Alternative Dispute Resolution and Superfund: A Research Guide

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I wish to thank Robert Berring, Kathleen Van den Heuvel, Richard Robinson, Lawrence Susskind, Barbara-Lee Feldman, and the reference staff at Boalt Hall for their assistance in researching this Guide.
INTRODUCTION

During 1983, the Environmental Protection Agency (EPA) estimated there were between 16,000 and 22,000 sites across the United States harboring hazardous wastes that either have caused or could cause serious health effects to humans and the environment.\(^1\) After contamination at Love Canal and Times Beach made headlines around the world,\(^2\) Congress passed the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)\(^3\) to provide for the cleanup of this country's enormous hazardous waste problem. CERCLA created a trust that became known as the "Superfund" to pay for remedial work (cleanups) and authorized EPA to sue dump owners and those who generate and transport waste (collectively known as potentially responsible parties or PRP's) to recover the cleanup costs.

Long-term cleanup has moved very slowly under the law. Of the nearly 30,000 sites inventoried and 1,175 sites listed on EPA's National Priority List (NPL) of worst dumps and landfills, only 43 sites have been cleaned up.\(^4\) The vaguely drafted compromise bill that eventually became CERCLA also led to a great deal of litigation, as EPA, PRP's, and the courts struggled to interpret the law. In 1986, Congress responded to criticism of the Superfund program by reauthorizing and fundamentally amending the Act. The Superfund Amendments and Reauthorization Act of 1986 (SARA)\(^5\) clarified some important issues, such as the standard of liability for PRP's, but many questions remain.

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5. Pub. L. No. 99-499, 100 Stat. 1613 (codified in scattered sections of 10, 26, 29, 33,
Current resources will fund remedial work at only a fraction of the several thousand sites likely to end up on the NPL. Consequently, the amended law emphasizes the settlement of Superfund cases. EPA thus depends upon private party cleanup by industries under threat of enforcement. In light of these facts, EPA and a number of commentators have proposed that alternative means of dispute resolution be used to break up the litigation logjam that has been slowing enforcement and implementation of the program.

Alternative dispute resolution (ADR) processes are those other than adjudication and direct negotiation. ADR processes seek to avoid the uncertainty, delay, and high transaction costs of traditional litigation. ADR techniques include, but are not limited to, arbitration, mediation, minitrial, summary jury trial, private judging, negotiated rulemaking, policy dialogue, joint or neutral expert factfinding, convening, conciliation, and facilitation. These ADR methods range from nonbinding to binding and from voluntary to mandatory. As ADR techniques become more prevalent in Superfund cases, practitioners will need comprehensive guidelines to the intricacies of Superfund and ADR. The following research guide presents such a comprehensive tool.

In addition to evaluating and organizing the literature on Superfund and ADR, this Guide provides descriptive information on companies, organizations, experts, looseleaf services, and newsletters in the field. The Guide will help busy practitioners, students, scholars, and other researchers by providing an overview of the most useful sources, reducing the time needed to search for materials, and indicating what is unnecessary or out of date.

The Guide is designed to help both the novice researcher and the experienced dispute resolution professional understand the potential for ADR solutions to Superfund problems. The Guide is also meant to inform environmental attorneys of the various alternatives to Superfund litigation. It serves as a detailed exploration of the types of literature available on this subject. It also provides research tools to follow the growth of this new development in environmental law and dispute resolution.

The Guide is divided into five major parts. Part I begins with an annotated list of environmental dispute resolution organizations and experts involved in Superfund settlements. Part II discusses several books

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6. Although CERCLA originally had no settlement provisions, SARA added section 122 on settlement procedures, 42 U.S.C. § 9622 (Supp. IV 1986), and section 113 on the right to contribution and contribution protection. Id. §§ 9613(g)(3), 9657.

7. The concept of a "research guide" was pioneered by Professor Robert Berring who serves as both the Dean of the Library School, University of California at Berkeley and as the Chief Librarian, Boalt Hall School of Law, University of California at Berkeley.
on environmental dispute resolution (EDR) in general. While no works specifically devoted to the topic of Superfund settlements have yet been published, much of what has been learned in the first fifteen years of EDR may be applicable to Superfund settlement agreements. Because ADR takes place, by definition, outside the courtroom, one would expect there to be very few cases discussing the applicability of ADR to Superfund problems. In fact, there are no cases that comment directly on the use of ADR in conjunction with Superfund. Hence, most information on the use of ADR in the Superfund arena has been published in law reviews and journals. Commentaries, therefore, constitute a large portion of this Guide and form Part III. Part III is subdivided into ADR and Superfund sections because little has been written specifically about using ADR to solve Superfund problems. Subsections on settlement and on case studies discuss early attempts to use ADR at Superfund cleanup sites. Government documents, studies, and working papers on Superfund dispute resolution comprise Part IV. Finally, the additional resources listed in Part V should enable Superfund ADR researchers to continue to investigate the potential for ADR in this new area of environmental law. Superfund dispute resolution is developing quickly. With luck, this rapid growth will lead to better and faster settlements.

Much has been written about using ADR to facilitate the siting of new hazardous waste facilities and on what is called the negotiated rulemaking of administrative agency policy. Although both uses of ADR are intrinsically connected to Superfund, they are research topics unto themselves. Consequently, they are not included in this Guide.

GLOSSARY

The following statutory, administrative, and legal designations are used throughout this Guide:

8. This research guide, like an annotated bibliography, attempts to provide an accurate summary of each source and an evaluation of each source's usefulness. The summary often consists of verbatim extracts from the source to give the reader a sense of the author's (or organization's) emphasis and style. Evaluations are largely made from the standpoint of the practitioner; all judgments are attributable solely to the author of this Guide.
ADR: Alternative Dispute Resolution
CERCLA: Comprehensive Environmental Response, Compensation and Liability Act
EDR: Environmental Dispute Resolution
EPA: Environmental Protection Agency
NPL: National Priority List
PRP: Potentially Responsible Party
RCRA: Resource Conservation and Recovery Act (regulates the treatment, storage, and disposal of hazardous wastes)
SARA: Superfund Amendments and Reauthorization Act

I
ENVIRONMENTAL DISPUTE RESOLUTION COMPANIES,
GENERAL ALTERNATIVE DISPUTE RESOLUTION ORGANIZATIONS, GOVERNMENT AGENCIES AND OFFICES, AND EXPERTS

A. Environmental Dispute Resolution Companies

EDR has emerged as a growth industry in the last decade. In response, mediation companies have begun to franchise. One commentator has called this expansion "McJustice." Given the dependence of the Superfund program on settlements, however, this development should be seen as a positive sign. The growing demand for EDR in other disputes may foreshadow more demand for Superfund EDR.

The following organizations are involved in Superfund settlement negotiations in various ways.

Center for Public Resources, Inc.
Legal Program to Develop Alternatives to Litigation
366 Madison Avenue
New York, New York 10017
(212) 949-6490
Peter H. Kaskell, Staff Director

The Center for Public Resources' (CPR) Legal Program was organized in 1979 to develop alternatives to the high cost of litigation. CPR is a coalition of over 350 corporations, law firms, and law professors interested in ADR. Members are involved in academic and corporate research, the creation of new dispute resolution resources and services, and the work of several task forces. Members of CPR's ADR panels serve as third-party neutrals. Many have

10. "Third-party neutral" is a generic term for an independent person, usually serving at the will of the parties, who seeks to facilitate resolution of their dispute. A neutral can play three distinct but related roles in ADR: serving as an expert in the process, facilitating negoti-
developed a reputation for objectivity and creativity in the search for solutions to complex problems. CPR publishes *Alternatives*, a monthly news journal, and several practice guides on ADR. The CPR Hazardous Waste Committee has written a report entitled *Model ADR Procedures: Superfund Multiparty Site Cost Allocation.*

Citizen’s Clearinghouse for Hazardous Wastes  
P.O. Box 926  
Arlington, Virginia 22216  
(703) 276-7070  
Lois Gibbs, Executive Director

Citizen’s Clearinghouse for Hazardous Wastes/West  
P.O. Box 33124  
Riverside, California 95219  
(714) 681-9913

The Citizen’s Clearinghouse for Hazardous Wastes (CCHW) is composed of individuals who live near hazardous waste dumps and was established as a direct response to problems encountered by the Love Canal Homeowners Association. The organization is concerned with the potential for adverse physical effects on both children and adults from contact with toxic chemicals and other hazardous wastes. CCHW provides information, guidance, and support to those who must deal with toxics firsthand. CCHW is one of the environmental groups opposed to the use of ADR; instead, it encourages members to pressure lawmakers to take strong regulatory action on toxics. CCHW maintains a speakers bureau and a library of 2,000 volumes on waste management, and it publishes the quarterly newsletters *Action Bulletin* and *Everyone’s Backyard.*

Clean Sites, Inc.  
1199 North Fairfax Street  
Alexandria, Virginia 22314  
(703) 683-8522  
Thomas P. Grumbly, President

Clean Sites, Inc., is a nonprofit corporation established in 1984 by a coalition of environmental, industry, and government groups. Its objective is to accelerate the voluntary cleanup of hazardous waste sites. Clean Sites’ fifty-three person staff works with companies, communities, and governments to facilitate cooperation in

cleanup efforts. Clean Sites has helped bring about twenty final settlement agreements to undertake removals, remedial actions, or cleanup studies costing a total of approximately $193 million. However, because Clean Sites receives support from a variety of sources, including corporations, foundations, and the government, some environmental groups believe that the organization has allowed itself to be captured by these groups. In 1987, Clean Sites responded to charges of capture by starting to charge fees for its services in order to decrease the need for corporate grants. Clean Sites periodically publishes a quarterly newsletter called Forum.

