



cleanupnews

inside

Brownfields:	4
Shenandoah, VA	
In the Courts:	6
Ilco	
Findett	
Libby Asbestos	
Vertac	
Chem-Nuclear	
Accounts Receivable	7
Calendar	8

Whitman Presents Notable Achievement Awards

The 2001 National Notable Achievement Awards Ceremony was held in Arlington, Virginia, on April 25, 2001, recognizing outstanding achievements in the Superfund, Superfund

Enforcement, and RCRA Corrective Action programs. This year an additional component, Regional Science, was included in the awards for innovative and outstanding contributions to the science of hazardous waste management including the area of risk assessment.

In her welcoming remarks, Administrator Christine Todd Whitman noted: "It is fitting that we meet during Earth Week to recognize those regional staffers who are out there in the field every day making a real difference in the lives and health and countless Americans." She also commented on the "leadership, creativity, and hard work of EPA Regional and HQ staff and our State partners in implementing the RCRA cleanup reforms. Whitman quipped, "As I looked over the list of

continued on page 2



Brownfields Legislation Passes the Senate

On April 25, 2001, the U.S. Senate voted unanimously (99-0) in favor of brownfields legislation. The bill, S.350, amends CERCLA to promote the cleanup and reuse of brownfields, provide financial assistance for brownfields revitalization, and enhance state response programs. President Bush commended the Senate for its "bipartisan approach to this important environmental reform," noting that "environmental reforms must set high standards and get results." EPA Administrator Christine Whitman called the vote "very exciting news," and stated: "S.350 encourages brownfields redevelopment by clarifying Superfund liability and funding brownfields cleanups that will make our communities safer and cleaner. This bill reflects the Bush Administration's belief that environmental protection and economic prosperity do go hand in hand. The vote is an overwhelming endorsement of brownfields programs that: strengthen partnerships among states and local community groups and developers; improve public health; boost local property tax rolls and provide jobs. I look forward to working with the House to earn its bipartisan endorsement of brownfields legislation."

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

Achievement Awards

continued from page 1

today's winners, I couldn't help but think that maybe I don't have the toughest job at EPA after all... even though there are times we have messes to clean up, they're nothing like the messes you find out in the field!" Whitman expressed the Agency's appreciation to the award winners:

"I know from first-hand experience how hard your job is and how important you are to the people whose communities you are restoring to environmental health. Your

jobs are rarely easy. When it comes to cleaning up a contaminated site, those who live nearby think it can never be done fast or cheaply enough. We would think the same thing if we were in their shoes.

But we also know that the work you do has to be done right – and that rarely allows for quick, cheap fixes. By doing it right, however, you are making sure that the health of the people you serve is protected based on the best possible science and technology available, in the most efficient and effective manner. Your commitment to excellence has earned a

real sense of pride, not just in yourselves, but in all of us who have the honor to work with you."

Since its inception in the late 1980s, the National Notable Achievement Awards program has expanded to recognize the growing emphasis on teamwork, to reflect changes in the Superfund program, and to include the entire hazardous waste management family. All 10 EPA Regions participate in the Awards program. A total of 123 nominations were submitted for the 22 awards presented. Recipients were recognized with plaques and monetary awards.

Superfund Legal Enforcer of the Year Arthur Haubenstock, Region 9

Arthur Haubenstock is this year's recipient of the Legal Enforcer of the Year, awarded for his work in crafting the largest and most complex brownfields agreement in EPA history. The Operating Industries, Inc. (OII) Site, a 190-acre landfill in Monterey Park, California, disposed of over 300 million gallons of liquid industrial wastes and a large amount of municipal waste, and posed a threat of leachate migration, landfill gas emissions, and ground-water contamination. The landfill, now closed, is bisected by the Pomona Freeway into a North Parcel, which has significant potential for productive future use, and a South Parcel. Haubenstock's OII settlement resolved a number of parties' liabilities while utilizing many innovative administrative reforms.

Haubenstock determined that the OII owner/operator was not able to contribute its "fair share" of the settlement, and that its most significant asset was the property itself, so he established that conveyance of the parcel combined with a cash payment to the custodial trust account was the most equitable resolution of liability. The settlement also resolved the liability of generator PRPs for the North Parcel by committing the generator group to create a custodial trust, hold title to the landfill property, and agree to do additional response activities on both the North and South Parcels. They will also perform the operation and maintenance of the landfill cap to be implemented by the developer/prospective purchaser. Funds from the custodial account may be used for remediation of the South Parcel, which the generator PRPs have agreed to undertake under prior consent decrees.

