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EPA ADMINISTRATOR PRUITT TAKES OVER $50M SUPERFUND SITES

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On May 22, 2017, Administrator Scott Pruitt issued a Memorandum outlining actions for prioritizing the Superfund program, reviewing the remedy selection process, and establishing a task force to provide recommendations on an expedited timeframe to restructure the Superfund cleanup process.- In his Memorandum, Administrator Pruitt indicated he has "heard that some Superfund cleanups take too long to start and too long to complete." This is not news to the Potentially Responsible Parties (PRPs) involved in the cleanups, or the communities that have been impacted by the cleanups, since the Comprehensive Environmental Response, Compensation and Recovery Act (CERCLA) was first enacted in 1980, and subsequently reauthorized in 1986. Interested parties have sought CERCLA reform, without success.

Though CERCLA reform is not on the horizon, Administrator Pruitt claims that ongoing Superfund cleanup efforts "will be restored to their rightful place at the center of the agency's core mission." Toward that end, Administrator Pruitt is retaining authority to select remedies estimated to cost $50 million or more. Previously, this authority had been delegated to the assistant administrator for Office of Land and Emergency Management (OLEM) and the regional administrators.

In addition, Pruitt is establishing a task force to provide recommendations to: "restructure the cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country." The task force will be chaired by Albert Kelly, senior advisor to the Administrator, and shall include leaders from OLEM, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, EPA Region 3 (as the lead region for the Superfund program) and other offices as appropriate.

The actions for the task force will include:

- Streamline the Superfund program to result in faster cleanups and encourage private investment at sites during and after cleanups.
- Propose recommendations to overhaul and streamline the process used to develop, issue or enter into prospective purchaser agreements, bona fide prospective purchaser status, comfort letters, ready-for-reuse determinations and other administrative tools under the agency's existing authorities used to incentivize private investment at Superfund sites.
- Streamline and improve the remedy development and selection process, particularly at sites with contaminated sediment, to ensure that risk-management principles are considered in the selection of remedies at such sites, including input from the National Remedy Review Board and the Contaminated Sediments Technical Advisory Group.
- Utilize alternative and non-traditional approaches for financing site cleanups, as well as improvements to the management and use of Superfund special accounts.

- Reduce the administrative and overhead costs borne by parties remediating contaminated sites, including a reexamination of the level of agency oversight necessary.
- Improve the agency's interactions with key stakeholders under the Superfund program, particularly other federal agencies at federal facilities and federal potentially responsible parties, and expand the role that tribal, state and local governments, local and regional economic development zones and public-private partnerships play in the Superfund program.
- Propose recommendations for better addressing the liability concerns of state, tribes and local governments.

California environmental litigation attorneys at Bick Law LLP will continue to monitor Administrator Pruitt's actions concerning Superfund site cleanups exceeding $50 million, as well as the progress of his task force towards streamlining Superfund cleanups.