



Oregon

Tina Kotek, Governor

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Regulation Identifier Number: 1090–AB26

Office of Restoration and Damage Assessment
U.S. Department of the Interior
1849 C Street Northwest
Mail Stop/Room 2627
Washington, DC 20240

Dear Ms. Emily Joseph,

Thank you for the opportunity to submit comments on proposed revisions to regulations for the Type A procedures for conducting a natural resource damage assessment and restoration (NRDAR) for hazardous substance releases covered in 43 CFR Part 11.

We appreciate the changes in the proposed regulations that simplify the paperwork requirements for small- to medium-sized spills. The Type A Report incorporates the elements of larger more prescriptive documents described in current Type B regulations.

Another difference between the Type B and proposed Type A regulations is the trustees' ability to make assumptions and assertions without having to do expensive and time-consuming study design, fieldwork, and laboratory analyses on samples from the site to demonstrate exposure. Trustees would be able to expedite a NRDAR, if § 11.34 of the proposed regulations are satisfied, while using existing data to bolster evidence of exposure (such as those collected for response actions).

Including the provision for a tolling agreement is appreciated, as it gives trustees the flexibility to switch to the more demanding Type B regulations if negotiations collapse and the PRP is no longer cooperative. The monetary caps seem appropriate by today's economic standards.

However, some sections of the proposed regulations could use more explanation:

- Please give more guidance regarding simplified methods to do a NRDAR. Proposed regulations merely say this in § 11.41: "identify and describe the model(s) selected to determine damages to fund restoration activities." More guidance could be provided by including a reference document in § 11.18 (which still includes technical documentation to the old Type A methods for coastal/marine and Great Lakes environments – for anyone who still wanted to use that method/model).
- Please clarify the proposed regulations in § 11.36(d), which addresses when trustees may use Type B procedures for injuries not addressed in a Type A procedure. After rereading this section several times, it appears to address two distinct scenarios:

1. Trustees using a Type B procedure for *injuries not addressed in a Type A procedure*: which states that for injuries not addressed in a Type A procedure, trustees must provide the more extensive documentation and sampling defined in the Type B regulations.
2. Trustees using a Type B procedure for *compensable values that are not included in a Type A procedure but that result from injuries that are addressed in the Type A procedure*: In this case trustees may rely on the less cumbersome injury estimates/modeling of the Type A procedure and simply use the valuation methods authorized by § 11.83(c), while complying with § 11.84 (addressing double counting, uncertainty, discounting, substitutability, recovery rates, and scope).

The first scenario seems clear. The second is a more complicated scenario where an injury is quantified in a Type A Report, but compensable values are addressed in the more inclusive Type B Restoration and Compensation Determination Plan. However, it would be appreciated if these two scenarios could be explained separately and include clarifications.

- In § 11.36 (May the Trustee use both a Type A and Type B procedure for the same release?), how many times could a Type A procedure be used in a NRDAR where trustees combine both procedures, and how would monetary caps and other restrictions for the Type A assessment affect the combination of the two procedures? Could a trustee assess multiple injuries (to groundwater, shoreline-biota, down-river biota, etc) using Type A procedures, each claim with a \$3 million cap, then calculate the total compensable values using Type B procedures that is over \$3 million? Is the \$3 million cap invoked anytime part of the Type A procedures are used in combination with the Type B procedures?

Thank you for your consideration of these comments. If you have questions regarding the comments, please contact Sara Lovtang at the Oregon Department of Energy at Sara.Lovtang@energy.oregon.gov.

Sincerely,

Sara Lovtang

Digitally signed by Sara Lovtang

Sara Lovtang,
Hanford Ecologist
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