

RUSS AND LEE PYE v. U.S. Army Corps of Engineers

by Charles M. Niquette

In December of last year ACRA joined with the Society for Historical Archaeology and the National Trust for Historic Preservation in filing an *amici curiae* brief in support of the Plaintiffs-Appellants, Russ and Lee Pye. The Pye case, on appeal from the United States District Court for the District of South Carolina (Charleston Division), raises the fundamental issue of standing, in the context of a lawsuit challenging the Corps' failure to comply with Section 106 of the National Historic Preservation Act (NHPA). In this case, the Corps authorized the paving of a road crossing a wetland area, pursuant to a nationwide permit under Section 404 of the Clean Water Act. In doing so, the Corps failed to take into account the effects of its undertaking on known historic and archaeological properties that had previously been determined eligible for listing in the National Register of Historic Places. The Corps' failure in this regard was inconsistent with its mandated responsibilities under Section 106 and under the U.S. Army Corps' own regulations, 33 CFR Part 325, Appendix C. Despite this, an earlier decision by the district court held that the plaintiff's lacked standing to challenge

the Corps' decision, even though they owned property adjacent to the permit area. The National Trust argued forcefully that if the district court's opinion was allowed to stand, the enforceability of the NHPA would be seriously jeopardized, notwithstanding Congress's clear intent that "any interested person" be entitled to bring an action in federal court "to enforce the provisions of the Act," and to recover attorney's fees if he or she "substantially prevails."

The Pye's own a 36-acre parcel of land known as Oak Hall Plantation, which lies immediately adjacent to a 750-acre parcel, known as the Sheppard Tract, owned by the County of Charleston, South Carolina. Both the Sheppard Tract and the plaintiff's property were once part of a much larger historic rice plantation, known as Encampment Plantation, which was owned by the family of Robert Young Hayne (1791-1839).

In January 1995, the county submitted a permit application to the Corps to pave a road with a 50-foot wide right-of-way, the only legal access to the Sheppard Tract. The county's road paving project required crossing a wetland and, therefore, was subject to Corps regulation under the Clean Water Act.

In April of the same year, the Advisory Council on Historic Preservation (Council) notified the Corps that the road paving project may have an effect on Encampment Plantation and associated archeological properties, which are included in or eligible for listing in the National Register of Historic Places. At the same time, the Council advised the Corps that the nature of the undertaking's effect on historic properties may require compliance with Section 106.

In August, the County revised and resubmitted its permit application to the Corps. The new application included plans for paving of a road totaling 4 acres which would access a 13-acre parcel. In November 1995, the Council once again contacted the Corps and requested additional information about the application. The Council also warned the Corps that the agency's permit review procedures may be inconsistent with the Corps' responsibilities under the NHPA. The Corps never responded to the Council. In September 1996, the Corps authorized the project under

... continued on Page 2

In This Issue...

ACRA Business

Message from the Executive Director

pg. 3

Committee Reports

1999 ACRA Awards

1999 Congressional Calendar

pg. 4

pg. 7

Contributed Articles

CRM Workshop

ROPA

pg. 6

pg. 8

A C R A B o a r d o f D i r e c t o r s

Cory Dale Breternitz
Soil Systems, Inc.
Phoenix, Arizona

Colin I. Busby
Basin Research
Associates, Inc.
San Leandro, California

Susan M. Chandler
Alpine Archaeological
Consultants, Inc.
Montrose, Colorado

Ann Hubber
Historical Research
Associates, Inc.
Missoula, Montana

MESA TECHNICAL

HABS/HAER Large Format Photography
 Archaeological Soil Science

David G. DeVries
 principal

HABS/HAER Photographic Documentation

- Dozens of large and small HABS/HAER projects completed.
- Industrial, Residential, Commercial, Cold War and Military.
- Widely experienced in Historic Districts and Landscapes.
- In-house 8x10" Sinar copy camera for historic drawings.
- In-house lab/darkroom for archival processing and printing.

Archaeological Soil Studies & Geomorphology

- Stratigraphy: description and correlation across landscape.
- Depositional History: paleolandforms, stratigraphic integrity.
- Sampling: physical, chemical; lab data interpretations.

