




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Revised Policy on Managing the Duration of Remedial Design/Remedial Action Negotiations

**FROM:** Elliott J. Gilberg, Director   
Office of Site Remediation Enforcement

**TO:** Regional Counsel, Regions II-VII, IX, and X  
Director, Office of Environmental Stewardship, Region I  
Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice, Region VIII  
Superfund Division Directors, Regions I-X  
Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice

This memorandum sets forth revised procedures for managing the duration of remedial design/remedial action (RD/RA) negotiations. The Office of Site Remediation Enforcement's (OSRE) objective is to strengthen our negotiation practice, shorten the duration of negotiations, and achieve timely settlements.

This Revised Policy on Managing the Duration of Remedial Design/Remedial Action Negotiations ("Negotiation Policy") supersedes that portion of prior guidance specifically related to requesting approval to continue RD/RA negotiations beyond certain set dates.<sup>1</sup> The Negotiation Policy also supersedes the 9/30/09 Interim Policy on Managing the Duration of RD/RA Negotiations in its entirety and addresses issues that were raised during the Interim Policy evaluation, which was completed in May 2012.<sup>2</sup> For all new RD/RA negotiations, the Regions should follow the processes set forth in this memorandum. We will work closely with our counterparts at the Department of Justice (DOJ) to implement this revised policy.

<sup>1</sup> See Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of Remedial Design/Remedial Action at Superfund Sites, OSRE, June 17, 1999, pp. 5-6 ("Negotiation Strategies").

<sup>2</sup> See Results of the Evaluation of the Interim Policy on Managing the Duration of RD/RA Negotiations, May 2012, available at: <http://www.epa.gov/enforcement/cleanup/documents/superfund/factsheet/rdra-eval-results-2012.pdf>. Modifications include: providing a process for monitoring negotiations that continue beyond 300 days (see II.A.1.d.); clarifying who on the negotiation teams has the responsibility for scheduling status conferences (see II.A.1.); and addressing some CERCLIS-related issues about bi-furcating RD and RA and SNL waivers (see II.A.2-3).

## **I. Purpose – To Strengthen the Negotiation Process**

Meeting the Agency's cleanup goals is a top priority for Superfund enforcement, and enforcement plays an important role in helping achieve timely RD/RA cleanups. Through our efforts in efficiently negotiating RD/RA settlements or using other enforcement tools, we can directly impact site cleanup. We believe by working together on a systematic approach to negotiations, where settlement is preferred but other potential enforcement options may be part of the strategy, EPA can advance the goals of the cleanup program, improve the negotiation process, promote faster RD/RA cleanups, and help complete construction of the remedy.

The duration of RD/RA negotiations has grown over the years, though negotiations concluded in the last few years suggest that there has been some improvement.<sup>3</sup> OSRE is committed to work with the Regions, the Superfund Program, and DOJ to find ways to shorten these timeframes in order to begin cleanups as soon as practicable. Therefore, OSRE is implementing fundamental changes in managing RD/RA negotiations by shifting from a system that requires Regions to request approval from Headquarters to extend negotiations past certain milestones, to one in which Regions engage in a dialogue with Headquarters and DOJ about the progress of negotiations. Our goal is to empower negotiation teams to engage in earlier, more frequent dialogues with an eye toward collectively resolving issues slowing progress toward settlement.

As the Agency faces budget adjustments and continues to seek improved efficiencies, the goals of the Negotiation Policy are even more critical. By focusing our efforts to shorten negotiation timeframes, we can reduce resources devoted to negotiating RD/RA settlements.

## **II. Policy Implementation**

The Negotiation Policy emphasizes promptly concluding RD/RA negotiations and more aggressively utilizing our enforcement tools. Implementation of this process involves several key elements: (1) earlier enforcement involvement at the Proposed Plan stage; (2) the incorporation of contingency planning into the negotiations process; and (3) engaging Office of Regional Counsel (ORC), Program Offices, OSRE, and DOJ in a more systematic way that urges negotiators to commit to specific timeframes and benchmarks throughout the process. We believe these are ambitious yet realistic expectations of all those involved with the negotiations.

