



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

June 15, 2023

MEMORANDUM

SUBJECT: Update to 2019 “Remedial Design/Remedial Action: Process for Expediting Negotiations and PRP Cleanup Starts” – 300-Day Meeting Requirement

FROM: Kenneth Patterson, Director
Office of Site Remediation Enforcement **KENNETH PATTERSON** Digitally signed by KENNETH PATTERSON
Date: 2023.06.15 15:34:30 -04'00'

TO: Superfund Division Directors, Regions 1-10
Regional Superfund Legal Branch Chiefs, Regions 1-10
Regional Counsels, Regions 1-10

I. Purpose

The purpose of this memorandum is to provide EPA Regions with an update to the “[2019 Remedial Design/Remedial Action: Process for Expediting Negotiations and PRP Cleanup Starts](#)” memorandum (“2019 Negotiation Policy”) issued on June 20, 2019. Except on a case-by-case basis, this update removes the requirement that EPA Regions, Headquarters, and the U.S. Department of Justice (DOJ) senior managers meet to discuss negotiation strategies and obstacles if a remedial design/remedial action (RD/RA) settlement negotiation extends beyond 300 days from the issuance of special notice letters (SNL).

II. Background

Meeting the Agency’s cleanup goals is a top priority for the Superfund enforcement program, and enforcement plays an important role in securing timely settlement instruments for RD/RA cleanups. OSRE issued the 2019 Negotiation Policy to strengthen RD/RA negotiations and promote the use of all available enforcement tools to expedite the commencement and eventual completion of responsible party cleanup. The 2019 Negotiation Policy established a goal of completing RD/RA negotiations within 300 days¹ of the issuance of SNL. In addition, it sets forth benchmarks and deadlines throughout the negotiation process.

¹ For the negotiations reporting measure, OSRE tracks negotiations completed within 365 days and negotiations that extended beyond 365 days.

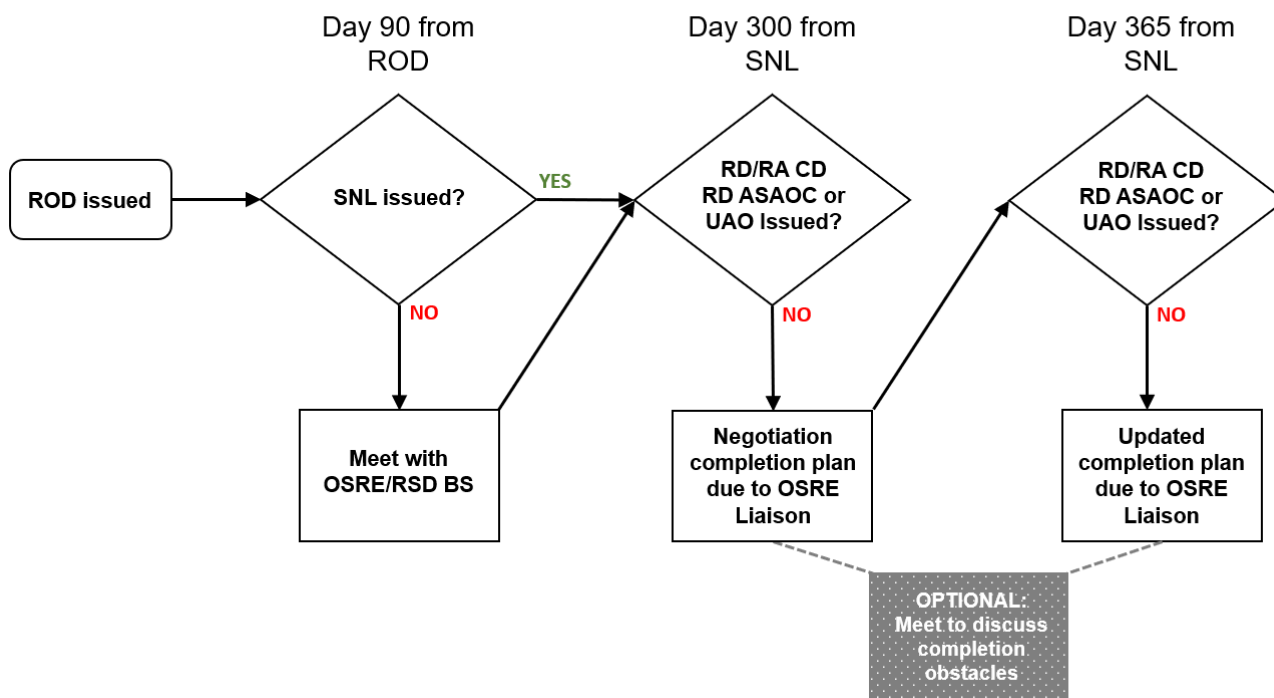
Under the 2019 Negotiation Policy, one milestone in the RD/RA negotiation process is at 300 days from SNL issuance. If the EPA Region expects that negotiations will extend beyond 300 days, then the EPA regional office is required to submit a negotiation completion plan to the OSRE regional liaison on or before day 300. The plan outlines the strategy to finalize an enforcement instrument (consent decree, unilateral administrative order, or RD administrative settlement agreement and order on consent) within the next 65 days. The OSRE regional liaison would then schedule a meeting (“300-Day Meeting”) to discuss the enforcement strategy and any obstacles that have impeded or delayed negotiations with the OSRE office director, the regional counsel, the Superfund division director, the DOJ section chief or deputy chief, the EPA regional attorney assigned to the case, and the remedial project manager. At day 365, if the negotiation has not completed, the EPA regional office would then update the plan and hold another meeting to discuss next steps.

