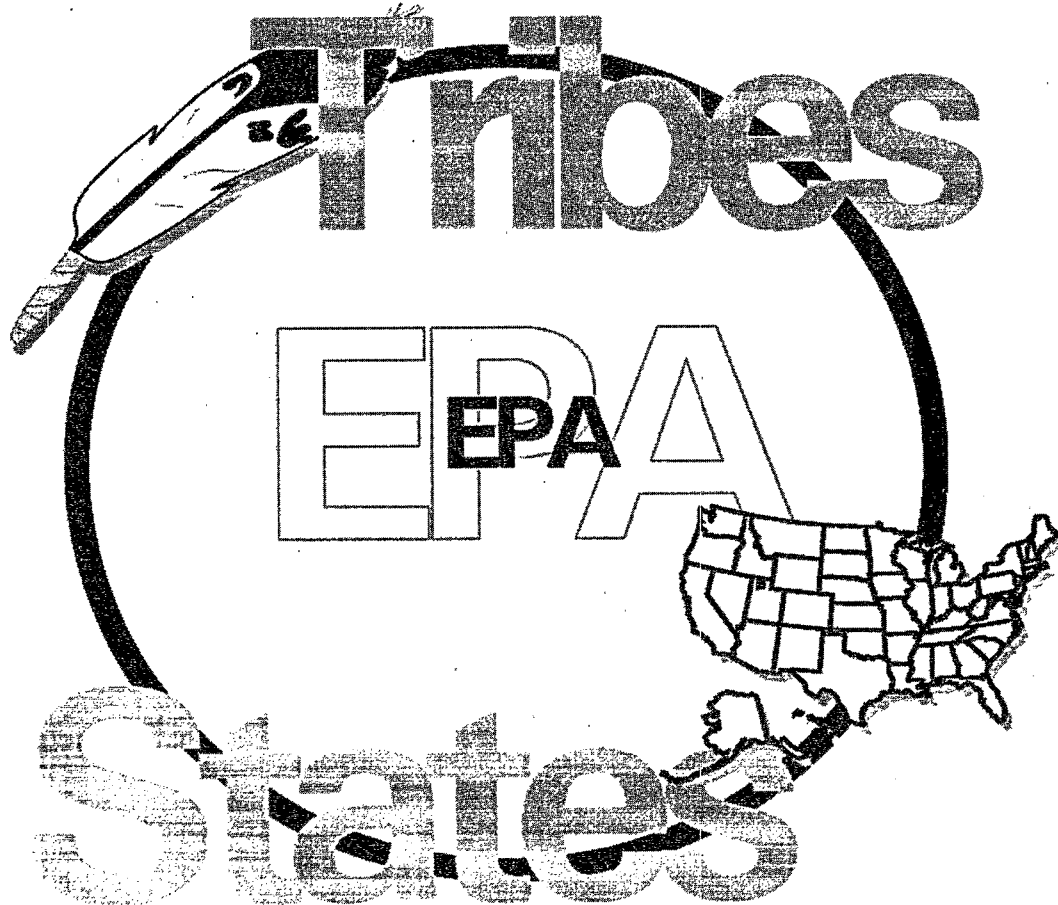




# Plan to Enhance the Role of States and Tribes in the Superfund Program



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## **ACKNOWLEDGMENTS**

The Office of Emergency and Remedial Response acknowledges and thanks the individuals who contributed to the development of this plan. Each recommendation results from discussions and analysis by each workgroup, the coordination of the Leadership Integration Team, and the guidance of the State and Tribal Superfund Management Council. Please see the membership list in Appendix E for the names of the people who contributed to this plan.

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**Plan to Enhance the Role of the States  
and Tribes in the Superfund Program:  
Executive Summary**

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## I. Introduction

This document presents EPA's recommendations for enhancing the roles of states and federally-recognized Indian tribes in implementing the Superfund program. The agency collaborated with states and tribes in working sessions, during which the parties developed "consensus-based" recommendations for final approval by upper-level EPA, state, and tribal managers. EPA acknowledges that state and tribal support for recommendations in this report is based on the Superfund statute. This effort is separate from that of Superfund reauthorization, and state or tribal participation in the development of this report does not represent an endorsement of any particular reauthorization position.<sup>1</sup>

Through this document, EPA proposes an integrated process for implementing the recommendations to enhance state and tribal roles, and suggests ways the process could begin under a national pilot program. This document is for state, tribal, and EPA regional audiences, and it identifies steps that EPA could take to build stronger partnerships with states and tribes. As this plan and its recommendations will apply to all sites within the Superfund program, including federal facilities, it will interest other parties.

## II. Background

Over the past 15 years, many states have developed Superfund program capabilities and now implement their own hazardous waste cleanup programs. Many tribes have also begun developing capabilities in this area. EPA has encouraged and supported this development with both technical and financial resources, and plans to continue this trend toward an enhanced role for states and tribes in hazardous waste cleanups. The Administrator places a high priority on state and tribal empowerment, as demonstrated by the National Environmental Performance Partnership System (NEPPS), which calls for "States to serve as the primary front-line delivery agent." Superfund's administrative reforms further illustrate the agency's commitment to improve state and tribal involvement in the Superfund program.

In November 1996, EPA's Assistant Administrators for the Office of Solid Waste and Emergency Response (OSWER) and the Office of Enforcement and Compliance Assurance (OECA) issued a policy message commissioning work to identify and analyze major issues associated with enhancing the role of states and tribes in Superfund. They stressed the importance for EPA, with states and tribes, to work through the issues of state and tribal readiness, assistance to states and tribes, EPA-state or EPA-tribal partnership agreements, and unique considerations for enhancing tribal participation.

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<sup>1</sup> State participants in the State and Tribal Superfund Management Council (SMC) and workgroups support the premise that the state role in Superfund should be enhanced. State participants view this report's recommendations as facilitating an appropriate division of labor for assisting states and regions in developing workable models for an increased state role in the Superfund program, under current law. While these recommendations may be applicable to a reauthorized Superfund statute, states wish to reserve judgment until reauthorization is a fact. Comments and recommendations in this report, therefore, should not be viewed as contradictory to state opinions expressed on reauthorization.

The statement asked for recommendations on ways EPA can work to further build "strong partnerships" between the federal government and states and tribes.<sup>2</sup>

### **III. State and Tribal Enhanced Role Initiative: Concept and Assumptions**

The purpose of the State and Tribal Enhanced Role Initiative is to develop a comprehensive plan that EPA can implement to equitably share Superfund program responsibilities with interested and capable states and tribes, to enable quicker cleanup of more sites. EPA is evaluating the Superfund program to integrate new ideas into the comprehensive plan and build upon state and tribal partnerships. EPA intends for this plan to promote flexibility in the management of contaminated sites consistent with the overall goal of protecting human health and the environment.

This report recognizes that the role of states and tribes in the Superfund program has grown measurably during the past decade, and advocates a comprehensive national approach to defining program management roles. The recommendations manifest an evolving federal role that will continue to be delineated as EPA moves to enhance program cooperation with states and tribes, while maintaining a continued role in program implementation, enforcement, and response activities.

This report consists of four chapters containing the assumptions, objectives, and recommendations from participants in EPA's State and Tribal Enhanced Role Initiative. These chapters form the framework for a process that EPA will utilize to increase the state and tribal roles as co-implementors of the Superfund program. The chapters address the key steps and provide general themes for how the process is envisioned to work. For example, the decision-making process for states and tribes to take on responsibilities under the Superfund program should include an "enforcement first" approach and public involvement. In addition, a shared role should be negotiated between the EPA region and the state and tribe, including provisions for dispute resolution. It was agreed that disputes should be resolved whenever possible between the states or tribes and region through escalation to senior officials. The dispute resolution process cited in the Code of Federal Regulations will be used when agreement cannot be reached through the informal process. EPA will fully develop a formal implementation plan as part of a pilot initiative this fiscal year.

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<sup>2</sup> Policy Message, November, 1996.

Please send comments to [Konz.James@epamail.epa.gov](mailto:Konz.James@epamail.epa.gov) or call (703) 603-8841, or send comments to [Wright.Felicia@epamail.epa.gov](mailto:Wright.Felicia@epamail.epa.gov) or call (703) 603-8775

The basic framework for implementing the State and Tribal Enhanced Role Initiative is illustrated in the box below.

#### **Framework for the State and Tribal Enhanced Role Initiative**

- ◆ **Communication:** EPA should hold general discussions with state and tribal Superfund program managers to explore their interest in an enhanced role in the Superfund program.
- ◆ **Readiness:** When a state or a tribe expresses interest in an enhanced role in the Superfund program, EPA and the state or tribe should meet to discuss the full range of program activities that it would like to implement. The EPA region works with the state or tribe to identify the program criteria by which to evaluate the state or tribal program, and works with that state or tribe to gauge the level of readiness to assume program responsibilities. (See *Chapter 1: Readiness Recommendations*.)
- ◆ **Assistance:** The state or tribe and region should identify and discuss the technical and financial assistance needed for the state or tribe to perform the negotiated activities. Assistance needs are identified for activities the state or tribe can begin conducting in the near term (i.e., when the state or tribe meets the readiness criteria), as well as activities that the state or tribe hopes to implement in the long term (i.e., developing capacity to meet the readiness criteria in specific program areas). (See *Chapter 2: Assistance Recommendations*.)
- ◆ **Agreements:** The region and state or tribe should negotiate and sign a program agreement to formally establish and document their roles and responsibilities in an enhanced partnership to implement Superfund. (See *Chapter 3: Agreements Recommendations*.)
- ◆ **Tribal Programs:** EPA has learned that there are different concerns and priorities when working with Indian tribes rather than states. Ways to address these differences will be incorporated into the implementation process to ensure that tribes, as well as states, are fully involved in developing and implementing Superfund programs. (See *Chapter 4: Tribal Recommendations*.)

Please send comments to [Konz.James@epamail.epa.gov](mailto:Konz.James@epamail.epa.gov) or call (703) 603-8841, or send comments to [Wright.Felicia@epamail.epa.gov](mailto:Wright.Felicia@epamail.epa.gov) or call (703) 603-8775

To provide additional context to the State and Tribal Enhanced Role Initiative, participants in this effort agreed to the principles highlighted below.

