AN ASSESSMENT OF THE IMPACTS OF *COOPER V. AVIALL* ON BROWNFIELDS CLEANUPS

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Executive Summary

In response to a Congressional request the Northeast Midwest Institute (NEMW) has compiled a report assessing the affects of the December 2004 Supreme Court decision in Cooper v. Aviall (*Aviall*)**.** Several legal professionals and state voluntary cleanup representatives have speculated that the Court's decision may have far-reaching implications that possibly prevent, inhibit, delay, and/or complicate the cleanup of brownfields sites.

Two significant themes have been identified in the arena of brownfield remediation and reuse in the wake of the *Aviall* decision.

Properties that involve cost recovery actions, due to either high cleanup costs or complex questions related to legal responsibility for contamination, have seen increased litigation, higher transaction costs, significant delay of cleanup, and, in some cases, site re-use plans that have been put on hold or dropped altogether. Generally speaking, *Aviall* places increased burden on sites afflicted with high cleanup costs and sites that are more likely to become "up-side-down," because cost recovery may be the only option for parties seeking to cleanup and redevelop these sites. The Supreme Court decision and the interpretation of CERCLA language has led to increased litigation, higher transaction costs, and significant delays in the cleanup of complex brownfields. NEMW staff has uncovered an abundance of court cases throughout the United States with added entanglements directly related to *Aviall*. Several instances exist were participants have withdrawn VCP applications. In light of *Aviall* several brownfield owners have made the unorthodox decision to turn to USEPA or state attorney general's offices and actually request enforcement actions.

A particular concern is that these sites (sites with legal complications related to cost recovery) tend to be larger sites where contamination may be significant enough to adversely affect public health. In these instances, the *Aviall* decision may be indirectly linked to exacerbation of public health problems, in addition to the obvious negative effect on communities that are impacted by the continuing blight of these large abandoned properties that dominate the landscape.

The majority of brownfield transactions are not affected by cost recovery actions, and Aviall has had little impact on the numbers of property owners entering state level voluntary cleanup programs (VCPs). Survey interviews with VCP representatives and experienced brownfield developers indicate the *Aviall* has not significantly decreased the VCP applications and the decision has had very little impact on most brownfield transactions. The majorities of stakeholders surveyed were not familiar with the *Aviall*

case and were not changing business practices; of those interviewed it was determined that developers do not factor litigation into their model for redevelopment–reduced purchase prices coupled with public subsidies continue to be the key to successful reuse projects. This finding is not inconsistent with the other findings – developers tend to choose sites where the cleanup costs can be covered by some combination of an "impaired value" purchase price, and governmental brownfields incentives. Legal action for cost recovery (even before Aviall) has been deemed too slow and too expensive – developers will avoid sites where cost recovery is the main option to cover cleanup costs.

That said, there are undoubtedly cases where developers have proceeded assuming that cleanup costs can be managed without resorting to cost recovery, but unexpected contamination has been found, and cost recovery suddenly becomes necessary. These sites would also become impacted by the Aviall decision.

In short, *Aviall* has not been the "deathblow" to VCPs feared by many legal professionals and most brownfields cleanups are proceeding without changing the approach that has been working since the advent of state VCP's. However, brownfield sites saddled with complex legal responsibility questions – sites where cost recovery is a necessary component of cleanup - have seen significant delay and increases in litigation and transaction costs. The former group constitutes a clear majority of the brownfields marketplace. ***But the number of sites affected by cost recovery complications (and therefore affected by Aviall) represents a significant minority of sites, particularly large sites with high cleanup costs, and cannot be ignored by policy-makers.***

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Post-script: On June 11th, with the United States v. Atlantic Research decision, the Supreme Court clarified the Aviall decision and specifically allowed contribution actions under CERCLA 107, regardless of whether the site was subject to a state or federal enforcement action. A preliminary version of this report was cited in an Amicus Brief submitted for the *Atlantic Research* case by the US Conference of Mayors.

Introduction and General Background

The following pages reflect the work compiled by the Northeast Midwest Institute as a response to a congressional request to determine the overall impacts and/or potential consequences of the Cooper v. Aviall Supreme Court Decision (*Aviall*). This report culminates several surveys, white-paper reviews, and conversations with environmental attorneys, state environmental agencies, developers, and other brownfield property stakeholders.

