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SUPERFUND TASK FORCE PROVIDES RECOMMENDATIONS AND GOALS FOR SUPERFUND PROGRAM IN REPORT

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In May 2017, U.S. Environmental Protection Agency Administrator Scott Pruitt formed a Superfund Task Force with the goal to streamline and improve the Superfund program. On August 10, 2017, the new Superfund task force provided recommendations on cleaning up sites currently on the NPL in an expedited manner. The task force is cross populated with representatives from the Office of Land and Emergency Management and the Office of Enforcement and Compliance Assurance, and regional EPA offices.

The goals and recommendations of the report include:

- *Expediting Cleanup and Remediation.* To achieve this goal, EPA will develop a list of target sites that need immediate attention, along with monthly reports on the progress of the prioritized sites. It recommends reviewing sites that exceed $50 million, allocating resources to the prioritized sites, and employing best technologies to expedite cleanup.
- *Re-Invigorating Responsible Party Cleanup and Reuse.* To achieve this goal, EPA intends to assist parties in their cleanup efforts by offering incentives to expedite cleanup activities and using tools like designating states to lead cleanup operations, using financial incentives, reducing overlap and duplication at the government level, engaging third parties for certain tasks and looking for opportunities to reuse the sites.
- *Encouraging Private Investment.* To achieve this goal, EPA will encourage greater use of private sector tools and techniques to come up with new and innovative ways to assist in cleanup efforts can expedite the process and potentially lead to redevelopment of the site.
- *Promoting Redevelopment and Community Revitalization.* EPA sees the potential for redevelopment of former Superfund sites, and identified 20 sites for reuse and community development, conducting redevelopment training and engaging local communities in the process.
- *Engaging Partners and Stakeholders*. To achieve this goal, EPA will hold more regularly scheduled meetings with all parties involved about the cleanup process and the potential for redevelopment.

Many of these recommendations are not new, but Scott Pruitt is making them a priority with the goal of expediting the conclusion of cleanups and the subsequent beneficial reuse of the sites.-

Other recommendations in the report represent a significant change intended to move sites to completion faster than they have in the past. One significant change is the shift of authority for decisions to be handled out of EPA headquarters in Washington, D.C., rather than in the regional offices, as in the past. Centralizing the prioritization of the sites and the oversight of progress at these prioritized sites is intended to ensure that the prioritized sites are not slowed down by overworked regional offices.

By creating a top-10 list of prioritized sites, Scott Pruitt believes EPA will be able to focus on these sites and make more progress more quickly. As California Environmental Lawyers, it will be interesting to see how this potential shift to regional offices will impact

California's EPA regional office.

Stakeholders are hopeful that the recommendations might encourage cooperation by EPA and reduce the time and cost and unnecessary and duplicative studies at these sites. At some sites, investigative studies have delayed the cleanup process, some studies taking up to 10 years to complete, keeping sites on the National Priority List longer than necessary.-

Pruitt called for immediate action to identify and prioritize sites that pose a health risk. Within 60 days of the date of the report, EPA regional offices must develop a list of sites that can be deleted from the list because they already meet cleanup criteria.

There are 1,336 sites on the National Priority List (NPL) across the country in various stages of the cleanup process (according to the Center for Health, Environment and Justice).- The Superfund Task Force report does not provide criteria to identify the top-10 sites for prioritization, except to state that sites anticipated to cost over $50 million to cleanup are prioritized for review before listing on the NPL.-

Reading between the lines, Scott Pruitt, a known anti-regulation EPA Administrator who challenged in court EPA's Clean Power Plan and WOTUS rules as the Attorney General of Oklahoma, may be trying to reduce the number of sites on the NPL with the goal of eliminating altogether the Superfund program. This may seem a longshot given the number of sites on the list already, and the remaining contaminated aquifers and rivers across the country that may be in the queue to join the list. That said, if Pruitt's goal is to winnow down the list, he can achieve that in two ways: (1) do not add any more sites to the list; and (2) quickly achieve cleanup of the sites on the list and remove them.- Potentially Responsible Parties at such sites could potentially benefit from these two actions, if the regional offices are able to work quickly and cooperatively with the parties to achieve expedited cleanups. At certain sites, however, EPA is relying on outdated sampling data that will not result in the most cost effective or technically effective cleanup. At those sites, Pruitt's newfound goal to expedite the cleanup may be in tension with the PRPs desire to use the most recent and most credible sampling data to establish the best and most cost-effective remedy. Similarly, fast cleanups may not be as effective and environmental groups may challenge such remedies in court.- Most importantly, though Pruitt may seek to expedite cleanups, many of the sites are behemoth sites with approved Records of Decisions and the remedies could take decades. Pruitt will be long gone from the Administrator's office of the EPA before most of those sites will have made any progress whatsoever.-

PRPs are well-advised to use Pruitt's goals to their full advantage by pushing for expedited, quicker, less expensive cleanups, so long as those cleanups are effective.- The behemoth sites, including regional groundwater contamination sites and large river contaminated sediment sites, which are divided into Operable Units (OUs) may be better managed as separate Superfund sites, rather than OUs.- Otherwise, the regional sites, like the San Fernando Valley Superfund Sites and the San Gabriel Valley Superfund Sites, may never come off the NPL while remediating one or two OUs with lingering contamination.- The Regional EPA offices manage these large sites by maintaining the sites cannot be deemed clean, and thereby come off the NPL, until all of the OUs are deemed clean.- Some of the OUs are decades away from being deemed clean.- In furtherance of Pruitt's goal to expedite cleanups, it may make sense to close out OUs with final, not interim, remedies and remove them from the regional Superfund site, or, in the alternative, list them as separate sites on the NPL and remove them individually as they become clean.

Separately, PRPs at sites that are prioritized and expedited by EPA will need to similarly expedite allocation processes to ensure there are parties willing to enter into Consent Decrees or Administrative Orders with EPA to implement the expedited cleanups.- In some cases, this could prove problematic if parties are seeking additional technical information to assist with the allocation process. PRPs may be forced to take a leap of faith and negotiate with EPA first and then allocate second.

At any rate, EPA's regional offices will need to pivot to tackle priority sites and move them forward. PRPs at these sites should be prepared to use the prioritization to negotiate reasonable cleanups and settlements with EPA.

To view the report, see: https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf. The California Environmental Lawyers at Bick Law LLP will continue to follow Pruitt's next steps and impacts of the Superfund Task Force.