#### **Principles To Promote Equal Participation**

- ◆ Both states and tribes [i.e., tribes meeting requirements of the National Oil and Hazardous Substances Contingency Plan (NCP) 40 CFR §300.515(b)] are eligible to participate in the enhanced role initiative.
- ◆ No assumptions are made on the exact form or nature of the future Superfund program.
- ◆ EPA regions will promote/assist states and tribes to ensure equal and open participation by all states and tribes that desire enhanced participation in the Superfund program.
- ◆ It is assumed that federal funding will be available to implement the initiative.

#### **Principles To Promote Equal Protection**

- ◆ States and tribes may be more stringent than, but must at least meet, the minimum performance standard for each element of the federal cleanup program that they are implementing (e.g., state or tribal program actions must be as protective as those conducted under the Federal program).
- ◆ Cleanups conducted or overseen by a state or tribe using federal funds must be carried out in accordance with the applicable federal laws and regulations.
- ◆ The federal program will retain its legal authorities and independence of action, but will not generally exercise them on state-lead or tribal-lead sites (and not without full prior consultation), unless a state or tribe has failed to meet its responsibilities, and there is an unaddressed threat to human health and/or the environment.
- ◆ States, tribes, and regions are responsible for maintaining the spirit of EPA's "enforcement first" policy in implementing Superfund program activities.

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### Principles To Promote Program Consistency and Flexibility

The balance between flexibility and consistency was an issue much discussed by EPA, state, and tribal representatives. The issue is complex and not easily captured in a simple statement. Some key points of the discussion are:

- ◆ The framework of the national Superfund program is laid out not only in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Contingency Plan (NCP), but also in EPA policy and guidance;
- ◆ EPA, states, and tribes want flexibility to respond to diverse situations, site complexities, and community concerns;
- ◆ EPA, states, and tribes see consistency as important to assuring a level playing field among states, tribes, potentially responsible parties (PRPs), and communities; and
- ◆ Achieving the program goals is important, especially in the following areas: level of protectiveness; enforcement equity; diligence of enforcement (especially before going to fund-lead cleanups and cost recovery); public involvement; and cost-effectiveness of remedies.

## IV. Establishing an Integrated Framework

The State and Tribal Enhanced Role Initiative was structured to ensure that resulting deliberations and recommendations are comprehensive and fully integrated into a balanced strategy that capitalizes on state, tribal and EPA perspectives.

The State, Tribal and Site Identification Center in EPA's Office of Emergency and Remedial Response (OERR) led this initiative by organizing the work into four key implementation steps that define a process to increase state and tribal roles in Superfund. EPA formed four workgroups to assess the issues associated with each step: the *Readiness Workgroup* to develop clearly stated performance standards and a flexible process to assess state and tribal readiness and identify means to enhance readiness; the *Assistance Workgroup* to identify technical, financial, administrative and legal assistance needs of states and tribes, and ways to provide for that assistance; the *Agreements Workgroup* to develop a model for agreements between EPA Regions and states or tribes with flexibility to meet the variety of agreement needs; and the *Tribal Workgroup* to identify the special needs of tribes in building capacity for program implementation, assistance and addressing cultural values. The workgroups included members of several offices at EPA Headquarters, seven EPA regional offices, twelve states and five tribes and tribal consortia.

In addition to the four workgroup topic areas, EPA formed a sub-workgroup to research and address enforcement-related issues that cut across workgroup domains (see related discussion in the Readiness and the Assistance Highlights sections and the Cross-Cutting Issues section of this summary). The Enforcement Sub-workgroup began meeting in the fall of 1997, and was composed of representatives from states, EPA Headquarters and regions, and the Department of Justice.

Please send comments to [Konz.James@epamail.epa.gov](mailto:Konz.James@epamail.epa.gov) or call (703) 603-8841, or send comments to [Wright.Felicia@epamail.epa.gov](mailto:Wright.Felicia@epamail.epa.gov) or call (703) 603-8775

At the outset, EPA also formed a team, largely composed of EPA Headquarters program staff, to coordinate among the four workgroups, and between the workgroups and senior managers (see State and Tribal Superfund Management Council below). The Leadership Integration Team, or LIT, manages process-oriented activities, including project planning and scheduling, communicating the issues and products among workgroups and senior management, and addressing and resolving overlapping or cross-cutting issues. The LIT is composed of the team leaders of the four workgroups, and representatives from the OERR (the Superfund Program Office), OECA, OSWER and EPA Regional staff, as well as a representative from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).

In coordinating the products of this initiative, the LIT interacts regularly with the State and Tribal Superfund Management Council (SMC). The main reason for creating the SMC was to provide early and ongoing senior manager input to this initiative from EPA Headquarters, EPA regions, states and tribes. Through periodic conference calls and meetings, the SMC has been able to review and comment on workgroup/LIT deliberations throughout the entire process.

## **V. Shaping the Initiative: SMC Leadership**

The SMC provided key leadership to the State and Tribal Enhanced Role Initiative. Its membership provided a balance of EPA, state, and tribal perspectives, and included senior managers with detailed knowledge of response, enforcement, legal and administrative/managerial aspects of Superfund. Workgroup leaders were able to benefit from the perspective of senior managers as they guided the activities of their workgroups.

The SMC met four times and held many conference calls concurrent with the workgroup process. At the initial meeting in November 1996, the SMC identified its primary interests and initial guidance for the initiative. Members briefly discussed the planning context (current v. future law), the initiative's scope, how to gauge a state's or tribe's readiness, and the importance of providing flexibility to meet the broad range of state and tribal interests and capabilities. The SMC asked the LIT to summarize its recommendations on these issues for their consideration at a subsequent SMC meeting.

During a full-day SMC meeting in January 1997, the SMC considered the LIT's recommendations and provided clear, substantive input on these and other central issues. Following this meeting, the SMC reached consensus on the issues noted on the following page.

Please send comments to [Konz.James@epamail.epa.gov](mailto:Konz.James@epamail.epa.gov) or call (703) 603-8841, or send comments to [Wright.Felicia@epamail.epa.gov](mailto:Wright.Felicia@epamail.epa.gov) or call (703) 603-8775

### Consensus Issues

- ◆ **Planning Context:** The generation of ideas under this initiative should not be constrained by current law, nor should any specific statutory changes be anticipated. Rather, workgroups should work with open minds toward the best practical solutions.
- ◆ **Flexibility:** Recommendations should provide sufficient flexibility to work for the broad range of interests and capabilities of state and tribal Superfund programs.
- ◆ **Standard Elements:** It is useful to communicate a set of base program elements that are important to success in Superfund, but these elements should have the flexibility noted above.
- ◆ **Federal Involvement:** Members agreed that federal involvement would be greater for the highest-risk sites, and that involvement should decrease as states and tribes demonstrate capability.
- ◆ **Retained EPA Role:** The SMC recognized the importance of EPA response and enforcement action to the success of state and tribal programs. In particular, the SMC opposed limits to the number of sites that could be listed on the National Priorities List (NPL); noted the importance of a threat of EPA enforcement to the states' or tribes' success in securing PRP response work; and acknowledged that EPA should retain its enforcement discretion in the case of Fund-financed response actions.

Other issues were discussed for which a range of opinions were held within the group. Among the non-consensus items are those in the following box.

### Non-Consensus Issues

- ◆ **Federal Interest Sites:** Some EPA workgroup members believed the universe of sites that should be covered by EPA-state and EPA-tribal partnerships encompassed all high-risk sites, generally consistent with a Hazard Ranking System (HRS) score that would qualify the site for the NPL. Some State members viewed federal interest sites as a more narrow universe, generally restricted to NPL sites and sites where EPA performs a removal action.
- ◆ **Federal Enforcement:** Some EPA workgroup members believed that EPA should retain an ability to take enforcement action at state-lead sites in appropriate circumstances. State members believed state-lead sites should not be subject to federal enforcement, except in extremely limited cases of seriously unaddressed risks.

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The SMC discussions early in the workgroup process provided essential executive input to this initiative for both the consensus and non-consensus areas. Two SMC members summarized the SMC guidance and opinions for all workgroup members during the first consolidated workgroup meeting in February 1997.

The Council's third meeting was held in early May of 1997. SMC members provided input on preliminary recommendations presented by the four workgroup leaders. In addition, the SMC was briefed on critical considerations for enhancing the tribal role in Superfund by one of its tribal members from the St. Regis Mohawk Tribe, and discussed the connections between enforcement activities and funding decisions. A final SMC meeting in November of 1997 allowed for their review of final workgroup recommendations and provided a forum to resolve issues of concern to Council members.

## VI. Recommendation Highlights

**Relation of Recommendations to Superfund Reauthorization:** This initiative began at a time when EPA was also exploring approaches for a reauthorized Superfund program. The SMC and EPA management directed that the State and Tribal Enhanced Role Initiative should be an effort separate from reauthorization, allowing the workgroups to explore any type of change they felt necessary or appropriate to enhance state and tribal roles. While the workgroup recommendations represent significant changes in how the program could be implemented, most recommendations are well within EPA's current authority for implementing Superfund.<sup>3</sup>

Though it is a separate effort, the work conducted within the State and Tribal Enhanced Role Initiative may serve as an opportunity to inform EPA and others on particular reauthorization issues. On the other hand, Superfund reauthorization will require EPA to reevaluate recommendations in this report in light of enacted statutory change.

**Resource Implications:** Some recommendations in this report will require significant investments (such as technical and financial assistance to states and tribes). Workgroups did not attempt to solve resource problems implicit in their recommendations. Participants believe that some recommendations can be implemented with existing resources; some will depend upon new national resource investment/ disinvestment decisions, and some may be implemented by EPA regions with resource shifts at that level. EPA will consult with states and tribes at both national and regional levels about these resource decisions.

**Flexibility Can Enhance Efficiency:** All workgroups called for a flexible approach to address individual state and tribal needs as part of their recommendations. Consistent with SMC's instruction, workgroup members believe that program flexibility supports the goal of cleaning up sites to achieve the level of protection currently required under the federal Superfund program. By working with

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<sup>3</sup> Pilots will be implemented according to applicable federal laws and regulations. EPA does not intend for regions to implement recommendations which cannot be carried out under existing statutory authorities during this pilot phase.

states and tribes to identify and clarify their respective roles within the program, EPA can provide the support to ensure successful program implementation. Participants in this effort believe that with a new approach to the partnership, resources may be more efficiently directed towards greater program effectiveness. For example, current working relationships among EPA, states and tribes can include a significant overlap in roles, with no single entity having sufficient resources to address all contaminated sites. EPA believes that developing a comprehensive implementation framework is a significant step in the direction of a more efficient program.<sup>4</sup>

## **Readiness Highlights**

The Readiness Workgroup recognizes that all states and tribes have different ranges of expertise, experience, and ability to implement activities at sites under Superfund and that EPA regions have different working relationships with different states and tribes. In order to provide states and tribes a baseline against which to measure their program capability, the Workgroup developed performance-based criteria that define implementation "readiness." These criteria establish (1) the best way to identify readiness of a state or tribe to assume responsibilities for implementing the Superfund program, and (2) resources and capabilities that a state or tribe should have in place to demonstrate "readiness." The workgroup framed consistent "results-oriented" standards around which states and tribes can develop their programs and assess their level of readiness.