EPA should evaluate all available enforcement and settlement tools throughout the negotiation process, including: (1) bifurcation of the RD and RA to get work started sooner; or (2) the potential/need for fund-lead or enforcement-leverage options, e.g., mixed funding, mixed work, and issuing unilateral administrative orders (UAOs) for all or part of the work. We encourage use of EPA's UAO authority in appropriate cases as a key component to expediting the RD/RA negotiation process. Current guidance promotes the use of a UAO in the face of unsuccessful negotiations, either by issuing a UAO with a delayed effective date, issuing a UAO for RD only while continuing to pursue a settlement for RA, or issuing UAOs to all appropriate

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<sup>3</sup> Median duration has increased from 197 days during 1990-1993 to 305 days during 2004-2008. Data Source: CERCLIS, November 2008.

parties for RD and RA.<sup>4</sup> Potentially Responsible Parties (PRPs) should know during negotiations that EPA is willing and ready to issue a UAO if they unreasonably delay settlement.

As negotiations progress, status conferences will be set up to discuss the best ways to overcome obstacles and move forward toward settlement or other enforcement options. During these conferences, participants will discuss the associated benchmarks and address situations in which the benchmarks have not been met. These status conferences will replace the former system of requesting Regional Administrator approval to extend negotiations past 120 days after issuing a Special Notice Letter (SNL), and will replace requesting prior written approval from the Division Director/RSD/OSRE to extend negotiations past 180 days, and the Office Director/OSRE to extend negotiations past 240 days. The dialogue-based system provides a forum for addressing and elevating issues and is a more effective process compared to the paperwork intensive prior approval system. The Roles Chart will be amended to reflect these changes to the process for continuing negotiations.

### **A. Negotiation Status Conferences: Benchmarks and Accountability**

Dialogue and planning will drive this new approach. Through systematically elevated status conferences, we will focus our attention on understanding the reasons for delays and explore strategies to resolve them. To implement this revised system, we developed a timeline for setting up status conferences based on signing of the Record of Decision (ROD), issuance of SNL, and conclusion of negotiations. The conferences themselves could be incorporated into regional dockets, set up as conference calls, or scheduled to correspond with other meetings or conferences. If the status conference date falls within either two weeks before or two weeks after a scheduled Regional docket, the conference date may be adjusted to coincide with the scheduled docket. This will take advantage of the fact that DOJ, Headquarters, and Regional staff are already scheduled to participate in a meeting or a call.

The initial expectation is the development of a RD/RA Negotiation Plan, including the overall strategy, benchmarks, and deadlines, prior to the ROD.<sup>5</sup> The Negotiation Plan would include, for example: when and under what conditions the Region could issue a UAO for some or all of the work; consideration of an Administrative Order on Consent (AOC) for RD; or, if applicable, an analysis of relevant case law. The Negotiation Plan would also take into account, as needed, coordination with Natural Resource Trustees, the State, and/or the involvement of Federal PRPs. When developing the Negotiation Plan, the Regional case attorney and the Remedial Project Manager should establish firm negotiation schedules and identify potential obstacles along with strategies to address them.<sup>6</sup> A Negotiation Plan template that incorporates the necessary elements is attached (Attachment A).

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<sup>4</sup> See Negotiation Strategies, June 17, 1999, pp. 5-7; Integrated Timeline for Superfund Site Management, OSWER Directive Number 9851.3, June 11, 1990, p. 6; Superfund Enforcement Strategy and Implementation Plan, Office of Waste Programs Enforcement, September 26, 1989, p.19.

<sup>5</sup> See CERCLA Enforcement Project Management Handbook, November 2002, p. 8-1 (“Enforcement Handbook”). For a list of topics to be included in the Negotiation Plan, see Section 8.2.B.1 of the Enforcement Handbook, available at: <http://intranet.epa.gov/oeca/osre/documents/hbk-pdf/chapter8.pdf>.

<sup>6</sup> The Regional case attorney and Remedial Project Manager will draft the initial Negotiation Plan, which will be finalized with input from the DOJ attorney once he or she is assigned.