The Conservation Foundation's Program on Environmental Dispute Resolution
1250 24th Street NW., Suite 500
Washington, D.C. 20037
(202) 293-4800
Gail Bingham, Director

The Conservation Foundation is a nonprofit research and communications organization dedicated to improving the quality of the environment and promoting wise use of the earth’s resources. The Program on Environmental Dispute Resolution was formed in 1981. It aims to facilitate dialogue and negotiation among business and environmental leaders on issues of national environmental policy, conduct research documenting and analyzing environmental dispute resolution processes, and serve as a national center of information on EDR. The Program is divided into three parts: dispute mediation, research, and outreach. The Program’s six-person staff conducts training workshops, provides speakers, and also provides technical assistance to parties involved in specific disputes.

The Foundation has recently begun a pilot program in conjunction with EPA, limited to EPA Region V, to provide mediation in small Superfund cost-recovery cases. The Foundation hopes to expand this program. The Conservation Foundation publishes books on ADR and Resolve, an exceptional newsletter on EDR that is available without charge. In 1987, the Conservation Foundation published State of the Environment: A View Toward the Nineties, which, while now somewhat out of date, includes an excellent introduction to the problem of hazardous waste. The Conservation Foundation’s Fifth National Conference on Environmental Dispute Resolution will be held in the spring of 1990.
ENDISPUTE, Inc.
1820 Jefferson Place NW.
Washington, D.C. 20036
(202) 429-8782
Jonathan B. Marks, President

ENDISPUTE provides a range of dispute resolution and conflict management services. This privately owned company handles the resolution of corporate, commercial, insurance, and public disputes by assisting counsel and managers in evaluating, selecting, and implementing dispute resolution mechanisms. ENDISPUTE also designs mechanisms to prevent disputes and conducts training workshops on litigation management and dispute resolution. Opened in 1982, the company has an eight-person staff with offices in Washington, D.C., Chicago, Illinois, and Cambridge, Massachusetts. ENDISPUTE has assisted in the resolution of several complex multiparty disputes. It recently completed a study for EPA that evaluates past Superfund cleanup negotiations and develops procedures for obtaining better and more cost-effective settlements.\(^{12}\)

ERM-New England
205 Portland Street
Boston, Massachusetts 02114
(617) 742-8228
John A.S. McGlennon, President

ERM provides conflict management services, dispute resolution training, and regulatory rulemaking services. The company assists parties in negotiations with EPA and will arbitrate or mediate a Superfund dispute. ERM aims to help its clients avoid costly, drawn out disputes through conflict assessment, negotiation, and environmental mediation. Founded in 1977, ERM-New England was recently involved in a major settlement in Massachusetts and is presently working for New Hampshire's Resolve Site Generators Association, an organization of Superfund PRP's. Its president, John McGlennon, is an experienced environmental mediator and former administrator of EPA's Region I office in Boston. The company maintains a library and will provide a bibliography on request. ERM-New England is part of the ERM Group, which has thirty-one affiliated offices throughout North America.

\(^{12}\) That study, Negotiating Better Superfund Settlements—Lessons From Experience and Recommendations for the Future, is annotated \textit{infra} p. 847.
ICF

9300 Lee Highway
Fairfax, Virginia 22031
(703) 934-3000
James Janis, President
Sandra Rennie, Head of ADR

ICF is an employee-owned company that has been involved in EDR since 1969. Its brochures claim ICF is the largest private sector EDR service in the country. The company’s record includes mediating the settlement of nineteen Superfund sites and developing the cost allocation and data management systems at seventeen sites. The company has over 1,000 employees in fifteen cities across the country. It also has an extensive library on Superfund and ADR.

The Information Network for Superfund Settlements
Morgan, Lewis & Bockius
1800 M Street NW.
Washington, D.C. 20036
(202) 467-7777
John Quarles, Counsel
Contact: Deborah Manzari, Legal Assistant

The Information Network was created in March 1988 to facilitate the exchange of information concerning Superfund settlements. The undertaking was launched by the Superfund Settlements Project, a group of ten companies (including AT&T, General Motors, IBM, and Union Carbide) organized to accelerate and reduce transaction costs in the cleanup of hazardous wastes. The Network keeps its participants abreast of important developments affecting the negotiation of settlement agreements through services that include: bi-monthly reports of ongoing negotiations, settlement agreements, and litigation; a centralized collection of documents affecting Superfund settlements that includes all agreements entered into by EPA, especially EPA Records of Decision and EPA guidance directives related to Superfund; and semi-annual two-day conferences for Network participants with lectures and workshops on important Superfund issues. The Network is comprised of over 130 participating corporations, law firms, and public agencies, who pay $3,500 in annual dues. The law firm of Morgan, Lewis & Bockius provides administrative support for the Network. Although only a year old, the Information Network is well organized and informative. It re-

13. The organization was formerly known as the Intercity Fund, but today the initials ICF no longer serve as an acronym.
recently published the Mohonk Superfund Report, summarizing its June 7-9, 1988, conference on Superfund settlements.

Institute for Environmental Negotiation
Campbell Hall
University of Virginia
Charlottesville, Virginia 22903
(804) 924-1970
Richard Collins, Director

The Institute invites groups currently involved in a Superfund dispute who feel that a third-party neutral might be able to contribute to the resolution of the dispute to contact them. In most instances, the Institute provides its services without charge. Richard Collins, the Institute's director, was recently involved in the first Superfund minitrial and has written a study of the settlement of that case.14

Keystone Center
P.O. Box 606
Keystone, Colorado 80435
(303) 468-5822
John R. Ehrmann, Vice President

This national nonprofit organization fosters cooperative problem-solving through the use of nonadversarial conflict resolution processes, with an orientation toward issues of science and public policy. The Center focuses on policy issues such as the siting of facilities, but has not mediated site-specific Superfund problems. The Center has published a pamphlet on building consensus in remedial actions entitled How Clean is Clean?15 Founded in 1975, the Center also serves as an informal clearinghouse for ADR issues and publishes the newsletter Consensus.

New England Environmental Mediation Center
123 Main Street, Suite 23
Gloucester, Massachusetts 01930
(508) 283-1153
Jim Arthur, Executive Director

This private nonprofit organization mediates all aspects of environmental disputes, including Superfund cleanups. The Center has

15. Annotated infra p. 839.
worked on sites across the Northeastern United States. It is funded by fees for its services and by public and private grants.

**PennACCORD**

Center for Environmental Dispute Resolution  
225 S. 15th Street, Suite 506  
Philadelphia, Pennsylvania 19102  
(215) 985-4972 or 735-0966  
Wendy Emrich, Director

PennACCORD is the Pennsylvania Center for Environmental Dispute Resolution, a nonprofit project of the Pennsylvania Environmental Council. The center was formed in January 1988 to provide mediation for parties with environmental and land use problems in Pennsylvania. PennACCORD is staffed by three mediators and fifteen trained apprentices. The Center's literature points out that EDR is not a panacea. It goes on to note that third-party dispute resolution is not appropriate in all cases, nor is it successful in all appropriate cases. But, it notes, used carefully and in good faith by the parties, it can significantly increase the chances of reaching agreement. PennACCORD has not mediated any Superfund cleanup disputes.

**B. General Alternative Dispute Resolution Organizations**

In addition to the specific services listed above, the following general ADR organizations may be of assistance in the settlement of Superfund cleanup cases:

**American Arbitration Association (AAA)**  
140 W. 51st Street  
New York, New York 10020  
(212) 484-3233  
Alan Silverman, Vice President, Department of Education and Training

Established in 1926, the AAA is one of the pioneer organizations in the ADR field. It operates the National Center for Dispute Settlement and refers parties to both binding and nonbinding arbitration. This nonprofit organization provides a broad range of services in thirty-three offices located nationwide and in Puerto Rico. AAA administers over 50,000 cases annually and enlists more than 60,000 mediators and arbitrators on its panels. AAA publishes two quarterly periodicals: *Arbitration Journal* and *Arbitration Newsletter*. 
ABA Standing Committee on Dispute Resolution  
1800 M Street NW., S-200  
Washington, D.C. 20036  
(202) 331-2258  
Larry Ray, Executive Director

The American Bar Association encourages dispute resolution techniques as a complement to the court system, conducts research, and acts as a clearinghouse for information on ADR. The Standing Committee publishes an annual directory of ADR organizations, and a list of additional publications is available on request.

National Institute for Dispute Resolution  
1901 L Street NW., Suite 600  
Washington, D.C. 20036  
(202) 466-4764  
Madeleine Crohn, President  
Contact: Linda Work, Associate

The National Institute for Dispute Resolution (NIDR) is a private nonprofit organization that began in 1983. It is primarily a grant-making and informational organization. In 1984-85, NIDR provided funds to help establish statewide offices of mediation in Hawaii, Massachusetts, Minnesota, New Jersey, and Wisconsin. NIDR published the *Dispute Resolution Resource Directory* in 1984 which, while now somewhat out of date, profiles over 100 national organizations in the field. It also publishes the *Dispute Resolution Forum* periodically.

National Institute for Justice  
P.O. Box 6000  
Rockville, Maryland 20850  
(800) 851-3420  
Contact: Susan McMillan

The Institute acts as a clearinghouse for information on other organizations doing ADR work. It provides updated information on groups that continue to engage in Superfund mediation as new companies are formed and others go out of business. This organization formerly included the Dispute Resolution Information Center, which is no longer active. Funded by the Department of Justice, the Institute is an example of the federal government's increasing interest in ADR. Referrals are free; customized information searches are $48 each.
The Society of Professionals in Dispute Resolution
1730 Rhode Island Avenue NW., Suite 909
Washington, D.C. 20036
(202) 833-2188 or 331-7037
Laurene Hughes Church, Executive Director

The Society of Professionals in Dispute Resolution (SPIDR) was founded in 1972 to increase public awareness and acceptance of ADR. The 1750-member organization promotes professionalism in the field. SPIDR holds an annual conference each fall, acts as a clearinghouse for recent publications on dispute resolution, and publishes a quarterly newsletter, *SPIDR News*.