Haubenstock also came up with a creative solution to resolve

the liability of one of the *de minimis* generator PRPs, Goodwill Industries, by allowing Goodwill to staff an on-site repository for 15 months – equivalent in value of labor to the amount necessary to settle its liability. Goodwill will also be able to provide employment training in information services.

Haubenstock's tireless efforts in weaving together a myriad of issues, mediating disputes, and finding creative solutions to potential deal-stopping problems resulted in a settlement that was not only beneficial to the Agency and the environment, but was lauded by all the parties and local governments as well.

Superfund Outstanding Achievement Lauren Volpini, Region 9

Lauren Volpini, a bilingual member of EPA Region 9's Chemical Emergency Prevention and Preparedness Team, received the Outstanding Achievement Award for her work on the U.S./Mexico Border Emergency Planning program, which has significantly increased chemical safety along Region 9's border with Mexico. Until Volpini stepped in, Region 9 had a relatively limited relationship with the numerous emergency planning and response stakeholders in the border area. Volpini demonstrated how the U.S./Mexico border area poses unique and potentially catastrophic risks to the residents, fragile environments, high risk businesses, tourism, and commercial rail and truck traffic.

In less than one year, Volpini's work resulted in the mayors of the four Sister Cities signing the first Binational Emergency Prevention and Response Agreement and establishing cross-border emergency planning committees. She successfully negotiated these agreements in two languages, with diverse U.S. and Mexico

counterparts at the municipal, county, state, and federal levels.

Volpini assumed overall responsibility for plan research and development, accurate language translation of numerous bilingual drafts, plan production and distribution, and formal ceremonial arrangements involving transborder customs and immigration issues. To launch the agreements and plans, she coordinated well attended, high profile binational ceremonies, which required sensitive Customs and Immigration arrangements and protocols that respected cultural differences and expectations. The successful ceremonies were captured by numerous print, radio, and televised accounts and interviews.

Volpini also obtained end-of-year unspent monies provided to Region 9 by the Office of International Activities and drafted three

individual grant proposals for the Arizona border cities of Douglas, Nogales, and San Luis, including the purchase and loan of emergency communications equipment to the grantees' respective Mexican counterparts. Volpini obtained additional funding to deliver a variety of bilingual emergency response training and hazmat exercise design courses. She even found a way to provide scholarships to cover registration, travel, and per diems for 12 border emergency responders to attend California's week-long hazmat training conference. As a result of Volpini's efforts, EPA and Mexico agreed to collaborate to identify and characterize border tire piles and take measures to prevent tire fires. Public meetings were held to provide outreach to community participants and leaders from both sides of the border.

And the winners are...

Superfund Awards

Superfund Remedial Project Manager of the Year:

D. Mark Doolan, Region 7

Superfund On-Scene Coordinator of the Year:

Tien Nguyen, Region 8

Superfund Community Involvement
Coordinator of the Year:

Ann C. Rychlenski, Region 2

Superfund Site Assessment Manager
of the Year:

Monica R. Tonel, Region 10

Superfund Leader/Mentor of the Year:

Elizabeth J. Adams, Region 9

Superfund Outstanding Achievement:

Lauren Volpini, Region 9

Superfund Team of the Year:

Hudson River PCBs Site Team, Region 2

*Commencement Bay Nearshore/Tideflats Team,
Region 10*

Superfund Enforcement Awards

Superfund Legal Enforcer of the Year:

Arthur L. Haubenstock, Region 9

Superfund Technical Enforcer of the Year:

Laura Janson, Region 3

Superfund Financial Management Team of the
Year:

Leslie Peterson and Courtney McEnergy, Region 2

Superfund Enforcement Team of the Year:

Montrose Team, Region 9

RCRA Corrective Action Awards

Outstanding Stakeholder Involvement:

Diane Lynn Sanelli, Region 8

Outstanding RCRA Team of the Year:

Former Amoco Refinery Site Team, Region 7

Outstanding Use of Environmental Indicators:

