the original team of seven scientists with advising on-scene coordinators. Today, ERT addresses a host of scenarios including industrial chemicals, thermal treatments, geophysics, analytical method development for biological and chemical agents, drum sites, and fires of all types.



The original team (left to right): Steve Doerrlen, Joe Laforanara, John Gilbert, Royal Nadeau, Andy Zownir, Bob Cibulskis, Rod Turpin.

ERT responded to its first incident shortly after its creation: the ICG Railroad train derailment in Kentucky on October 15, 1978. Since then, the team has responded to over 1925 incidents (including 42 international incidents), 79 oil spills, and 217 emergencies, including two significant recent re-

sponses: the World Trade Center and anthrax attacks. At the World Trade Center, ERT members provided health and safety assistance to responders and conducted air monitoring and sampling. During the fumigation of the Hart Senate Office building and several post office facilities, the team gave advice on cleanup technologies and provided air monitoring for chlorine dioxide emissions.

But ERT is much more than “scientists in moonsuits.” ERT plays a variety of roles in responses, including conducting air monitoring, threat assessments, cleanup consulting, ecological assessments, and groundwater studies. The team also helps EPA on-scene coordinators (OSCs) and remedial project managers with site determinations. In addition, ERT supports the efforts of EPA criminal investigators. The ERT dive team addresses underwater emergency responses, like the response at the Continental Steel Quarry site in Kokomo, Indiana. At this site, hundreds of hazardous substance containers were found in a



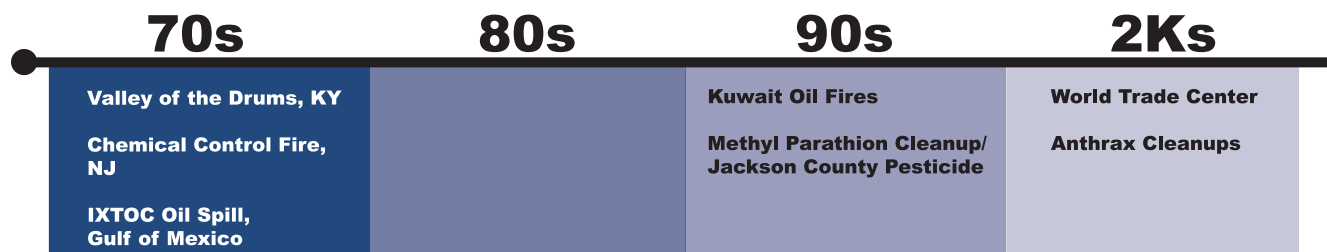
The Environmental Response team today

quarry pond. In a typical recent response, ERT addressed a coal tar leak at Brodhead Creek, a trout stream and drinking water source for Pennsylvania and New Jersey. ERT identified the leak source, evaluated threats to the environment and human health, and suggested building a slurry wall and recovery wells.

To address changing response needs and domestic terrorism threats, EPA opened the Environmental Response Team-West office in Las Vegas last February to provide quick responses for incidents in the West. Prior to the opening of ERT-West, the most westerly team office was in Cincinnati, Ohio.

For additional information, contact Joe Laforanara (laforanara.joseph@epa.gov) or Dave Wright (wright.dave@epa.gov), Environmental Response Team.

Timeline of Significant ERT Responses



Missouri Redevelopment Vision Realized

Through the dedicated work of citizens and government officials, Springfield,

property values, below average household incomes, high unemployment, and overall decay were an exception.

and the voter-approved tax increase have generated an estimated \$125 million for the development of Center City.



A greenspace area in Center City.

Missouri has revitalized its city center. The newly-restored downtown is growing into a vibrant 250-acre commercial, residential, and recreational community called “Center City.” Recent accomplishments in the development of Center City include two NHL regulation ice rinks, a 140,000-square-foot Exposition Center, a minor-league baseball stadium, a 12-acre greenspace, and a number of residential and office buildings.

