



DIRECTIVE NUMBER: 9831.1-1A

TITLE: CERCLA Funding of Oversight of Potentially
Responsible Parties by States at National
Priorities List Sites

APPROVAL DATE: October 1, 1986

EFFECTIVE DATE: October 1, 1986

ORIGINATING OFFICE: OWPE

☒ **FINAL** (Interim)

☐ **DRAFT**

LEVEL OF DRAFT

☒ **A** — Signed by AA or DAA

☐ **B** — Signed by Office Director

☐ **C** — Review & Comment

REFERENCE (other documents):

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<div style="display: inline-block; vertical-align: middle; margin-left: 10px;"> United States Environmental Protection Agency Washington, DC 20460 </div>		Interim Directive Number 9831.1-1A	
OSWER Directive Initiation Request			
Originator Information			
Name of Contact Person Anthony M. Diecidue		Mail Code WH-527	Telephone Number 382-4841
Lead Office <input type="checkbox"/> OERR <input type="checkbox"/> OUST <input type="checkbox"/> OSW <input checked="" type="checkbox"/> OWPE <input type="checkbox"/> AA-OSWER		Approved for Review Signature of Office Director <i>Abraham K. Hood for</i>	
		Date 9-29-86	
Title CERCLA FUNDING OF OVERSIGHT OF POTENTIALLY RESPONSIBLE PARTIES BY STATES AT NATIONAL PRIORITIES LIST SITES			
Summary of Directive Sets forth the policy and procedures for funding States in support of their oversight of private party response actions. Merges two previous oversight funding guidances into one comprehensive document (see below for directives number of these guidances). The Headquarters offices listed below have reviewed previously issued drafts of this guidance. They also reviewed and commented on this final guidance. Their comments have been incorporated into this final guidance, and serves as concurrence on the document: Office of Emergency and Remedial Response (Hazardous Site Control Division) Office of Enforcement and Compliance Monitoring Office of General Counsel			
Type of Directive (Manual, Policy Directive, Announcement, etc.) Guidance		Status <input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final <input type="checkbox"/> New <input checked="" type="checkbox"/> Revision	
Does this Directive Supersede Previous Directive(s)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Does it Supplement Previous Directive(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes" to Either Question, What Directive (number, title) 9831.1 and 9831.1(a), same titles as above.			
Review Plan <input type="checkbox"/> AA-OSWER <input type="checkbox"/> OUST <input checked="" type="checkbox"/> OECM <input checked="" type="checkbox"/> Other (Specify) National Association of Attorneys General <input checked="" type="checkbox"/> OERR <input checked="" type="checkbox"/> OWPE <input checked="" type="checkbox"/> OGC Association of State and Territorial Solid Waste Management Officials <input type="checkbox"/> OSW <input checked="" type="checkbox"/> Regions <input type="checkbox"/> OPPE			
This Request Meets OSWER Directives System Format			
Signature of Lead Office Directives Officer <i>Abraham K. Hood</i>			Date 9-29-86
Signature of OSWER Directives Officer			Date



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

OCT - 1 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: CERCLA Funding of Oversight of Potentially Responsible Parties by States at National Priorities List Sites

FROM: *J. Winston Porter*
J. Winston Porter
Assistant Administrator

TO: Addressees

This memorandum sets forth the policy and procedures for funding States in support of their oversight of private party response actions (OSWER Directive Number 9831.1-1A).

This final guidance explains the conditions to be met, tasks to be funded and levels of funding to be provided for remedial oversight activities. In previous drafts, oversight of remedial planning (January 17, 1986 guidance) and remedial implementation (March 26, 1986 guidance) were separately addressed. The attached guidance merges these previous drafts into one comprehensive document. An appendix is also included, outlining the enforcement provisions required in each cooperative agreement (CA) application and applicable provisions from Appendix F, State Participation in the Superfund Program.

The award of CAs under this guidance for fiscal year 1987 (assuming CERCLA reauthorization) will be on a pilot project basis. When determining which sites to fund as pilot projects, priority consideration should be given to States that demonstrate the following:

- ° Established, in-house capability to implement the necessary technical and legal tasks associated with hazardous waste enforcement;
- ° Experience in conducting successful enforcement actions at hazardous waste sites; and
- ° Willingness to closely coordinate with the Agency and provide opportunities for review and consultation prior to making major decisions.

