United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response

EPA

DIRECTIVE NUMBER: 9375.1-06

TITLE: Cooperative Agreements with Political Subdivisions for Remedial Response

APPROVAL DATE: 07/12/87

EFFECTIVE DATE: 07/12/87

ORIGINATING OFFICE: OERR

☒ **FINAL**

☐ **DRAFT**

STATUS:
[ ] A- Pending OMB approval
[ ] B- Pending AA-OSWER approval
[ ] C- For review &/or comment
[ ] D- In development or circulating headquarters

REFERENCE (other documents):
Supplements Directive 9375.1-04

OSWER OSWER OSWER
VE DIRECTIVE DIRECTIVE DI

EPA

United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9375.1-06

2. Originator Information

Name of Contact Person	Mail Code	Office	Telephone Code
Deborah Swichkow	WH-548E	OERR/HSCD	382-2453

3. Title

Award of Cooperative Agreements to Political Subdivisions

4. Summary of Directive (include brief statement of purpose)

Establishes procedures for providing funding to political subdivisions to perform remedial activities through Cooperative Agreements.

5. Keywords
Superfund, CERCLA, State participation, response agreements, procedures, political subdivisions

6a. Does This Directive Supersede Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

b. Does It Supplement Previous Directive(s)? [ ] No [X] Yes What directive (number, title) 9375.1-04
State Participation in the Superfund Program

7. Draft Level
[ ] A -- Signed by AA/DAA [ ] B -- Signed by Office Director [ ] C -- For Review & Comment [ ] D -- In Development

8. Document to be distributed to States by Headquarters? [X] Yes [ ] No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator Richard Roder, OERR Directives Coordinator	Date 2/20/87
10. Name and Title of Approving Official Peter Hubbard, OSWER Directives Officer	Date 3/23/88

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

OSWER OSWER OSWER O
VE DIRECTIVE DIRECTIVE DIRECTIVE

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

FEB 12 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Cooperative Agreements With Political Subdivisions for Remedial Response (Directive No. 9375.1-6)

FROM: Henry L. Longest II, Director
Office of Emergency and Remedial Response

TO: Waste Management Division Directors
Regions I through X

Attached is the guidance for cooperative agreements with political subdivisions (OSWER Directive 9375.1-6). It provides information to the Regions, States, and political subdivisions on the criteria, procedures and requirements for a political subdivision lead for remedial activities at NPL sites. This guidance was developed via the Multi-Site Cooperative Agreement (MSCA) Workgroup that included State representatives from the Association of State and Territorial Solid Waste Management Officials as well as the Regions, the Office of Waste Programs Enforcement, the Office of General Counsel and the Grants Administration Division. Draft guidance developed by the workgroup was distributed to the Regions for their comment on October 7, 1986.

Background

CERCLA section 104(d)(1) authorizes EPA to enter into a cooperative agreement with a State or political subdivision that has the capability to carry out fund-financed response actions taken at a site, but CERCLA requires States not political subdivisions, to provide the required section 104(c)(3) assurances. While SARA retains the flexibility to enter into a cooperative agreement with either a State or political subdivision, it increases State involvement during remedial response and still requires a State to make the required assurances. The guidance describes two options for political subdivision-lead actions that ensure State involvement during remedial response and provide the mechanism for obtaining the State's required assurances.

Guidance Summary

EPA may enter into a cooperative agreement with a State that intends to pass funds through to a political subdivision that will actually perform the work. This relationship is similar to current State/contractor relationships and is consistent with 40 CFR 33.260 requirements pertaining to intergovernmental agreements between State and local governments. This is the easiest way to provide assistance to a political subdivision for its participation during response and for obtaining a State's required assurances.

The second option discussed in the guidance permits EPA to enter into a cooperative agreement with a political subdivision and describes the three-party contract between EPA, the State, and the political subdivision necessary to ensure State involvement during remedial response and to obtain the State's required assurances. The State can be awarded a cooperative agreement for management assistance.

Summary of Comments on Draft Guidance

Although the majority of commenters responded positively to the use of a three party contract, two commenters were concerned that such a mechanism would cause delays in performing site activities since SARA requires more rapid clean up of sites.

We reexamined the rationale for requiring the use of the three party contract and find it provides the best means of ensuring coordination and legal recourse for all parties to the contract. Although development of the three party agreement will require time, it is preferable to obtain agreement of all three parties upfront rather than encounter disagreements during the course of the project. If a three party agreement is untimely or cumbersome, a political subdivision lead may not be the best choice for that particular site.