During this process, the negotiation team can determine whether it would be appropriate to include an OSRE staff person as part of the team, if one has not already been involved. Potential candidates for OSRE participation in the negotiations are those that may require prior written approval in the future (e.g., possible special account disbursement, sites greater than \$100 million, etc.) or those where the Region anticipates other complexities associated with the case. An OSRE participant also could help expedite the status conference process. The Regional case attorney can contact the OSRE Regional Liaison who will raise the request for greater OSRE support.

The other baseline expectation is that the Regions will submit the Negotiation Plan, along with the Pre-Referral Negotiation (PRN) package to DOJ, approximately 30 days after the ROD.<sup>7</sup> These expectations are already established in current guidance and would assure that the negotiation team addresses issues that often delay the negotiations.<sup>8</sup> In some cases, a partially drafted PRN can be submitted prior to the ROD and then supplemented as necessary. A partial PRN should include key elements, such as the description of the site, identification of PRPs and their liability and defenses, identification of any state or trustee involvement, any potential federal PRPs and contacts to date, and any special circumstances.

## **1. Timeline for Tracking Negotiation Status**

Generally, RD/RA negotiations start on the date the SNL is issued.<sup>9</sup> EPA guidance anticipates that the SNL will be issued no later than 90 days after the ROD is issued.<sup>10</sup> Using this 90-day timeframe is consistent with, and integral to, the policy of submitting the PRN and Negotiation Plan to DOJ shortly after the ROD is issued and takes into account the 30-day comment period that DOJ has to review the PRN. See Section II.B. for the process to follow if SNL is delayed beyond 90 days after the ROD is issued.

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<sup>7</sup> Note: DOJ has 30 days of receipt of a complete PRN to provide comments to the Region, *see* Pre-Referral Negotiation Procedures for Superfund Enforcement Cases, October 12, 1990, p. 8. DOJ uses the PRN to assign an attorney to the case.

<sup>8</sup> *See* Pre-Referral Negotiation Procedures for Superfund Enforcement Cases, October 12, 1990, p. 7 (“Identification of the ROD (or the most recent version of the draft ROD or proposed plan if the ROD is not yet issued), which will be an attachment for informational purposes, and discussion of significant remedy issues, such as public, state or local government, or RP opposition to the proposed plan to chosen remedy, if known”) (listing the information that should be included with the PRN); Enforcement Handbook, November 2002, p. 8-3 (“Generally the pre-referral package should be provided to DOJ at least 60 days prior to the issuance of the RD/RA Special Notice Letters”), p. 8-10 (“The detailed RD/RA negotiation plan, in combination with the site overview and other existing components of the site management plan . . . should comprise the pre-referral litigation report”).

<sup>9</sup> *See* Superfund Program Implementation Manual, Fiscal Year 2012, OSWER Directive 9200.3-14-1G-W, March 20, 2012 at IX-17.

<sup>10</sup> *See* Enforcement Handbook, November 2002, p. 8-3 (“Issuance of special notice should occur between the time the Proposed Plan and draft Feasibility Study (FS) are released to the public, and the date the ROD is signed, or shortly thereafter”); Integrated Timeline for Superfund Site Management, June 11, 1990, p. 2 (“Issuing special notice for RD/RA shortly before or upon signature of the ROD”) (listing key steps in cleanup process).

Our goal is to complete RD/RA negotiations within 120 days. For situations where that is not the case, we developed the following timeline that will apply to new RD/RA negotiations, using that 120-day timeframe as a baseline and understanding that situations will sometimes necessitate additional time:

- Day 120 From SNL – Negotiation Status Conference 1 (see II.A.1.a.)
- Day 240 From SNL – Negotiation Status Conference 2 (see II.A.1.b.)
- Day 300 From SNL – Negotiation Status Conference 3 (see II.A.1.c.)

The attached flowchart illustrates each stage of the timeline (Attachment B). For each status conference, examples of benchmarks<sup>11</sup> that would be expected to be completed at that stage of negotiation are listed below as well as expected outcomes of the conferences. OSRE's Regional Liaison will coordinate with the Regional case attorney to schedule the status conferences.

