



Superfund And Small Waste Contributors

Office of Site Remediation Enforcement

Have you been contacted by the U.S. Environmental Protection Agency or another party regarding your possible involvement with a Superfund site? If you believe the waste that you contributed to the site was minimal, you should learn about “de minimis settlements.”

This pamphlet describes what Superfund is, who potentially responsible parties are, and why a de minimis settlement may be to your advantage.

How did I become a potentially responsible party?

"Potentially responsible parties" (PRPs) are individuals or companies who may be responsible for all or part of the contamination at a site. PRPs include individuals, businesses, local, state, or federal governmental agencies, and other types of organizations. You may be identified as a PRP if you are:

- 1) a current owner or operator of the site;
- 2) a former owner or operator of the site during the period of disposal;
- 3) a party that arranged for the treatment, disposal, or transportation of hazardous substances to the site;
- 4) a party that transported hazardous substances to a site you selected.

If you fit one of these descriptions, you may be a PRP even if you were unaware that your waste was disposed of at the site, or did not dispose of it yourself.

What does “de minimis” mean?

At many sites there are PRPs who may have contributed only a very small amount of waste to a site. EPA may consider these parties "de minimis" because their contribution is minimal compared to the other waste at the site. For example, an individual who contributed one percent or less of the waste at a site may be considered a *de minimis* party.

In recognition of their relatively small contribution of waste, and to help ensure that these *de minimis* parties do not get drawn into lengthy and expensive lawsuits, EPA may offer a special type of settlement to these types of parties.

Whether and how individuals qualify for a *de minimis* settlement depends on a variety of site-specific factors. However, in general, you may qualify for a *de minimis* settlement if:

- the amount of waste you contributed is minimal in comparison to the other hazardous substances at the site;
- the toxic or other hazardous effects of the waste you contributed are minimal in comparison to the other hazardous substances at the site; and
- the settlement is in the public interest, and involves only a minor portion of the response costs at the site.

Or, if you are the owner of a site, you may qualify for another type of *de minimis* settlement if:

- as the owner of the site, you did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the facility; and
- at the time of purchase, you did not know, or had no reason to know, that the property was used for the generation, transportation, storage, treatment, or disposal of a hazardous substance.

What are the benefits of this type of settlement?

Although EPA may go to court to require PRPs to pay for (or perform) a cleanup, the Agency often prefers to settle its claims without resort to expensive court action. Settlements save both time and money for all parties involved.

De minimis settlements can provide several benefits, including:

“*Covenant Not to Sue*” – This provision is a promise that the EPA will not bring any future legal actions against the *de minimis* party regarding the site and the specific matters named.

“*Contribution Protection*” – This provision offers protection to the *de minimis* settlor from being sued in a contribution action by other PRPs at the site. Frequently, major waste contributors will sue many small waste contributors in contribution under Section 113(f) of CERCLA to recover their cleanup costs. A *de minimis* settlement provides protection from such contribution suits that extends to all matters covered by the settlement. (You should note, though, that a settlement may not be able to protect you from all future claims by other PRPs. A recent Supreme Court case has held that in certain situations, a PRP who has incurred cleanup costs at a site can sue other PRPs under CERCLA Section 107(a)(4)(B). These claims may not be barred by the contribution protection provided by a settlement.)

Taken together, contribution protection, the covenant not to sue, and other *de minimis* settlement terms provide settlors with the most certainty that EPA can offer that their responsibilities to EPA at the site are fulfilled, and that they are protected from future contribution actions related to those matters addressed by the settlement. To date over 30,000 individuals, small businesses, and others have entered into over 580 *de minimis* settlements with EPA to address their Superfund liability at more than 269 sites across the country.

What other settlement provisions are important?

“Payments and Premiums” - Although the amount a *de minimis* settlor may pay varies from site to site, in general, the payment amount is calculated by combining a basic payment and a premium payment. The basic payment is based on the estimated cost to clean up the site and the amount of the *de minimis* party's waste as a percentage of the total waste at the site.

The premium payment is associated with the protection from further EPA lawsuits that is provided by the "covenant not to sue." Premium amounts vary according to a variety of factors specific to both the site and the settlement, but typically range from 50 – 100 percent of the basic payment.

“Reopeners” - If you enter into a *de minimis* settlement with EPA, you will likely be asked to certify that your waste contribution is the amount (and type) that you claim. After the settlement is finalized, if new information indicates that your contribution is actually greater than you originally certified, the settlement may be "reopened" for renewed consideration. Other types of reopeners may also be included.

What is Superfund?

Superfund is a federal program, administered by the Environmental Protection Agency, which is designed to clean up hazardous substances (or “waste”) that may pose a threat to human health or the environment. The full name of the law is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Many Superfund sites are frequently areas or facilities where solvents, sludges, heavy metals, or other wastes have been disposed. These sites range in size from a quarter-acre metal plating shop to a 250-square mile mining complex. Contamination from these sites is often found in the soil, groundwater, and/or nearby streams and lakes.

Who pays for cleanups?

When Congress enacted Superfund, it intended to "make the polluters pay" for the cost of cleaning up these sites. To achieve this goal, EPA seeks to hold those parties who contributed to the contamination responsible for the cost of cleanup. Such parties may be asked to help pay for the cleanup of a site even if they acted in full accordance with the law at the time they disposed of the waste.

Superfund encourages EPA to settle with these responsible parties outside of court, but also authorizes the Agency to bring actions in court to require responsible parties to pay for (or perform) the cleanup.

In some cases, when no responsible parties can be identified, the cost is borne by the taxpayers. At these sites, the cleanup is paid for out of a Trust Fund set up by Congress to address this problem.

What Is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is a collection of methods to resolve legal disputes outside of court. ADR normally involves the use of neutral third parties who are skilled in a variety of ADR approaches to increase the effectiveness of settlement discussions.

At sites where numerous *de minimis* parties have been identified, it may be most efficient for such parties to coalesce into a group and appoint a representative to negotiate with EPA and/or the other PRPs at the site. A neutral ADR professional can assist greatly in the formation of a *de minimis* group, in the dissemination of information, and most importantly, in the negotiations process.

Where can I get more information?

To find out more about *de minimis* settlements, and how you might be involved, contact the nearest Regional U.S. Environmental Protection Agency Superfund program office. Ask to speak to the attorney, project manager, or, community relations representative assigned to your site. Information on *de minimis* settlements is also available on EPA's Web site from the Superfund enforcement policy and guidance database at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>.