2630 Hilgard, Berkeley, CA 94709-1002
 Telephone/Fax 510.845.7830

Russ and Pye cont.

Nationwide Permit #14 which applies to road crossings of wetland areas of which less than 1/3 acre will be subject to filling. In authorizing the permit, the Corps prepared an internal memorandum documenting the agency's rationale for not taking into consideration the effects of this undertaking. The memo acknowledged that the road would provide access to the 13-acre field and that the field contained archaeological Site 38CH1589. Previously determined eligible for listing in the National Register, the site was the location of the original Hayne family home, dating back to 1740, and possibly the birthplace of Robert Young Hayne. Nevertheless, the Corps refused to consider the potential effects of the permit on the site based upon the assertion that "the area of consideration for cultural resource impacts is limited to the footprint of the roadway only," and the site in question was located outside of the footprint. As most readers of the ACRA Edition are well aware, failure to consider both direct and indirect impacts on significant historic properties is inconsistent with a federal agency's obligation under the NHPA, and in this case with the Corps' own regulations, thus the plaintiff's legal action.

The National Trust's *amicus* brief concluded by offering well-crafted arguments demonstrating that the district court's ruling that the plaintiffs lack standing to enforce the NHPA is fundamentally inconsistent with constitutional principles and Congressional intent. The decision now rests in the United States Court of Appeals for the Fourth Circuit.

ACRA BOARD OF DIRECTORS' SPRING MEETING

ACRA Board of Directors' Spring Meeting

ACRA's board of directors will hold their spring board meeting February 27-28, 1999, at the Westchester Holiday Inn, Westchester, Pennsylvania. Anyone with a topic for the agenda should contact Tom Wheaton, Executive Director, at 770-498-4155.

MESSAGE FROM THE EXECUTIVE DIRECTOR

by Tom Wheaton

"A Note and a "Modest Proposal" from the Executive Director"

I apologize for several errors in the recent dues notices I sent out. I forgot to change the "past dues paid" from 1997 to 1998. Everyone who received a notice paid their dues in 1998. The other error was in only putting 32 cent stamps on the return envelopes. The rate is now 33 cents, or so I have been told. Some of you added the extra postage, and I received your checks. Some of you did not, and I received many of your checks anyway. I am worried, however, that some of you may have sent checks, did not include your return address on the envelope, and now your check is in limbo under some postman's mattress, not to be retrieved for 20 or 30 years. I cashed all checks within a day or two of receiving them. Please let me know before you stop payment on any checks.

Please remember that you must pay your dues by February 15 to remain a member in good standing. We have moved up the date this year (and in future years) to allow the board to have an idea of our income before addressing budget issues at the winter board meeting.

Prior to the board meeting, ACRA's Government Relations Committee will meet in Washington D.C. Nellie Longworth of CEHP will be setting up a series of meetings with the staffs of various Representatives (we assume the Senators will be otherwise occupied). If you have a question or concern that you would like expressed, please contact Susan Chandler (chair), Cory Breternitz, Patrick O'Bannon or Tom Wheaton before February 25.

This year's board meeting is in West Chester, Pennsylvania, at the Holiday Inn. It starts Saturday morning (February 27) and

may run to Sunday morning. All members are welcome to attend and either be amazed or berate us, maybe both.

Among the issues that will be discussed is one that I will introduce. Many members have suggested that we certify our member firms. This has usually been intended to mean that we certify archaeologists or historians or architects. For several reasons, including the fact that other organizations are already certifying and licensing the various disciplines, ACRA has declined to devote the time and effort necessary to institute and enforce such certification.

A Modest Proposal

Recently, I have been thinking that perhaps ACRA could certify members who voluntarily want to be certified. The certification could be in the business sector, not the various disciplines, however. Being certified by ACRA might mean that the member has a certain level of accounting proficiency, has minimum levels of insurance, can satisfactorily pass a yearly audit by an independent agency, formally adheres to the ACRA ethics statement, provides certain levels of training in OSHA compliance, has 106 training, attends continuing education courses, and promotes equal opportunity hiring practices, etc. In other words, ACRA certification could mean that the member meets certain business standards. This might be appealing to large engineering firms, state agencies and utilities, and even some federal agencies when they select contractors. If we advertised this special certification status among potential clients nationally, it might become an important tool for them in their

selection of contractors. There would be more assurance that a certified member could handle large, multiple, or complex projects without being hampered by lack of proper insurance, expertise, OSHA training, or labor problems.