For a cooperative agreement to a State with a "pass through" to a political subdivision, a commenter wanted EPA to have approval authority over the Intergovernmental Agreement between the State and the political subdivision. This is inconsistent with the intent of intergovernmental agreements developed in accordance with 40 CFR 33.260 and with our guidance that encourages States to assume responsibility for managing fund-financed actions consistent with applicable regulations and program requirements.

For a cooperative agreement directly with a political subdivision, a commenter wanted EPA to require the State to submit a written determination of the validity of a political subdivision as such. This procedure is not necessary since this determination is up to the State, not EPA. The State

would not transmit to EPA a request from an entity that did not meet its definition of a political subdivision. However, it is EPA's responsibility to determine whether the political subdivision is eligible for assistance and capable of carrying out the response actions.

A commenter thought that the request for a cooperative agreement with a political subdivision must come from the State and suggested that a letter from the State approving the subdivision lead would be sufficient. This is the intent of the guidance and it has been rewritten for clarity.

We agreed that due to resource requirements, it may be difficult for the States to evaluate the political subdivision's capabilities. Therefore, the guidance has been changed to provide the option of either the State providing the evaluation of the political subdivision's capabilities or the political subdivision providing documentation of its capabilities to EPA via the State.

Several commenters suggested specific changes in the guidance to reflect the situation in their particular Region. We have developed the guidance on a level that is applicable to all Regions and expect the Regions to tailor their implementation to the particular situation. The actual title of EPA's representative may vary from Region to Region depending on the stage of development of the draft cooperative agreement and who is designated to interact with the State. This may be the RPM or a different individual. (The State Participation Manual describes the roles of the RPM and the cooperative agreement project officer.)

A commenter requested that we identify the roles of the EPA RPM and the political subdivision representative as well as the State Project Officer. In actuality, the RPM role does not differ from the one he/she plays during the development and execution of a State-lead cooperative agreement or a Federal-lead SSC. The role of the representative of the political subdivision is the same as that of the State project officer during a State-lead remedial project. A highly detailed list of duties and points of coordination would not cover all the potential responsibilities for all projects. Therefore, we have indicated the general duties of EPA's RPM and the political subdivision's representative in the guidance and have referenced that the details of these roles can be found in the State-lead RPM manual. It

should be noted that although the political subdivision has the same type of involvement in coordination activities as the State, it does not have all the same responsibilities as are required of the State. These differing State responsibilities include provision of CERCLA 104(c)(3) assurances, concurrence in the ROD and deletion of the site from the NPL.

Several commenters asked for clarification of the enforcement mechanism for a political subdivision lead project. These have been described in the guidance and as follows:

Under CERCLA section 104(d)(2), when EPA enters into a contract or cooperative agreement and the recipient State or political subdivision fails to comply with any requirements, EPA may seek in the appropriate Federal district court to enforce the contract or agreement or to recover any funds advanced or any costs incurred due to breach of the contract or agreement by the State or political subdivision. Furthermore, the performance of the political subdivision on the project can be enforced under the cooperative agreement. The duties and responsibilities of EPA, the political subdivision and the State are enforceable under the terms of the three party contract.

Additions or further clarifications to the guidance were also made in response to comments that addressed State concurrence on the ROD and NPL deletion, submission of the community relations plans and the quality assurance project plans as well as various minor editorial changes or additions.

Conclusion

Regions are encouraged to communicate with Headquarters during the implementation of this guidance to ensure a consistent national approach. Questions should be directed to Jan B. Wine, Chief, State Programs Section, or Bobbie Lively-Diebold at 382-2443.

Attachment

AWARD OF COOPERATIVE AGREEMENTS TO POLITICAL SUBDIVISIONS

A. PURPOSE

The purpose of this guidance is to establish the policy and procedures for providing funding to political subdivisions to perform remedial activities through Cooperative Agreements. The roles of EPA, the State, and the political subdivision are also discussed. This guidance is limited to award of Cooperative Agreements for remedial planning and remedial implementation activities, and does not apply to pre-remedial activities. Exhibit 1 shows those remedial activities that are eligible for political subdivision lead. The issue of a political subdivision-lead for removal activities will be considered after the development of guidance for State-lead removal actions. Political subdivision-leads for overseeing an enforcement response may be considered after experience is gained with State-lead enforcement activities conducted through Cooperative Agreements.

