

Superfund Task Force Final Report: A Superset of Recommendations

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On September 9, EPA's Superfund Task Force released its [final report](#) on recommendations to improve the Superfund program. This eighty-page document is the culmination of EPA's efforts that began with the initiation of the Superfund Task Force on May 22, 2017. EPA's [first report](#), issued on July 25, 2017, listed 42 recommendations for the Agency to consider and organized the recommendations into the following five goals:

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

This final report evaluates over a year of EPA review, and in many instances implementation, of the Task Force recommendations. Of particular interest to PRPs and developers, the report signals that EPA will continue the recently expanded role of the Administrator in the Superfund program, focus on getting sites deleted from the National Priorities List (NPL), expedite the pace of Remedial Design/Remedial Action (RD/RA) negotiations, and improve tools for providing comfort to third parties interested in developing Superfund sites. For the most part, these tools are not new; rather, EPA is encouraging increased use of existing tools the Agency believes are effective in implementing the Task Force recommendations.

Continued Administrator Oversight

Administrator Pruitt made Superfund a [focus](#) of his tenure at EPA and implemented measures designed to speed cleanup of Superfund sites. The report recommends continuing these measures, particularly Administrator approval of remedies over \$50 million and use of a priority list of sites that would benefit from direct Administrator involvement. Sites are moved off of this “Emphasis List” when they meet short-term milestones. As an added measure, EPA headquarters will become involved earlier in the RI/FS process at sites it considers “complex” regardless of whether they meet the \$50 million threshold, but the criteria that EPA headquarters will use in deciding where to get involved earlier in the process is not set out in the report.

While this approach has largely been ongoing since 2017, it marks a change from the previous EPA approval process. Prior to 2017, the majority of remedy selection was delegated to the regions regardless of the projected cost or complexity of a selected action. The elevated involvement in remedy selection seems designed to increase engagement and accountability at the highest level of the Agency, and in some cases, could be effective to tee up significant issues for early and decisive resolution. Yet, there are potential drawbacks to this approach. Elevation to the Administrator can result in delay, depending on the Administrator’s busy schedule. In addition, the monetary threshold of \$50 million no longer denotes a particularly complicated site and may not be the best proxy to determine the sites that need such elevated attention.

Increased NPL Deletions

Superfund sites cannot be deleted from the NPL until RA is complete and all cleanup goals are met. Not surprisingly, Superfund sites can stay on the NPL for a long time. To expedite cleanup and get sites out of the process more quickly, the report also includes recommendations targeted at deleting, or partially deleting, sites from the NPL. The recommendations encourage partial deletions, where cleanup is complete at a portion of the site allowing earlier reuse where possible. In addition, EPA is implementing management tools to track sites through the deletion process and remove obstacles more quickly. The report highlights the need to track institutional controls, as the technological remedy may be completed at the site, but the institutional controls have not been put in place.

Agency efforts appear to be working. According to the report, in FY 2018 EPA deleted 18 sites and portions of four, the largest number of site deletions since 2005. Three of these deleted sites — Fulton Terminals in New York, Whitehouse Oil Pits in Florida, and Frontier Hard Chrome in Washington — had been on the NPL since the first NPL listing in 1983.

EPA also evaluated tools to keep large sites from requiring NPL listing. The report promotes the use of RCRA and state cleanup actions to clean up sites that would qualify for the NPL (NPL-caliber sites) without actually listing them as superfund sites. This emphasis on state cleanup may have impacts on the pace of cleanup and the criteria used to measure cleanup success.

Expedited Pace of RD/RA Negotiations

In an effort to shorten the timeframe for consent decree negotiations, the report highlights available EPA tools to encourage PRPs to wrap up RD and RA more quickly. The report promotes bifurcating RD and RA where negotiating both is likely to be protracted, and using increased unilateral enforcement as a tool for speeding up completion. The report recommends a performance metric of 70% of RD and RA negotiations to be completed within a year and will hold the regions accountable for meeting this metric.

Renewed Commitment to Reuse and Redevelopment

With a stated goal to cleanup sites more quickly so that properties can get back into the communities, the task force provides recommendations aimed at encouraging redevelopment, which goes to the third and fourth goals of the report. These include increased use of the “look first” provisions in CERCLA settlements involving third parties who have assumed cleanup responsibilities at Superfund sites. Under this approach, EPA agrees to seek performance from a third party first before pursuing enforcement against settling PRPs, which provides a degree of certainty to settling parties. Along with this, the task force report encourages more frequent use of comfort letters to encourage redevelopment by Bona Fide Prospective Purchasers. However, the task force recommendations also discuss guidance that requires EPA regions to consult with headquarters prior to disbursing special account funds to Bona Fide Prospective Purchasers as an incentive to perform cleanup work, which could have the potential to slow down approval, to the extent these funds are available at all.

This report clearly shows the administration’s intentions to involve the Administrator more centrally in the Superfund process; complete the cleanup process, and encourage redevelopment. Time will tell whether these efforts bear fruit.

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