



# Insights: Top Disputes & Investigations

Environmental Solutions





## Environmental Solutions

Managing and resolving environmental issues such as complex contamination, toxic tort, product liability and insurance disputes can be challenging for public and private entities. FTI's Environmental Solutions Group provides essential expertise and services through strategic consulting, communications, and litigation support to help deal with specific issues or ongoing challenges.

Currently, it appears that entities subject to EPA regulation, at least, will continue to face regulatory enforcement as they have in the past, despite COVID-19. We will continue to monitor this space closely in the weeks and months ahead.

In this section, of our **2020 Insights: Top Disputes & Investigations**, we highlight our work helping clients resolve disputes on major Environmental Solutions projects.



## Cost Allocation at a Superfund Site

A Cooperating Party Group retained FTI Consulting to provide responsible party identification and cost allocation services at a waterway CERCLA (Superfund) site. In this role, FTI Consulting served as a neutral fact-finder and mediator for an Alternative Dispute Resolution (ADR) process that allowed participants to avoid litigation.

FTI conducted a rigorous investigation based largely on publicly-available records to identify additional potentially responsible parties whose operations may have contributed contaminants to the Superfund site. Such parties historically or currently have a nexus to the Superfund site through direct discharges of process waste or other materials, indirect discharges via the sewer system, or other pathways. FTI worked with the existing Group members and the Environmental Protection Agency (EPA) to add new members to the Group, which ultimately spread cost and reduced the required contribution from any given participant.

Concurrently, FTI cost allocation experts collected and analyzed thousands of documents covering a wide range of subject areas including public records, industrial process research, business records, environmental chemistry, toxicity and risk assessment data, and remedial design and cost estimates. These documents were organized in an online repository for ease of access and review by both FTI and Group members. Current and historical site chemistry data were standardized and compiled into a database for use in statistical, tabular and graphical analyses. Further, geographic information such as historical aerial photographs, sewer maps, and site boundaries was organized and made accessible to Group members through an innovative web-based Geographic Information System for spatial analyses.

FTI also managed the advocacy process through which Group members submitted position papers detailing factual and legal arguments as part of the ADR process.

FTI evaluated member site operations, chemical usage, waste handling practices, and potential pathways to the proposed cleanup area over time in the context of EPA's proposed cleanup plan for the Superfund site, where cleanup costs were estimated in excess of \$100 million. This information, in conjunction with Group member advocacy submissions, were relied on to develop a final recommendation for equitable allocation of investigation and cleanup costs that accounted for factual, technical, and legal issues. FTI's recommendation formed the basis for negotiation of a final settlement among the Group members and with the EPA.

### Subject Matter Experts



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