As I envision the concept, it would be voluntary for members who want to go the extra mile. Not all members would want or feel it advantageous to become certified.

Once the criteria for certification are set up, a committee could investigate to make sure the member meets the criteria. A fee could be levied for the initial certification to ensure that members are serious and to help defray costs. Certification would have to be renewed periodically (annually? bi-annually?) to make sure members are still in compliance, and this would also require a small fee. The certified member could then use a symbol or statement ("Certified ACRA Member?") or logo to indicate certification, and ACRA would publicize certification generally, and specifically list certified members in mailings, etc. Certification would also encourage firms to be properly insured, to maintain proper and up-to-date accounting practices, to be more responsive to clients' business needs, and to improve staff quality and training, among other things.

Of course, even assuming there is support for this idea, it will have to be looked into from the legal side to make sure there are no restraint of trade or other issues involved.

COMMITTEE REPORTS

1999 ACRA AWARDS

Dear ACRA Member:

The deadline for submission of nominations for the 1999 ACRA awards is July 2, 1999. Awards will be presented at the 1999 ACRA Annual Meeting. The 1999 categories are:

Government Award

Awarded to a SHPO, employee of a SHPO, government agency (federal, state, county, municipal, or Native American/tribal governments), or employee of a government agency that has worked with a CRM company or companies in a cooperative and supportive way in protecting cultural resources. This category also includes a Senator or Representative who supports existing legislation and/or is influential in proposing new legislation that protects irreplaceable cultural resources.

Industry Award

An award presented to a client company (mining, energy, transportation, etc.) that has shown a commitment to the preservation of cultural resources. This could be a single project or recognition of on-going commitment.

SUBMISSION REQUIREMENTS:

1. Who Can Enter

Architects, archaeologists, historians, students, and professionals working in the cultural resources management field in the United States, either in the public or private sector, may submit a nomination for any of the 10 categories. For projects, nominations must have been directed and substantially executed in the United States not more than five (5) years ago. Nominations for the following categories must have been executed by an ACRA member in good standing:

- Public Service Award
- Quality Product Award

2. Providing Additional Material and Publication

If the nomination should win, the entrant agrees to make available further information and graphic material as needed by ACRA. *ACRA Edition* is granted the first opportunity for publication of the award announcement and supporting information about the project or work.

3. Projects Fact Page

To ensure the jury's clear understanding, each entry must contain a single page that lists, in English, the nomination's facts under the following headings:

- Award Category
- Name of Nominee
- Basis of Eligibility

In addition, for the Quality Product Award, you must augment your submission with the following information:

- Start and Finish Dates
- Client or Source of Funding
- Project Budget
- Name and Location of Client
- Form of Final Products

4. Narrative

Nominations must contain a one-page synopsis that explains how the nominee meets the submission requirements. **Do not list the name of the nominee, their firm, or the name/company of person making the nomination.**

Public Service Award

Recognition of an ACRA company or an employee of an ACRA company that has made a long-term contribution to the study, management, and/or protection of cultural resources or has contributed volunteer efforts and resources for the betterment of their immediate community, county, state, etc. These include efforts toward training students for CRM careers, internships, etc., and school programs, environmental programs, preservation programs, and interpretive programs.

Quality Product Award

Recognition of a high quality product produced by an ACRA member company. The product can be in the form of innovative or long-term research, preservation of a cultural resource for future generations (such as a building or archaeological site), or an outstanding report, book, brochure, etc.

Please Note:

This year, all entries will be anonymous. Please read the instructions and ensure that your submission meets the anonymity requirement or it will be disqualified. Please direct questions to Charissa Wang, ACRA Awards Chair, at 614-784-8733.