- a. Negotiation Status Conference 1 at Day 120 from SNL: If a settlement has not been sent out for signature by Day 120 from the SNL date, there will be a conference with the Regional and DOJ case attorneys, Regional Counsel Branch Chief, Superfund Program Section Chief, and the OSRE Regional Liaison, who will evaluate status based on benchmarks in the Negotiation Plan, identify barriers, and elevate issues if appropriate.
  - i. Benchmarks: Examples - drafted UAO for RD/RA or RD; enforcement leverage analysis; and analysis of Fund-lead RD or RD AOC potential.
  - ii. Negotiation Plan will be revised with concrete dates for every step.<sup>12</sup>
  - iii. Status Memo: the Regional case attorney will submit a short status memo to the Regional Counsel, the Superfund Division Director, and Assistant Chief or Senior Attorney/DOJ, copying the RSD Branch Chief and Regional Liaison, summarizing the Status conference and the strategy for moving forward.<sup>13</sup>
- b. Negotiation Status Conference 2 at Day 240 from SNL: If a settlement has not been sent out for signature by Day 240 from the SNL date, there will be a conference with the Regional Counsel Branch Chief, Superfund Program Branch Chief, Division Director/RSD/OSRE, and Assistant Chief or Senior Attorney/DOJ.
  - i. Benchmarks: Examples – look for progress on Negotiation Plan; determine a deadline for issuing UAO; UAO ready to issue or issue with delayed effective date; drafted AOC for RD.

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<sup>11</sup> The Negotiation Plan would include the site-specific benchmarks and associated deadlines.

<sup>12</sup> If negotiations proceed according to the Plan, subsequent Negotiation Status Conferences would be expected to be brief check-in meetings to go over the schedule for negotiation completion. However, if additional issues are raised that will delay negotiations, the Negotiation Plan should be revised and subsequent Negotiation Status Conferences should address those additional issues.

<sup>13</sup> The Status Memos can be informal (e.g., bullet points in an email) and are meant to provide a brief overview of the current situation, outcome of the conference, and next steps. Unless warranted by a particularly complex set of issues, these Status Memos should not exceed one or two paragraphs.

- ii. Status Memo Update: the Regional case attorney will submit an updated status memo to the Regional Counsel, Superfund Division Director, Office Director/OSRE, and Assistant Chief or Senior Attorney/DOJ, summarizing the status conferences and the strategy for moving forward. The memo will identify whether a UAO has been prepared, explain any rationale for not doing so, and expressly justify the decision to continue negotiations.
- c. Negotiation Status Conference 3 at Day 300 from SNL: If a settlement has not been sent out for signature by Day 300 from the SNL date, there will be a conference with the Regional Counsel, Superfund Division Director, Office Director/OSRE, and Section Chief or Deputy Chief/DOJ.
  - i. Benchmarks: Development of a focused agenda with recommended options for specific next steps.
  - ii. Status Memo Update: the Regional case attorney will submit an updated status memo to the Regional Counsel, Superfund Division Director, Office Director/OSRE, and Section Chief or Deputy Chief/DOJ summarizing the status conferences and the strategy for moving forward. The memo will attach a draft UAO if appropriate and will recommend whether to continue negotiations and how to assure a very prompt (< 45 days) conclusion.
- d. Additional Negotiation Status Conferences: These conferences would continue to be scheduled every 60 days until the settlement has been sent out for signature. The parties may establish an alternative check-in process if warranted by the negotiation situation.
  - i. Status Memo Update: After each subsequent status conference, the Regional case attorney will submit an updated status memo to the Regional Counsel, Superfund Division Director, Office Director/OSRE, and Section Chief or Deputy Chief/DOJ summarizing the Status conferences and the strategy for concluding negotiations, either through settlement or UAO.
- e. Monitoring Consent Decree (CD) Lodging and Entry
  - i. According to EPA guidance, DOJ should lodge the CD within 30 days of receipt of the final executed settlement from the Region and should move for entry of the CD within 45 days after lodging (assuming no significant comments).<sup>14</sup> We encourage the Regions to work with DOJ, and OSRE where appropriate, to have the settlement before the Court as quickly as possible in order to get the cleanup started. As the Regional Case attorney monitors the progress of the case after referral, he or she should promptly elevate any unreasonable delays.
- f. Managing Status Conference Schedules: OSRE will maintain Regional reports on ongoing and upcoming RD/RA negotiations and the schedule for possible status conferences based on the timing of the RODs and SNLs. OSRE's Regional Liaisons will distribute these reports quarterly to

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<sup>14</sup> Pre-Referral Negotiation Procedures for Superfund Enforcement Cases, October 12, 1990, p. 12 (issued by OECA and OSWER and concurred by Assistant Attorney General, Environment and Natural Resources Division/DOJ).

the Regions (case attorneys and Branch Chiefs), DOJ, and the RSD Branch Chief so that all parties are informed about upcoming status conferences. A template for the quarterly tracking report is attached (Attachment C).

