

Insights & Updates

FALL 2002

MOEHRKE, MACKIE & SHEA, P.C.



DOING THE DUE DILIGENCE BLUES

The summer of 2002 will go down as the "summer that never was" for several Moehrke, Mackie & Shea attorneys and many others with whom we have worked intensely over the past nine months. Beginning in February 2002, when our client Clean Harbors, Inc. announced that it was acquiring the assets of Safety-Kleen's Chemical Services Division to become the largest hazardous waste company in North America we engaged in a non-stop environmental due diligence and facility permit transfer operation in support of the transaction. We are pleased to announce that the transaction closed on September 6, 2002 and that Clean Harbors is now No.1 in the Nation and on the North American Continent!

MM&S has represented Clean Harbors since before it acquired its Braintree plant in 1985. We handled past environmental due diligence matters for the company and were excited to participate again when President and CEO Alan McKim gave us the nod. Led by Tom Mackie, we formed an eight lawyer team to perform aspects of the environmental due diligence and obtain state, federal and local

agency approvals for the transfer of all facility permits held by Safety-Kleen. Eventually, working with Clean Harbors' and Safety-Kleen's talented compliance staffs, we obtained the transfer of over 300 hazardous waste and other facility operating permits in 32 states.



Tom Mackie

Bill Squires headed the permit transfer team and coordinated the efforts of scores of state, federal, and local agency officials and company compliance personnel. To manage this daunting task, Bill

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Heat Strokes

On August 12, 2002 Tom Mackie and Michelle O'Brien participated in Browning-Ferris Industries, Inc.'s Annual Charity Golf Tournament for the Benefit of the Cerebral Palsy Association of Eastern Massachusetts. The event was held at the Andover Country Club. With temperatures in the mid-90s and a dew point of 70, Tom and Michelle spent a lot of time in the rough searching for errant shots as well as shade. On August 19, Tom and Hench Ellis teed it up at the 9th Annual George Troupe Memorial Golf Tournament held at the Framingham Country Club. Once again heat was the story as 144 golfers sweated their way around the course, quaffing any and all liquid sustenance they could get their hands on.

Walk the Walk

Moehrke, Mackie & Shea once again sponsored a team of walkers for the annual Boston Marathon Jimmy Fund Walk held in Boston on September 29. The Walk is one of the Dana-

Farber Cancer Institute's flagship fundraising events. The event provides critical support to the Institute's efforts to defeat cancer in our lifetime.



Team Moehrke, Mackie & Shea celebrate after The Jimmy Fund Walk.

Everything's Coming Up Rosie's

In what has become a favorite annual activity, members of the firm prepared and served

dinner at Boston's Rosie's Place, a shelter for homeless women and their children. Rosie's Place provides much needed aid and support to women and their children who find themselves temporarily without housing.

Sports Authority

Coach John Shea's Stoughton Sixth Grade Travel Basketball Team posted an impressive 21-5 record in 2002. In March the team won the Eastern Division Championship of the Suburban West League, and was one possession away from winning the Final Four Championship, which they lost to Natick in OT. Coach Shea has great expectations for his Seventh Grade Travel squad this coming season.

John's 2002 Orioles Little League team had an 8-7 record and made it to the second round of the playoffs.

MICHELLE O'BRIEN APPOINTED CO-CHAIR OF THE BBA'S HAZARDOUS AND SOLID WASTE COMMITTEE

Michelle O'Brien has been appointed co-chair of the Boston Bar Association's Hazardous and Solid Waste Committee for a two-year term. This Committee meets monthly for discussions on recent case law, regulatory issues, and other topics of interest to attorneys and environmental professionals working in the solid and hazardous waste areas.

Michelle also recently served on the faculty of the Environmental Law Basics seminar sponsored by Massachusetts Continuing Legal Education.



Michelle O'Brien

DOING THE DUE DILIGENCE BLUES *continued from page 1*

supervised the development of a custom Microsoft Access® database to track all permit transfer activity and required logistics. Working with another associate, Emily LaPointe, and a team of talented contract attorneys, Bill was able to achieve an outstanding result. The ability of the firm to apply the talents of its experienced internal staff and to attract senior environmental contract attorneys (including two former EPA attorneys) made the project feasible.

The balance of the project was equally daunting. Tom Mackie led a team of environmental engineers from Weston Solutions in performing environmental due diligence on Safety-Kleen's landfills located in several different states from California to Oklahoma. Michelle O'Brien helped Weston Solutions and Clean Harbors perform their review of the remaining Safety-Kleen facilities and environmental liabilities. We were extremely fortunate to be able to work with Jonathan Black, former General Counsel of Clean Harbors and American Tower Corp., as part of our

team. Coupled with the firm's successful track record in representing hazardous waste management companies, landfill operators, and environmental litigation, this highly experienced team was able to deliver a quality product under tight time lines. Bill Geary, current General Counsel of Clean Harbors, commented that it was an "exceptional effort" by MM&S.