As experience is gained in funding these pilot projects, the guidance may be revised in the future.

When reviewing applications for these activities during this time period, the Regional Project Manager (RPM) should work closely with the Regional grants office and Regional Counsel to ensure that the application is sufficient and complete. RPMs should also coordinate closely with their Headquarters Regional Coordinator in the Office of Waste Programs Enforcement (OWPE). The Region must submit draft CA applications to the Director, CERCLA Enforcement Division, OWPE for review prior to award. This is necessary to ensure that implementation of these new funding activities is consistent nationally, and that monies available in the future are properly distributed to the Regions. A more detailed description of the review and award process is also attached to this memorandum.

In a related matter, CERCLA reauthorization will have some impact on the guidance. Under Section 104(a)(1), responsible parties can be authorized to conduct a remedial investigation and feasibility study only if:

- ° the responsible party is qualified to conduct the RI/FS;
- ° the President contracts with or arranges for a qualified person to provide assistance in overseeing and reviewing a responsible party conducted remedial investigation and feasibility study; and
- ° the responsible party agrees to "reimburse" the Fund for any cost incurred by the Agency in connection with the oversight contract or arrangement.

OWPE is currently reviewing the impact of these requirements and will prepare supplemental guidance.

If you have any questions on the guidance, you may contact Tony Diecidue, Office of Waste Programs Enforcement (WH-527), U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C., 20460 or telephone him at 202/FTS 382-4841.

Attachments

Addressees:

Directors, Waste Management Divisions, Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Waste Management Division, Region III
Directors, Air and Waste Management Division, Regions II, VI
Director, Toxics & Waste Management Division, Region IX
Director, Hazardous Waste Division, Region X
Regional CERCLA Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X
Regional Assistance Management Contacts, Regions I-X

CERCLA FUNDING OF OVERSIGHT
OF POTENTIALLY RESPONSIBLE PARTIES
BY STATES AT NATIONAL PRIORITIES LIST SITES

PURPOSE

The purpose of this guidance is to assist EPA Regional offices and States on funding, under a CERCLA cooperative agreement (CA), of State oversight of Potentially Responsible Parties (PRP) conducting Remedial Investigations (RI), Feasibility Studies (FS), Remedial Designs (RD), Remedial Actions (RA) and Operation and Maintenance (O&M) at sites on the National Priorities List (NPL). The guidance also discusses funding of States during a Federal enforcement response.

BACKGROUND

The Office of General Counsel has concluded that CERCLA funding may be provided to States to support a broad range of enforcement related activities. This is in addition to State conducted, Fund-financed RI/FS to support enforcement actions at NPL sites. The reason is that such activities are included under CERCLA, Section 104(b) and consequently are eligible for CERCLA funding.*

The role of States in oversight of PRP conducted RI/FS, RD, RA and O&M depends on whether the State or EPA negotiated the administrative order (AO) or consent decree (CD). If the State negotiated the AO or CD, then the State has the lead for oversight of the PRP's work. If EPA negotiated the AO or CD, then EPA has the lead for oversight. When EPA has the lead for oversight, the State may receive management assistance funding in order to meaningfully participate in reviewing PRP response activities at the site. The State may also, under certain circumstances, undertake various, mutually agreed upon oversight activities in place of EPA. These circumstances may include the following:

- ° CERCLA, Section 106[°] settlements with PRPs that are jointly negotiated and signed by EPA and the State; and
- ° State oversight that can result in a more effective and timely PRP response.

GUIDANCE

In determining whether to fund a State for oversight of a PRP response action, the Region should employ the same standard of review as if work were to be performed by the Regional office (or contractor working for the Regional office). First, the Region should assess the State's ability to meet the classification criteria outlined in the EPA/Association of State and Territorial

* L.A. DeHihns, Authority to Use CERCLA to Provide Enforcement Funding Assistance to States, July 20, 1984 and February 12, 1986.