A brief and simplified background to the Aviall/Cooper:

- Aviall purchased a fully operating aircraft maintenance facility from Cooper Industries about twenty years ago.
- Aviall continued operating the facility in the same manner as Cooper, but eventually discovered that some of the cleaning and chemical disposal procedures were contaminating the industrial site.
- Aviall entered the Texas brownfield voluntary cleanup program and subsequently remediated the property.
- Aviall recognized that the business practices of Cooper Industries had also contributed to the contamination and Aviall brought suit against Cooper in an attempt to mitigate and offset their cleanup costs.

To the layperson, the case seems simple enough– the companies that were responsible for polluting the property should share the cost of cleanup. However, the language of Section 113(f) of CERCLA and the section's reference to "contribution" does not address parties that *voluntarily* cleanup a brownfield site (Steinberg 2005). The historically accepted legal definition of *contribution* is a "method of distributing liability." In the *Aviall* case the principles of contribution in a CERCLA context were called into question, 'If a party *voluntarily* pays for brownfield remediation and were never *deemed liable* by a state or federal agency, how then can that party seek contribution under the classic definition and *share* liability?'

In late December of 2004, citing similar questions and concerns, the Supreme Court sided with Cooper and therefore denied Aviall's request for contribution. "In *Aviall*, the U.S. Supreme Court held that a PRP who has not been sued under Section 106 or Section 107(a) of CERCLA may not obtain contribution under Section 113(f) of the statute from other liable parties (Bourdeau and Moore 2007)." The Court indicated that a property owner/PRP can only seek contribution under Section 113 if they are, or have been, the subject of a "civil action." In other words, unless the owner of a contaminated site has been sued or has a consent order from USEPA or a state agency, the owner would not have the ability to recuperate costs from a previous responsible party.

A year after the *Aviall* decision Richard E. Bartelt, P.E., an attorney with ARCADIS G&M, prepared a white-paper discussing the outcome of the Cooper v. Aviall Supreme Court decision. In his writings, Mr. Bartelt posed the following question, "Will Cooper

v. Aviall be a catalyst for updating the Superfund program and possibly amending the law or will it be the death blow for what had become a flourishing private response effort in the United States (Bartelt 2005)?"

In the two and a half years since the December 2004 verdict countless environmental attorneys have speculated, theorized, and postulated about the looming impacts and consequences of *Aviall*. The research of NEMW staff has set out to answer the question posed by Mr. Bartelt and determine if in fact significant implications have resulted from the Court's interpretation of the case.

Methodology

One of the primary goals of this research was to uncover a representative sampling of voluntary brownfield remediation cases that have been severely curtailed as a consequence of the Supreme Court ruling. The NEMW staff took a multi-pronged approach to gathering information including: review of current literature, mass email/listserv requests to brownfield stakeholder groups, telephone surveys of state environmental agencies, telephone surveys to brownfield developers, and numerous conversations with legal professionals and brownfield experts.

Email requests for information were distributed to listserv groups of the American Bar Association, members of the National Brownfields Association, members of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and members of the Washington DC based Brownfields Coalition. In addition to numerous email requests for information NEMW staff interviewed approximately fifteen state level environmental personnel and ten large scale brownfield redevelopment professionals. Due to confidentiality and ongoing litigation much of the information obtained can only be conveyed in an anecdotal manner.

Overview of Findings

The *Aviall* decision appears to have negatively impacted the cleanup and redevelopment of larger, more complicated brownfields sites where litigation over cleanup responsibility is likely. In many cases it is evident that the *Aviall* case is spurring a shift towards lengthy litigation and generally slowing cleanup progress of sites with complex questions of pollution accountability. Additionally, it is evident that the increased litigation is contributing to a substantial rise in transaction costs.