2. **Waiver of 122(a)**: In certain situations the negotiation team may recommend, pursuant to Section 122(a), waiving Special Notice procedures, but still pursue RD/RA negotiations or recommend issuing a UAO without engaging in negotiations. In those cases, a Section 122(a) waiver should be signed promptly and the timing of Status Conferences will follow the same schedule as the standard negotiation timeline, using the date the 122(a) waiver is signed as the start of negotiations in CERCLIS.<sup>15</sup>
3. **Subsequent Negotiations**: If a Region issues an AOC or UAO for RD or if settlement is reached or an order issued for a portion of the RA, the date of that settlement or the date the order is issued will serve as (a) the completion date for the initial negotiations and (b) the start date for the subsequent negotiations. For the subsequent RA negotiations, the Region should establish a new RD/RA negotiation in CERCLIS. Alternatively, the Region can issue new SNL or a 122(a) waiver of SNL to initiate the subsequent negotiations. For the subsequent RA negotiations, the timing of the Status conferences will follow the same schedule as the standard negotiation timeline.<sup>16</sup>

## **B. Deviations from the RD/RA Negotiation Tracking Timeline**

1. **Delayed Special Notice**: When SNL is not issued 90 days after the ROD, the following process should be used to keep the negotiation start as timely as possible. OSRE's Regional Liaison will coordinate with the Regional case attorney to schedule the status conferences.
  - a. **Day 90 From ROD - SNL Status Conference 1**: If SNL has not been issued by Day 90 from ROD, there will be a conference with Regional Counsel Branch Chief, Superfund Program Section Chief, Regional and DOJ case attorneys (if PRN has been submitted and a case attorney has been assigned), and OSRE Regional Liaison who will evaluate status, identify barriers, and elevate issues if appropriate.
    - i. Negotiation Plan will be revised with concrete dates for every step.
    - ii. Benchmarks: SNL drafted; CD drafted.
  - b. **Day 150 from ROD - SNL Status Conference 2**: If SNL has not been issued at Day 150 from ROD, there will be a conference with Regional Counsel Branch Chief, Superfund Program Branch Chief, Division Director/RSD/OSRE, and Assistant Section Chief or Senior Attorney/DOJ

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<sup>15</sup> See Superfund Program Implementation Manual, Fiscal Year 2012, OSWER Directive 9200.3-14-1G-W, March 20, 2012 at IX-17.

<sup>16</sup> See *id.*, at IX-17.

(if PRN has been submitted and a case attorney has been assigned) who will evaluate status, identify barriers, and elevate issues if appropriate.