There are two mechanisms for providing funds to a political subdivision:

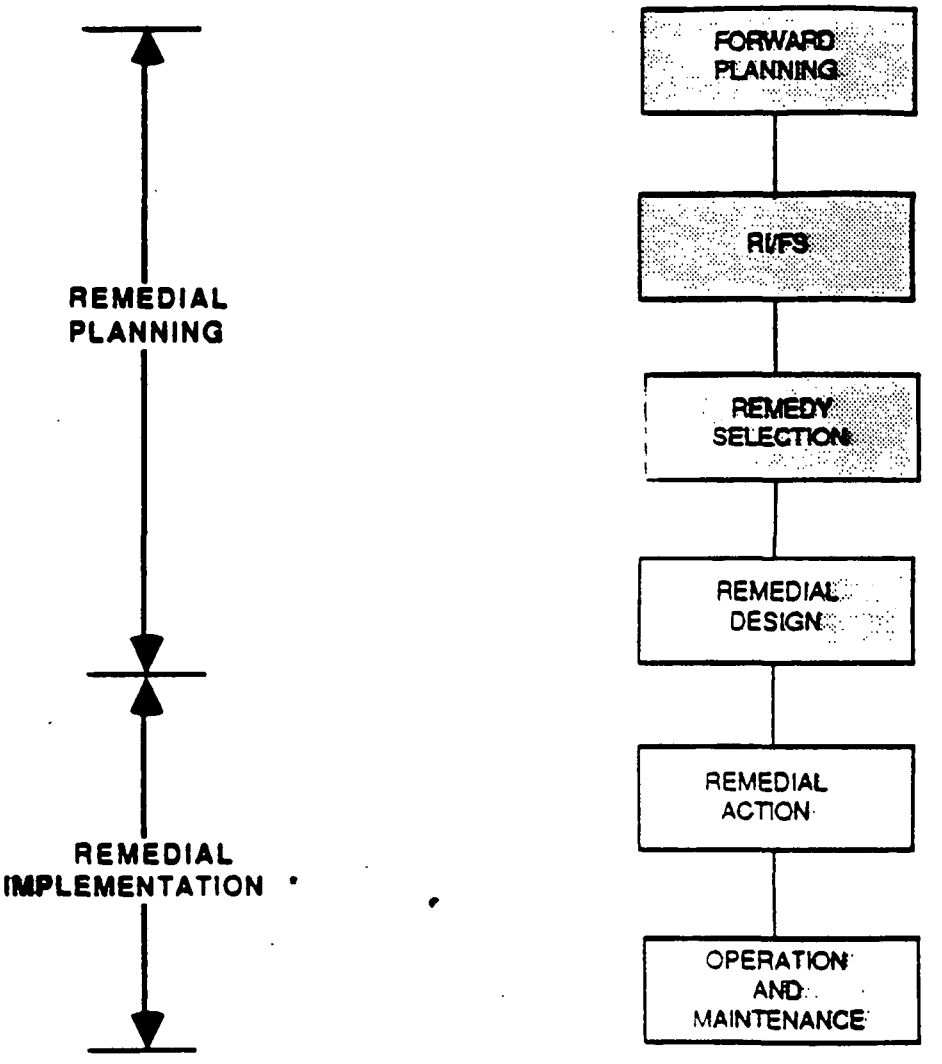
- A Cooperative Agreement with the State with a "pass through" to a political subdivision, along with a two-party Intergovernmental Agreement prior to costs being incurred.

- A Cooperative Agreement with a political subdivision with an enforceable three-party contract that defines roles and responsibilities of all parties, is amendable, and is the vehicle to provide a State's CERCLA section 104(c)(3) assurances.

B. BACKGROUND

CERCLA section 104(d)(1) authorizes EPA to enter into Cooperative Agreements with political subdivisions of States for response actions taken under section 104. Written guidance is intended to ensure a workable, consistent approach on a national basis for those Regions/States that find such an arrangement desirable. Approval of a political subdivision-lead for remedial activities is discretionary and requires the full support and approval of the appropriate State agency Director and the EPA Regional Administrator. CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) permits political subdivisions that have the

EXHIBIT 1
SUPERFUND REMEDIAL ACTIVITIES
ELIGIBLE FOR POLITICAL SUBDIVISION-LEAD



* CERCLA fund-financed remedial action may be undertaken only at sites on the final NPL; other activities may be initiated at any time after a site is proposed for the NPL.

necessary capabilities and jurisdictional authority to have an active role in directly managing response activities; however, SARA has assigned States a larger role with expanded responsibilities. This emphasizes the need to clearly delineate, in a legally binding manner, the responsibilities of EPA, the State, and a political subdivision during fund-financed remedial response, thereby offering adequate recourse to all parties.