5. Graphic Materials

Please submit one copy of graphic material in 8-1/2"x11" format (no more than three pages). This requirement is mandatory for project entries only. However, non-project entrants are also encouraged to submit applicable supplementary material (newspaper clippings, etc.) in a bound 8-1/2"x11" format. GRAPHIC MATERIALS MUST NOT BEAR THE NAMES OF THE NOMINEES OR THEIR FIRMS.

6. Entry Forms

Each nomination must be accompanied by a signed entry form. Reproductions of the form are acceptable. THIS FORM MUST BE PLACED IN A SEPARATE ENVELOPE.

7. Submission Format

All required pages of each entry shall be firmly bound in binders. No slides, original drawings, videos, or unbound materials will be reviewed. Materials not in 8-1/2"x11" format will not be reviewed.

8. Return of Entries

All entries become the property of ACRA and will not be returned. ACRA reserves the right to distribute, publish, or otherwise utilize the materials in the entry as part of its program and mission. Please do not submit your originals.

9. Entry Deadline

All entries must be postmarked by July 2, 1999 (Entries must show a postage mark as evidence of being in the carrier's hands by that date.). Hand-delivered entries must arrive at ACRA's Award Chair office by 5:00 pm on July 2.

10. Anonymity

Except for the entry form, which is to be placed in a separate envelope, the name of the nominees, their firms, and the name/firm of the person making the nomination must not appear in the submission. Failure to abide by the rule of anonymity is grounds for disqualification.

ADDRESS ENTRIES TO:

ACRA AWARDS CHAIR
 c/o Hardlines: Design & Delineation
 4608 Indianola Avenue
 Columbus, OH 43214

CRM Workshop at the World Archaeological Congress in CAPE TOWN SOUTH AFRICA

by Tom Wheaton

The Fourth World Archaeological Congress (WAC) in Cape Town was by all accounts a great success. Over 700 delegates from 70 countries were in attendance. CRM was one of the main topics, and nearly everyone had an opinion. There were, of course, some disagreements or misunderstandings about what CRM is. Some called it Public Archaeology and thought that all projects should involve public participation; some called it Archaeological Heritage Management, and felt it should be academically oriented; and some, mostly government people dealing with CRM on a day-to-day basis, did not care what it was called as long as they got the information they needed to make the management decisions.