Solid Waste Management Officials (ASTSWMO) policy memorandum of October 2, 1984. Prior to accepting a CA application for review and award, the criteria should be applied to the site. Secondly, the Region should pay particular attention to the itemized budget submitted along with the CA application. The budget should be carefully reviewed to ensure that adequate resources and staff expertise are devoted to the project. Along with these considerations, the conditions and requirements outlined in this guidance must be incorporated into the CA application prior to award.

The guidance explains the conditions for awarding funds and the fundable tasks for each activity. This guidance does not preclude the Regions from including additional enforcement-related conditions in the application, if warranted. Furthermore, applicable provisions outlined in Appendix F, State Participation in the Superfund Program, must be incorporated into each CA application.

When developing CA applications for these activities, the Regional Project Manager (RPM) should work closely with the Regional grants office and Regional Counsel to ensure that the application is sufficient and complete. RPMs should also coordinate closely with their Headquarters Regional Coordinator in the Office of Waste Programs Enforcement (OWPE). Since this is new guidance, the Region must submit draft CA applications to the Director, CERCLA Enforcement Division, OWPE for review prior to award. This review is necessary to ensure that implementation of these new funding activities is consistent nationally, and that monies available in the future are properly distributed to the Regions.

1. Funding State Oversight of PRPs - State Enforcement Response

If a State successfully negotiates to have the PRPs conduct the RI/FS, RD, RA and/or O&M, it will be in the State's interest to oversee their work. As a general rule, States should attempt to secure funds for this oversight in advance from the PRPs as part of the settlement. Where this is not possible, EPA may fund the State for oversight and will seek future CERCLA §107 cost recovery for those costs.

A.1 Conditions for Funding under a Cooperative Agreement: Oversight of RI/FS

In order to receive funding from EPA for oversight of a PRP conducted RI/FS, the State must include the following information and assurances in their CA application. Except where noted, the following information and assurances must be certified by the State's Governor, Attorney General, designee or appropriate State agency.

1. The State must have issued or obtained an enforceable order, decree or other enforceable document requiring the PRP to conduct a RI/FS in accordance with the National Contingency Plan (NCP) and applicable EPA

policy and guidance. A copy of the order must be included in the CA application.*

2. The State must provide a letter outlining the State enforcement authorities that provide the basis for initiating enforcement action against PRPs (e.g. administrative action or litigation) which can result in securing the necessary response.
3. The State must certify that:
 - ° (1) it believes a good enforcement case exists against the PRPs (i.e., financially able to undertake the remedy or have resources equal to or greater than the expected cost of the remedy) and (2) site conditions meet the elements of proof required by the State's authority (i.e. imminent and substantial endangerment).
 - ° If a good enforcement case continues to exist at the completion of the RI/FS, the State agrees to pursue administrative or judicial enforcement action to (1) assure performance of the RD/RA/O&M by the PRP or (2) collect from the PRP the funds necessary to conduct the RD/RA/O&M.
 - ° It will select a remedy that is consistent with the NCP.
 - ° It attempted to secure funds for oversight of the RI/FS from the PRP and cite reasons why this was not possible.
4. The State must agree to submit all final plans, reports, specifications, and/or recommendations to EPA for review and concurrence prior to their issuance or implementation. Final PRP documents or plans and PRP change orders that substantially change the scope of work must be submitted to EPA prior to issuance for review and concurrence to ensure technical adequacy and compliance with the terms of the CA. The State must also assure in the CA that it will not expend funds for oversight of the RI field activities until EPA has had the opportunity to review and concur on the RI/FS work plan and has indicated in writing that this condition was satisfied. EPA will agree to provide their review within the timeframes or schedules established in the order.**

* If a three party agreement (EPA, State and PRP), then only cite the enforceable document since a copy should already be in EPA's possession.

** If work plans are prepared and submitted concurrent with the enforceable document, they should be submitted for review with the CA application.

5. The State must conduct a community relations plan in accordance with applicable EPA guidance.* The plan must include a provision for public comment on the RI/FS.

A.2 Conditions for Funding under a Cooperative Agreement:
Oversight of RD/RA/O&M

In order to receive funding from EPA for oversight of a PRP conducted RD, RA and O&M, the State must include the following information and assurances in its CA application. Except where noted, the following information and assurances must be certified by the State's Governor, Attorney General, designee or appropriate State agency.

