



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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Can't the list in  
EPA be scaled  
back?  
DEC, 4 1986 P/1

Superfund Branch

DEC - 1 1986

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

returned  
10/11/86  
w/ corrections

MEMORANDUM

SUBJECT: Mailing List for the Manual State Participation  
in the Superfund Program

FROM: Sam Morekas, Chief *Sam Morekas*  
State and Regional Coordination Branch  
Hazardous Site Control Division

TO: Superfund Branch Chiefs  
Regions I - X

Per your request at the recent Branch Chiefs' meeting in Headquarters, I am forwarding to you a copy of the individuals and organizations for your Region that are currently on our "purple book" mailing list. We are in the process of updating this list now; a copy of our notice to this effect is also attached. Please review the list carefully and forward any revisions, deletions, or additions that may be necessary to me by December 31, 1986.

Attachments

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The manual State Participation in the Superfund Program is updated periodically as new procedures are developed and revised pages are added to the document. The Office of Solid Waste and Emergency Response (OSWER) within EPA maintains a mailing list to ensure that appropriate individuals receive information. This list is currently being revised. Your name appears as shown below:

To assist OSWER in this effort, please review the address, complete this form and return it within 10 days to the address on the reverse side. Your name will be automatically deleted if you do not return this form by December 31, 1986.

(FOLD HERE)

Please check one of the following boxes:

- ☐ My name and address are correct as shown. Please keep my name on the Update Mailing List.
- ☐ Please revise my entry on the Update Mailing List as shown.
- ☐ Please remove my name from the Update Mailing List
- ☐ Please add my name to the Update Mailing List.

NAME \_\_\_\_\_

POSITION \_\_\_\_\_

EMPLOYER \_\_\_\_\_

ADDRESS \_\_\_\_\_

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*Recipients of  
Purple Book & updates*

November 1986  
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United States  
Environmental Protection  
Agency

401 M St., S.W.  
Washington, D.C. 20460

February 1984

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Emergency and Remedial Response

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# STATE PARTICIPATION IN THE SUPERFUND REMEDIAL PROGRAM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

STATE PARTICIPATION IN THE SUPERFUND REMEDIAL PROGRAM

This document provides information on how to implement approved remedial response activities at National Priorities List sites in accordance with the National Oil and Hazardous Substances Contingency Plan. Its scope includes cooperative agreements, Superfund State Contracts and credit claims.

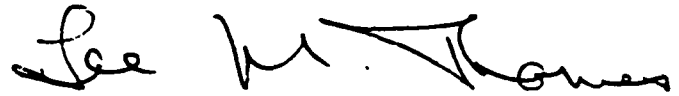
Further, this document incorporates several new Superfund initiatives EPA has taken in the past year to facilitate remedial response and to make it easier for States to join EPA in addressing problems at uncontrolled hazardous waste sites. One is to allow EPA to share in operation and maintenance (O&M) costs for up to one year, rather than the six months limit heretofore in effect. A second is an option of management assistance cooperative agreements to fund State costs at EPA-lead sites. A third is the option of multi-site cooperative agreements, a concept which has always been permissible but has not been previously developed. The document is intended to serve as a manual for State and EPA staff who are implementing the Superfund remedial program, consistent with the delegations of authority we plan to issue in the coming months. Until these delegations are approved, cooperative agreements, Superfund State Contracts and audit responses will be processed in Headquarters in accordance with current practice.

The document is the result of many months of hard work and reflects the input of a number of key people, including representatives of EPA's Regional Offices, State agency personnel working through the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), representatives of citizens organizations, and other offices in EPA headquarters, especially the Office of General Counsel.

Some of the procedures described in the document are presented as suggested models for Regions and States. We expect Regions and States to tailor their internal procedures in their own situations as appropriate.

It should be noted that we will be updating the document as needed and major updates will be distributed in draft for comment before final issuance. Therefore, it is important that the actual user of each copy of the document return the Update Mailing List form in the front of the volume.

A limited number of additional copies are available at no cost to Federal and State governmental officials and may be obtained by contacting: Chief, State and Regional Coordination Branch (WH-548E), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-2443. The document may also be purchased by persons outside of government through the Government Printing Office (GPO) or the National Technical Information Service (NTIS).

A handwritten signature in dark ink, appearing to read "Lee M. Thomas", is written over a horizontal line.

Lee M. Thomas  
Assistant Administrator

CHANGES TO DATE

<u>Date/ Addendum #</u>	<u>Topic</u>	<u>Instruction</u>	<u>Location/Page</u>
6/22/84 #1	Site Closeout	<ul style="list-style-type: none"> <li>. New pages</li> <li>. New page</li> <li>. New pages</li> </ul>	<ul style="list-style-type: none"> <li>. Appendix F, Pages F-22 and 23</li> <li>. Appendix H, Page H-23</li> <li>. Appendix P, Pages P-37-F-47</li> </ul>
	Minority and Women's Business Reporting	<ul style="list-style-type: none"> <li>. New page</li> </ul>	<ul style="list-style-type: none"> <li>. Appendix F, Page F-24</li> </ul>
	Changes to IG Audit	<ul style="list-style-type: none"> <li>. Change "... which must be sent within 120 days." to "... which must be sent within 90 days."</li> <li>. Add, as the second sentence in the paragraph, "In addition, the Award Official will send the State a copy of the final audit report within 15 days of its receipt."</li> <li>. Change "The response must be dispatched within 120 days..." to "The response must be dispatched within 90 days..."</li> </ul>	<ul style="list-style-type: none"> <li>. Appendix C, Page C-12, first complete paragraph</li> <li>. Appendix C, Page C-12 first complete paragraph</li> <li>. Appendix C, Page C-12 footnote</li> </ul>
9/12/84 #2	Quality Assurance Project Plan	<ul style="list-style-type: none"> <li>. New pages</li> </ul>	<ul style="list-style-type: none"> <li>. Appendix L, formerly reserved</li> </ul>
9/28/84 #3	Revised Letter of Credit Procedures Provision	<ul style="list-style-type: none"> <li>. Replacement pages</li> </ul>	<ul style="list-style-type: none"> <li>. Appendix F, Pages F-3 through F-6</li> </ul>

CHANGES TO DATE (Continued)

<u>Date/ Addendum #</u>	<u>Topic</u>	<u>Instruction</u>	<u>Location/Page</u>
12/10/84 #4	Multi-Site Cooperative Agreements	<ul style="list-style-type: none"> <li>. Replacement pages</li> <li>. Replacement pages</li> <li>. Replacement pages</li> <li>. Replacement pages</li> <li>. New pages</li> <li>. Replacement page</li> <li>. New pages</li> <li>. Replacement pages</li> <li>. New pages</li> <li>. Replacement page</li> <li>. New page</li> <li>. Replacement pages</li> <li>. New page</li> <li>. Change "...at quarterly intervals commencing at the start of the project." to "...within 30 days of the end of the Federal fiscal quarter."</li> <li>. New pages</li> <li>. Replacement pages</li> <li>. New pages</li> <li>. Replacement pages</li> <li>. Replacement pages</li> <li>. New pages</li> </ul>	<ul style="list-style-type: none"> <li>. Table of Contents, Pages xiii through xvii</li> <li>. List of Exhibits, Pages xvii and xix</li> <li>. List of Acronyms, Pages a - through e</li> <li>. Chapter II, Pages II-1 through 6</li> <li>. Chapter II, Page II-7 and Exhibit II-2</li> <li>. Chapter III, Page III-17</li> <li>. Chapter III, Pages III-18 through 27 and Exhibits III-10 and III-11</li> <li>. Chapter IV, Pages IV-5 through IV-7</li> <li>. Chapter IV, Pages IV-8 through IV-11</li> <li>. Chapter V, Page V-7 and V-8</li> <li>. Chapter V, Page V-9</li> <li>. Appendix E, Pages E-1 through E-22</li> <li>. Appendix E, Page E-23</li> <li>. Appendix F, Page F-16, Section K, indented paragraph</li> <li>. Appendix F, Pages F-25 and F-26</li> <li>. Appendix J, Pages J-1, J-2, and J-7</li> <li>. Appendix J, Pages J-8 and J-9</li> <li>. Appendix N, Pages N-1 through N-6</li> <li>. Appendix P, Pages P-1, P-2, and P-47</li> <li>. Appendix P, Pages P-48 through P-51</li> </ul>

3/5/86  
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CHANGES TO DATE (Continued)

<u>Date/ Addendum #</u>	<u>Topic</u>	<u>Instruction</u>	<u>Location/Page</u>
1/4/85 #5	Advance Match	. New pages	. New Appendix S, Pages S-1 through S-9
1/11/85 #6	Site Safety Plan Guidance	. New pages	. Appendix M, formerly reserved
8/2/85 #7	Obtaining Equipment Under a CERCLA Cooperative Agreement	. New pages	. New Appendix T, Pages T-1 through T-15
9/17/85 #8	Intergovernmental Review Procedures	. Replacement page . Replacement pages	. Table of Contents, Pages xiii through xix . List of Exhibits, Pages xx and xxi . Appendix D, Pages D-1 through D-28
	State Cooperative Agreements for Pre-Remedial Activities	. New pages	. Appendix A, formerly reserved
12/18/85 #9	Action Memorandum Guidance	. Replacement pages . Replacement pages	. Table of Contents, Pages xiii through xix . Appendix B, Pages B-1 through B-9
12/20/85 #10	Model Statement of Work for a Remedial Investigation/Feasibility Study	. Replacement pages	. Table of Contents, Pages xiii through xix . Appendix E, Pages E-1 through E-21
12/20/85 #11	Site Safety Plan Guidance	. Replacement pages . Replacement pages	. Table of Contents, Pages xiii through xix . Appendix M, Pages M-1 through M-28
1/31/86 #12	Quality Assurance Project Plan	. Replacement pages	. Table of Contents, Pages xiii through xix . Appendix L, Pages L-1 through L-12
3/5/86 #13	Superfund Supplemental Guidance	. New pages	. Table of contents, pages xiii new Appendix P, xviii pages p-1 - p-16

## FOREWORD

The Director, Office of Emergency and Remedial Response, issued the Guidance on Cooperative Agreements and Contracts with States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) in March 1982. Drafts of this document had been distributed during the previous year for comment and provisional use.

During the remainder of 1982, regulations and policies evolved which had a substantial impact on the remedial response program. Examples include publication of the National Priorities List (NPL), promulgation of the National Oil and Hazardous Substances Contingency Plan (NCP) and a new regulation for Procurement under Assistance Agreements (40 CFR 33), and development of a policy on "Payment of State Enforcement Costs under Superfund." Consequently, we decided to prepare and issue a revised document.

On January 31, 1983, a revised draft was distributed for comment to all EPA Regions, participating Headquarters offices, and three major State associations. The Regions were asked to distribute the draft to their States. Comments were requested by February 25; comments received after that date were also reviewed and considered.

Five Regions, four States, one State association, and ten Headquarters offices responded. Major comments are summarized below.

### General Comments

A number of commenters found the draft revised document very helpful. However, some comments reflected perceived shortcomings in the document. These comments can be divided into four categories:

1. Many commenters found that the draft did not sufficiently emphasize the program's flexibility. This was primarily due to verb choice. Preferences and requirements have been more clearly differentiated in the final document.
2. Some commenters felt that the State role in decision-making on remedial response was too limited. It was our intent to indicate that the State is a full partner, involved in all stages of the program. We believe this has been stated more explicitly in the final document.

3. Some commenters felt that exhibits would be helpful. For this reason, a number of exhibits have been included in the final document.
4. Many commenters recommended revisions to increase the general clarity of the document, many of which have been incorporated throughout. Some of these are specifically listed below.

#### More Specific Comments

Many commenters objected to requiring States to provide quality assurance (QA), site safety, and community relations plans (CRP) with their applications for assistance. There were two major grounds of objection: 1) these requirements would delay projects, and 2) States would incur substantial costs before a Cooperative Agreement providing EPA assistance was in place. The final document emphasizes that a State need not provide QA and site safety plans with its application; development of these plans should instead be included as tasks in the proposed statement of work. EPA may, at no cost to the State, prepare the CRP to be included in the application package. The State is subsequently responsible for updating the CRP as part of the project covered by the Cooperative Agreement.

A number of commenters felt that Remedial Action Master Plans (RAMPs) have not in the past served as adequate planning documents. RAMPs are no longer being initiated by EPA. EPA will fund preliminary planning activities on a site-specific basis, but will no longer require a particular format for outputs of such activities.

Several commenters raised questions about the section of the draft outlining factors for State consideration in making the lead management decision. In addition to raising questions about appropriate factors, some commenters found the draft to imply that EPA was establishing rigid criteria for State-lead projects. This implication was unintended. To correct it, we have eliminated this section from the final document.

Several commenters raised questions about the description of the clearinghouse review process. This process has now been replaced by 40 CFR Part 29, "Intergovernmental Review of the Environmental Protection Agency Programs and Activities." The requirements of this regulation are summarized in the final document.



Some commenters felt that States should not be expected to begin procurement activities before award of a Cooperative Agreement. The major reason for this is that any costs incurred would not be reimbursed, and prospective contractors might be reluctant to prepare a proposal or bid before funding was assured. The document merely suggested that States use this approach for expediting procurement; it is not a requirement. Some States have already used such procedures with good results. Where the proposed remedial activities have been authorized through an Action Memorandum or inclusion in a Remedial Accomplishments Plan, EPA has indicated its intent to award a Cooperative Agreement. This should serve to alleviate some contractor concern. As an additional guide to State programs, EPA has, since the draft was released, issued a guidance memorandum concerning methods for expediting procurement. The appropriate section of the final document has been revised to reflect the contents of that memorandum.

A number of commenters found the discussion of the National Environmental Policy Act (NEPA) functional equivalency requirements to be inadequate. This discussion has been revised in the final document.

Several commenters felt that the description of requirements for selection of an off-site facility was inadequate. We have revised this discussion in the final document to emphasize that an acceptable facility need not be in the same State as the site in question, and that facility designation may occur during the procurement process. Specific criteria for selection of an acceptable off-site facility have also been included.

Some commenters found the discussion of the verification of CERCLA credit period claims to be inadequate. A formal delineation of the procedures was in preparation at the time the draft was distributed. These procedures are detailed in Appendix C of this document.

Several questions were raised about the required level of detail in Cooperative Agreement application budget breakdowns and the need for making letter of credit draw-downs under a Cooperative Agreement by remedial activity. One commenter expressed the impression that EPA was requiring a separate Financial Status Report (FSR) each quarter for each activity. The budget breakdown requirements reflected in this document are those generally required for obtaining any cooperative agreement and were not originated by the Office of Emergency and Remedial Response (OERR). In any case, accounting by activity is

not unduly complex. A single FSR may cover all activities funded under a Cooperative Agreement and it need not be provided each quarter. Some clarifications have been made in the budget section and the accounting code system has been simplified. An appendix explaining the accounting requirements has also been added to the document.

Several commenters felt that the discussion of changes in the Cooperative Agreement or Superfund State Contract (SSC) which require a formal amendment was unclear. The latitude for making adjustments to the work plan and other minor changes not requiring a formal amendment is highlighted in the final document.

Several commenters felt that the requirements for SSC payment terms were too rigid. The draft did not sufficiently reflect the actual flexibility EPA demonstrates in payment term negotiation. This section has been revised in the final document to emphasize this flexibility.

Several commenters felt that the site access and permit terms in the SSC, as stated in the document, were too rigid. This section has been revised accordingly in the final document.

Some commenters felt that the role of the U.S. Army Corps of Engineers (COE) was not made sufficiently clear and that the State's requirement to share in COE costs should be stated more explicitly. This section has been revised in the final document and the cost-sharing requirement explained more fully.

One commenter requested that EPA state its policy on calculating the State's cost-sharing requirements for remedial projects at publicly-owned sites. Since the draft was issued, the Office of Solid Waste and Emergency Response (OSWER) has issued a policy memorandum on this subject. This policy has been cited in the final document and the memorandum is included in Appendix P.

One commenter felt that the document should contain a list of abbreviations and acronyms. This has been included in the final document.

### New Initiatives

Since the January 1983 draft was issued, EPA has been re-examining Superfund policies and procedures to determine ways to expedite remedial response. As a result of this review, EPA has decided to implement several new initiatives which are incorporated into this document. These

include: delegating to the Regions authority for negotiating and signing Cooperative Agreements and SSCs; providing the option of using site planning Cooperative Agreements; and providing for greater EPA participation in operation and maintenance costs, where appropriate. In addition, EPA's legal interpretation is that cost-sharing at privately-owned sites is necessary only for remedial implementation.

We have also emphasized in the document methods by which States may reduce their administrative burdens. One of these is to provide one letter certifying a State agency's authority to enter into CERCLA remedial response agreements rather than submitting a separate letter for each agreement. Another is the option of including remedial investigation/feasibility study subactivities at more than one site in the same remedial response agreement.

Some revisions to the draft have also been made to ensure consistency with 40 CFR Part 29, "Intergovernmental Review of Environmental Protection Agency Programs and Activities," and revisions to 40 CFR Part 30, "General Regulation for Assistance Programs."

### Second Draft

Because of the extensive revisions necessary to incorporate the new initiatives, on July 5, 1983, we distributed a second draft for comment to all EPA Regions, four State and citizens' associations, and involved Headquarters offices. Comments were requested by July 22; comments received after that date were also reviewed and considered.

Four Regions, two States, one citizens' group, and five Headquarters offices provided comments. Commenters generally felt that the second draft was a substantial improvement over the first, and favored the new policies reflected in it. Most comments pointed to very few problems in the draft.

However, a number of comments indicated the need to further clarify some of the initiatives. We have, therefore, provided more detailed explanations. The section concerning site planning Cooperative Agreements (now called management assistance Cooperative Agreements) was the section that commenters most frequently indicated as needing clarification. We have revised this section, but recognize that additional guidance may prove helpful. After the concept has been put into practice, we will provide additional information on management assistance Cooperative Agreements as an update to this document.

Some commenters felt that the Introduction needed to be made more helpful to readers unfamiliar with the Superfund program. We have revised the Introduction accordingly.

Several commenters questioned the requirement that State cost-sharing be provided during remedial planning for publicly-owned sites. The final document has been revised to reflect the language of CERCLA, requiring the State's cost-sharing obligation to be provided when a CERCLA-funded remedial action is to be implemented at the site. SSCs will not be required for remedial planning activities, a need that concerned some commenters.

One commenter objected to the requirement of performing an environmental assessment during remedial planning. This requirement is a fundamental EPA policy based upon statutory and regulatory mandates. Therefore, the final document continues to reflect this requirement.

One commenter, concerned about the State's role in determining the appropriate alternative for a site, questioned the requirement that the Assistant Administrator for Solid Waste and Emergency Response select the remedy. We have revised this section of the document to emphasize the State's involvement in choosing an appropriate remedy.

One commenter expressed the concern that EPA might not take full account of operation and maintenance (O&M) costs in selecting a cost-effective remedy. The final document makes clear that cost-effectiveness determinations are based on total life cycle costs, not on the costs of the remedial action alone.

One commenter requested that more specific references be made to the applicability of the Resource Conservation and Recovery Act (RCRA) standards to facility selection under CERCLA. Although Agency review of this subject continues, we have included some additional language in this area.

One commenter suggested that a reference to public availability of State and EPA remedial site files should be added to Section D of Chapter VII. Such a reference has been added in the final document.

One commenter expressed the opinion that we should specify that a quality assurance (QA) plan is needed for each site, not simply for each Cooperative Agreement, and

that the QA project plan must be approved before sampling may be initiated. The final document includes these concepts both in the body of the document and in the sample provisions in Appendix F.

One commenter suggested that we identify the types of documents concerning remedial projects which Regions should forward for inclusion in Headquarters files. The final document contains more details in this area.

One commenter felt that the document should provide more information on estimating remedial action costs. This is done in the final document.

Many comments received were essentially editorial in nature, including the need for consistency throughout the document, the need to clarify some points, and the correction of typographical errors. Many changes have been made in the final document as a result of these comments.

#### Additional Revisions

In addition to changes made in response to comments, a number of revisions have been made in the document to reflect policy and procedural refinements made by EPA since the second draft was issued for comment. Many of the policy and procedural changes were in development at the time of issuance of the last draft. The final document is, therefore, more accurate and more complete than the previous drafts.

One major change has been in EPA's policy concerning the period of time that the Agency will share in the costs of O&M. During most of the history of the Superfund remedial program, it was EPA's policy to provide O&M cost-sharing for up to six months after completion of a remedial action to ensure that the remedial action was functional and operational and to allow the State to put a mechanism in place to assume full responsibility for all aspects of O&M. As part of the Agency's recent effort to expedite remedial response, EPA evaluated the six-month O&M cost-sharing period and considered extending it to two years. This proposed two-year period was reflected in the July 5, 1983 draft of this document.

Superfund has since instituted procedures to plan remedial response activities, as projected by Regional personnel, throughout the life of the program. EPA is therefore better able to predict future demands on the Fund and to weigh the requirements for expenditures for

all phases of remedial response, including remedial planning, remedial actions, and O&M activities. In this light, the Agency has re-examined the O&M cost-sharing issue and has decided, from the best Fund-balancing information available, that it is prudent at this time to extend the cost-sharing period from six months to one year through the end of the currently-authorized program.

### Subsequent Changes

The Office of Solid Waste and Emergency Response intends from time to time to issue changes to this document in the form of revised pages. These will include the "Reserved" parts of the document as presently published. The contact for suggesting changes and receiving copies of revisions is: Chief, State and Regional Coordination Branch, Hazardous Site Control Division (WH-548E), U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone (202) 382-2443. To be certain of receiving all updates, readers are requested to return the form for this purpose which has been included in the front of this document.

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LIST OF ACRONYMS AND ABBREVIATIONS

A number of acronyms and abbreviations are used throughout the text; each is identified in the text and, where possible, in the introduction to each appendix in which the abbreviation or acronym occurs. To assist the reader in understanding any acronym or abbreviation that may not be explained, and to provide a quick reference, a list of acronyms and abbreviations is included here. Most of the abbreviations shown are from the remedial program. However, because of the close interaction and coordination required with other aspects of Superfund, some terms used primarily by the removal program have also been included.

AA	Assistant Administrator
ACE	U.S. Army Corps of Engineers (more appropriately referred to as COE)
AM	Action Memorandum
C/A	Cooperative Agreement
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510)
CFR	Code of Federal Regulations
CLP	Contract Laboratory Program
COE	U.S. Army Corps of Engineers
CRA	Community Relations Assessment
CRP	Community Relations Plan
CTS	Credit Tracking System
CWA	Clean Water Act
EPA	Environmental Protection Agency
ERD	Emergency Response Division, OERR (Superfund removals)
ERT	Emergency Response Team (Superfund removals)
FCC	Fiscal Control Center, OERR

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FEMA	Federal Emergency Management Agency
FMD	Financial Management Division (EPA)
FMS	Financial Management System
FR	<u>Federal Register</u>
FS	Feasibility Study
FSR	Financial Status Report
FY	Fiscal Year
GAD	Grants Administration Division (EPA)
GOB	Grants Operations Branch, GAD
HQ	EPA Headquarters
HRS	Hazard Ranking System
HSCD	Hazardous Site Control Division, OERR
IAG	Interagency Agreement
IFB	Invitation for Bids
IG	EPA Inspector General
IRM	Initial Remedial Measure
LOC	Letter of Credit
MBE	Minority Business Enterprise
MOU	Memorandum of Understanding
MSCA	Multi-Site Cooperative Agreement
NCP	National Oil and Hazardous Substances Contingency Plan (40 CFR 300)
NEIC	National Enforcement Information Center
NEPA	National Environmental Policy Act of 1969 (PL 91-190)

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NPL	National Priorities List
NRC	National Response Center
OECM	Office of Enforcement and Compliance Monitoring (EPA)
OERR	Office of Emergency and Remedial Response
OGC	Office of General Counsel (EPA)
OIG	Office of the Inspector General (EPA)
O&M	Operation and Maintenance
OMB	Office of Management and Budget
ORC	Office of Regional Counsel (EPA)
OSC	On-Scene Coordinator (Superfund removals)
OSHA	Occupational Safety and Health Administration
OSW	Office of Solid Waste (EPA)
OSWER	Office of Solid Waste and Emergency Response (EPA)
OWPE	Office of Waste Programs Enforcement (EPA)
PA	Preliminary Assessment
PCB	Polychlorinated Biphenyl
PCMD	Procurement and Contracts Management Division (EPA)
PCS	Program Control System
PMM	Program Management Module (part of the Project Tracking System)
PR	Procurement Request
PRP	Potential Responsible Party
PTS	Project Tracking System
QA	Quality Assurance

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QAPP	Quality Assurance Project Plan
QC	Quality Control
RA	Remedial Action <u>or</u> Regional Administrator
RAB	Remedial Analysis Branch, OERR (references in original issuance of the manual are to the former Remedial Action Branch and now generally apply to RACB)
RACB	Remedial Action and Contracts Branch, OERR
RAMP	Remedial Action Master Plan
RAP	Remedial Accomplishments Plan (as of October 1, 1984 this has been superceded by the Remedial Program Plan, a portion of the SCAP)
RCRA	Resource Conservation and Recovery Act of 1976 (PL 94-580)
RD	Remedial Design
REAP	Regional Enforcement Accomplishments Plan
REM/FIT	Remedial Planning/Field Investigation Team
RFP	Request for Proposals
RI	Remedial Investigation
RI/FS	Remedial Investigation/Feasibility Study
ROD	Record of Decision
RRT	Regional Response Team (Superfund removals)
RS	Responsiveness Summary
RSCRC	Regional Superfund Community Relations Coordinator
RSPO	Regional Site Project Officer
SBE	Small Business Enterprise

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SCAP	Superfund Comprehensive Accomplishments Plan
SCRC	State Community Relations Coordinator
SF	Standard Form
SI	Site Inspection
SIf	Site Inspection Follow-up
SMP	Site Management Plan
SOP	Standard Operating Procedure
SOW	Statement of Work
SPMS	Strategic Planning and Management System
SPO	State Project Officer
SRCB	State and Regional Coordination Branch, OERR
SSC	Superfund State Contract
USGS	U.S. Geological Survey
WBE	Women's Business Enterprise
ZM	Zone Manager

## I. INTRODUCTION

## I. INTRODUCTION

In March 1982, the Office of Emergency and Remedial Response (OERR) in the U.S. Environmental Protection Agency (EPA) published Guidance for Cooperative Agreements and Contracts with States Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510). The document was intended to provide instructions to EPA Regional offices on the development and use of Cooperative Agreements and Superfund State Contracts (SSCs) for remedial actions taken under CERCLA.

This manual, State Participation in the Superfund Remedial Program, supersedes the March 1982 document. It has been developed to assist both EPA staff and State officials in implementing EPA policies and procedures related to State participation in the Superfund remedial program. Procedures outlined herein pertain to all agreements covering approved remedial projects.

Remedial responses\* may be managed by either the State or EPA. If the State manages the response, a Cooperative Agreement must be entered into for all phases of the remedial work. If, conversely, EPA manages the response, EPA and the State must enter into an SSC prior to initiating a remedial action. To cover EPA-lead remedial planning, at the discretion of the EPA Regional Administrator, the State and EPA may either enter into a formal Memorandum of Understanding (MOU), or the State may submit a letter to the Regional Administrator, requesting EPA to undertake such activities. All O&M activities for which EPA provides a share of costs must be implemented through a Cooperative Agreement since State responsibility for O&M is a statutory requirement.