In September of 2005 the Government Accounting Office (GAO) wrote the following: "Parties who carry out Voluntary Cleanups have limited ability to recover cleanup costs" and "The *Aviall* decision may complicate efforts to clean up contaminated properties by providing a disincentive for parties to voluntarily carry out such cleanups (GAO 2005)." Environmental attorney, Amy Edwards with the American Bar Association explained that, "Sophisticated brownfield owners no longer see the benefit of entering voluntary cleanup programs." Ms. Edwards and other environmental attorneys speculate that parties

may be hesitant to enter state cleanup programs because *volunteering* would alleviate future opportunities to recuperate costs of remediating unforeseen contamination.

However, the findings of this study confirmed that the majority of brownfield transactions *do not* fall into a category of sites that are impacted by the *Aviall* decision. Cursory telephone calls to state VCP directors indicated that *Aviall* has not had a significant influence on the volume of voluntary applicants. Additional phone surveys established that most brownfields are remediated by developers that are using a combination of "impaired acquisition prices" and public incentives to address cleanup costs, not cost recovery litigation. In other words, the same transaction model that has worked for developers for years continues to work – post *Aviall*– for the vast majority of brownfields sites.

NEMW staff acknowledged that the conversations with of state environmental workers may not present a complete picture of changes in VCP applications. It is possible that many brownfield owners with questions of responsibility are simply not engaging with VCP offices. As Ms. Edwards suggested, the more "sophisticated" site owners might not be conversing with VCP officials. It is probable that there are many sites – possibly in the hundreds – that have been negatively impacted by *Aviall* and not showing in the databanks of state voluntary cleanup programs. Unfortunately, many of such sites are large properties with complicated and costly cleanup; presumably sites where there could be a public health risk due to stalled or slowed progress on remediation.

The kinds of sites where *Aviall* is having a negative impact include:

- ***Sites that are moving more slowly and have higher transaction costs***, such as:
  - Sites that are being shifted from VCP programs to enforcement programs - this is being done on certain sites in order to lay the groundwork for later cost recovery, usually from a past owner (not the seller);
  - Sites where developers run into significant cleanup costs that were not anticipated by virtue of pre-acquisition site testing – limitations on cost recovery from the RP has put cleanup and redevelopment at risk;
  - Sites where contribution action was being pursued pre-*Aviall*, but progress is now slowed or halted because *Aviall* has, in effect, granted the RP immunity in certain circumstances.

- ***Sites where cleanup and redevelopment is "off the table,"*** being judged infeasible, partly because *Aviall* has limited contribution action/cost recovery. These sites are not being seen by VCP directors because potential developers are dissuaded before discussions can begin with the states. The kinds of sites affected include:
  - Sites where cleanup costs represent a high proportion of total development costs – developers are more reluctant to get involved with these sites because of the greater risk that unanticipated cleanup costs will make the project infeasible and there is lower likelihood of successful cost recovery.

- Sites owned by the US Government – because EPA does not bring legal action against sites owned by federal agencies (usually Defense Department or Energy Department), these cannot qualify for cost recovery under *Aviall*;
- "Upside down" sites where the cost of remediation may exceed land value – developers would be less likely to take a chance on these sites if they cannot seek cost recovery.

A particular concern is that these sites (sites with legal complications related to cost recovery) tend to be larger sites where contamination may be significant enough to adversely affect public health. In these instances, the Aviall decision may be indirectly linked to exacerbation of public health problems.

Results from contact with State VCP Officials verify intermittent *Aviall* concern

- ***Wisconsin***: "negative impact on larger, more complicated brownfields"
  - Sites of former manufactured gas plants "reluctantly entered EPA's 'off-the-NPL' process to ensure cost recovery ability."
  - NPL has more transactional costs than VCP
  - Wisconsin also seeing problems with landfill owners looking to clean property to provide space for public and private development
  - Darsi Foss, Chief Brownfields and Outreach Section

- ***New York***: Several important brownfield sites have sparked litigation and created cases that have made it to the circuit court level. Most importantly *Con Edison v. UGI Utilities.* The final decision of the circuit court has many intricacies, but, in general, went against the *Aviall* decision and allowed for contribution.
  - Further litigation pending
  - Dale Desnoyers of New York VCP indicated that 20+ property owners have withdrawn from VCP because of *Aviall* .