C. Government Agencies and Offices

In addition to the preceding private organizations, government entities are beginning to focus attention on the possibilities of ADR. Although the federal government has played an important role in promoting the use of alternative processes in the areas of labor relations, community relations, and consumer affairs, its consideration of ADR in matters to which it is a party is a recent development. The Attorney General of the United States has, in fact, recently stated that it is the policy of the United States Government to use ADR.16

Administrative Conference of the United States
2120 L Street NW., Suite 500
Washington, D.C. 20037
(202) 254-7020
Marshall J. Brager, Chairman
Contact: Charles Pou, Jr.

The Administrative Conference of the United States (ACUS) was established by statute as an independent agency of the federal government in 1964. Its purpose is to promote improvements in the efficiency, adequacy, and fairness of procedures by which federal

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agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions. To this end, ACUS conducts research and issues reports concerning various aspects of the administrative process and, when warranted, makes recommendations to the President, Congress, particular departments and agencies, and the judiciary concerning the need for procedural reform. ACUS has repeatedly called for federal agencies to make greater use of ADR techniques and has sponsored numerous studies to further the use of these techniques by the federal government. Recently, ACUS has begun working with a number of federal agencies, including EPA, to facilitate the use of ADR techniques. In 1987, ACUS published *Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution.*

U.S. Environmental Protection Agency
Office of Enforcement Compliance and Monitoring
401 M Street SW.
Washington, D.C. 20460
(202) 475-8293
Richard H. Robinson, Chief of Legal Enforcement Policy

The Environmental Protection Agency is in charge of the Superfund hazardous waste cleanup under CERCLA and SARA. To promote compliance with these laws, EPA has developed a judicial and administrative enforcement program. As it has faced difficulties with the cleanup effort, EPA has also become interested in alternative means of dispute resolution. It views ADR as a “tool in its arsenal for the achievement of compliance,” rather than as a retreat from strong enforcement. By memorandum, dated February 12, 1987, the EPA Administrator endorsed the concept and urged regional Agency officials to nominate appropriate cases for ADR procedures. On August 6, 1987, EPA published its *Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions.* In addition, EPA’s Office of Policy Planning and Evaluation is currently analyzing past Superfund negotiations and developing procedures for obtaining better and more cost-effective settlements.

Environmental Protection Agency’s RCRA/Superfund Hotline
(800) 424-9346

17. *Sourcebook,* supra note 16.
19. See infra p. 842.
EPA’s Superfund hotline is a unique, often overlooked source of information. Anyone may call the toll-free number from 8:30 a.m. to 7:30 p.m. (Eastern Standard Time) with questions regarding EPA’s hazardous waste program. Geo Resources, located one floor below EPA’s office in Washington, D.C., has contracted with the Agency to operate the hotline. This private consulting firm has access to EPA’s “Superfund Docket Library of Documents” database. The RCRA/Superfund hotline will assist callers in locating the document numbers of EPA Guidance documents or Memoranda. With these numbers, documents may be obtained from EPA.

Federal Mediation and Conciliation Service
2100 K Street NW.
Washington, D.C. 20427
(202) 653-2055
Robert Baker, Acting Director
Contact: John A. Wagner, Director, Mission Support

The Federal Mediation and Conciliation Service (FMCS) is an independent agency of the federal government that uses mediation and other techniques to promote better labor relations. The service was established by the Labor-Management Relations Act of 1947. FMCS has also provided assistance to other agencies, including EPA, in mediation and other types of dispute resolution. The Office of Arbitration Services, located in the national office of FMCS in Washington, D.C., maintains a roster of qualified labor arbitrators in all parts of the country.

D. Experts in Superfund Dispute Resolution

Currently, only a handful of people are actively involved in ADR approaches to Superfund disputes. The following experts on Superfund cleanup negotiations are sources of timely information in this area:

Gail Bingham
Vice President
The Conservation Foundation
1250 24th Street NW.
Washington, D.C. 20037
(202) 293-4800

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21. Geo Resources may be of assistance when the EPA hotline is inadequate. Geo Resources may be reached at (202) 382-3046.
Bingham is the Program Director for the Conservation Foundation's program on EDR and the author of *Resolving Environmental Disputes: A Decade of Experience*. She was a senior associate at RESOLVE, a center for environmental conflict resolution, before that organization merged with the Conservation Foundation in 1981. Bingham is a practicing environmental mediator and a member of two national committees of the Society of Professionals in Dispute Resolution. She is past president of the Society's Washington, D.C., chapter. She is also a former editor of the foundation's newsletter on environmental dispute resolution, *Resolve*.

Richard C. Collins
Institute for Environmental Negotiation
Campbell Hall
University of Virginia
Charlottesville, Virginia 22903
(804) 924-1970

Richard C. Collins is director of the Institute for Environmental Negotiation, a research and service arm of the urban and environmental planning program of the University of Virginia. He is also Professor of Urban and Environmental Planning, School of Architecture, University of Virginia. Collins has extensive experience serving as a mediator in environmental and land use issues and as a facilitator of a toxics round table in Virginia, composed of environmental and industry representatives, that drafted a bill which became the basis for a state facility siting law. He has also served, under the auspices of Clean Sites, Inc., as a member of an arbitration panel on a cost allocation dispute arising from a Superfund site in the Midwest. Collins was recently the third-party neutral at the first Superfund minitrial and has written a case study based on that experience.23

Richard H. Mays, Of Counsel
Pettit & Martin
1800 Massachusetts Avenue NW.
Washington, D.C. 20036
(202) 785-5153

Mays has recently moved from consulting at ICF to the law firm of Pettit & Martin. He is a leading proponent of the use of ADR techniques in Superfund enforcement and other environmental disputes. Mays was formerly Senior Enforcement Counsel and

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Acting Assistant Administrator for EPA, where he participated in the development of EPA's *Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions.* He is also the author of several articles on Superfund settlement through ADR.

Richard H. Robinson
Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
401 M Street SW.
Washington, D.C. 20460
(202) 475-8293

Robinson is EPA's ADR expert and author of the Agency's final *Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions.* Robinson speaks on ADR throughout the United States, trying to persuade EPA's regional offices to adopt ADR methods.

Roger Strelow
Vice President
Corporate Environmental Programs
General Electric Company
Bridgeport, Connecticut 06601
(203) 373-3067

Strelow is perhaps the most active corporate sector participant in the Superfund ADR community. He was formerly Executive Assistant to EPA Administrator Russell Train and is now a director of Clean Sites, Inc., Chair of the Center for Public Resources Hazardous Waste Committee, and one of nine members of the Superfund Settlements Project that began the Information Network for Superfund Settlements.

Lawrence E. Susskind
Program on Negotiation
500 Pound Hall
Harvard Law School
Cambridge, Massachusetts 02138
(617) 495-1684 or 253-2026

Susskind, Professor of Urban Studies and Planning at the Massachusetts Institute of Technology, was formerly the Executive Di-

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rector of the Harvard Program on Negotiation and is now Director of the Program's Public Disputes Project. Susskind is also a Senior Consultant for ENDISPUTE, Inc. and Environmental Resources Ltd., which is based in London. He is a leading expert in complex multiparty negotiations and the resolution of disputes involving government and public policy issues. He is the author of numerous books and articles in this area.

II
GENERAL BOOKS ON ENVIRONMENTAL DISPUTE RESOLUTION AND ALTERNATIVE DISPUTE RESOLUTION

At this time, no books have been published that deal exclusively with Superfund and ADR. However, several outstanding general works on environmental dispute resolution are available.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, SOURCEBOOK: FEDERAL AGENCY USE OF ALTERNATE MEANS OF DISPUTE RESOLUTION (1987). (1049 pages)

The Sourcebook is an invaluable tool for research in the ADR area. It is an introduction and reference book for agency personnel, practicing attorneys, administrative law scholars, and anyone interested in alternatives to litigation or other formal proceedings in which the government is a party. The compilation discusses various forms of ADR, such as mediation, minitrials, and arbitration. It familiarizes readers with various dispute resolution alternatives, issues unique to the use of ADR by government agencies, and the experience of agencies that have initiated ADR policies and programs. It also contains sample forms and policy guidance documents that some agencies have used to promote ADR, including EPA's most important documents on Superfund settlements. A number of the sources discussed in this Guide are available in the Sourcebook.28


Amy expanded his 1983 law review article with the same title into this book. While environmental mediation has been hailed as

27. Annotated supra p. 810.
29. Annotated infra p. 826.
faster, less expensive, and more fair than litigation, Amy discusses some of mediation's disadvantages as well as its potential. The author contends that mediation is not always neutral, often obscures power imbalances, and enables more powerful parties to co-opt inexperienced opponents. However, Amy's comparison of ADR to traditional processes is often based on an ideal view of the latter, and he may be underestimating the level of skill and sophistication of environmental interests in the 1980's. Amy's law review article gives the reader the same information in briefer form.


This book posits that conventional methods of handling public disputes no longer work. According to the authors, political compromise, litigation, elections, referenda, and administrative processes have been unable to break policy impasses in a growing number of public disputes. The book draws on various cases over the past fifteen years in which negotiated approaches were used to resolve politically charged public problems. It presents a set of consensus-building strategies aimed at producing agreements that are less costly and more satisfying to those involved. Written in a cogent, jargon-free style, the authors draw on over ten years of first-hand experience to demonstrate that the bitterness of zero-sum outcomes may be avoided by the use of ADR. This is the first book to discuss the problems of Superfund in the ADR context.

G. BINGHAM, RESOLVING ENVIRONMENTAL DISPUTES: A DECADE OF EXPERIENCE (1986). (284 pages)

This book presents the first empirical study of voluntary approaches to resolving environmental conflicts. Through extensive interviews, tabulation of data, and analysis of more than 160 cases, it documents and discusses the first decade of EDR. It explores the potential and pitfalls of EDR, as well as the factors most likely to aid or hinder successful mediation. Bingham also explores key problems EDR will face in the future. The book also includes an extensive bibliography. It is a good introduction to EDR, but does not provide much specific information on Superfund.

This is the first casebook for law school courses on ADR. The authors have compiled articles, notes, and study questions. Chapter ten is a helpful overview of environmental dispute resolution, but does not discuss hazardous waste cleanup.


