



Superfund Task Force Listening Session
Recommendation 16.2
Improving Implementation of
Cleanup Agreements for
Response Actions by PRPs

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

June 18, 2018



Housekeeping

- **Entire broadcast offered live via Adobe Connect**
 - Listen and watch as the presenters advance through materials live
- **Audio is available online by default**
 - Please check your local volume settings to adjust audio
 - Use Q&A to privately report technical difficulties
- **Live public remarks will be delivered by telephone**
 - All lines will be globally muted
 - Press #6 to unmute **ONLY** when your name is called to remark
- **Use the Q&A pod to privately submit remarks, questions and report technical problems**



Control online audio



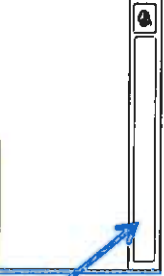
Enlarge presentation



Information about Sponsors & Speakers



Submit private questions, remarks or report technical problems



Housekeeping
View
presentation live
online here

• Q&A - use the Q&A pod to privately submit comments, questions and report technical problems

Live Closed Captioning





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
- Session number – 8
- Input from stakeholders and the public
- Increase transparency and improve communications

Register for more sessions at

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



Presenters

- Douglas Dixon
 - Office of Site Remediation Enforcement,
Regional Support Division
- Charles Howland
 - Region 3, 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)
- Echoes a significant, consistent theme of task force: promoting expeditious, high-quality cleanup of Superfund sites
- Includes a broad range of issues, thus divided into two listening sessions



Goal of Recommendation 16.2 Part 2

- **Promoting expeditious, high quality cleanup of Superfund sites**
- **Identify common causes of delays in implementation of cleanup settlement agreements**
- **Evaluate options to avoid or mitigate such delays so that cleanup can be conducted in a timely manner**



Benefits of Timely Implementation of Response Actions

- Greater protection of human health and the environment
- Earlier response to contamination
- Cost savings for PRPs
- Assurance to public that selected remedy is being implemented



Topics Related to Delays in Implementation of Response Actions

- Promoting adherence to project deadlines
- Minimizing disputes and speeding their resolution
- Assuring stipulated penalties are assessed consistently and fairly
- Work takeover/financial assurance



Delays in Implementing Cleanup Work

- Parties' goals in a cleanup agreement: effective, timely cleanup work in accord with decision document
- Model agreements include:
 - Deliverables (workplans, schedules) from settling parties to EPA
 - Enforcement mechanisms (stipulated penalties, work takeover, financial assurance)
 - "Dispute Resolution" provisions, giving settling parties opportunity to challenge EPA determinations



Why do Delays and Disputes Happen?

- Some provisions of negotiated agreements have raised issues during implementation, e.g.: access provisions, statement of work
- Issues with deliverables (workplans, schedules) from settling parties to EPA
- Task force goal is to “establish and promote strict adherence to project deadlines,”
- Task force concerned with PRPs submitting multiple versions of the same document
- Inadequate communication within the project team



Mechanisms in Agreements for Dealing with Delays

- Stipulated penalty practice
 - Task Force: EPA should “assess stipulated penalties when deadlines are [missed] to motivate timely adherence to deadlines.”
 - Amounts, and deliverables to which they apply, are reflected in agreement
 - How best to improve practice?
- Dispute resolution process
 - Underlying agreement determines what EPA decisions may be disputed
 - Issue with decisions made in the underlying decision document being ‘relitigated’
 - Role of informal vs. formal processes
 - How best to improve practice?



Mechanisms in Agreements for Dealing with Delays (cont'd)

- **Work Takeover/Financial Assurance**
 - Recommendation 16 includes “Trigger work takeover provisions when multiple deadlines are missed and access financial assurance when appropriate”
 - April 2015 financial assurance (FA) guidance describes FA mechanisms, accessing funds
 - All model settlement agreements include work takeover and FA provisions
 - Work takeover rarely triggered



What we would like to hear from you

- In your experience, what have been the major causes of delays in implementation of PRP-lead response actions?
- What suggestions do you have on how EPA can prevent unnecessary delays in the implementation of PRP-lead cleanup response actions?

Written remarks can be emailed to osre-sftf-listening@epa.gov until June 25, 2018



Next Steps

- Analyze feedback from Regional and DOJ practitioners and stakeholders
- Develop recommendations regarding applicable guidance: reissue, better enforce, or revise?
- Develop draft list of best practices related to mitigating and/or avoiding situations that delay implementation of response actions



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 2. Deadline is June 25, 2018



Public Remarks

1. Constance Westfall, Clark Hill Strasburger
2. James Morriss, Thompson & Knight LLP
3. Gene Lucero

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



Interested parties may submit written remarks by June 25, 2018 to SFTF-listening@epa.gov with the following subject: LS 16-2 Part 2



Reference Materials

- [Superfund Task Force website](#)
- [Superfund enforcement website](#)
- [EPA Cleanup Enforcement Model Language and Sample Documents database](#)
- [Options for Responding to Deficient Deliverables from PRPs \(June 30, 2011\):](#)
- [Revised Policy on Managing the Duration of RD/RA Negotiations \(9/28/2012\)](#)
- [Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of Remedial Design/Remedial Action at Superfund Sites \(6/19/1999\)](#)



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-listening@epa.gov with the following subject: LS 16.2 Part 2