- ***Virginia:*** At least one property owner actually requested to be listed as a "Superfund Site" to be in a position to recover costs.
  - The site was not listed as a Superfund site and consequently "their idea fizzled," Chris Evans, Virginia VCP

- ***Arizona:*** Conversation with Mitch Klein, Environmental Attorney, Former attorney with the Arizona Attorney General's Office
  - Successfully defended Union Pacific in *ASARCO v. Union Pacific* shortly after the *Aviall* case
  - Recommends to virtually all of his clients that they DO NOT enter a VCP and instead request action from AG's office (He has been doing this for about two years… no cases are yet settled.)

- ***Tennessee I***: (Name deleted per State's request)
  - Former industrial site with on-site waste facilities/trash dump
  - Withdrew their application from the VCP in Tennessee and approached the Tennessee AG asking to be sued
  - The AG office obliged and began preparing the Consent Order. According to Tennessee VCP Office, such a case is placing the AG's office in "uncharted waters." The VCP official also indicated that the case is taking a very long time and consuming countless man hours
  - The proposed budget for the site remediation was around $15 million and a "first class" cleanup. Evidently the cleanup is on hold.
  - No other public information could be obtained because, according to the attorney for the site owner, the consent order is still pending

- ***Tennessee II***: *See information in following section from by Pam Elkow, Attorney*

- ***Georgia***: Atlanta Gas Light asked the state to amend their voluntary language with an "order to comply."

- ***California:*** A good example has already made it through the courts: Adobe Lumber v. Taecker 2005. A landowner began cleanup of property previously contaminated by dry cleaning facilities. Because the owner "voluntarily" began cleanup the court, citing *Aviall*, dismissed any claims against the dry-cleaners. Claims were denied under both 113 and 107. *(NEMW understands that they are back in court arguing over section 107)*

- ***California II****: See information in following section from Larry Schnapf, Attorney*.

Examples from attorneys 'in the trenches' of Aviall

One of the initial goals of this project was to elucidate real world examples where brownfield redevelopment has been curtailed because of *Aviall*. Even though attorneys familiar with environmental cases told NEMW staff that many *Aviall* type stories will take years to surface, the following examples verify that problems exist. The nature of environmental law leads to litigation taking years, not months to settle. In light of this fact, NEMW researchers were not able to find a single case that was not still in some form of litigation and this legal ensnarement has made quantifying the brownfield properties impacted by *Aviall* very difficult. NEMW made numerous attempts to gather data from environmental attorneys (including listserv postings on the environmental sector of the American Bar Association) and received relatively little feedback. NEMW speculates that counsel/client privacy agreements may have impaired accurate surveying of current cases. Additionally, because so many cases are still pending, attorneys are reluctant to disclose names and/or specific location details.

The following anecdotal examples came to NEMW. As requested, the businesses involved remain anonymous.

Attorney David J. Freeman sent the following, "My client owns a brownfield site near Rochester, New York that was previously a Department of Defense installation. Prior to Aviall, lawyers for the Corps of Engineers advised that, if they were to bring litigation against the Department, money from a Department of Justice fund would be available to underwrite the cost of cleanup. After Aviall was handed down, any discussion of settlement of such a lawsuit, with funding to facilitate cleanup, was off the table. The result is that the site is still contaminated and will remain so for the foreseeable future." In a follow up telephone conversation Mr. Freeman indicated that the site cannot be made "shovel-ready" for redevelopment. Developers are reluctant to construct reuse plans for the site until the litigation issues are resolved and the lack of cleanup is costing jobs to the area.

- *Pam Elkow, an environmental attorney representing a client in Tennessee informed NEMW with the following information: Company 'A' entered a unilateral order* and as a result installed a water treatment plant. After operating the plant for several years it was discovered that chromium was entering the site via groundwater. Company 'A' had never produced chromium and followed the plume to company 'B.' The treatment facility was treating for company A and B pollutants, company A feels that B should share the costs of treatment. B has refused and Aviall is truly complicating the issue. Currently there is sufficient water supply for the nearby town, but treatment has stopped at the facility until court wrangling determines the true RPs.*

  **Our case isn't a VCP, it's a unilateral order, but one that doesn't "fit" the definition of "civil action" under Aviall.*