The authors use eight case studies to illustrate the major issues of EDR. Chapters cover the nature of environmental conflict, dispute resolution theory, negotiation incentives, joint problem-solving, two-party versus multiparty negotiations, mediation ethics, negotiated rulemaking, and the institutionalization of ADR. Lawrence Susskind did the principal research for the book as part of a larger study by EPA. This well-written and informative book is organized as a self-contained text for a one-semester graduate level course in environmental dispute resolution. Unfortunately, none of the eight case studies is on Superfund cleanup disputes.


This book emphasizes the processes and skills common to all mediation. It is designed to be both an introduction and a manual for practitioners. It discusses environmental mediation, but does not specifically mention Superfund or hazardous waste problems. The appendix contains a set of resource materials, including sample agreements and a professional code of conduct. While not specifically about EDR, the book is an excellent tool for the Superfund mediator.


Drawing on her own experience and that of others, McCarthy presents a practical guide to environmental dispute options. Anecdotal material is used to illustrate the dynamics of mediation. Three sample mediated agreements are included in an appendix. Because the field is changing so rapidly, this five-year-old guide is somewhat out of date.

Settling Things documents six environmental disputes that were settled with the assistance of a mediator. The case studies suggest the roles that mediators can perform, the conditions under which mediation can work, and the limitations and promise of the process. Talbot’s major conclusion is that mediation becomes feasible when a conflict matures to a point where issues are clearly defined, power is balanced, and the parties perceive that their objectives cannot be achieved through unfacilitated negotiation. Although half of the book’s case studies are of complex multiparty disputes, none are about hazardous waste cleanup. This book is much more comprehensive than Talbot’s original 1981 study.30

III

COMMENTARIES

A. Alternative Dispute Resolution

1. Environmental Dispute Resolution in General


In this article the author responds to a critique by Professor Edward Brunet31 of Mays’ article ADR and Environmental Enforcement: A Noble Experiment or a Lost Cause? Mays states that the critique’s arguments are fallacious and demonstrate misconceptions of ADR and the point of Mays’ original article. In this short piece, Mays attempts to correct the misconceptions propagated by Brunet. While this dialogue does not add much to the subject, it does clarify why the use of ADR in the environmental area is controversial.

Bingham & Laue, Disagreeing About Rules: Negotiation and Mediation, EPA J., Mar. 1988, at 17. (3 pages)

A quick overview of the types of environmental disputes ADR processes are being used to resolve. This article suggests that ADR in the environmental area achieves a seventy-eight percent success rate. Bingham’s book on this subject provides a much more detailed study.32

32. Annotated supra p. 821.

Mays participated in the development of EPA’s *Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions.* In this article, he uses the perspectives of the government and the private sector to examine the need for ADR in enforcement actions, as well as the obstacles to its use. He concludes that ADR should play a key role as EPA’s docket of cases continues to grow and that support from the government and the private sector is essential to make this a viable option. Mays suggests ADR education and training as a means to change the attitudes of people working with potential Superfund settlements. Although this article does not specifically address Superfund cleanup cases, it is a “must read” on general aspects of environmental ADR.


This article strongly advocates the use of ADR in environmental enforcement actions and suggests methods of implementation. The article does not thoroughly address the obstacles facing ADR.


This article summarizes the findings of Bingham’s book of the same title, focusing on the increased use of ADR techniques to settle environmental controversies, the success of those techniques, and the challenges they pose to EDR as a profession.


This is an excellent academic analysis of the larger picture in environmental dispute resolution by the chief judge of the United States Circuit Court of Appeals for the District of Columbia Circuit. Wald discusses the latest United States Supreme Court rulings on the scope of judicial review of agency actions and then surveys the current impact of ADR techniques on environmental disputes. She explores the tools presently available to district and appellate courts that are sympathetic to an expanded use of negotiation and settlement. Finally, she explores these options in the context of EPA en-

33. *Guidance,* supra note 16.
forcement actions and negotiated rulemaking, concluding that ADR and judicial review may have conflicting aims. This article is essential reading on the prospects for ADR and Superfund.


This overview of the environmental dispute resolution spectrum, which is adapted from a speech to the Conservation Foundation, is not particularly useful. Dinkins does, however, make an interesting distinction between litigation as a tool to define rights and responsibilities under the law, on the one hand, and ADR as a more efficient set of techniques to shed light on the facts of a case on the other hand.


In this controversial article, Susskind calls for environmental mediators to assume a more active and accountable role, rather than the traditionally neutral function of a mere facilitator. For instance, the author claims that a mediator should protect the interests of under or unrepresented third parties. Susskind also lists nine steps to successful environmental mediation and seven criteria for judging the success of such efforts. This article, which includes a reply by Professor Stulberg, provides a good introduction to the subject of environmental ADR.

2. Critiques and Barrier Studies


While Bingham and Laue claim a seventy-eight percent success rate for mediation, these authors maintain that, based on a study of eighty-one disputes, ninety percent of mediated cases never reach agreement as a result of the mediation. The study suggests, however, that the lack of signed agreements does not accurately reflect the mediators' contribution to the process of negotiation. The authors conclude that evaluative criteria should focus on the process gains of the mediation rather than on the outcome.

34. See supra p. 823.
Reisel, *Negotiation and Mediation of Environmental Disputes*, 1 Ohio St. J. on Dispute Resolution 99 (1985). (13 pages)

The author argues that, despite success thus far, EDR faces significant limitations. Reisel suggests that certain cases are not appropriate for ADR, especially those involving an inequality of power. He uses two case studies to comment on negotiation and mediation in general. Though simplistic, the article provides a useful counterpoint to those authors who only discuss ADR's potential advantages.


Amy is one of the few authors who has written on the negative aspects of environmental dispute resolution. He discusses three problems with ADR: the seduction of the environmentalists, power imbalances, and a definitional bias in mediation against environmental interests. While this work provides balance to more optimistic commentaries on ADR, Amy's critique overestimates traditional dispute resolution and underestimates the skill of environmentalists.


The author reviews Talbot's *Settling Things* and refutes the book's major propositions on mediation of environmental disputes. Schoenbrod asserts that government promotion of ADR would have little effect because one party always has an incentive to delay resolution. Schoenbrod does not mention whether this practice holds true for Superfund cleanup negotiations. Finally, as an alternative to mediation, the author proposes changing legislative structures that contribute to environmental litigiousness. This is one of the few articles that argues against the adoption of mediation.


This article summarizes the five-year experiment with environmental negotiations by the U.S. Geological Survey and the Council on Environmental Quality. Unfortunately, EPA was the lead agency on only one of the nine case studies, and that was not a

35. Annotated supra p. 823.

36. In fact, several corporations have begun investigating ADR techniques for the allocation of remedial costs. See Information Network, annotated supra p. 811.
Superfund case. Few of the attempts at mediation were successful; nevertheless, the project called attention to obstacles to settlement, made recommendations for lowering these barriers, initiated training workshops, and documented new techniques for ADR in the federal government. The research is interesting but not entirely on point for those interested in Superfund problems.

3. Alternative Dispute Resolution in Government


The purpose of this article is to examine ADR as it pertains to the federal government and, in particular, to the Department of Justice (DOJ). It offers a brief description of governmental ADR activity and how the DOJ is involved. It describes DOJ policies and experience with ADR to date. The article discusses government litigators’ concerns with ADR, speculates on the movement’s future, and offers suggestions for litigators confronting these new techniques. Although it presents a helpful journalistic overview, the article’s emphasis is on the use of ADR in suits against the government. It mentions Superfund enforcement cases only in passing.


In this article, Senator Hatch applauds the use of ADR while examining questions relating to the right to a jury trial, the right to due process of law, and the right to equal protection of the laws. He claims that the application of ADR is particularly well suited to settlements where timely and inexpensive relief are of great importance. However, the article does not mention CERCLA. Hatch’s coverage of ADR is superficial and can be omitted from research on Superfund settlements.


This article discusses negotiated rulemaking and administrative adjudication and only briefly touches on arbitration and mediation. It is not very useful for a study of ADR possibilities in Superfund cleanups.
Former United States Attorney General William French Smith presents a general overview of the steps taken by the federal government to implement alternative means of dispute resolution in rulemaking and litigation and also discusses possibilities for the future. The article lacks substantive analysis.


This article explores the impact of the Occupational Safety and Health Act on the arbitration process, as well as the judiciary's treatment of awards based on an arbiter's interpretation of the Act. The article is useful for comparisons of ADR in two different substantive policy areas.

4. Alternative Dispute Resolution Techniques


A summary jury trial is an alternative dispute resolution technique that retains the traditional jury system. The jury's verdict, although not binding on the parties, serves to facilitate settlement. This article focuses on a case concerning organic solvent contamination of residential wells, but the method it describes will likely be applied to Superfund cases in the future. Zatz was one of the principal attorneys in this summary jury trial, and this anecdotal article provides a good introduction to the potential of summary jury trials.  

Susskind, Mediating Public Disputes, 1 NEGOTIATION J. 19 (1985). (3 pages)

This is the clearest of several articles by Susskind with similar titles. In this article, he describes experiments at the federal, state, and local levels with the use of alternate means of dispute resolution. These include negotiated agency rulemaking by federal agencies, mediation at the state level to resolve disputes regarding siting of hazardous waste treatment facilities, and negotiated investment strategies for city planning. This short article is not directly on
point, but it does give an overview of types of ADR used in the public sector.

**B. Superfund**

1. **General Accounts and Legislative Histories**


   This is the eighth edition of a summary outline of issues and a table of published and unpublished opinions relating to civil enforcement of RCRA and CERCLA. The outline is organized by subject. The ongoing project is a very useful general source for all Superfund cases. Researchers should check Chemical Waste’s index for the latest version, as the cumulative outline is issued irregularly twice a year. This is an outstanding research tool on any Superfund topic. Even though cases are reported inconsistently, the outline is sure to contain any new cases relating to ADR issues.