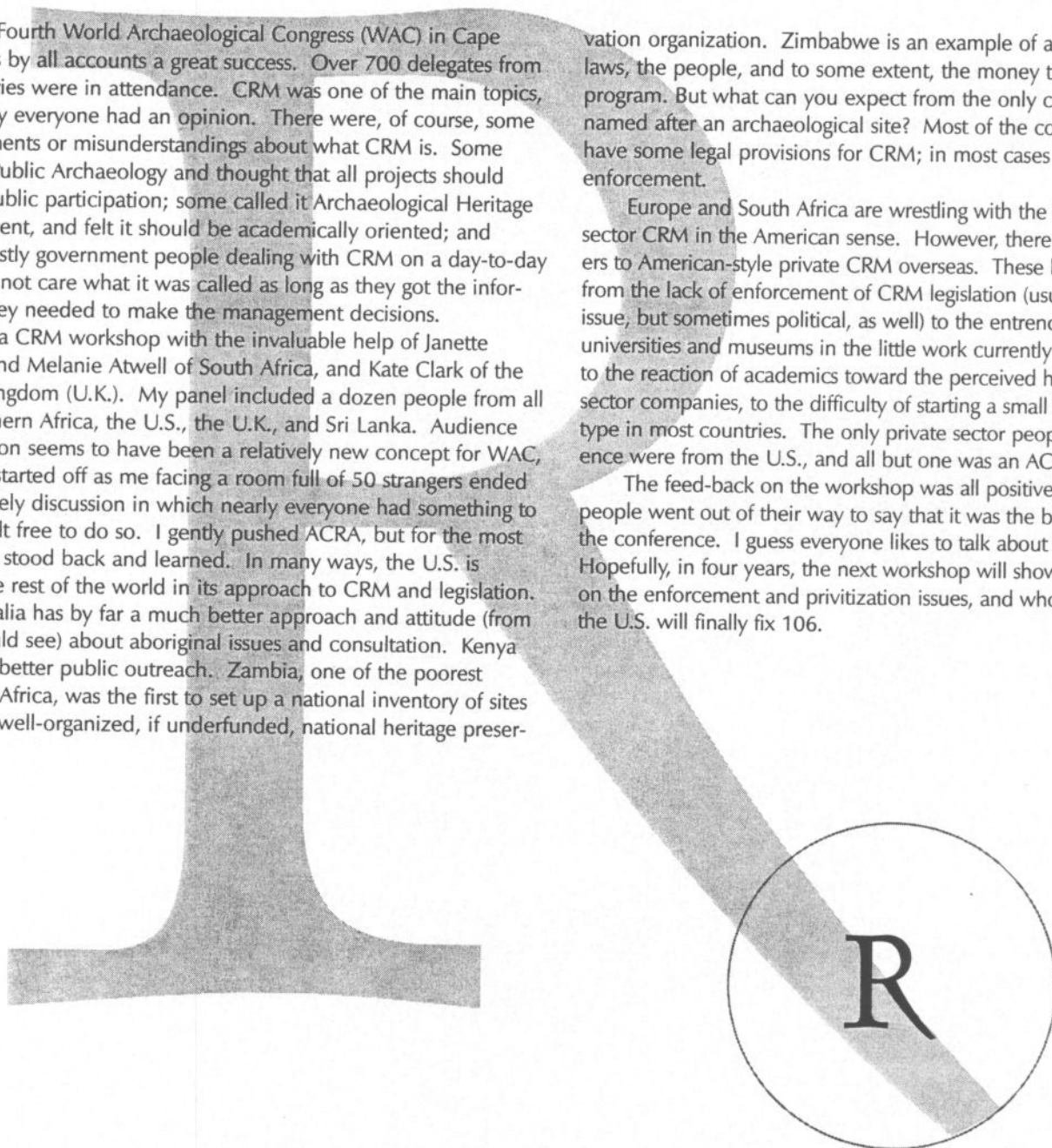
I led a CRM workshop with the invaluable help of Janette Deacon and Melanie Atwell of South Africa, and Kate Clark of the United Kingdom (U.K.). My panel included a dozen people from all over southern Africa, the U.S., the U.K., and Sri Lanka. Audience participation seems to have been a relatively new concept for WAC, but what started off as me facing a room full of 50 strangers ended up as a lively discussion in which nearly everyone had something to say and felt free to do so. I gently pushed ACRA, but for the most part, I just stood back and learned. In many ways, the U.S. is behind the rest of the world in its approach to CRM and legislation.

Australia has by far a much better approach and attitude (from what I could see) about aboriginal issues and consultation. Kenya has much better public outreach. Zambia, one of the poorest nations in Africa, was the first to set up a national inventory of sites and has a well-organized, if underfunded, national heritage preser-

vation organization. Zimbabwe is an example of a country with the laws, the people, and to some extent, the money to carry out its program. But what can you expect from the only country that is named after an archaeological site? Most of the countries attending have some legal provisions for CRM; in most cases the problem is enforcement.

Europe and South Africa are wrestling with the idea of private sector CRM in the American sense. However, there are several barriers to American-style private CRM overseas. These barriers range from the lack of enforcement of CRM legislation (usually a budgetary issue, but sometimes political, as well) to the entrenched nature of universities and museums in the little work currently being conducted, to the reaction of academics toward the perceived horrors of private sector companies, to the difficulty of starting a small business of any type in most countries. The only private sector people at the conference were from the U.S., and all but one was an ACRA member.

The feed-back on the workshop was all positive, and some people went out of their way to say that it was the best thing about the conference. I guess everyone likes to talk about their problems. Hopefully, in four years, the next workshop will show some progress on the enforcement and privatization issues, and who knows, maybe the U.S. will finally fix 106.