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\* Remedial response is a series of activities taken at a hazardous waste site to effect a permanent remedy; it usually involves the following two activities: remedial planning (defined in CERCLA section 101[23]) and remedial implementation. Remedial planning includes the subactivities of remedial investigation/feasibility study and remedial design. Remedial implementation includes the subactivities of remedial action, initial remedial measures, and operation and maintenance. Remedial action is defined as that phase of remedial response during which a selected remedy is actually implemented; it includes both source control and off-site actions. (See Appendix Q for more detailed definitions.)

The type and components of the agreement negotiated will vary, depending upon the demands of the site work and the requirements of Regional and State officials. Exhibit I-1, on the following page, graphically depicts the flow of administrative and remedial events that typically occurs after a site is determined to be appropriate for remedial response. The exhibit also shows the types of remedial response agreements used for both remedial planning and remedial implementation projects at EPA- and State-lead sites.

The authority for entering into Cooperative Agreements and SSCs is provided in CERCLA sections 104(d)(1) and 104(c)(3). The power to approve general remedial agreements is given by section 104(d)(1), which states in part:

"Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision..."

Authority for entering into agreements for remedial actions is given by section 104(c)(3), as follows:

"The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President..."

By Executive Order No. 12316, dated August 14, 1981, the President delegated this authority to several Federal departments and agencies, including EPA.

#### A. PURPOSE OF THE MANUAL

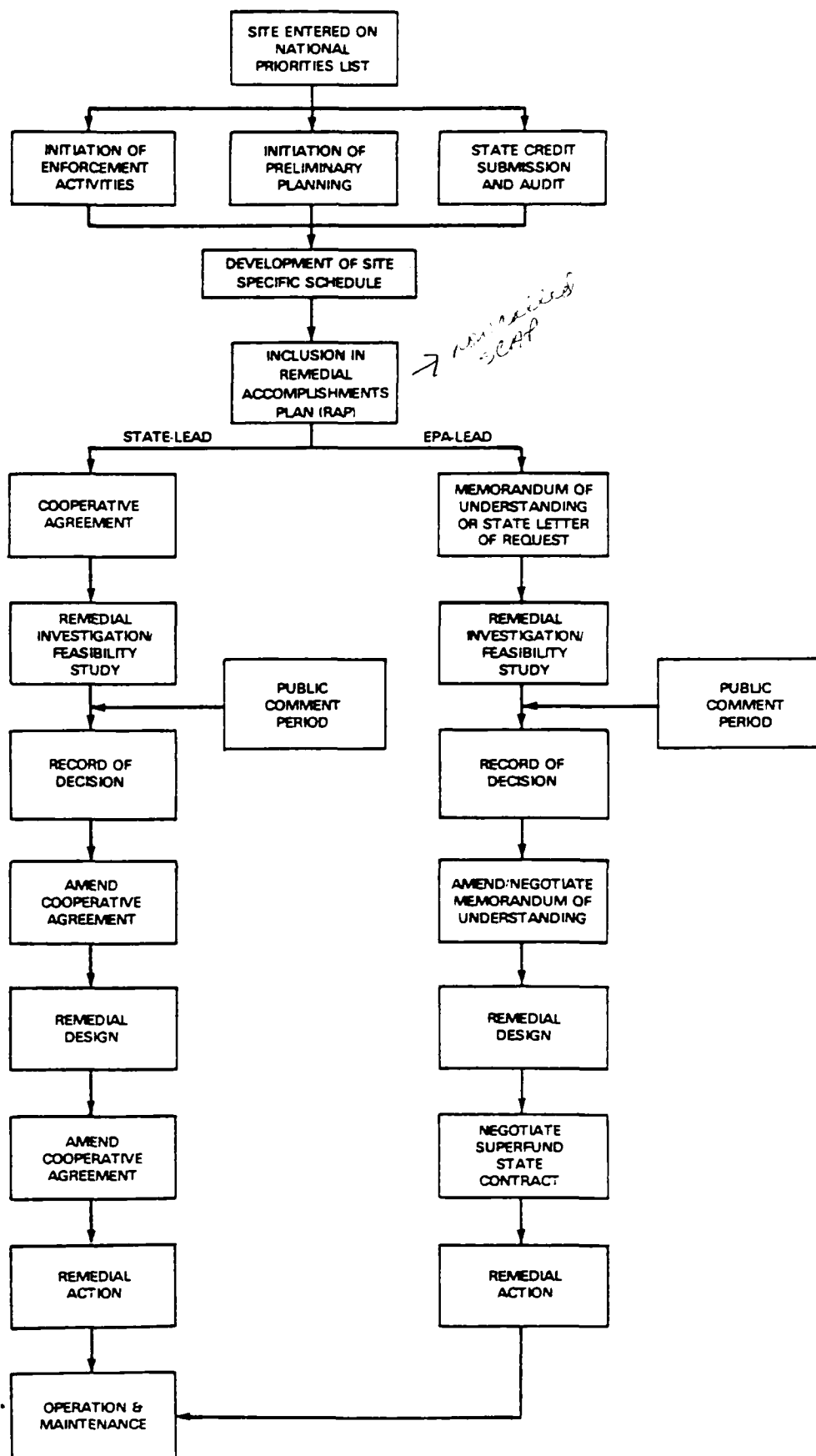
Because the users' levels of experience and familiarity with the program will vary, a balance has been sought in both the scope and level of detail for this document. Of necessity, this document must accomplish several objectives simultaneously. To do so requires that the document:

- . Present information that amplifies and clarifies existing program policy on EPA- and State-lead remedial response



# EXHIBIT I-1

## SITE CHRONOLOGY



- Describe documents to be prepared and administrative events that occur at sites either before a remedial response can be initiated or concurrently with a remedial response
- Identify key roles and responsibilities of program staff who plan, administer, and manage remedial response
- Specify procedural steps to be followed at all levels (i.e., States, Regions, Headquarters) to ensure that policy is carried out expeditiously and well.

This document is designed to be used as a manual for implementation of existing policy, rather than as a policy-making document.

This document has been developed primarily for the use of:

- EPA Regional Site Project Officers (RSPOs), who oversee and participate in the planning and administration of remedial response activities
- State Officials, especially State Project Officers (SPOs), who are responsible for work performed at priority remedial sites
- EPA Headquarters Zone Managers, who coordinate Headquarters participation in and monitoring of remedial response activities.

Detailed discussion of the roles and responsibilities of each group is contained in each chapter.

## B. BACKGROUND -- KEY TERMS

Several terms used in the Superfund remedial program are central to understanding the information presented in this document. These terms -- remedial response, Cooperative Agreements, MOUs, SSCs, State assurances, and State credits -- appear throughout this document and are described here. Definitions can also be found in references cited throughout the text and appendices of this document. Readers who are familiar with the CERCLA legislation and the Superfund program may wish to proceed directly to Section C of this chapter.

## B.1 Remedial Response

CERCLA defines two types of responses that may be taken in the event of a release or threatened release of a hazardous substance into the environment: removals and remedial response. The scope of this document is limited to remedial response activities and events preparatory to undertaking them.

A remedial response is a series of activities and subactivities, consistent with a permanent remedy, that prevents or mitigates the migration or release of a hazardous substance into the environment. Each remedial response may involve the following two activities: remedial planning (comprised of the subactivities of remedial investigation/feasibility study and remedial design) and remedial implementation (comprised of remedial actions, initial remedial measures [IRMs], and operation and maintenance). Section 300.68 of the NCP identifies three types of remedial actions that can be taken at a site: IRMs, source control remedial actions, and off-site remedial actions (see Appendix Q for definitions). Some type of remedial planning -- at least a feasibility study and a remedial design -- must be completed before a source control or off-site remedial action can be selected and implemented.\*

## B.2 Remedial Response Agreements

Sections 104(c)(3) and 104(d)(1) of CERCLA authorize the use of either a Cooperative Agreement or a Contract as the instrument for delineating EPA and State responsibilities for remedial actions at a site, for obtaining required State assurances, and for committing the necessary funds. For remedial planning, EPA requires the use of a Cooperative Agreement for State-lead projects, and a State letter of request or an MOU for EPA-lead projects. The appropriate choice of instrument depends upon whether the State or EPA assumes lead responsibility, the types of activities or subactivities undertaken, and the needs of EPA and State officials.

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\* In order to expedite approval and implementation of simple IRMs, remedial investigation/feasibility study and remedial design for the IRM may be limited in scope.

When a State assumes management responsibility for any remedial activities at a site, a Cooperative Agreement is used, as prescribed by CERCLA. Under the Federal Grant and Cooperative Agreement Act of 1977, when a Federal agency provides assistance (for example, transferring money or services) to a State or political subdivision and substantial Federal involvement is anticipated, a Cooperative Agreement is the appropriate instrument for providing that assistance. A Cooperative Agreement for remedial implementation under CERCLA also documents EPA and State responsibilities and serves as an instrument for obtaining any required CERCLA section 104(c)(3) assurances.

If, conversely, EPA has the lead for any remedial activities at a site, the appropriate instrument can be a State letter of request, an MOU, or an SSC. When initiating remedial planning, the instrument used may be either a letter from the State requesting that the activities be undertaken or an MOU. An SSC is appropriate for remedial action.

The complexity of and requirements for EPA-lead agreements vary considerably. The letter of request is a written statement verifying that State officials are aware of the requirements of the proposed remedial activities, in a generic sense, and requesting that EPA undertake the project. An MOU is a joint agreement between EPA and a State defining the scope of work for the project and the responsibilities of the respective parties. An SSC serves the same functions as an MOU and also acts as the vehicle for obtaining necessary State assurances under section 104(c)(3) of CERCLA. It is a bilateral contract that is legally binding on both EPA and the concerned State. While a Cooperative Agreement obligates money for a project, EPA-lead funds must be obligated through a procurement contract (REM/FIT) or an Interagency Agreement.

### **B.3 State Assurances**

Before the Federal government funds remedial implementation, section 104(c)(3) of CERCLA requires a State to provide assurances relating to cost-sharing, off-site treatment, storage, or disposal, and operation and maintenance. These assurances are provided in a Cooperative Agreement or an SSC. However, they need not be provided during remedial planning.

#### **B.3.a Cost-Sharing**

In accordance with CERCLA section 104(c)(3)(C), a State is required to share in the costs of the remedial actions performed at a site. The percentage of a State's

cost share depends upon the ownership of the site at the time of disposal of the hazardous substances. At privately-owned sites, the State is required to pay 10 percent of remedial implementation costs (remedial action, IRMs, operation and maintenance). At publicly-owned sites (owned by the State or a political subdivision thereof), the State is required to pay at least 50 percent of all costs for removals, remedial planning, and remedial implementation as part of the agreement covering remedial action at that site. No cost-sharing is required during remedial planning at any site. However, the State must provide its share of costs for remedial planning at a publicly-owned site if a CERCLA-funded remedial action is undertaken there.

Under a Cooperative Agreement, the State can furnish its share of remedial costs by supplying services and/or cash equivalent to its cost share. Under an SSC, these costs must be provided in the form of cash payments. For both types of agreements, the State may also reduce the amount of State-funded services or cash to be provided by authorizing a drawdown of any available State credit (see Section II.F and Appendix C of this document). Procedures for calculating and contributing a State's cost share are discussed in Chapters III (Cooperative Agreements) and V (SSCs).

Allowable, approved cost-sharing which States have already paid for remedial planning activities at a privately-owned site under past EPA policy may be applied toward the State's share of costs for remedial implementation at that site (see "Waiver of 10 Percent Cost Share for Remedial Planning at Privately-Owned Sites," OSWER, May 13, 1983, shown in Appendix P).

#### B.3.b Off-Site Treatment, Storage, or Disposal

At sites where off-site treatment, storage, or disposal of hazardous wastes is necessary to implement a selected remedial action (including an IRM), the State is required to assure the availability of a hazardous waste treatment, storage, or disposal facility that satisfies three conditions.

First, the facility must have an applicable permit or have been granted interim status in accordance with the Resource Conservation and Recovery Act (RCRA). Such permits or authorization may be issued by EPA or an authorized State. Second, it must have a RCRA Part B permit or have had a RCRA compliance inspection within 12

months prior to its use for treatment, storage, or disposal of site wastes and must have been found to comply with the RCRA regulations. Third, it must have sufficient capacity to handle wastes from the site. In addition, EPA must find off-site treatment, storage, or disposal to be cost-effective in comparison to other remedial actions that would provide adequate protection of public health, welfare, or the environment. The facility need not be located in the same State as the site in question. (See "Requirements for Selecting an Off-Site Option in a Superfund Response Action," OERR, February 28, 1983, in Appendix P.) Further discussion is provided in Section III.B for Cooperative Agreements and in Section V.C for SSCs.

#### B.3.c Operation and Maintenance (O&M)

The third assurance required by CERCLA is that a State will assume responsibility for all future O&M for the expected life of each remedial action as determined by EPA and the State. In accordance with current policy, EPA may, for a period not to exceed one year after completion of remedial response activities, share in the costs of any required O&M. These costs will be shared on the same percentage basis as costs for other remedial implementation subactivities. EPA's procedures for obtaining this assurance and additional details of EPA's current policy are discussed in Section III.B for Cooperative Agreements and in Section V.C for SSCs.

#### B.4 State Credits

A final concept that is critical to understanding this document is that of State credits. Section 104(c)(3)(C) of CERCLA provides that a State may receive credit for direct, out-of-pocket, non-Federal funds expended or obligated by the State or a political subdivision thereof for cost-eligible response actions at sites between January 1, 1978, and December 11, 1980. As described above, these credits can be used to meet State cost-sharing requirements at that site. Procedures for developing and submitting an accounting of these costs can be found in Section II.F and Appendix C of this document.

### C. OVERVIEW OF THE MANUAL

This document has been organized to reflect the general sequence of events that occurs prior to and during the development and implementation of agreements for remedial response. Exhibit I-2, on the next page, presents a flow

# EXHIBIT I-2

## DOCUMENT OUTLINE

	CHAPTER AND SECTION	PAGE
INTRODUCTION	I	I-1
	I-A	I-2
	I-B	I-3
	I-C	I-7
CONCURRENT EVENTS	II	II-1
• ENFORCEMENT	II-A	II-2
• PRELIMINARY PLANNING	II-B	II-2
• SITE SPECIFIC SCHEDULES	II-C	II-3
• RAP	II-D	II-3
• ACTION MEMORANDUM	II-E	II-4
• STATE CREDITS	II-F	II-4
• INTERGOV'TAL REVIEW	II-G	II-5
DEVELOPMENT OF C/As	III	III-1
• APPLICATION FORM	III-A	III-2
• PROVISIONS	III-B	III-6
• PROCUREMENT CHECKLIST	III-C	III-12
• OTHER SUBMISSIONS	III-D	III-13
• DEVIATION REQUEST	III-E	III-15
DEVELOPMENT OF EPA-LEAD PLANNING AGREEMENTS	IV	IV-1
• SCOPE OF WORK	IV-A	IV-3
• PROVISIONS	IV-B	IV-3
• COMMUNITY RELATIONS PLANS	IV-C	IV-5
• MANAGEMENT ASST. C/As	IV-D	IV-6
DEVELOPMENT OF SSCs	V	V-1
• STATEMENT OF WORK	V-A	V-2
• COST-SHARING TERMS	V-B	V-2
• PROVISIONS	V-C	V-4
• OTHER SUBMISSIONS	V-D	V-7
EXECUTION OF AGREEMENTS	VI	VI-1
• DRAFT REVIEW	VI-A	VI-1
• FINAL REVIEW AND CONCURRENCE PACKAGE	VI-B	VI-2
• APPROVAL AND EXECUTION	VI-C	VI-4
ADMINISTRATION	VII	VII-1
• MONITORING FINANCIAL COMMITMENTS	VII-A	VII-1
• MONITORING TECHNICAL COMMITMENTS	VII-B	VII-3
• COORDINATING WITH PERFORMANCE AGREEMENTS	VII-C	VII-5
• DOCUMENTING ACTIVITY	VII-D	VII-6
• DOCUMENTING COMPLETION	VII-E	VII-7
MODIFICATIONS	VIII	VIII-1
• PROJECT ADJUSTMENTS	VIII-A	VIII-1
• INITIATION OF RD-RC	VIII-B	VIII-3
• INITIATION OF O&M	VIII-C	VIII-7

diagram illustrating the organization of this document. Each chapter is represented by a frame of the diagram and is shown in relation to other chapters. Within each frame, key activities are identified and reference is made to the location in the document where the activity is discussed.

Whenever possible, information common to both State and EPA-lead remedial response has been consolidated in one chapter. This has been done in chapters concerning concurrent administrative events, and execution, administration, and modification of agreements. Information pertaining to the actual development of agreements is presented separately to emphasize the different procedures involved in the preparation of each instrument type.

To assist the reader, each chapter in this document is briefly outlined below:

- . Chapter I - Introduction describes the context, purpose, organization, and scope of this document
- . Chapter II - Concurrent Administrative Events discusses administrative events that precede, or occur simultaneously with, the development of an agreement and also identifies the significance of these activities for developing and implementing the agreement instrument
- . Chapter III - Development of Cooperative Agreement Application Packages describes key steps in the development of Cooperative Agreement application packages
- . Chapter IV - Development of EPA-Lead Remedial Planning Agreements generally discusses the types of agreements that are appropriate and describes in detail key steps in the development of MOUs, which are the more complex of the EPA-lead planning agreements
- . Chapter V - Development of Superfund State Contracts describes key steps in the development of SSCs
- . Chapter VI - Execution of Remedial Agreements identifies procedures for reviewing and approving remedial response agreements



- Chapter VII - Administration of Remedial Agreements identifies procedures for monitoring, coordinating, and documenting implementation of remedial response agreements
- Chapter VIII - Agreement Modifications discusses the purpose of, and identifies procedures for, project adjustments and new activity initiatives.

Appendices to the document contain examples, supplementary information, EPA guidance memoranda, a glossary of terms, and a list of references to documents and publications providing additional detailed information.

To assist EPA and State staff, charts summarizing individual responsibilities for each administrative activity described in this document can be found at the beginning of each chapter. When appropriate, the charts also display a list of work products and/or references to additional sources of information. These exhibits can serve as "checklists" for EPA and State officials as they implement the steps outlined in this document.

\* \* \* \* \*

The remainder of this document describes the development and use of CERCLA remedial response agreements. The following chapter provides a brief description of events that are usually initiated prior to or concurrently with the development of a remedial response agreement, and describes their significance to the development and implementation of agreement instruments.

## II. CONCURRENT ADMINISTRATIVE EVENTS

## II. CONCURRENT ADMINISTRATIVE EVENTS

While the focus of this document is on the development of remedial response agreements, this process is more fully understood in the context of a number of other events likely to occur once a site is placed on the National Priorities List (NPL). The following may be among these:

- . Initiation of enforcement activities to ensure that the proper groundwork is laid for potential future enforcement and cost recovery actions
- . Initiation of forward planning activities to assess the need for removal and remedial responses, and to define an approach for enforcement activities
- . Development of a site-specific schedule to tentatively schedule removal, remedial, and enforcement activities at the site
- . Inclusion of remedial response activities at the site in the Remedial Accomplishments Plan (RAP) to tentatively schedule obligation of funds
- . Development of the Action Memorandum for the site to document Regional Administrator approval of the first phase of the remedial response
- . Identification and review of State credit submission to enable a State to apply its credit against its share of remedial costs
- . Initiation of intergovernmental review procedures for applications for Federal assistance.

These activities have a significant bearing on the development of remedial response agreements and thus are the subject of this chapter.

Concurrently with the events listed above, EPA and the State need to consider and ultimately decide who will assume lead management responsibility for directing the remedial response activities at the site. EPA and the State should also initiate community relations activities and should involve the Regional Superfund Community

Relations Coordinator (RSCRC) in their discussions concerning the site. More detailed information on community relations activities is provided in Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983.

Responsibilities of the SPO, the RSPO, and the Zone Manager for each event shown will be discussed throughout this chapter. Exhibit II-1, on the following pages, summarizes these responsibilities and provides a list of additional guidance cited in the text. The remainder of this chapter discusses each of the activities noted above.

#### A. INITIATION OF ENFORCEMENT ACTIVITIES

The enforcement process begins immediately upon inclusion of a site on the NPL through attempts to identify potentially responsible parties. During these preliminary stages, it is important that the SPO, RSPO, and Zone Manager:

- . Share information about responsible parties with State and EPA enforcement staff to determine the viability of an enforcement action
- . Establish site files and document all steps taken in the development of a remedial response agreement to support any future cost recovery actions.

Subsequent to these initial efforts, remedial response at the site should continue to be coordinated with enforcement staff. This is crucial not only for cost recovery purposes, but also to ensure that any information discovered during the course of remedial activities, which may enhance the potential for enforcement or voluntary response, is shared with appropriate State and EPA staff.

Additional information on the importance of documentation and the establishment and maintenance of site files is provided in Section VII.D of this document. Detailed guidance on the enforcement process is available in Cost Recovery Actions Under CERCLA, Office of Enforcement Counsel (OEC) and Office of Solid Waste and Emergency Response (OSWER), August 26, 1983.

#### B. INITIATION OF FORWARD PLANNING

In the past, EPA undertook forward planning at a site where remedial activities were contemplated, as soon as

EXHIBIT II-1  
CONCURRENT ADMINISTRATIVE EVENTS

ACTIVITY	RESPONSIBILITIES		ADDITIONAL GUIDANCE
1. Initiation of Enforcement Activities	SPO, RSPO, and ZONE MGR:	<ul style="list-style-type: none"> <li>Assists in initiation of enforcement process, as appropriate</li> <li>Coordinates with enforcement staff throughout response</li> <li>Maintains documentation files for future cost recovery</li> </ul>	<u>Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983</u> <u>Community Relations in Superfund: A Handbook (Interim version), OERR, September 1983 (Chapter 6)</u>
2. Initiation of Preliminary Planning Activities	SPO:	<ul style="list-style-type: none"> <li>Acts as chief point of contact in State</li> <li>Reviews output of planning, as needed</li> </ul>	<u>REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983</u>
	RSPO:	<ul style="list-style-type: none"> <li>Initiates preliminary planning on as-needed basis</li> <li>Manages (through REM/FIT contractor) development of planning output</li> <li>Reviews/coordinates review of planning output</li> </ul>	
	ZONE MGR:	<ul style="list-style-type: none"> <li>Provides assistance, as necessary</li> </ul>	
3. Development of the Site-Specific Schedule	SPO, RSPO, and ZONE MGR:	<ul style="list-style-type: none"> <li>Individual responsibilities will be defined after specific procedures are developed.</li> </ul>	
4. Development of the Remedial Accomplishments Plan (RAP)	SPO:	<ul style="list-style-type: none"> <li>Provides input on site requirements, as necessary</li> </ul>	
	RSPO:	<ul style="list-style-type: none"> <li>Identifies potential obligations in area of responsibility</li> <li>Drafts descriptions of proposed projects</li> </ul>	
	ZONE MGR:	<ul style="list-style-type: none"> <li>Coordinates HQ review and approval</li> </ul>	
5. Development of the Action Memorandum	SPO:	<ul style="list-style-type: none"> <li>Provides information/assistance, as necessary</li> </ul>	Appendix B: Action Memorandum Guidance
	RSPO:	<ul style="list-style-type: none"> <li>Develops Action Memo with SPO input</li> </ul>	
	ZONE MGR:	<ul style="list-style-type: none"> <li>Provides assistance, as necessary</li> </ul>	

EXHIBIT II-1 (Continued)  
CONCURRENT ADMINISTRATIVE EVENTS

ACTIVITY	RESPONSIBILITIES		ADDITIONAL GUIDANCE
6. Preparation and Review of State Credit Submissions	SPO:	. Submits credit claim to EPA	Appendix C: Procedures for Processing CERCLA State Credit Claims
	RSPO:	. Reviews State credit claim . Makes formal submission to HQ	
	ZONE MGR:	. Coordinates recording of unverified and verified credit accounts with CERCLA Credit Coordinator	
7. Intergovernmental Review	SPO:	. Initiates review of projects (State-lead) . Includes review comments in application package, as appropriate (State-lead)	Executive Order 12372, Intergovernmental Review of Federal Programs, 47 FR 30959, July 14, 1982 Intergovernmental Review of EPA Programs and Activities, 48 FR 29288, June 24, 1983 (40 CFR 29)
	RSPO	. Reviews application package for necessary comments (State-Lead) . Includes review comments in funding package, as appropriate (EPA-Lead) coordinates EPA response to review recommendation and/or comment, as appropriate	Appendix D: Procedures for Implementing Intergovernmental Review Notice of Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372 (48 FR 54692)

feasible after the site appeared on the NPL. A Remedial Action Master Plan (RAMP) was used to present data compiled. This document served as a preliminary planning tool that outlined existing site data and described proposed remedial response and community relations activities. RAMPs also included a detailed statement of work (SOW) for the first phase of remedial response at the site. This SOW, often with minimal revisions, could be used in the remedial response agreement covering that phase of site activity.

The Office of Emergency and Remedial Response (OERR) has revised its forward planning approach to enhance efficiency and flexibility. This will usually result in less elaborate and less expensive forward planning than did the RAMP approach. The purposes of forward planning activities are threefold: 1) to develop technical/financial information to support requests for funds for subsequent remedial activities; 2) to evaluate the extent and utility of available data and to identify additional data needs; and 3) to identify administrative or procedural problems that may affect project implementation. Forward planning may be tailored to respond to the specific needs or problems of the site in question, the State, and the Region. In keeping with this emphasis on flexibility, the Superfund program now funds forward planning on a site-specific basis. Funding for forward planning must be requested on the Region's Superfund Comprehensive Accomplishments Plan (SCAP).

Forward planning will generally be limited to sites on the final or proposed NPL. In rare circumstances, forward planning may be allowed at candidate NPL sites which have a quality assured Hazard Ranking System score above the NPL cut-off (currently 28.5). In addition, at least one of the following criteria must be met:

The State and EPA have initiated response activities at all NPL sites in the State and the State proposes forward planning at sites scheduled for the next NPL update (candidate NPL sites). EPA will consider this only after the submission of documentation describing the response activity at each existing NPL site and the date the activity either started or will start.

- . Forward planning is needed at candidate NPL sites due to special situations, such as an existing public health threat. In such situations, it is necessary to prepare a written explanation describing why the activity is needed before adding the site(s) to the NPL. This explanation must indicate why remedial response is a more appropriate course of action than an immediate removal or enforcement.

A justification to support funding forward planning at a candidate NPL site must be submitted to the Director, OERR, for review and approval.

States can request funding for such activities at State-lead sites by using either of the following procedures:

- . Request EPA to task one of its remedial contractors to conduct the forward planning. The RSPO should prepare the SOW for these activities. The SOW should contain only those specific activities necessary prior to the implementation of a remedial investigation/feasibility study project.
- . Prepare a multi-site Cooperative Agreement application to fund State-managed forward planning activities (see Chapter III for additional guidance on multi-site Cooperative Agreements). Exhibit II-2, on the following pages, contains an example of an SOW and budget breakdowns for State-lead forward planning activities. This exhibit shows typical forward planning activities; specific applications may include activities that are in addition to or less than those presented in the exhibit.

