

E. MICHAEL THOMAS
STATEMENT OF QUALIFICATIONS
SUPERFUND ALLOCATION CONSULTANT & EXPERT WITNESS

- ⇒ Thirty-five year Superfund career distinguished by innovative problem-solving: ground-breaking allocation methodologies and *de minimis* settlements; award-winning Superfund case management techniques; precedential approaches to complex Superfund settlements, including imposition of allocation results on non-settlers; and innovative procedures for remedial cost estimation, settlement risk management mechanisms and associated pricing of settlements.
- ⇒ Demonstrated success in working collaboratively and aggressively in encouraging non-participant involvement in allocations and settlements.
- ⇒ Adept at assembling widely skilled, capably-resourced, multi-disciplinary teams to meet all aspects of potential allocation issues at sites including hundreds of adversaries, teams of citizen groups, environmental engineers, scientists and consulting firms.
- ⇒ Experienced allocation practitioner in governmental, client representational, allocation consultant, third party neutral and court-sponsored allocation processes; outstanding record of success: every allocation has resulted in allocation agreement and settlement with no less than ninety percent participation. *See SUPERFUND ALLOCATION CONSULTANT QUALIFICATIONS, P. 2.*
- ⇒ In-depth experience working with sophisticated teams of national technical and legal experts on complex Superfund sites with major sediment contamination cleanup and natural resource damages including the Lower Passaic River Study Area in New Jersey, Lower Fox River in Wisconsin, the Housatonic River in Massachusetts and Connecticut and the Pine Street Barge Canal in Vermont developing expertise in remedial and allocation approaches to such sites. *See SEDIMENT SITE EXPERIENCE, P. 5.*
- ⇒ Successful consulting and testifying allocation expert witness on all aspects of allocation of CERCLA liability, including divisibility assertions based on geographical, waste type, and successor owner/operator and generator temporal distinctions. *See EXPERT WITNESS QUALIFICATIONS, P. 6.*
- ⇒ *See SUPERFUND EXPERIENCE HIGHLIGHTS, P. 7.*

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SUPERFUND ALLOCATION CONSULTANT QUALIFICATIONS:

I am an experienced Superfund practitioner, allocation consultant and mediator with thirty-five years of experience conducting Superfund allocations in governmental, client representational, third party neutral and court-sponsored allocation processes, a member of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals of the U.S. Institute of Environmental Conflict Resolution. Every allocation process which I have been involved in conducting, as a neutral, as a government attorney or as private counsel taking a lead role in moving a group of parties toward an allocation agreement, has resulted in allocation agreements and settlement with at least ninety percent participation.

I have had in-depth experience working with some of the nation's most sophisticated teams of attorneys and technical experts on remedial and allocation issues associated with complex Superfund sites especially sites involving including sediment contamination of riverine environments. I have achieved success in imposing fair and reasonable allocation results on non-settling parties. My work is characterized by an intense focus on problem-solving and by creative approaches to make the most complex project undertakings manageable and successful.

With my substantive background in Superfund allocation, service as third party neutral, persuasive expert witness experience and leadership roles in PRP groups, I strive to provide parties with reliable, carefully conceived and meticulously conducted allocation processes, opinions and outcomes that will have maximum factual and legal basis and credibility.

My Superfund allocation experience is summarized in the following table.