- i. Negotiation Plan will be revised with concrete dates for every step.
  - ii. Benchmarks: Documentation of what was discussed at the Regional SNL status conference; progress on Negotiation Plan.
  - iii. Status Memo: the Regional case attorney will submit a short status memo to the Regional Counsel, Superfund Division Director, Office Director/OSRE, and Assistant Section Chief or Senior Attorney/DOJ (if PRN has been submitted and a case attorney has been assigned) summarizing the status conference and the plan for issuing SNL.
- c. **Additional SNL Status Conferences:** These conferences would continue to be scheduled every 30 days until the SNL is issued. The parties may establish an alternative check-in process if warranted by site-specific circumstances.
- i. Status Memo Update: After 60 additional days (i.e. day 210), the Regional case attorney will submit a memo to the Regional Counsel, Superfund Division Director, Office Director/OSRE, Director/Office of Superfund Remediation and Technology Innovation (OSRTI), and Assistant Section Chief or Senior Attorney/DOJ (if PRN has been submitted and a case attorney has been assigned) recommending a specific and prompt timetable to issue SNL.
2. **Site-Specific Exception Plans:** In rare cases, e.g., those involving requests for mixed funding/mixed work, there may be negotiation situations that the Region believes warrant an exception to the standard negotiation timeline. In those cases, the Regions will use the process below to request an exception:
- a. **Day 90 From ROD:** The negotiation team will develop a proposal for a site-specific alternative schedule, including a detailed justification memo, and submit the proposal to the Division Director/RSD within 90 days of issuing the ROD. Once the proposal is discussed and the alternative timeline agreed upon by OSRE and the negotiation team, that site-specific schedule will govern activities and expectations for the negotiations, including the timing of any necessary Negotiation Status Conferences.
  - b. If a Region issues, or plans to issue, an AOC for RD before the SNL is due (90 days after the ROD), the Region will follow the Site-Specific Exception Plan process.
  - c. Once the Site-Specific Exception Plan has been approved by Headquarters, the date of that approval should be reported in CERCLIS as a SubAction to the negotiations.<sup>17</sup>

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<sup>17</sup> See Superfund Program Implementation Manual, Fiscal Year 2012, OSWER Directive 9200.3-14-1G-W, March 20, 2012, pp. IX-18.



### **III. Distinguishing Negotiation Moratorium and Negotiation Timelines**

CERCLA Section 122(e)(2) provides a moratorium on any enforcement actions under Section 106. Under Section 122(e)(2)(B), PRPs have 60 days from the date of receipt of SNL to submit a good faith offer to EPA. If EPA receives a good-faith offer, the PRPs have another 60 days during which negotiations can continue without EPA commencing a Section 106 enforcement action or funding a remedial action. Current policy on negotiation extension requests cites the statutory negotiation moratorium as a “benchmark for measuring the timeliness of RD/RA negotiations.”<sup>18</sup> There is no EPA policy or statutory requirement for continuing the moratorium beyond 120 days, and the former OSRE extension request-and-approval system related only to continuing negotiations, not to extending the statutory moratorium on taking an enforcement action.<sup>19</sup> Similarly, the Negotiation Policy will continue to use the 120-day moratorium as a “benchmark” for when we believe negotiations should be complete, but it will also not involve any extension of the moratorium. When we amend the Roles Memo to implement the revised system, this distinction between the statutorily imposed moratorium and the EPA policy of permitting negotiations to continue will be clarified.

### **IV. Disclaimer**

This memorandum is intended solely for the guidance of employees of EPA. It is not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States of America. EPA reserves the right to act at variance with this document and to change it at any time without public notice.

#### Attachments

cc: Superfund Legal Branch Chiefs, Regions I-X  
Karen Dworkin, DOJ  
DOJ Assistant Section Chiefs  
James Woolford, OSRTI  
Kenneth Patterson, OSRE  
Karin Leff, OSRE  
Monica Gardner, OSRE

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<sup>18</sup> Negotiation Strategies, June 17, 1999, p. 2.

<sup>19</sup> See *id.*, p. 3 at note 4.

**ATTACHMENT A**

**NEGOTIATIONS PLAN TEMPLATE**

*Regions should use or modify this Negotiations Plan according to regional practice.*

**Date:** \_\_\_\_\_

**Subject:** \_\_\_\_\_ Superfund Site, SSID, OU, RD/RA Negotiations Plan

**From:** (staff attorney)  
(RPM)

**To:** (as appropriate: Program and Legal Branch Chiefs)

**cc:** (as appropriate)

I. The purpose of this memorandum is to outline a negotiations plan for RD/RA negotiations for the \_\_\_\_\_ Superfund Site, OU \_\_\_\_.

Identify RPM/OSC, other relevant staff

Brief description of Work and costs to be recovered.

Objectives of negotiations, *i.e.*, all work? All costs?