These minimum standards are written in generic form so that they can be applied under the current program, or in any future scenario. To ensure that the full scope of the Superfund program is characterized, the Readiness Workgroup developed the criteria within four broad areas. These areas were identified as the major elements of a cleanup program: site identification, screening, and prioritization; expedited actions; long-term actions; and post-cleanup site monitoring and evaluation. The Workgroup also linked certain activities among the readiness criteria of activities that would work best together. The Workgroup recommends that programs follow the "criteria grouping" guidelines to ensure overall effective program implementation.

Consistent with the guiding principles for this initiative, the Readiness Workgroup agreed that states and tribes should adhere to the spirit of the enforcement fairness reforms and policies, even without consensus on the issue of whether the states should have to implement the reforms in the same manner as EPA. The Workgroup's recommendations are more fully discussed in *Chapter 1: Readiness Recommendations* of this report.

## **Assistance Highlights**

The Assistance Workgroup proposes to use multiple tools to address a two-part program of technical assistance and financial funding/assistance.

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<sup>4</sup> It is envisioned that there generally will be a single "lead regulator" for each site that would be determined by the region and state or tribe.

The principal technical assistance recommendations are that EPA: formally assess, on an ongoing annual basis, the technical needs of state and tribal Superfund programs; meet those needs to the best of its ability through training and access to federal personnel, contracts, or equipment; and provide a periodic report to Congress on the technical needs of state and tribal programs and federal resources required to meet those needs. Some resources to implement training and technical assistance are currently available. Future resources needed to provide for technical assistance and training may require investment/divestment. Superfund research and development activities should continue to be conducted by EPA, with transfer of those technologies to the states and tribes.

One of the report's principal recommendations is to give states and tribes greater flexibility in implementing the various Superfund program components. To that end, greater or lesser involvement in implementation may be accomplished by varying the type and scope of assistance agreement offered, depending on the extent of state or tribal readiness, the combination of program elements requested by the state or tribe, and the need for EPA involvement in implementation. Possible changes to provisions of the Superfund Administration Regulation, "Cooperative Agreements and Superfund State Contracts for Superfund Response Actions," 40 CFR Part 35 Subpart O, are being examined for assistance agreements issues. A related recommendation is to streamline and consolidate the budget and reporting requirements prescribed by Subpart O. Options for advancing these recommendations can be found in the body of this report.

The Enforcement Sub-workgroup recommends using a variation of the current National Prioritization Panel in awarding cooperative agreements for Fund-financed construction. This approach can ensure the "enforcement first" policy is maintained in implementing response actions. Currently, the panel prioritizes the following activities: remedial action starts; non-time critical removal actions at NPL sites; removal actions with costs above a region's base budget; and enforcement fairness initiative projects. As the states and tribes take on larger roles in the Superfund program, newly created EPA regional panels could provide states and tribes with direct involvement in the priority-setting process. The National Prioritization Panel will continue to make final (cross-Regional) priority decisions. The Workgroup's recommendations are more fully discussed in *Chapter 2: Assistance Recommendations* of this report.

## **Agreements Highlights**

The principal recommendation from the Agreements Workgroup is for states, tribes and EPA to follow a proposed model agreement that documents the relationship between EPA and a state or tribe. This model agreement would define the type of relationship EPA and the state or tribe plan to develop, based on the most efficient way to clean up sites in the state or Indian country, and the capabilities and interests of the state or tribe. In particular, the Workgroup thought it essential to clearly define the roles and responsibilities of the various parties and the types of sites to be included. The Workgroup envisioned the agreement to be broad; if site-specific details were needed, they would be provided in sub-agreements. The Workgroup did not recommend a particular duration for the agreement, because it will vary depending on how much responsibility is initially provided to individual states and tribes in any agreement. However, the agreement does provide that if a significant statutory program or funding change affects the state's, tribe's, or EPA's ability to carry out

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the agreement, then it should be brought to the attention of all parties to decide the implications/consequences to the agreement.

The primary benefit from this recommendation is that the agreement would formally assign responsibilities to either EPA or the state or tribe, thereby reducing duplication of effort among participants, with a single agency having primary responsibility for the particular activity or group of activities. *Chapter 3: Agreement Recommendations* contains the model agreement and further discussion of the recommendation.

## **Tribal Highlights**

Although each workgroup operated under the assumption that its recommendations would apply to states and tribes equally, EPA and the SMC recognized that there are unique considerations to address in the recommendations with respect to Tribes. To ensure that tribal concerns are appropriately represented within the implementation plan, the Tribal Workgroup conducted the special task of evaluating each workgroup's recommendations as to their applicability to tribes. Tribal Workgroup recommendations are directed at issue areas assigned to other workgroups, with a specific focus on tribal needs. The Workgroup developed a total of 29 detailed recommendations, organized into four broad priorities that EPA could implement to increase the tribal role in Superfund:

- ◆ Increase funding for tribal Superfund programs and allocate it separately from state funding;
- ◆ Develop tribal-specific Superfund training and increase training efforts;
- ◆ Explore ways to better incorporate tribal cultural values into the Superfund program; and
- ◆ Advocate inter-agency coordination among agencies with environmental Federal Trust responsibilities.

These priority recommendations indicate that tribes are in the early stages of developing capacity, if they are involved at all, in the Superfund program. As tribes develop their environmental programs, they need mechanisms to address unique tribal needs and priorities that are different from those EPA has experienced in working with states. *Chapter 4: Tribal Recommendations* contains all Tribal Workgroup recommendations and accompanying discussion summaries. It acknowledges that increased tribal funding should not come at the expense of state funding, and proposes means to address any issues of site jurisdiction that may arise between states and tribes.

## **VII. Cross-Cutting Issues Associated With This Initiative**

EPA identified several important issues that span more than one workgroup and affect implementation of the enhanced role initiative. In particular, issues regarding enforcement/funding arose within a broad context, and were investigated by the Enforcement Sub-workgroup identified previously. These issues extended well beyond the State and Tribal Enhanced Role Initiative, but are integral to implementation of workgroup recommendations. These issues are important, because in the absence of a major Congressional funding increase, it is essential that the current balance of enforcement-lead cleanups (approximately 75%) continue.

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The most significant enforcement issues relate to increasing state management of federal funds and enforcement policy initiatives. A major question was how EPA's "enforcement first" policy should continue under state program direction.<sup>5</sup> Participants agreed that states and regions should adhere to the spirit of the fairness reforms and policies (e.g., *de micromis* settlements, municipal liability), because of the great importance placed upon them by the federal government and Superfund program stakeholders. Participants also agree, however, that states and tribes should have flexibility in implementing the reforms.

The SMC discussed the issue of jurisdiction over sites that impact tribes. Two types of sites were considered: (1) sites located partly or wholly within the boundaries of a federally-recognized Indian tribe/Native Village; and (2) sites located immediately adjacent to Indian lands or those with a clear and significant impact on tribal lands or resources (e.g., fisheries).<sup>6</sup> The SMC agreed that states should not be able to take lead responsibility for the first group of sites (within the boundary of Indian lands). If tribes have the interest and readiness to take the lead for site response, they may do so. If the tribe does not have this interest/readiness, EPA would maintain lead responsibility to ensure that the federal government is living up to its responsibilities. State members urged EPA to ensure that states are provided an opportunity to be involved in sites on tribal lands that impact non-tribal lands/resources.

For the second group of sites (those adjacent to or impacting Indian lands or resources), the SMC agreed that it would be important to consider whether the tribe's interests could be addressed if the state has the lead for site response. If the result of advance discussions among EPA, the state, and the tribe were that tribal interests could be fairly incorporated under a state lead, then the state could assume lead for these sites. If there remained significant concern that tribal interests may not be fairly addressed, then EPA would maintain the lead responsibility for these sites.

## VIII. Key Next Steps for EPA

Recommendations outlined in this plan are steps that EPA will implement to comprehensively enhance the role of states and tribes in Superfund's implementation. The agency is investigating opportunities to pilot-test the overall process. (EPA believes that the readiness, assistance, and agreements recommendations should be implemented as an integrated process.) The components of this initiative (i.e., the workgroup products) are inter-dependent and constitute a unified approach to meet the goal of enhancing the state and tribal implementation role in Superfund.

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<sup>5</sup> Many states have voluntary cleanup programs through which private parties conduct site cleanups that preserve constrained public resources. These programs can contribute to Superfund's enforcement-first and polluter-pay principles.

<sup>6</sup> EPA should seriously investigate ways to look at ways to encourage states and tribes to better cooperate among themselves on Superfund and other important environmental issues. As tribal environmental program capacity increases, opportunities for cooperation among tribes and states will proliferate.

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Starting in FY98, EPA will begin work to develop a comprehensive implementation plan for the enhanced role process and will conduct a national pilot of this process. Each region is to "field-test" the integrated process with one state and one tribe (except Region III, which has no federally-recognized Indian tribes). The selection of the state and tribe (or, more than one, if a given region is willing and has several states and tribes interested in pursuing an enhanced role) is at the region's discretion. Piloting the process on a small scale in each region will give EPA program-wide experience with an enhanced state and tribal role which can be incorporated into the final implementation plan.

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# Introduction

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## Preface

The following chapters present the workgroup products developed under the State and Tribal Enhanced Role Initiative. These chapters form the basis of an integrated approach for EPA to increase the state and tribal role as co-implementors of the Superfund program. The LIT has sketched out an implementation process, using ideas developed by the workgroups, which will be used to pilot the initiative. The process, depicted in Figure 1 on the next page, is envisioned to be highly interactive and iterative. The success of this process will be directly linked to the quality of interactions and negotiations between EPA and the states and tribes to reach agreement on their implementation roles.

