



Interior Issues New NRDAR Type A Rule for Comment

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On January 5, 2024, the Department of the Interior (Interior) will issue a notice of a proposed rulemaking (NPRM) to provide the first significant revisions to its natural resource damage assessment and restoration (NRDAR) regulations in more than 15 years. The new regulations significantly overhaul the “Type A Rule” that Interior uses to perform damage assessments and evaluate the need for restoration activities following the release of hazardous substances that injure natural resources. More information on the history of the Type A Rule can be found [here](#).

Interior is proposing to greatly expand the number of cases that can be resolved through its planned, more streamlined and simplified Type A Rule. The current Type A Rule is limited to NRDAR claims of \$100,000 or less involving hazardous substance releases to either the Great Lakes or to other specific coastal and marine environments. Interior intends to “re-formulate” the Type A Rule to create a broader procedural structure for negotiated settlements of NRDAR claims of up to \$3,000,000 (and in some cases up to \$5,000,000) at any location. The NPRM lays out Interior’s plan for a new “Type A Process” that would use models (like habitat equivalency analysis) to determine natural resource damages, as opposed to the more site-specific, detailed investigations conducted under the Type B Rule.

Several requirements must be met in order to use the new Type A Process:

- All of the Federal, State and Tribal natural resource co-trustees (Trustees) must agree to use the Type A Process;
- At least one potentially responsible party (PRP) must voluntarily agree to use the Type A Process;
- The PRP must also agree to toll the statute of limitations for at least one year and agree to reimburse the Trustees for their reasonable assessment costs; and
- The claim to be resolved must be expected to be less than \$3 million, excluding reasonable assessment costs (or less than \$5 million if a discrete spill with a small number of PRPs).

The new Type A Process will culminate in a “Type A Report” that will explain to the public the Trustees’ basis for using the Type A Process, describe the model(s) and inputs used to derive the damages and provide an opportunity to comment. After the Type A Report is finalized, PRPs can enter into settlement agreements with the Trustees and resolve their NRDAR liability.

Interior will be accepting comments on the NPRM for 60 days, until March 5, 2024.