1. The State must have issued or obtained an enforceable order, decree or other enforceable document requiring the PRP to conduct a RD, RA and O&M in accordance with applicable EPA policy and guidance. A copy of the order must be included in the CA application.**
2. The State must provide a letter outlining the State enforcement authorities that provide the basis for initiating enforcement action against PRPs (e.g. administrative action or litigation) which can result in securing the necessary response.
3. The State must certify:
 - ° That (1) it believes a good enforcement case exists against the PRPs (i.e., financially able to undertake the remedy or have resources equal to or greater than the expected cost of the remedy) and (2) site conditions meet the elements of proof required by the State's authority (i.e., imminent and substantial endangerment).
 - ° It attempted to secure funds for oversight of the RD, RA and O&M from the PRP and cite reasons why this was not possible.
4. The State must submit documentation, similar to EPA's Record of Decision (ROD) or Enforcement Decision Document (EDD), outlining the information and rationale used to select a remedy consistent with the NCP. This documentation must be included in the CA application.**

* See the document Community Relations in Superfund: A Handbook, especially Chapter 6 which deals with community relations during enforcement actions.

** If a three party agreement (EPA, State and PRP), then only cite the documentation since it should already be in EPA's possession.

5. The State must certify that it attempted to secure funds for oversight of the RD, RA and O&M from the PRP and cite reasons why this was not possible.
6. The State must agree to submit all final plans, reports, specifications, and/or recommendations to EPA for review and concurrence prior to their issuance or implementation. Final PRP documents or plans and PRP change orders that substantially change the scope of work shall be submitted to EPA prior to issuance for review and concurrence to ensure technical adequacy and compliance with the terms of the CA. The State may not expend funds for oversight of the RD, RA and O&M activities until EPA has had the opportunity to review and concur on the RD, RA and O&M work plan and has indicated in writing that this condition was satisfied. EPA will agree to complete its review within the timeframes or schedules established in the order.*
7. The State must prepare and implement a community relations plan in accordance with applicable EPA guidance.

The Regional Administrator will review the rationale used to select the remedy, the enforceable document and the CA application. Based on this review, the Regional Administrator may decide to:

- Fund oversight of the RD, RA and O&M (all or some of the tasks in the application);
- Not fund oversight of the RD, RA and O&M if the State and PRP negotiated remedy is unacceptable to EPA; or
- Initiate EPA enforcement actions against the PRP.

In order to avoid delays and problems during EPA's review, States should coordinate with the RPM throughout the RI/FS, remedy selection process and negotiations with PRPs.

B.1 Fundable Oversight Tasks: RI/FS

Currently, EPA does not have experience with funding States to oversee PRPs conducting remedial response tasks. In an effort to provide States and Regions with some guidelines on costs and allowable tasks, we reviewed the Federal experience with oversight. We also reviewed typical State costs for certain specific tasks. Based on these reviews, we have determined that State costs for oversight generally should range between 8% to 10% of the cost of the RI/FS. The rationale is that the PRPs are responsible for actually managing the work and conducting the RI/FS. States should not be duplicating work conducted by the PRPs. Therefore, in most situations, funding within this range should be adequate for

* If work plans are prepared and submitted concurrent with the enforceable document, they should be submitted for review with the CA application.

oversight. Funding above this range may be provided if adequate justification is provided in the CA application.

In preparing and reviewing the proposed budget, it might be helpful for States and Regions to consider oversight as consisting of review tasks, community relations, and field related tasks. States should attempt to specify in the enforceable document the roles and responsibilities of the PRP as distinguished from the roles and responsibilities of the State in each of these major categories.

Review tasks conducted by the State might include:

- Review preliminary planning documents;
- Review and comment on scope of work and work plans;
- Review and comment on quality assurance project plans and site safety plans;
- Review and comment on draft RI reports;
- Review final RI reports;
- Review and discuss FS objectives;
- Review and comment on draft FS;
- Review final FS;
- Review PRP monthly progress reports;
- Organize and participate in technical meetings on the RI/FS with the PRPs, PRP contractors, and/or EPA.