## Description of Integrated Process

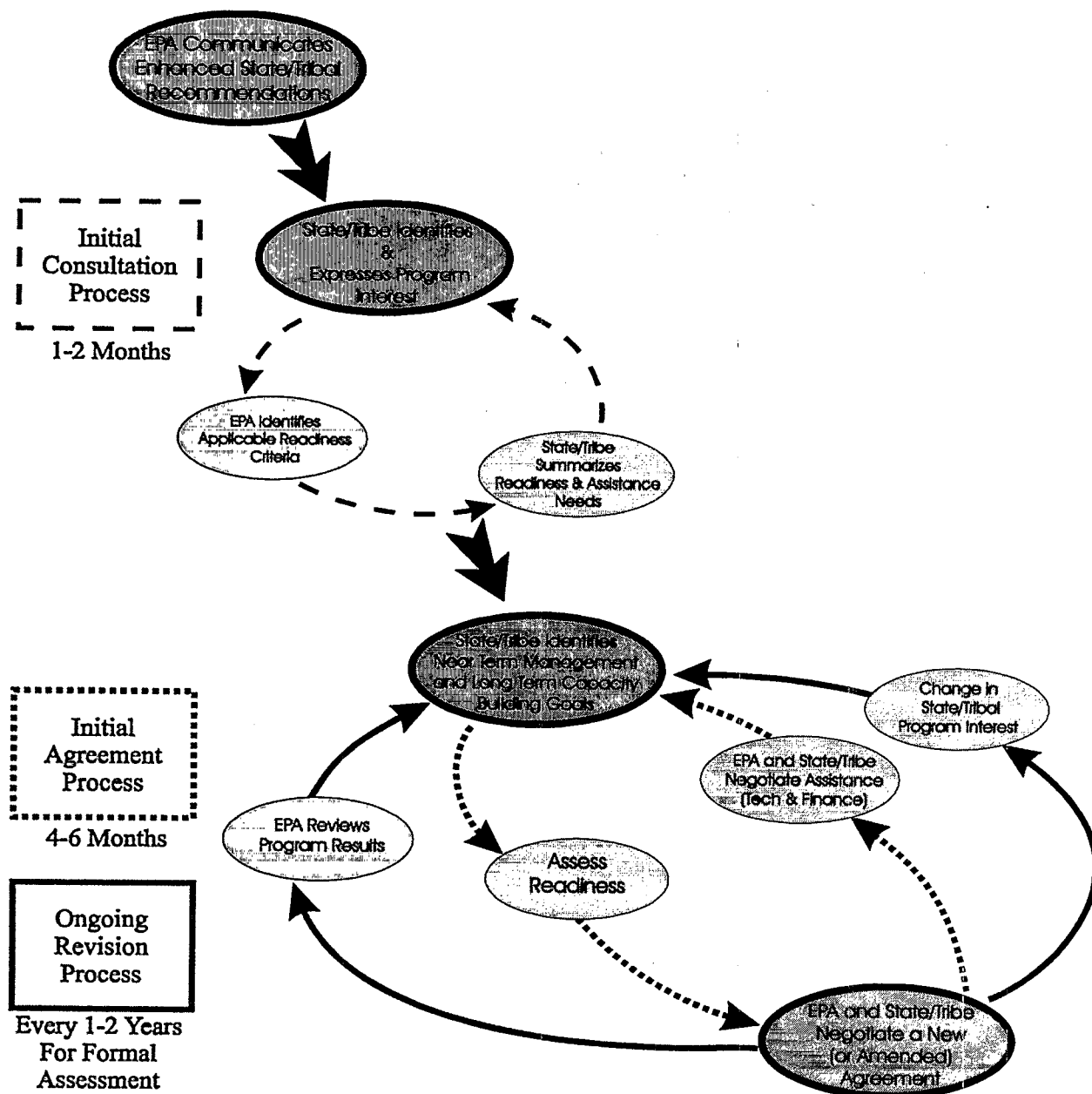
As illustrated in Figure 1, the proposed integrated process can be generalized into three basic steps. Each step involves a greater level of effort as implied by the number of actions influencing the process. The steps are depicted in a linear progression towards full implementation of an enhanced role:

- ◆ First, EPA communicates the opportunities and begins to pilot recommendations to enhance the state and tribal role. This first step is initiated with the issuance of this plan.
- ◆ The second step is initiated by the state or tribe who expresses interest to EPA for a greater implementation role. The state or tribal program interest is then tentatively defined within an **"initial consultation process"** with EPA. During the initial consultation process, EPA and the state or tribe work together to correlate initial interests with applicable readiness criteria, and informally gauge current readiness and assistance needs. Initial program interests may change, depending upon the needs and capabilities identified.
- ◆ The third step begins when the state or tribe has decided upon and clarified its Superfund program goals with respect to near-term management and long-term capacity building for its Superfund program. At this point, EPA would initiate an interactive **"agreement process"** to negotiate a final EPA-state or EPA-tribal agreement. The process consists of a detailed readiness assessment, detailed negotiations for technical and financial assistance, and the development of a new program agreement formalizing the enhanced state and tribal role. Over time, changes to the agreement may be necessary based on changing program needs and priorities, resource availability, and performance. EPA views this as an **"ongoing revision process"** that ties back into, and re-initiates, the "agreement process" for development of an amended agreement.

The four bolded ellipses in Figure 1 represent another important concept. These components are emphasized as key actions critical to achieving implementation. For example, the enhancement process cannot proceed if EPA does not communicate the enhanced role opportunity, and states and tribes do not express interest in an enhanced role in the Superfund program. Further, the process should enable states and tribes to begin conducting Superfund activities they are capable of now, and develop their capabilities over time in other program areas in which they are interested.

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**Figure 1: Generalized Implementation Process  
Enhanced State and Tribal Role**



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Finally, in viewing the last step to achieving full implementation — the negotiated agreement — it is important to note that this endpoint is not fixed, since ongoing changes in program implementation may warrant periodic amendments to the agreement.

## **Workgroup Chapter Recommendations**

Each workgroup chapter explains the objectives of the workgroup and provides detailed recommendations to meet the objectives. Each workgroup developed its own strategy for presenting the recommendations that would be most effective for meeting the objectives of its workgroup. In each case, the workgroup may provide some general direction on process, but most of the emphasis is placed on the activities or products that could facilitate an enhanced role for states and tribes in Superfund, based on workgroup objectives. Consequently, the recommendations take many forms, whether they are a set of standardized program criteria, a list of program enhancements, or a comprehensive model.

The workgroups avoid the use of specific Superfund program terminology in their recommendations, when possible, to ensure that the basic ideas for enhancing state and tribal roles do not become immediately obsolete if program terminology changes as a result of Superfund reauthorization. To be consistent, all workgroups attempted to use the same "generic" terms, where applicable.

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# **Chapter 1**

## **Readiness Recommendations**

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## I. Introduction

The purpose of this chapter is to describe both the process and the capabilities needed for transferring responsibility for elements of the Superfund program from EPA to states and tribes. The Readiness Workgroup (Workgroup) is one of the four workgroups tasked with planning for an enhanced state and tribal role in the Superfund program. State and tribal readiness, for the purposes of this report, means the ability to implement an effective Superfund program (or elements of the program). The members of the Readiness Workgroup developed a mission statement, which is

“To develop flexible performance standards and a process to assess state and tribal readiness and identify means or needs to enhance readiness. The performance standards should be clearly stated, and the process should be flexible.”

This chapter contains some general themes for establishing a process to define a baseline measure for an effective Superfund program. States and tribes and EPA can use the Modules in Appendix A to assess their programs and, by so doing, decide which capabilities are well established and which need to be more fully developed over time to reach a level that will ensure effective program implementation.

NOTE: Cleanup programs, in this case the Superfund program, are multi-faceted and consist of a variety of program activities. In order to organize all of this material, the Workgroup divided the program activities into “Modules.” Each Module consists of activities for different parts/aspects of the program. The Modules are organized according to the different stages of a cleanup program and will assist in assuring effective program implementation. All twelve Modules are located in Appendix A.

## A. Workgroup Membership

The Workgroup consists of representatives from Ohio, Massachusetts, the U.S. Army Corps of Engineers (USACE), North Carolina, Missouri, EPA Region 5 (Regional Counsel’s Office), EPA Region 7 Superfund Division, and EPA Headquarters (Office of Emergency and Remedial Response (OERR), Federal Facilities Restoration and Reuse Office, Office of Site Remediation Enforcement, and Office of General Counsel).

## B. Recommendation

The Workgroup recommends that the process for assessing State and Tribal readiness laid out in this chapter be implemented on a pilot basis. The Modules can be used to determine current State and Tribal readiness and areas needing development. When a State or Tribe seeks to assume responsibility for the entire Superfund program or a part of the program, then that State or Tribe should demonstrate capability and authority to carry out all of the activities in each Module. However, it is possible for a State or Tribe to work out an arrangement with the Region to divide work, so long as all of the activities

Please send comments to [Frey.Sharon@epamail.epa.gov](mailto:Frey.Sharon@epamail.epa.gov) or call (703) 603-8817

in each Module are addressed. The State or Tribe and Region have a shared responsibility to ensure that all of the program activities are completed.

## II. General Themes for Process for Determining Readiness

The Workgroup believes it is most valuable at this point to develop the general themes and direction of the process for determining readiness. A detailed process should be developed during implementation, so that Regions would have flexibility in how best to work with individual States and Tribes. The themes outline general roles and responsibilities of States, Tribes, the public, Regions, and EPA Headquarters. The Workgroup envisions that the State or Tribe would initiate the process by communicating its interest in having a more enhanced role in the implementation of Superfund. This would be followed by the Region and State or Tribe negotiating with each other to sign agreements that designate the division of labor for specific program areas between the Federal and State or Tribal governments. Where a State or Tribe takes on a portion of the program, the State or Tribe will work with the appropriate Region to determine the most effective use of combined Federal and State or Tribal resources, authorities, and capabilities.