HOUSE AND SENATE CALENDARS FOR 1999

HOUSE CALENDAR— 106TH CONGRESS

January 6	House Convenes
January 8-18	Winter District Work Period
February 13-21	President's Day District Work Period
March 27- April 5	Spring District Work Period
May 28 - June 1	Memorial Day District Work Period
July 3 - July 11	Independence Day District Work Period
August 7 - September 7	Summer District Work Period
October 29	Target Adjournment

SENATE CALENDAR

February 13-21	President's Day Recess
March 27-April 11	Easter Recess
May 1-9	State Work Period Recess
May 28- June 1	Memorial Day Recess
July 3 - 11	Fourth of July Recess
August 7 - September 7	August Recess
October 9-11	Columbus Day Recess
October 29	Target Adjournment Recess

advertising space available

ACRA Edition offers advertising space to our members. Does your company have a special product, service, or publication that would be of interest to some aspect of the CRM community?

Why not consider placing an ad in ACRA Edition?

Advertising Rates:	Per 6 Months	Per Year
Business Card size (3.5"x 2")*	\$100.00	\$175.00
1/4 page (3.5"x 4.75")	\$200.00	\$350.00
1/2 page (7.0"x 4.75")	\$300.00	\$525.00

* Business cards can be scanned.



The Register of Professional Archaeologists UNCHARTED GROUND

by Charles M. Niquette, RPA Secretary/Treasure, January 7, 1999

The Executive Committee of the Register of Professional Archaeologists (the Register) met in Washington, D.C., on December 28-29, 1998. This meeting was held in conjunction with the Annual Meeting of the Archaeological Institute of America (AIA). While in Washington, we learned that the AIA Board of Governors had voted unanimously to join the Register as a sponsoring member along with the Society for Historical Archaeology (SHA) and the Society for American Archaeology (SAA). In so doing, the Register has gained the commitment and financial support of the three largest archaeological organizations in this country. The AIA decision also presents the Register with new challenges, particularly because of the diversity of archaeological specialties and interests within its membership.

The Archaeological Institute of America (AIA) has been dedicated to the encouragement and support of archaeological research and publication and to the protection of the world's cultural heritage for more than a century. A non-profit cultural and educational organization chartered by the U.S. Congress, it is the oldest and largest archaeological organization in North America, with more than 11,000 members around the world. Members of the Institute have conducted fieldwork in Africa, Asia, Europe, and North and South America. The AIA has further promoted archaeological studies by founding research centers and schools in seven countries and maintains close relations with these institutions, including the American School of Classical Studies at Athens, the School of Classical Studies at the American Academy in Rome, and others. Within the AIA a considerable number of its member's education and training varies dramatically from the more traditional career tracks shared by the SHA and SAA membership. Instead of holding advanced degrees in Anthropology, many AIA archaeologists hold degrees in Art History, the Classics, History and other similar fields. As a result, many AIA members are not field archaeologists. Instead, the society's membership includes many professionals whose research interests and expertise are predominately (or even exclusively) laboratory- and collections-based. Regardless of these differences, the common thread among all three societies remains a professional commitment to archaeology, a desire to enhance professionalism within our discipline, and recognition of the need for a universal Code of Conduct and Standards of Research Performance. The Register meets these needs.

Given the diversity of professional archaeologists who will wish to be registered, the Executive Committee discussed the current application process. Just as SOPA suffered in the days of old from a general perception that the application process was too cumbersome, similar comments and concerns have been raised continually about the Register's current process. It was the Executive Committee's opinion that now that the equation had changed due to the AIA's sponsorship, the time was at hand to insure that the Register was as inclusive as possible. If the application process was an impediment to such inclusiveness, then a modification to the process was appropriate.

It was decided that a Register applicant could choose to submit his or her credentials using the current application or select a more expedient process that many practicing professional archaeologists might find less burdensome. The alternative application does not require documentation of field and lab experience per se; rather, the alternative process to qualify for the Register requires that the applicant:

- 1). Holds an advanced degree with a specialization in archaeology;
- 2). Has designed and executed an archaeological study that has been reported in the form of a Master's thesis or Doctoral dissertation; and,
- 3). Accepts the Code of Conduct, Standards of Research Performance, and Grievance Procedures of the Register of Professional Archaeologists.

