DOI Finalizes Long-Awaited Overhaul of the Natural Resource Damages "Type A" Assessment Rules

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Overview

Effective August 12, 2026, the U.S. Department of the Interior (DOI), through its Office of Restoration and Damage Assessment (ORDA), issued a final rule modernizing “Type A” natural resource damage assessment (NRDA) procedures under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act. CERCLA requires that NRDA regulations include two types of assessment procedures: Type A procedures, which are "standard procedures for simplified assessments requiring minimal field observation,” and Type B procedures, which are "alternative protocols for conducting assessments in individual cases." 42 U.S.C. 9651(c)(2). The final rule revitalizes the simplified assessment process under Type A assessments, which until now, was effectively obsolete. For potentially responsible parties (PRPs), the revisions create a viable path to faster, lower-cost resolution of natural resource damage (NRD) claims and earlier restoration of injured resources.

Background: Why the Change?

CERCLA directs government trustees—federal, state, and Tribal—to assess and recover damages for injury to public natural resources from PRPs, and it has long required DOI to provide two assessment tracks. The Type A track is a simplified procedure requiring minimal field observation, while the Type B track is a data-intensive, site-specific process that can take a decade or more and cost millions of dollars. In practice, trustees often incur those Type B costs in preparation for litigation that never occurs, and the alleged injured resources go unrestored in the meantime.

The Type A rule, last revised in 1997, was rarely used because it was hardwired to just two environments—coastal/marine and the Great Lakes—and relied on static formulas that could be updated only through formal rulemaking. DOI concluded that the rule was “inefficient and inflexible” and set out to modernize it, issuing a proposed rule in January 2024. Over two years later, DOI finalized the rule largely as proposed, with several refinements driven by commenters. DOI frames the rule as a deregulatory action consistent with recent Executive Orders on deregulation and energy, and it estimates that the rule will generate roughly $16.3 million in annualized cost savings, with approximately $1.6

million saved for each Type B assessment that is converted to a Type A assessment.

Key Changes to the Type A Procedures

- **Geographic Expansion**: The most significant change is that Type A is no longer confined to coastal, marine, or Great Lakes settings. Under the rule, Type A assessment procedures may now be used for all natural resources in any environment in which they occur, dramatically expanding the universe of sites that can take advantage of the streamlined track.
- **Modernized Methodologies**: The final rule also modernizes the methodologies trustees may use, which now cross-references a list of applicable models, allowing trustees to rely on well-established tools such as habitat and resource equivalency analysis and benefits transfer for recreational losses. Importantly, DOI removed prior “existing model” requirements rule language, which means newly developed methodologies may be used as the science evolves, not just those recognized as of the rule's effective date.
- **Increased Damages Threshold**: Perhaps most consequential for the regulated community, the rule replaces the old $100,000 rebuttable-presumption cap with a $5 million threshold (excluding reasonable assessment costs), which will be periodically adjusted for inflation under Office of Management and Budget guidance. Even more notably, the Type A procedure may be used for claims expected to exceed $5 million if all parties agree, which effectively removes any hard ceiling where the trustee and PRP are willing to proceed cooperatively.
- **Cooperative and Voluntary Framework**: The streamlined process remains cooperative and optional. Under the rule, *at least one* PRP must voluntarily agree to use Type A, must agree to toll the statute of limitations for at least one year, and must reimburse the trustees' reasonable assessment costs. This gives PRPs a meaningful role in deciding whether a matter proceeds under the simplified track.
- **Public Transparency:** Transparency is preserved through public participation. Under the rule, the trustee's decision and the modeling that supports it must be documented in a Type A Report, which is made available for public comment for at least 30 days before the report is finalized and any settlement is concluded.

What This Means for PRPs

For PRPs facing potential NRD liability, the practical significance of this rule is speed and cost. By making the streamlined Type A process broadly available, DOI has created a mechanism to compress what has historically been a decade-long, multi-million-dollar Type B exercise into a shorter and more predictable process. That compression should reduce transaction costs, lower overall NRD exposure, and allow restoration to begin years sooner.

Because Type A requires PRP buy-in, PRPs also have an opportunity to move away from the more burdensome Type B track. A trustee cannot force a matter into Type A, so early and constructive engagement with trustees can materially shape the cost, timing, and ultimate outcome of an assessment. PRPs who understand the new framework will be better positioned to steer eligible matters toward the streamlined process if they determine it is well-suited for their site.

At the same time, litigation posture continues to matter. Damages calculated under Type A retain CERCLA's rebuttable presumption of correctness, so clients should weigh the efficiency and settlement advantages of agreeing to Type A against the evidentiary weight that will attach to the resulting assessment. The decision to toll the statute of limitations and to participate in a public-comment process likewise deserves careful and matter-specific evaluation.

Takeaway

DOI's overhaul is generally a favorable development for the regulated community. PRPs that face potential NRD liability, or that are evaluating sites with legacy contamination, should assess whether pending or anticipated claims are good candidates for the new Type A process and should consider engaging early with the relevant trustees to capture the associated cost and timing benefits.