The general themes include the following:

1. There should be appropriate public involvement in the decision-making process for each individual State or Tribe to take on parts of the Superfund program (e.g., notice in *Federal Register*, public comment period).
2. An explanation of how a State or Tribe meets the activities in each Module should be submitted by the State or Tribe to begin negotiations with the Region. This process should not be onerous, and should take into account a State's or Tribe's past record of its Superfund activities and experiences (which could include related activities in other programs, e.g., Resource Conservation Recovery Act (RCRA), Underground Storage Tank (UST), and voluntary cleanup programs (VCPs)).
3. Where a State or Tribe takes on a portion of the program (e.g., a few Modules), the State or Tribe will work with its Region to determine the most effective use of combined Federal and State or Tribal resources, authorities and capabilities. As part of EPA and the State or Tribe determining the use of combined Federal and State or Tribal resources, authorities and capabilities, the State or Tribe and EPA should decide which entity will be the "lead regulator" for each site. EPA should provide States and Tribes with assistance to build capacity where needed (see *Chapter 2: Assistance Recommendations*).
4. The Workgroup grouped the program activities in a logical manner in each Module to assure effective program implementation.
5. Regions should be responsible primarily for working with the State or Tribe to assess readiness for an enhanced role. Headquarters should play a support role when needed, and ensure national consistency regarding enhancing the State and Tribal role.
6. There should be a dispute-resolution process. Appeals should start at the staff level among Regions, States, and Tribes and should work their way up the chain of command.

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- In dispute resolution, EPA Headquarters should be the final decision maker if the dispute cannot be resolved at the Regional level consistent with 40 CFR 31.70 ("Disputes").
7. Regions should perform differential oversight of Superfund activities undertaken by each State or Tribe (i.e., the level of oversight would vary based on, for example, the complexity of the tasks to be undertaken and a State's or Tribe's experience. See #2 above). Differential oversight should be defined in the agreement that is negotiated between the State or Tribe and Region (see Chapter 3: Agreements Recommendations).
  8. Periodic reviews or some other mechanism should be in place to determine that readiness criteria continue to be satisfied by a State or Tribe over time. This mechanism should ensure that significant changes that affect the State's, Tribe's, or EPA's ability to carry out the agreement are brought to the attention of the parties to the agreement to decide what implications/consequences there are to the agreement.

### **III. Framework for Readiness Approach Developed by Consensus**

The Workgroup reached consensus on the assumptions listed below to provide a context for the activities in the Modules and the general themes for the process for determining readiness. All of the assumptions are important in understanding the context of the activities listed in the Modules. The assumptions include the following:

1. Program activities are generic because the content of any future law is unknown.
2. All Superfund elements are "on the table."
3. No assumptions are made as to the exact form (e.g., "flexible partnership," delegation or authorization) the program would take.
4. Thoughts are limited to existing pipeline elements.
5. All States and Tribes are eligible, and at least one State or Tribe wants the program.
6. EPA Regions, States, and Tribes will cooperate.
7. There is a need for both long-term and short-term cleanup actions.
8. Federal funding is available. If a State or Tribe spends Federal funds, it must satisfy the minimum criteria outlined by the then-effective Federal laws/regulations.
9. A national system exists to prioritize sites for cleanup that need/want Federal Superfund dollars for Superfund activities.
10. There are no special assumptions made about Federal facilities.<sup>6</sup>
11. Cleanups conducted or overseen by the State or Tribe using Federal funds must be done in accordance with the requirements of whatever the Federal laws/regulations provide at the time and must not be less protective than whatever the Federal laws/regulations provide at the time. If the State's or Tribe's liability standards are less stringent than the Federal liability standards and requirements, EPA would take the lead on these portions of the program.

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<sup>6</sup> There are a number of activities which cannot be performed by a State or Tribe for Federal facilities under current statutory construction. Regions and States or Tribes will need to be cognizant of this when drafting the terms and conditions of any agreement between Regions and States or Tribes.

12. There is a Federal safety net; i.e., the Federal Government retains all of its legal authorities, but would not generally exercise such authority on State- or Tribal-lead sites (and not without full prior consultation), except when human health or the environment is not being protected.
13. There is a minimum baseline performance standard for each element of the Federal cleanup/enforcement program. States and Tribes may go beyond the minimum baseline.
14. The Readiness Modules should be considered by Regions, States, and Tribes when entering into flexible work-sharing agreements. The Modules contain logically-grouped activities. All activities within each Module must be covered. In attempting to implement an effective Superfund program, States and Tribes should be aware that they do not have to meet all of the activities listed in the Modules. It is assumed that for any activities within a Module that the State or Tribe will not perform, a flexible work arrangement will provide that the Federal Government will perform those activities.

#### IV. Additional Issues

The Workgroup reached consensus on all of the criteria, recommendations, and findings in this chapter and Appendix A, except the issue regarding Federal principles of fairness and equity as stated below. (Consensus was defined as what the Workgroup members "could live with.")

In identifying readiness criteria, the Workgroup considered whether adoption of the same or similar Federal principles of fairness and equity should be required of the States and Tribes. EPA has been criticized for inequitable and unfair settlements. During the last few years, to address stakeholder concerns, EPA has placed great emphasis on the principles of fairness and equity within the Superfund settlement context and has issued a number of policies to ensure effective implementation of these principles. Currently, EPA settlements may be based on the PRPs' individual contributions to site contamination and allow minor contributors and parties with limited financial resources the opportunity for an "early out." EPA settlement policies that reflect these principles of fairness and equity include policies regarding *de minimis* and *de micromis* contributors, orphan share, and mixed funding.

The Workgroup believed it was important that States and Tribes at least make a statement with respect to the principles of fairness and equity because of the great importance placed upon these principles by the Federal Government and Superfund stakeholders. Further, the Workgroup believed that States and Tribes should consider them when negotiating settlements. Options for tools that EPA, States, and Tribes could use to make this type of statement include: (1) partnership agreements; (2) Memoranda of Agreement; and (3) cooperative agreements. Workgroup members agreed that the mere mention of the principles in public documents such as these would encourage compliance, as it would allow aggrieved parties to publicly raise the issue. The type of vehicle used for stating that States and Tribes should consider the principles of fairness and equity should be decided by the Region and State or Tribe, so together they can determine the most appropriate option considering the specific circumstances.

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## V. Generic Program Components

The Workgroup developed an outline of generic program components of a typical cleanup program. These were developed so as to be able to fit under any Superfund scenario; i.e., the current program or any future reauthorized Superfund program. These program components serve as a basis for States, Tribes, and EPA Regions to develop agreements about how to transfer implementation responsibility from EPA to the States and Tribes. These program components, and the specific activities under them (i.e., the Modules), then become "readiness criteria." In order for a State or Tribe to assume responsibility for an entire program component (or some logical subset of activities under that component; i.e., a Module), a State or Tribe should have the capability (including legal authority) to carry out each activity. These activities are therefore both (1) a list of readiness criteria when the States and Tribes seek to assume new responsibilities, and (2) a checklist of work activities for Regions and States or Tribes to jointly manage. They are written using generic terminology, rather than Federal Superfund terms, so applicable State and Tribal experiences can more readily be considered. These program components follow below:

### *1. Site Identification, Screening, Prioritization*

The purpose of this component is to ensure that States and Tribes can identify and prioritize potentially contaminated sites to be addressed under CERCLA.

- ◆ Identify sites.
- ◆ Screen sites.
- ◆ Prioritize and evaluate sites for cleanup.
- ◆ Prioritize and evaluate sites for Federal eligibility.

### *2. Short-term Action Activities*

The purpose of this component is to ensure that States and Tribes have the ability to conduct and compel expedited evaluations and expedited actions.

- ◆ Conduct and compel urgent evaluations and cleanups.
- ◆ Conduct and compel expedited evaluations.
- ◆ Conduct and compel expedited cleanups.

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### *3. Long-Term Action Activities*

The purpose of this component is to ensure that States and Tribes can fully characterize and compel the characterization of sites, select a cleanup option and compel the selection of a cleanup option, and conduct and compel implementation of a long-term cleanup.

- ◆ Characterize, and compel the characterization of, sites for long-term cleanup actions.
- ◆ Identify, evaluate, select, and compel potential cleanup actions.
- ◆ Design, implement, and compel site cleanups.
- ◆ Have the ability to conduct and compel temporary and permanent relocations.

### *4. Post-Cleanup Site Monitoring and Evaluations*

The purpose of this component is to ensure that States and Tribes can conduct operation and maintenance and other site maintenance activities, ensure that the cleanups remain protective, determine when/if a site is clean, and prepare necessary deletion documentation.

- ◆ Conduct and compel post-cleanup monitoring and evaluations.

## **VI. Common Activities To Determine Capability**

The Workgroup created a list of activities that are the foundation for an effective cleanup program, and which apply to activities across the program. Regardless of what portion(s) of the program the State or Tribe is interested in taking responsibility for, it should be able to implement the following common activities, as appropriate. Unless otherwise indicated, each activity described may be funded by EPA under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into cooperative agreements with States and Indian Tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O codifies the requirements for Superfund Cooperative Agreements.

### **A. Access to Resources**

1. *Trained Personnel:* The State or Tribe should have the ability to train and/or access trained personnel who are capable of fulfilling the particular tasks outlined in the chapter and Modules. There should be a sufficient number of personnel commensurate with the workload, and the State or Tribe should have the capability to ensure that future training needs are met. The type of trained personnel (in-house or contract<sup>7</sup>) that will be necessary include:

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<sup>7</sup> It is not appropriate for contractors to perform inherently governmental functions (e.g., making cleanup and enforcement decisions and deciding on a State's priorities).

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- (i) Personnel with appropriate health and safety certifications.
  - (ii) Government (e.g., USACE, U.S. Bureau of Reclamation (BoR), the Agency for Toxic Substances and Disease Registry, other State health departments, and other State agencies) or contract personnel capable of conducting human health risk assessments, ecological risk assessments, hydrogeological evaluations, chemical analysis, legal work (e.g., legal analysis and litigation), community interaction, and engineering analysis.
  - (iii) Federal, State, or Tribal personnel capable of procuring, administering, and monitoring contractors and site progress.<sup>8</sup>
  - (iv) Personnel capable of PRP searches, as appropriate, which entail such activities as tying PRPs' liability to the site and financial analysis of PRPs.
  - (v) Personnel trained in conducting field activities in accordance with standard operating procedures that the State or Tribe should have in place for conducting these field activities.
2. *Analytical Services:* Based on the types and number of sample analyses that will be needed, the data quality (level of data quality that data must meet), turnaround times, and anticipated numbers of each type of analysis, the State or Tribe should be able to:
- (i) Ensure that there is an agreement in place with a laboratory to provide these services.
  - (ii) Ensure laboratory certification or other mechanisms are in place to assure data quality.

