



Results of the Evaluation of the Interim Policy on Managing the Duration of Remediation Design/Remedial Action Negotiations

Office of Site Remediation Enforcement

In fiscal year (FY) 2012, the Office of Site Remediation Enforcement (OSRE) conducted an evaluation of the implementation and effectiveness of the 2009 Interim Policy on Managing the Duration of Remedial Design/Remedial Action (RD/RA) Negotiations (“Interim Policy”). The objectives of the evaluation were to analyze implementation, review data on remedial design/remedial action (RD/RA) negotiation durations, determine effectiveness, and look for possible ways to improve the Interim Policy.

BACKGROUND AND POLICY OBJECTIVES

Potentially Responsible Party (PRP) RD/RA cleanup is a top priority for EPA’s Superfund Enforcement program. With the overarching goal of accelerating the pace of RD/RA negotiations in order to begin cleanup as soon as practicable, OSRE issued the Interim Policy on September 30, 2009. Recognizing that the duration of negotiations was increasing while the number of settlements were decreasing, OSRE sought to strengthen our negotiation practice, shorten the duration of negotiations, and achieve timely settlements by fundamentally changing the way we manage RD/RA negotiations. The main objectives of the Interim Policy were to:

- Move away from a paper-work intensive approval process;
- Focus on advanced planning and the use of best negotiation practices;
- Develop a robust dialogue-based approach with systematic elevation and expectations at each stage; and

- Broaden the scope of tracking negotiations beyond RD/RA negotiation starts to include post-ROD activities, which also have an impact on the start date of enforcement-lead cleanups.

The Interim Policy shifts away from a system that requires Regions to request written approval to continue negotiation beyond certain milestones to a process that involves engaging the Regions, Headquarters (HQ), and the Department of Justice (DOJ) in a dialogue about the progress of the negotiations. The rationale behind this shift was that, through these dialogues, attention would be focused on the issues that may be impeding negotiations and jointly explore solutions.

EVALUATION PROCESS

As part of the Interim Policy, OSRE committed to conducting an evaluation that consisted of an analysis of Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) data and a survey that was sent to each Region, DOJ, and the regional liaisons in October 2011. The survey included questions about the use of enforcement/settlement tools and negotiation plans, useful as well as problematic aspects of the Interim Policy, and overall effectiveness of the Interim Policy. After receiving the Regional survey responses, OSRE held conference calls with each Region to discuss the survey results, Region-specific issues, and the Region’s experience in implementing the Interim Policy.

EVALUATION RESULTS

Based on the Regional surveys and follow-up conference calls, there was general support and positive feedback about the Interim Policy as compared to the previous process. Among the most useful aspects noted were the verbal status conference system versus the paper prior written approval process and helping move the case through the Regions, DOJ, and HQ.

Aspects of the Interim Policy the Regions found more problematic were scheduling status conferences, especially with upper management and DOJ, and meeting the ambitious deadlines for negotiation completion.

OSRE compared the mean duration of negotiations during the evaluation period (FY10-FY11)¹ to the mean duration of negotiations for the five years preceding the implementation of the Interim Policy.²

Time period	Mean duration: ROD to neg. start	Mean neg. duration	# of completed neg.
FY 05-09	296 days	449 days	101
FY 10-11	239 days	269 days	24

The drop in the mean negotiation durations from 449 days to 269 days is encouraging, represents a trend in accelerated negotiations, and indicates that the Interim Policy may be helping to accelerate the pace of negotiations. However, due to the small number of cases during the evaluation period and the fact that this data does not account for negotiations started after the Interim Policy and are still ongoing, it is difficult and premature to conclude that the Interim Policy has had a direct effect on

negotiation durations.³ OSRE will continue to track negotiation durations and we hope that the declining duration trend will continue.

A key component of the 2009 Interim Policy was to start tracking the amount of time it takes to start negotiations after the ROD is issued. OSRE therefore compared the duration of time between the record of decision (ROD) and negotiation starts/ SNL between the two data sets. During FY2005-2009, the mean duration of 296 reflects the fact that for many sites, negotiation starts were often delayed well over 200 days. Although the mean duration during the evaluation period is 239 days, that number is misleading due to some extreme cases.⁴ For most negotiations, the duration between the ROD and SNL was under or close to 90 days.

As part of the policy evaluation, OSRE also reviewed negotiations where status conferences were triggered and compared that number to the number of status conferences that were actually held. Overall, only a third of these status conferences occurred. In some situations, the Regions explained that even if formal status conferences were not held, HQ was highly involved and was routinely updated on the progress of negotiations.

RECOMMENDATION:

Finalize the Policy with modifications: Based on the evaluation results, OSRE plans to finalize the Interim Policy with a few modifications, e.g., providing a process for monitoring negotiations that continue beyond 300 days. Once finalized, OSRE plans to re-issue the policy as “Managing the Duration of RD/RA Negotiations.”

¹ This data set includes negotiations that started after the start of FY10 and were completed by the end of FY11.

² This data set includes negotiations that started after the start of FY05 and were completed by the end of FY09.

³ As of 9/30/11, there were approximately 15 ongoing RD/RA negotiations, most of which started after the Interim Policy was issued. Of those that started after the Interim Policy, only 2 were over 500 days.

⁴ In two cases, the duration between the ROD and negotiation start was over 1000 days. Excluding those two cases, the mean duration would be 131 days.