

# CUMMINGS RITER CONSULTANTS, INC.



## Environmental

Remediation • Compliance/Permitting  
Brownfields • RCRA/CERCLA • O&M  
Voluntary Cleanup • Health & Safety

## Human Resources

## GIS/GPS

PITTSBURGH • ALTOONA, PA • EWING, NJ

Another jam-packed issue: a new office, the latest environmental buzz, a skunk sighting & finally, an answer to "Who's Cummings? Where's Riter?" Enjoy!

## NRD: Sleeping Giant...or Pesky Gnat?

In recent news, Natural Resource Damage (NRD) claims, which seek recovery of the value of natural resources injured by contamination, are called "a sleeping giant to rival Superfund remediation." Tags range from "terribly counterproductive" to "vigilantism at its worst" but most agree it's "the new battlefield in environmental litigation." One program was summarized as, "Pay us now or we'll hurt you later. If Tony Soprano was running (it), you'd call it a protection racket." How exciting! It's been a while since an environmental program elicited such colorful discourse, and with good reason.

In the past, most NRD claims were for injury to wildlife from catastrophic spills in surface water (e.g., Exxon Valdez). Now, groundwater injury is the target, even at sites with a remedy in place and no current impacts. Some claims are in the billions, and controversial issues include calculation methods, effect on Brownfields and hiring outside counsel on contingency, a practice ruled against by at least two federal district courts. Garnering the *most* attention for NRD, though, is New Jersey, home of our new office, and subject of the Sopranos reference.

In 2003, NJDEP issued a Policy Directive for the systematic pursuit of NRDs at 4,000+ sites. It defers No Further Action letters until NRDs are resolved, provides for enforcement via litigation and penalties, and raises all the hot issues noted above. NJDEP Commissioner Campbell said he will "aggressively pursue" NRD, and to be clear Assistant Commissioner Van Hook added, "We're out to make polluters pay." To that end, responsible parties have gotten invitations to settle, and some have. Large settlements range from \$1 million for one site to \$17 million for 210 sites. As of May, NJ settled 267 cases for \$30 million, and Table 1 shows recent deals, bringing totals to \$31 million at 318 sites.

Name—no. sites	Settlement
SP Industries—1	\$65,641
Rohrer Foundation—1	\$620
Celotex Corp.—1	\$2,151
Technical Coatings—1	\$3,063
Wellington Realty—1	\$817
El Paso Corp.—37	\$260,000
Eagle Industries—1	\$64,126
DuPont—8	\$500,000
<b>Total 51 sites</b>	<b>\$896,418</b>

That's \$100K per site, on average. Unpleasant, yes, but it certainly doesn't rival remediation costs, even factoring in the in-kind compensation that sometimes makes settlement resemble a generous dowry, like the one in recent news offered to Bill Clinton by a Kenyan man: 40 goats and 20 cows for Chelsea's hand in marriage. The DuPont deal (Table 1), lauded as innovative and one of the largest in NJ history, includes preserving 1,875 acres, 3,000 trees, a 15-foot boat ramp, and 4 chickens. OK, no chickens, but you get the idea. The Commissioner said this reflects his promise to go easier on voluntary payers. Quite an early-bird special, given the NRD claim was reportedly \$60 million.

Elsewhere, New Mexico (like NJ) hired outside counsel and calculates damages based on retail water prices applied to contaminated groundwater volumes over time. NM scored settlements of \$210K and \$1 million prior to 2004, when a federal court dismissed a billion dollar claim concluding the state failed to prove loss of resources. Pennsylvania is addressing its first groundwater claim, but a PADEP Regional Chief Counsel says there are no plans to follow NJ's systematic approach.

Is NRD a sleeping giant now waking, or have the suit dismissal and small settlements turned it into a pesky gnat? Time will tell, but even a pesky gnat will not be ignored. If you wish to reassess a remedy in light of NRD, or pursue an early bird special, C/R offers NRD support.

## What's Happening

### C/R Opens New Office

Our Ewing, NJ office is officially open, serving the entire Delaware Valley. We invite one & all to visit.