C. DEFINITION OF A POLITICAL SUBDIVISION

What legally constitutes a "political subdivision" differs from State to State; therefore, it is left to each State to determine what unit of government meets its legislative definition of a political subdivision that may qualify for assistance for Superfund response actions.

D. COOPERATIVE AGREEMENT WITH THE STATE WITH A PASS THROUGH TO A POLITICAL SUBDIVISION

A State-lead Cooperative Agreement with a pass through to a political subdivision is one method of funding a political subdivision to perform a remedial activity. The State must enter into a two-party Intergovernmental Agreement with the political subdivision that describes the roles, responsibilities, and timing of actions by both parties during the response activities. This agreement must be in place before the State or political subdivision incurs costs for field activities. The State retains the ultimate responsibility for overseeing the activities of the political subdivision and for ensuring that funds are properly expended in accordance with statutory and regulatory requirements. The State must comply with 40 CFR Parts 30 and 33; the political subdivision also must comply with 40 CFR Part 33. EPA is not required to review and approve the Intergovernmental Agreement. The Intergovernmental Agreement must be:

- Provided as an attachment to the State Cooperative Agreement application;
- Developed under a task in the workplan; or
- Required by a special condition in the Cooperative Agreement.

E. AWARD OF A COOPERATIVE AGREEMENT TO A POLITICAL SUBDIVISION

E.1 Application and Approval Process

The request for designation of a political subdivision-lead Cooperative Agreement must be made by the State agency authorized by the Governor as the point of contact with EPA on Superfund. The draft Cooperative Agreement application prepared by the political subdivision and other required documents must be submitted to EPA by the State. Applications submitted directly to EPA by a political subdivision will not be acted upon by the Regional Administrator. The following process must be used for the application and approval of a political subdivision-lead Cooperative Agreement:

1) The designated State agency makes a formal request by letter to the EPA Regional Administrator that a political subdivision or other State agency be designated as lead for remedial activities at a specific site or sites. The request must include as attachments:

   - A draft application for a Cooperative Agreement supplied by the political subdivision;

   - The State's analysis of the political subdivision's capabilities based on the appropriate criteria or documentation provided by the political subdivision to support that it possesses the required capabilities (see Section E.3);

   - The State's acknowledgement that it understands it is responsible for all CERCLA/SARA section 104(c)(3) assurances; and

   - Acknowledgement by both the State and the political subdivision that they will enter into a three-party contract with EPA.

2) The Regional Administrator, based on information in the State's request and the draft Cooperative Agreement application, will evaluate the merit of the State's request versus the merit of conducting a Federal- or State-lead response. The Regional grants office and RPM will review the draft Cooperative Agreement application to ensure conformance with applicable Agency regulations and program requirements. After this review is completed, the RPM, with input from the Regional

Counsel and the grants office, will develop the draft Superfund State/Political Subdivision Contract (SS/PSC) that defines the roles, responsibilities, and concerns of EPA, the political subdivision, and the State.

3) With the Region's written approval for a political subdivision-lead, the political subdivision will develop and submit to EPA through the State the final Cooperative Agreement application. The draft SS/PSC will be finalized by the RPM based on input and agreement from the political subdivision and the State. The political subdivision-lead designation becomes effective after all parties sign the three-party agreement and the Award Official and the political subdivision sign the Cooperative Agreement.

E.2 Superfund Comprehensive Accomplishments Plan (SCAP)

The project being proposed for political subdivision-lead must be on the annual SCAP and the lead designation process should not delay the SCAP target dates. Whenever possible, the State should determine the appropriateness of a political subdivision-lead during the SCAP development process and submit its formal written request to EPA no later than six months prior to the planned project start date.

If the project has been placed on the SCAP with State- or Federal-lead designation, the SCAP must be amended to reflect the change in lead to a political subdivision.