## **B. Public Access to Non-Enforcement Sensitive Documents**

1. The State or Tribe should ensure that public documents generated under State or Tribal implementation of the Superfund program will not be less accessible to the public than if the program were Federally implemented.
2. The State or Tribe should have the authority to withhold from release confidential documents (including enforcement sensitive, confidential business information, deliberative) in accordance with whatever the Federal laws/regulations provide at the time (e.g., 40 CFR Part 2, Subpart B). (Note: Many State Freedom of Information laws are less stringent than the Federal Freedom of Information Act.) Public access to documents and data may include electronic access.

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<sup>8</sup> Ibid.

### **C. Community Involvement**

The State or Tribe should be able to ensure the appropriate level of community involvement, depending on the activities being implemented.

### **D. Health and Safety**

The State or Tribe should be able to ensure that appropriate health and safety plans/measures are implemented, as necessary.

### **E. Coordination With Other Agencies**

The State or Tribe should have the ability to ensure that cooperative work mechanisms (e.g., letters, Interagency Agreements, Memoranda of Agreement, contracts) and support from other Federal and State agencies can be obtained as necessary.

### **F. Budgetary, Accounting, Procurement, Cost Recovery, and Tracking Systems**

1. The State or Tribe should be able to provide the information needed to track site activities and financial expenditures, as necessary, to support assistance agreement obligations, cost-recovery actions, and other Federal reporting requirements. Information may include investigation costs, oversight billing, etc., and should be provided in an electronic format that is compatible with EPA data systems or can be easily converted for use with EPA data systems.
2. The State or Tribe should be able to ensure that indirect and direct costs are documented for ultimate purposes of cost recovery.
3. Based on the proposed work plan of activities to be conducted, the State or Tribe should present an estimated budget and indicate a source of funding, including the Federal dollars needed to implement the program. The State or Tribe should also have the ability to obligate, allocate, and be accountable for (i.e., manage appropriately and responsibly) funds to complete cleanup.

### **G. Site Access and Information Gathering**

The State or Tribe should be able to secure site access and obtain site information.<sup>9</sup>

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<sup>9</sup> CERCLA §104(e)(1) authorizes any designated officer, employee, or representative of a State or Tribe operating pursuant to a Superfund Cooperative Agreement to take action under §104(e)(2)(access to information), (e)(3)(entry), (e)(4)(inspection and samples).

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## **H. Site Records**

The State or Tribe should be able to ensure that decision-making processes are documented by creating site records, ensuring site activities are tracked, and maintaining comprehensive files describing rationale for site decisions. For short-term actions, documentation would be done at an appropriate time based upon the nature of the site condition.

## **I. Site Closeout**

The State or Tribe should agree with EPA upon a procedure for determining when no further Superfund action is required at any point in the Superfund process.

## **VII. Conclusion**

EPA believes that it is important to assess State and Tribal readiness objectively, while taking into account the wide variation of capabilities among States and Tribes. EPA also believes that a flexible process is important for assessing readiness. The process and Modules in Appendix A allow for effective implementation of the Superfund program with a larger role for States and Tribes. This process will help to ensure consistent and objective decisions about enhancing the role of States and Tribes in the Superfund program, both in the near term (current law) and in the longer term (potentially a reauthorized Superfund law). Additionally, the process will help ensure strong management and administration of the Superfund program as more activities are implemented by States and Tribes.

Please send comments to [Frey.Sharon@epamail.epa.gov](mailto:Frey.Sharon@epamail.epa.gov) or call (703) 603-8817

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## **Chapter 2: Assistance Recommendations**

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## **I. Summary**

The Assistance to States Workgroup is composed of state representatives from New York, North Carolina, Minnesota, Wisconsin, Ohio, Kansas, Illinois, and Michigan, as well as EPA staff from OERR, the Office of General Counsel, the Office of Grants Debarment, Region 3, Region 5, and Region 8. This chapter has been condensed from a more detailed report that represents the deliberations of the Assistance to States Workgroup, and focuses mainly on recommendations contained in the master report for providing technical and financial assistance to state and tribal Superfund programs.

In summary, this chapter recommends that EPA strategically plan and budget to provide Superfund training and technical assistance to states and tribes to develop state and tribal capability to respond to the release, or threat of release, of hazardous substances. Assessing readiness of individual states and tribes to assume Superfund implementation will result in a shared understanding of the near-term and longer-term program capabilities and expertise needed for implementation. Training and technical assistance should be specifically tailored to the need for technical resources and training on the part of individual states and tribes. This chapter further recommends that EPA formally assess, on an ongoing annual basis, the technical needs of state Superfund programs, and that EPA meet those needs through training and access to federal personnel, contracts, and equipment. Some resources are available currently to implement additional technical assistance. In future years, disinvestments and reinvestments may be needed to support training needs of states and tribes. Assistance Workgroup recommendations comprehensively discuss ways this can be accomplished.

One of the principal recommendations in Chapter 2 is to give states and tribes greater flexibility in implementing the various Superfund program components. To that end, greater or lesser involvement in implementation may be accomplished by varying the type and scope of assistance agreement offered, depending on the extent of state or tribal readiness, the combination of program elements requested by the state or tribe, and the need for substantial EPA involvement in the implementation of the activity. Possible changes to provisions of the Superfund administrative regulation, 40 CFR Part 35, Subpart O, are being examined for assistance agreements issues. A related recommendation is to streamline and consolidate the budget and reporting requirements prescribed by 40 CFR Part 35, Subpart O, the program regulation governing "Cooperative Agreements and Superfund State Contracts for Superfund Response Actions." Options for advancing these recommendations can be found in the body of this report.

## **II. Introduction**

Chapter 2 presents technical assistance and funding recommendations to facilitate an increased state and tribal role in Superfund. The technical assistance section of this chapter explores areas for enhancement identified by state and EPA workgroup members. The funding section of this chapter evaluates recommendations for enhancing state and tribal involvement in Superfund through more flexible assistance agreements and improved administration of current agreements.

### III. Technical Assistance

Three areas that have been identified by the Assistance to States Workgroup as important components of assistance to states and tribes are training, state and tribal access to federal resources, and management and technological program enhancements.

#### A. Training

##### 1. *Assessment and Delivery of State Training Needs*

More than 275 courses relating to Superfund are presently offered by EPA; these are listed in Appendix B. Of these courses, 152 are contained in the OSWER Training Database and Videotape Inventory, and 124 are contained in the National Enforcement Training Institute's (NETI) catalogue. In addition, there are 312 videotapes available in the OSWER Training Database and Videotape Inventory for training purposes. The Workgroup recommends that EPA regional offices, in coordination with state and tribal partners, annually identify state and tribal training needs. EPA Headquarters would oversee and coordinate the regional effort, to ensure that the training objectives are met; to report, as necessary, on the technical needs of state and tribal programs; and to seek federal resources required to meet those needs. A mechanism for recording needed Superfund training and assistance can be the implementing agreement between EPA regions and the states and tribes, as described in *Chapter 3: Agreement Recommendations*.

To deliver training resources, individual training could be offered within states to meet the needs of state and tribal personnel hampered by travel restrictions. For those states and tribes not restricted by travel limitations, it is recommended that the Superfund Academy concept, which is currently available primarily to federal employees (as space permits, several courses are available currently to states and tribes), be expanded to provide training for states and tribes. The Academy could offer "one-stop shopping" for Superfund-related training. In addition, courses presently offered by state universities and colleges could be reviewed and "approved" by EPA, then used as training resources for states and tribes. Training is also offered by other government agencies, such as the Department of Energy and USACE. Coordination among these agencies and EPA in evaluating and delivering Superfund training needs could facilitate the overall federal ability to transfer federal experience and capabilities to states and tribes, and promote more comprehensive Superfund training.

##### 2. *Program Assistance*

States and tribes would like to access other sources of information through personnel and resources at EPA. Examples of possible sources include the Management Assistance Review program for review of state and tribal programs. Development of manuals similar to the Region 4 Environmental Investigations Division's field sampling standard operating procedures manual could be applied across all regions, which would help to promote consistency and identify accepted operating procedures that could be adopted by states and tribes. This application could also assist in regular regional reporting requirements.



## **B. State and Tribal Access to Federal Resources**

### **1. Expert Assistance**

States and tribes have expressed a desire to more fully utilize federal resources to expand their role in Superfund. Forming and providing state access to multi-disciplinary teams of technical and scientific experts on either a regional or national basis is recommended to support state remediation efforts. This concept is similar to the Environmental Response Team located in Edison, New Jersey, which is available to mobilize for situations demanding specialized expertise. Multi-disciplinary teams could be assembled from regional resources, on a regional basis, and be made available to assist on-site where specialized expertise is needed by states and tribes, when states and tribes do not otherwise have access to such resources, or they cannot cost-effectively maintain such resources. Access to teams for more routine site issues could be accomplished via the Internet, through a published directory of technical and scientific personnel with identified expertise for direct access, or through a chat room/bulletin board. Availability to states and tribes of federal personnel with specialized expertise through Inter-Agency Personnel Agreements (IPAs), or detail assignments, as well as EPA labs, information databases, equipment pools, and contracts, could be more widely employed to maximize the use of resources and benefits to states and tribes.

### **2. Contract Lab Program and Other Labs**

Additional ability to utilize the Contract Lab Program (CLP) will become increasingly important if the state and tribal role in Superfund is expanded. In addition, state and tribal ability to assess risks posed by Superfund sites could be enhanced by providing additional state and tribal access to the U.S. EPA Environmental Monitoring System Laboratories in Ada, Oklahoma, Las Vegas, Nevada, and Cincinnati, Ohio. A possible improvement in this area suggested by state workgroup participants is to combine contracts so that one lab would be available to do more than one type of analysis under variable turn-around time requirements. Near-term availability would be valuable in completing the hundreds of projected remedial actions anticipated by the year 2000.

### **3. Use of BoR and USACE**

Many investigative, technical, and remediation services are available through USACE and BoR. An enhanced communications strategy to highlight the resources available through BoR and USACE could promote greater utilization of existing federal resources. A description of the services provided by, or links to, USACE and BoR, for example, could be added to the EPA home page. It is recommended that states and tribes be invited to attend coordinating meetings between EPA, USACE, and BoR to promote meaningful involvement when federal services are requested.

### **4. Access to and Compatibility with U.S. EPA and Other Databases, and Additional Sources of Information**

Superfund's information systems have evolved with the program's expansion over time, and include CERCLIS (WasteLAN), the Grants Information Control System (GICS), the Internal Financial Management System (IFMS), and the Superfund Comprehensive Accomplishments Plan (SCAP). With the implementation of WasteLAN, Superfund information will no longer be maintained across a diverse network of regional and national systems and databases. Instead, WasteLAN enables Superfund staff to

share comprehensive data across the program, across EPA and, eventually, with other federal partners and the public. Currently, all EPA regions are performing data entry in WasteLAN. In addition, the "One-Stop Shopping" program, which links WasteLAN and other Superfund databases together for easy access by interested parties, is being implemented in thirteen states to facilitate the sharing of this comprehensive data.