Downtown Springfield’s industrial corridor, formerly known as Jordan Creek Corridor, used to be the industrial and commercial hub of Springfield, with gas and electric companies; lumber and coal yards; painting, printing shops, metalworking, and electroplating facilities; and agricultural mills. As the buildings aged and industrial processes contaminated the soil and water, these businesses began to move to “greenfields” away from downtown. On the whole, Springfield has enjoyed a relatively healthy economy. The corridor’s low

property values, below average household incomes, high unemployment, and overall decay were an exception. Redeveloping the corridor was the brain-child of citizens who took an active role in driving and shaping the changes. In the mid-1990’s, over 300 citizen volunteers joined to create Springfield’s Vision 20/20, a 20-year redevelopment plan. Their goal was to restore the sense of community that was lost when businesses and residences fled the downtown area. The volunteers formed the Civic Park Citizen Advisory Committee, which worked with city staff on the master plan. The majority of Springfield voters approved the master plan and opted for a tax increase to support it.

The city’s efforts drew the attention of EPA, and in 1999, EPA approved an assessment grant of \$200,000 for the appraisal of multiple sites within the corridor. In 2003, EPA granted an additional \$150,000 pilot program grant. These grants provide for the site assessment of approximately 12 brownfield sites and are expected to spur additional interest. Since 1996, when the Vision 20/20 plan began, various investments

In 2001, the City of Springfield received the Missouri Department of Economic Development’s Public Improvements Award for the project. In March 2001, the Parks Department won the 2000 Gold Leaf Award from the Midwestern Chapter of the International Society of Arboriculture for the Boonville Avenue Pilot Streetscape Project. As an added bonus, *Employment Review* recognized the city in its America’s Best Places to Live and Work top ten list.

For additional information, contact Belinda Young, EPA Region 7, (800) 223-0425.

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EPA and DoD Resolve Post-ROD Dispute

By Sally Dalzell, Federal Facilities Enforcement Office

On October 2, 2003, EPA and DoD successfully resolved a near three-year post-Record of Decision (ROD) dispute that should now expedite decision-making at dozens of military Superfund cleanup sites for years to come. RODs document for the public the chosen cleanup approach to best address whatever pollution problem exists at a facility. EPA and DoD disagreed over the appropriate EPA oversight role in determining what actions are needed to implement and maintain the land use controls that help insure the cleanup remains protective after the remedy has been selected.

Land use controls typically allow some level of pollution to remain in place, as long as it can be managed safely and effectively. For instance, a military landfill that accepted trash and other wastes might best be “capped” rather than having its

contents removed, which can be quite expensive and not really necessary to ensure site safety. However, for the cap to continue to be safe, its integrity must be maintained. Land use controls help ensure, as part of the long-term maintenance of the remedy, that trees would not be allowed to grow in the cap and that the military or others did not dig through the cap inadvertently. Because land use controls are part of the remedy, EPA insists that land use controls be fully evaluated, designed, and implemented, just as the physical part of the remedy. EPA also has an important oversight responsibility to ensure site safety.

After lengthy negotiations first with the Navy and later including the Army, EPA and the Navy reached agreement on a set of principles, “the Navy Principles,” which include land use controls and ensure

a role for EPA regarding the implementation and maintenance of such controls. Because of hard work and good faith negotiations, EPA, the Navy, the Army, and the Defense Logistics Agency reached a resolution that streamlined the information needed on actions required to ensure land use controls are safe. A task force will soon further examine site management and oversight.

EPA also agreed to give full and fair consideration to a new, alternative performance-based approach suggested by the Air Force. While EPA had no part in the development of the Air Force Principles, the Agency agreed to discuss the approach on a site-specific basis and see how and whether the proposed principles might be used to reach resolution regarding cleanups.

For additional information, contact Sally Dalzell, FFEO, (202) 564-2583.

Leavitt, continued from page 1

“This is an exciting time to serve. I look forward to working together and meeting the many challenges ahead.”

— Leavitt, in a memo to EPA employees

Administrator Leavitt has brought two staff members on-board to assist his administration. Rich McKeown, who served as the governor’s chief-of-staff

from 1999 to 2003, will be the administrator’s senior counselor. Leavitt also added Cynthia Bergman to serve as EPA press secretary in the Office of Public Affairs. Bergman’s recent communications experience includes managing communications for the Maine Republican Party during the reelection campaign for Senator Susan Collins (R-ME) in 2002. Additional staff appointments are expected.