SUPERFUND ALLOCATION	E. MICHAEL THOMAS CERCLA ALLOCATION EXPERIENCE
Lower Passaic River Study Area Superfund Site, NJ	Selected as third party neutral allocator for this Superfund site comprising the lower 17 miles of the Passaic River; initial cleanup phase proposed by EPA estimated to cost \$1.3 billion; potential issues include allocations based on waste types driving site risks and remedy, divisibility of harm geographically, temporally and by waste type and liability determinations and impacts of joint and several liability.
Cannons Engineering Superfund Sites, MA and NH	Developed pioneering (EPA gold medal winning) case management plan for case involving incinerator, three midnight dumping sites and 600 PRPs, including federal, state and local agencies; developed first-in-nation multi-party <i>de minimis</i> cash-out settlements with 300+ parties using innovative cost estimation techniques to settle sites at which RI/FSs were not complete; reached settlement with all but 10 parties; settlement process approved by the District Court and the First Circuit, has become the national standard for judicial review of Superfund settlements, <i>United States v. Cannons Engineering Corp.</i> , 720 F.Supp. 1027 (D.Mass. 1989), <i>aff'd</i> , 899 F2d 79 (1st Cir. 1990).
Lower Fox River Superfund Site, WI	Worked with multidisciplinary panel of national experts to develop an alternative ecosystem-based remedial plan intended to integrate remedial and natural resource damages concerns into unified approach to the site and to provide basis for allocation among paper plant direct dischargers and upland PRPs stretching along the 39 mile length of the Lower Fox River; evaluated use of insurance vehicles to assist remedial funding and allocation.
Fike/Artel Superfund Site, WV	Allocation consultant, mediator for PRPs at this site involving World War I munitions manufacturing and modern era toll chemical manufacturing, reclamation and disposal; included accelerated <i>de minimis</i> settlement track with individual mediations leading to 20 <i>de minimis</i> buyouts; allocation agreements reached with all but one PRP, including federal agency PRPs with significant involvement; mediated \$140 million agreement between US and PRPs to conduct remedial action and resolve past cost claims.

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SUPERFUND ALLOCATION	E. MICHAEL THOMAS CERCLA ALLOCATION EXPERIENCE
Pine Street Barge Canal Superfund Site, VT	Counsel for landowner in first EPA Region 1 PRAP on contaminated sediments from manufactured gas facility; guided unsophisticated landowner PRPs through allocation process leading to internal settlement; negotiated settlement on behalf of landowners to allocate costs between landowners and MGP plant operators; currently serving as coordinating counsel for landowners monitoring sediment remediation by MGP operators, including ESD for NAPL releases from subaqueous cap; recovered cleanup costs from federal government operator of WWII ordnance manufacturing plant.
Blosenski Landfill Superfund Site, PA	Third party neutral allocation consultant; developed allocation for municipal and industrial waste landfill; allocation enabled PRPs to negotiate successful RD/RA settlement; allocation included significant involvement of federal agency PRP.
PJP Landfill Superfund Site, NJ	Third party neutral allocation consultant to group of approximately 80 PRPs; developed allocation for solid and industrial waste landfill during period of active discovery in cost recovery litigation; allocation garnered more than 90 percent participation, enabled PRPs to negotiate successful RD/RA settlement.
York Oil Superfund Site, NY	Guided lesser-involved PRPs in developing allocation plan to reach settlement with major PRP (40% share) and US agency parties (35% share); allocation agreement provided thereafter unchallenged basis for RI/FS AOC, Consent Decree settling OU1, later Consent Decree with OU2 pay-as-you-go and cash-out settlers, as well as for third- and fourth-party litigation against previously undiscovered parties.
Silresim Chemical Superfund Site, MA	Developed and negotiated allocation agreement and settlement with 300 PRPs at chemical recycling facility; reached first-known settlement with bank mortgage-holder of site property.
Keefe Environmental Services, NH	Developed case management plan and case management infrastructure for EPA Region 1's first large multi-party Superfund site; negotiated allocation agreement and settlement with 150 PRPs including federal and state agencies at chemical waste lagoon facility.

The allocation activities which I designed and led while at EPA made EPA Region I a recognized national leader in EPA's efforts to use the CERCLA allocation and settlement processes, particularly the *de minimis* settlement tools, to yield fair and expeditious settlement of Superfund cases. This work led to cornerstone judicial opinions governing proposed Superfund settlements, notably *US v. Cannons Engineering*.