William F. Lowe, Region 7

Outstanding RCRA Team of the Year:

Tennessee Team, Region 4

Faster, Focused, More Flexible Cleanup:

Tamara Ohl, Region 5

Anna Filutowski, Region 10

Outstanding RCRA Teams of the Year:

Indoor Air Action Team, Region 8

BKK Landfill Team, Region 9

Regional Science

Science Individual:

Marian Olsen, Region 2

Science Team:

*Ground Water/Surface Water Transition Zone Assess-
ment Team, Region 10*

For more information, visit: [http://www.epa.gov/superfund/
new/awards/index.htm](http://www.epa.gov/superfund/new/awards/index.htm)

Shenandoah Uses Brownfields Pilots to Plot a New Future

With help from the EPA brownfields pilot program, Shenandoah, Virginia, is planning its new future. In July 1998, Shenandoah was selected for a \$200,000 brownfields pilot to assess, clean up, and redevelop a former iron smelter site that has lain idle for 90 years in the center of town.

Shenandoah's economic fortunes have declined since its heyday as an iron-based industrial center and railroad transportation hub. Unemployment has been running at over 10 percent, and the poverty rate is over 13 percent. In addition, there is very little land available for commercial or industrial enterprise. One of the most obvious problems is the 66-acre tract in the center of town that used to be the home of the Big Gem Cast Iron Furnace, once the principal producer of iron in the area. More recently, a municipal dump was located on the site.

"Everyone drove by it and knew it

was there," described Eddie Bumbaugh, one of the two EPA-sponsored facilitators for the project. "There was a little pond so kids sometimes took their bikes along there. But most people assumed it was polluted and stayed away. Discussions developed that perhaps the site could be usable, and could be developed for the benefit of the town. But one of the barriers was getting people to believe that something would actually happen. Part of it was the concern over residual contamination; even more was the amount of money needed. The residents didn't believe that a town as small as Shenandoah could attract state or federal agency attention for the amount of money needed." As it turned out, an intern from James Madison University working in the town learned of the brownfields program and worked with a councilman to obtain brownfields funding.

Defining a Vision

Funding was important, but equally important was developing a consensus about what should replace the brownfields tract. "Although the town managers had done a great job moving this forward, the community wasn't sure what it wanted to see in the center of town," notes Lee Scharf, Alternative Dispute Resolution Specialist in EPA's Office of Site Remediation Enforcement. "We thought we could help by bringing in facilitators to assist the community in envisioning its future. We particularly wanted facilitators from the local area, and we found two: Frank Dukes from the University of Virginia and Eddie Bumbaugh from the Community Mediation Center in Harrisonburg, VA. At the first meeting, we didn't know if there would be any interest at all – but 80 people showed up!"

With a core group of six townspeople, a steering committee was formed with three working subcommittees. An advisory committee of outside people was also organized to serve as a resource for the community. Every few months an open meeting was held to inform the community of plans. A professor at nearby James Madison University brought in his students to help develop options and ideas for the community to consider. The steering committee eventually hired a landscape architect from the University of Virginia to develop a more specific plan based on the community's input.

The end result blended a lot of diverse ideas into what is now expected to be the Big Gem Furnace

Brownfields Assessment Pilots Receive \$38 Million

EPA Administrator Christine Todd Whitman announced awards of \$38 million to 90 communities around the country for brownfields pilot awards for assessments and cleanup. Appearing at a ceremony in April 2001 with District of Columbia Mayor Anthony Williams, Whitman awarded DC a \$100,000 Brownfields Assessment Demonstration Pilot to supplement the process of assessing the contamination of abandoned properties in the District. Whitman said, "This year we've included provisions for the evaluation, protection and preservation of "greenspace" parks, playgrounds, trails, gardens, habitat restoration, and open space. Rather than continue to neglect these abandoned properties, these grants spur partnerships among state, local, community groups, investors and developers to create jobs and get the work done."

Since its inception in 1993, the brownfields program has provided over \$162 million in grants with an estimated \$2.9 billion leveraged and over 11,000 jobs created.

For more information, contact Bonnie Piper at 202-564-4355, or visit the brownfields website at www.epa.gov/brownfields.



Shenandoah town meeting on the brownfields pilot, August 26, 1999.