   Lucero, *Son of Superfund: Can the Program Meet the Expectations*, ENVTL. F., Mar.-Apr. 1988, at 5. (8 pages)

   Written while Lucero was still with EPA, this article assesses SARA one year after it became effective. The author believes that while there are some positive aspects to SARA, there are “dark clouds on the horizon.” He notes that EPA must resolve the dilemma between obtaining the most environmental protection nationwide for the available dollars and obtaining maximum cleanup at each site. Lucero clearly favors the former course of action and suggests several changes in SARA’s implementation to that end. Finally, he suggests several criteria for judging the program’s success. In short, this article provides an excellent overview of the current landscape as EPA looks to the future.


   This research guide effectively covers every aspect of CERCLA during its first five years. It is divided into five major sections: commentaries, looseleaf services, newsletters, organizations, and databases. This research guide was written, however, before SARA was enacted in 1986. A great deal has been published on the subject since that time, particularly in the area of settlements.

This outstanding annotated legislative history provides a comprehensive guide to understanding the development of the new law and interpreting the significance of its provisions. The guide includes separate detailed discussions for more than forty of the principal topics covered by SARA. A developmental history for each topic relates the topic to existing provisions, outlines the role of the administration and the seven congressional committees involved in the reauthorization process, and lists all the relevant legislative history sources.


This may be the only short piece on CERCLA’s legislative history.

2. Settlement and Use of Alternative Dispute Resolution


This article by two former Clean Sites, Inc., employees is up to date and informative. It concludes that the voluntary settlement program must work for Superfund to work. The authors hypothesize that the settlement program is not working because each settlement is approached by both the government and the PRP’s as if it were the first and only time such a negotiation would have to occur. They argue that it is necessary to systematize the settlement process. To this end, they propose the use of ADR techniques and third-party neutrals acting in a factfinding capacity relative to the issue that usually defeats settlement negotiations, allocation of costs. The section discussing the interface between science and law in this area is somewhat confusing, but the rest of this article makes it one of the best published on Superfund and ADR.


As its title suggests, this note contends that the 1986 Superfund amendments fail to eliminate major barriers to settlement under CERCLA, such as the high costs of negotiating and implementing
site cleanups and EPA's failure to create adequate incentives for parties to perform cleanups. It also proposes policies that the government could adopt to overcome the problem. The author describes the problem of hazardous waste gridlock in a clear and concise fashion, but ignores the possibility of reaching settlements through ADR.


Gaynor makes an interesting plea for EPA leniency in stipulated penalty provisions for PRP settlement agreements. The dispute resolution methods Gaynor discusses in this article are not ADR techniques designed to bring about cleanup agreements; instead, they are dispute resolution provisions written into agreements in case the settlement agreement breaks down. Gaynor notes that EPA can adopt alternative means of dispute resolution that will encourage PRP's to participate in implementing CERCLA without sacrificing EPA's environmental objectives or causing PRP's to feel entirely at the mercy of EPA.


This article provides a good introduction to Superfund settlement vocabulary. A beginning CERCLA researcher might want to read this article before reading his or her first consent decree.


This article, a synopsis of a report commissioned by EPA's Office of Policy Planning and Evaluation before SARA was enacted, identifies and analyzes problems encountered during settlement negotiations. The report presents a detailed analysis of how settlement negotiations actually work. Ideally, one should read the entire report; however, the report is unpublished and may be difficult to obtain.

38. See infra note 48.

This article examines the evolution of settlement policy issues as they arose in the Superfund reauthorization process and were resolved by SARA. The author begins by considering how the issues became a major concern of Congress then reviews the specific provisions developed by the Senate, the House, and, finally, the Conference Committee. He presents a thorough treatment of the legislative history and policy concerns surrounding the settlement policy amendments then suggests that EPA's management approach must evolve in tandem with the new legislation. Strock concludes by reflecting on the implications of the congressional debate and its aftermath for the new Superfund program. The article is worth reading to see how the settlement provisions might have evolved.


The author maintains that SARA's requirement of judicial rather than administrative consent to settlement decrees will increase rather than prevent delay in hazardous waste cleanups. He proposes that parties file their complaint and consent decree simultaneously with a motion by EPA to stay the proceedings in order to expedite the process. This article presents an interesting sidebar to the Superfund settlement puzzle.


Futrell notes that the private sector has shown creative initiative in the effort to clean up hazardous wastes. However, he also recognizes that there is growing concern that transaction costs of these cleanups are too high. One encouraging innovation is the “generator's committee,” which has become a standard method of convening the hundreds of PRP's involved at a single site. Futrell discusses ADR but does not give it much consideration. Though the article rambles and contains no subheadings, it is a good analysis of new developments in environmental liability under Superfund.

The author reviews the new settlement provisions of SARA and analyzes their potential impact on EPA's enforcement procedures, taking into account other relevant sections of SARA. He tells us that Congress has also substantially strengthened EPA's enforcement authority and set a standard of review very favorable to EPA, leading a number of pundits to suggest that instead of SARA, the acronym for the new law should be RACHEL: Reauthorization Act Confirming How Everyone is Liable. Mays suggests that SARA's provisions for public and PRP participation in the cleanup process will considerably slow that process. This is a very good guide through some difficult statutory language. Mays looks at the tools for settlement in the law itself, ignoring ADR until his next article.


The author notes that EPA often conducts Superfund negotiations with an entity called a "steering committee." These committees are panels of representatives of a larger group of PRP's involved with a particular hazardous waste site. Moorman analyzes what the committees do, why they came into existence, how they are structured, and how they function. This last topic includes information gathering and dissemination, consensus development, cost allocation, and settlement negotiation. This article asserts that the success of CERCLA largely depends on the effectiveness of these committees. Moorman suggests that the percentage of negotiation failures could be diminished by greater EPA assistance to committees that are having difficulty arriving at a settlement. He adds concrete proposals for EPA to consider. This is an important discussion of a subject generally ignored in the Superfund literature.


The author argues that a variety of factors, such as statutory constraints, inadequate funding, and limitations inherent in litigation, have combined to increase the costs and delays inherent in the Superfund program. After an extensive analysis of EPA settlement policies from 1980 to 1985, he suggests that greater reliance on privately funded cleanups, negotiated with the full accord of EPA,
waste generators, state and local governments, and affected citizens would significantly streamline the process. Applying the concept of "principled" negotiation, Anderson details a process that includes selecting a mediator, identifying sites amenable to negotiated cleanup, and including all parties with a stake in the outcome.

Habicht, Encouraging Settlements Under Superfund, NAT. RESOURCES & ENV'T, Fall 1985, at 3. (8 pages)

This article sets forth the basic goals and authorities of the Superfund program and describes the results of early CERCLA litigation. It outlines the enforcement process and EPA's selection of cases. Habicht also reviews the drawbacks to litigation and the need for private party cleanup if Superfund is to achieve its goals. He explores government settlement policies and options for greater flexibility in negotiating voluntary private party cleanup. This is a brief and bland introduction to why alternative means of dispute resolution should be exploited in CERCLA cases.

Kowalski, Why Can't We Just Settle These Superfund Cases Once and For All?, 5 VA. J. NAT. RESOURCES L. 179 (1985). (17 pages)

This article focuses on issues left unresolved by EPA's 1985 Settlement Policy, such as covenants not to sue, forms of settlement, contribution, and opportunities for settlement of less than one hundred percent of cleanup costs. In enacting SARA, Congress adopted provisions in many of these areas, including incentives for negotiation, finality of settlement, and contribution. Because many commentators think SARA did not go far enough, this article is still worth reading to provide an understanding of the Superfund settlement process.

Mays, EPA's Superfund Settlement Policy, ENVTL. F., Feb. 1985, at 6. (12 pages)

The author, previously an attorney for EPA, analyzes EPA's 1985 Settlement Policy. While agreeing that the policy is not a panacea, Mays thinks that it will help make settlement easier once the negotiation process has begun. His analysis demonstrates EPA's dilemma: attempting to provide incentives for voluntary settlements that preserve the government's legal rights and options, while at the

same time placing on PRP's the risk that a remedy chosen for a particular site may not succeed. He concludes that "the best incentive to hazardous waste cleanup is a vigorous, efficient enforcement program" coupled with voluntary action by PRP's. As with all of Mays' work on Superfund, this article is clearly written and well worth reading.


The author contends that EPA's 1985 Settlement Policy is unlikely to encourage an increase in the pace of voluntary cleanups because EPA has not provided significant incentives to PRP's. He contends that, on the contrary, EPA has actually created impediments to voluntary cleanup. Effective incentives would include: cost savings, contribution protection, flexible thresholds on acceptable levels of settlement, and enhanced releases from future liability. Because the enactment of SARA did not end these debates, Moorman is still worth reading. Kowalski's article, however, presents a clearer analysis of the problem.


This article describes how a facilitator, mediator, or arbitrator, such as Clean Sites, can accelerate settlement of Superfund cleanup disputes by encouraging the involvement of PRP's. Despite the fact that the article at times appears to be an advertisement for Clean Sites, Rikleen offers interesting ideas on "shuttle diplomacy," dual track arbitration and negotiation, and regional approaches to cleanups. In short, this is an article well worth reading.

Stoll & Graham, *Need for Changes in EPA's Settlement Policy*, NAT. RESOURCES & ENV'T, Fall 1985, at 7. (6 pages)

This article describes the positive elements of EPA's 1985 Settlement Policy then claims that EPA is not following some of these positive aspects in practice. The authors proceed to criticize EPA's policy of nonrelease from liability as being counterproductive. Finally, they suggest that EPA give PRP's the opportunity to perform remedial investigation or feasibility studies at waste sites. This article seems to be the most objective treatment of the subject matter.

42. Annotated supra p. 834.

This pre-SARA article articulates some of the principles for settlement that emerged in the first few years of CERCLA. The article is designed to provide assistance to attorneys who must make recommendations to clients on whether to litigate or settle a Superfund case. Moore asks “Why Settle?” in Part II and then proceeds to detail a variety of reasons why companies should negotiate rather than fight these cases.


