

Superfund

Guidance on Effective Date of Settlements Helps Set Statute of Limitations, Lawyers Say



Recent guidance clarifying the effective date of superfund settlement agreements will help determine whether the statute of limitations has run out for contribution actions, an environmental lawyer told Bloomberg BNA.

That clarification is the most important change to Environmental Protection Agency guidance revising language for settlement models issued under the Comprehensive Environmental Response, Compensation, and Liability Act, according to Larry Schnapf of Schnapf LLC.

"This presumably responds to the recent case law and makes clear when the statute of limitation for contribution actions starts to run," Schnapf said.

The guidance also clarifies that certain agreements qualify as administrative settlements allowing settling parties to avail themselves of contribution protection—again in response to recent cases calling into question whether certain settlements that didn't comply with requirements of Section 122 of CERCLA constituted administrative settlements, he said.

Schnapf was referring to recent guidance posted by the EPA that clarifies certain contribution rights and protection from claims following two Supreme Court decisions, *Cooper Industries, Inc. v. Aviall Services, Inc.* (543 U.S. 157, 59 ERC 1545 (2004)) and *United States v. Atlantic Research Corp.* (551 U.S. 128, 64 ERC 1385 (2007)).

The guidance revises language in the March 16, 2009, ARC Memo, the "Interim Revisions to CERCLA Judicial and Administrative Settlement Models to Clarify Contribution Rights and Protection from Claims Following the Aviall and Atlantic Research Corporation Decisions" ([23 EDDG 73, 10/16/14](#)).

Most Revisions Not 'Incredibly Meaningful'

Steven Miano, an attorney with Hanglely Aronchick Segal Pudlin & Schiller, told Bloomberg BNA that clarification of the effective date of settlement is a positive change to the new guidance. While there are many revisions, "the bulk are either not significant or wildly different" from the 2009 guidance, said Miano, who also heads the American Bar Association's Section of Environmental and Energy Law. "The changes make a slight improvement but are not incredibly meaningful," he said. Several of the changes, however, raise concerns, Miano said.

For example, the new portions regarding EPA access to property are broader and more in-depth and include new insurance representations concerning a party's ability to pay the settlement, he said. In addition, expanded provisions on the sale of properties and use of the proceeds to pay off the government may raise a host of issues, according to Miano. In another provision, the scope of disputes that can be raised in response to decisions regarding additional response costs have potentially been narrowed, he said.