Historical Park, with camping grounds and a multiuse trail connecting adjacent neighborhoods, the Shenandoah River, and possibly the Shenandoah National Park. The town believes this redevelopment will attract a significant amount of the rising heritage tourism industry in the Shenandoah Valley and create much-needed jobs.

According to Charles Meek, Shenandoah's Economic Development Director, the town has just completed the Phase 2 Environmental Site Assessment. Some elevated levels of metals were found but no significant contamination. EPA will review the town's final report and either suggest certain cleanup measures or write the town a comfort letter stating that EPA does not foresee the need for more work.

Although the lengthy site assessment phase has slowed the town's momentum, it has also allowed time for an interesting development. After attending the public meetings, some of the residents of Shenandoah became so enthusiastic about facilitation that they asked to be trained as

facilitators. With some additional funding, EPA coordinator Lee Scharf arranged for Bumbaugh and Dukes to design a facilitation training program for members of the community so they could manage any conflicts that might arise later in the process.

Three workshops were held, covering topics such as communication and consensus building, conflict resolution, facilitating meetings, dealing with groups, and public speaking. Bumbaugh was amazed at the response from the community: "Twenty people showed up for the workshops; this is out of a town population of less than 2000." The training materials used in the workshops will be made available to other communities over the next few months.

As the town gets ready for redevelopment work to begin, there are kudos all around. "This facilitation pilot has proven to be even more exciting than I had hoped," said Lee Scharf. Charles Meek also reported good feeling in the town: "The whole project really galvanized the community. It has empowered the citizens to help the town come up with a reuse plan that was both feasible and desired by the community."

For more information, contact Lee Scharf at 202-564-5143 or scharf.lee@epa.gov.

Conflict Prevention and Resolution Center Opens New ADR Website

Shenandoah's experience with facilitation is just one of a number of successful applications of alternative dispute resolution (ADR) techniques to environmental and other disputes. ADR techniques can help in developing innovative, long-term, and pragmatic ways of resolving conflicts, with reduced transaction costs. If you're looking for facilitation or other forms of ADR assistance, a good place to start is the new website of EPA's Conflict Prevention and Resolution Center, www.epa.gov/adr. The Center makes ADR services available to EPA programs in Headquarters and the Regions, as well as external stakeholders (e.g., state agencies, industry, environmental advocacy groups) and EPA managers and staff. Building on existing ADR efforts at EPA, the Center can assist in developing effective ways to anticipate, prevent, and resolve disputes, and can make neutral third parties more readily available for those purposes. The website offers help in locating a mediator or facilitator, as well as information on training opportunities and ADR policy at EPA.

Alabama District Court Issues Adverse CERCLA Ruling in ILCO Superfund Site

On April 5, 2001, the U.S. District Court for the Northern District of Alabama issued a ruling in the consolidated action entailing *U.S. v. Mountain Metal Company, et al.* (Civil Action No. 98-C-2562-S) and *Exide Corporation and Johnson Controls, Inc. v. Aaron Scrap Metals, et al.* (Civil Action No. 98-C-2886-S), related to the Interstate Lead Company (ILCO) Superfund site. [*U.S. vs. Mountain Metal Co.*, 2001 WL 377241 (N.D.Ala. 2001)] The site, located in Leeds, Alabama, consists of the ILCO plant, a battery recycling and sec-

ondary lead smelting facility, and seven satellite sites where lead contaminated furnace slag and other lead contaminated waste from the ILCO facility were disposed.

Judge Clemon found the defendant Jowers Battery liable under Section 107(a)(3) of CERCLA for sending spent lead-acid batteries to the ILCO site and found the defendant Madewell and Madewell and consolidation defendant Lion Metals not liable under Section 107(a)(3) of CERCLA for sending only battery plates to the ILCO Site.

With respect to Jowers Battery, the court followed the existing case law holding that Jowers did not sell a “**useful product**” to ILCO. The court focused specifically on the fact that the

batteries had to be broken open and the lead plates recovered. This process was found to amount to a treatment of a hazardous substance as defined by CERCLA. In contrast, the court held that Madewell and Lion Metals sold useful products that did not have to be broken open by ILCO, thereby avoiding creation of the waste problem that batteries generally create.