The author, formerly an attorney for EPA and currently Assistant Vice-President of Clean Sites, begins her article with an overview of the liability provisions of CERCLA. She then outlines the advantages of avoiding litigation and some difficult problems that must be resolved before a settlement can be reached, discussing these concerns in the context of the cleanup of a hazardous waste site in Woburn, Massachusetts. Rikleen concludes that a successful cleanup must address the concerns of the local community and that any agreement should be clear and concise to prevent subsequent misinterpretation. Although Woburn was listed as one of the ten most hazardous sites in the country, only one PRP participated in the Woburn settlement talks. The case is therefore not very instructive on the obstacles to multiparty Superfund negotiations.


Pain illustrates the complexity and potential problems of mega-party Superfund negotiations that include hundreds of PRP’s from one hazardous waste site. Even though the article is relatively old compared to much of the CERCLA literature, it is full of practical suggestions to ease the settlement process. For instance, Pain suggests using minitrials in which an arbitrator makes a nonbinding recommendation concerning the liability of each party.

43. *Annotated supra* p. 808.
3. Allocation of Cleanup Costs


Although most Superfund cases attempt nonbinding mediation and negotiation techniques, PRP's are often unable to reach an agreement on the proper allocation of cleanup costs. Disputes over cost allocation then contaminate negotiations over the proper method of cleanup. In light of these problems, Cohen suggests that PRP's submit most cost allocation disputes to binding arbitration and reserve the issue of remedy until a cost allocation scheme has been determined. This excellent article sheds light on an ADR technique often ignored in the Superfund literature.


Garrett states that the three key issues to allocating the cost of cleanup are the joint and several liability standard, the right of contribution, and the means used to apportion liability. Since this article was written, SARA defined the first two, but failed to set out criteria for apportioning liability. Garrett also discusses the so-called Gore Amendment criteria and various allocation formulae and methods to facilitate apportionment. The article is a good introduction to this crucial element of settling multiparty Superfund cases.

4. Case Studies

"Minitrial" Used by Corps of Engineers to Resolve Superfund Dispute, Hearing Told, 19 Envtl. Rep. (BNA) 208 (June 10, 1988). (1 page)

A short news piece on the first minitrial in a Superfund case. Many CERCLA observers have talked about the possibilities of this technique, and now it has been tried successfully.


The MOTCO settlement, for remedial action at a hazardous waste site near La Marque, Texas, was one of the first settlements

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after the passage of SARA in 1986. The settlement is important because of its size—twenty PRP's and $45 million—and the state-of-the-art technology proposed to clean the site. Mays uses this case study to discuss SARA’s settlement provisions on mixed funding, covenants not to sue, de minimis party settlement, and “applicable or relevant and appropriate requirements” (ARAR’s), which are other federal or state laws that might apply to settlements. The author analyzes only the results of the MOTCO settlement, not the process through which it occurred, and therefore does not mention whether ADR played a role. He suggests that many aspects of the MOTCO settlement make it a good model for future agreements.


A fascinating case study of Susskind’s appointed role as an environmental mediator in Camden County, New Jersey. Though not a Superfund cleanup, the mediation principles articulated in this case study can easily be analogized to the allocation of costs in a CERCLA remedial action. Susskind discusses the need for individual caucuses and credible technical data. This clear and succinct article was originally written as a speech.


In June 1985, Chem-Dyne's Hamilton, Ohio hazardous waste facility became the subject of one of the first settlements governing soil removal and groundwater purification at a multigenerator Superfund site. Graham, chair of the steering committee of settling companies, argues for a “surface cleanup first approach” to major CERCLA cases and recommends that PRP's and government agencies adopt a more cooperative attitude in order to avoid litigation and delay. He suggests that from the moment PRP's first receive their notice letters from EPA they should make a concerted effort to organize themselves. Though insightful, this play-by-play case study is often confusing.


This article details EPA's first multiparty Superfund settlement. Bernstein, co-chair of the generator industry's steering com-

mittee in the negotiations, describes how the seventeen parties resolved the critical issues of allocating liability among the generators and establishing a practical mechanism for operating the cleanup trust fund established for the site. The case study is quick and easy to read.

5. Case Strategy

Hickok & Padleschat, Strategic Considerations in Defending and Settling a Superfund Case, 19 Loy. L.A.L. Rev. 1213 (1986). (37 pages)

The authors briefly identify litigation factors warranting consideration (impleader, bifurcation, and remedial participation) without suggesting that a particular strategy would necessarily be best in every case or even a particular case. The article offers helpful advice to defense counsel.


This article deals with the complex subject of third-party claims for contribution of cleanup costs in a clear and organized fashion, using the so-called Laskin proposal as a theoretical vehicle. In the Laskin proposal, twenty “second tier” companies wishing to resolve potential third party contribution claims without litigation offered a “Framework for Settlement” to the eight generator defendants at the Poplar/Laskin site in Ohio. The participating companies agreed to submit to ADR to develop a cost allocation formula. This innovative notion allows the primary defendants to avoid fighting a “two-front” war against the government and smaller, second-tier PRP’s at the same time. The Laskin-style proposal could become an important precedent and mechanism for settling contribution claims among PRP’s.


The author states that the principal problem in negotiating the conclusion of a cleanup case is how to resolve uncertainty over the nature and extent of remedial action needed at the site. The question “How clean is clean?” exists not because of a lack of data but rather, because of the political difficulties of defining acceptable or tolerable levels of risk. Mott claims that there are two critical questions for defendants to ask in every case. First, on whom does the
burden of uncertainty fall? Second, how will it be resolved? Defense counsel should seek a finite and reasonable ceiling for their client's obligation in settlement negotiations. Mott compares those obligations in thirty-four settlements, orders, and judgments in CERCLA cases. Although interesting, Mott's article ignores the problem of cleanup cost allocation among PRP's.

IV

GOVERNMENT DOCUMENTS, STUDIES ON ALTERNATIVE DISPUTE RESOLUTION IN SUPERFUND, MODEL PROCEDURES, AND WORKING PAPERS

A. Government Documents on Alternative Dispute Resolution and Superfund

In addition to the following resources, note that Senator Grassley will introduce legislation entitled "The Administrative Dispute Resolution Act of 1989." The Act will authorize and encourage federal agency use of mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes.

1. EPA Memoranda and Guidance Documents

EPA produces program documents detailing its efforts to clean up hazardous wastes. These documents ordinarily take the form of interim, draft, and final guidance memoranda from headquarters to regional administrators and staff. Keeping track of the production of these guidance documents is an ongoing process that challenges even EPA insiders.

46. In addition to the sources below, the United States General Accounting Office (GAO), 441 G Street NW., Washington D.C., 20548, publishes the Annual Index of Reports, which lists all reports issued by the federal government. For information, contact GAO at (202) 275-6241. The first five copies of any publication are free. The Index does not cumulate, so back catalogs are necessary for serious research. For example, GAO has a report entitled Hazardous Waste: Issues Surrounding Insurance Availability (RCED-88-2), which is very useful.


48. Obtaining copies of EPA's internal memoranda is often quite difficult. In addition to the Superfund hotline, annotated supra p. 816, researchers may try calling EPA's Public Information Center at (202) 475-7751 for general EPA documents, or the CERCLA docket at (202) 382-6940 for more technical materials. If these options fail, call Jack Winder, Superfund Bureau Chief, or Richard Robinson, Chief of Legal Enforcement at (202) 475-8293, or finally, attempt a Freedom of Information Act request. See supra note 22. Also, note that Cassel, annotated infra p. 845, provides a very extensive list of documents.
Subject: Evaluating Mixed Funding Settlements Under CERCLA
Date: Oct. 20, 1987

This document provides guidance for use when a party negotiating with EPA proposes that both private and Superfund funds be used at a site. This type of arrangement is generally referred to as "mixed funding" and is authorized by Section 122(b) of CERCLA. The primary goals of the memorandum are to encourage EPA regional offices to consider mixed funding, present a method of analyzing such proposals, and indicate EPA's preferences by specifying good and bad candidates for this type of settlement.

Subject: Cover Memorandum to Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions
Date: Aug. 14, 1987

In this cover memorandum, EPA Administrator Lee Thomas describes changes from the Draft Guidance and plans to implement the final document's proposals. Implementation plans include training, outreach (including plans for a national conference), and pilot cases. Thomas said that he expected "each Region to nominate at least one case for ADR this fiscal year."

Subject: Guidance on the Use of Alternative Dispute Resolution Techniques in Enforcement Actions
Date: Aug. 6, 1987

This important document establishes that it is EPA's policy to utilize ADR techniques in the resolution of appropriate civil enforcement cases. It describes various types of ADR and the characteristics of cases that might call for the use of ADR. The guidance also establishes procedures for choosing appropriate cases and guidelines for the selection of a qualified third-party neutral. Finally, the document formulates case management procedures for the use of ADR in resolving these issues. Attached as appendices are sample agreements that utilize ADR, arbitration procedures, and mediation protocols. EPA's adoption of ADR holds enormous promise for hazardous waste cleanup settlements. While EPA headquarters is making a great deal of effort in this area, it is not seeing

much success in its regional offices. This document is the starting point to any research on Superfund and ADR.

Subject: Interim Guidance on Covenants Not to Sue Under SARA
Date: July 17, 1987

This guidance applies to private party cleanup and cost recovery settlements under CERCLA. It deals with three major issues: EPA's ability to request "reopeners," i.e., additional relief after settlement, EPA's discretion to seek additional remedial relief after settlement but before the effective date of covenants not to sue, and EPA's responsibility to certify completion of remedial actions.

Subject: Interim Guidance on Settlements With De Minimis Waste Contributors Under Section 122(g) of SARA
Date: June 19, 1987

This interim guidance was published in the Federal Register with a solicitation for public comment. The document provides guidelines for determining which PRP's under section 107(a) of CERCLA may qualify for treatment as de minimis waste contributors pursuant to section 122(g)(1)(A) of SARA. It also provides guidelines for negotiating and entering into settlements with de minimis parties.