The Workgroup recommends that state access to WasteLAN be provided in the near term and that training be offered on WasteLAN and other databases that are or will become available to states and tribes. The Workgroup also recommends that additional strategies that increase state, tribal, and EPA interconnectivity be identified, developed, and adopted. State participants in the Assistance to States Workgroup have recommended that to generate and maintain an awareness of available databases, EPA should create a continuously updated directory of information sources. This directory could have a broad key word search capability that could include publications, databases, Internet home pages, bulletin boards, and other electronic resources, as well as contacts and participants in workgroups and task forces related to Superfund. It would be beneficial to include, on the EPA home page or on the individual EPA regional home pages, a directory of technical experts in each region. The states and tribes would then generally be able to access this information.

### ***5. Enforcement Assistance***

NETI offers many training courses on environmental enforcement for EPA, state, and tribal personnel. States and tribes should continue to access these courses, which are offered in subject areas such as criminal enforcement training, case support training, and international training. A complete list of the courses offered by NETI is included in Appendix B.

### ***6. Contracts***

States have indicated a desire to have greater access to federal contracts, and they believe that access to these federal contracts would be of greatest value during transition periods to greater state involvement. Current EPA policy provides that state employees on an IPA to the EPA can be a Work Assignment Manager (WAM). State employees who are not on an IPA cannot be a WAM, but can offer advice and provide recommendations to EPA. It would appear that as long as the proper legal relationship (i.e., IPA) is created, and the IPA personnel are trained and certified in federal contracts management principles and practices, these personnel could be reassigned to the state to carry out the work assignment, and states could thereby gain greater access to federal contracts. Guidance would need to be developed to implement this practice.

### ***7. Frequently Used Equipment, and Specialized or Infrequently Used Equipment***

Many regions presently maintain some response equipment or equipment pools, but there is no general policy and approach to more widely assuring the availability of equipment. Specific types of equipment that are needed on a frequent basis could be purchased by the states and tribes through the Core Program cooperative agreement as a way to outfit programs with necessary equipment. Infrequently used equipment could be purchased by the region and maintained for loan, as needed. Operational policies and procedures regarding equipment should be developed that would be implemented in all regions for the purchase or loan of response equipment.

## C. Research

Superfund research and development should remain centralized and be conducted generally in the present manner. The current centralized approach to technology development is considered by the Workgroup to be the most effective and appropriate method. Centralized development and testing of new technologies is generally viewed by the Workgroup as the most appropriate mechanism for fostering broader application of these technologies in remediation. By continuing to test technologies, EPA will be able to identify viable options and develop guidance so that technologies are utilized consistently throughout the regions. EPA Headquarters will also be able to evaluate the cost effectiveness of the technologies and pass these findings along to the regions, states, and tribes.

## IV. Funding

The Federal Grant and Cooperative Agreement Act of 1977 governs the use of grants, cooperative agreements (CAs), and contracts. Contracts are used for acquisition by purchase, lease, or barter of property or services for the direct use of the federal government. Grants and CAs are used to transfer money, property, services, or anything of value to the state, tribe, local government, or other recipient in order to accomplish a public purpose of support authorized by federal statute.

The application and administration process is essentially the same for grants and CAs, and they are governed by the same regulations; the difference is in implementation. A grant is used in cases where no substantial involvement is anticipated between the Executive Agency and state, tribe, local government, or other recipient during the contemplated activity. CAs are used in cases where substantial involvement in implementation between the Executive Agency and recipient is deemed necessary.

The current mechanism for providing financial assistance in the Superfund program is the Superfund Cooperative Agreement. Authority to enter into CAs is provided in Section 104 of CERCLA and is regulated by 40 CFR Part 35, Subpart O ("Cooperative Agreements and Superfund State Contracts for Superfund Response Actions"), Office of Management and Budget circulars and directives, and other rules that ordinarily apply to assistance agreements.

Subpart O describes six types of site- and non-site-specific CAs with states and tribes to implement the Superfund program, including: Removal, Pre-Remedial, Remedial, Enforcement, Support Agency, and Core Program. While each type of CA is intended to fulfill a unique purpose, the award and administration requirements of multiple CAs can limit the flexibility and discretion of EPA regions, states, and tribes to more readily address their highest priority needs. Multiple CAs add significantly to the Superfund administrative workload. Two key issues have been identified as concerns in the current Superfund CA award and funding processes:

- ◆ Regulations at 40 CFR, Part 31 and Part 35 limit the transfer of CA funds between different sites and activities, which reduces the flexibility of regions, states, and tribes to address changing priorities.

- ◆ Regions are restricted by budget categories and processes, as well as by the CA award process, in their discretion to shift resources to meet states' and tribes' needs.

The following sections describe how the CA funding process impacts regions', states', and tribes' flexibility, and identifies options to improve the administration of Superfund Assistance Agreements.

## **A. Current Cooperative Agreement Process**

### **1. Statutory and Regulatory Framework**

As discussed above, CERCLA, Section 104, provides that EPA may enter into a CA with a state or tribe in order to carry out Superfund response actions. 40 CFR, Part 35, Subpart 0, codifies requirements for administering CERCLA-funded CAs.

### **2. Advice of Allowance Process**

Currently, EPA Regions fund CAs with states and tribes through Advices of Allowance (AOAs), which provide the authority to commit, obligate, and expend funds. Each fiscal quarter, funds pass from Headquarters to regions according to AOAs, which are based on Phase III Operating Plan projected obligations for each quarter. Five AOAs allocate resources to states and tribes for the following site-specific and non-site-specific activities: Site Characterization, Remedial Actions, Removals, Other Response, and Enforcement.

In response to changing workloads and site conditions during any given fiscal year, regions often need to shift funds between sites and activities. According to EPA policy, only certain types of shifts in funds between and within AOAs are allowable.

The chart below summarizes the restrictions on shifting funds between and within AOAs.

<b>Shifting Funds Between and Within AOAs</b>		
<b>Type of Move</b>	<b>Allowable</b>	<b>Not Allowable</b>
<b>Between different AOAs</b> ( <i>Requires HQ approval</i> )	<ul style="list-style-type: none"> <li>✓ From Site Characterization, Other Response, or Enforcement to any other AOA, except Other Response.</li> <li>✓ Between Enforcement and Other Response. If shift is over \$500K, Congressional notification must be initiated.</li> </ul>	<ul style="list-style-type: none"> <li>✗ From Remedial Actions or Removals to any other AOA.</li> <li>✗ From any AOA into Other Response.</li> </ul>
<b>Between projects within an AOA</b> ( <i>Does not require HQ approval, but WasteLAN must be revised to reflect the shift</i> )	<ul style="list-style-type: none"> <li>✓ From projects within Site Characterization, Removals, Other Response, or Enforcement to other projects within that same AOA.</li> </ul>	

Given these restrictions on movement of funds among AOAs, Regions, states and tribes are limited in their ability to make pre- or post-award adjustments to CA budgets. Due to the inflexibility of the AOA process, the Workgroup recommends a review of the AOA structure, with a view toward relaxing current restrictions. Only a small number of Block Funding Pilots are now permitted to transfer funds from Core Program CAs to pre-remedial CAs, or to transfer funds from one site to another under site-specific CAs. Deviations from 40 CFR, Parts 31 and 35 have allowed the State of Illinois, under its Block Funding Pilot, to cut at least three months out of the remedial process for one Superfund site and have ensured that construction would not be delayed into the next construction season. Further, the State of Illinois is reporting an 85% drop in the preparation and processing of fiscal paperwork due to regulatory deviations from certain reporting, amendment, and funds transfer requirements that the state received under its Block Funding Pilot.

### 3. Accounting

Certain accounting practices must be observed to ensure that monies are spent on authorized Superfund activities. Presently, Superfund monies are tracked by site number and within the site cleanup by activity level (e.g., remedial investigation) and by operable unit. This detailed accounting supports recovery of Superfund dollars expended at cleanups and reporting to Congress on Superfund dollars spent, and it should be maintained.

#### **4. Adjustments**

Minor and major adjustments to CAs are sometimes required. Minor project adjustments, such as small budget changes or small changes in a Statement of Work, are currently managed through memoranda or letters and do not require significant administration. Major project adjustments are initiated through formal amendments when there are significant transfers of funds within the CA and/or significant changes in the scope of work, such as the addition of new duties or the elimination of existing duties. Transfer of more than 10% of funds within the cost categories triggers an amendment. The current amendment process takes from 30 to 120 days to complete and requires several levels of review. Deviations from the above procedures have produced savings for all participating states.

Pilot projects now underway are testing methods to reduce the reporting requirements required by 40 CFR, Part 35, Subpart O to identify opportunities to reduce administration requirements while maintaining fiscal accountability in the expenditure of Superfund dollars. These projects, which consolidate CAs and CA budgets, are having a positive impact on lowering transaction costs. The Workgroup recommends that these streamlining approaches be more widely utilized.

#### **5. Reporting and Accountability**

States and tribes are required to report quarterly to the regions about progress on the CA scope of work (40 CFR, Part 35.6650). Financial status reports are required annually, or as specified in the CA (40 CFR, Part 35.6650). The need to report on Superfund expenditures in support of cost recovery, and monitoring the use of the Trust Fund are crucial to ensuring that Trust-related funds are properly directed to Superfund activities. Expenditure data is also needed to provide information to taxpayers, Congress, and Superfund stakeholders. However, less frequent reporting is generating considerable savings in pilot projects with no apparent cost to reporting abilities. It is recommended that site- and activity-specific information be reported from the states and tribes to EPA annually, as well as during the fiscal year when activities (e.g., CERCLA-funded response) are completed, and that procedures be developed to submit both reports and original CA applications electronically.

#### **6. Allocating Remedial Action Funding**

New start remedial actions, removal actions that cannot be undertaken within the Region's base budget, and enforcement projects are reviewed by the National Risk-Based Priority Panel. All projects in these categories are evaluated by the Panel. Funding priorities are established within the three individual categories, not across them. This procedure is designed to promote a programmatic funding balance between projects of characteristically different natures. The enforcement projects that the Panel presently evaluates include mixed funding sites; take-over projects; allocation sites; and sites settling 106(b) petitions.