In either case, Regional program office personnel will be responsible for initiating (where appropriate), reviewing, and securing approval of the planning outputs according to internal procedures established in each Region. In carrying out these responsibilities, however, Regional program staff should coordinate closely with contractor personnel and Regional and State enforcement, legal, and community relations staffs as well as the SPO, where one has been designated.



EXHIBIT II-2

Sample SOW for State-Lead Forward Planning Activities

Statement of Work

Work to be carried out under this cooperative agreement will include Forward Planning for three sites on the Superfund list. These sites include Peterson Sand and Gravel (HRS score 44.16), Pagel's Pit (HRS score 40.99), and Sheffield/U.S. Ecology (HRS score 34.22).

Forward planning for these State lead Superfund sites will include several activities that need to be carried out before implementation of the RI/FS. Work to be carried out will include the following activities.

1. Review Data

Data available at and near the site of concern will be reviewed to develop an understanding of the extent and nature of contamination problems at the site. This review of data will include an evaluation of the utility of available data and a determination of additional data needs.

2. Pre-RI/FS Community Relations Activities

Community relations activities will be carried out during the period between signing the MSCA and the initiation of the RI/FS. Work activities will include responding to inquiries from the news media, adjacent property owners, and elected officials and preparing news releases. Preliminary file searches and site visits will be necessary to carry out these activities. A copy of all publically released materials will be sent to the RPO (Regional Project Officer).

3. Develop Community Relations Plan

This plan will outline opportunities for public information and participation during the remedial investigation/feasibility study. These activities to develop the plan are summarized below.

- A. Identify constituency. State community relations personnel will survey the area to identify interest and potentially affected parties. This group may include residents, local public officials, and other concerned citizens. This work effort will require travel to the site of concern.
- B. Analyze level of concern. The level of concern will be analyzed using methods including noting the attendance at and the response to public meetings and workshops. The level of concern will be re-evaluated as new project phases are initiated.
- C. Schedule of activities. A schedule of activities will be developed for implementing the community relations plan.
- D. File Search. Files at both IEPA Springfield headquarters and the appropriate field office will be inspected. This activity will be the first step in developing the plan and provide a large part of the first section of the plan entitled "Background and Key Issues".

- E. Interviews. Interviews will be conducted with adjacent property owners, municipal officials, local health officials, and other interested parties. Key issues will be identified during these interviews.
- F. Site Inspection. The site and surrounding area will be visited prior to drafting the objectives of the plan. The map used in the plan will be prepared during this visit.
- G. Mailing List. Although the mailing list will change throughout the cleanup process, the bulk of the list will be prepared before the first draft of the plan is finished.

#### 4. Develop a Statement of Work

A Statement of Work will be developed for each Superfund site included in this MSCA in accordance with available guidance. These SOWs will describe tasks to be carried out in the RI/FS for each site. The SOWs developed in this effort will be used in the MSCA amendments needed to begin RI/FS work activities. Consultation with IEPA technical staff including Groundwater Advisor, Industrial Hygienist, and Quality Assurance Officer will be necessary to develop the Statement of Work. Prior to expending any money budgeted for the RI/FS, this work scope, along with any necessary budget adjustments, will be submitted to the RPO for approval. Funds for equipment will be required in the RI/FS budget to purchase necessary safety and monitoring equipment. Examples of equipment that may be needed include self-contained breathing apparatus and an organic vapor analyzer.

#### 5. Development of Request for Proposal

This work activity will include preparation of a Request for Proposal, review of proposals received, implementation of the selection procedure, contract preparation, contract negotiations, and completion of contractor procurement. A final selection of a contractor will not be made until either a site specific cooperative agreement or an amendment to this multi-site agreement has been approved for completing the remedial investigation/feasibility study.

#### 6. Quarterly Reports

Quarterly reports will be submitted by the IEPA to the USEPA reviewing the progress of various activities in this scope of work at each site. These reports will:

- A. Review expenditures to date and expenditures since the previous report by object class categories.
- B. Estimate variance expected at project completion based on current project.
- C. Project costs for monthly financial transactions for the remainder of the project.
- D. Summarize work completed.

**7. Schedule for Forward Planning Activities**

Forward Planning Activities for each site will begin during the quarter preceding the quarter specified for initiating the RI/FS in the SCAP. (The SCAP indicates the RI/FS will begin during the fourth, the second, and the second quarter, 1985 for Pagel's Pit, Peterson Sand and Gravel and Sheffield/U.S. Ecology, respectively.) Forward Planning Activities for each site will end upon approval of an amendment to this agreement for the RI/FS.

DC:ct/1716D,sp1-57

12/10/84  
New Exhibit

EXHIBIT II-2 (Continued)

PAGEL'S PIT :  
FORWARD PLANNING

PERSONNEL COSTS

Position Title	Annual Salary	Work Years	Cost	
First Line Supervisor	\$42528.00	0.006	\$255.17	
Project Manager	\$31056.00	0.069	\$2142.86	
Assistant Project Manager	\$27732.00	0.023	\$637.84	
On-Scene Coordinator	\$31056.00	0	\$0.00	
Community Relations Officer	\$31056.00	0.096	\$2981.38	
Legal Clerk	\$37332.00	0.005	\$186.66	
Groundwater Advisor	\$42528.00	0.003	\$127.58	
Industrial Hygienist	\$31056.00	0.003	\$93.17	
Contract Administrator	\$37332.00	0.003	\$112.00	
Clerical	\$15912.00	0.02	\$318.24	
Quality Assurance Officer	\$27732.00	0.002	\$55.46	
TOTAL		0.23	\$6910.36	\$6910

FRINGE BENEFITS

			Cost	
Retirement	0.054 *	\$6910.36	\$373.16	
Social Security	0.07 *	\$6910.36	\$483.72	
Insurance	\$1180.00 *	0.23	\$271.40	
TOTAL			\$1128.28	\$1128

INDIRECT COSTS

		Cost	
0.7566 *	\$8038.64	\$6082.04	\$6082

TRAVEL

Origin/Destination	Cost per Round Trip
Springfield/ New Milford	\$165.00
Springfield/Chicago	\$125.00

Position Title		No. Trips	Cost	
Project Manager	Spf/New	2	\$330.00	
	Spf/Chi	1	\$125.00	
TOTAL			\$455.00	\$455

TOTAL FORWARD PLANNING

\$14575

EXHIBIT II-2 (Continued)

PETERSEN SAND AND GRAVEL  
FORWARD PLANNING

PERSONNEL COSTS

Position Title	Annual Salary	Work Years	Cost	
First Line Supervisor	\$42528.00	0.006	\$255.17	
Project Manager	\$31056.00	0.069	\$2142.86	
Assistant Project Manager	\$27732.00	0.023	\$637.84	
On-Scene Coordinator	\$31056.00	0	\$0.00	
Community Relations Officer	\$31056.00	0.096	\$2981.38	
Legal Clerk	\$37332.00	0.005	\$186.66	
Groundwater Advisor	\$42528.00	0.003	\$127.58	
Industrial Hygienist	\$31056.00	0.003	\$93.17	
Contract Administrator	\$37332.00	0.003	\$112.00	
Clerical	\$15912.00	0.02	\$318.24	
Quality Assurance Officer	\$27732.00	0.002	\$55.46	
TOTAL		0.23	\$6910.36	\$6910

FRINGE BENEFITS

			Cost	
Retirement	0.054 *	\$6910.36	\$373.16	
Social Security	0.07 *	\$6910.36	\$483.72	
Insurance	\$1180.00 *	0.23	\$271.40	
TOTAL			\$1128.28	\$1128

INDIRECT COSTS

		Cost	
0.7566 *	\$8038.64	\$6082.04	\$6081

TRAVEL

Origin/Destination	Cost per Round Trip
Springfield/Libertyville	\$179.00
Springfield/Chicago	\$125.00

Position Title		No. Trips	Cost	
Project Manager	Spf/Lib	2	\$358.00	
	Spf/Chi	1	\$125.00	
TOTAL			\$483.00	\$483

TOTAL FORWARD PLANNING

\$14602

12/10/84  
New Exhibit

EXHIBIT II-2 (Continued)

SHEFFIELD/U. S. ECOLOGY  
FORWARD PLANNING

PERSONNEL COSTS

Position Title	Annual Salary	Work Years	Cost	
First Line Supervisor	\$42528.00	0.01	\$425.28	
Project Manager	\$31056.00	0.075	\$2329.20	
Assistant Project Manager	\$27732.00	0.026	\$721.03	
On-Scene Coordinator	\$31056.00	0	\$0.00	
Community Relations Officer	\$31056.00	0.1	\$3105.60	
Legal Clerk	\$37332.00	0.01	\$373.32	
Groundwater Advisor	\$42528.00	0.005	\$212.64	
Industrial Hygienist	\$31056.00	0.005	\$155.28	
Contract Administrator	\$37332.00	0.005	\$186.66	
Clerical	\$15912.00	0.02	\$318.24	
Quality Assurance Officer	\$27732.00	0.002	\$55.46	
TOTAL		0.258	\$7882.72	\$7883

FRINGE BENEFITS

Cost

Retirement	0.054 *	\$7882.72	\$425.67	
Social Security	0.07 *	\$7882.72	\$551.79	
Insurance	\$1180.00 *	0.258	\$304.44	
TOTAL			\$1281.90	\$1282

INDIRECT COSTS

Cost

0.7566 *	\$9164.61	\$6933.95	\$6934
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TRAVEL

Origin/Destination	Cost per Round Trip
Springfield/Sheffield	\$138.00
Springfield/Chicago	\$125.00

Position Title		No. Trips	Cost	
Project Manager	Spf/New	2	\$276.00	
	Spf/Chi	1	\$125.00	
TOTAL			\$401.00	\$401

TOTAL FORWARD PLANNING

\$16500

C. DEVELOPMENT OF SITE-SPECIFIC SCHEDULES

Prior to the initiation of remedial activities at a site on the NPL, EPA will, in close coordination with the State, develop a site-specific schedule for the site in question. OSWER requires the development of a schedule for every NPL site. The schedule is a tool which will be used to outline all Superfund activities at NPL sites and show their scheduling through completion of response at the site. These activities include remedial, removal, enforcement, and community relations activities.

Additional guidance and procedures will be developed and issued separately.

D. DEVELOPMENT OF THE REMEDIAL ACCOMPLISHMENTS PLAN (RAP)

Another event that takes place prior to the execution of a remedial response agreement is the inclusion of a remedial project in the RAP. The Regional accomplishments planning process consists of an Annual RAP and Quarterly RAPs. The Annual RAP is a Region's master plan for Superfund remedial obligations expected to occur during a given fiscal year; Quarterly RAPs provide detailed schedules for each of these expected obligations. After its RAP has been approved, a Region may obligate CERCLA funds for the activities, subactivities, and amendments included in its RAP. RAPs are monitored through the Program Control System (PCS).

Detailed guidance for developing and modifying Annual and Quarterly RAPs can be found in FY84 Regional Superfund Accomplishments Plan, OSWER, August 5, 1983, and Modifying the Remedial Accomplishments Plan (RAP), OSWER, December 30, 1983.

E. DEVELOPMENT OF THE ACTION MEMORANDUM

Preparation of an Action Memorandum is another important administrative event which may occur prior to the execution of a remedial response agreement. Action Memoranda are documents which Regions can use to secure the Regional Administrator's conceptual approval of the first remedial project to be implemented at a hazardous waste site; a single Action Memorandum may also be used to cover projects at more than one site within a State. Following approval of an Action Memorandum, the proposed project(s) will be undertaken using either a Cooperative

Agreement or an EPA-lead agreement. Use of Action Memoranda is discretionary, but is recommended to document Regional concurrences on, and approval of, remedial projects.

Further information on the format of Action Memoranda and an approved example can be found in Appendix B.

**F. PREPARATION AND REVIEW OF STATE CREDIT SUBMISSIONS**

Another step taken prior to the development of an agreement between EPA and the State is State identification of any potential credits for which it might be eligible under CERCLA, and subsequent EPA review and audit of the State's claimed credits. Such credits have a direct bearing on the amount of a State's residual cost-sharing obligation for remedial activities at a given site.

Based on the provisions of CERCLA section 104(c)(3)(C), EPA will grant States a credit against their share of costs under a Cooperative Agreement or an SSC for expenditures or obligations that:

- . Occured between January 1, 1978, and December 11, 1980 (the CERCLA credit period)
- . Have been properly documented, based on Circular A-87 of the Office of Management and Budget (OMB)
- . Represent direct costs, as defined by OMB Circular A-87
- . Are eligible for payment under CERCLA, as defined in CERCLA section 111
- . Are site-specific
- . Were neither used as required match for other Federal programs nor reimbursed by another Federal or State agency or by a responsible party.

Costs that meet these criteria may be counted as State credit, subject to EPA approval. The credit will be site-specific, and may therefore be used only for remedial activities at the site for which it was accrued. A State will not be reimbursed for any credit remaining after remedial implementation at that site has been completed.



To obtain EPA approval on its claimed credit, a State must prepare a credit claim and submit it for review to the appropriate EPA Region prior to or early in the development of a Cooperative Agreement or an SSC. Credit claims should be written in letter form and should follow the procedures detailed in Appendix C. EPA's review and audit procedures are also contained in Appendix C.

#### G. INTERGOVERNMENTAL REVIEW

In accordance with OMB Circular A-95, States/applicants in the past submitted applications for Federal assistance to designated clearinghouses for review. This formal review process identified potential duplication of effort or lack of coordination with other State and Federal projects.

On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs." The Order directed OMB to revoke A-95 and to implement a flexible, elective review system relying on State-established procedures. The effective date for implementing regulations and ending the A-95 review system was September 30, 1983. EPA, along with other Federal agencies subject to the Executive Order, published its final rule and related Federal Register notices on June 24, 1983. This rule is 40 CFR Part 29, "Intergovernmental Review of the Environmental Protection Agency Programs and Activities" (48 FR 29288).

Detailed procedures to implement the regulations as they apply to both State and EPA-lead Superfund remedial agreements can be found in Appendix D. For the benefit of concerned individuals, the Appendix defines roles of EPA and State staff, provides reprints of the regulation and associated Federal Register notices, and contains sample letters to formally initiate review of proposed remedial projects.

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This chapter has provided information on administrative events which serve as a foundation for the procedures described in the remainder of this document. The next three chapters -- Development of Cooperative Agreement Application Packages (Chapter III), Development of EPA-Lead Remedial Planning Agreements (Chapter IV), and Development of Superfund State Contracts (Chapter V) -- discuss the steps taken while developing draft agreements.

III. DEVELOPMENT OF COOPERATIVE AGREEMENT  
APPLICATION PACKAGES

### III. DEVELOPMENT OF COOPERATIVE AGREEMENT APPLICATION PACKAGES

At sites where the State has opted to assume lead management responsibility for a remedial project, an agreement vehicle is needed which can be used to provide funding assistance to the State as well as to document responsibilities and obtain State assurances. A Cooperative Agreement is the appropriate instrument for carrying out these functions. Even where remedial action is managed by EPA, a Cooperative Agreement must be used to provide any EPA funds for sharing in operation and maintenance (O&M) costs.

Most Cooperative Agreements negotiated will be site-specific. However, a State may choose to develop a multi-site Cooperative Agreement which covers remedial investigation/feasibility study projects at more than one site. States also have the option of entering into a single Cooperative Agreement which will cover costs for a State-lead project as well as costs which the State incurs for EPA-lead projects. When the State elects to utilize a single agreement for both purposes, its Cooperative Agreement application must meet the requirements described in this chapter as well as those outlined in Section IV.D of this document.

This chapter describes the activities necessary to develop a Cooperative Agreement application package that will ultimately result in an executed Cooperative Agreement. These procedures are applicable for both site-specific and multi-site Cooperative Agreements.

Exhibit III-1, on the following page, identifies activities and organizational responsibilities for developing a Cooperative Agreement application package. In addition, it shows primary/lead roles for developing a request for a deviation from EPA's General Regulation for Assistance Programs (40 CFR 30) to permit the allowability of costs incurred by the State prior to award of the Cooperative Agreement; a deviation request is sometimes submitted concurrently with the Cooperative Agreement application package. As shown in the exhibit, the State has primary responsibility for developing a Cooperative Agreement application package. The State official who assumes this role -- usually the SPO -- should consult

EXHIBIT III-1  
DEVELOPMENT OF COOPERATIVE AGREEMENTS

ACTIVITY	RESPONSIBILITIES	WORK PRODUCTS
1. Development of the Cooperative Agreement application package (includes development of the application form, development of agreement provisions, completion of procurement system certification form, and submission of other documents)*	<p>SPO: . Develops Cooperative Agreement application form</p> <p>. Develops Cooperative Agreement provisions</p> <p>. Submits Procurement System Certification Form</p> <p>. Submits Community Relations Plan</p> <p>. Submits certification letter</p> <p>. Submits intergovernmental review comments (where necessary)</p> <p>RSPO: . Provides consultation and technical assistance to the SPO, as requested</p> <p>1 ZONE . Supports RSPO, as requested</p> <p>o MGR:</p>	<p>. Completed Application for Federal Assistance -- State and Local Nonconstruction Programs (EPA Form 5700-33)</p> <p>. Completed set of provisions as part of Cooperative Agreement application package</p> <p>. Completed Procurement System Certification Form for Applicants for EPA Assistance (EPA Form 5700-48)</p> <p>. Community Relations Plan</p> <p>. Letter from Governor or Attorney General certifying the authority of the official signing the Cooperative Agreement to do so and to make any necessary CERCLA section 104(C)(3) assurances</p> <p>. Intergovernmental review comments and EPA response (if appropriate)</p>
2. Deviation Request to Permit the Allowability of Pre-Award Costs	<p>SPO: . Determines need for deviation request to establish the allowability of costs incurred prior to award</p> <p>. Develops deviation request (where necessary)</p> <p>RSPO: . Submits deviation request to Regional Administrator for concurrence</p> <p>. Submits approved request to EPA HQ for approval</p> <p>ZONE . Coordinates HQ concurrences</p> <p>MGR: and approval of deviation request</p>	<p>. Deviation request</p> <p>. Approved deviation</p>

\*/This activity is comprised of four distinct steps which are addressed separately in the text. They have been combined in this chart in an effort to simplify the presentation of responsibilities.

closely with EPA's RSPO for that site throughout development of the application package. Additional support is available through the EPA Headquarters Zone Manager.

Exhibit III-2, on the following page, summarizes key requirements of the Cooperative Agreement application package and may be used as a checklist in developing the application package. As shown in this exhibit, the application package consists of the Cooperative Agreement application form (EPA Form 5700-33) and a number of attachments. Each part of the package is discussed in this chapter. In addition, an example of a completed application package is shown in Appendix G.

#### A. COMPLETION OF THE COOPERATIVE AGREEMENT APPLICATION FORM

The State must use an Application for Federal Assistance - State and Local Nonconstruction Programs (EPA Form 5700-33) when applying for a remedial Cooperative Agreement under CERCLA. This form consists of five parts:

- . Part I - General Summary Information
- . Part II - Project Approval Information
- . Part III - Budget Information
- . Part IV - Project Narrative Statement
- . Part V - Assurances.\*

General instructions for completing each part are included in the application form.

Additional information on completing Part III - Budget Information and Part IV - Project Narrative Statement is provided in this section. These parts of the application form are subject to remedial program-specific requirements. Part IV is discussed first, since its completion is necessary prior to fully addressing Part III. Other sections are more straightforward and therefore do not require explanation in this document.

##### A.1 Part IV - Project Narrative Statement

A Project Narrative Statement has two important components: (1) a brief explanation of the problems and history of the site or sites and (2) a statement of work

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\* These assurances are different from, and in addition to, those required under CERCLA section 104(c)(3) and other program requirements.

## EXHIBIT III-2

## COOPERATIVE AGREEMENT APPLICATION PACKAGE CHECKLIST

COMPONENT/ELEMENT	SUBMISSION	GUIDANCE
<b>1. Application for Federal Assistance</b>		
. Part I-General Summary Information	. Part I, completed and signed	. 5700-33 Instructions
. Part II-Project Approval Information	. Part II, completed	. 5700-33 Instructions
. Part III-Budget Information*	. Part III, completed . Detailed budget breakdown	. 5700-33 Instructions . Guidance, Section III.A.2
. Part IV-Project Narrative Statement*	. Site background summary . Statement of work	. Guidance, Section III.A.1 . Model SOW in Appendix E
. Part V-Assurances	. Part V, completed	. 5700-33 Instructions
<b>2. Cooperative Agreement Provisions</b>		
. General Assistance Provisions	. Provisions stating intent to comply with EPA regulations, statutes, and other general Agency requirements	. 40 CFR 30 . 40 CFR 33 . Guidance, Section III.B.1 . Guidance, Appendix F, Section 1
. Superfund Program Provisions	. CERCLA section 104(c)(3) assurances . Provisions stating intent to follow other program requirements	. Guidance, Section III.B.2 . Guidance, Appendix F, Section 2
<b>3. Procurement System Certification</b>	. Completed EPA Form 5700-48	. 5700-48 Instructions . Guidance, Section III.C
<b>4. Other Submissions</b>		
. Community Relations Plan (CRP)	. Draft CRP included in draft application package; final CRP in final application package	. Guidance, Section III.D.1 . Guidance, Appendix K
. Certification Letter	. Letter signed by Governor or Attorney General (or designee) certifying that agency entering into the C/A has authority to do so and to make the assurances required by CERCLA section 104(c)(3)	. Guidance, Section III.D.2 . Guidance, Appendix J
. Intergovernmental Review Comments	. Comments included, as appropriate	. 40 CFR 29 . Guidance, Section II.G . Guidance, Section III.D.3

\*For multi-site Cooperative Agreements, the State should submit individual budget breakdowns and project narrative statements for each project to be included under the Agreement.

(SOW). The exposition of problems and history will be specific to each agreement and is therefore not discussed here in detail; however, it should include a site chronology, for each site covered by the Agreement, which highlights past removals and emergency actions taken at the site and outlines any coordination necessary. Conversely, the format of a SOW should be similar for many sites and is therefore discussed below.

The SOW describes the purpose and scope of activities and tasks to be carried out as a part of the proposed project. When the Cooperative Agreement covers work at more than one site, a separate SOW should be submitted for each site-specific project to be undertaken in addition to a SOW for the overall management and coordination activities. For each activity/subactivity, the SOW should include a description of necessary subactivities/tasks with estimated start and completion milestones. Where appropriate, the SOW should also identify outputs and may contain cost estimates for each subactivity and task.

In general, the SOW for a remedial investigation/feasibility study can be obtained from one of three sources:

- . The RAMP, if one has been prepared
- . The REM/FIT contractor, as the output of a special task order from Regional program office personnel
- . The State, which can prepare it through a contractor or using State staff.

If State staff prepare the SOW for inclusion in the Cooperative Agreement application, it can be based on the model SOW shown in Appendix E. For remedial design projects, the conceptual design requirements contained in the feasibility study can serve as the basis for SOW development. The SOW for a remedial action will normally be prepared as part of the remedial design.

## **A.2 Part III - Project Budget**

Sources of information for developing the project budget will vary, depending on the type of project in question. The proposed budget for a remedial investigation/feasibility study project may be based upon the cost estimates in the RAMP, if available, upon cost estimates developed by the REM/FIT contractor, or upon modified

standard cost estimates. If the State uses standard costs to develop its project budget, persons in the State or Region with knowledge about the site in question should be consulted so that the standard costs can be altered to reflect site conditions and the project at hand. For remedial design and remedial implementation activities, the proposed project budget is normally developed simultaneously with the SOW; the chart in Exhibit III-3, on the following page, can be used to assist the State in estimating total remedial implementation project costs. In any case, the budget should identify total project costs for all activities, subactivities, and tasks to be completed. When the Cooperative Agreement is designed to cover projects at more than one site, individual budget breakdowns should be submitted for each project to be undertaken.

The project budget should be displayed in the Cooperative Agreement application package both in summary form and in detail. Using the budget formats included in Part III of the application, Project Budget Information, the applicant should summarize Federal and State costs for each proposed activity and subactivity; appropriate activity codes and their associated subactivities can be found in Exhibit N-1 in Appendix N. Management costs can be included in this budget breakdown, but total management costs, including those associated with the individual activities listed, should generally not exceed the guidelines of 8-12 percent of project costs. The applicant should also identify costs for each activity and subactivity in the application by object class category (e.g. personnel, travel, contractual, etc.); appropriate object class categories for use in completing the Cooperative Agreement application are shown in Exhibit III-4, following Exhibit III-3.

To assist EPA staff in determining whether proposed costs are reasonable and meet applicable EPA requirements, the State should attach to the application form a detailed project budget, showing estimated costs for each proposed task. This attachment should also contain detailed information on elements of object class categories. Exhibit III-5, following Exhibit III-4, shows the appropriate level of detail for each object class category; an example can be found in Appendix G.

#### A.2.a Allowable Costs

The State should ensure that costs to be included in the application are allowable for payment under CERCLA. To be allowable, proposed costs must be consistent with



**EXHIBIT III-3**  
**FIGURES FOR USE IN ESTIMATING TOTAL STATE-LEAD REMEDIAL ACTION COSTS**

<u>ITEM</u>	<u>REM. ACTION ESTIMATES LESS THAN \$2,000,000</u>	<u>REM. ACTION ESTIMATES GREATER THAN \$2,000,000</u>
Supervision and Administration	8%	6%
Engineering and Design Support During Construction	1.5%	1%
Contingencies*	10%	8%
	<hr/>	<hr/>
TOTAL**	19.5%	15%

\* Contingency rates are applied to total project costs, including overhead and profit.

\*\* Supervision and administration figures shown apply to costs for State personnel, travel, etc., not covered by the contractual object class category (except where the State will let contracts for these functions); other items shown will normally be covered by contractual and/or construction categories, except when conducted in-house.

EXHIBIT III-4  
OBJECT CLASS CATEGORIES FOR USE IN COMPLETING THE  
COOPERATIVE AGREEMENT APPLICATION

CATEGORY	CONTENT
Personnel	<p>. The State may include the costs of all wages paid to State employees who are, for example:</p> <ul style="list-style-type: none"> <li>- engaging in response activities</li> <li>- directly managing State employees engaged in response</li> <li>- managing subagreements awarded under the Agreement.</li> </ul> <p>These costs can be calculated on either a percentage of time or level of effort basis.</p>
Fringe Benefits	<p>. The State may include fringe benefits for State employees, calculated as a fixed percentage of salary or by some other agreed-upon method.</p>
Travel	<p>. The State may include costs incurred by State employees for travel necessary for the conduct of the proposed remedial activities.</p>
Equipment	<p>. The State may include the purchase price of any necessary equipment that it will furnish, less its residual value after the completion of the project. If equipment costs are based on usage rates, the State must:</p> <ul style="list-style-type: none"> <li>- use a standard depreciation usage method</li> <li>- document initial costs, expected life, and residual value in accordance with OMB Circular A-102, Attachment N.</li> </ul>
Materials and Supplies	<p>. The State may include the purchase price of any necessary materials and supplies it will furnish.</p>
Contractual Services	<p>. The State may include all costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit. These costs, to the extent possible, should be limited to personal services and nonconstruction contracts (see 40 CFR Part 33 and OMB Circular A-87).*</p>
Construction	<p>. The State may include all costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit. These costs, to the extent possible, should be limited to construction contracts (see 40 CFR Part 33 and OMB Circular A-87).*</p>
Other Direct Costs	<p>. The State may include other direct costs, such as equipment rental, real property purchase, and miscellaneous costs. If the State purchases real property, it must agree to comply with the property requirements of 40 CFR Part 30.</p>
Indirect Costs	<p>. The State may include indirect costs.</p>

\*In accordance with the Prompt Payment Act (PL 97-177), however, Federal funds may not be used for payment of interest penalties to contractors when bills are paid late.