Marianne Horinko, who had been Acting Administrator since Christie Todd Whitman’s resignation, continues on with the Agency as Assistant Administrator of the Office of Solid Waste and Emergency Response. Stephen Johnson will continue as Acting Deputy Administrator pending Bush administration nomination and Senate confirmation of a replacement.

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

State Cleanup Officials Focus on Drycleaner Contamination

By Richard Steimle, Technology Innovation Program

The State Coalition for Remediation of Drycleaners (SCRD) was established in 1998, with support from EPA's Office Superfund Remediation and Technology Innovation. It is comprised of representatives of state governments with established drycleaner remediation programs. Current member states are Alabama, Florida, Illinois, Kansas, Minnesota, Missouri, North Carolina, Oregon, South Carolina, Tennessee, Texas, and Wisconsin. Louisiana, which is considering a formal drycleaner remediation program, is currently a Coalition associate member. California and New York, which do not have formal programs but are active in drycleaner remediation under other authorities, also participate in Coalition activities.

The drycleaner programs in SCR D states cover about a third of the 30,000 drycleaners in the United States and provide environmental benefits beyond the actual cleanup. These programs help states address contaminated sites that may not be adequately covered by other remediation programs and can be models for cleanup of other small sites. An added benefit of the SCR D program has been the inclusion of pollution prevention provisions in the statutes and rules governing operating drycleaners. These provisions vary among the states, but include secondary containment for solvent use, solvent and waste storage areas, direct couple delivery of solvent, and the prohibition on the discharge of contact water to sewers or septic tanks.

The Coalition provides a forum to share programmatic, technical, and environmental information to improve the cleanup of drycleaner sites. To accomplish its mission, SCR D:

- Holds semi-annual meetings and regular conference calls to facilitate information exchange;

- Informs states without drycleaner programs;
- Serves as an information resource; and
- Encourages innovative technology use.

At their November 11-12, 2003 meeting in New Orleans, LA, SCR D members elected a new Chair, William Linn of the Florida Department of Environmental Protection. A 9-year veteran of the Florida Drycleaning Solvent Cleanup Program and a founding member of SCR D, Linn will lead SCR D until Fall 2005.

New Products Being Developed

Two major SCR D products will be released in 2004. The first will describe the assessment and drycleaner cleanup technologies being used throughout the United States. And the second will explore the various approaches and alternatives state programs have used.

Other Helpful SCR D Tools

The Coalition has also developed a database of information on more than 70 drycleaner site cleanups. Site profiles containing these data are available on SCR D's web site at <http://www.drycleancoalition.org>. These site profiles are the most visited part of the site. New case studies of three Florida drycleaner sites have recently been added to the database, and case studies from Illinois, Minnesota, Tennessee, and Texas are expected to be posted by the end of the year. The case studies provide users with consistent data about site cleanup, including sections on costs and lessons learned. Users can conduct profile searches by keywords.



SCR D has also developed a searchable on-line database of "Chemicals Used in Drycleaning Operations," which provides important and often hard-to-find information to assist site assessment and cleanup at contaminated drycleaner sites. The database is also a useful resource for regulators responsible for drycleaning facility inspections. Data includes drycleaning products/trade names, manufacturers or distributors, how products are used in drycleaning operations, chemical ingredients in products, and any alternate name by which these chemicals are known. "Chemicals Used in Drycleaning Operations" is also accessible via the SCR D web site at: <http://www.drycleancoalition.org/chemicals/>. Additional information about the Coalition, its activities, and products are available at: <http://www.drycleancoalition.org>.

Did you know?

EPA rates among the top five "best places to work in government," according to a 2002 survey of federal employees conducted by the Office of Personnel Management.

100,000 federal employees responded to the survey. The survey results were compiled by the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation and are available online at: <http://bestplacestowork.org/>.