E.3 Analysis of a Political Subdivision's Capabilities

The analysis or documentation of a political subdivision's capabilities provided to the Regional Administrator by the State or political subdivision in its application must address:

- Jurisdictional responsibility of the political subdivision;

- Whether or not the political subdivision may be considered to be a potentially responsible party (PRP);

- Whether or not the political subdivision has a demonstrated history in addressing problems at the site;

Whether or not the political subdivision has experience in performing work similar to that to be funded in the Cooperative Agreement;

Whether the political subdivision will manage O&M, regardless of who cleans up the site;

Whether direct participation by the political subdivision is likely to be more economical or efficient than either a State- or Federal-lead;

Whether the political subdivision has existing authority to conduct the remedial activities;

Whether the political subdivision has the existing authority to enter into a Cooperative Agreement with the Federal Government and the financial and management capabilities to administer Federal funds;

- Whether the political subdivision has an established liaison role with State and local agencies involved in problems at the site;

- Capability of the political subdivision to comply with 40 CFR Parts 30 and 33 (including an accounting system that accurately reflects costs and retains records for cost recovery purposes; see Appendix U of the manual State Participation in the Superfund Program).

A political subdivision that is a known PRP will not be eligible for a Cooperative Agreement.

E.4 Preparation of a Political Subdivision's Cooperative Agreement Application

The guidance on preparation of State Cooperative Agreement applications in the manual State Participation in the Superfund Program is applicable (with a few exceptions noted here) for use by the political subdivision in developing its application. The special conditions in Appendix F of the manual are applicable and should be modified to reflect the political subdivision-lead. Exhibit 2 gives a checklist for attachments to the Cooperative Agreement package. However, the State is responsible for providing CERCLA section 104(c)(3) assurances at the time of remedial action.

EXHIBIT 2
CHECKLIST FOR COOPERATIVE AGREEMENT APPLICATION PACKAGE

1. APPLICATION FOR FEDERAL ASSISTANCE

____	Part I-General Summary Information	• Part I, completed and signed
____	Part II-Project Approval Information	• Part II, completed
____	Part III-Budget Information	• Part III, completed • Detailed budget breakdown, by site and activity
____	Part IV-Project Narrative Statement	• Site background summary • Statement of work
____	Part V-Assurances	• Part V, completed (distinct from CERCLA section 104(c)(3) assurances)

2. ATTACHMENTS

____	Procurement System Certification	• Completed EPA Form 5700-48
____	Intergovernmental Review Comments	• Comments included, as appropriate
____	Community Relations Plan (CRP) *	
____	Quality Assurance Project Plan (QAPP) *	
____	Site Safety Plan *	

---

* In some cases, these plans will be developed by the political subdivision following Cooperative Agreement award. When these plans are not attached to the Cooperative Agreement application, a special condition should accompany the award, requiring these plans to be in place prior to the initiation of field activities.

E.5 State Superfund/Political Subdivision Contract

All political subdivision-lead Cooperative Agreements require a three-party SS/PSC to be in place prior to award. The SS/PSC:

- Defines roles and responsibilities of EPA, the State, and the political subdivision
- Serves as the vehicle for substantial and meaningful involvement by the State in initiation, development, and selection of the remedial action to be undertaken
- Can be amended at each phase of response
- Can be amended to provide State CERCLA section 104(c)(3) assurances
- Is enforceable.

A topic outline for the SS/PSC is included as Exhibit 3. The Cooperative Agreement is incorporated as part of the three-party contract (SS/PSC).

The RPM is responsible for developing the SS/PSC just as he/she is responsible for developing an SSC used during a Federal-lead remedial response. The RPM also is responsible for managing the Cooperative Agreement and the SS/PSC.

E.6 Relationship of the Superfund State/Political Subdivision Contract to the Cooperative Agreement

The Cooperative Agreement is incorporated as part of the SS/PSC by reference. The SS/PSC contains CERCLA/SARA section 104(c)(3) assurances provided by the State, and articles or provisions that relate to all three parties in the contract (roles, responsibilities, timing, etc. See Exhibit 3 and Appendix H in the State Participation manual). The Cooperative Agreement with the political subdivision contains the provisions (special conditions) specific to the project being funded (see Appendix F). Exhibits 4 and 5 display the object class categories and the appropriate level of detail for the itemized Cooperative Agreement application budget.