To accommodate the AIA membership, the Register's Executive Committee has decided to extend the application fee waiver until January 1, 2000.

We solicit the enthusiastic support of the members of the three sponsoring societies and archaeologists everywhere who desire to enhance professionalism within the discipline. By becoming registered archaeologists, we have the opportunity to demand accountability for our own actions and those of our peers, and to set examples for the next generation of archaeologists. The heart and soul of the Register remains a personal choice to distinguish ourselves as professionals, to agree to abide by the Code and Standards, and to willingly support the purpose of a disciplinary procedure that works to protect the profession. Paying fees to the Register is support for the professional community, just as taxes support the communities in which we live. The Register is not a licensing or certification board, it is a voluntary step one takes to distinguish yourself as a professional archaeologist. By becoming a registered professional archeologist, one clearly signifies acceptance of professional responsibilities. In so doing, we take a well-considered step toward recognition as professional archaeologists as opposed to those who work within the field of archaeology, but who have not attained a professional level of education and experience, and from unscrupulous "peers," antiquities traders, antiquarians, looters, and others whose interest in archaeology will forever remain suspect.

Applications to the Register may be obtained by requesting a copy via E-mail at Register@erols.com or by downloading a copy from WWW.RPANET.ORG. Alternatively, one may write or call the Register of Professional Archaeologists at 5024 Campbell Blvd, Suite R, Baltimore, Maryland 21236: 410-933-3486.

Flote-Tech Flotation System

- ◆ Excellent recovery
- ◆ Cost-effective
- ◆ Labor saving

Being used by more than 60 universities and cultural resource management firms in the U.S. and overseas

R.J. Dausman Technical Services, Inc
 2860 Division Rd., Jackson WI 53037
 414-677-4825 Fax 414-677-0339
<http://www.execpc.com/~rdausman>
 E mail: rdausman@execpc.com



Michael Polk
Sagebrush Consultants L.L.C.
3670 Quincy Avenue, Suite 203
Ogden, UT 84403

1318 Main Street, Cincinnati, Ohio 45210

1999 ACRA EDITION SCHEDULE

<i>DEADLINE</i>	<i>PRODUCTION</i>
February 1	February 15
March 29	April 12
May 31	June 14
August 2	August 16
October 4	October 18
December 6	December 20

ACRA Edition

is a bi-monthly publication of The American Cultural Resources Association. Our mission is to promote the professional, ethical and business practices of the cultural resources industry, including all of its affiliated disciplines, for the benefit of the resources, the public, and the members of the association.

This publication's purpose is to provide members with the latest information on the association's activities and to provide up to date information on federal and state legislative activities. All comments are welcome.

Please address comments to:

Jeanne Harris, Editor
ACRA News
c/o Gray & Pape, Inc.
1318 Main Street
Cincinnati, OH 45210
513•287•7700

OR

Thomas Wheaton,
Executive Director
c/o New South Associates, Inc.
6150 East Ponce de Leon Ave.
Stone Mountain, Georgia 30083

770•498•5159
tomwheaton@newsouthassoc.com

1999 ACRA AWARDS

Nomination Form

Deadline for Submission: JULY 2, 1999

Please complete each section and submit with the required documentation.

- Category:**
- 1 Government Award
 - 2 Industry Award
 - 3 Public Service Award
 - 4 Quality Product Award

Nominee: _____
Name of firm, agency, or individual(s) being nominated

Project: _____
Name of associated project (if applicable)

Entered By: _____
Name of firm or individual(s) submitting the nomination

I certify that the nominated individual, agency, project, or firm meets all eligibility requirements. I understand that any entry that fails to meet the submission requirements may be disqualified.

Signature: _____

Name (typed or printed): _____

IMPORTANT!

This is the only part of the nomination that can list the name of the company or individual being nominated or submitting the nomination. Please ensure that your name, the nominee's name, or the firm's name does not appear in any of the required submittals. You must take care to blacken or otherwise remove any mention of such from newspaper articles, report covers, brochures, etc. Failure to do so will result in disqualification.