District Court Upholds EPA's Indirect Cost Methodology in *US v. Lombardi Realty*

On October 17, 2003, the District Court for Rhode Island found Lombardi Realty liable for cleanup costs associated with a 1995 removal action at the Robin Hollow Road Superfund site. The total award, including reimbursement for direct and indirect costs and prejudgment interest, was \$580,000. During the removal, EPA removed 900 tons of PCB-contaminated soils. The potentially responsible party had made an earlier attempt to remove some of the soils but had improperly disposed of them in piles onsite.

At trial, Lombardi Realty argued that EPA's choice of responses, removing the soil, was "arbitrary and capricious" and that EPA should not be allowed to claim work done by outside vendors as indirect costs. The court found that Lombardi had failed to demonstrate that the removal was "arbitrary or capricious." In terms of indirect costs, the court determined Lombardi Realty had failed to meet the burden of proof that outside vendor costs were inconsistent with the National Contingency Plan and therefore awarded indirect costs as part of the judgment. This ruling marks the second time EPA's methods for calculating indirect costs have been upheld by a court. The recent decision in the Libby asbestos cost recovery case (*US v. W.R. Grace Co.*) was the first such ruling. The Libby cost recovery trial appeared in the November 2003 issue of *CleanupNewsII*, which is available online at <http://www.epa.gov/compliance/resources/newsletters/cleanup/cleanup14s.pdf>.

In addition to questioning EPA's chosen response and the indirect costs, Lombardi Realty had asserted an "innocent landowner defense," a defense intended to protect landowners who purchased property without knowledge that hazardous wastes had been there. According to Lombardi Realty, the PCB-contamination had been caused by the previous owner, Armand Allen, who operated a scrap yard on the site. The court found witness testimony that the contamination preceded Lombardi's purchase of the site to be not credible and determined that Lombardi Realty was responsible for the contamination. They also ruled that Lombardi Realty had not taken "due care" to address the contamination once it had been identified, for instance, Lombardi had not informed visitors and tenants of the contamination. Lombardi Realty owner, John Lombardi, admitted that he had seen children on mountain bikes riding on piles of contaminated soil and did nothing to warn them of the danger.

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

Western District Court of New York Rules in *US v. El DuPont*

On September 28, 2003, the District Court of New York determined that EPA could recover costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) from E.I. DuPont de Nemours & Company for oversight of the Necco Park cleanup. The oversight costs were incurred in conjunction with a 1985

RCRA Section 3013(a) order and related consent decree. The ruling requires DuPont to reimburse EPA for oversight costs incurred before September 30, 1993.

In the decision, the court rejected DuPont's motion for partial summary judgment. DuPont had argued that, according to RCRA Section 3013(d)(2), EPA cannot require reimbursement of oversight costs through an order. The court rejected DuPont's claim because EPA was not attempting to issue an order for repayment but was rather taking cost recovery action under CERCLA Section 107. The court joined other district courts in rejecting the finding in *US v. Rohm & Haas Co.* that EPA is not entitled to removal oversight costs under CERCLA Section 107.

In the late 1970s, DuPont believed that waste from its landfill was seeping into soil and groundwater, and the company subsequently conducted investigations and undertook some corrective actions, including installing groundwater monitoring wells and capping the wastes. In 1988, EPA and DuPont entered into a consent decree through which DuPont agreed to conduct additional investigations. A 1998 Record of Decision outlined EPA's recommended remedy for the site: construction of containment barriers and groundwater monitoring. The potentially responsible party has agreed to implement the remedy, which is estimated at \$65 million with an approximate construction completion date of October 2005.

The Necco Park site is located just 1.5 miles from Niagara Falls in New York. The potentially responsible party had used the land

Continued from previous page

for a landfill since the 1930s, disposing of nearly 100,000 tons of industrial waste with some hazardous substances including carbon tetrachloride, chloroform, and hexachlorobenzene.

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

2004 Community Involvement Conference Announced

EPA's 7th annual Community Involvement Conference and Training, scheduled for June 15-18, 2004 in the mile-high city Denver, Colorado, is aptly named "Going the Extra Mile: Meeting Community Needs." The event is intended for EPA managers, staff, and partners who implement EPA's community involvement, partnership, outreach, and education programs. Presenters and participants will discuss how the needs of both communities and environmental programs can be met through EPA's public education, partnership, and community involvement initiatives.