- *Environmental attorney Larry Schnapf, noted a case in California involving a non-profit multi-unit housing developer, AMCAL. Mr. Schnapf explained that an "affordable housing developer unexpectedly incurred $7MM in cleanup costs and its contribution action was dismissed because of Aviall and its cost recovery action under 107 was dismissed without prejudice as it not introduced evidence that it qualified as an innocent party."*

Aviall: Potential for Significant Increases in Litigation

The following paragraphs are the researcher's notes from a long conversation with a prominent environmental attorney who recommends that clients ask for consent orders rather than enter VCP programs in order retain the option nof cost recovery The conversation highlights the potential for increased litigation and underscores how problematic *Aviall* might be for the traditional involvement in state voluntary cleanup programs. For the purpose of confidentiality the name of the attorney has been replaced with "*Mr. Attorney.*" Furthermore, titles, states, etc. have been deleted and will not be disclosed in this report.

In a recent telephone conversation with Mr. Attorney, one of the more active lawyers working with brownfield property owners, he indicated that because of Aviall implications he takes a very aggressive, and perhaps unorthodox, approach with brownfield clients. Mr. Attorney, a former attorney in the state's Attorney General's office and current environmental specialist within his law firm, recommends to virtually all clients potentially entering a state Voluntary Cleanup Program (VCP) to ask the respective state to file a formal action/consent order against his client. This may sound quite contrary to conventional thought; who in their right mind would actually ask to be sued? Mr. Attorney clarified that every circumstance is unique and asking for a consent order to be filed against his clients has a lot of qualifiers. For example asking a state's attorney general to sue you might not be a reasonable request if such and would have negative financial implications or the level of cleanup proposed was not significant enough to warrant such action. Nevertheless, in general, an apparently large number of potential participants in a state VCP are being steered away from voluntary cleanup and toward legal proceedings with the state AG's office.

Mr. Attorney has been on both sides of environmental legal issues and the Aviall findings. His resume includes acting as the chief counsel for the Civil Units of the state's Attorney General, where he was responsible for all environmental enforcement actions taken by the state. Shortly after the Cooper v. Aviall Supreme Court decision, then working as a private attorney, he successfully used the Aviall decision to keep his client from having to pay the cite owner/plaintiff for any remediation costs. This was one of the first cases solidifying the 2004 Aviall court decision.

Although he declined to give details on his cases, Mr. Attorney indicated that he represents clients in several states that are choosing to not enter VCP and not voluntarily cleanup their brownfield sites. Instead he is encouraging clients to not proceed with cleanup activities until the respective state files suit requiring cleanup. Presumably, it is beyond the financial capability of many AG offices to litigate all brownfield cases.

Mr. Attorney indicated that he works in several states throughout the country and that he knows the applications to VCPs in states are "way down" because of Aviall.

As indicated in previous sections, NEMW has been unable to verify claims that VCP applications have significantly decreased. However, NEMW staff has been found evidence that the federal circuit courts are encumbered with a significant *Aviall*-type docket. The following bullet-points highlight *Aviall*-related circuit court activities through December of 2006.

Aviall Impacts within Circuit Courts

- Influx of Cases at the Circuit Court Level
    - As of December 31st, 2006 47 cases have been tried at the circuit court level
    - The second circuit (New York, Connecticut, Vermont) has had 14 *Aviall* related cases
    - Several Circuit Court decisions have gone against the *Aviall* opinions and allowed PRPs to sue other potential PRPs.
    - The conflicting opinions have lead to a second Supreme Court Case, Atlantic Research v. United States. The case was heard on April 23rd, 2007 and a decision is pending.

    NOTE: Discussions with representatives from the American Bar Association speculate that the case-load at the circuit level is only a small percentage of *Aviall* related cases on dockets in lower courts (Perhaps ten times the number exist in lower courts.)

