



Superfund Task Force Listening Session Recommendation 16.2 Expediting Negotiations

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

May 21, 2018



Housekeeping

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Live Closed Captioning

18 pt White (B)

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Agenda

- Introduction
- Presentation on Recommendation 16.2
- Live remarks by session participants
- Resources
- Closing remarks



Superfund Task Force Report

- **Create:** May 2017, Task Force comprised of senior representatives from Superfund program and enforcement offices, EPA's General Counsel, Regions, and other offices.
- **Charge:** propose recommendations to streamline and strengthen the Superfund program.
- **Report:** July 2017, 5 goals with 42 recommendations





Superfund Task Force Recommendations

Five Goals:

1. Expediting cleanup and remediation process
2. Reinvigorating responsible party cleanup and reuse
3. Encouraging private investment
4. Promoting redevelopment and community revitalization
5. Engaging partners and stakeholders



Download the report at

<https://www.epa.gov/superfund/superfund-task-force-recommendations>



Superfund Task Force Listening Sessions

- Eight sessions – May 21, 2018 – June 18, 2018
- Input from stakeholders and the public
- Increase transparency and improve communications

Register for more sessions at

<http://www.epa.gov/superfund/superfund-task-force>



Today's Presenters

- Christina (Tina) Skaar
 - OSRE's Regional Support Division
- Elizabeth McKenna
 - Region 10, Office of Regional Counsel



Overview of Recommendation 16.2

- Covers strategies to focus on and decrease the time involved in:
 - Negotiating cleanup agreements (Part 1)
 - Implementing cleanup work once agreement is finalized (Part 2)
- Includes a broad range of issues, thus divided into two listening sessions



Goal of SFR 16.2 Part 1

- Expedite and complete negotiation of settlement agreements so that cleanup can begin more quickly.
- Consistent with CERCLA's fundamental purpose that PRPs undertake and timely complete cleanups through settlement agreements or pursuant to EPA-issued orders.



Benefit of Expediting Settlements

- Earlier response to contamination
- Greater protection of human health and the environment
- Transactional cost savings for PRPs



Background on EPA's Negotiation Practice

- EPA has issued guidance documents to promote successful negotiations
- Revised Policy on Managing the Duration of RD/RA Negotiations (2012):
 - Strengthen negotiation practice; shorten duration of negotiations
 - Dialogue based process with the Regions, EPA HQ, and DOJ to resolve issues delaying negotiation progress
 - Evaluate and better utilize enforcement and settlement tools:
 - Focus on negotiation plans
 - Bifurcation of remedial design and remedial action
 - Use of unilateral orders when negotiations fail or are protracted



What is EPA Doing to Implement 16.2? Guidance Documents

Finding Ways to Improve Existing Practices

- Review 2012 Guidance and determine the policy's effectiveness at expediting negotiations
- Identify ways to improve EPA negotiation practice
 - Issue best practices tip sheets to Agency CERCLA practitioners
 - Rigorously compel meeting deadlines and emphasize HQ attention on protracted negotiations
 - Determine if revisions to model settlement language would speed up the process



What is EPA Doing to Implement 16.2? Collect and Analyze Data

- Asking DOJ and EPA CERCLA practitioners about the factors that contribute to settlement negotiation delays
- Identify successful strategies used to overcome obstacles that have delayed negotiations
- Seek input on ways to speed up negotiations from:
 - Private party representatives who are or have been involved in CERCLA negotiations
 - Community groups and non-profit organizations
 - State and tribal representatives who are involved with CERCLA settlement negotiations



Factors that may delay negotiations

- Multiple parties and potential allocation issues
 - Different types of parties with different goals (large number of parties, *de minimis*, government parties, etc.)
- Difficult technical issues with the cleanup
- Issues related to calculating and negotiating orphan share
- Disagreements about provisions in EPA's model settlement agreements



What we would like to hear from you

Focus remarks on the following questions and topics:

- In your experience, what have been the major obstacles in finalizing negotiations for cleanup agreements?
- What suggestions do you have on how EPA can improve its CERCLA enforcement program in terms of effectively and efficiently negotiating cleanup agreements with responsible parties?

Written remarks can be emailed to osre-sftf-listeningssession@epa.gov until May 29, 2018.



Next Steps

- Analyze feedback from Regional and DOJ practitioners as well as what we hear today and in written remarks
- Develop recommendation regarding the 2012 Guidance: revise?
- Develop draft list of best practices related to overcoming obstacles that delay negotiations



How to share remarks

- Live during online broadcast
 - Pre-registered participants may share remarks by phone
 - Attendees may also type remarks into the Q&A window in the lower left
- After today's online broadcast
 - Interested parties may submit remarks in writing at any time to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 16-2 Part 1 by May 29, 2018



Public Remarks

1. Jane Fedde, Polsinelli PC
2. Lawrence Schnapf, Schnapf LLC
3. James Price, Spencer Fane LLP
4. W. A. Hendricks, Cement-Lock, LLC
5. David Graham, Kaufman & Canoles, P.C.
6. Chris Rycewicz, northwest resource law
7. Michele Harmon, Alabama Coast United
8. Maritza Lopez, East Chicago Calumet Coalition Community Advisory Group
9. Steven Kohl, Warner Norcross & Judd
10. Gregory Norris, ACES. 4 Youth
11. Vicki Quint, Quint LLC
12. Christopher Hagger, Nobis Engineering
13. Larry Davis, ArcelorMittal Steel, Burns Harbor

Press #6 to unmute when your name is called to share remarks.



Interested parties may submit written remarks by May 29, 2018 to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 16-2 Part 1



Reference Materials

- Superfund Task Force website
- Superfund enforcement website
- Revised Policy on Managing the Duration of RD/RA Negotiations (9/28/2012)
- Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of RD/RA (6/19/1999)
- Cleanup Enforcement Model Language and Sample Documents Database



For More Information

- Visit the Superfund Task Force website at <https://www.epa.gov/superfund/superfund-task-force>, and the Information page for the OSRE-sponsored listening session series at <https://www.epa.gov/enforcement/listening-sessions-superfund-task-force-recommendations>
- Email
 - OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 16-2 Part 1