EXHIBIT III-5  
ITEMIZATION OF OBJECT CLASS CATEGORIES:  
APPROPRIATE LEVEL OF DETAIL

CATEGORY	INFORMATION TO BE SHOWN
Personnel	<ul style="list-style-type: none"><li>. Positions of staff required</li><li>. Number of hours necessary</li><li>. Salary of staff (annual or hourly rate)</li><li>. Estimates of personnel costs, by position</li></ul>
Fringe Benefits	<ul style="list-style-type: none"><li>. Basis (percentage or other) upon which fringe benefits are calculated</li><li>. Estimates of fringe benefit costs, by position</li></ul>
Travel	<ul style="list-style-type: none"><li>. Purpose and estimated number of trips</li><li>. Starting point and destination</li><li>. Transportation method</li><li>. Per diem while on travel</li><li>. Number of persons traveling</li><li>. Estimated cost per trip</li></ul>
Equipment	<ul style="list-style-type: none"><li>. Number and type(s) of equipment to be purchased</li><li>. Price of each piece</li></ul>
Materials and Supplies	<ul style="list-style-type: none"><li>. Type(s) of materials and supplies to be furnished</li><li>. Total prices</li></ul>
Contractual Services	<ul style="list-style-type: none"><li>. Estimated number of personal services for nonconstruction contracts to be let</li><li>. Nature of contract services</li><li>. Estimated total costs for each contract*</li></ul>
Construction	<ul style="list-style-type: none"><li>. Estimated number of construction contracts to be let</li><li>. Nature of contract services</li><li>. Estimated total costs for each contract*</li></ul>

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\*It is recommended that estimates be sufficient to allow for unforeseen costs and contingencies which may occur during contract performance.

section 111 of CERCLA and with Federal cost principles outlined in the OMB Circular A-87, "Cost Principles for State and Local Governments." The State may also seek assistance from the RSPO in determining which costs may be allowable. Final determination of the reasonableness of the cost estimates in the application will be made by the EPA Award Official.

#### A.2.b Enforcement Costs

Certain enforcement costs attributable to site-specific activities are allowable under CERCLA, according to OSWER guidance. Among specific enforcement costs that may be included in the project budget are those associated with identification of responsible parties, investigation, gathering of evidence, and preparation of expert witness testimony. Enforcement costs that may not be included in the project budget are those directly attributable to litigation and to overall enforcement program management, including court costs and legal fees. For background on EPA's policy in this area, see "Payment of State Enforcement Costs Under Superfund," OSWER, January 21, 1983, contained in Appendix P of this document.

#### A.2.c Calculation of State Cost Share

To complete the project budget for Part III of the Cooperative Agreement application form, the State must identify both the Federal and non-Federal (if any) costs for each activity. Current EPA policy is to not require State cost-sharing for remedial planning (remedial investigation/feasibility study and remedial design) at privately-owned sites (see "Waiver of 10 Percent Cost Share for Remedial Planning Activities at Privately-Owned Sites," OSWER, May 13, 1983, included in Appendix P). CERCLA section 104(c)(3)(C) requires a State to provide 10 percent of the costs for remedial implementation at privately-owned sites and at least 50 percent of response costs (including removals and remedial planning costs) at publicly-owned sites. However, provision of a State's cost-sharing obligation is required only in an Agreement covering CERCLA-funded remedial implementation; no cost-sharing is required for a Cooperative Agreement covering only remedial planning, regardless of site ownership.

Once EPA, after consultation with the State, has determined the appropriate cost-sharing percentage, if any, the State should multiply the total cost of the project by this figure to identify the total State share. (If this is a publicly-owned site and the project involves

remedial implementation, the State should also add its share of removal and remedial planning costs to arrive at its total share.) Then the State should subtract any available State credit (see Section II.F and Appendix C of this guidance for further discussion of State credits), up to 100 percent of the State share, to determine its remaining cost-sharing obligation for the project. The Federal share is the difference between total project costs and the State's share. The State should identify these costs and note the use of any credit in the appropriate sections of Part III of the application form -- Project Budget. For the benefit of State staff, examples of these calculations are shown in Exhibit III-6, on the following page.

Prior to the May 13, 1983 rescission of the 10 percent cost-sharing policy, States shared in remedial planning costs at some privately-owned sites. Under current EPA policy, any cost shares previously paid by the State (allowable State services, statutory credit, or cash) for these activities may be applied to the State's cost-sharing obligation during remedial implementation at the site. Such cost shares may have been included in the Cooperative Agreement budget under the previous EPA policy. If the State provided remedial planning cost share prior to the May 13 decision, the State may apply this toward its ultimate cost share during remedial implementation.

## **B. DEVELOPMENT OF COOPERATIVE AGREEMENT PROVISIONS**

Cooperative Agreements for remedial response at sites under CERCLA are subject to a number of legal and administrative requirements that affect the implementation of the project funded. The State should address each of these subjects, as appropriate, in provisions included in its Cooperative Agreement application package. After the State has submitted its application, the RSPO should discuss with the State any requirements not adequately addressed and should meet them through the addition of appropriate special conditions to the Cooperative Agreement. Types of requirements fall into two broad categories: general assistance provisions and program provisions, both of which are discussed below. Specific examples can be found in Appendix F.

### **B.1 General Assistance Requirements**

Superfund remedial Cooperative Agreements are subject to certain general Agency requirements which apply to all applications for financial assistance from EPA. One of

EXHIBIT III-6  
STATE COST SHARE CALCULATIONS  
(for remedial implementation projects)

Example 1

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 10 percent (privately-owned site)  
State credit = none

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share
	\$550,000	x	10 percent	=	\$55,000

The State is required to contribute \$55,000 in cash or services; EPA will provide the remaining \$495,000 for the remedial implementation.

Example 2

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 10 percent (privately-owned site)  
State credit = \$35,000

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share
	\$550,000	x	10 percent	=	\$55,000
.	State cost share	-	State credit	=	State Obligation
	\$55,000	-	\$35,000	=	\$20,000

The State is required to contribute \$20,000 in cash or services; the remainder of the State cost share is met by applying the State credit. EPA will provide \$530,000 for the remedial implementation.

Example 3

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 50 percent (publicly-owned site)  
State cost share for remedial planning = \$50,000  
State credit = \$350,000

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share for Remedial Implementation
	\$550,000	x	50 percent	=	\$275,000
.	Remedial planning cost share + Remedial implementation cost share	+		=	Total State Cost Share
	\$50,000	+	\$275,000	=	\$325,000
.	Total State cost share	-	State credit (up to 100 percent of State cost share)	=	State Obligation
	\$325,000	-	\$325,000	=	0

EPA funds 100 percent of all project costs under the Cooperative Agreement. Of the \$350,000 credit, \$325,000 has been applied, leaving \$25,000 available for future cost-sharing. The State will not be reimbursed for the \$25,000.

these is EPA's General Regulation for Assistance Programs (40 CFR Part 30). This regulation explains the manner in which a State must manage a project performed under a Cooperative Agreement and outlines other responsibilities that the State must assume following award of funds.

Also among general assistance requirements is Procurement Under Assistance Agreements (40 CFR Part 33), EPA's regulation for any procurements made under a Cooperative Agreement; key points of this regulation are summarized in Exhibit III-7, on the following page.\* In considering procurement requirements, the State should be sure to address the provisions of section 33.240, which establish six affirmative steps that States must take to ensure that small and disadvantaged businesses are used, when possible, as sources of supplies, construction, and services. These requirements have been reinforced by Executive Order 12432, Minority Business Enterprise Development, signed by the President on July 14, 1983. Executive Order 12432 reiterates the Federal government's commitment to small and disadvantaged business by setting forth a program aimed at developing such enterprises. Procedures developed under the Executive Order stipulate that EPA will establish "Fair Share" objectives for awards to minority (MBE) and women's (WBE) business enterprises; that the State must set its own objectives and must advertise them in all Requests for Proposal and Invitations for Bids; and that the State must report, on a quarterly basis, on its utilization of MBEs and WBEs. These requirements apply to all Superfund Cooperative Agreements, including those awarded by the remedial program.

The State should address all general assistance requirements in its Cooperative Agreement application by including applicable provisions. Specific requirements, additional background information, and examples of acceptable provisions can be found in Section 1 of Appendix F.

## B.2 Superfund Program Requirements

In addition to the general EPA assistance and procurement requirements, there are program-specific requirements for Cooperative Agreements awarded under CERCLA. Provisions addressing these requirements are necessary to assure compliance with CERCLA statutory requirements and Superfund program policy and procedures. These provisions are summarized in Exhibit III-8, following Exhibit III-7.

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\* Development of the Procurement System Certification Form, one requirement of this regulation, is discussed in the following section of this chapter.

EXHIBIT 111-7  
SUMMARY OF REQUIREMENTS FOR PROCUREMENT UNDER  
ASSISTANCE AGREEMENTS (40 CFR 33)

TITLE	SUMMARY OF REQUIREMENT	SECTION
Recipient Responsibility	System must ensure that contractors perform in accordance with all applicable contract requirements	33.210
Submission of Information	Recipient must inform Award Official of construction subagreements totalling over \$10,000 per year	33.211
Limitation on Subagreement Award	System must consider listed factors in determining contractor responsibility	33.220
Competition	System must have procurement transaction procedures which provide maximum open and free competition	33.230
Profit	System procedures must allow only fair and reasonable profits to contractors	33.235
Small, Minority, Women's, and Labor Surplus Area Businesses	System must award a fair share of sub-agreements to such businesses according to six affirmative steps specified	33.240
Documentation	System must require that procurement records and files for purchases over \$10,000 include items specified	33.250
Specifications	System procedures for establishing specifications must meet the requirements listed	33.255
Bonding and Insurance	System procurements must meet the specified requirements	33.265
Code of Conduct	System must have a written code of standards of conduct for State officials in dealing with contractors	33.270
Federal Cost Principles	System procedures for determining allowable costs must meet the specified principles	33.275
Prohibited Types of Subagreements	System may not allow cost-plus-percentage-of-cost (multiplier) or percentage-of-construction types of contracts	33.285
Cost and Price Considerations	System procedures must allow for consideration of cost and price, as specified	33.290
Lower Tier Subagreements	System must provide that subagreements below the first tier comply with all provisions specified	33.295
Small Purchase	System small purchase method must meet specified requirements	33.305-315
Formal Advertising	System procedures relating to formal advertising, including those for bidding documents and contract awards, must meet the specified requirements	33.405-430
Competitive Negotiation	System procedures for competitive negotiation must meet the specified requirements	33.505-535
Noncompetitive Negotiation	System procedures for noncompetitive negotiation must meet the specified requirements	33.605
Requirements for Recipients of Remedial Action Cooperative Agreements under CERCLA	Subpart requires use of formal advertising for remedial action construction procurements unless determined not to be appropriate (not applicable for remedial planning or for engineering services)	Subpart E
Subagreement Provisions	Subpart includes the clauses which must be contained in subagreements for procurement	Subpart F
<u>Protests</u>	Subpart applies to all applicants for EPA assistance except non-profit organizations	Subpart G



EXHIBIT III-8  
SUMMARY OF SUPERFUND PROGRAM PROVISIONS FOR COOPERATIVE AGREEMENT APPLICATIONS

SUBJECT	DESCRIPTION
CERCLA Section 104(c)(3) Assurances	Applications proposing remedial action must contain assurances that State will provide all future operation and maintenance and an off-site facility, if applicable
State Credit	If State uses credit to provide some of its cost share, this is documented; if credit is not verified, State agrees to EPA adjustment in cost share, if needed following verification
Fund Balancing	Provision that funding future activities at a site is dependent upon the need to respond at other sites and that EPA is not obligated to fund further activities
Development of Recommendations According to NCP	State agrees to develop feasibility study recommendations in accordance with the NCP
Floodplain Requirements	State agrees to evaluate potential effects of remedial action in the floodplain, pursuant to Executive Order 11988 (used when site is located in a floodplain)
Duties of the RSPO and SPO	State and EPA specify relevant duties of the SPO and RSPO
Site Access and Permits	State agrees to secure site access and permits necessary to conduct the project
Community Relations Plan	State agrees to allow period for public comment on recommendations of feasibility study; State also assures that CRP will be implemented during remedial response
Site Safety Plan	State agrees to submit Site Safety Plan to EPA prior to beginning on-site activities
Access to Files	State agrees to allow EPA access to its site files and to designate confidential information
Reporting Requirements	State agrees to submit quarterly reports on site progress to RSPO for review
Submission of Documents	State agrees to forward site-specific documents to RSPO for review during progress of activities
Responsible Party Activities	EPA and State agree to modify the Agreement if responsible parties will perform or pay for the performance of activities
Conflict of Interest	State agrees to require potential contractors to submit information on responsibility for the site
Emergency Response	State agrees that remedial activities may be suspended if emergency response is required
Negation of Agency Relationship	State agrees that no relationship of agency exists between EPA and State in response activities
Notice of Settlement	EPA and State agree to notify each other before settlement with or action against responsible party
Cooperation and Coordination in Cost Recovery Efforts	EPA and State agree to coordinate and cooperate in future cost recovery efforts
U.S. District Court	EPA and State agree to file future CERCLA cost recovery actions in appropriate U.S. District Court
Litigation Under CERCLA Section 106 or 107	State agrees that Cooperative Agreement does not prohibit EPA from filing litigation against responsible party under section 106 or 107 of CERCLA
Sharing in Cost Recovery	State agrees to share recovered costs with EPA in proportion to EPA's participation in remedial response under CERCLA (used only where the State has filed a cost recovery action)

The SPO should discuss these Superfund program needs with the RSPO while developing the Cooperative Agreement application package to determine which requirements apply to the proposed activities and site conditions. Requirements should be addressed in the application on a site-specific basis, as appropriate. Where the application package is deficient, OERR needs will be met by the addition of special conditions to the Cooperative Agreement prior to award.

Appendix F contains background information on program-specific requirements and sample language for special conditions which may be used to address those requirements. The State may adapt this language for use in provisions to be included in its Cooperative Agreement application, but salient points must be adequately addressed. In addition, the subjects of several of these provisions are discussed in detail below.

#### B.2.a Provision of CERCLA Section 104(c)(3) Assurances

Section 104(c)(3) of CERCLA requires the State to make three separate assurances concerning a remedial action: provision of off-site treatment, storage, or disposal, responsibility for operation and maintenance (O&M), and cost-sharing. These assurances, if necessary for the project in question, must be documented in the State's Cooperative Agreement application package.

When the SOW in the application contains a remedial action that requires off-site treatment, storage, or disposal, the State must include an assurance that it will locate and enter into an agreement with an appropriate facility for treatment, storage, or disposal of site wastes.

When the SOW in the application contains a remedial action that requires O&M, the State must include an assurance that it will assume responsibility for all O&M for the life of the remedy. In such cases, the SOW should also include as a task the development of an O&M plan, which should at least contain the following elements:

- . Designation of the organizational unit of the State government responsible for O&M
- . Identification of the availability of State funding mechanisms for O&M activities
- . Milestone dates for assuming O&M responsibility

- . Description and duration of O&M activities
- . Summary of O&M staffing needs
- . Summary of O&M performance standards
- . Contingency plan for handling abnormal occurrences
- . Safety requirements for O&M activities
- . Equipment and material requirements
- . Estimates of annual O&M costs
- . Description of site use and disposition of facilities following completion of O&M.

In addition, the appropriate remedial implementation subagreement under the Cooperative Agreement must include a provision that the contractor is responsible for project startup and for certifying that the designed remedy is functional and operational. After this has been done, EPA may, for up to one year, provide assistance to the State for project O&M at the same rate of cost share as for the remedial action. The Cooperative Agreement covering the remedial action may be amended to remain in effect until the end of EPA's O&M support. After that period, the State will be expected to assume responsibility for all project O&M costs.

States may provide off-site and O&M assurances for more than one site in the State through a single letter. A copy of such a letter should be attached to each appropriate Cooperative Agreement application. O&M plans, however, must be site-specific.

Where State cost-sharing is required, the State provides its cost-sharing assurance by showing its share of project costs in the project budget sheets.

#### B.2.b The National Environmental Policy Act of 1969 (NEPA)

NEPA establishes a national policy requiring Federal agencies to incorporate environmental factors into their decision-making processes. Superfund remedial activities are exempt from the provisions of NEPA because CERCLA and the NCP require the program to perform the "functional equivalent" of NEPA requirements.

To assure functional equivalency, EPA must assess both proposed actions and reasonable alternatives in terms of their environmental effects, and obtain comments on the alternatives from concerned members of the public. The State should consider these requirements in developing its application. The first requirement can be fulfilled by conducting an environmental assessment during the course of remedial planning activities, as required by section 300.68(i)(2) of the NCP, while the second can be met through implementation of a Community Relations Plan that provides for a minimum three-week comment period for feasibility studies and for a minimum two-week comment period for expedited feasibility studies.\* For more details, see Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983, and the sample CRP in Appendix K.

#### B.2.c Quality Assurance/Quality Control (QA/QC)

In all environmental sampling and/or analysis conducted as part of the project, the State must meet Superfund program QA requirements, among which are the following:

- . Data produced must be able to withstand the scrutiny of litigative proceedings; this requires appropriate chain-of-custody, document control, and QA/QC documentation
- . Data collection must be cost-effective; costs of generating the data cannot significantly exceed costs associated with similar analyses provided by the National Contract Laboratory Program
- . Data turnaround times must meet remedial program needs.

In addition, a QA project plan must be developed in accordance with "Guidelines & Specifications for Preparing Quality Assurance Project Plans (QAMS-005/80)." Preparation of this plan may be a task under the Cooperative Agreement, performed either by in-house personnel or by a State contractor. The QA plan must be reviewed by the EPA Regional QA officer and the RSPO and approved by the Award Official before any sampling can begin for the project. A sample QA plan is provided in Appendix L.

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\* Expedited feasibility studies are used only for IRMs.

EPA's existing National Contract Laboratory Program can be used to conduct necessary environmental sampling and analysis, or the State may use its own facilities for these purposes. In either case, the State should identify in its application those laboratory facilities that it intends to use. The Users Guide to the EPA Contract Laboratory Program provides a breakdown of the types of analytical services provided by the National Contract Laboratory Program; this manual can be used for purposes of comparison with the facilities to which the State has access.

#### B.2.d Site Safety Plan

Under a Cooperative Agreement, the State is required to have a site safety plan providing for the protection of on-site personnel and area residents. This plan may either be prepared by State personnel or may be included in the SOW as part of the project and undertaken by a State contractor. The safety plan must be consistent with the following:

- . CERCLA sections 104(f) and 111(c)(6)
- . EPA Order 1440.2 - Health and Safety Requirements for Employees Engaged in Field Activities
- . EPA Order 1440.1 - Respiratory Protection
- . EPA Occupational Health and Safety Manual
- . EPA Interim Standard Operating Safety Guide (September 1982)
- . Applicable OSHA standards
- . State safety and health statutes
- . Site conditions.

This plan must be included in all subagreements awarded under the Cooperative Agreement and must be implemented by both State and contractor personnel on the site. A sample site safety plan is shown in Appendix M.

Whether the safety plan is developed by the State or its contractor, it should be submitted to the RSPO for review. This may be done simultaneously with the application or after the application has been approved. Review assistance is available to the RSPO from EPA-certified On-Scene Coordinators or from the National Response Team, Edison, New Jersey (FTS 340-6745).

### B.2.e Expedited Procurement

When undertaking the lead for remedial planning, the State is encouraged to expedite necessary procurement. Under normal circumstances, procurement actions for remedial planning may require several months to complete. Exhibit III-9, on the following page, describes four suggested alternatives for expediting the initiation of remedial planning. These should be considered on a site-by-site basis, as appropriate. Additional information on expedited procurement is provided in "Guidance for State Contracting of Remedial Planning Activities," OSWER, February 22, 1983, and "Class Deviation From 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of CERCLA," GAD, November 18, 1983, both included in Appendix P.

### C. COMPLETION OF PROCUREMENT SYSTEM CERTIFICATION FORM

One requirement of EPA's procurement regulation is that each application for assistance must be accompanied by a completed Procurement System Certification Form for Applicants for EPA Assistance (EPA Form 5700-48). This requirement applies to CERCLA remedial Cooperative Agreements. Therefore, the State must include a signed original of this form in its application package.

To complete the Procurement System Certification Form, the State should determine whether its procurement system meets the requirements of EPA's procurement regulation (40 CFR Part 33) and must certify on the form whether its procurement system does or does not meet the intent of this regulation. If the State is certifying its system for the first time (or is not certifying its system), a responsible official should complete Part B of the form. If the State does not certify its system, the State must indicate that its procurement activities will be conducted in accordance with the requirements of Part 33, with EPA review and pre-award approval of proposed procurement actions. States that provide certification will not receive this level of procurement oversight by EPA; however, EPA reserves the right to review any State procurement action funded wholly or in part by EPA.

A State must certify its system to EPA only once every two years. If the State has previously provided its required certification, a responsible official should complete Part A of the Certification Form, indicating the month and year in which this certification was submitted.

EXHIBIT III-9

METHODS FOR EXPEDITING PROCUREMENT\*

TYPE	SUMMARY
Options Contract for Site Remedial Planning Activities	The State includes both remedial planning and remedial action in the initial Cooperative Agreement. Following completion of the RI/FS and selection of a remedy, remedial design and remedial action are funded by amendment. The State's request for proposals (or similar documents) for engineering services also covers all remedial phases, but should indicate that only RI/FS activities will be funded, with an option to conduct the design and remedial action engineering services subject to the availability of funds.
Pre-Award Procurement	The State starts procurement activities such as issuing requests for proposals, negotiations, and selection of a qualified firm before the award of the Cooperative Agreement. A procurement contract can then be signed immediately after the award of funds. State personnel costs prior to award are not allowable; however, these costs should not be significant.
Procurement for Multiple Site Planning	States with numerous sites and available funding for cost-sharing may issue a level of effort type contract similar to EPA's REM/FIT contracts. Once in place, site planning activities could be started immediately following the award of an individual Cooperative Agreement, without the need for site-specific procurement actions.
Procurement Using Prequalification	The State may compile a list of available contractors by requesting qualifications from firms capable of performing remedial planning activities. The list of prequalified firms will then be used to solicit site-specific proposals. However, prequalification procedures must ensure adequate competition.

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\*All methods shown must be consistent with EPA's procurement regulation, 40 CFR Part 33.

#### D. OTHER SUBMISSIONS

The remainder of the Cooperative Agreement application package is made up of the three submissions described below.

##### D.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the remedial response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting a response action. CRPs may be prepared either by EPA or the State, either in-house or through contract assistance.

A draft CRP for State-lead remedial activities must be submitted for review along with the draft Cooperative Agreement application. This draft CRP will form the basis of the complete CRP which must be submitted with the final Cooperative Agreement application package covering a remedial investigation/feasibility study.

##### D.1.a Draft Community Relations Plan

Before developing the CRP, the agency responsible for the community relations program should conduct informal discussions with interested citizens and local officials in the site area. These on-site discussions are required to assess the nature and level of citizen concern and determine how the remedial response may affect local citizens.

Following completion of the on-site discussions and assessment of citizen concern, a draft CRP is prepared. The following elements are essential components of a draft CRP:

- . Description of the site's background, including an explanation of the nature of the threat to the public health, welfare, and the environment and a description of any response actions taken to date
- . Background and history of community involvement, including a description of past and ongoing community activities and media coverage at the site, key issues of community concern, and an evaluation of the level of citizen concern



- . Description of the site-specific objectives of the community relations program during the remedial investigation/feasibility study, including a list of the objectives and a preliminary description of community relations activities considered for the site
- . Description of any immediate community relations activities recommended prior to approval of the complete CRP
- . A mailing list of affected and interested groups and individuals with their affiliations, addresses, and telephone numbers
- . The date the draft CRP was prepared and a schedule for completing the CRP.

#### D.1.b Complete Community Relations Plan

The complete CRP updates the information in the draft CRP and specifies the mechanisms for a minimum three-week public comment period for review of the feasibility study prior to the selection of the recommended alternative. For any initial IRMs, the plan must also (1) address how the community will receive notification prior to any site action, and (2) state that a minimum two-week comment period will be provided. In addition, the complete CRP should include the following elements:

- . A detailed description of community relations activities and techniques to be used in each phase of the response to keep the community informed and to elicit citizen input
- . Charts containing a work plan and implementation schedule of activities at the site
- . Budget and staffing plan for the community relations program
- . An appendix containing the names, telephone numbers, and addresses of public officials, interested groups, and individuals, contractors, Federal, or State staff responsible for the site.

For a more complete description of the CRP and the community relations program, refer to Community Relations in Superfund: A Handbook, (interim version), OSWER, September 1983, and the sample CRP presented in Appendix

K. In addition, the RSPO, the Regional Superfund Community Relations Coordinator (RSCRC), and the OERR Headquarters Community Relations staff are available to provide information and assistance, if required.

## D.2 Certification Letter

The State should submit a letter with the Cooperative Agreement application package certifying that the State agency submitting the application has the authority both to enter into a Cooperative Agreement with EPA and to make any CERCLA section 104(c)(3) assurances that are necessary for the completion of the project. This certification letter may be from either the State's Governor or Attorney General.

Such a letter need not be site-specific; the State may prepare one letter applying to all of its NPL sites and submit a copy with each application (see sample certification letters in Appendix J). However, if the State chooses to exercise this option, it has the affirmative obligation to inform EPA of any changes in State law or policy that affect its certification letter and to provide a new certification letter, where appropriate. Any specific details on provision of O&M should be supplied in the State's O&M plan.

## D.3 Intergovernmental Review Comments

The final component of the Cooperative Agreement application package is the intergovernmental review comments. If the State has developed a review process which includes Superfund Cooperative Agreement applications, the SPO should include in the application package any review comments and EPA's response to them. EPA will award a Cooperative Agreement only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the application has not been subjected to formal review, but affected local officials have responded to direct notification, the SPO may include these comments in the application package, as appropriate.

## E. DEVIATION REQUESTS TO PERMIT THE ALLOWABILITY OF PRE-AWARD COSTS

In some situations the State may need to incur costs included in the Cooperative Agreement prior to award of the actual Agreement. Under EPA's general assistance regulation, such costs are normally not allowable toward

the State's cost-sharing obligation, nor may they be paid with Federal funds. For these costs to be allowable, the State must request, and the EPA Headquarters Grants Administration Division (GAD) approve, a deviation from the provisions of 40 CFR 30.308 of the assistance regulation.