- Michigan falls under the jurisdiction of the Sixth Circuit Court. Since *Aviall*, four relevant cases have been heard at the circuit level, two emanate from Michigan:
    - ITT Indus v. BorgWarner, Inc (Brought suite against six PRPs, collectively known as BorgWarrner. Courts upheld *Aviall* and found in favor of BorgWarner)
    - Ford Motor Co. v. United States (Ford unsuccessful in bringing suit against United States)

Developer Perspective

NEMW staff interviewed ten regionally and nationally recognized brownfield developers and/or environmental contractors. The selected firms included the nation's premier brownfield "shovel-ready" developer Cherokee Investment Partners, the high profile mid-Atlantic reuse champion, Struever Brothers, Eccles and Rouse, Connecticut's number one environmental consulting and engineering firm, HRP Associates, and other major brownfield development professionals. The telephone interviews indicated that *Aviall* is not significantly impacting business practices. Contrary to the myriad of litigation surrounding *Aviall*-type cases, the discussions NEMW staff had with developers and environmental consulting firms did not illuminate significant redevelopment barriers.

This finding is not inconsistent with the other findings – developers tend to choose sites where the cleanup costs can be covered by some combination of an "impaired value" purchase price, and governmental brownfields incentives. Legal action for cost recovery (even before Aviall) has been deemed too slow and too expensive – developers will avoid sites where cost recovery is the main option to cover cleanup costs.

Postscript: *Atlantic Research and Consolidated Edison Cases*

On June 11th, with the *United States v. Atlantic Research* decision, the Supreme Court answered a question that has perplexed brownfield property owners and environmental attorneys ever since the *Aviall* decision of late 2004: 'Can an innocent purchaser *or* a potentially responsible party (PRP) voluntarily clean up an impaired property and still file suit in federal court to recover costs from other persons (including the United States, state governments, and other PRPs)? The long awaited answer was "yes."

Justice Thomas delivered the unanimous decision of the court stating, "In *Cooper Industries, Inc. [Aviall]*, we held that a private party could seek contribution from other liable parties only after having been sued under §106 or §107(a)… This narrower interpretation of §113(f) caused several Courts of Appeals to reconsider whether PRPs have rights under §107(a)(4)(B), an issue we declined to address in *Cooper Industries [Aviall]*… Today we resolve this issue."

In short, the ruling clarified that private parties, including PRPs, do not have to be the party of a lawsuit or formal action in order to recoup cleanup costs from other PRPs. In the Opinion of the Court, Justice Thomas shed light on the CERCLA context of *contribution*, "a PRP's right to contribution under §113(f)(1) is contingent upon an inequitable distribution of common liability among liable parties. By contrast, §107(a) permits recovery of cleanup costs but does not create a right to contribution. A private party may recover under §107(a) without any establishment of liability to a third party. Moreover, §107(a) permits a PRP to recover only the costs it has 'incurred' in cleaning up a site."

Just days after the *Atlantic Research* ruling, on June 26, 2007, the Supreme Court declined to review *UGI Utilities Inc v. Consolidated Edison Co.* (*Con Ed*). On September 9, 2005 the Second Circuit Court had ruled that the plaintiff and RP, Consolidated Edison, was in fact a "person" and could pursue cost recovery under Section 107(a). The *Con Ed* decision of the Second Circuit marked dissention from the *Aviall* verdict of a year earlier. By not hearing the case, the Supreme Court upheld the ruling of the Second Circuit.

The *Atlantic Research* decision and the Court's refusal to review *Con Ed* have clarified a private party's right to pursue cost recovery. These actions will no doubt expedite the cleanup and reuse of complicated brownfield sites. Understanding that they may not have to solely bear the financial burden of cleanup, owners of sites mired with intricate questions of responsibility now have the legal backing to *voluntarily* remediate brownfields.

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Cited Sources

Bartelt, R. E. (2005). The Changing World of Private Party Hazardous Site Response, ARCADIS G&M**:** 11.

Bourdeau, K. S. and W. P. Moore (2007). "Options for Potentially Responsible Parties in the Wake of the Avill Decision." Environmental Reporter **Vol. 38**(No. 8).

GAO (2005). Environmental Cleanup: Transfer fo Contanminated Federal Property and Recovery of Cleanup Costs. G. A. Office. **Report Number GAO-05-1011**.

Steinberg, M. W. (2005). ""Mostly Cloudy, with a Chance of Contribution"-- Life After *Cooper Industries*." ALI-ABA Superfund and Natural Resource Damages Litigation Committee Newsletter **Vol 2**(No. 1).