II. Schedule [for each item, add expected date]

A. Prior to PRN:

Request cost documentation: \_\_\_\_\_

Review cost package: \_\_\_\_\_

Review Admin record: \_\_\_\_\_

Review PRP search: \_\_\_\_\_

Schedule supplemental PRP work: (Title Search, etc.) \_\_\_\_\_

Compile address list for all PRPs and counsel: \_\_\_\_\_

First Draft Proposed Plan: \_\_\_\_\_

First Draft CD: \_\_\_\_\_

First Draft SOW: \_\_\_\_\_

Identify issues that need resolution prior to SNLs:

B. Proposed Plan issued: \_\_\_\_\_

C. Contact State Environmental Agency, state and/or federal natural resource trustees to determine participation:  
\_\_\_\_\_

D. Consider redraft of PRN, CD, SOW as necessary based on ROD to be issued, and any issues raised during public comment period

E. ROD: \_\_\_\_\_ (generally within 60 days of Proposed Plan)

Attorney review of ROD \_\_\_\_\_

ARARs analysis complete \_\_\_\_\_

F. Formal notification to state and NRD trustees: \_\_\_\_\_

## Negotiations Plan Template

G. PRN to DOJ: \_\_\_\_\_ (within 30 days of ROD)

- Date DOJ attorney assigned: \_\_\_\_\_
- Initial comments sent by DOJ: \_\_\_\_\_
- Resolve issues raised in comments from Trustees, State \_\_\_\_\_
- Resolve issues relating to whom SNLs are issued \_\_\_\_\_

H. 120 Day Benchmark

- SNLs issued: \_\_\_\_\_ (within 90 days after ROD)(Day 0)
- GFO received: \_\_\_\_\_ (Day 60)
- Schedule for meetings/conference calls
- CD to be sent to PRPs for signature: \_\_\_\_\_(Day 120)

III. Site Specific Exception Plan: If the case team determines that it believes the situation warrants an exception to the standard negotiation timeline (*i.e.*, anticipated delays in issuance of SNLs or more than 120 days needed for negotiations), the team should submit a site specific exception proposal to Director/RSD/OSRE within 90 days from issuance of the ROD \_\_\_\_\_.

IV. List of Known Substantive Issues Expected to Affect Timing of Negotiations  
Analyze for Potential Impediments to Timely Settlement/Strategy for Addressing Each Issue

A. PRP liability issues:

B. Other PRP Issues:

C. Technical Issues:

D. State and NRD issues:

E. Leverage Analysis/Settlement Tools:

V. Contingency Planning for alternative enforcement and settlement approaches to prevent extended delays in getting the cleanup started.

UAO analysis (for RD or RD/RA, delayed effective date, enforcement)

AOC for RD analysis

Resource/funding needs, Superfund State Contract

Start Drafting UAO and/or AOC for RD if negotiations are going slowly:  
Day 110 from SNL

Finalize Admin Orders (UAO, AOC): 30 days after Day 120

VI. Conference Schedule if additional time beyond 120 days is needed:

*End of 120 days:* If no agreement, conference with Regional and DOJ staff attorneys, Regional Counsel Branch Chief, Superfund Program Branch Chief, HQ Liaison; memo to Regional Counsel and SUPR Div Dir w/ copy to RSD Branch Chief; start drafting UAO and AOC for RD if appropriate \_\_\_\_\_

*End of 240 days:* If no agreement reached, conference w/ Regional Counsel Branch Chief, Superfund Program Branch Chief, RSD/OSRE Dir, DOJ

Negotiations Plan Template

Senior Attorney; memo to Regional Counsel, SUPR Div Dir, Dir OSRE, Asst Chief or Senior Attorney DOJ; complete UAO and AOC for RD, get concurrences so they can be issued \_\_\_\_\_

*End of 300 days:* If no agreement reached, conference w/Regional Counsel, Superfund Division Director, Director OSRE, Sec Chief or Deputy Chief DOJ; memo to Regional Counsel, Superfund Division Director, Director OSRE, Sec Chief or Deputy Chief DOJ \_\_\_\_\_

VII. Referral of completed settlement \_\_\_\_\_

Draft complaint: All defendants and information needed to file complaint  
10 Point Settlement Document