In my capacity as an EPA attorney, supervisor and manager in the Boston office, I was responsible for site cleanup and enforcement actions at more than 60 Superfund sites in the New England region. While employed at EPA headquarters in Washington, I was the deputy to the Associate Enforcement Counsel in charge of hazardous waste enforcement nationwide and was Special Assistant to the General Counsel on all matters within the General Counsel's responsibility. I received EPA's highest honor, the Gold Medal for Exceptional Service, for extraordinary and precedential Superfund case management.

In twenty-six years of private practice I have represented and counseled numerous clients on many state and federal Superfund sites, notably the Lower Fox River site in Wisconsin, the Housatonic River site in Massachusetts and Connecticut and the Pine Street Barge Canal Superfund site in Vermont. I have provided leadership among PRP groups in resolving allocation disputes and settling numerous Superfund cases. I have represented major corporations in hazardous waste enforcement actions, cleanup negotiations and litigation under waste site cleanup, regulatory and permitting programs and have tackled some of the most challenging allocation scenarios in the Superfund program. I have chaired steering committees of groups of potentially responsible parties in multi-party Superfund cases and have led negotiations and participated in allocation and mediation proceedings reaching settlements in these cases.

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I have hired and supervised allocation consultants and mediators and have participated in and administered numerous alternative dispute resolution proceedings in pursuit of such settlements. I have also served as neutral allocation consultant and mediator to many PRP groups which have reached settlements based on my assistance.

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SUPERFUND SEDIMENT SITE EXPERIENCE:

I have specific and extensive experience and expertise at sites requiring sediment remediation. On three of the sites, I was representing clients with significant stakes in potentially hugely expensive CERCLA remedies and natural resource damages, in each case possibly exceeding \$500 million. These sites, the Lower Fox River, the Housatonic River and the Pine Street Barge Canal, received intense focus from federal and state regulators. The clients in each of these sites assembled nationally renowned multidisciplinary teams of technical and legal professionals to examine exhaustively all aspects of the client's exposure and defenses. In addition, the clients participated aggressively in the agency remedial decision-making processes and in national policy development activities. From these experiences, and from other experiences in which sediment issues were less central to the case but still presented potentially costly contingencies, I have developed considerable knowledge and expertise in all aspects of sediment sites, both legal and technical, which is summarized below.

SEDIMENT SITES	E. MICHAEL THOMAS SEDIMENT SITE EXPERIENCE
Lower Passaic River Study Area Superfund Site, NJ	Selected as third party neutral allocator for this Superfund site comprising the lower 17 miles of the Passaic River; initial cleanup phase proposed by EPA estimated to cost \$1.3 billion; potential issues include allocations based on waste types driving site risks and remedy, divisibility of harm geographically, temporally and by waste type and liability determinations and impacts of joint and several liability.
Lower Fox River Superfund Site, WI	Worked with multidisciplinary panel of national experts to develop an alternative ecosystem-based remedial plan intended to integrate remedial and natural resource damages concerns into a single approach to the site and provide basis for liability allocation among paper plant direct dischargers and upland PRPs stretching along the 39 mile length of the Lower Fox River assessed risk management tools for cost and cash flow control over remedial expenditures.
Housatonic River, MA and CT	Member of GE legal team developing legal and remedial strategies to address sediment and upland contamination in Housatonic River; worked with top lawyers, scientists and engineers in conjunction with GE efforts concerning Housatonic River and Hudson River sediment contamination and remediation.
Pine Street Barge Canal Superfund Site, VT	Counsel for landowner adjoining inlet on Lake Champlain with sediments contaminated by historic manufactured gas facility; developed series of technical monographs which convinced EPA to revoke proposed dredging remedy (first PRAP ever revoked by EPA Region 1) and adopt capping remedy; serving as coordinating counsel for landowners monitoring sediment remediation performed by MGP plant operators, including ESD for NAPL releases from subaqueous cap.
Fike/Artel Superfund Site, WV	Allocation consultant, mediator for PRPs at this site with potential NRD claims associated with contaminated groundwater migrating toward adjacent Kanawha River; allocation agreements reached with all but one PRP, including federal agency PRPs with significant involvement; mediated \$140 million agreement between US and PRPs to conduct remedial action and resolve past cost claims.
Fletcher Paint Works Superfund Site, NH	Represented GE in developing remedial strategy and participating in EPA remedial decision-making concerning contamination in Souhegan River.
Cranford Sanitary Landfill Site, RI	Coordinating counsel for PRP subgroup associated with landfill site with potential ecologically-driven remediation and NRD claims concerning adjoining Pawtuxet River.
New Bedford Harbor Superfund Site, MA	Oversaw site enforcement and remediation for EPA Region 1 concerning contamination from multiple capacitor manufacturers of the Acushnet River and Outer New Bedford Harbor.
Yaworski Lagoon Superfund Site, CT	Supervised site enforcement and remediation for EPA Region 1 site with sediment contamination and groundwater contamination flowing to wells located on far side of Quinebaug River.