E.7 Definition of Roles

The SS/PSC must identify the EPA RPM, the representative of the political subdivision and the SPO who will interact with each other during the fund-financed action. The SPO will:

EXHIBIT 3
CHECKLIST FOR ARTICLES IN SUPERFUND STATE/POLITICAL SUBDIVISION CONTRACT

GENERAL RESPONSE ARTICLES FOR ALL ACTIVITY PHASES

- Authority
- Purpose of the Agreement
- Parties to the Agreement
- Designation of State, EPA, and Political Subdivision Project Officers
- Responsibilities of EPA, State, and Political Subdivision
- Coordination of Parties Participating in Response
- Duration of the Agreement
- Amendments to the Agreement
- State Involvement per NCP
- Reporting Requirements
- Submission of Documents
- Third Parties
- State Involvement in Community Relations
- Failure to Comply with Terms of the Agreement

RESPONSE AGREEMENT ARTICLES FOR RI/FS

- Fund Balancing
- Site Access and Permits
- Acknowledgement of Provision of CERCLA Assurances by State
- Finding of No Significant Threat*

RESPONSE AGREEMENT ARTICLES FOR REMEDIAL DESIGN, REMEDIAL ACTION, AND O&M

- CERCLA Section 104(c) (3) Articles
- Design Review
- Remedial Action Inspections
- Final Inspection
- Remedial Action Report
- Remedy Shakedown Period
- Acceptance of Remedy
- Transfer of Guarantees and Warranties
- Contract Closeout*
- NPL Deletion**

* Contract closeout can take place after completion of RI/FS with a finding of no significant threat.

** NPL deletion can take place in RI/FS with a finding of no significant threat.

EXHIBIT 4
OBJECT CLASS CATEGORIES CONTENT REQUIRED FOR COMPLETING COOPERATIVE AGREEMENT BUDGET SHEETS

CATEGORY	CONTENT - THE POLITICAL SUBDIVISION MAY INCLUDE:
Personnel	• Costs of wages paid to political subdivision employees who are engaged in response activities. (Calculated either as a percentage of time or LOE basis.)
Fringe Benefits	• Fringe benefits for political subdivision employees, calculated as a fixed percentage of salary or by some other agreed-upon method.
Travel	• Costs incurred by political subdivision employees for travel necessary for the remedial activities.
Equipment	• Purchase price of necessary equipment which the political subdivision furnishes, less its residual value after project completion. If equipment costs are based on usage rates, the costs are calculated by a standard depreciation usage method or in accordance with OMB Circular A-102, Attach. N. *
Materials and Supplies	• Purchase price of any necessary materials and supplies the political subdivision furnishes.
Contractual Services	• Costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit for personal services and nonconstruction contracts. (See 40 CFR Part 33 and OMB Circular A-87.)**
Construction	• Costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit for construction contracts. (See 40 CFR Part 33 and OMB Circular A-87.)**
Other Direct Costs	• Costs such as equipment rental, real property purchase (see 40 CFR Part 30), and miscellaneous costs.
Indirect Costs	• The political subdivision may include indirect costs.

* See Appendix T of the manual State Participation in the Superfund Program for instructions for obtaining and disposing of equipment under Superfund Cooperative Agreements.

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

EXHIBIT 5
OBJECT CLASS CATEGORIES
APPROPRIATE LEVEL OF DETAIL FOR ITEMIZED COOPERATIVE AGREEMENT APPLICATION BUDGET

CATEGORY	INFORMATION
Personnel	• Positions of staff • Number of hours • Salary of staff (annual or hourly rate) • Estimates of personnel costs, by position
Fringe Benefits	• Basis (percentage or other) upon which fringe benefits are calculated • Estimates of fringe benefit costs, by position
Travel	• Purpose and estimated number of trips • Starting point and destination • Transportation method • Per Diem while on travel • Number of persons traveling • Estimated cost of trips
Equipment	• Special Superfund conditions for purchasing equipment * • Number and type(s) of equipment to be purchased • Price of each piece
Materials and Supplies	• Type(s) of materials and supplies to be furnished • Total prices
Contractual Services	• Estimated number of personal services or nonconstruction contracts • Nature of contract services • Estimated total cost for each contract **
Construction	• Estimated number of construction contracts to be let • Nature of contract services • Estimated total cost for each contract **

* See Appendix T of the manual State Participation in the Superfund Program for instructions for obtaining and disposing of equipment under Superfund Cooperative Agreements.

** Estimates should allow for bid and activity contigencies.

1) Interact with the political subdivision and EPA;

2) Participate in the decision-making process at key junctures of the project; and

3) Provide input into the remedy selection (ROD) process at the conclusion of the feasibility study.

The provision must discuss limitations and prerogatives of each party for making minor agreement changes.