With respect to Madewell and Lion Metals, the court found that, “While the batteries themselves were no longer useful for their original intended purpose, the lead plates were in a form that allowed ILCO to place them directly in the furnace for smelting. As such they constituted a ‘complete useful product’ or raw material for processing rather than disposal.” The court was not persuaded by the United States’ argument that the lead plates still required treatment for residual amounts of sulfuric acid.

The court distinguished the prior Eleventh Circuit ILCO ruling by stating that that case focused on the RCRA regulations and not CERCLA liability. (See *U.S. v. ILCO, Inc.*, 996 F.2d 1126 (11th Cir. 1993).) In addition, the court noted that the prior Eleventh Circuit decision never discussed the acquisition by ILCO of lead plates only. Instead, the Eleventh Circuit had focused on the batteries and the need to crack them open and remove the raw materials.

The court also discussed applicability of the **Superfund Recycling Equity Act (SREA)** to the two cases. The exemption was held to be inapplicable to the United States’ case because its action was pending at the enactment of the SREA. However, the court found that SREA’s provisions had retroactive effect as to the private party plaintiffs’ case. With regard to lead plates, the court held that the recycling of lead plates is a defense to

In Brief

- **EPA’s Cost Recovery Case Against Findett Not “Time Barred:”** A ruling favorable to EPA was issued in August 2000 by the Eighth Circuit affirming that the government’s cost recovery action for the Hayford Bridge Road Site in St. Charles, MO, was not “time barred” under CERCLA Section 113(g)(2). On the merits of the cost recovery action, the court was not persuaded by Findett’s argument that EPA had failed to adequately document its costs and that the costs were inconsistent with the National Contingency Plan. Contact: David Dowton, 202-564-4228 [*U.S. v. Findett Corp.*, 220 F.3d 842, 8th Cir., Aug. 3, 2000]
- **Judge Grants Immediate Access to Libby Asbestos Site:** On March 9, 2001, a judge granted EPA full and immediate access to certain properties around Libby, MT, owned or controlled by defendants W.R. Grace and Kootenai Development Corporation in order to clean up asbestos contamination. EPA had been denied access since July 2000. Contact: Steve Botts, 202-564-4217.
- **Eighth Circuit Remands Vertac Case to District Court:** On April 10, 2001, the Eighth Circuit Court of Appeals reversed a district court decision (1) awarding the United States over \$100 million in reimbursement costs for the Vertac Chemical Corporation Superfund Site and (2) allocating responsibility for such costs between Hercules, Inc. and Uniroyal Chemical Limited. The Court of Appeals was critical of the summary manner in which the district court rejected Hercules’ divisibility arguments. Contact: Steve Botts, 202-564-4217. [*U.S. v. Hercules, Inc.*, No. 99-3684, 8th Cir., 2001]
- **Chem-Nuclear Petition for Reimbursement Denied:** On March 26, 2001, the District Court granted EPA’s motion for final judgment and denied Chem-Nuclear’s petition for reimbursement of \$2,557,989 under CERCLA Section 106(b) in connection with the Basket Creek Drum Disposal Site located in Douglas County, GA. Contact: Benjamin Lammie, 202-564-7126. [*Chem-Nuclear Systems, Inc. et al. v. Bush, et al.*, No. 96-1233, D.D.C., Mar. 26, 2001]

continued on page 7

Accounts Receivable Get Special Attention

One of the Superfund Enforcement program's continuing high priorities for FY 2001 is to improve its fiscal management of the Superfund program.

Section 107 of CERCLA authorizes EPA to recover all federal costs, including oversight, associated with cleaning up a Superfund site. This authority is instrumental in replenishing the Superfund Trust Fund. Since the beginning of the Superfund program, EPA has obtained over \$4 billion in commitments from PRPs and court ordered judgments against PRPs to reimburse the Agency for past costs, as well as oversight costs, fines, penalties, and cash-out settlement for future response work.

Since FY 1998, OSRE has worked collaboratively with the Office of the Chief Financial Officer (OCFO) to complete several initiatives to enhance the collection of Superfund accounts receivable. In FY 2000, in conjunction with the Office of the Inspector General, OSRE and OCFO

reviewed EPA's management of the Superfund accounts receivable process in Regions 1, 5, and 6. The reviews were intended to identify best practices that facilitate the management and collection of delinquent Superfund receivables; and to develop recommendations for improving and/or streamlining the accounts receivable management process by EPA Headquarters, Regions, and the Department of Justice (DOJ).