Community relations tasks conducted by the State might include:

- Conduct discussions with the affected community in the locale of the site;
- Prepare community relations plans;
- Hold public comment period on the RI/FS;
- Brief local and State officials;
- Hold public meetings on technical aspects of the site;
- Prepare fact sheets and press releases and disseminate information;
- Prepare summaries of public concerns.

Field related tasks conducted by the State might include:*

- Prepare or assist the PRP to prepare detailed work plans;
- Environmental monitoring (e.g. air, water);
- Take and analyze split samples or confirmatory samples; and
- On-site presence/inspection.

B.2 Fundable Oversight Tasks: RD/RA/O&M

Federal experience with RD and RA oversight was also reviewed in an effort to provide States and Regions with some guidelines on costs and allowable tasks. Based on this review, it is recommended that funding for State oversight costs generally should range between 4 to 6 percent of the cost of the RD and RA. Again, the rationale is that the PRPs are responsible for actually managing the work and implementing the RD and RA. States should not be duplicating work conducted by the PRPs. Therefore, in most situations, funding within this range should be adequate for oversight. Funding above this range may be provided if adequate justification is provided in the CA application.

Furthermore, in accordance with current policy on Fund-financed remedial actions, 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. Consistent with this policy of providing technical assistance to a State on O&M, EPA will also consider funding a State's oversight of PRP-conducted O&M, for a period not to exceed one year after completion of PRP remedial response activities. After reviewing its experience with O&M, EPA has determined that State costs for oversight generally should not exceed 4 to 6 percent of the cost of the O&M.

Fundable oversight tasks for RD

Review tasks conducted by the State might include:

- Participate in technical design briefings for RD initiation;
- Review design scopes of work;
- Technical meetings on the RD with the PRPs, PRP contractors and/or EPA;
- Assist in reviewing preliminary design documents and design changes which may affect remedy selection;

* The amount and scope of field related tasks to be funded by EPA during oversight should be negotiated on a case-by-case basis. The amount required varies widely according to the type and condition of the site, and other considerations.

- Review and comment on value engineering screening submittals;
- Review and comment on quality assurance project plans, site safety plans and intermediate design documents;
- Review and comment on plans for operation and maintenance developed by PRP;
- Review final RD.

Community relations tasks conducted by the State might include:

- Prepare fact sheets and notify public on RD activities and what the RD is expected to entail;
- Continue prior community relations activities as needed;

Fundable oversight tasks for RA

Review tasks conducted by the State might include:

- Review and comment on PRP or PRP contractor work plans, health and safety plans, QA/QC procedures, etc;
- Review any construction change orders that may alter the approved remedy and amend the CA and Record of Decision or Enforcement Decision Document as appropriate with concurrence of EPA.
- Review and comment on draft and final RA reports;
- Participate in pre-construction and pre-final construction conferences;
- Review PRP or PRP contractor monthly progress reports; and
- Organize and participate in technical meetings on the RA with the PRPs, PRP contractors, and/or EPA.
- Certify that the remedy is complete.

Community relations tasks conducted by the State might include:

- Revise original community relations plans to incorporate any changes required due to remedial design and construction activities;
- Conduct discussions with the affected community on the selected remedy and planned construction activities; and
- Hold meetings with the public during the RA.

Field related tasks conducted by the State might include

- Provide periodic monitoring and oversight of construction activities;
- Take and analyze split samples or confirmatory samples; and
- Participate in pre-final and final inspections, and project acceptance.

Fundable oversight tasks for O&M

Review tasks conducted by the State might include

- Review O&M manuals or workplans developed by the PRP or PRP contractor;
- Participate in technical meetings on the O&M with the PRPs, PRP contractors, and/or EPA;
- Review pre-final and final inspection reports;
- Review final technical reports; and
- Review monitoring reports and NPL deletion documents.

Community relations tasks conducted by the State might include:

- Prepare fact sheets and notify the public of the O&M activities and explain what O&M is expected to entail; and
- Continue prior community relations activities, as needed.

