

EPA Retracts CERCLA Remedy Selection Authority from Regional Offices for Remedies that Exceed \$50 Million



Prepared by:

Steven M. Jawetz, Pam D. Marks and Gayatri M. Patel
Beveridge & Diamond PC

LORMAN[®]

Published on www.lorman.com - August 2017

EPA Retracts CERCLA Remedy Selection Authority from Regional Offices for Remedies that Exceed \$50 Million, ©2017 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ✓ Unlimited Live Webinars - 120 live webinars added every month
- ✓ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ✓ Videos - More than 700 available
- ✓ Slide Decks - More than 1700 available
- ✓ White Papers
- ✓ Reports
- ✓ Articles
- ✓ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

EPA Retracts CERCLA Remedy Selection Authority from Regional Offices for Remedies that Exceed \$50 Million

Written by: Steven M. Jawetz, Pam D. Marks and Gayatri M. Patel – 5/11/17

On May 9, 2017, EPA Administrator Scott Pruitt issued two new delegations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) that limit to the Administrator (and possibly the Deputy Administrator) the authority to select remedies estimated to cost over \$50 million. One delegation concerns Superfund sites generally; the other relates to federal facilities. Previously, all remedy selection was delegated to the Assistant Administrator for Office of Land and Emergency Management and the Regional Administrators. The authority to sign Records of Decision estimated to cost less than \$50 million remains with those officials. A copy of the revised delegations and accompanying memorandum are available [here](#).

According to the Administrator, the purpose of the revisions is to place his office “more directly” in the remedy selection process and to “facilitate the more-rapid remediation and revitalization of contaminated sites and to promote accountability and consistency in remedy selection.” He also asked that the Regions confer with the Administrator’s Office “early on and throughout the process of developing and evaluating alternatives,” particularly for sites where the Regions anticipate that estimated cost of the preferred remedial alternative will exceed \$50 million.

The May 9 revised delegation may have significant impacts on the process for CERCLA remedy evaluation and selection, particularly at the most costly or complex NPL sites (sometimes referred to as “mega sites”). On the one hand, the involvement of the Administrator in the most costly remedies may reduce the likelihood of remedies with costs exceeding a billion dollars, like those at the Lower Passaic River in New Jersey and Portland Harbor in Oregon. On the other hand, how the Administrator may balance the sometimes conflicting perspectives and interests of the Regional Office, the relevant state, any involved Indian tribes, other interested stakeholders, and the potentially responsible parties (PRPs) at particular sites is unknown. Also unknown is how this new delegation will affect the role of the National Remedy Review Board, which reviews and provides comments to the pertinent Region on each proposed remedy estimated to cost over \$25 million (the cost threshold was recently increased to \$50 million on a pilot basis) in an effort to promote national consistency and sound decision-making.

Moreover, the request that the Regional Offices engage in early consultation while remedial alternatives are being evaluated could become a source of procedural confusion, as it potentially requires Regions to decide whether to involve the Administrator’s Office well before a Proposed Remedial Action Plan has been drafted. Similarly, instead of focusing their efforts just on the Region, PRPs will need to decide whether to engage the Administrator’s Office on a more routine basis at all mega-sites.

Whether the new delegations will accelerate the Superfund process at mega-sites in practice is uncertain, given the staffing and expertise needed to evaluate major decision documents and ensure that decisions are consistent with the National Contingency Plan. Even if

the Regions continue to fully staff document preparation, personnel likely will be needed at Headquarters to review the materials and advise the Administrator before decisions can be made. Substantive involvement by the Administrator in remedies proposed throughout the country may prove to be a bottleneck, particularly at the end of the fiscal year when many remedy decisions have typically been made. All parties involved with Superfund mega-sites will be paying close attention to how these delegations are implemented.

Beveridge & Diamond's Superfund practice helps clients plan and execute cost-effective strategies to manage significant potential liabilities for removal or remedial action and natural resource damages at sites across the country, including liabilities arising from contaminated sediment mega-sites, mining sites, landfills, and other situations involving contaminated soil or groundwater. We have worked at over 220 sites across the country that are subject to [CERCLA](#), and also help our clients with similar issues at corrective action sites under [RCRA](#) and related state statutes. For more information, please contact the authors.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.