In January 2001, the three offices jointly issued a report which consolidated findings from the three Regional reports and suggested recommendations for improving the management of Superfund accounts receivable in four areas:

- Timely and accurate recording of Superfund accounts receivable;
- Internal communications;
- National and regional data management/data quality; and
- Enforcement and collection of delinquent debt and write-off.

OSRE continues to work with DOJ to reconcile DOJ's accounts receivable tracking system with all open Superfund accounts receivable for which EPA's Integrated Financial Management System indicates that DOJ has collection responsibility.

OSRE issued interim guidance in 2000 on referring delinquent Superfund debts and plans to issue guidance later this year outlining procedures for compromising CERCLA debt.

In FY 2001, OSRE and OCFO conducted Accounts Receivable Management Reviews in Regions 2 and 4, and an additional review is scheduled for Region 8 in August.

At OECA's Seventh Annual Awards Ceremony on May 1, the Superfund Accounts Receivable Team received a group bronze medal in recognition of the team's perseverance and hard work to improve the accounts receivable management process.

Contacts: Bruce Pumphrey, 202-564-6076.

In the Courts

continued from page 6

arranger liability under CERCLA, as lead plates are not excluded from the definition of "scrap metal" as a "recyclable material" under SREA. The court found that both Lion Metals and Madewell met the exemption requirements under SREA, and were not excluded from the exemption by subsection (f), in that the private party plaintiffs were unable to show that either defendant had an objectively reasonable basis to believe that ILCO was not in compliance with environmental laws at the time they sold their lead plates to ILCO. (See CERCLA

Section 127(f).) The court also found Jowers to be exempt under SREA, finding that batteries (while not a "useful product") are recyclable material under the exemption. The court also found Jowers not to be excluded by subsection (f) of the exemption for the same reasons as it found neither Madewell nor Lion Metals to be excluded (i.e., no objectively reasonable basis...). Finally, the court ruled that the attorney fees provisions under SREA did not apply because, "there was no notice to the plaintiffs of the fee-shifting provision before the commencement of this action."

The court found that Madewell and Lion Metals were not liable to the

United States or the work party defendants, and dismissed the government's and the work party defendants' claims with prejudice. The court determined, however, that Jowers Battery is liable to the United States for its past and future environmental cleanup costs incurred or to be incurred at the ILCO site and that the case shall proceed against Jowers on the issue of damages. The court also awarded Madewell and Lion Metals their taxable costs against the United States. The private party plaintiffs (work party defendants) filed an appeal of this decision on May 3, 2001. For more information, contact Meredith McLean at 202-564-4216.

September 24 - 26, 2001

Brownfields 2001 Conference

Chicago, IL

Sponsors: Engineers' Society of Western Pennsylvania, U.S. EPA, City of Chicago Brownfields Initiative

More information: www.brownfields2001.org

Contact: Molly Wenner, brownfields2001@dyncorp.com, tel: 1-877-343-5374 (toll free)

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Glossary

ADR	Alternative Dispute Resolution	OERR	Office of Emergency and Remedial Response (EPA)
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (Superfund law)	OSRE	Office of Site Remediation Enforcement
HQ	Headquarters	PRP	Potentially Responsible Party
NCP	National Contingency Plan	RCRA	Resource Conservation and Recovery Act (hazardous waste)
NPL	National Priorities List (Superfund)	SREA	Superfund Recycling Equity Act
OECA	Office of Enforcement and Compliance Assurance		

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www.epa.gov/oeca/osre

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Rick Popino, Ph.D., editor

EPA Review Board: **Rick Popino, Paul Connor, Karen Ellenberger, Ken Patterson, Helen DuTeau, Jeff Heimerman, Carole Macko Cameron**

Gilah Langner, writer

Robin Foster, SciComm Inc., designer

To comment on the newsletter, contact Rick Popino at MC-2271A, U.S. EPA, 401 M Street SW, Washington, DC 20460, e-mail: popino.rick@epa.gov.

For mailing list inquiries, contact Robert France, SciComm Inc., 7735 Old Georgetown Rd, 5th Floor, Bethesda, MD 20814, fax: 301-652-7001, e-mail: rfrance@scicomm.com.

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