Field related tasks conducted by the State might include:

- Be present at trial runs/shakedowns of major equipment;
- Conduct periodic field inspections.

Funding State Management Assistance and Oversight of PRPs - Federal Enforcement Response

A. Management Assistance during a Federal Enforcement Response

If EPA has negotiated the administrative order or consent decree with the PRPs, EPA will have the lead for oversight of PRP activities and for community relations. In this situation, States may receive funding for management assistance. Management assistance essentially will involve review tasks and is explained in Volume I of the EPA manual State Participation in the Superfund Program. EPA will not fund States to hire contractors for management assistance tasks.

B. Oversight during a Federal Enforcement Response

The State may also, under certain circumstances, undertake various, mutually agreed upon oversight activities in place of EPA. These circumstances may include the following:

- ° CERCLA, Section 106 settlements with PRPs that are jointly negotiated and signed by EPA and the State; and
- ° State oversight that can result in a more effective and timely PRP response.

This means the State would be conducting some review, community relations and/or field related oversight tasks along with EPA or EPA's contractor. For each task, the CA application should clearly outline the roles and responsibilities of the State as distinguished from the roles and responsibilities of EPA or EPA's contractor. It should be made clear, however, that the State cannot act as EPA's agent to the PRPs or direct EPA's contractors.

Where EPA has the lead for oversight, EPA encourages the State to conduct oversight tasks only if they have the inhouse capability to do the work. Generally, EPA will not fund the State to hire contractors for oversight tasks unless they provide adequate justification for their use. Furthermore, EPA will not fund States to conduct oversight tasks that duplicate EPA's efforts.

3. Cooperative Agreement Application Procedures

States must follow established procedures for developing CA applications encompassing oversight of PRPs. The State has primary responsibility for developing a CA application package, but should consult with EPA's RPM for the site throughout the process.

In general, the key elements of a CA application package are:

- ° Intergovernmental Review;
- ° EPA Form 5700-33, Application For Federal Assistance, and accompanying support narrative and assurances;
- ° EPA Form 5700-48, Procurement System Checklist; and
- ° State Certification Letter.

A comprehensive discussion of CA or multi-site CA (MSCA) applications for Superfund activities is presented in Volume I of the manual State Participation in the Superfund Program. As experience is gained in funding PRP oversight, procedures for developing CA applications will be revised in the future.

The project period for PRP oversight is one year. States can request, in a CERCLA CA application, only enough money to conduct the necessary tasks for twelve months. If additional funds are needed to continue the tasks, the State should submit to EPA a request for a CA amendment at the end of this twelve month period approaches.

4. Preparation of State Quarterly Reports

States are required to submit quarterly reports that provide EPA with information on the progress of the funded tasks. These reports serve many important purposes, including:

- ° Providing site-specific tracking data as required under CERCLA;
- ° Providing data for future use during cost recovery; and
- ° Providing information to assist the State and EPA in managing CAs.

States are required to report or document costs associated with the CA on a site-specific basis. Expenditures must be tracked and reported by object class category, as required under the General Assistance regulation for CAs. In addition, personnel hours must be tracked and reported on a site-specific basis. For further information on accounting codes and cost documentation, see the appropriate appendices in Volume I of the manual State Participation in the Superfund Program.

States will submit quarterly reports to the RPM within thirty days of the end of each Federal fiscal quarter. In general, the quarterly reports must cover the following:

- ° Itemization of expenditures by object class;
- ° Estimation (percentage) of work completed for each task covered in the CA;
- ° Summary of personnel hours spent at each site;
- ° Disposition of sites where all tasks have been completed and accepted/approved by the RPM; and
- ° Explanation of variances from the SOW in estimated costs, personnel hours and/or tasks being initiated).

A narrative explanation must also be provided discussing actions initiated or completed, problems or delays encountered and actions planned during the next reporting period. The State must also provide explanations for revisions to the original schedules or time tables established in the CA. As experience is gained in funding PRP oversight, reporting requirements for these particular activities will be revised in the future.

schedules or time tables established in the CA. As experience is gained in funding PRP oversight, reporting requirements for these particular activities will be revised in the future.