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SUPERFUND EXPERT WITNESS QUALIFICATIONS:

I have served as a successful consulting and testifying allocation expert witness on all aspects of allocation of CERCLA liability, including divisibility assertions based on geographical, waste type, and successor owner/operator and generator temporal distinctions.

EXPERT WITNESS MATTER	E. MICHAEL THOMAS EXPERT WITNESS EXPERIENCE
Municipal Airport CERCLA Cost Recovery Action, CA	Expert witness concerning liability of federal and corporate operators of contamination at aircraft maintenance facilities at municipal airport during WWII, Korean War and Vietnam War; issues included temporal and waste type allocations among successive operators, divisibility of harm based on temporal, waste type and geographic distinctions and federal allocation shares based on war-time contamination costs constituting costs to be borne by society as a whole in furtherance of national defense interests.
Landfill Superfund Site, NJ	Testified at deposition and trial concerning the collective allocation share owed by non-settling parties at a landfill; expert opinion was adopted by the District Court, which viewed my testimony to be "particularly knowledgeable and candid," and adopted my allocation as "an equitable and fair allocation," subsequently upheld by the 3rd Circuit.
Landfill Superfund Site, MA	Expert witness testimony and reports in support of judgment denying \$25m environmental indemnification provision in a purchase share agreement, designated as "most helpful expert."
Wood Treating Superfund Site, MN	Expert witness addressed divisibility of harm for contamination and cleanup at site based on geographic distribution of contamination, causation of contamination by prior actions of potentially responsible parties and liability determinations in action brought for joint and several recovery of cleanup costs.
Government-Owned Contractor-Operated Aerospace Facility, CA	Allocation consulting expert concerning the allocation of responsibility between the United States and its successive contractor manufacturers concerning contamination from contract-based industrial activities.
Distant Early Warning System Site, AK	Consulting expert witness for the State of Alaska in mediations between state agencies and the US Air Force and its contractors concerning cleanup of a contaminated remote early warning site that the US had given to the State for use as a middle school.
Ferroalloys Manufacturing Plant, TN	Expert consulting witness concerning cleanup responsibility of successive owners of a ferroalloys manufacturing plant in Tennessee.
Industrial Site, OK	Expert consulting witness concerning allocation of responsibility for differing air contaminants emitted by separate industrial facilities adjacent to impacted neighborhoods.
Industrial Site, NJ	Consulting expert concerning the respective liability allocations appropriate for two industrial operators occupying adjoining properties with commingled contamination.

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SUPERFUND EXPERIENCE HIGHLIGHTS:

As outlined above, my allocation consultant, allocation expert witness and environmental dispute resolution experience spans virtually the entire time frame of the Superfund program. Certain relevant matters are highlighted below.