Subject: Interim Guidance: Streamlining the CERCLA Settlement Decision Process
Date: Feb. 12, 1987

In this memorandum, EPA states that the way in which it manages the settlement process can have a dramatic effect on the chances for successful cleanup negotiations. The memorandum describes problems and concludes that changes in three areas will improve and streamline the process of conducting settlement discussions. These changes include negotiation preparation, oversight of settlement decisions, and deadline management.

Subject: Settlement of Enforcement Actions Using Alternative Dispute Resolution Techniques  
Date: Oct. 2, 1985

This memorandum identifies obstacles to the quick resolution of EPA enforcement cases, suggests ADR mechanisms for resolving cases more expeditiously and with better results, advises administrators of available resources, and solicits potential cases for ADR. This memorandum was an early EPA effort in the area of ADR. Although not specifically directed at hazardous waste cases, the Superfund settlement logjam was the impetus for this memo.

Subject: Interim CERCLA Settlement Policy  
Date: Dec. 5, 1984

This memorandum sets forth the general principles governing private party settlements under CERCLA and specific procedures for EPA to use in assessing settlement proposals. It addresses, among other topics, releases of information, criteria for evaluating offers, partial cleanup proposals, contribution, and covenants not to sue. The memorandum incorporates the draft, *Hazardous Waste Case Settlement Policy*, published in December 1983. It states that proposals for settlements will be evaluated under criteria established in the policy guidance entitled *Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA*. After aggressive lobbying by EPA, much of this memorandum was adopted by SARA.

2. Administrative Conference of the United States (ACUS) Recommendations and Reports

P. Harter, *Points on a Continuum: Dispute Resolution Procedures and the Administrative Process* (June 5, 1986) (report to the Administrative Conference)

Harter's 1986 report to the Administrative Conference covers each technique of ADR in a variety of administrative settings. Chapter topics include arbitration, mediation, settlement techniques, minitrials, and agency oversight. This report is thorough and fact filled.

55. See supra note 39.  
Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution (Recommendation No. 86-8)

This recommendation\(^57\) states that a crucial role in the functioning of various modes of ADR is that of the "neutral": a person, usually serving at the will of the parties, who attempts to facilitate resolution of the dispute. The ACUS suggests that government agencies develop procedures to decide when and how these persons can be employed and to identify qualified neutrals.

Negotiated Cleanup of Hazardous Waste Sites Under CERCLA (Recommendation No. 84-4)

This clear and forceful ACUS recommendation\(^58\) traces EPA settlement policy in the first four years of CERCLA and points out problems with EPA's approach. ACUS suggests eleven steps that the Agency should take to increase reliance on negotiated private party cleanups in cases where successful negotiations are possible. Many of these ideas were adopted by EPA and Congress.

Agencies' Use of Alternative Means of Dispute Resolution (Recommendation No. 86-3)

A brief outline of ADR techniques, Recommendation No. 86-3\(^59\) urges administrative agencies, where permitted under statutory authority, to adopt ADR techniques as a means of resolving civil disputes. The memorandum discusses voluntary and mandatory arbitration, settlement techniques (mediation, minitrials, and guided negotiations), and private sector dispute mechanisms. A lexicon of ADR terminology is attached as an appendix. This is a sketchy report on ADR meant only as an introduction to the subject.

B. Studies, Model Procedures, and Conference Reports

The following studies, model procedures, and reports have not been published in journals or periodicals, but they provide some of the most up-to-date information on ADR for Superfund. Note that two of the major "think-tanks," the Rand Corporation and the Brookings Institute, do not list any information on Superfund and ADR.

\(^{57}\) 1 C.F.R. § 305.86-8 (1988).
\(^{58}\) 1 C.F.R. § 305.84-4 (1988).
\(^{59}\) 1 C.F.R. § 305.86-3 (1988).

This report states that, under the current implementation strategy, the Superfund program will not achieve the goals set by Congress or public expectations. To improve the program, Clean Sites recommends that EPA: (1) maximize enforcement and settlement options to encourage voluntary cleanup by PRP's; (2) improve the remedy selection process; (3) clarify procedures for managing Superfund cleanups, with the goal of improving coordination within the Agency; and (4) redefine measures of the program's success. Surprisingly, the report does not discuss alternative dispute resolution in the enforcement process.


This case study illustrates the use of a minitrial by the U.S. Army Corps of Engineers and the Goodyear Tire and Rubber Corporation to resolve a Superfund cost allocation issue. The author served as the neutral adviser to the parties in this case. He describes the chronology of the conflict and the impasse that led to the use of ADR. In addition, he describes how the parties reached the point of a minitrial, the ground rules, his selection as the neutral, and the substance and process of the four-day trial itself. The study recounts each side's presentation and the negotiations that followed, then concludes with a description of the agreement reached. This useful work shows ADR theory in practice at a Superfund site.


The author describes the Superfund enforcement process and obstacles to settlement. He proposes the use of ADR and outlines problems with its implementation at EPA. The section devoted to model procedures for ADR in the Superfund process is intended to facilitate EPA's use of these techniques. While the author does a good job of integrating information on the Superfund enforcement process from various sources, his demonstration protocols are cryptic. The thesis includes an extensive bibliography of EPA documents and additional sources.
This report states that ADR principles can be applied productively to the disputes that commonly arise among PRP's in Superfund cleanup cases. In this paper, CPR's Hazardous Waste Committee sets forth the ADR procedures that it has developed for fair and expeditious cost allocation among PRP's at hazardous waste sites. The paper discusses advantages of an equitable cost allocation in the beginning of a remedial action and includes sections on apportionment, de minimis PRP's, EPA's use of ADR, and alternatives in cost recovery actions. With representatives from Exxon, General Electric, Mobil, Monsanto, and Union Carbide on the panel, this report is the best evidence of industry support for ADR in Superfund actions.\(^60\)


This Report summarizes issues discussed during workshops and plenary sessions of the Superfund Settlement Project's Northeast regional Superfund conference. Eighty leaders from government and industry participated in the event, which concentrated on facilitating settlement agreements that allow private corporations to investigate and clean up contaminated sites. Discussions centered on creating incentives to settle hazardous waste disputes and the basic nature of the relationship between the parties to Superfund settlements. Participants shared their views on dispute resolution, stipulated penalties, mixed funding, and actions against nonsettling parties. The report offers an interesting example of government and industry cooperation that could signal a better future for Superfund.\(^61\)

**CLEAN SITES, INC., ALLOCATION OF SUPERFUND SITE COSTS THROUGH MEDIATION (1987). (34 pages)**

This piece focuses on the process of developing allocation-related information and facilitating an allocation of costs in the context of voluntary private party cleanup of Superfund sites. The

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60. The report is available from CPR for $25.
authors, Kit Krickenberger and Eugene Berman, are third-party mediators who have assisted in several allocations leading to settlements. The purpose of the article is to share the authors' experience with successful tools and techniques. Specific chapters include a blueprint for allocation (with sections on de minimis PRP's, degree of waste hazard, minimally viable PRP's, multiple handling of a given waste, and late identification of some PRP's) and the relationship of allocation to the settlement process. Clean Sites' pamphlet will satisfy both academic and practical readers; this is one of the most perceptive articles on the subject of cost allocation.62


This handbook is based on experience in resolving corporate, commercial, insurance, tort, and public policy disputes over the past decade. As the preface explains, the handbook's primary focus is on disputes that otherwise would be resolved through litigation. It provides "a framework for practicing lawyers and businesspeople to think about whether and how particular disputes can be resolved more cost-effectively." In outline form, this handbook provides a systematic approach to deciding whether a dispute has ADR potential and which ADR process is most appropriate. Appendices summarize ENDISPUTE's suggested approach to these questions and provide a comparison of ADR procedures. They are followed by a ten page pitch for ENDISPUTE.63


This work is perhaps the most extensive research thus far on this topic. This study was commissioned by EPA's Office of Policy Planning and Evaluation to identify and analyze problems encountered during Superfund settlement negotiations. Although all the data was collected before CERCLA was amended and reauthorized, the conclusions and recommendations are still relevant. Nine of the fifteen settlements studied, however, involved a single PRP, and of the six that included multiple PRP's, the largest settlement involved only eight defendant companies. Therefore, the data may not be applicable to a site with hundreds of PRP's. The report presents a

detailed analysis of how CERCLA settlement negotiations actually work. Chapters of the study (and the recommendations it proposes) focus on participation of all affected parties, information sharing and joint development, flexibility within EPA, allocation among PRP's, dispute resolution techniques, and negotiating posture. This "review draft" is stamped "not for reproduction or dissemination outside of EPA," but ENDISPUTE, Inc., might make it available.64

**KEYSTONE CENTER, HOW CLEAN IS CLEAN: A KEYSTONE CONSENSUS-BUILDING PROJECT ON WASTE SITE CLEAN-UP POLICY (June 1986). (44 pages)**

This report summarizes the conclusions of an eighteen-month consensus-building project that involved a wide range of public and private sector institutional interests. The project's goal was to "develop a new approach to determine the appropriate extent of cleanup of hazardous waste sites." Although the report does not discuss ADR, it does propose a decisionmaking process for cleanups and a process for citizen participation.


This paper investigates institutionalizing ADR techniques in hazardous waste cleanup disputes, focusing on a hybrid form of dispute resolution that is part arbitration and part minitrial. Hoban argues that pitting the government against PRP's is a misuse of resources because the real dispute exists among the PRP's themselves. He suggests the formation of an organization to facilitate negotiation within the generator group to apportion the costs of cleanup equitably and that EPA become more amenable to ADR techniques in these cases. Hoban's proposals were implemented with the formation of Clean Sites and the publication of EPA's *Guidance on ADR*. After six years, this study is still worth reading.

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64. A synopsis of the study is published at 8 **ENVTL. IMPACT ASSESSMENT REV.** 113 (1988).
VERMONT LAW SCHOOL DISPUTE RESOLUTION PROJECT, A STUDY OF BARRIERS TO THE USE OF ALTERNATIVE METHODS OF DISPUTE RESOLUTION (report of a symposium held Sept. 16, 1983). (247 pages)

This is a one-of-a-kind report that includes both the full text of each speaker's remarks and the discussion that followed as well as papers written by the symposium's study group. The purpose of the report was to expose and explore barriers to the successful implementation of ADR in many situations. Participants included ADR scholars Frank Sander, Joseph Stulberg, and Michael Wheeler. The report is a very useful overview of obstacles to ADR.