ENFORCEMENT PROVISIONS
CERCLA COOPERATIVE AGREEMENTS

PROVISIONS SPECIFIC TO STATE-LEAD ENFORCEMENT OVERSIGHT
OF POTENTIALLY RESPONSIBLE PARTIES (PRP)

State-lead enforcement oversight Cooperative Agreements should contain the provisions found in Sections 1 (A-F) and 2 (C, E, G-L, N-S) of Appendix F, State Participation in the Superfund Program. In addition, they should also contain the following provisions.

A. Issuing an Enforceable Order, Decree or other Enforceable Document

Before EPA funds oversight, the State is required to issue an enforceable order, decree or other enforceable document that requires the PRP to conduct a RI/FS and/or RD/RA/O&M in accordance with the NCP and applicable EPA guidance. A copy of this document must be included in the cooperative agreement application.

The State issued a [type of enforceable document] for the [name of site] dated [____], requiring a [type of response action] in accordance with the NCP and applicable EPA guidance. A copy of this document is attached to the cooperative agreement application.*

B. State Enforcement Authorities

In providing CERCLA funds for State-lead oversight of PRPs, the State has shown it possesses the legal authorities to pursue administrative or judicial enforcement action to ensure performance of the response action. EPA asks the State to outline these authorities in the Cooperative Agreement application.

The State possesses the legal authorities to pursue administrative or judicial enforcement action to ensure performance of the private party response action. The State agrees to use these authorities if private parties (1) do not meet the terms of the order, decree or other enforceable document, or (2) are unwilling to undertake subsequent phases of the response action. These legal authorities are outlined in a letter attached to the Cooperative Agreement application dated [____].

C. Ability of PRPs to Undertake or Pay Cost of the Response Action

In settling with PRPs to undertake the response action, the State believes that (1) a good enforcement case exists against

* If a three party agreement (EPA, State and PRP), then add "and EPA" after "The State" and only cite the enforceable document since a copy should already be in EPA's possession.

the PRPs (i.e., financially able to undertake or pay the cost of the response action), and (2) site conditions meet the elements of proof required by the State's legal authorities (i.e., imminent and substantial endangerment).

For RI/FS oversight:

The State believes that (1) a good enforcement case exists against the private parties (i.e., financially able to undertake or pay the cost of the response action) and (2) site conditions meet the elements of proof required by the State's legal authorities at the onset of the RI/FS (i.e., imminent and substantial endangerment). If these factors continue to exist at the completion of the RI/FS, the State agrees to pursue administrative or judicial enforcement action to (1) assure performance of the RD/RA/O&M by the private parties, or (2) collect from the private parties the funds necessary to conduct the RD/RA/O&M.

For RD/RA/O&M oversight:

The State believes that (1) a good enforcement case exists against the private parties (i.e., financially able to undertake or pay for the cost of the response action), and (2) site conditions meet the elements of proof required by the State's legal authorities at the onset of the RD/RA/O&M (i.e., imminent and substantial endangerment).

D. Consistency with Agency Policy and Guidance

- In overseeing PRP conduct of response actions, the State must assure that such actions are consistent with the NCP and applicable EPA guidance.

For RI/FS oversight:

In conducting RI/FS oversight funded by this Cooperative Agreement, the State agrees to ensure that the private party RI/FS be consistent with the National Contingency Plan as published on November 20, 1985 (40 CFR 300) and the manuals Guidance on Remedial Investigations Under CERCLA and Guidance on Feasibility Studies Under CERCLA, OERR, June, 1985.

For RD/RA/O&M oversight:

In conducting RD/RA/O&M oversight funded by this cooperative agreement, the State agrees to ensure that the private party RD/RA/O&M be consistent with the National Contingency Plan as published on November 20, 1985 (40 CFR 300) and the manual Superfund Remedial Design and Remedial Action Guidance, OERR, June, 1986.

E. Deliverables Required for EPA Review and Concurrence Prior to Initiating Oversight Field Activities

EPA must review and concur on appropriate work plans prior to a State initiating oversight. The State must also agree to submit all final plans, reports, specifications and/or recommendations to EPA for review and concurrence prior to issuance and implementation.