Moehrke, Mackie & Shea provides its clients with focused and cost-effective environmental law services and related business advice. If you would like to speak to someone about environmental due diligence or other environmental aspects of business transactions, please call Tom Mackie at (617) 266-5700.



Bill Squires

Talking Regulations & Ethics

WHAT FRANK IS UP TO

By Tom Mackie



From Left to Right: Richard Doherty of GeoInsight, Jonathan Higgins of Higgins Environmental, MM&S partner Michelle O'Brien, and James Begley of Global BioSciences

Licensed Site Professionals Gather To Discuss Regulatory and Ethical Issues

On June 26, 2002, Moehrke, Mackie & Shea hosted an Executive Breakfast entitled "LSPs: Keeping Out of Trouble." The event, facilitated by Michelle O'Brien, was an interactive discussion among hazardous waste site cleanup professionals, also known as Licensed Site Professionals or LSPs, regarding regulatory and ethical issues facing LSPs today.

The work that LSPs perform in managing the assessment and remediation of contaminated sites is governed by regulations known as the Massachusetts Contingency Plan (MCP). The MCP provides the framework in which LSPs work but requires the LSP to interpret the regulations. This poses challenges to LSPs, particularly where their interpretations differ from those of the regulators. Moreover, LSPs can be subject to disciplinary action if their conduct violates the Rules of Professional Conduct for LSPs.

The Executive Breakfast attendees, all experienced LSPs, shared their views about recent disciplinary actions taken against LSPs and discussed how to stay out of trouble with the regulators and licensing board. One recurring theme was for LSPs to maintain good documentation, such as laboratory data and

quality control data, to support LSP Opinions issued in the course of providing professional services. Other lessons learned included being particularly cautious when handling a contaminated site with a public drinking water supply nearby.

MM&S attorneys work with LSPs on a regular basis, overseeing cleanups and responding to regulatory demands. We also defend LSPs in disciplinary actions brought by the licensing board or in private party litigation. If you would like to speak to someone about LSP disciplinary issues, please contact Michelle O'Brien or Hench Ellis at (617) 266-5700.



Everywhere I go, people ask me what our former partner and firm founder, Frank Wright, is up to. For those of you who did not have the pleasure of working



Frank Wright

with Frank, he was a class act. We sorely miss him. A former Assistant Attorney General, Boston University Constitutional Law Professor and public defender, Frank joined Tony Moehrke to form Wright & Moehrke in 1983. He loved the heady early days of environmental law where, as he would say, "you made it up as you went along." He helped draft the state's wetlands regulations and practiced before the Hazardous Waste Facility Site Safety Council. Frank especially enjoyed working on the permitting and development of some of the Commonwealth's proudest environmental achievements, like SEMASS and Clean Harbors. But as the practice of environmental law became more settled and the industry matured, Frank grew restless.

Frank's creativity and talent were not limited to the practice of environmental law. When he started the firm, he filled it with furniture that he either built or refurbished. A beautiful maple table of his still adorns our conference room. Frank is now happily ensconced in a cottage on the shore in Gloucester with his wife Judy and views to forever. Frank is actively involved in local Gloucester affairs. He now sits on the Gloucester Zoning Board of Appeals and was instrumental in obtaining funds for reconstruction of the massive granite seawall that now shelters Lanesville Cove. Since retirement, Frank obtained a degree in furniture making from the North Bennett Street School. He now builds and restores furniture in his workshop in the old Gloucester train station. Judy, also an artist, incorporates inlaid stained glass mosaics into tables Frank has crafted. Early in the morning you may catch them pulling lobster pots from Ipswich Bay.



SUCCESS STORIES

Even in this troubling and uncertain economy, the firm successfully permitted two noteworthy projects in 2002: a campus roadway realignment and wetland enhancements for the DeCordova Museum & Sculpture Park in Lincoln, and a roadway and bridge access in Riverfront Area for Mark Ridder's Adult Retirement Village in Hanson. Both developments required specialized professional teams in order to comply with vexing regulatory standards and unique site constraints, to examine alternatives, and to respond to neighborhood concerns.

DeCordova satisfied several special burdens of proof under the Lincoln Wetland Bylaw with state-of-the-art planning, engineering and wetlands studies and credible expert testimony. We were able to show that there were no feasible alternatives with materially less adverse effects on wetland values, which solve the Museum's internal pedestrian-vehicle conflicts, achieve a beautified and

unified campus, and provide enhanced wetland mitigation and stormwater management.

Ridder is another team victory resulting from careful strategic planning, unassailable technical and legal presentations, and special wetland and wildlife mitigation. The firm prepared a "cutting edge" report praised by the Conservation Commission and the Department of Environmental Protection which demonstrated that "there are no practicable and substantially economic equivalent alternatives" on-site and off-site, with less

adverse impact on Riverfront Area and wetland interests.

For more information about the permitting teams and wetlands alternatives analysis, contact John Shea at (617) 266-5700.



John Shea

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