C. Working Papers and Teaching Notes


This paper discusses a hybrid ADR technique known as policy dialogue. The authors include sections on goals, procedure, nonparticipant relationships, facilitation, and different modes of implementing the work of a dialogue group. They note that a policy dialogue in 1984 initiated the organization Clean Sites. While this paper focuses on a very different topic, many of its ideas are relevant to Superfund cleanups.


This is a package of teaching notes designed to provide theoretical lessons for use with dispute resolution games produced by the Harvard Program on Negotiation. The notes are based on the theories elaborated in L. Susskind and J. Cruikshank, Breaking the Impasse (1987). Simulations involve the siting of a controversial new waste facility, a negotiated rulemaking with EPA, and a multiparty negotiation focusing on scientific and technical issues. The latter game is particularly relevant in a Superfund negotiation because the simulation involves incomplete and inconclusive scientific data.

The authors begin by stating a number of proposals advanced especially for handling science-intensive disputes. They conclude that dispute resolution mechanisms that separate scientists from decisionmakers and affected interests are unacceptable. Ozawa and Susskind suggest that mediation, while not the answer in every dispute, is an effective technique for dealing with science-intensive public disputes. They discuss information-sharing, joint factfinding, and mediator accountability. Finally, the authors briefly explore several examples of mediation in site-specific environmental disputes. This is an important example of research into ADR and Superfund.


This paper discusses opposition to the local siting of facilities such as prisons, low-income housing, and hazardous waste treatment plants. It suggests negotiated solutions to the "not in my backyard" movement. Raiffa explores extra-dispute incentives and joint problem-solving by the affected parties. Although interesting and intrinsically related to CERCLA cleanups, the siting of controversial facilities is not the same ADR dilemma as that faced in Superfund settlements. Nevertheless, many of Raiffa's ideas can be applied to hazardous waste cleanups.

All of the Harvard Program on Negotiation materials are available from: The Program on Negotiation Clearinghouse, Harvard Law School, 519 Pound Hall, Cambridge, Massachusetts 02138, (617) 495-1684. Publication lists are available on request, and working papers are $5.00 each. The cost of simulation games varies, but the average price per student for each game is $3.00. The average cost of a teacher's packet is $5.00 per game.
V
ADDITIONAL RESOURCES

A. Bibliography


This bibliography is a useful research tool. It includes eighty-seven annotations, which are concise summaries of each work. Though the bibliography's organization makes it difficult to use, this up-to-date list is a good start for any research in the area.

B. Journals

Environmental Impact Assessment Review
(quarterly, $60/year)
Elsevier Science Publishing Co.
P.O. Box 882, Madison Square Station
New York, New York 10159
(212) 989-5800

Although this academic publication is geared toward environmental impact assessment, it also contains a permanent section titled "Agenda for Environmental Negotiation" that provides an ongoing report on EDR. Volume 5, No. 1 (1985), lists thirty organizations involved in EDR, some defunct but most still operating.

Missouri Journal of Dispute Resolution (annually, $7/year)
The Center for the Study of Dispute Resolution
School of Law, Tate Hall
University of Missouri-Columbia
Columbia, Missouri 65211
(314) 882-9682

This journal contains articles, student notes, and book reviews on a variety of ADR topics.

Natural Resources Journal (quarterly, $22/year)
School of Law
University of New Mexico
Albuquerque, New Mexico 87131
(505) 277-4820

Although the journal covers CERCLA irregularly, Vol. 28, No. 1 (Winter 1988) is devoted to EDR.
C. Looseleaf Services

Since CERCLA was enacted in 1980, looseleaf services on hazardous wastes have been a growth industry; many services have come and gone. Listed below are several that have survived.

Chemical Waste Litigation Reporter (monthly, $650/6 months)
1519 Connecticut Avenue NW., Suite 200
Washington, D.C. 20036-1103
(202) 462-5755

Actually listed as a newsletter, this cumulating series contains approximately 250 pages per month. More than half of the materials relate to CERCLA. Regular features include articles, recent decisions, recent developments, and relevant documents. The articles are usually short and concise pieces geared to Superfund attorneys. Renamed in 1986, this looseleaf reporter was formerly the Chemical & Radiation Waste Litigation Reporter. The reporter includes an annual cumulative index. In that index, informative subheadings under CERCLA include allocation, contribution, and settlement. An outstanding outline of Superfund case law is published by the Reporter approximately twice a year.65

Environmental Law Reporter (monthly, $745/year)
Environmental Law Institute
1616 P Street NW., Suite 200
Washington, D.C. 20036
(202) 328-5150

The Environmental Law Reporter provides several separate binders: “News and Analysis” (cumulating), “Pending Litigation” (cumulating), “Statutes” (interfiling), and “Regulations” (interfiling). “News and Analysis” provides many feature articles on aspects of Superfund. One particular section, “Dialogues,” contains short pieces written by readers to exchange ideas. The service also

65. See, e.g., Ledbetter & Hammond, annotated supra p. 829.
includes the most comprehensive list of environmental law articles, including those published in other journals and looseleaves. In particular, articles on all aspects of Superfund, including dispute resolution, are listed under the heading “Comprehensive Environmental Response, Compensation and Liability Act.”

Environment Reporter (weekly, $1752/year)
The Bureau of National Affairs, Inc.
1231 25th Street NW.
Washington, D.C. 20037
(800) 372-1033

This looseleaf combines cumulating updates with interfiling inserts on many aspects of environmental law. Separate compression binders are organized by such topics as Current Developments, Decisions, Federal Laws, Federal Regulations, Mining, Monographs, and State Air, Water, and Solid Waste Laws. This weekly looseleaf often provides good articles on CERCLA. The information presented is more useful to Superfund litigation than to settlement.

Hazardous Waste Litigation Reporter (bimonthly, $825/year)
Andrews Communications, Inc.
P.O. Box 200
Edgemont, Pennsylvania 19028
(800) 345-1101

More than half of this cumulating looseleaf is devoted to CERCLA. Litigation and regulatory developments are organized and reported as “news items,” while recent pleadings, opinions, statutes, regulations, and settlement agreements are reproduced as “documents.”

The following services have a more limited use in the area of ADR and Superfund settlements.

The Law of Hazardous Waste ($285 for an initial three volume set, with periodic supplements)
Matthew Bender & Co.
1275 Broadway
Albany, New York 12204
(800) 223-1940
Hazardous Waste Law and Practice (annual, $95/year)
John Wiley and Sons, Inc.
One Wiley Drive
Somerset, New Jersey 08875
(201) 469-4400

Hazardous Waste Management Guide (semiannual, $90/year)
Keller and Associates
P.O. Box 368
Neenah, Wisconsin 54957
(800) 558-5011

The Law of Chemical Regulation and Hazardous Waste
(annual, $185/year)
Boardman Company
435 Hudson Street
New York, New York 10014
(800) 221-9428

D. Newsletters and Magazines

In addition to the newsletters and magazines already mentioned, the following sources are useful to research on ADR and Superfund settlements:

Alternative Dispute Resolution Report (bi weekly, $396/year)
The Bureau of National Affairs, Inc.
1231 25th Street NW.
Washington, D.C. 20037
(800) 372-1033

This is a new newsletter from BNA. Highlights include sections on New Developments, Court Decisions, Practices and Perspective, and a Calendar of ADR events.

THE ENVIRONMENTAL FORUM (monthly, $60/year)
Environmental Law Institute
1616 P Street NW.
Washington, D.C. 20036
(202) 328-5150

This magazine usually includes an article on CERCLA in each issue.
Hazardous Waste and Toxic Torts Law and Strategy (monthly, introductory rate $95/year, renewal rate $145/year)
Ledger Publications, Inc.
111 Eighth Avenue, Suite 900
New York, New York 10011
(212) 741-8300

This publication includes reports on: case decisions; settlements and verdicts; new federal, state, and local laws and regulations; insurance questions; and pretrial, settlement, negotiation, and trial strategy for lawyers involved in hazardous waste and toxic tort representation.

Hazardous Waste News (weekly, $345/year)
Business Publishers, Inc.
951 Pershing Drive
Silver Springs, Maryland 20910
(301) 587-6300

This newsletter publishes timely CERCLA updates. It also presents short articles on Superfund on a regular basis.

Toxics Law Reporter (weekly, $940/year)
Bureau of National Affairs, Inc.
1236 25th Street NW.
Washington, D.C. 20037
(800) 372-1033

TXLR, as it is cited, covers legal developments in toxic tort and hazardous waste lawsuits and related insurance issues. It includes discussion of litigation under Superfund and RCRA, tort law reform news, state cases, and legislation. TXLR presents informative and practical articles on Superfund.

E. Databases

Another tool for researching CERCLA problems is specialized computerized databases. Their value, however, is dependent on the researcher’s ability to craft queries to suit his or her needs. Often, a more efficient approach is to have a trained librarian design and conduct the search. Catalogues and database directories are available from the companies that market them and libraries that offer these services. One useful directory is Computer-Readable Databases: A Directory and Data Sourcebook (M. Williams ed. 1985). The area is constantly changing, however, and the directory is becoming out of date.
DIALOG is a vendor of particularly useful environmental databases. For additional information about their services, contact DIALOG’s customer service in Palo Alto, California, at (800) 334-2564. DIALOG does not market a database on ADR. The following DIALOG databases include information on Superfund settlements:

*Enviroline* (file 40, 1971 to present, updated monthly)

This database covers all aspects of environmental information. It provides indexes and abstracts from more than 5,000 primary and secondary publications around the world, including rulings published in the Federal Register.

*Environmental Bibliography* (file 68, 1973 to present, updated bimonthly)

This database does not cover Superfund specifically, but it does include references to information on health, human ecology, and land resources. This database indexes many periodicals and provides access to those referenced.