Cannons Engineering Case

My most substantial settlement project as a government attorney was in the *Cannons Engineering* case. This case involved transshipment and distribution of waste among four sites in two states. My management of the *Cannons* case led to comprehensive settlement or resolution, within three years of issuance of notice letters, with all but 25 of the 600 parties initially notified concerning the four sites. The *Cannons* settlements included the first multi-party *de minimis* settlements in the country, which achieved settlement with more than 300 *de minimis* parties. The allocations for this case, and the resultant settlements, included parties ranging from local school districts and small businesses to Fortune 50 companies. It also included several agencies of federal and state governments as both *de minimis* and large volume contributors and settlers. The settlement process was approved by the District Court and the First Circuit and has become the national standard for judicial review of Superfund settlements, *United States v. Cannons Engineering Corp.*, 720 F.Supp. 1027 (D.Mass. 1989), *aff'd*, 899 F2d 79 (1st Cir. 1990).

Lower Passaic River Study Area Superfund Site

In 2015, I was selected by the PRPs to perform a comprehensive allocation for the Lower Passaic River Study Area Superfund site, a 17 mile section of the Passaic River in eastern New Jersey. EPA in 2016 selected a \$1.3 billion remedy, among the largest in the Superfund program, as the second of four operable units at the site. The area, sometimes referred to as “The Cradle of the Industrial Revolution,” has a long and complex history and environmental context that is likely to bear upon the allocation. The river is a tidally-influenced estuary that poses special challenges in understanding the fate and transport of contaminants in the riverine environment.

Lower Fox River Superfund Site

The Lower Fox River Superfund site is comprised of the entire 39 mile Lower Fox River from Lake Winnebago to Green Bay in Wisconsin with sediments significantly contaminated by PCBs. For a private client, I worked with a multidisciplinary panel of experts to develop an alternative ecosystem-based remedial plan intended to integrate remedial and natural resource damages concerns into a single approach to the site and potentially to provide a basis for allocation in support of settlement negotiations. This plan, “Ecosystem-Based Rehabilitation Plan: An Integrated Plan for Habitat Enhancement and Expedited Exposure Reduction in the Lower Fox River and Green Bay,” Lue-Hing, *et al.* (2002) provided an alternative to EPA’s more narrowly focused remedial decision-making. My work with the panel was to ground the technical

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considerations within the legal environment of CERCLA remedial and natural resource damages requirements as well as the liability and allocation implications of the technical issues.

Fike/Artel Superfund Site

I served as neutral Allocation Consultant and mediator, jointly with Clean Sites, Inc., in settlement of the Fike/Artel Superfund Site in Nitro, West Virginia. This site was a former World War I chemical munitions plant at which subsequent chemical manufacturing, reclamation and disposal was conducted. The settlement process included the United States Air Force and United States Army, together with other parties associated with the World War I activities and with the more recent chemical manufacturing activities at the site. The settlement process included more than 20 individual mediations to facilitate *de minimis* settlements. The case management order process required preparation of a draft allocation methodology, a draft allocation report and a final allocation report that addressed substantial environmental fate and transport issues and complex legal issues relating to arranger liability and the law of contribution and allocation under CERCLA.

I conducted week-long mediation enabled the parties, including the United States-as-defendant, to reach an overall allocation agreement. I then led mediation between the PRPs and the United States-as-plaintiff which reached an agreement in principle to resolve the litigation and perform the site cleanup. The various agreements reached pursuant to these mediations were valued at \$140 million.

Pine Street Barge Canal Superfund Site

I served as lead negotiator for a group of PRPs who owned property adjacent to the manufactured gas plant that was responsible for virtually all of the relevant contamination. I negotiated an allocation agreement and settlement with the plant operators premised upon an intra-landowner allocation, including municipal and state shares. I served on the Pine Street Barge Canal Coordinating Council, consisting of citizens, environmental groups, government and business representatives that forced EPA to withdraw entirely its initial cleanup proposal for the first time in the program's history. I am currently serving as common counsel to the landowner PRPs in the cleanup phase of the case.

