

EPA Issues Guidance for Characterization and Remediation of Contaminated Sediment Sites Under CERCLA

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*Authors: Steven Jawetz
Beveridge & Diamond, P.C., February 28, 2017*

In a [Directive](#) sent to Regional Administrators on January 9, 2017, the U.S. Environmental Protection Agency (“EPA”) Office of Land and Emergency Management has identified eleven recommendations intended to facilitate the development, evaluation, selection and implementation of response actions at contaminated sediment sites under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). The Directive supplements, but does not supersede, EPA’s previous sediment site guidance documents issued in 2002 and 2005, and draws upon EPA’s experience at dozens of contaminated sediment sites – among the most complex and expensive environmental cleanups in the nation – to highlight the importance of risk reduction and adaptive management strategies in achieving remedial goals. EPA stresses its importance at sites with bioaccumulative contaminants where a response action is warranted in part because of risk to human health from consumption of fish or shellfish (*i.e.*, PCBs, dioxins and furans, or methyl mercury).

Although the Directive is not legally binding, some of its recommendations may help achieve the dual goals of remedy effectiveness and cost-effectiveness, and consequently stakeholders at sediment sites should consider the Directive’s recommendations when preparing Remedial Investigation and Feasibility Studies or otherwise

interacting with EPA. It remains unclear to what extent the EPA regional offices will implement the Directive's recommendations.

Recommendations for Site Characterization and Assessment

The Directive highlights the inherent tension between the desire to implement protective measures quickly and the need to definitively characterize site risks and carefully analyze alternative remedial approaches. Although EPA explicitly states the agency's bias towards initiating early response actions to eliminate, reduce or control immediate hazards, it also urges regional offices to carefully consider the level of risk reduction that can be achieved through such early response actions. The Directive encourages regional offices to gather information sufficient to support informed risk management at an early stage of the Remedial Investigation/Feasibility Study ("RI/FS") process, including data to assess the efficacy of Monitored Natural Recovery, evaluate background contaminant levels, and determine the potential for recontamination. Each of these factors can significantly influence the level of risk reduction that can be achieved through remedial action. The Directive also counsels that sediment toxicity tests should be designed to distinguish between adverse responses from site-related hazardous substances versus off-site and ubiquitous sources.

Recommendations for Remedy Design and Selection

Consistent with EPA's past sediment remediation guidance documents, the Directive is largely focused on optimizing risk assessment and reduction. It recommends that regional offices describe risk reduction

in terms of concrete monitoring endpoints that can be used to evaluate achievement of Remedial Action Objectives (“RAOs”), including an expected timeline for achieving RAOs in specific indicators (*i.e.*, sediments and fish tissue). The risk reduction expectations should be achievable, and should consider the limitations of models in predicting future conditions. The Directive also advocates for the use of adaptive management approaches, such as interim and contingency RODs, that can optimize decision-making through an iterative, structured approach in the face of uncertainty. In line with that suggestion, the Directive stresses the importance of the use of monitoring data to evaluate remedial effectiveness.

Clarification of CSTAG Process

An October 24, 2016 Government Accountability Office (“GAO”) Report identified two overarching challenges at large sediment sites – technical complexities and stakeholder involvement – and recommended that EPA update the procedure for regional offices working with the Contaminated Sediment Technical Advisory Group (“CSTAG”). Largely in response to the GAO Report, EPA’s Directive also amended the CSTAG Operating Procedures to provide clarity regarding what types of information and documentation EPA regional offices should prepare and provide to CSTAG in preparation for that Group’s meetings regarding complex sediment sites. These amendments will also provide guidance to stakeholders at sediment sites, who are often encouraged to participate in the CSTAG review process, regarding what materials the CSTAG will be considering in its review of EPA’s proposed remedial action.

EPA's Directive does not propose radical changes to how the regional offices and CSTAG work together with EPA Headquarters to characterize and assess site risks or to design, evaluate and implement remedial alternatives at sediment sites. Nonetheless, the Directive's recommendations reinforce the importance of risk assessment and the adaptive management strategies in remedy design and can serve as important benchmarks for stakeholders working with EPA to design reasonable and effective remedial actions at contaminated sediment sites.

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