The general assistance regulation stipulates that a deviation may be granted only by the Director, GAD. GAD will not consider a deviation request unless it has been referred, with recommendations, by the Regional Administrator (or his/her designee) and has received the concurrence of the Director, OERR. Regional staff should review a deviation request only after a Cooperative Agreement application has been filed and an allocation made by the AA, SWER through approval of the RAP.

To obtain a deviation, the State should prepare a formal written request. This request should be addressed to the EPA Regional Administrator, through the RSPO, and should include the following information:

- . The name of the State program, assistance agreement identification number, date of award, and dollar value of application or award
- . The section of the regulation from which the deviation is requested (30.308 if the deviation is for pre-award costs)
- . A complete description of the purpose of the deviation and the circumstances which make it necessary
- . A statement whether the same or a similar deviation has been previously requested and, if such a request has been made, an explanation of the purpose and outcome of the previous request.

The deviation request may be submitted concurrently with, or subsequent to, the Cooperative Agreement application package.

The RSPO, upon receipt of the request, should coordinate a Regional review and transmit necessary concurrences to the Regional Administrator. If the Regional Administrator (RA) concurs on the deviation request, it will be sent to the Headquarters Zone Manager to obtain the concurrence of the Director, OERR. If the RA does not concur, a written explanation for non-concurrence should be sent to the State.

The Zone Manager will coordinate the Headquarters concurrence process. If the Director, OERR concurs, the deviation request will be forwarded to the Director, GAD for action. If the Director, OERR does not concur, a written explanation of non-concurrence will be sent to the RA.

Upon review and approval of the request by the Director, GAD, the State will be notified that it may incur costs subject to the determination of allowability, and a special condition documenting the deviation will be added to the Cooperative Agreement. The State will be notified in writing if the request is denied.

#### F. MULTI-SITE/MULTI-ACTIVITY COOPERATIVE AGREEMENTS

A multi-site/multi-activity Cooperative Agreement (MSCA) is an "umbrella" Cooperative Agreement that may, under one funding document, include several response activities at one or more sites within a State. EPA has developed the MSCA concept to provide States with the flexibility to select from a range of options in developing Cooperative Agreements covering State-lead projects and/or State participation in EPA-lead projects. States may choose to include in MSCA applications one or more pre-NPL, remedial, or allowable enforcement remedial investigation/feasibility study\* activities at one or more sites. This approach will enable States to negotiate a variety of agreements ranging from one type of response activity at one or two sites, to including all fundable activities at numerous sites within a State. Remedial and allowable enforcement activities for any site for which there is a completed Site Management Plan (SMP) may be included in an MSCA.

An MSCA may be developed either as a new Cooperative Agreement or by adding several sites/activities to an existing Cooperative Agreement. After their initial award, MSCAs can be amended at any time to include funds for additional sites and/or activities. Two or more

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\* For information on allowable and unallowable State enforcement costs, see "Payment of State Enforcement Costs Under Superfund," OERR and OWPE, December 15, 1982, (approved by OSWER January 21, 1983) and "Authority to Use CERCLA to Provide Enforcement Funding Assistance to States," OGC, July 20, 1984, both produced in Appendix P.

existing single-site Cooperative Agreements can be combined into one MSCA only by converting one of the existing single-site Cooperative Agreements into an MSCA and closing out the other agreements; closeout should occur only at the conclusion of a remedial activity.

Using MSCAs, a State can tailor the number and content of its State-lead agreements to correspond to the individual strengths and weaknesses of that State's remedial response program. One important attribute of MSCAs is the ease with which obligated funds may be transferred among activities and/or sites covered within the same MSCA, although, as under single-site Cooperative Agreements, all costs must be accounted for on a site-specific basis. MSCA obligation documents will normally contain account numbers for each NPL site and activity included in the MSCA.

In general, requirements for MSCAs are similar to those for single-site Cooperative Agreements described in the preceding sections of this chapter. This section outlines specific changes to existing procedures that are necessary for the negotiation and execution of MSCAs and highlights the activities that may be included in an MSCA. Therefore, the information presented in this section applies to all MSCAs. Additional requirements for any Cooperative Agreement that includes preliminary assessments, site inspections, and site inspection followups are discussed in Appendix A. Because of the potential complexities of MSCAs and for the benefit of State and EPA staff, examples of options for awarding and managing MSCAs are outlined in Exhibit III-10, on the following pages.

#### F.1 Activities That May Be Included in MSCAs

A single MSCA may be used to fund most activities -- from the inception of the pre-NPL phase through the end of the O&M cost-sharing period -- that may be undertaken at hazardous waste sites. The following is a list of activities that are eligible for funding under a CERCLA MSCA:

- . Preliminary assessments (PAs)
- . Site inspections (SIs)
- . Site inspection follow-up (SIf)
- . Management assistance for EPA-lead PA, SI, SIf, and Hazard Ranking System scoring

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EXHIBIT III-10  
EXAMPLES OF OPTIONS FOR AWARDING AND MANAGING MULTI-SITE  
COOPERATIVE AGREEMENTS (MSCAs)

CASE 1: The State negotiates one MSCA application to cover all Superfund activities to be conducted by the State.

	Sites	Activities	Budgeted Funds (\$X1000)
Original CERCLA CA	150 Sites	PA	240
	15 Sites	SI	90
	Site A	RI/FS	350
	Site B	State-lead enforcement RI/FS	300
	Site C	Management ass't RD/RA	10
Amendment 1	Site A	RI/FS	-350*
	Site D	IRM	420
Amendment 2	Site C	O&M	85

CASE 2: The State amends an existing single-site Cooperative Agreement to include additional remedial activities at other sites, thus creating an MSCA.

	Sites	Activities	Budgeted Funds (\$X1000)
Original CA	Site E	RI/FS	375
Amendment 1	Site F	Management ass't RI/FS	8**
Amendment 2	Site E	RD	250
	Site G	State-lead enf. RI/FS	320
	50 Sites	PA	80

\* In this example, after the Cooperative Agreement was awarded, potential responsible parties agreed to conduct the RI/FS. The State, with the RSPO's approval and via a formal Cooperative Agreement amendment, shifted funds from the RI/FS to an IRM already on the approved SCAP.

\*\* The Cooperative Agreement is now an MSCA.

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EXHIBIT III-10 (Continued)  
EXAMPLES OF OPTIONS FOR AWARDING AND MANAGING MULTI-SITE  
COOPERATIVE AGREEMENTS (MSCAs)

**CASE 3:** The State develops separate MSCAs for pre-remedial, remedial planning, and remedial implementation activities.\*

	Sites	Activities	Budgeted Funds (\$x1000)
Original CA#1	100 Sites	PA	160
	10 Sites	SI	60
Amendment to CA#1	30 Sites	PA	48
Original CA#2	Site H	RI/FS	290
Amendment to CA#2	Site J	RI/FS	345
	Site K	State-lead enf. RI/FS	315
Amendment to CA#2	Site H	RI/FS	-30**
	Site H	RD	350
	Site J	RD	280
Original CA#3	Site H	RA	800
Amendment to CA#3	Site H	O&M	115
Amendment to CA#3	Site J	RA	750
	Site J	O&M	100

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\* Some States have indicated that they do not want to combine PA/SI activities with other activities in the same agreement and/or that they want to keep cost-shared and non-cost-shared activities in separate Cooperative Agreements. This is an example of such a situation.

\*\* The State has \$30,000 obligated funds remaining at the completion of the RI/FS at site H. In accordance with Federal assistance regulations and program requirements, the State can shift these funds, via a formal Cooperative Agreement amendment, to the RD for the same site, simultaneously requesting \$320,000 in additional funds. (The RD must be on the approved SCAP.)

- . Forward planning
- . State-lead remedial investigation/feasibility study (RI/FS) projects (program and enforcement)
- . Management assistance for EPA-lead RI/FS projects (program and enforcement)
- . State-lead IRMs
- . Management assistance for EPA-lead IRMs
- . State-lead remedial design/remedial action (RD/RA) projects
- . Management assistance for EPA-lead RD/RA projects
- . O&M (for up to one year).

The State may choose which activities and sites to include in an MSCA.

To be considered for funding under an MSCA, each activity at each site, with the funding amount, must be on the Region's approved Superfund Comprehensive Accomplishments Plan (SCAP)\*. Regions and States should begin discussions concerning which SCAP sites and activities -- if any -- will be included in an MSCA during negotiations for the next fiscal year's SCAP.

## F.2 Intergovernmental Review

All funding for RI/FSs, IRMs, and RD/RAs must undergo intergovernmental review in accordance with 40 CFR Part 29 (see Section II.G and Appendix D of this document). Notification requirements, however, differ for each of these activities.

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\* The SCAP is the annual plan that projects for each Region those remedial, enforcement, and removal activities for which funds will be obligated during a fiscal year. The Remedial Program Plan portion of the SCAP is the direct successor to the former Remedial Accomplishments Plan (RAP). All references to the RAP made elsewhere in this document now apply to the SCAP Remedial Program Plan; references will be made consistent at a later date.



For several RI/FS projects covered by an MSCA, a single notification letter can be sent to the State process to initiate review (the model RI/FS notification letter in Appendix D can be modified for this purpose). This letter should note that RI/FSs will be conducted at several sites and should include the site names, locations, and an individual summary of the problems at each site. If appropriate, the letter may contain a general description of proposed remedial and community relations activities; other portions of this letter may also be general or site-specific, depending upon the project in question. A State process form for intergovernmental review of Superfund projects may be used instead of a letter where a State has developed such a form based on the requirements detailed in Appendix D. Each RD/RA project must undergo an individual intergovernmental review (see Appendix D for details).

### F.3 Contents of a Multi-Site Cooperative Agreement

The major components of a Cooperative Agreement application package, as described in Sections A through D of this chapter, are generally the same regardless of whether the agreement covers one or more sites. Whereas some of these components, such as SOWs for planning activities or application provisions, may be sufficiently general to cover several or even all of the projects/sites included in an MSCA application, other components must be project/site-specific. Because requirements for each component differ, specific requirements are addressed separately below. For the convenience of manual users, the discussion here has been organized to reflect the order of discussions concerning Cooperative Agreement components found in earlier sections of this chapter.

#### F.3.a Cooperative Agreement Application Form

As with single-site Cooperative Agreements, the State must use EPA Form 5700-33, a five-part, multi-page form providing general and specific project information, when applying for an MSCA. The following is a general summary of each part of the application form and its completion requirements for MSCA submittals:

- . Part I: General Summary Information - One copy of Part I, the application cover sheet, is sufficient for each MSCA application or proposed major amendment for additional activities or sites.

- Part II: Project Approval Information - One copy of Part II is sufficient for each MSCA application or proposed major amendment. If any sites included in the MSCA application are located in a designated flood hazard area, item 11 should be marked "YES" and the site name(s) and FEMA number(s) attached; other exceptions should also be noted and an explanation(s) attached. (See Appendix A for requirements for pre-NPL activities.)
- Part III: Budget Information - Separate budget sheets must be prepared and submitted for each NPL site included in each original application and in each amendment adding activities and/or sites. (See Appendix A for requirements for pre-NPL activities.)
- Part IV: Project Narrative Statement - Requirements for the different types of activities are described in Section F.3.a.1 below.
- Part V: Assurances - One copy of Part V is sufficient for each MSCA application or proposed major amendment.

Because of the complexity of Parts III and IV of the MSCA application form, additional information on their completion is provided below. As in Section A of this chapter, Part IV is discussed first, since it must be completed before Part III can be fully addressed.

#### F.3.a.1 Part IV - Project Narrative Statement

The Project Narrative Statement is made up of two components: the site history/background section and the project SOW. Each section of this part of an MSCA application has specific requirements.

The State should develop and submit individual site history/background statements for each NPL site included in the MSCA. See Appendix A for discussion on the content of the history/background section for PA/SI activities.

Requirements for project SOWs are more complex. Work performed under some activities included in an MSCA is generally recognized to be consistent from site to site; in such cases, the State need submit only one generic SOW

for all projects. The scope of other activities, however, must be tailored to the needs of individual sites, thus requiring the State to submit a separate SOW for each project of this kind. Except for pre-NPL activities, the State must submit a separate site-specific schedule for each activity to be initiated under the MSCA. Specific SOW requirements for each activity are summarized below:

- . PA/SI/SIf: See Appendix A for SOW requirements.
- . State review of EPA-lead Hazard Ranking System scoring and site inspection reports: See Appendix A for SOW requirements.
- . Forward planning: One generic SOW is sufficient if the scope of forward planning to be conducted at each site is the same.
- . State-lead RI/FS (program and enforcement): One generic SOW is sufficient for all sites in the MSCA unless EPA determines that existing site conditions require a specific SOW. The model RI/FS SOW in Appendix E can be used in developing RI/FS SOWs. When developing State-lead enforcement SOWs, States should be sure to address the specific enforcement requirements highlighted in that appendix. Detailed work plans for both types of RI/FS projects should be developed after award of the MSCA and submitted for RSPO review and concurrence before field work is begun.
- . Management assistance for EPA-lead RI/FS (program and enforcement): One SOW is sufficient if the State plans to perform the same activities at all sites (see Section IV.D of this manual for an explanation of eligible activities).
- . State-lead IRMs, RD, and RA: A site-specific SOW must be submitted for each activity at each site.
- . Management assistance for EPA-lead IRMs, RD, and RA: One SOW is sufficient for each activity if the State plans to conduct the same work for all sites at which that activity is proposed.
- . O&M: A site-specific SOW must be submitted for O&M for each completed remedial action.

**F.3.a.2 Part III - Budget Information**

The general requirements for Part III of an MSCA application form have been summarized earlier. Instructions for completing these sheets are the same as for single-site Cooperative Agreements and may therefore be found in Section A of this chapter. In addition to preparing separate budget sheets for each NPL site in an MSCA, a State should also submit, as an attachment to its application, an itemized budget breakdown for each site (explained on page III-4; example on pages G-22 and G-23). This breakdown should present, in more detail than the application form budget sheets, the costs for each activity and subactivity to be initiated under the MSCA. (See Appendix A for a sample budget breakdown for pre-NPL activities.)

**F.3.b Multi-Site Cooperative Agreement Application Provisions**

In general, provisions included in single-site Cooperative Agreements are equally applicable to MSCAs. Appendix F contains provisions that are standard for all remedial Cooperative Agreements and those that must be used in Cooperative Agreements covering State-lead enforcement RI/FS projects. Provisions specific to any Cooperative Agreement covering pre-NPL activities can be found in Appendix A. In addition to these standard provisions, the RSPO may add special conditions to MSCAs to address any other concerns not adequately covered in the application.

**F.3.c Procurement System Certification Form**

As under single-site Cooperative Agreements, each State is required to submit EPA Form 5700-48 to certify whether or not its procurement system meets the requirements of 40 CFR Part 33. One signed copy of this form is sufficient for each original MSCA application package. It is not required for amendments unless the State's procurement system has been substantially revised.

**F.3.d Certification and Enforcement Letters**

When applying for a Cooperative Agreement, the State is required to submit a letter certifying the State agency's authority to enter into the agreement and to make any necessary CERCLA section 104(c)(3) assurances. In many cases, States submit, with each Cooperative Agreement

application, a copy of a generic letter certifying a State agency for all remedial activities at all sites. State agencies that do not submit a generic letter must provide a letter specifically certifying that agency for each site and activity included in the Cooperative Agreement. Each State agency that applies for a Cooperative Agreement with EPA must be covered by a certification letter.

For a Cooperative Agreement covering one or more State-lead enforcement RI/FS, the State must include in the certification or in a separate enforcement letter, a commitment to pursue site enforcement activities at the completion of each enforcement RI/FS funded. This letter should be signed by the State's Governor or Attorney General. Both certification of the State agency and commitment to pursue enforcement activities are required for all applications including one or more State-lead enforcement RI/FS. Sample certification letters and information on the content of certification and enforcement letters are contained in Appendix J.

#### F.4 Accounting for Multi-Site Cooperative Agreements

Funds cannot be shifted between Cooperative Agreements without undergoing a formal deobligation/reobligation process. It is particularly difficult if the shift occurs in a fiscal year later than the one in which the original obligation was made. In such a case, the funds are classified as "carryover" and must be recertified to the allowance holder before they can be reobligated. With single-site Cooperative Agreements, this had made it difficult to move funds from a site where actual costs were less than projected to another where additional funds are required.

MSCAs, however, allow much easier shifting of funds among sites and activities. EPA does not require formal deobligation of funds for accounting changes under an MSCA if the activity or site to which funds are being moved is clearly encompassed by the scope of the MSCA. This is because the use of the funds is still considered to be for the purpose of the initial obligation. Therefore, with EPA approval, funds within an MSCA may be transferred from:

- . One site to another site in the MSCA.
- . One activity at a site to another activity at that site if the second activity is included in the MSCA.

States need not receive funding for all sites/activities at initial MSCA award for those sites/activities to be within the scope of the MSCA and, therefore, to qualify for potential transfer of funds.

Transfer of funds between sites or activities within an MSCA must be accomplished through the Cooperative Agreement amendment process, since funds are obligated on a site-specific (except for pre-NPL activities) and activity-specific basis. While this will result in a financial transaction that appears to be a deobligation/reobligation, it will not be reported as such and will not require recertification of funds to the allowance holder. When a transfer is needed, the State should send a letter to the RSPO requesting and justifying the transfer. If the request is approved, the RSPO will forward it to the Regional grants office which will develop the amendment for signature by the RA and thereafter send it to the State for signature. EPA will then adjust the accounting information in the Agency's Financial Management System (FMS) to reflect the transfer of funds from one account to another.

Care should be taken to ensure that amounts proposed for transfer have not been drawn down or expended. A different Document Control Number (DCN) must be assigned to each amendment to ensure that the date of the amendment is recorded in the EPA FMS thus allowing site activities to be tracked. Activity codes (eighth digit) and/or site identifiers (ninth and tenth digits) in the accounting data can thus be changed, but the remainder of the account number cited for funding should be unaltered. Funds may not be transferred to an RD unless a Record of Decision (ROD) for the site has been approved.

Fund transfers must be consistent with the Region's SCAP. Should a transfer require SCAP adjustments or amendments, these must be made before the necessary MSCA amendment is executed.

All cost-sharing is site-specific. State costs incurred at one site may not be used to meet the State's cost-sharing obligation at any other site. ]

An example of an MSCA obligation document, showing how the accounting information is detailed, is contained in Exhibit III-11, on the following pages.

## F.5 Administration of Multi-Site Cooperative Agreements

While MSCAs should facilitate paperwork, accounting, and other Cooperative Agreement procedures, they should not substantially change individual site management procedures. Use of MSCAs will require both States and EPA to use effective, well coordinated agreement management procedures. Information and some suggested procedures to assist in MSCA management are discussed below.

### F.5.a Project Management

The MSCA should specify one EPA contact and one State contact with overall responsibility for the MSCA. The overall contacts will usually be supervisors in the normal concurrence chain for approving and amending such documents. The EPA contact should be entered on the award as "EPA Project Officer" and the State contact should be entered as "Project Manager." In addition to these contacts, Regions and States will usually designate staff members with day-to-day responsibility for specific sites or activities (e.g., PA/SI) within an MSCA. These staff members may perform most of the RSPO and SPO functions described elsewhere in this chapter. Regions and States may include in the MSCA a list of these personnel and the site/activities for which they are responsible.

### F.5.b Project/Budget Periods

Under a single-site Cooperative Agreement, the project and budget periods for each activity are specified. Since an MSCA can be negotiated to cover various activities at several sites and thereafter can be amended numerous times, the project and budget period procedures used for single-site agreements are not sufficient. Regions will therefore find it necessary to develop a formal mechanism for establishing agreed-upon end dates for each site and activity. Two options are discussed below.

One method is to fund activities on a yearly basis, thereby establishing several one-year budget periods. The MSCA could have a three to five-year project period and would be amended annually to add new funds, activities, and sites. For any one-year budget period, the MSCA would provide only the funding that the State planned to use during that period, which would not necessarily include sufficient money to complete each activity for which funding was provided. Therefore, activities that could not be completed within a one-year budget period would be incrementally funded, although a full SOW and complete

## EXHIBIT III-11 (Continued)

## PART II-APPROVED BUDGET

ASSISTANCE IDENTIFICATION NO.

V005794-01

TABLE A - OBJECT CLASS CATEGORY (Non-construction)	TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL	\$ 90,620
2. FRINGE BENEFITS	16,310
3. TRAVEL	7,440
4. EQUIPMENT	4,500
5. SUPPLIES	1,180
6. CONTRACTUAL	500,000
7. CONSTRUCTION	0
8. OTHER	1,300
9. TOTAL DIRECT CHARGES	621,350
10. INDIRECT COSTS RATE 35.1 % BASE SF	35,390
11. TOTAL (Share: Recipient _____% Federal 100 %)	\$656,740
12. TOTAL APPROVED ASSISTANCE AMOUNT (See Attachment 1)	\$ 656,740
TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)	
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12. TOTAL (Share: Recipient _____% Federal _____%)	
13. TOTAL APPROVED ASSISTANCE AMOUNT	\$
TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)	
1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURES, RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS: INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Share: Recipient _____% Federal _____%)	
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$



EXHIBIT III-11  
SAMPLE MSCA OBLIGATION DOCUMENT

12/10/84  
New Exhibit

<b>U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT/AMENDMENT PART I - ASSISTANCE NOTIFICATION INFORMATION</b>				1. ASSISTANCE ID NO. <b>V005794-01</b>		2. LOG NUMBER	
				3. DATE OF AWARD <b>SEP 29 1984</b>		4. MAILING DATE <b>OCT 05 1984</b>	
5. AGREEMENT TYPE				6. PAYMENT METHOD			
<input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Assistance Amendment				<input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Letter of Credit <b>68-13-0502</b> Send Payment Request To:			
				7. TYPE OF ACTION <b>New Award</b>			
RECIPIENT ORGANIZATION	8. RECIPIENT <b>Minnesota Pollution Control Agency 1935 West County Road, B-2 Roseville, Minnesota 55113</b>			9. PAYEE <b>Same as Block 8</b>			
	EIN NO. <b>41-6007162</b>		CONGRESSIONAL DISTRICT <b>Statewide</b>		10. RECIPIENT TYPE <b>State</b>		
	11. PROJECT MANAGER AND TELEPHONE NO. <b>Gary Pulford (612) 296-7290 Site Response Section Same Address as Block 8</b>			12. CONSULTANT (WWT Construction Grants Only)  <b>N/A</b>			
EPA CONTACT	13. ISSUING OFFICE (City/State) <b>Chicago, Illinois</b>			14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. <b>Cindy Wakat U.S. Environmental Protection Agency 230 South Dearborn Street Chicago, Illinois 60604 (312) 886-0394</b>			
	15. EPA CONGRESSIONAL LIAISON & TEL. NO. <b>P. Gaskins (202) 382-5184</b>			16. STATE APPL ID (Clearinghouse)		17. FIELD OF SCIENCE <b>99</b>	
18. PROJECT STEP (WWT CG Only) <b>N/A</b>							
19. STATUTORY AUTHORITY <b>P.L. 96-510</b>			20. REGULATORY AUTHORITY <b>40 CFR Parts 29, 30, 32, 33 and 35</b>		21. STEP 2 + 3 & STEP 3 (WWT Construction Only)		
					a. Treatment Level b. Project Type c. Treatment Process d. Sludge Design		
22. PROJECT TITLE AND DESCRIPTION <b>Multi-Site, Multi-Activity Cooperative Agreement for CERCLA funded activities to include: Management assistance and community relations coordinative lead activities for EPA lead RI/FS's at 3 sites and State-lead RI/FS's at 3 sites.</b>							
23. PROJECT LOCATION (Areas Impacted by Project)							
City/Place <b>Statewide</b>		County		State <b>MN</b>		Congressional District <b>Statewide</b>	
24. ASSISTANCE PROGRAM/CFDA Program No. & Title <b>66.802 Superfund</b>			25. PROJECT PERIOD <b>10/1/84 - 1/31/86</b>		26. BUDGET PERIOD <b>10/1/84 - 1/31/86</b>		
27. COMMUNITY POPULATION (WWT CG Only) <b>N/A</b>			28. TOTAL BUDGET PERIOD COST <b>\$656,740</b>		29. TOTAL PROJECT PERIOD COST <b>\$656,740</b>		
FUNDS		FORMER AWARD		THIS ACTION		AMENDED TOTAL	
30. EPA Amount This Action				<b>\$656,740</b>			
31. EPA In-Kind Amount							
32. Unexpended Prior Year Balance							
33. Other Federal Funds							
34. Recipient Contribution							
35. State Contribution							
36. Local Contribution							
37. Other Contribution							
38. Allowable Project Cost				<b>\$656,740</b>			
39. FISCAL	Program Element	FY	Appropriation	Doc. Control No	Account Number	Object Class	Obligation/Debiting Amount
				E2H100	4TFA725LH8	41.83	22,340
				E2H103	4TFA725LR8	41.83	235,360
				E2H104	4TFA725L57	41.83	22,000
				E2H105	4TFA725LS1	41.83	177,990
				E2H101	4TFA725LH5	41.83	20,420
				E2H102	4TFA725LR9	41.83	178,630

Breakdown of Object Class Categories

Attachment 1

Mgt. Assist. RI/FS & Comm. Rel. Coord. Lead

State Lead RI/FS

Object Class Categories	Arrowhead	LeHillier	South Andover	Kimmer	Long Prairie	Whittaker	Total
a. Personnel	13,050.00	13,110.00	12,400.00	17,910.00	16,560.00	17,590.00	\$20,620.00
b. Fringe Benefits	2,350.00	2,360.00	2,230.00	3,220.00	2,980.00	3,170.00	\$16,310.00
c. Travel	1,510.00	1,070.00	610.00	2,230.00	1,520.00	500.00	\$7,440.00
d. Equipment	0.00	0.00	0.00	4,500.00	0.00	0.00	\$4,500.00
e. Supplies	160.00	160.00	160.00	240.00	220.00	240.00	\$1,180.00
f. Contractual	0.00	0.00	0.00	200,000.00	150,000.00	150,000.00	\$500,000.00
g. Construction	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
h. Other	170.00	180.00	160.00	270.00	240.00	260.00	\$1,300.00
i. Total Direct Charges	17,240.00	16,880.00	15,580.00	228,370.00	171,520.00	171,760.00	\$621,350.00
j. Indirect Charges	5,100.00	5,120.00	4,840.00	6,990.00	6,470.00	6,870.00	\$35,390.00
k. Totals	\$22,340.00	\$22,000.00	\$20,420.00	\$235,360.00	\$177,990.00	\$178,630.00	\$656,740.00

EXHIBIT III-11 (Continued)

12/10/84  
New Exhibit

EXHIBIT III-11 (Continued)

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

*(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)*

1. EPA awards this Cooperative Agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This Agreement is subject to all applicable EPA assistance regulations.
2. This Agreement is subject to the procurement standards of Title 40 of the Code of Federal Regulations Part 33 (copy enclosed).
3. Assurance number 16 in the State's application is hereby deleted and replaced by the following condition:

In accepting this Cooperative Agreement, the recipient agrees to the following conditions for the letter of credit method of financing:

- a) Cash drawdowns will occur only when needed for disbursements;
- b) Timely reporting of cash disbursements and balances will be provided as required by the EPA Letter of Credit Users Manual;
- c) The same standards of timing and reporting will be imposed on secondary recipients, if any;
- d) When a drawdown under the letter of credit occurs, the recipient will show on the back of the voucher (Form TFS-5401) the cooperative agreement number, the appropriate EPA account number, and the drawdown amount applicable to each activity/account (see attached "Instructions for Using the Superfund Account Number Under Cooperative Agreements"). The eighth digit of the account number (see item 39, page 1 of the cooperative agreement) is the code to the appropriate activity assignment:
  - L - Remedial Planning, consisting of the following subactivities:
    - Remedial Investigation/Feasibility Study
    - Remedial Design

## EXHIBIT III-11 (Continued)

ASSISTANCE IDENTIFICATION NO V005794-01

## 5. SPECIAL CONDITIONS (Continued)

## Special Conditions (Continued)

R - Remedial Implementation, consisting of the following subactivities:

- Remedial Action
- Operation and Maintenance
- Initial Remedial Measure

e) When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not draw down from another activity or site account without written permission from the EPA Project Officer and Award Official;

(NOTE: Additional special conditions omitted from this exhibit.)

## PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

## OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the Minnesota Pollution Control Agency

for 100% of all approved costs incurred up to and not exceeding \$ 656,740

for the support of approved budget period effort described in application (including all application modifications)

Multi-Site Cooperative Agreement included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS Grants Management Section (5FMB) U.S. Environmental Protection Agency 230 South Dearborn Street Chicago, Illinois 60604	ORGANIZATION/ADDRESS Waste Management Division (5HR) U.S. Environmental Protection Agency 230 South Dearborn Street Chicago, Illinois 60604

## THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	Valdas V. Adamkus, Regional Administrator	

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

## BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE

budget estimates would be included in the application in which initial funding for each activity is proposed.

During annual SCAP negotiations, the Region and State would discuss the status of ongoing or incrementally funded activities as well as new sites and activities. Available SCAP funds would be allocated first to these ongoing activities and then to new activities. Such an approach would spread funding for such projects over more than one fiscal year, thus enabling Regions and States to begin a large number of activities since obligated money would not be tied up where it was not immediately required. In addition, setting one-year budget periods would allow fine tuning of activity funding estimates.

A second option is to specify the performance period for each activity at the time that it is added to the MSCA. Under this approach, a special condition listing the site name, activity, and the activity performance period is added to the MSCA when funds are obligated for that activity. As in a single-site Cooperative Agreement, any change to the activity completion date must be made through a formal MSCA amendment.

#### F.5.c Quarterly Reports

Quarterly reports are a useful management tool for overseeing the implementation of on-site activities. Because numerous projects will be occurring simultaneously under MSCAs, it is vital that States and Regions ensure that quarterly reports are produced and submitted on schedule. Quarterly reports for all sites and activities are due 30 days after the end of the Federal fiscal quarter. For most activities performed under an MSCA, the State may submit one overall report containing separate sections addressing the progress of work on each activity at each site. (Additional guidance on preparation of PA and SI quarterly reports is included in Appendix A.)

\* \* \* \* \*

After carrying out the steps identified in this chapter, the SPO should have a completed Cooperative Agreement application package that is ready to be submitted to the EPA Region for draft review. The checklist provided as Exhibit III-2 should be helpful in assembling the draft application package. For procedures on submitting the application package for review and obtaining necessary approvals, see Chapter VI.

IV. DEVELOPMENT OF EPA-LEAD REMEDIAL PLANNING AGREEMENTS

#### IV. DEVELOPMENT OF EPA-LEAD REMEDIAL PLANNING AGREEMENTS

When EPA has lead responsibility for remedial response at a site and CERCLA section 104(c)(3) assurances are not required (i.e., for remedial planning), two options are available for initiating the project: the State may submit a letter requesting that EPA undertake remedial activities at the site, or EPA and the State may enter into a Memorandum of Understanding (MOU). It is left to the discretion of Regional and State staff to select the appropriate vehicle for the project at the site in question. Factors which may influence this decision include the complexity and cost of the project, characteristics of the site, the need for rapid initiation of the project, and requirements of both State and EPA Regional officials. Either type of agreement may be used at both publicly-owned and privately-owned sites.

The less complex of these options is the State letter of request. This letter should be addressed from the director of the State agency responsible for hazardous waste sites to the Regional Administrator, requesting that EPA initiate remedial planning at the site. It should refer to and approve the anticipated remedial project and should stipulate that:

- . The State will participate in community relations activities associated with the project
- . The State will secure site access and any required permits
- . Representatives of the State will meet with EPA Regional personnel to discuss progress of the project and, if required, exchange site information
- . In the case of a publicly-owned site, the State will pay 50 percent of all response costs at the time CERCLA-funded remedial implementation is undertaken at the site.

The State's letter should also designate an SPO for the project.

An MOU, on the other hand, is a joint agreement defining the project to be undertaken and both EPA and State responsibilities for performing that work. It is a less elaborate form of agreement than an SSC, and will normally cover a remedial investigation/feasibility study and a remedial design. The MOU may be used when remedial planning activities require more formal arrangements than can be made using a State letter of request.

A State may choose to negotiate an MOU which covers remedial planning activities at more than one site. However, an MOU may not be used for remedial implementation projects. For these, a formal Superfund State Contract (SSC) must be used to obtain the State contribution and any necessary assurances (see Chapter V of this document). An SCC must also be used if the State chooses to provide advance match funds during remedial planning.

A completed MOU will usually consist of the memorandum itself, a SOW, a Community Relations Plan (CRP), and intergovernmental review comments. However, contents may vary depending upon the needs of the site and the requirements of EPA and State officials. Sample articles which may be suitable for use in a MOU can be found in Appendix H.

Because of the relative complexity of an MOU, this chapter provides detailed guidance on the development of this type of remedial planning agreement. The State and EPA may, however, utilize the letter of request if it is mutually found to be more appropriate for a particular project. This chapter also discusses the concept of management assistance Cooperative Agreements, which States may use to cover costs they incur in performing management and oversight tasks associated with EPA-lead remedial projects (see Section IV.D, below).

Major steps in the development of an MOU are displayed in Exhibit IV-1, on the following page; also shown is the development of a management assistance Cooperative Agreement. As can be seen in the exhibit, primary responsibility for developing the MOU rests with the RSPO. In doing so, the RSPO should work closely with the SPO, involving other State and Regional personnel, especially the Office of Regional Counsel and other enforcement staff as appropriate. Additional support is available to the RSPO from the EPA Zone Manager, whom the RSPO should regularly inform of progress while developing the MOU.



EXHIBIT IV-1  
DEVELOPMENT OF MEMORANDA OF UNDERSTANDING

ACTIVITY	RESPONSIBILITIES	WORK PRODUCTS
1. Development of the MOU package (includes: the scope of work, documentation of terms and responsibilities, submission of other documents)*_/	<p>SPO: . Acts as chief point of contact for State in developing MOU</p> <p>. Negotiates terms of MOU with RSPO</p> <p>. Reviews terms of MOU during development</p> <p>. Reviews Community Relations Plan</p> <p>RSPO: . Negotiates terms of MOU with RSPO</p> <p>. Develops MOU</p> <p>. Obtains Regional Counsel and other necessary Regional concurrences</p> <p>. Submits Community Relations Plan</p> <p>. Includes intergovernmental review comments</p> <p>ZONE MGR: . Supports RSPO, as requested</p>	<p>. Completed set of articles comprising the body of the MOU</p> <p>. Scope of work</p> <p>. Community Relations Plan</p> <p>. Intergovernmental review comments</p>
2. Development of the management assistance Cooperative Agreement	<p>SPO: . Develops management assistance Cooperative Agreement application</p> <p>. Develops management assistance Cooperative Agreement provisions</p> <p>. Submits Procurement System Certification Form, Certification Letter, and other package components, as applicable</p> <p>RSPO: . Provides consultation and technical assistance, as requested</p> <p>ZONE MGR: . Supports RSPO, as requested</p>	<p>. Completed management assistance Cooperative Agreement application (for appropriate contents, see Exhibit III-2)</p>

\*\_/This activity is comprised of three distinct steps which are addressed separately in the text. They have been combined in this exhibit in an effort to simplify presentation of responsibilities.

## A. SCOPE OF WORK FOR REMEDIAL PLANNING

A key purpose of the MOU is to document agreement between EPA and the State on the project in question. This occurs through mutual agreement on the scope of work for the project. The scope of work provides a general outline of the major tasks to be performed during the remedial planning project and the project's objectives. It differs from a statement of work (SOW) in that a SOW contains more detailed information on the project's subactivities, tasks, and subtasks, usually identifying a schedule for their completion, their anticipated outputs, and tentative cost estimates. A scope of work should be attached to the MOU and incorporated into the MOU by reference; the detailed SOW will be developed as the first task to be completed during the project.

The scope of work for an EPA-lead remedial investigation/feasibility study project may be taken from the RAMP, if one has been developed for the site, may be developed as a separate task order to the REM/FIT contractor, or may be prepared by EPA staff. If remedial design is later incorporated into the MOU, a detailed SOW must be added to document the additional tasks and subtasks required to complete that subactivity. This can be based on the conceptual design requirements contained in the completed feasibility study.

## B. DOCUMENTATION OF TERMS AND RESPONSIBILITIES

The MOU may also document EPA and State responsibilities and contain general terms governing the agreement. In many cases, the sample SSC articles found in Appendix H can be used directly or modified for this purpose. However, several of the terms required in an SSC are not appropriate for an MOU. This section describes the most common responsibilities and terms reflected in MOUs; additional ones may be used as the situation warrants.

### B.1 EPA Responsibilities

In addition to those detailed in the SOW, EPA has other responsibilities that may be addressed in an MOU. These include:

- . Designation of an RSPO - EPA is responsible for designating a RSPO who will manage activities at the site. Limitations and prerogatives of the RSPO for effecting minor agreement changes should be discussed with the State and included in the MOU

- . Communication with the State - Communication will usually be achieved through regular status reports provided by the RSPO to the SPO
- . Community Relations Plan - EPA is responsible for implementing the CRP; the State may participate in the community relations program and provide support to EPA, as specified in the CRP
- . Site Safety Plan - EPA is responsible for ensuring that a safety plan will be prepared prior to initiation of any on-site work and that it will be implemented during the project.

Other EPA responsibilities, as appropriate for the specific site, may also be discussed and documented in the MOU.

## B.2 State Responsibilities

State responsibilities that may be addressed in an MOU, in addition to those identified in the SOW, include the following:

- . Designation of an SPO - The State is responsible for identifying an SPO to monitor site activities. Limitations and prerogatives of the SPO for effecting minor project changes should also be included in the MOU
- . Site access and permits - The State is responsible, to the extent of its statutory authority, for securing site access and obtaining, or assisting EPA in obtaining, any permits necessary for remedial activities at the site, should EPA request it to do so
- . Assistance in obtaining site data - This assistance includes carrying out necessary coordination with State and local agencies and using the State's authority to obtain available information
- . Community Relations Plan - The State is responsible for assisting EPA in implementing the CRP, as specified in the Plan.

Other State responsibilities, as appropriate to the specific conditions at the site, may also be documented in the MOU.

### B.3 General Terms

Finally, paragraphs that define the general terms governing the MOU may be developed. Topics that might be addressed include:

- . Emergency response actions - A paragraph specifying that remedial activities defined in the SOW may be suspended or modified if an emergency response is necessary at the site
- . Third parties - A paragraph excluding third-party benefits under the MOU; it should also exempt EPA and the State, to the extent possible, from third-party liability
- . Coordination of enforcement and cost recovery - One or more paragraphs providing that these activities will be coordinated through Regional and State attorneys and address relevant enforcement subjects
- . Responsible parties - A statement that performance of remedial activity at the site by a responsible party could change the scope of the MOU
- . Modifications to the agreement - A paragraph identifying that there may be a need to alter the MOU to reflect changes in the agreement between EPA and the State
- . Termination of the agreement - A provision that the MOU can be terminated upon agreement by both parties.

### C. OTHER SUBMISSIONS

The MOU will usually include two additional attachments:

- . Community Relations Plan
- . Intergovernmental review comments.

These are discussed in detail below.

#### C.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the course of the remedial response. It is

designed to provide for two-way communication between the affected community and the agencies responsible for conducting the response action.

The CRP for EPA-lead activities must be included with the MOU (if used) or must be developed prior to the initiation of remedial planning subactivities, whichever occurs first. For more details on the contents of CRPs, see Section III.D.1 of this document and also refer to Community Relations in Superfund: A Handbook, (interim version), OSWER, September 1983.

## C.2 Intergovernmental Review Comments

The final component of the MOU package is the intergovernmental review comments. If the State has developed a review process that includes Superfund MOUs, the RSPO should include in the agreement package any review comments and EPA's response to them. EPA will execute an MOU only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the MOU has not been subjected to formal review but affected local officials have responded to direct notification, the RSPO may include these comments in the MOU package, as appropriate.

## D. MANAGEMENT ASSISTANCE COOPERATIVE AGREEMENTS

EPA coordinates all Federal-lead remedial activities with the concerned States. To monitor progress and consult meaningfully with EPA about these activities, States may review significant documents produced as part of a project, attend important meetings about site programs, and make site visits. Such site-specific activities performed by a State are collectively called "management assistance."

Management assistance applies to enforcement-lead remedial investigation/feasibility study projects as well as to program-lead remedial activities; State management assistance activities are essentially the same for both types of projects. Enforcement costs are subject to the limitations defined in "Payment of State Enforcement Costs," OERR and OWPE, December 15, 1982, and "Authority to Use CERCLA to Provide Enforcement Funding Assistance to States," OGC, July 20, 1984, both reproduced in Appendix P of this manual.

Management assistance costs vary from project to project, but should generally range between 2 and 4 percent of EPA costs during remedial planning and less during remedial implementation. Such costs are allowable under Superfund Cooperative Agreements. The Federal share of these costs (either 100, 90, or 50 percent, as explained on pages I-5 and I-6 of this manual) may be included in an agreement funding only management assistance at one or more Federal-lead sites or may be included in a multi-site Cooperative Agreement that also funds State-lead projects. In either case, the Cooperative Agreement providing funds for management assistance should reference the applicable Federal-lead response agreement (State letter of request, MOU, or Superfund State Contract (SSC)), as appropriate.

Allowable management assistance costs may generally include the following:

- . Personnel costs for professional staff involved in reviewing documents and monitoring the progress of the project, in addition to costs for necessary support staff.
- . Travel costs for State personnel to visit the site and to attend key meetings concerning the project.
- . Incidental costs, such as telephone usage, postage, copying, etc., associated with the above activities.
- . Indirect costs in accordance with the State agency's approved indirect cost rate.

The State role in management assistance varies, depending upon the remedial activity being undertaken. During an EPA-lead remedial investigation/feasibility study the State may:

- . Assist EPA contractors in obtaining information from State files
- . Review preliminary planning outputs

- . Review SOWs and workplans
- . Review remedial investigation reports
- . Provide information about applicable State environmental standards and requirements
- . Review the draft feasibility study
- . Participate in public meetings and briefings for local officials and legislators
- . Review public comments on the draft feasibility study
- . Assist EPA during preparation of the Record of Decision (ROD) and provide a State recommendation on remedial action alternatives
- . Participate in environmental review of the design bid package
- . Review community relations fact sheets.

During an EPA-lead remedial design, the State may:

- . Participate in technical transfer briefings for remedial design initiation
  - . Participate in public meetings and briefings held for local officials and legislators
  - . Assist EPA in reviewing major design changes which may affect the selected remedy approved in the ROD
  - . Review the Value Engineering screening submittal
  - . Assist EPA in reviewing key contractor bid documents, particularly in areas related to conflict of interest and compliance of off-site facilities with RCRA requirements, where necessary
- Review community relations fact sheets

- . Develop administrative portions of the O&M plan
- . Review O&M Plan developed by the remedial design contractor.

During EPA-lead remedial implementation, the State may:

- . Participate in public meetings and briefings held for local officials and legislators
- . Obtain access to the site and adjoining properties
- . Review proposed change orders and claims which may affect State cost share and/or the ROD
- . Participate in pre-construction and pre-final construction conferences and implementation activities
- . Review O&M manuals or workplans developed by the remedial action contractor
- . Be present at trial runs/shakedowns of major equipment
- . Participate in periodic and final inspections and project acceptance
- . Review pre-final and final inspection reports
- . Review progress reports and NPL deletion documents
- . Coordinate with Federal agencies and remedial action contractors to provide for smooth State assumption of O&M.

EPA will provide funding only for activities which are specifically identified in the State's Cooperative Agreement application and which are reasonable and necessary for the State to fulfill its role in the EPA-lead project. EPA will not usually fund contractual costs for State management assistance during an EPA-lead project, nor will the Agency fund the full-time, on-site presence of a State representative. The amount of time that State personnel will spend on-site will be negotiated



between EPA and the State on a site-by-site basis. The period agreed upon should be adequate to keep the State fully informed on the progress of work at the site, but it should not allow the State to duplicate EPA or U.S. Army Corps of Engineers (COE) efforts.

States should understand that EPA funding for State management assistance will not change the contractual relationship between EPA or the COE and the remedial response contractor. States may not direct the work of the EPA or COE contractor or its subcontractors. Any changes that the State feels are needed in contractor activities should be brought to the attention of the RSPO.

In addition to fulfilling a management assistance role at some EPA-lead sites, States may take the lead for coordinating community relations in lieu of EPA or its contractors. In cases where EPA and the State agree that it is appropriate, the State may also take the lead in other tasks, such as air monitoring, reviewing applications for State and local permits and licenses, and issuing State permits and licenses. These tasks, however, must be delineated in a Cooperative Agreement application in the same manner as for State-lead projects and should not be considered as management assistance activities.

A State may prefer to use its expenditures at a Federal-lead site as advance match, rather than to have the Federal share of these costs paid under a Cooperative Agreement. In such cases, the State may include these costs in an existing Cooperative Agreement for one or more sites; the costs must then be shown on the application budget sheets as State-funded. Where there is not an appropriate Cooperative Agreement to use as a vehicle, the State may document its advance match expenditures in an SSC. Information on advance match at Federal-lead sites is included in Section V.B.3 of this manual.

Preparation, review and approval procedures, and documentation and reporting requirements for management assistance Cooperative Agreements are generally the same as those for any Superfund remedial Cooperative Agreement. These are described in Chapters III and VI of this manual.

\* \* \* \* \*

Upon completion of each of the steps identified in this chapter, the RSPO should have an MOU submission package ready for review by the State and EPA Region. Review and approval procedures for MOUs are described in Chapter VI.

V. DEVELOPMENT OF SUPERFUND STATE CONTRACTS

## V. DEVELOPMENT OF SUPERFUND STATE CONTRACTS

A Superfund State Contract (SSC) is the type of contractual agreement entered into by EPA and the State when EPA has lead responsibility for remedial implementation. It is not a procurement contract, as defined by the Federal Grant and Cooperative Agreement Act. Rather, the SSC is a joint, legally binding agreement that provides the medium for obtaining any required State cost share and assurances and also documents responsibilities for remedial implementation at a site. An SSC is not needed for remedial planning subactivities, since no cost-sharing or other CERCLA section 104(c)(3) assurances are required. In addition, an SSC may not be used to cover Operation and Maintenance (O&M); the State must take the lead for O&M through use of a Cooperative Agreement (see Chapter III).

In the case of a remedial action at a publicly-owned site, the SSC must also be used to obtain the State's cost-share for remedial planning. Remedial planning at such sites may be covered by either an MOU or State letter of request (see Chapter IV). However, EPA does not require the State to provide its statutory cost share for remedial planning until such time as a remedial action is implemented at the site. Under the remedial implementation SSC, the State is obliged to provide its required cost share for removals, completed remedial planning, and the remedial implementation subactivities to be initiated.

Major steps in the development of an SSC are presented in Exhibit V-1, on the following page. As shown in the exhibit, primary responsibility for developing the draft SSC rests with the RSPO. The RSPO should work closely with the SPO throughout the development of the SSC, involving other State and Regional staff, especially the Office of Regional Counsel and other enforcement personnel, as appropriate. Support is available to the RSPO from the EPA Zone Manager, whom the RSPO should regularly inform of progress while developing the SSC.

A completed SSC will consist of the terms of the agreement between EPA and the State and attachments that include the following elements:

- . Statement of work
- . Revised Community Relations Plan
- . Governor or Attorney General certification letter (if required)
- . Intergovernmental review comments.

EXHIBIT V-1  
DEVELOPMENT OF SUPERFUND STATE CONTRACTS

ACTIVITY	RESPONSIBILITIES	WORK PRODUCTS
1. Development of the SSC package (includes: development of statement of work, development of cost-sharing terms, documentation of other terms and responsibilities, submission of other documents)* /	<p>SPO: . Acts as chief point of contact in developing SSC for State</p> <p>. Negotiates terms of SSC with RSPO</p> <p>. Reviews terms of SSC during development</p> <p>. Reviews Revised Community Relations Plan</p> <p>. Submits certification letter (when necessary)</p> <p>. Includes intergovernmental review comments</p> <p>RSPO: . Negotiates terms of SSC with SPO</p> <p>. Develops SSC</p> <p>. Submits Revised Community Relations Plan</p> <p>ZONE . Supports RSPO, as requested</p> <p>MGR:</p>	<p>. Statement of work</p> <p>. Cost-sharing terms and schedule, if required</p> <p>. Completed set of articles comprising the body of the SSC</p> <p>. Revised Community Relations Plan</p> <p>. Letter from Attorney General or Governor (or designee), certifying the authority of the agency to enter into the SSC and, if necessary for completion of the project, to the assurances required by CERCLA section 104(c)(3) (if the Attorney General has not signed the SSC)</p> <p>. Intergovernmental review comments</p>

\* / This activity is comprised of four distinct steps which are addressed separately in the text. They have been combined in this exhibit in an effort to simplify the presentation of responsibilities.

This chapter provides guidance on developing each of these SSC components. A sample SSC for remedial implementation at a privately-owned site can be found in Appendix I.

#### A. DEVELOPMENT OF THE STATEMENT OF WORK (SOW)

The SOW is the basis for all responsibilities defined in the SSC. It describes the activities, subactivities, and tasks that EPA, through its contractors or through other Federal agencies, will carry out at the site and is used in estimating costs for these activities. It should be attached to the SSC and incorporated into the SSC by reference.

As with other types of remedial response agreements, activities identified in the SSC SOW should be consistent with the remedial response framework of the National Contingency Plan (NCP), section 300.68. The scope of the SOW will usually include only remedial implementation (i.e., remedial actions and IRMs). A SOW for a remedial action, however, will usually be prepared as part of the remedial design.

#### B. DEVELOPMENT OF STATE COST-SHARING TERMS

Based on cost estimates derived from work contained in the SOW, the State's cost share should be determined and payment terms negotiated. Terms negotiated between EPA and the State should be included as an article in the SSC. The remainder of this section provides guidance for calculating the State's cost share, negotiating payment terms, and documenting both in the SSC.

##### B.1 Calculation of the State's Cost Share

There are three factors that determine the amount of a State's cost-sharing obligation:

- . Estimated total project costs as defined by the government estimate contained in the SOW. Remedial action project cost estimates must be adjusted to cover Army Corps of Engineers oversight costs plus various contingencies. The chart in Exhibit V-2, on the following page, can be used to estimate total remedial actions costs; to minimize the need for future amendments, SSCs should be negotiated to cover the total remedial action costs.

EXHIBIT V-2  
FIGURES FOR USE IN ESTIMATING TOTAL EPA-LEAD REMEDIAL ACTION COSTS

<u>ITEM</u>	<u>REM. ACTION ESTIMATES LESS THAN \$2,000,000</u>	<u>REM. ACTION ESTIMATES GREATER THAN \$2,000,000</u>
Supervision and Administration (ACE) On-Site Costs	8%	6%
Bid Contingency*	25%	25%
Engineering and Design Support	1.5%	1%
During Construction Contin- gency Construction Change- Orders and Claims Contingency	10%	8%
	<hr/>	<hr/>
TOTAL	44%	40%

- \* Bid contingency is included to allow the Army Corps of Engineers (COE) to award a contract to the low responsive, responsible bidder; the Corps is required to have funds available for 25% more than the estimated cost of a project before it may issue Invitations for Bids. For State-lead projects, EPA maintains a contingency fund under the RAP process which may be used to cover bids in excess of project cost estimates.

- . The State's cost-sharing percentage -- either 10 percent of remedial implementation costs or at least 50 percent of all response costs (including removals and remedial planning) -- as required by CERCLA section 104(c)(3)(C).
- . The amount of site-specific credit, if any, available to the State under the provisions of section 104(c)(3)(C) of CERCLA (see Section II.F of this document and Appendix C for more details).

Each of these factors should be documented in an SSC article defining State cost-sharing terms.

Calculation of the State's cost-sharing obligation is a two-step process. The first step is to identify the State's total cost share for the site. This is determined by multiplying the total cost of activities included in the SSC SOW which require cost-sharing by the appropriate State cost-sharing percentage. If the site is publicly-owned, the State's share of any removal and remedial planning costs must also be added.

The second step is to calculate the State's total obligation by applying State credit. Available credit, up to 100 percent of the State's cost share, is subtracted from the State's cost share to determine the State's total obligation. (Where there is no credit, the State's total obligation will equal the State's cost share.) This corrected amount represents the total contribution the State must provide to EPA. For examples of this calculation, see Exhibit V-3, on the following page.

## B.2 Negotiation of Payment Terms

If there is insufficient credit to cover its cost-sharing obligation, the State must contribute the difference in cash payments. The State may use either of two alternative methods: lump-sum or installment payments. When the State elects to use the lump-sum payment method, EPA prefers to receive the money within 30 days of execution of the SSC.

When the State uses the installment approach, EPA and the State will negotiate a payment schedule which is documented in the SSC, along with payment amounts. Where possible, the SSC should identify specific payment due dates. EPA prefers one payment to be scheduled within 30 days of SSC execution and one at the completion of site activities; other payments can either be made on a regular



EXHIBIT V-3  
STATE COST SHARE CALCULATIONS  
(for remedial implementation projects)

Example 1

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 10 percent (privately-owned site)  
State credit = none

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share
	\$550,000	x	10 percent	=	\$55,000

The State is required to contribute \$55,000 in cash or services; EPA will provide the remaining \$495,000 for the remedial implementation.

Example 2

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 10 percent (privately-owned site)  
State credit = \$35,000

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share
	\$550,000	x	10 percent	=	\$55,000
.	State cost share	-	State credit	=	State Obligation
	\$55,000	-	\$35,000	=	\$20,000

The State is required to contribute \$20,000 in cash; the remainder of the State cost share is met by applying the State credit. EPA will provide \$530,000 for the remedial implementation.