E.8 Required Points of Coordination

The State is required, at a minimum, to perform the following activities:

- Review draft and final Cooperative Agreement applications and SS/PSC;
- Review all administrative reports, including the quarterly progress and financial status reports;
- Review the draft and final RI/FS and comment on the proposed alternatives;
- Certify compliance with State standards;
- Concur in the remedy and the ROD (the same as for Federal-lead procedures);
- With EPA, determine the need to pursue enforcement actions against PRPs for conduct of the response actions;
- Review and approve all designs and specifications during remedial design, prior to remedial action, and design changes during remedial action;
- Concur in any substantive changes in the scope of work or project costs;
- With EPA, jointly inspect the remedy at the conclusion of the remedial action;
- Accept the remedy;
- Concur in deletion of site from the National Priorities List; and
- Other points as applicable.

The responsibilities of the RPM do not differ from those during a State-lead Cooperative Agreement with an exception being the signature of three parties on the SS/PSC. The responsibilities of the representative of the political subdivision are the same as the SPO during a State-lead Cooperative Agreement. A detailed description of duties and responsibilities of the RPM and SPO are included in the Superfund State-Lead Remedial Project Management Handbook, OERR, December 1986.

E.9 Cooperative Agreements with Political Subdivisions During RD/RA/O&M

For RD/RA/O&M, the State must concur in the remedy selected by EPA in the ROD. The SS/PSC must state that the political subdivision will undertake the response activities and that this agreement is acceptable to all parties. The SS/PSC must be revised to include the next phase of response and specifically to provide for a formal acceptance of the remedy by the State before O&M commences. The SS/PSC must be amended to include the section 104(c)(3) assurances and must be signed by all parties before remedial action funds are obligated in the Cooperative Agreement with the political subdivision.

E.10 CERCLA Section 104(c)(3) Assurances

The State is responsible for providing the following CERCLA section 104(c)(3) assurances:

- Cost share;
- Future O&M of the remedial action at the site(s); and
- Availability of an acceptable off-site disposal facility, if required.

Although the State is responsible for these assurances, the political subdivision can share in the cost of the action and manage the O&M at the site.

Although the State must recognize its responsibility for CERCLA section 104(c)(3) assurances when it recommends to EPA that a political subdivision undertake the lead, these assurances are not required until the time of remedial action. Prior to the initiation of the remedial action stage of a project, the SS/PSC will be amended as appropriate to convey the CERCLA section 104(c)(3) assurances. The amended contract must be executed and signed

by all parties before remedial action funds are obligated in the Cooperative Agreement with the political subdivision. The SS/PSC must address the assurances as follows:

- Cost Share

  - The State may provide its required match in cash payments directly to EPA or to the political subdivision who in turn provides the required services as match in the Cooperative Agreement; or

  - The political subdivision may match on the State's behalf. The SS/PSC must indicate that this is acceptable to all parties.

- Off-Site Disposal Facility. If necessary, the State must secure an off-site disposal facility that the political subdivision can use in its request for bids to perform the remedial action and must provide this information as part of its assurances in the contract.

- O&M. The State must agree to assume responsibility for O&M and may designate the political subdivision as its manager. The State must agree to conduct the O&M if the political subdivision cannot fulfill all or part of this obligation and must identify in the contract how it would do so.

E.11 Enforceability

The political subdivision's performance on the project can be enforced under the executed Cooperative Agreement. The duties and responsibilities of EPA, the political subdivision, and the State are enforceable under the terms of the SS/PSC and the 40 CFR Part 30 provisions in the Cooperative Agreement. Under CERCLA section 104(d)(2), if EPA enters into a contract or Cooperative Agreement and the recipient State or political subdivision fails to comply with any requirements of the contract or agreement, EPA may seek in the appropriate Federal district court to enforce the contract or agreement or to recover any Federal funds advanced or any costs incurred due to breach of the contract or agreement by the State or political subdivision.

F. OTHER

There can only be one lead for any one phase of response in the site project. However, in a political subdivision-lead, the State, through an existing MSCA, can request management assistance to defray the cost of its coordination. If there is no MSCA in place, the State may apply for a single-site Cooperative Agreement for management assistance.

If a Cooperative Agreement (single-site or MSCA) is awarded to the State for management assistance, the special conditions are specific to the activity being performed under the Cooperative Agreement. CERCLA section 104(c)(3) assurances can be provided through the Cooperative Agreement for management assistance.