

ALI-ABA Course of Study
Hazardous Wastes and Site Remediation: Legal and Policy Developments

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Recent Developments in Superfund Site Remediation and Litigation

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**ALI-ABA Hazardous Waste Conference:
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I. Superfund Enforcement Update

A. EPA's Integrated Cleanup Initiative

Beginning this year, EPA is initiating a three-year strategy, the Integrated Cleanup Initiative, intended to improve the Agency's land cleanup programs. Through this Initiative, EPA will explore the opportunity to integrate and leverage the Agency's land cleanup authorities (Superfund Remedial, Removal, Federal Facilities, Enforcement, Brownfields, and Underground Storage Tanks) to accelerate cleanups, address a greater number of contaminated sites, and put these sites back into productive use while protecting human health and the environment.

In the 1980s and 90s, EPA's cleanup programs were much different than they are today. One of the key differences is that today's programs confront sites that are more dynamic and complex than those of the early years. Enforcement activities are even more critical to ensuring that responsible parties clean up these sites, thereby preserving Fund monies to be used to clean up other sites where viable responsible parties do not exist. Communities and key stakeholders want to be now, more than ever, full partners at the decision making table—from the discovery of contamination through its cleanup and the site's return to productive use.

EPA's enforcement program is exploring ways to contribute to this Initiative in several ways, including increasing enforcement earlier in the pipeline, rejuvenating the process for identifying responsible parties to support improved site assessment, and expediting remedial action by holding parties to negotiation timeframes and scheduled cleanup commitments.

B. OSRE's Interim Policy on Managing the Duration of RD/RA Negotiations, issued on September 30, 2009¹

The new Interim Policy provides revised EPA and DOJ procedures for managing the duration of negotiations with potentially responsible parties (PRPs) for cleaning up Superfund sites, with the objective of more promptly concluding negotiations so that cleanup can begin as soon as practicable.

The Interim Policy shifts from a paper-work intensive, formal approval process for extending negotiations to one in which the Regions engage in a dialogue with EPA's Headquarters and the Department of Justice (DOJ) about the progress of negotiations. Implementation of the Interim Policy involves earlier enforcement involvement at the proposed plan stage, the incorporation of contingency planning into the negotiation process, and engaging the Regional Offices, EPA Headquarters, and DOJ in a more systematic way that pushes negotiators to commit to specific timeframes and benchmarks throughout the process. As

¹ The full guidance is available at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rdra-neg-timeline-mem.pdf>. The attached fact sheet also provides additional information.