III. Removing 300-Day Meeting Requirements for Ongoing RD/RA Negotiations

Since EPA issued the 2019 Negotiation Policy, OSRE and the EPA Regions have closely tracked each ongoing RD/RA negotiation and have coordinated to submit negotiation completion plans for negotiations exceeding 300 days. However, ongoing discussions with the EPA Regions indicate that in many circumstances, the 300-Day Meeting may not facilitate expediting negotiations or is unnecessary if the completion of an enforcement instrument is imminent. Data also indicate that RD/RA negotiation timeframes have improved, further indicating that the 300-Day Meeting requirement is unnecessary. The negotiation timeframes have decreased when comparing FY19-FY20 to FY21-FY23. While the 2019 Negotiation Policy and procedures have had a positive impact on timeframes, we believe that the decreased timeframes are due to tracking efforts other than the 300-Day Meetings.

For the reasons stated above, OSRE has decided to eliminate the 300-Day Meeting requirement with senior managers in the 2019 Negotiation Policy, as well as the requirement to hold another meeting at day 365. However, in certain circumstances, a 300-Day Meeting may still be an appropriate and helpful tool for expediting negotiations, and OSRE retains the option to schedule a 300-Day Meeting on a case-by-case basis. Where a 300-Day Meeting is appropriate, it may also be delegated to other management levels as warranted by site-specific circumstances. The OSRE regional liaison or branch supervisor will initiate the process for a 300-Day Meeting if one is needed. OSRE has updated the flowchart contained in the 2019 Negotiation Policy to reflect these changes as follows:

Flowchart for RD/RA Negotiations



Please note that for all RD/RA negotiations, the 2019 Negotiation Policy still requires submittal of a negotiation completion plan on or before day 300 and an update to the plan on or before day 365.² The negotiation completion plan requirement is not altered by this memorandum.

IV. Contact Information

Please direct questions about this memorandum to Kerriann Shabanowitz (202-564-4205; shabanowitz.kerriann@epa.gov), Jennifer Nearhood (202-564-2721; nearhood.jennifer@epa.gov), or Tina Skaar (202-564-0895; skaar.christina@epa.gov) in OSRE's Regional Support Division.

Disclaimer

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligations. The extent to which EPA applies them in a particular case will depend on the facts of the case.

cc: Larry Douchand, Director, Office of Land and Emergency Management, Office of Site Remediation and Technology Innovation
Thomas A. Mariani, Jr., Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, Department of Justice

² EPA's Superfund Enterprise Management System (SEMS) includes a data field to capture negotiation completion plans and 300-Day Meetings for RD/RA negotiations.