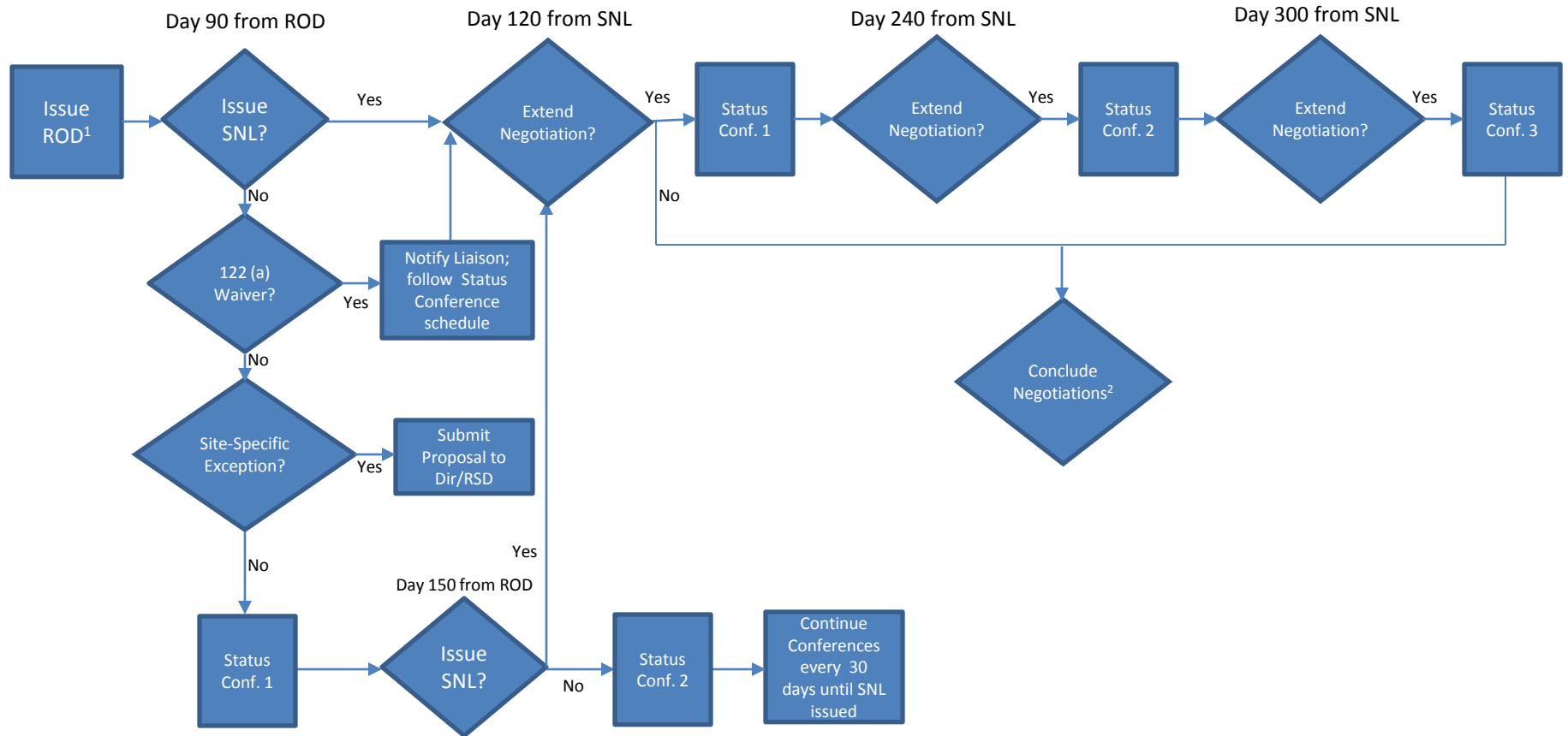
VIII. DOJ action

Signature by DOJ \_\_\_\_\_

Lodging (anticipated within 30 days of signature by EPA) \_\_\_\_\_

Motion to Enter (anticipated 45 days after lodging) \_\_\_\_\_

# Attachment B RD/RA Negotiation Flowchart



<sup>1</sup>This timeline assumes the PRN was submitted within 30 days after the ROD is issued.

<sup>2</sup>As per the 1990 Pre-referral Negotiation Guidance, once the final settlement package has been submitted, DOJ will lodge the CD within 30 days and will move for entry within 45 days after lodging (assuming no significant comments).

