

## Question 105.01

**Question:** Are costs anticipated to be incurred under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) (otherwise known as the "Superfund" law), pursuant to a remedial agreement entered into in the normal course of negotiation with the EPA, generally considered "sanctions" within ~~Instruction 5(C) to Item 103(c)(3)(iii)~~?

**Answer:** No. ~~The Division's former view that all environmental legal proceedings involving \$100,000 or more instituted by a governmental authority are subject to the disclosure provisions of Instruction 5(C) to Item 103 of Regulation S-K, regardless of whether the money involved is characterized as damages (as in the Superfund cases) or fines, has been superseded by Footnote 30 of Release No. 33-6835 (May 18, 1989) and the letter to Thomas A. Cole (Jan. 17, 1989).~~ Footnote 30 of Release No. 33-6835 (May 18, 1989) and the letter to Thomas A. Cole (Jan. 17, 1989) ~~Footnote 30 and the Cole letter~~ clarify that, while there are many ways a Superfund "potential monetary sanction" may be triggered, including the stipulated penalty clause in a remedial agreement, the costs anticipated to be incurred under Superfund, pursuant to a remedial agreement entered into in the normal course of negotiation with the EPA, generally are not "sanctions" within ~~Instruction 5(C) to Item 103(c)(3)(iii)~~. [~~July 3, 2008~~June 20, 2025]