DuPont War Plant Cost Recovery Mediation

I served as mediator in early stages of this litigation brought by E.I. duPont against the United States seeking recovery of costs incurred in environmental cleanup of fifteen manufacturing plants which had been operational during World War II and the Korean War. The mediation was focused on allocation of responsibilities at one of the plants in an attempt to develop a template that could be used to resolve allocation issues at the remaining fourteen. After several months of negotiation and mediation activities, for reasons confidential to the mediation process, the parties determined that further discovery and motions practice would be necessary before mediations could succeed.

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Blosenski Site Ad Hoc Generators PRP Group

At the Blosenski Landfill Superfund site in Pennsylvania, I was retained as Allocation Consultant by the PRP Group to develop a comprehensive allocation that could be used to resolve ongoing litigation concerning the site and as a basis for addressing anticipated Section 106 orders compelling performance of the site remedy. The Group was under extremely tight time constraints; I completed the final allocation report within five months of project startup. The allocation considered complex waste-type distinctions, such as proposed distinctions for plant trash, filter cake and biodegradable organic solvents, and fate and transport and driving the remedy arguments advanced by parties associated with differing waste streams with the assistance of technical staff and consultants, and included the United States Navy as a notable participant in the process. The allocation report the basis for a negotiated comprehensive settlement of the case upon which the site cleanup work was conducted.

PJP Landfill Site

I served as allocation consultant to the PRP Group at the PJP Landfill site in Jersey City, New Jersey involving approximately 60 alleged waste generators associated with the site. The allocation process for the PJP site took place in the context of active discovery, which posed special challenges for the allocation process, and necessitated a high degree of flexibility in adjusting the allocation process to the vagaries of the litigation schedule. I provided draft and final allocation reports to the Participants, which served as the basis for an allocation agreement with greater than 90 percent participation.

Silresim Chemical Corporation

I was the lead government attorney for negotiations on funding the RIFS and recovery of the government's past costs in the *Silresim Chemical Corporation* case, a Superfund matter initially involving 300 PRPs. In *Silresim*, I oversaw development of a volumetric ranked list and audit procedure which allowed individual PRPs to contest their volumetric allocations and developed an allocation process between generators and transporters. Almost all PRPs participated in these settlements, with fewer than ten non-settlers. A unique feature of the *Silresim* allocation was a contribution in excess of \$500,000 t from a prominent New England bank that mortgaged the facility and participated in its management, the first such recovery from a financial institution in the Superfund program.

Other Superfund Experience

In private practice, I have had additional significant involvement at the Housatonic River PCB site in Massachusetts and Connecticut, the Town of Moreau Site, the York Oil Site, the Logan Airport environmental remediation in Boston, the Miami International Airport environmental remediation as well as a number of individual RCRA facilities involved in corrective action and regulatory issues.

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In the course of my Superfund work in private practice, I have played prominent roles in moving several cases toward settlement. For example, when I became involved in the *United States v. Peirce* litigation concerning the York Oil Superfund site, the case had been underway for eight years and was severely hampered by flawed allocation by the government. I first convinced the fractionated and contentious PRP group to conduct an interim allocation and to assemble a belated offer to perform the Second Operable Unit RIFS. Then, as chair of the PRP Steering Committee, I led the successful negotiation of an agreement with EPA under which the PRPs' offer was accepted. We then conducted a comprehensive allocation process and negotiated a Consent Decree with the United States for an overall settlement of the case for most of the participants in the allocation.

I was also involved, as a government attorney or supervisor, in several other notable Superfund allocations including the *Iron Horse Park* site and the *Wells G & H* site (upon which the book and movie *A Civil Action* was based). I was responsible for allocation and remedial issues for some 25 other National Priority List sites during my work at EPA.