The deadline for submitting presentation proposals is December 19, 2003. Prospective presenters can complete and submit their application online at <http://www.epancic.org/2004/submissions.cfm> or download an application in Microsoft Word or WordPerfect from <http://www.epancic.org/2004/callpresenters.cfm>.

Once proposals are selected, the conference agenda will be finalized. A variety of different presentation and discussion formats will be offered including keynote presentations, open-

time sessions, field trips, an exhibit room, and a poster session. For the first two-and-a-half days of the conference, participants can attend concurrent 90-minute sessions, which end at noon on June 17. Beginning the afternoon of June 17, training seminars (ranging in length from four to eight hours) will be offered. The training seminars will offer participants the unique opportunity for hands-on training by skilled presenters.

As the conference approaches, online registration and conference materials will be available on the conference website at: <http://www.epancic.org/2004>.

For additional information, contact conference chair Theresa Trainor; trainor.theresa@epa.gov or (202) 566-1250.

Regulatory Changes Proposed for Hazardous Waste Recycling

EPA's Office of Solid Waste and Emergency Response has proposed to exclude certain types of activities involving hazardous secondary materials from federal hazardous waste regulations. By removing regulatory controls over these recycling practices, EPA expects recycling of hazardous secondary materials will increase. This action complies with the Agency's long-standing policy of promoting reuse and recovery over land disposal. It also is a part of EPA's Resource Conservation Challenge (RCC). RCC is a cross-Agency initiative that identifies and uses innovative, flexible, and protective ways to conserve natural resources.

The rule proposes to exclude hazardous waste from regulation when it is generated and reclaimed in a continuous process within the same industry. Under the rule, these recycled materials do not have to be managed as hazardous waste. EPA estimates these proposed changes represent potential savings of \$178 million a year at more than 1700 plants nationwide.

The proposed rule does not apply to recycled materials that are considered inherently waste-like; used in a manner constituting disposal; burned for energy recovery; or recycled by a commercial or third-party recycler. Any materials recycled in these ways must comply with existing federal hazardous waste regulations.

EPA also proposed criteria to distinguish legitimate hazardous waste recycling activities from illegitimate recycling operations also are proposed. New language is added to the definition of solid waste that specifies four general criteria that determine legitimate hazardous waste recycling. These criteria would be grounds for EPA enforcement.

EPA issued the proposed rule in response to several rulings by the U.S. Court of Appeals for the D.C. Circuit, including the recent decision in *Association of Battery Recyclers v. EPA*. In its decisions, the court has consistently ruled that hazardous secondary materials are not solid wastes because they are "generated and reclaimed in a continuous process," not discarded.

EPA is accepting public comment on the proposed rule through January 26, 2004.

Additional information is available on the Web at: <http://www.epa.gov/epaoswer/hazwaste/dsw/abr.htm>. You also may contact RCRA Call Center at (800) 424-9346. In the Washington, DC area, please call (703) 412-9810.

March 16-18, 2004

ORC/BCs Meeting
 Kansas City, MO
 Contact: Nancy Riveland
 (415) 972-3251

June 15-17, 2004

Accelerating Site Closeout,
 Improving Performance, and
 Reducing Cost Through
 Optimization Conference

The Westin City Center,
 Dallas, TX

Contact Alina Martin, SAIC
 (703) 318-4678

http://www.clu-in.org/siteopt/CFA_v1.pdf

June 15-18, 2004

2004 Community Involvement
 Conference

Denver, CO

Contact Theresa Trainor
 (202) 566-1250

<http://www.epancic.org/2004>

Glossary

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	PCBs	Polychlorinated biphenyls
DoD	Department of Defense	RCC	Resource Conservation Challenge
EPA	Environmental Protection Agency	RCRA	Resource Conservation and Recovery Act
ERT	Environmental Response Team	ROD	Record of Decision
OSC	On-scene Coordinator	SCRD	State Coalition for Remediation of Drycleaners

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

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