For RI/FS oversight:

The State agrees to submit the private party RI/FS work plan to EPA for review and concurrence. The State agrees not to expend funds for oversight of the private party RI/FS field activities until EPA has indicated in writing that this provision has been satisfied. The State also agrees to submit all final plans, reports, specifications, and/or recommendations to EPA for review and concurrence prior to issuance or implementation. Final private party documents or plans and private party change orders that substantially change the scope of work funded under this Agreement will be submitted to EPA prior to issuance for review to ensure technical adequacy and compliance with the terms of this Agreement.*

For RD/RA/O&M oversight:

The State agrees to submit the private party [RD, RA and/or O&M] work plan to EPA for review and concurrence. The State agrees not to expend funds for oversight of the private party [RD, RA and/or O&M] field activities until EPA has indicated in writing that this provision has been satisfied. The State also agrees to submit all final plans, reports, specifications, and/or recommendations to EPA for review and concurrence prior to issuance or implementation. Final private party documents or plans and private party change orders that substantially change the scope of work funded under this Agreement will be submitted to EPA prior to issuance for review to ensure technical adequacy and compliance with the terms of this Agreement.*

F. Community Relations

The State agrees to prepare and implement a community relations plan for this site. The State will not initiate oversight field activities until EPA has approved the plan. The State further agrees to comply with all relevant EPA policy and guidance on community relations when implementing the community relations plan throughout the response, especially Chapter 6, Community Relations in Superfund: A Handbook.

* If the work plans were prepared and submitted concurrent with the enforceable document, they should be submitted for review with the Cooperative Agreement application.

3. Securing Oversight Funds from Private Parties

During negotiations with PRPs to conduct the response action, the State should attempt to secure funds for oversight. The State must attempt to have PRPs pay for oversight before requesting CERCLA funding. EPA asks the State to certify that an attempt was made, and cite the reasons why PRP funding of their oversight was not possible.

The State attempted to secure funds for oversight of the response action from the private parties. [Cite reasons why this was not possible or why additional oversight funding is required.]

PROCEDURES FOR REVIEW AND APPROVAL
OF ENFORCEMENT-RELATED COOPERATIVE AGREEMENTS

1. PROCEDURE FOR REQUESTING FUNDS AND REVISING THE CASE MANAGEMENT BUDGET - DRAFT COOPERATIVE AGREEMENT APPLICATION

- ° The Region should request cooperative agreement funds during September for the following fiscal year, represented as SCAP targets. The SCAP should be revised quarterly, if necessary. The Region should consult with the State prior to revising the SCAP.
- ° The State Project Officer, assisted by an EPA Regional Office counterpart, will develop a cooperative agreement application and submit it to the Enforcement Remedial Project Manager (RPM).
- ° The Regional Coordinator (RC) in the Compliance Branch will review the draft application in coordination with the Contracts Management Section in the CERCLA Enforcement Division.
- ° The RC will send their comments on the application to the RPM. The Region should give the State combined EPA comments (HQ and Region). The State will then prepare a final application for submittal to the Regional Administrator.

2. REGIONAL SUBMITTAL AND HEADQUARTERS SIGN-OFF - FINAL COOPERATIVE AGREEMENT APPLICATION

- ° The RC will receive a copy of the final cooperative agreement application, which will have a commitment notice attached. The dollar amount for award, cooperative agreement number and description should already be entered on the commitment notice.
- ° The RC will review the final application and get the commitment notice signed by the appropriate Headquarters managers. For CA's of \$250K or less, the Director, Office of Waste Programs Enforcement's signature is required. For CA's of over \$250K, the AA, Office of Solid Waste and Emergency Response's signature is required.
- ° Once signatures have been obtained, the RC will obtain the proper accounting information from OWPE's Program Management and Support Office (PMSO).
- ° Once signatures are obtained and accounting information has been entered on the commitment notice, the RC will send only the commitment notice back to the Region for use in awarding the CA. Delegation has given CA award authority to the RA. (The RC will keep the copy of the CA application and a xeroxed copy of the commitment notice on file for oversight purposes. The Compliance Branch will maintain files for these CAs.) The RPM will send a signed copy of the CA document to be sent to RC after award and acceptance by the State.