### Golf Event Sponsored

C/R was honored to sponsor the 13<sup>th</sup> Annual Golf Outing for The Children's Home, a Mount Holly-based nonprofit providing special education & shelter to NJ children.

### 11<sup>th</sup> Annual OSHA Training

C/R provided OSHA training for 40 staff members & clients on Sept 9.

## SEEN IN THE FIELD



She may be a little hard to see, but you can't blame Mike Lambert & Matt Kapral for not getting any closer! Pepe LePew's *cherie* was seen (and thankfully *only* seen) at a Gettysburg project site about 30 feet from where they sampled wells.

## Project Profile

## Regional Brownfields Assessment

Funded by USEPA and other grants, this economic redevelopment project was undertaken by a local planning commission. Despite the challenges of private land ownership, lack of cohesion among communities and attracting developers, the project is moving toward getting properties back on the tax rolls. Cummings/Riter provides support in overall strategy, environmental assessment, seeking funding & community involvement. Having identified and prioritized 40+ Brownfields and completed Master Development Briefs for priority sites, environmental assessments are now underway. Effective community relations channels include interactive public meetings and Information Stations strategically positioned throughout the region. Based on progress to date and a compelling strategy for moving forward, EPA awarded a second Brownfields Assessment Grant for \$200,000 in June 2005.

### Bird's Eye View: Is Mr. Cummings there?

We're often asked how we came up with the firm's name. It's a simple story: when Pat & I founded the firm in 1993, we chose not to use our own names or words like environmental, earth or human resources, but rather to use names of individuals whom we greatly admire and who exemplify the values we want the firm to emulate. So who do we most admire? "Cummings" comes from Pat's mother (it's her maiden name) and "Riter" is my mother's middle name. We also thought that not having our own names on the door would reinforce the message, to clients and employees alike, that Cummings/Riter is more than just its first two employees — we're a team. The marketing-types told us that, as a start-up firm, this wasn't smart because clients know us, not our mothers. It has worked out fine, though, and for the record, some clients *have* met our mothers. An added perk comes in the form of call screening. When we get a call for Mr. Cummings or Ms. Riter, we politely say they no longer work here...and hang up.



Ken Bird, VP

**STRANGE PHENOMS: STAFF SMOKING PIPES, WEARING WOOLY JACKETS WITH ELBOW PATCHES AROUND THE OFFICE**  
Recently, the expertise of no less than three of our esteemed staff was called on by institutions of higher learning. On the guest lecture circuit were Pat O'Hara at Youngstown State, Bryan Maurer at Penn State, Altoona, & Matt Valentine at Indiana U. of PA. Bryan will also present in October at the 21<sup>st</sup> Annual International Soils, Sediments & Water Conference at U. Mass, Amherst.



**Cummings/Riter Consultants, Inc.**  
10 Duff Road, Suite 500  
Pittsburgh, PA 15235

## Regulatory

### Ch-Ch-Ch-Changes

**USTs:** The Energy Policy Act of 2005, signed into law August 8, 2005, has new inspection & training requirements & fuel delivery limitations for underground storage tanks. Chad Coy can help determine its impact at your site. **VI:** In June, NJDEP issued *Draft Vapor Intrusion (VI) Guidance*, largely following EPA guidance. Differences include: NJ's groundwater to indoor air screening levels (IASLs) are higher; nonresidential IASLs are given; and where multiple buildings are over a plume, NJ allows the evaluation results for representative buildings to be used for the entire site. NJDEP wants this to be used now, particularly where in-situ remediation systems that may increase vapor production are involved. Remarkably, C/R's Bill Baughman has memorized this 300-page document, so call Bill about this (or any) VI policy. **Heads up:** NJDEP has begun to enforce their requirement that anyone submitting field analytical data, regardless of quality level, must be certified by their Office of Quality Assurance. *Anyone* includes labs, consultants, & business entities. This even applies to low flow sampling to 'analyze immediately' water quality indicator parameters like pH, temperature, & dissolved oxygen. C/R is NJDEP-certified to collect and analyze field data.