Example 3

Total remedial implementation cost = \$550,000  
State cost-sharing percentage = 50 percent (publicly-owned site)  
State cost share for remedial planning = \$50,000  
State credit = \$350,000

.	Total remedial implementation cost	x	State cost-sharing percentage	=	State Cost Share for Remedial Implementation
	\$550,000	x	50 percent	=	\$275,000
.	Remedial planning cost share	+	Remedial implementation cost share	=	Total State Cost Share
	\$50,000	+	\$275,000	=	\$325,000
.	Total State cost share	-	State credit (up to 100 percent of State cost share)	=	State Obligation
	\$325,000	-	\$325,000	=	0

EPA funds 100 percent of all project costs under the Superfund State Contract. Of the \$350,000 credit, \$325,000 has been applied, leaving \$25,000 available for future cost-sharing of the site. The State will not be reimbursed for the remaining \$25,000.

billing schedule or tied to the completion dates of site activities. Although the schedule is flexible, EPA prefers that the State's payments match EPA disbursements as closely as possible (e.g., 50 percent of the State cost share received by the time 50 percent of project costs have been incurred).

Under both of these payment methods, the SSC should contain a provision for reconciling estimated and actual total project costs and adjusting the State's cost-sharing terms accordingly. Where the State has provided its estimated cost share in a lump sum, EPA will refund any excess payment or will request additional payment if there is a difference between actual and estimated costs. If the State provides its payments in installments, EPA will adjust the payment due at completion of the project, as appropriate, for any difference.

Prior to the May 13, 1983 recision of the 10 percent cost-sharing for remedial planning, States shared in such costs at some privately-owned sites. Under EPA's current legal determination, any cost shares previously paid by the State (allowable State services, statutory credit, or cash) for these activities may be applied to the State's cost-sharing obligation during remedial implementation at the site. Such cost shares may have been included in the SSC under the previous EPA policy. If the State did provide a remedial cost share prior to the May 13 decision, EPA may apply this money toward the State's ultimate cost share during remedial implementation.

#### C. DOCUMENTATION OF OTHER TERMS AND RESPONSIBILITIES

The body of the SSC also contains articles that document other EPA and State responsibilities and general terms governing the agreement. Each of these responsibilities and terms should be discussed and incorporated into the SSC as appropriate. Appendix H provides examples of articles usually found in the SSC as well as additional background information. This section briefly describes the responsibilities and terms most commonly defined in a Contract.

##### C.1 EPA Responsibilities

In addition to responsibilities described in the project SOW, EPA has other responsibilities that should be addressed in SSC articles. These responsibilities include:

- . Designation of an RSPO - EPA is responsible for designating an RSPO who will manage implementation at the site. Limitations and prerogatives of the RSPO for effecting minor SSC changes should be discussed with the State and included in the SSC
- . Completion of site activities - EPA will retain this responsibility even though the actual remedial implementation is performed by REM/FIT Zone Contractors or under the direction of another Federal agency; this responsibility should be confirmed in the SSC
- . Communication with the State - Communication will usually be achieved through regular status reports that the RSPO will provide to the SPO; EPA is also responsible for seeking State input on any key decision points in the process
- . Community Relations Plan - EPA is responsible for implementing the CRP; the State may participate in the community relations program and provide support to EPA as specified in the CRP
- . Site Safety Plan - EPA is responsible for ensuring that a safety plan will be prepared prior to the initiation of on-site activities and will be implemented during the project.

Other EPA responsibilities, as appropriate for the specific site, may also be discussed and documented in the SSC.

## C.2 State Responsibilities

State responsibilities that should be discussed in the SSC, in addition to those identified in the SOW, include the following:

- . Designation of an SPO - The State is responsible for identifying an SPO who will monitor site activities. Limitations and prerogatives of the SPO for effecting minor project changes should also be included in the SSC
- . Assistance in obtaining site data - This assistance includes carrying out necessary coordination with State and local agencies and using the State's authority to obtain available information

- . Provision of operation and maintenance (O&M) (if necessary) - CERCLA 104(c)(3)(A) requires the State to assure O&M of the selected remedy. Where this is necessary, the State is responsible for undertaking all future O&M for the life of the project, (the O&M must be covered under a Cooperative Agreement)\*
- . Provision of off-site facility (if necessary) - CERCLA 104(c)(3)(B) requires the State to assure availability of adequate off-site storage, treatment, or disposal when necessary for completion of the project. To meet this assurance, the State is required to provide an acceptable off-site facility, should EPA request the State to do so\*\*
- . Obtaining site access - To the extent of its legal ability, the State is responsible for obtaining site access
- . Obtaining necessary permits - The State is responsible for obtaining, or assisting EPA in obtaining, permits necessary for the completion of proposed activities
- . Community Relations Plan - The State is responsible for assisting EPA in the implementation of the community relations program as specified in the CRP.

Other State responsibilities, as appropriate to the specific conditions at the site, may also be discussed and documented in the SSC.

### C.3 General Terms

The RSPO, in consultation with the SPO, should develop articles that define the general terms governing the SSC. Specific articles that should be discussed and drafted include the following:

- 
- \* Where O&M is necessary for the remedial action chosen, the State must also provide EPA with an O&M plan; Section III.B.2.a of this document defines contents of such a plan.
  - \*\* Section I.B.3 of this document defines conditions that the facility must meet to be considered adequate.

- . Emergency response actions - An article specifying that remedial activities defined in the SOW may be suspended or modified if an emergency response is necessary at the site
- . Third parties - An article excluding third-party benefits under the SSC; it also, to the extent possible, exempts EPA and the State from third-party liability
- . Coordination of enforcement and cost recovery - One or more articles addressing relevant enforcement and cost recovery subjects and providing for the coordination of these activities through Regional and State attorneys
- . Actions by responsible parties - A statement that remedial response activities by a responsible party could reduce the scope of the SSC
- . Amendments to the agreement - An article identifying that there may be a need to amend the SSC to reflect changes in the agreement between EPA and the State
- . Termination of the Contract - A provision that the SSC can be terminated upon joint agreement by both parties
- . Failure to comply with Contract - A provision that if either party fails to comply with the terms of the SSC, the other party may seek to enforce the contract.

#### D. OTHER SUBMISSIONS

The SSC will usually include three additional attachments:

- . Revised Community Relations Plan
- . Certification letter
- . Intergovernmental review comments.

These are discussed in detail below.

##### D.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the course of the remedial response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting the response action.

If Fund-financed remedial planning has been implemented at the site, a CRP has already been developed. This CRP must be revised prior to the implementation of a remedial action at the site. The revised version of the site CRP must be included with the final SSC when it is submitted for EPA approval. For more details on preparing CRPs, refer to Section III.D.1 of this document.

#### D.2. Certification Letter

The State should provide, as an appendix to its SSC, a letter certifying that the State official who signs the SSC has the authority to enter into an agreement with EPA and, if necessary for the completion of the project, to make the assurances required by section 104(c)(3) of CERCLA. The certification letter may be from either the State's Governor or Attorney General.

Such a letter need not be site-specific; the State may prepare one letter applying to all of its NPL sites and submit a copy with each SSC. Examples of this certification letter are provided in Appendix J. More detailed information concerning assumption of O&M will be contained in the State's O&M plan, the requirements of which are outlined in Section III.B.2 of this document.

Certification of authority is not required if the State Attorney General signs the SSC.

#### D.3 Intergovernmental Review Comments

The final component of the SSC package is the intergovernmental review comments. If the State has developed a review process that includes SSCs, the RSPO should include in the SSC package any review comments and EPA's response to them. EPA will execute an SSC only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the SSC has not been subjected to formal review but affected local officials have responded to direct notification, the RSPO may include these comments in the SSC package, as appropriate.

#### E. MULTI-SITE SUPERFUND STATE CONTRACTS

Just as EPA offers States the opportunity to develop multi-site Cooperative Agreements to fund numerous State-lead remedial response activities, a State may

include in a single SSC all Federal-lead remedial actions and IRMs to be conducted within that State. These agreements are called multi-site SSCs.

Using multi-site SSCs, a State can tailor the number and content of its Federal-lead remedial response agreements to best meet its resource and personnel needs. EPA and the State may jointly develop a multi-site SSC either as a new agreement or by amending an existing single-site SSC to add new sites and/or activities. After development, a multi-site SSC may be amended numerous times to add any new remedial implementation projects already on the Region's approved Superfund Comprehensive Accomplishments Plan (SCAP).

In general, requirements for a multi-site SSC are the same as those outlined in preceding sections of this chapter. However, two important additional considerations must be kept in mind when negotiating multi-site SSCs. First, a separate, site-specific SOW must be prepared for each remedial implementation project covered by the SSC. This SOW must include the scope of the remedial activities to be undertaken, the schedule for these activities, and their estimated costs. Second, cost-sharing terms must be negotiated individually for each project and must be recorded separately in the body of the SSC. All cost-sharing is site-specific; State costs incurred for work at one site cannot be used to meet the State's cost-sharing obligations at any other site.

Additional information on general requirements for multi-site remedial response agreements -- such as intergovernmental review -- can be found in the MSCA procedures, provided in Section III.F. of this document.

\* \* \* \* \*

Upon completing each of the steps outlined in this chapter, the RSPO should have an SSC submission package ready for review by the State and the EPA Region. Review and approval procedures are described in the next chapter.

VI. EXECUTION OF REMEDIAL AGREEMENTS



## VI. EXECUTION OF REMEDIAL AGREEMENTS

The review and approval process is similar for Cooperative Agreements, MOUs, and SSCs,\* and usually consists of three major steps:

- . Review of the draft agreement
- . Final Regional review
- . Approval and execution.

The three sections in this chapter describe these steps and the respective responsibilities of State and EPA officials respective responsibilities. A summary of these responsibilities is provided in Exhibit VI-1, on the following page. Regions may, at their discretion, institute less elaborate procedures for MOU approval than those described in this chapter.

Exhibit VI-2, following Exhibit VI-1, summarizes key events within each of the steps listed above. As can be seen from Exhibit VI-2, the execution process is similar for Cooperative Agreements, MOUs, and SSCs. Because of these similarities, the execution processes for the three types of agreements are, for the most part, discussed simultaneously in this chapter. An exception is made for the first step in the process -- review of the draft agreement -- where separate discussions are included for Cooperative Agreements and EPA-lead submissions.

### A. REVIEW OF THE DRAFT AGREEMENT

As the first step in the execution process, a completed draft agreement should undergo an initial review by officials in the State and in the EPA Regional program office to ensure that it is complete, technically sound, and consistent with State and Federal statutes, regulations, and policies. This draft review provides an opportunity to identify and resolve any major issues prior to the formal submission of the agreement for approval.

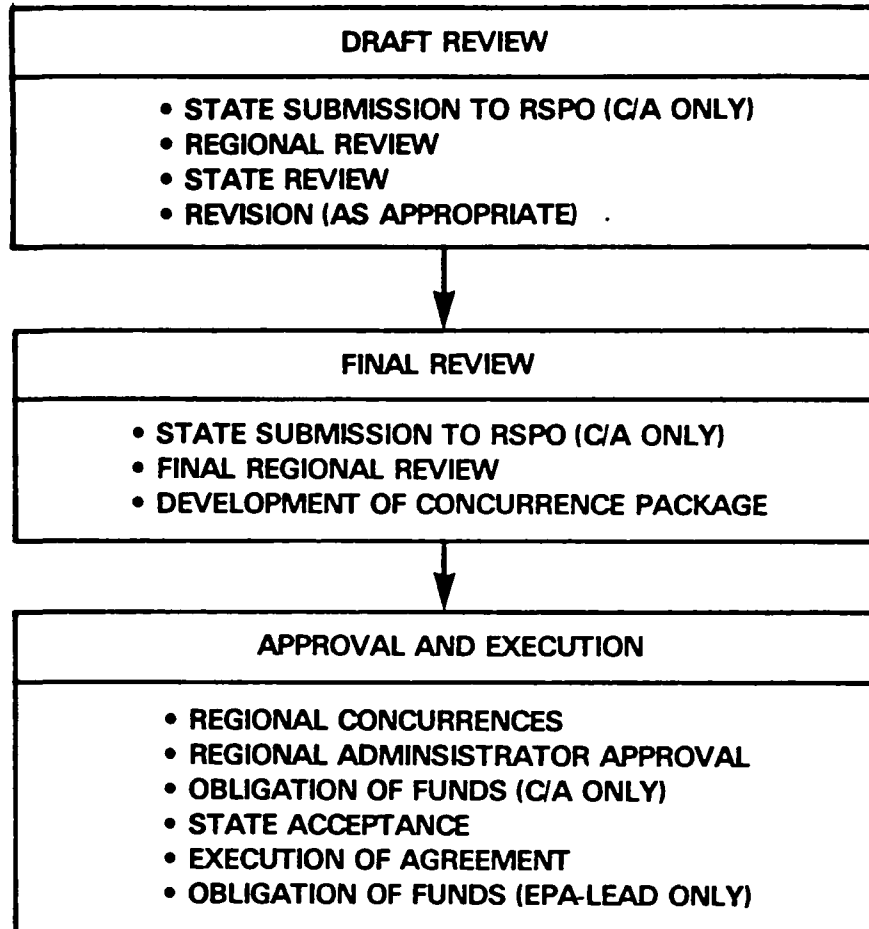
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\* State letters requesting initiation of EPA-lead remedial planning are not required to undergo the process described in this chapter. Necessary review, concurrences, and approvals of these projects should have been secured upon their inclusion in the Remedial Accomplishments Plan (RAP).

EXHIBIT VI-1  
EXECUTION OF REMEDIAL AGREEMENTS

ACTIVITY	RESPONSIBILITIES	WORK PRODUCTS	
		STATE-LEAD	EPA-LEAD
1. Draft Review	SPO:	. Draft Cooperative Agreement application package	. Draft MOU or SSC
	. Coordinates State review		
	. Develops draft application package and submits to RSPO (C/A only)		
	. Renegotiates MOU or SSC provisions, as necessary (EPA-lead only)		
	RSPO:		
	. Coordinates Regional review		
	. Assists SPO with revisions, as necessary (C/A only)		
	. Develops draft MOU or SSC (EPA-lead only)		
	. Renegotiates provisions, as necessary		
	ZONE		
	. Provides liaison between EPA Region and Headquarters		
	MGR:		
	. Assists RSPO, as necessary		
2. Final Regional Review and Preparation of Concurrence Package	SPO:	. Concurrence Package: - Cooperative Agreement application package - Decision Memo - Grant Funding Order (EPA Form 5700-14) - Commitment Notice (EPA Form 2550-9) - Draft press release - Congressional notification plan	. Concurrence Package: - MOU or SSC - Decision Memo - Draft press release - Congressional notification plan
	. Acts as chief point of communication for State		
	. Obtains required State concurrences		
	RSPO:		
	. Coordinates Regional review process		
	. Prepares concurrence package		
	ZONE		
	. Provides liaison between EPA Region and Headquarters		
	MGR:		
	. Assists RSPO, as necessary		
3. Approval and Execution of the Agreement	SPO:	. Offer of Award (Form 5700-20A)	. Executed MOU or SSC
	. Acts as chief point of communication for State		
	. Discusses required changes with RSPO, as necessary		
	RSPO:		
	. Reviews any revisions made to agreement		
	. Communicates all EPA comments to SPO		
	. Discusses required changes with SPO, as necessary		
	ZONE		
	. Provides liaison between EPA Region and Headquarters		
	MGR:		
	. Assists RSPO, as necessary		

**EXHIBIT VI-2**  
**AGREEMENT REVIEW AND APPROVAL PROCESS**



Because procedures differ slightly at this initial stage, reviews of the draft Cooperative Agreement application package and the draft EPA-lead submission are discussed separately below.

#### A.1 Review of the Draft Cooperative Agreement Application Package

Once the SPO and the RSPO agree upon the content of the draft Cooperative Agreement application package, it should be reviewed concurrently by staff in the State and EPA Region. The SPO should initiate this review by distributing copies of the draft to State officials and to the RSPO. In turn, the RSPO should distribute the draft application package to appropriate Regional officials. Participants in the State and Regional reviews will vary, depending on the requirements of the site, but should at least include the Office of Regional Counsel and enforcement and technical staff members. Based on EPA and State comments, the SPO and RSPO should jointly resolve issues and revise the draft Cooperative Agreement application package, as appropriate, to produce a final application.

#### A.2 Review of the Draft EPA-Lead Submission

Unlike the Cooperative Agreement, where the SPO is responsible for initiating the review and approval process, initiation of this process for an MOU or SSC is the responsibility of the RSPO. Once the RSPO and the SPO have developed a draft submission, the RSPO should distribute copies to Regional staff, thus initiating EPA Regional draft review, and to the SPO. Regional review should involve participation by technical and enforcement staff members, as well as representatives from the Office of Regional Counsel. The SPO should distribute the draft submission to State officials for review. Comments should be incorporated into the final document as appropriate.

#### B. FINAL REGIONAL REVIEW AND PREPARATION OF THE CONCURRENCE PACKAGE

The second step in the review process is the final Regional review of the Cooperative Agreement application package or EPA-lead submission, and preparation of a concurrence package. Final Regional review should ensure that all previous comments have been appropriately addressed and that any issues which could delay approval are resolved. This step is similar for both Cooperative Agreement application packages and EPA-lead submissions.

The RSPO is responsible for coordinating final Regional review and obtaining necessary concurrences. As in the draft review, participants may vary, but should at least include technical staff members and representatives from the Office of Regional Counsel.

Once the final review has been completed and necessary concurrences obtained, the RSPO should prepare a concurrence package for the agreement. A concurrence package for Cooperative Agreements and EPA-lead submissions should include:

- . A Decision Memorandum recommending approval of the agreement and highlighting potential issues associated with the project (see Exhibit VI-3 on the following page which, for the benefit of Regional staff, outlines the suggested format and contents of a Decision Memorandum); this will be issued from the Recommending Official through the Regional Administrator (RA)\*
- . The Cooperative Agreement application package or EPA-lead submission (including intergovernmental review comments)
- . A draft press release for announcing execution of the agreement
- . A Congressional notification plan for informing concerned Federal and State officials of the agreement.

Concurrence packages for Cooperative Agreements shall also contain a Grant Funding Order (EPA Form 5700-14), with special conditions attached if the application has not adequately addressed all EPA requirements, and a Commitment Notice (EPA Form 2550-9).

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\* The approval process for a Cooperative Agreement involves a Recommending Official, a Decision Official, and an Award Official. Although the Superfund Division Director (DD) functions as both the Recommending Official and the Decision Official, it is possible for the DD to delegate recommending authority to another official, usually the Regional Superfund Coordinator. When the DD has delegated this authority, the Decision Memo will be from the Recommending Official to the RA (Award Official) through the DD (Decision Official). When the delegation has not been made, and for all EPA-lead submissions, the Decision Memo will be from the DD to the RA.

EXHIBIT VI-3  
SUGGESTED FORMAT FOR THE DECISION MEMORANDUM

<u>SUBJECT</u>	<u>CONTENT</u>
Objective	Brief summary of the purpose of the project and how the proposed remedial activities satisfy it.
Relationship of the Project to the Program's Mission	Explanation of how the proposed project fulfills the CERCLA objectives of mitigating or minimizing potential damage to public health, welfare, or the environment.
Explanation of Any Apparent Duplication of Effort	Statement that the proposed project will not duplicate any previous site activities and explanation of how it will be coordinated with any past remedial and removal activities at the site.
Enforcement	Short statement of past and prospective enforcement actions, including concurrence from the Office of Regional Counsel that funding the project is appropriate in light of the status of enforcement activity.
Community Relations	Statement that describes the purpose and scope of the community relations program for the site.
Recommendations	Recommendations that the project be approved. For Cooperative Agreement applications, this should also include determination of the State's ability to manage the project.
Reviews	Outline of the State and Regional review mechanisms to ensure that conduct of the project will conform to program requirements.
Project Officer	Designation of the RSPO, including an address and telephone number.
Deviation Request	If the State has made such a request at the time of application submission, section containing necessary Regional concurrences on and recommendations for RA concurrence on the request.

### C. APPROVAL AND EXECUTION

The third and final step in the review and approval process for Cooperative Agreements and EPA-lead submissions is their approval and execution. Because of the similarities in carrying out this step for both types of agreements, they are discussed together in this section. Particular attention is given to procedures for review, concurrence, and execution.

The RSPO should distribute the completed concurrence package to the Regional offices that participated in the draft review. After necessary concurrences have been obtained, the package should be submitted to the RA for signature. Procedures followed after the RA's receipt of the package differ to some extent, depending on the type of agreement in question.

The RA, upon signature of the EPA-lead agreement, executes the agreement for EPA. Thereafter, two signed copies are sent to the State for execution. To accomplish this, an authorized State official must sign both copies of the agreement and return one to the RSPO for retention in EPA files.

For a Cooperative Agreement, however, the process is somewhat different. If the package is acceptable to the RA, it is sent to the Regional grants office for preparation of the offer of award (EPA Form 5700-20A). This is returned to the RA -- the Award Official -- for signature. Two signed copies of the Cooperative Agreement, accompanied by a cover letter making the offer of award, are then sent to the State for acceptance. Upon signature of the offer of award, the State should return one copy to the Region to complete the execution process; the second copy is for retention in the State's files.

Where a Cooperative Agreement has been executed, remedial activities at the site may commence immediately because the Cooperative Agreement obligates necessary funds. Execution of an EPA-lead agreement however is only one step in funding Federal-lead remedial activities. Money for activities under an EPA-lead agreement must be obligated either in work assignment packages under one of EPA's REM/FIT contracts or through an Interagency Agreement (IAG) with the Army Corps of Engineers or other Federal agency. The REM/FIT contract manuals, Management Plan and Operating Procedures: Remedial Planning/Field Investigation Team Zone Contracts and REM/FIT Zone Contract Management Procedures: An Illustrated Guide contain details and

procedures necessary for preparing such documents. These submissions should be developed concurrently with the preparation, review, and approval of the EPA-lead agreement to avoid any delay in obligation of the funds.

\* \* \* \* \*

This chapter has provided guidance for approving and executing Cooperative Agreements and those EPA-lead agreements which require review, concurrence, and approval. Following execution, all remedial response agreements must be implemented. Procedures established for the administration of Cooperative Agreements, SSCs, and other EPA-lead agreements are the subject of Chapter VII.



VII. ADMINISTRATION OF REMEDIAL AGREEMENTS

## VII. ADMINISTRATION OF REMEDIAL AGREEMENTS

A number of administrative activities are required to ensure that an executed remedial response agreement is implemented successfully. These activities include:

- . Monitoring financial commitments made in the agreement, if any
- . Monitoring technical commitments made in the agreement
- . Coordinating terms of the EPA-lead agreements with performance agreements entered into with the REM/FIT contractor or the U.S. Army Corps of Engineers
- . Maintaining adequate documentation of site remedial response
- . Documenting the completion of a remedial action.

The above activities and responsibilities for completing them are discussed in this chapter. They are also summarized in Exhibit VII-1, on the following page.

Discussion in this chapter focuses on responsibilities of EPA staff. State roles in carrying out similar activities will depend upon administrative systems unique to each State. In addition, this chapter covers only those administrative activities necessary to manage remedial response agreements. Similar procedures for administering task orders under the REM/FIT Zone Contracts or agreements with the Corps of Engineers are not discussed below but can be found in REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983.

### A. MONITORING FINANCIAL COMMITMENTS

RSPOs and Zone Managers are responsible for ensuring that the State carries out the financial commitments made in its Cooperative Agreement or SSC. Two types of financial commitments are discussed below, along with the RSPOs' and Zone Managers' oversight roles and responsibilities.

EXHIBIT VII-1  
ADMINISTRATION OF REMEDIAL AGREEMENTS

ACTIVITY	STATE-LEAD	RESPONSIBILITIES	EPA-LEAD	ADDITIONAL GUIDANCE
1. Monitoring Financial Commitments	SPO: . Coordinates with RSPO to transfer funds to new activity (if necessary) RSPO: . Reviews State drawdown activity . Coordinates State transfer of funds to different activity (if necessary) . Notifies OERR-FCC of changes in accounts . Resolves problems with State  ZONE MGR: . Monitors State expenditures . Supports RSPO problem resolution efforts	RSPO: . Follows up and resolves delinquent payments (SSC only)  ZONE MGR: . Provides information on payment schedule to OERR-FMC (SSC only) . Supports RSPO problem resolution efforts (SSC only)		. Letter of Credit Users Manual, EPA Division of Financial Management . Guidance, Appendix N
2. Monitoring Technical Commitments	SPO: . Coordinates with RSPO as necessary RSPO: . Initiates and maintains site data in PTS . Monitors technical activities at site . Tracks State CERCLA section 104(c)(3) assurances . Monitors compliance with special conditions . Resolves problems with State . Works with Regional Superfund Community Relations Coordinator (RSCRC) in monitoring community relations activities  ZONE MGR: . Monitors site activities . Supports RSPO problem resolution efforts	RSPO: . Initiates new activities and updates PTS information, as appropriate . Manages technical activities at site . Tracks State CERCLA section 104(c)(3) assurances (SSC only) . Resolves problems with State . Works with RSCRC in monitoring community relations activities  ZONE MGR: . Monitors site activities . Supports RSPO problem resolution efforts		. Project Tracking System: Procedures Manual/Users Guide, OERR, August 1982. . Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983
3. Coordinating the MOU or SSC with Performance Agreements		RSPO: . Ensures consistency between SOW and EPA-lead agreement terms . Monitors remedial progress for impact on State cost share or payments (SSC only)  ZONE MGR: . Monitors MOUs, SSCs, REM/FIT work orders, and IAGs		. Management Plan and Operating Procedures: Remedial Planning/Field Investigation Team Zone Contracts, HSCD, October 20, 1982 . REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983
4. Documenting Remedial Activity	SPO: . Maintains site file RSPO: . Maintains site file . Ensures necessary information maintained in Regional grants office . Forwards necessary documents to Zone Manager	RSPO: . Maintains site file . Forwards necessary documents to Zone Manager		. Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983

## A.1 State Drawdowns Under a Cooperative Agreement

The preferred method for transferring funds to a State under a Cooperative Agreement is through a Letter of Credit. Using this method, EPA establishes at a Federal Reserve bank of the State's choosing a credit account for remedial planning and/or one for remedial implementation, if applicable, for each signed Agreement. The State then "draws down" funds from the appropriate credit account to cover EPA's share of immediate cash needs for each activity approved in the Cooperative Agreement. When the Cooperative Agreement is site-specific, the State must draw down funds by the appropriate activity code. When the Agreement covers more than one site, the State should be careful to make drawdowns using the correct site and activity codes. In either case, State drawdowns should reflect provision of the State's cost share on a current basis (i.e., the State should not draw down all of EPA's share before providing its share of costs). Total drawdowns may not exceed the amount obligated for each activity and site in the Cooperative Agreement.

The RSPO should review State drawdowns on a monthly basis, using drawdown information available from the Regional financial management office. Key documents for this review include the Financial Management System (FMS) Outlay Report and the State's quarterly progress report, required under the terms of each Cooperative Agreement. In the review, the RSPO should first determine that State drawdowns correspond to technical progress at the site and that they are only large enough to cover immediate (usually one month) cash needs. The RSPO should also determine whether the State is following the account structure established in the Cooperative Agreement. Under the terms of the Cooperative Agreement, the State may draw down funds from an account only for work performed under activities funded by that account (for example, only remedial planning work may be paid with funds drawn down from the corresponding account established for remedial planning). The account from which drawdowns were made, identified in the FMS Outlay Report or State quarterly report, must match the activities being undertaken.

Upon completion of remedial planning at a site, any funds remaining in the site remedial planning account may be used to fund an approved remedial implementation project or may be used for activities at another site covered by the same Cooperative Agreement. Such funds, however, must be officially transferred to the appropriate account. To effect this transfer, the State should submit a written

request to the RSPO (see Appendix N for details). Transfers also require that the RSPO coordinate with OERR's FCC. If the FCC authorizes the transfer, the RSPO will request that the Cooperative Agreement be formally amended to move the funds to the designated account (see Chapter VIII of this document). Funds remaining in a credit account at the completion of the corresponding activity will be deobligated by EPA and returned to the Fund if the State does not submit a transfer request or if the State's request is denied.

Zone Managers are responsible for monitoring the rate of State expenditures against the percentage of tasks completed for all sites in their individual areas of responsibility. Necessary information can be obtained from the Project Tracking System (PTS) (discussed in greater detail in Section VII.B below). For more information on drawdown procedures, see Appendix N and EPA's Letter of Credit Users Manual, published by the Financial Management Division (FMD).

#### A.2 State Payment of Cost Share Under a Superfund State Contract

Unlike a Cooperative Agreement, an SSC does not provide funding to the State. Instead, to cover its share of remedial costs under an SSC, the State may be required to provide cash payments to EPA. If cash is to be provided, the RSPO and Zone Manager should ensure that FMD receives information necessary to track accounts receivable and delinquent payments.

Following execution of the SSC, the Zone Manager should forward a copy of the executed SSC, containing a payment schedule, to FMD to establish the account(s) receivable. FMD will automatically send invoices to the State before the due dates indicated in the payment schedule. If the State is late in making payment, FMD will provide the RSPO with a delinquency report and will forward a copy to the Zone Manager. The RSPO is responsible for contacting the State to resolve any problems; those that cannot be resolved by the RSPO should be referred to the Zone Manager.

#### B. MONITORING TECHNICAL COMMITMENTS

In addition to financial commitments, EPA must also monitor technical commitments concerning site activities as well as State assurances and special conditions in the remedial response agreement. These activities and responsibilities are discussed below.

## B.1 Monitoring Site Activities

The RSPo should provide an on-going review of technical progress at remedial sites to ensure that the State carries out commitments detailed in the SOW for the remedial response agreement. The level of review required is dependent upon whether the State or EPA has lead management responsibility for the project. As with financial commitments, Zone Managers are responsible for monitoring the progress of remedial response at sites within their geographical areas and for addressing problems that cannot be resolved between the RSPo and the State.

PTS is one tool used by EPA to track the conduct of work at remedial response sites. The system uses information from the detailed work plan in the Cooperative Agreement and from the REM/FIT contractor task order work plan (based on the SOW in the EPA-lead agreement) to chart estimated start and completion dates. The RSPo should provide information from the work plan to the PTS system following execution of the Cooperative Agreement or EPA-lead remedial agreement.

For additional detailed information on responsibilities and for descriptions of input forms and reports available through PTS, see Project Tracking System: Procedures Manual/Users Guide, OERR, August 1982.

The RSPo should also review progress through other methods to supplement information available from PTS. Some other information sources include site inspections, informal telephone calls (where appropriate), and, for State-lead activities, review of information included in the State's quarterly report.

## B.2 Monitoring State Assurances and Compliance with Special Conditions

The RSPo is also responsible for monitoring State implementation of CERCLA section 104(c)(3), assurances and compliance with Cooperative Agreement special conditions. In addition to any financial commitments necessary for its cost-sharing assurance (see Section I.B.3 of this document), a State may be required to carry out specific actions to implement its off-site facility and O&M assurances; these will be specified in the Cooperative Agreement or SSC. Cooperative Agreement special conditions may also identify specific actions, such as the provision of site safety plans, to which the State has committed itself.

To ensure that such commitments are carried out, the RSPO should track and review specific dates on which State actions are to be taken, if these are available. For State-lead activities, the RSPO may use the State's quarterly report to track these dates.

C. COORDINATING EPA-LEAD REMEDIAL AGREEMENTS WITH PERFORMANCE AGREEMENTS

After an EPA-lead remedial agreement is executed, EPA initiates remedial activities by entering into an agreement with its REM/FIT Zone Contractor or with other Federal agencies, such as the U.S. Army Corps of Engineers (COE). It is important that the terms of such performance agreements be consistent with those of the SOW for the remedial agreement reached with the State.

The RSPO is responsible for ensuring that both types of agreements are consistent during their initial development. Any SOW changes negotiated between EPA and the State during development of an EPA-lead agreement must be consistent with the SOW in the performance agreement signed with the contractor or another agency. In the same manner, any project changes made in performance agreements with the Zone Contractor or the agency must be negotiated with the State and reflected in the remedial response agreement. Since State payment terms under the SSC may be dependent upon the SOW, the RSPO should also ensure that these terms are consistent with time and cost estimates resulting from any changes made to the SOW.

It is also important to ensure that there is coordination between the agreements during conduct of the remedial response. Any modifications to EPA's performance agreements with its Zone Contractor or other agency that are inconsistent with the terms of the EPA-lead remedial response agreement must be reviewed by the State and reflected in the remedial agreement. The Zone Manager is responsible for ensuring that any necessary changes are made.

In addition, the RSPO should monitor financial and technical progress at the site to determine whether they will affect any State payment terms identified in the SSC. Changes may be required at sites where progress is significantly delayed or where actual costs are significantly different from estimated costs. The RSPO should discuss differences in progress with the SPO and where necessary, adjust payment terms by amending the SSC.

## D. DOCUMENTING REMEDIAL ACTIVITY

Another administrative responsibility for EPA staff is the documentation of site activities through development and maintenance of records and files. The State is also responsible for maintaining files for State-lead remedial response activities; therefore, State files are also discussed below. With the exception of certain policy, deliberative, and enforcement documents which may be held confidential, EPA and State files will be available to the public. For additional details on record maintenance in the Superfund program, see "Suggested Regional File Structure, Superfund Priority Sites and Priority Site Candidates," OSWER, May 1982, and Appendix E of Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983.

### D.1 Regional Files

Site files for documenting all activities carried out at each site should be developed and maintained in Regional offices. Information in these files is critical to EPA's enforcement and cost recovery actions.

In general, Regional files should document and support all actions taken at the site. Documentation should be sufficient to identify the source(s) and circumstances of site problems and potentially responsible parties, provide an accurate account of Federal costs incurred, and demonstrate actual and potential impacts to public health and welfare or to the environment. Files should include the following documents:

- . A signed copy of the final remedial response agreement and concurrences from reviewing offices
- . A signed copy of the Decision Memorandum
- . A copy of the final draft agreement (if different from the approved version of that agreement).

Other communications, memoranda, and relevant documents may also be included in the file, as appropriate.

### D.2 EPA Headquarters Files

Zone Managers are responsible for maintaining OERR program files that are adequate to monitor progress under remedial response agreements. Zone Managers in both the State and Regional Coordination Branch (SRCB) and in the Remedial Action Branch (RAB) are responsible for keeping



records and documents pertaining to EPA and State-lead agreements, including many of the documents in the site files maintained in the Regions. RSPOs should provide copies of necessary documents, such as those items identified above, State letters of request, reports, and letters concerning the agreement, to the Zone Managers for retention in their files.

In addition, Zone Managers are responsible for maintaining OERR records related to obligations under EPA-lead agreements. Contents of these files should be similar to the Regional site files. Zone Managers should also provide necessary information to the following Divisions:

- . Grants Administration Division, for Interagency Agreements (IAGs)
- . Procurement and Contracts Management Division, for REM/FIT contracts.

The above offices are those responsible for making obligations for these agreements and will maintain the official files.

### D.3 State Files

In accordance with EPA's assistance regulation, a State entering into a Cooperative Agreement must maintain a file containing all relevant documents and communications pertaining to the development and implementation of that Agreement. These records should include such site-specific documentation as ledgers, purchasing and contracting files, receipts, vouchers, travel authorizations, methods of equipment usage, and depreciation. Records must be maintained intact for three years after the submission of the final Financial Status Report (SF-269) or until any litigation, claim, appeal, or audit begun during that three-year period has been settled. Contents of State files for EPA-lead projects are at the discretion of the State.

## E. DOCUMENTING COMPLETION OF REMEDIAL IMPLEMENTATION

[RESERVED]

\* \* \* \* \*

The activities and responsibilities described in this chapter will continue throughout the agreement period; remedial agreements will remain in effect until the end of EPA's participation in O&M costs. At any time during the project, however, an occasion may arise when it is necessary to adjust the terms of an executed agreement. Procedures for making these adjustments, as well as for initiating new activities upon completion of the project identified in an existing agreement, are described in the next chapter.

## VIII. AGREEMENT MODIFICATIONS

## VIII. AGREEMENT MODIFICATIONS

After an agreement has been implemented, it sometimes becomes necessary to modify the vehicle in some manner or to negotiate a new agreement. Three types of modifications may be pertinent: (1) adjustments to existing projects, (2) initiation of a remedial design and/or remedial implementation at the completion of the already-funded remedial planning project, or (3) initiation of operation and maintenance. This chapter presents procedures and identifies responsibilities for effecting modifications and implementing new activities. As such, the chapter has three parts, corresponding to the three categories of adjustments.

The SPO and RSPO are responsible for initiating and processing agreement modifications; specific responsibilities of these personnel are summarized in Exhibit VIII-1, on the following pages.

### A. PROJECT ADJUSTMENTS

Project adjustments consist of alterations in the amount, terms, conditions, project period, or some other administrative, technical, or financial aspect of the agreement. Depending upon the significance of the change, adjustments can be made either through formal amendments or in writing between the RSPO and the SPO. (Some agreement adjustments will require prior changes in the RAP.)

Criteria for determining the type of adjustment required and the responsibilities of the RSPO and SPO in effecting these adjustments are discussed below for both State- and EPA-lead projects. They are also presented graphically in Exhibit VIII-2, following Exhibit VIII-1.

#### A.1 Adjustments to State-Lead Projects

Significant changes occur when:

- . Objectives and/or scope of the project, as funded, are altered
- . Funds obligated under one remedial accounting code will be used for a different remedial activity or a different site
- . There is any increase or a substantial decrease in the project period or budget

EXHIBIT VIII-1  
AGREEMENT MODIFICATIONS

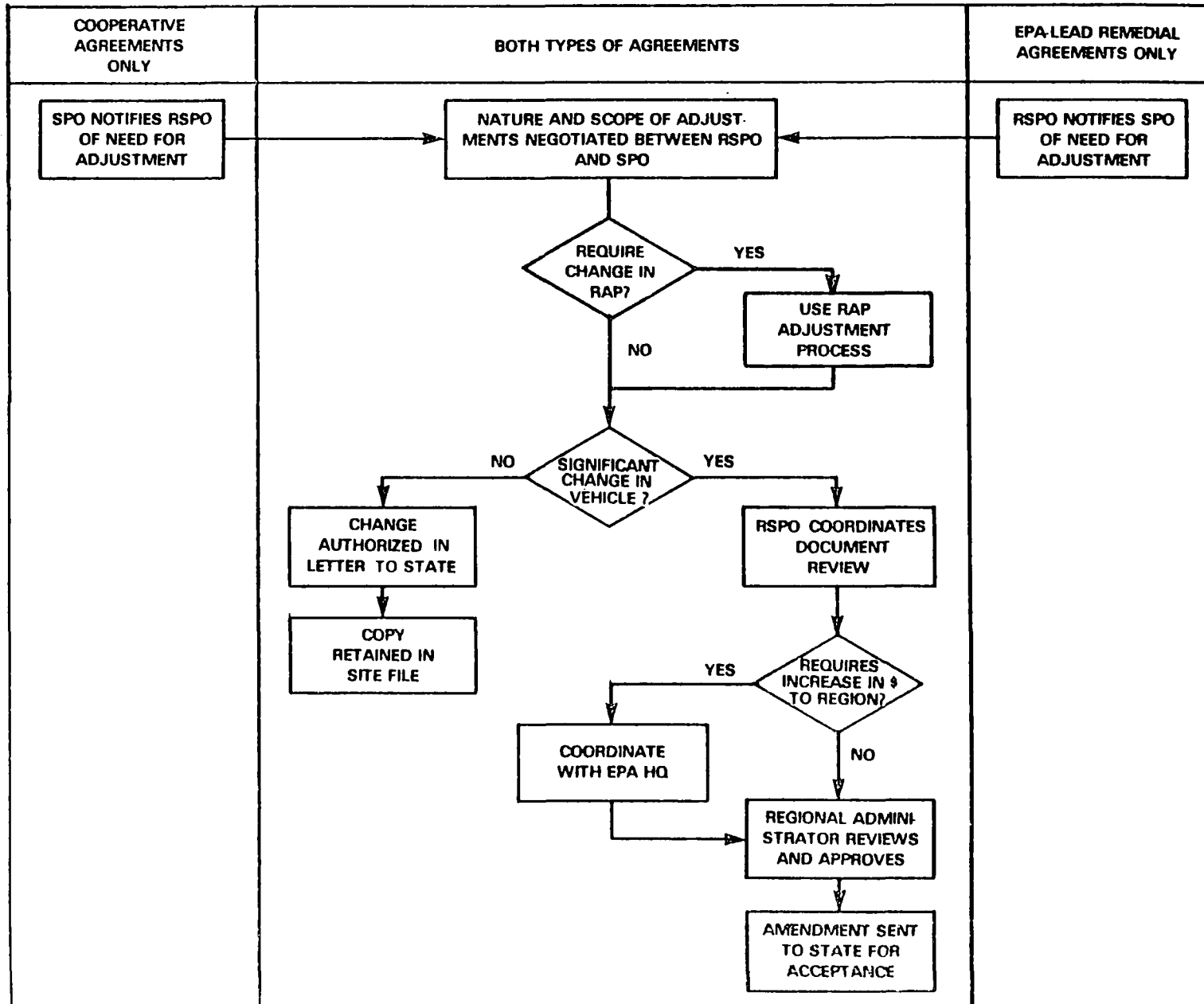
ACTIVITY	RESPONSIBILITIES		WORK PRODUCTS	ADDITIONAL GUIDANCE
	STATE-LEAD	EPA-LEAD		
1. Project Adjustments	SPO:	. Identifies changes to be made to Cooperative Agreement	SPO:	. Negotiates changes to EPA-lead agreements with RSPO
		. Negotiates minor and administrative changes with RSPO		. Effects minor changes to EPA-lead agreements in writing
		. Initiates amendment request, if required		. Letters between SPO and RSPO making changes
	RSPO:	. Approves minor changes and concurs on administrative changes, with necessary approvals	RSPO:	. Identifies changes that must be made to State-lead agreement
		. Forwards State amendment request to Regional Award Official		. Determines whether changes require amendment
				. Negotiates and effects minor changes in writing with SPO
				. Initiates amendment request, if required
	ZONE MGR:	. Coordinates with OERR-FCC on transfer of funds		
2.A Initiation of Remedial Design and Remedial Action - Record of Decision	SPO:	. Coordinates with RSPO to prepare ROD	SPO:	. Same as State-lead
		. Acts as chief point of contact for State in ROD preparation		. Record of Decision
		. Renegotiates agreement with RSPO, if required		. Supporting documentation
	RSPO:	. Prepares ROD, transmittal memo, and compiles documenting information	RSPO:	. Same as State-lead
		. Coordinates Regional review and concurrence		. Transmittal memo
		. Submits ROD to appropriate personnel in HQ		. <u>Record of Decision Guidance</u> , OSWER, August 25, 1982,
		. Renegotiates agreement with State, if required		. Appendix O, Sample Record of Decision
		. Makes change in RAP to approve new activity		
	ZONE MGR:	. Coordinates HQ review, concurrence, and approval of ROD	ZONE MGR:	. Same as State-lead

EXHIBIT VIII-1  
AGREEMENT MODIFICATIONS

ACTIVITY	RESPONSIBILITIES		EPA-LEAD	WORK PRODUCTS	ADDITIONAL GUIDANCE
	STATE-LEAD				
2.B Initiation of Remedial Design and Remedial Action - Incorporating RD/RA into an Agreement	SPO:	<ul style="list-style-type: none"> <li>. Develops C/A application/ amendment</li> <li>. Develops C/A provisions</li> <li>. Submits Revised CRP, certification letter, Procurement Check-list</li> <li>. Intergovernmental review comments</li> </ul>	SPO:	<ul style="list-style-type: none"> <li>. Acts as chief point of State contact in modifying MOU or negotiating SSC</li> <li>. Submits new State letter of request (if applicable)</li> <li>. Negotiates agreement terms with RSPO and reviews agreement during development</li> <li>. Reviews CRP</li> <li>. Submits certification letter, as necessary</li> </ul>	<ul style="list-style-type: none"> <li>. Agreement amendment or new remedial agreement</li> </ul>
	RSPO:	<ul style="list-style-type: none"> <li>. Provides consultation and technical assistance, as requested</li> <li>. Coordinates approval of agreement/amendment</li> </ul>	RSPO:	<ul style="list-style-type: none"> <li>. Negotiates agreement terms with RSPO</li> <li>. Develops MOU modifications/SSC</li> <li>. Submits CRP</li> <li>. Coordinates EPA approval of MOU amendment or SSC</li> </ul>	<ul style="list-style-type: none"> <li>. Guidance, Chapters 3-5</li> </ul>
	ZONE MGR:	<ul style="list-style-type: none"> <li>. Supports RSPO, as requested</li> </ul>	ZONE MGR:	<ul style="list-style-type: none"> <li>. Supports RSPO, as requested</li> </ul>	
3. Initiation of Operation and Maintenance	SPO:	<ul style="list-style-type: none"> <li>. Develops C/A application/amendment</li> <li>. Develops C/A provisions</li> <li>. Submits revised CRP, certification letter, Procurement Checklist, Intergovernment review comments</li> </ul>		<ul style="list-style-type: none"> <li>. Cooperative Agreement or amendment</li> </ul>	<ul style="list-style-type: none"> <li>. Guidance, Chapter 3</li> </ul>
	RSPO:	<ul style="list-style-type: none"> <li>. Provides consultation and technical assistance, as requested</li> <li>. Coordinates approval of agreement/amendment</li> </ul>			
	ZONE MGR:	<ul style="list-style-type: none"> <li>. Supports RSPO, as requested</li> </ul>			

# EXHIB. VIII-2

## PROJECT ADJUSTMENTS APPROVAL PROCESS



- . A rebudgeting of funds occurs, involving either a transfer between construction and another object class category or a change in the amount of indirect costs.

A formal amendment must be issued by the Award Official in the event that a significant change occurs; one is also required to make any changes in special conditions.

In contrast, formal amendments are not required for minor project changes which are consistent with the project's remedial objectives -- such as small budget shifts between object class categories (except as indicated above) and adjustments to the work plan within the scope and objectives of the funded project -- or for administrative changes -- such as the designation of a new RSPO. Such changes should be approved in writing by the RSPO or the Award Official, as appropriate. If approval of the Award Official is required -- usually for administrative alterations -- the RSPO should transmit the State's request and draft a memorandum indicating RSPO approval to the Award Official for issuance of written confirmation.

Responsibility for requesting and obtaining approval of adjustments to the Cooperative Agreement rests with the SPO and RSPO. The SPO identifies the need for an adjustment and initiates the approval process by submitting a request to the Region. The RSPO then determines whether a formal amendment is needed, and if so, transmits the request to the Award Official. If the Award Official signs the amendment, it is sent to the State for acceptance and is executed upon signature by an authorized State official.

#### A.2 Adjustments to EPA-Lead Projects

Significant changes that may merit a formal amendment to a MOU or SSC include:

- . Changes in objectives or scope of the project
- . Changes to other terms of the agreement
- . Changes in total project costs such that total costs will exceed the ceiling limit set in the payment terms.

In the case of minor project changes, the agreement usually gives the RSPO and SPO the authority to make modifications which do not increase the project scope or total costs.



Responsibility for identifying the necessity of and obtaining approval for changes to an EPA-lead project lies with the RSPO and the SPO. The RSPO should determine when the agreement requires modification, whereupon the RSPO should negotiate these with the SPO. Such changes can be implemented in written correspondence between the project officers.

A formal amendment to the SSC should be negotiated between the RSPO and the SPO. When agreement has been reached on the terms of the amendment, the RSPO should prepare an amending document and forward it to the Regional Administrator (RA) for approval. After the document has been signed by the RA, it should be transmitted to the SPO to obtain the signature of an authorized State official. Upon signature, the amendment is executed.

## **B. INITIATION OF REMEDIAL DESIGN AND REMEDIAL ACTION**

Following completion of a feasibility study, it is necessary to negotiate a new agreement or modify the existing one to cover remedial design and allow the initiation of remedial implementation; this is the second type of agreement modification. The new activities must also appear in a final, approved RAP. Prior to either of these, however, the selected remedy must be formally approved by the AA, SWER. Approval is documented through use of a Record of Decision (ROD). The remainder of this section provides a general description of the approval process for a remedy as well as the incorporation of remedial design and/or remedial implementation into an agreement between EPA and the State.

### **B.1 Records of Decision (RODs)**

Pursuant to section 104(c)(4) of CERCLA and subsequent delegations of authority, the AA, SWER is required to specifically select any remedial action prior to its initiation. Although Cooperative Agreements and EPA-lead remedial response agreements will be negotiated and executed in the Regions, the AA, SWER in EPA Headquarters will retain authority for selecting a remedy. Initial remedial measures (IRMs), however, may be selected by the RA; the selected IRM must also meet NCP requirements.\*

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\* Selection of IRMs not involving off-site storage, treatment, or disposal may not require completed ROD packages as outlined in this section; however, approval should be incorporated into a modified ROD, an Action Memorandum, or some other document signed by the RA. Selection of IRMs involving off-site storage, treatment, or disposal must be documented in a ROD.

The ROD is an approval and briefing document developed for obtaining and officially recording the AA's selection of a specific remedy. It is sent from the RA to the AA, recommending either a remedial option or the "no action" alternative for the site, and should contain the following information:

- . Background data on the site
  - . References to analyses and reports reviewed in determining the appropriateness of the remedy
  - . Declarations that the State has been consulted in the determination of the appropriate remedy; that the selected option is cost-effective and appropriate when balanced against use of the Fund to respond to other sites; and that the option effectively mitigates or minimizes danger to, and provides adequate protection of, public health, welfare, or the environment
  - . For actions involving off-site disposal, declarations that the action is more cost-effective than other remedial actions; will create new capacity to manage hazardous substances; or is necessary to safeguard public health, welfare, or the environment
  - . A summary of the selected remedial options and their costs.
- . The ROD should also include a section to document the approved period and extent of EPA cost-sharing for O&M activities. This section should contain the following information:
- . Identification of O&M necessary for the selected remedy, including on-site monitoring
  - . Length of time O&M will be required
  - . Total estimated O&M costs
  - . Identification of the State agency which will be responsible for O&M
  - . The RA's recommendation of the period of time (up to a maximum of one year) during which EPA will share in the costs of O&M.

When recommending the period of time for EPA O&M cost-sharing, the RA should consider the individual circumstances of both the site and the State involved. Factors which may be taken into account include the type and cost of the O&M, financial capability of the State, and the importance of the O&M activities to the effectiveness of the remedy. Data contained in the O&M section will be a factor in the AA's selection of remedy; the cost-effectiveness of an alternative can therefore be judged on total life cycle costs, including those for O&M, rather than solely upon costs of the remedial action itself. Active involvement of legal staff in preparing the O&M section is important since cost recovery efforts will include O&M costs.

Attachments to the ROD should provide sufficient information to justify the recommended remedy. These should include the following components:

- . A summary sheet, which can be used to brief the AA on the proposed remedy and site requirements
- . A more detailed narrative summary describing the site, its enforcement status, and the rationale for recommending an action
- . Other supporting documentation, such as the feasibility study report, analysis of the recommended alternative in terms of RCRA requirements, and a responsiveness summary which contains a review of public inquiries and comments, the issues and concerns raised, and how EPA or the State responded (see Community Relations Policy, "May 9, 1983, in Appendix P).

The ROD package should also highlight any potential problems or policy issues affecting the AA's decision and should demonstrate close coordination among EPA, the State, and the local community.

The RSPO, with assistance from the SPO and the Regional Superfund Community Relations Coordinator (RSCRC), is responsible for developing both the ROD and a memorandum from the RA, and transmitting the ROD to EPA Headquarters. The transmittal memorandum contains the RA's recommendations to the AA and the estimated costs of the recommended remedy, including State and EPA O&M costs. Representatives of the State as well as EPA and State legal and enforcement staff should be actively involved in preparing the ROD package.

The ROD package, containing the ROD, ROD attachments, and the transmittal memorandum, should be sent to the Hazardous Site Control Division (HSCD) for Headquarters review and concurrence. Following this review, the package will be forwarded to the AA, SWER for approval and signature. The AA is not obligated to authorize an entire remedial implementation project. It is possible that, for purposes of Fund-balancing, the AA may approve an obligation only for one operable unit or activity (such as remedial design) or may delay funding for O&M until a later time.

For a more detailed description of the ROD and procedures for its development and approval, refer to Record of Decision Guidance, OSWER, August 25, 1982. A sample ROD with supporting documentation is also provided in Appendix O.

## B.2 Incorporating Remedial Design and Remedial Action Into an Agreement Between EPA and the State

Once the ROD has been approved and the project included in the Region's final RAP, development of a new agreement or an amendment to an existing agreement between EPA and the State can begin. When there is an existing Cooperative Agreement or SSC for the site, initiation of remedial design and/or remedial implementation will normally be accomplished through an amendment to the existing agreement.

The amendment negotiation process generally follows the steps identified in Chapters III-V of this document. When an MOU or State letter of request is used to cover remedial planning at the site, the State may amend the MOU or may submit a new request letter for the remedial design. However, a Cooperative Agreement or an SSC must be negotiated before remedial implementation can be undertaken.

In any case, EPA and the State must agree upon a project SOW, develop budgets (for a Cooperative Agreement), negotiate State cost-sharing terms (for an SSC), address EPA general and programmatic requirements, and review and approve the resulting agreement in the manner described earlier in this document. Refer to the appropriate chapters of this guidance for detailed procedures for completing these steps.

If, however, the AA selects the "no action" alternative presented in the ROD for the site, any existing agreement is terminated.

### C. INITIATION OF OPERATION AND MAINTENANCE

Following completion of a remedial action, the State must assume responsibility for any O&M requirements associated with the remedy. This will begin with the period during which EPA shares in the costs of O&M (for a period not to exceed one year) as formally approved by the AA, SWER.

The State is required by CERCLA section 104(c)(3)(A) to assure that it will assume responsibility for all O&M activities. In keeping with this provision, it is EPA policy that all O&M activities for which the Agency provides a cost share will be State-lead. Any EPA cost-sharing approved by the AA, SWER in the ROD must therefore be provided through a Cooperative Agreement. If the remedial action has occurred under a Cooperative Agreement, that Agreement will normally be amended to cover O&M cost-sharing. EPA's share of O&M costs may be obligated at the same time as Federal funds for the remedial action, if the remedial action is of relatively short duration, or they may be obligated when that action is nearly completed. In either case, the SOW for the O&M portion of remedial implementation may be approved at the time that the remedial action is funded.

If a remedial action occurs through an SSC, the State must enter into a Cooperative Agreement with EPA to obtain any approved O&M cost-sharing. Procedures for developing a Cooperative Agreement can be found in Chapter III of this document.