The National Prioritization Panel, comprised of national program experts from regional offices and Headquarters, ranks projects based on five criteria: risks to human population exposed; stability (mobility of contaminant, site structure, institutional and physical controls); contaminant characteristics; threat to a significant environment, and program management considerations. Projects are presented by the region and/or state in which they are located. The nine other regions and Headquarters then score the

project. A rank-ordered list of national priority projects is then produced, which is used to allocate resources; projects are funded in order of scoring.

Regions and states support continuing this concept, and modifying it to include a front-end state/regional prioritization panel. This two-tiered proposal has regions, with the opportunity extended for full state participation, determining the relative priority of all projects in the region. Highest ranking projects would advance to the National Prioritization Panel.

## **B. Cooperative Agreement Pilots**

This section describes current CA and budget administration processes, practices, and pilots. The pilots currently in place combine two or more of the following CA types: Core Program, Pre-Remedial/Remedial Planning, and Support Agency. Three strategies have been identified that some regions are implementing within the current CA award and administration process, and one option has been identified but is not currently in effect. These are:

1. Integrating the Core CA into an existing Multi-Site Cooperative Agreement (MSCA);
2. Obligating CAs generically and disbursing CAs site-specifically;
3. Funding CAs incrementally for three years; and
4. Obligating and disbursing CAs generically (not implemented).

Strategies 1, 2 and 3 have been implemented by deviating from current regulations in the areas of funding shifts, reporting frequency and scope, scope of work changes, and budget consolidation.

### ***1. Integrating the Core Program CA into an Existing MSCA***

Several regions use MSCAs with their states and tribes; these MSCAs are broader in scope than traditional site-specific CAs. Through one lump award, MSCAs can fund activities at multiple sites for site assessment, remedial investigation/feasibility (RI/FS) study, remedial design (RD), and Support Agency activities. Region 6, for example, has developed a Multi-Project CA (MPCA). Functioning in a manner similar to a Support Agency CA, the MPCA obligates funds by different account numbers for site assessment, PRP searches, RI/FS and RD, Core Program, and management assistance. Funds allocated to the Core Program require a 10% match from the recipient, unless the match is waived. In addition, budgets are combined whenever possible to make re-budgeting easier. These pilots did not require deviation from current regulations.

### ***2. Obligating CAs Generically and Disbursing CAs Site-Specifically***

A second funding option is to obligate CA monies generically and disburse these funds site-specifically. This approach is currently being tested in a pilot program, as several regions, states, and tribes have opted to obligate a combination of Core Program, Pre-Remedial, and/or Support Agency CAs together under a lump award. Thus, the targeting of monies to specific sites is not necessary, but when site activity is conducted, activity expenditures are accounted for and drawn down site-specifically, maintaining the cost-recovery and reporting requirements.

### **3. Funding CAs Incrementally for Three Years**

A Region 8 pilot program funds each CA incrementally for three years. The CA application package, however, is reviewed and potentially modified on an annual basis. Changes to the CA are made possible through a letter rather than a formal amendment. The primary benefit to this pilot is that states and tribes are able to shift resources more freely among sites and activities. The elimination of separate object class breakouts saves time and paperwork for EPA and the states and tribes. The amendment process is reduced by allowing larger shifts in resources. The three-year CA also reduces the number of applications that states and tribes need to prepare and offers the recipient a more secure planning window, which facilitates more stable staffing levels.

### **4. Obligating and Disbursing CAs Generically (not implemented)**

In this concept, a region would obligate and disburse funds under one generic account number. As proposed, the region would only be required to approve one disbursement rather than many, and a state or tribe would notify the EPA award official when funds are transferred among projects, then report on expenditures after they occur. Reporting of disbursements could be required to IFMS through regional or Headquarters offices, or via end-of-the-fiscal-year reports. States and tribes would track disbursements by separate account numbers in the state accounting system for each site, activity, and operable unit to facilitate cost recovery, as is currently required in 40 CFR Part 35, Subpart O. States and tribes would be required to provide internal accounting documentation for all costs.

An advantage of this concept is that it promotes maximum flexibility for states and tribes to shift funds among projects when necessary, within the limits specified in the funding agreement and without formal amendments, and to focus more on what activities must be done rather than on what categories and funding processes must be used. This option minimizes the need to process amendments to multiple CAs throughout the year, and could allow states and tribes to more easily address changing site and program needs.

EPA is currently relying on state financial systems to provide site-specific expenditure information for cost recovery. To implement this concept, EPA could specify reporting requirements for states and tribes to follow in the CA. For example, states and tribes could be required (in the terms of the agreement) to electronically report site-specific expenditures at specified intervals or upon request. Reporting could be required at the time of disbursements by the states and tribes, or periodically throughout the fiscal year. Some regions believe that this option would more accurately reflect obligations and disbursements than the current system, which reports on obligations to activities that may not be performed when funds are de-obligated, re-obligated, and disbursed to different activities. Region 5 proposed generic obligations and disbursements for a pilot CA with the State of Illinois, but the state's request for deviation was denied over reporting and accountability concerns. Discussion of these issues continues, but this option is not currently available for pilot projects.

## **C. Flexible Federal Involvement and Oversight**

The consensus of the workgroup is that maximum flexibility in the use of Superfund management tools is desirable. The principal recommendation is to give states and tribes greater



flexibility in implementing the various Superfund program components. To that end, greater or lesser involvement in implementation may be accomplished by varying the type and scope of assistance agreement offered, depending on the extent of state or tribal readiness, the combination of program elements requested by the state or tribe, and the need for substantial EPA involvement in the implementation of the activity. Possible changes to provisions of the Superfund administrative regulation, 40 CFR Part 35, Subpart O, are being examined for assistance agreements issues.

The National Environmental Performance Partnership System (NEPPS) is the foundation for both Environmental Partnership Agreements (EnPA), also known as Performance Partnership Agreements (PPAs), and Performance Partnership Grants (PPGs). The objective of NEPPS is to assist states and tribes in setting environmental priorities while concentrating EPA oversight where it is most needed. PPGs provide states and tribes with the option of combining two or more of EPA's 16 categorical grants into a multi-program grant that does not require the tracking of funds back to individual programs. Because of the current structure of the Superfund Trust Fund as mandated by statute, and PPG authorizing language, Superfund CAs cannot be combined with PPGs, but block funding approaches to consolidating CAs currently being piloted in Superfund effect a similar concept. While Superfund CAs and PPGs cannot be combined, there is a possibility of greater utilization of the PPA in documenting the use of Superfund in concert with other environmental programs. Some Superfund-related work is already being incorporated in PPAs with states. A benefit of using either a PPG or consolidated Superfund CA is that either instrument allows for appropriate oversight by EPA. Oversight will vary depending upon a particular state's or tribe's situation and comfort level with implementing the Superfund program.

#### **D. Distribution of Funding**

The current approach to distribution is through annual negotiations with states and tribes based on historical activity and planned new activity. A common funding distribution approach for delegated programs is formulaic. The SMC has recommended that distribution of funding questions be discussed at a future point, when greater certainty exists over the levels and uses of funding. However, it may be beneficial to consider what may enter into a formula for the distribution of resources among the states and tribes. Such a formula might encompass such indicator values as the number and types of facilities the state is requesting responsibility for, the number of NPL sites, the number of other high priority facilities, and other factors such as personnel requirements, staffing ratios, possible relative risk of sites, available state resources, program components requested, and alternative funding available at the state level. Untested and prescriptive distribution methodologies, however, are to be avoided, and states and tribes should be involved in developing a distribution methodology. Non-formula-based local negotiations between the EPA regions and states and tribes to identify annual activities and workload, which are then further negotiated at the Headquarters level to meet national dollar targets, have been successful in the past. Until a future program change more clearly establishes the ground rules for development of a formula-based allocation, it is recommended that the current annual negotiation process continue as a basis for funding distribution.

## **V. Recommendations**

### **A. Two-Phase Program**

A two-phase program is recommended that has the following features:

- ◆ Combine all or several of the Pre-Remedial, Support Agency, Core Program, Enforcement, and Removal Capability CAs into a single assistance agreement reflecting the desired level of EPA involvement and the activity(ies) sought by the state or tribe; and
- ◆ Manage remedial activity and large-dollar, non-time-critical removal actions separately, and prioritize these actions nationally, utilizing a modified version of the current national priority-setting process.

Other two-phase program features are:

- ◆ Flexible EPA involvement/oversight depending on a state's or tribe's interest and experience in managing Superfund;
- ◆ Utilizing current authorities and block funding strategies more broadly to identify strengths and weaknesses in the two-phase strategy approach;
- ◆ Utilizing multi-year funding, based on state or tribal and regional negotiations, to enhance state and tribal strategic planning for Superfund implementation; and
- ◆ Reworking the AOA process to increase the flexibility to redirect resources.

The options listed below are specific examples of currently available tools for implementing the Superfund program, and are advocated by the Workgroup for continued use in the future.

### **B. Block Funding within Superfund**

It is recommended that Block Funding Pilot projects be expanded to include more states and tribes. Allowing regions to obligate funds generically and disburse funds site-specifically would advance this option. This pilot option would enable states and tribes to target resources toward the most crucial Superfund activities. In addition, the need to process amendments to multiple CAs would be reduced and states and tribes could more easily address changing site and program needs.

### **C. Modify Priority Panel**

Regions and states are supportive of continuing a National Risk-Based Priority Panel to prioritize new start remedial actions, removal actions that cannot be undertaken within the region's base budget

and enforcement projects. Projects in these categories should be evaluated by the Panel. It is proposed that the Panel include a front-end state/regional prioritization panel. This two-tiered proposal has the regions, with full state participation, determine the relative priority of all projects in the region. Highest-ranking projects would advance to the National Panel.

Please send comments to [Biggs.Kirby@epamail.epa.gov](mailto:Biggs.Kirby@epamail.epa.gov) or call (703) 308-8506

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## **Chapter 3: Agreements Recommendations**

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## I. Introduction

The Agreements Workgroup focused its efforts on developing an agreement that could be used as a prototype to foster greater cooperation and efficiency among EPA and the states and tribes. Once a state or tribe has identified its interest in the Superfund process, worked with EPA to assess its capability to implement the program, and determined the types of technical and financial support needed to proceed, the state or tribe is ready to work with EPA to formalize their respective roles in an MOA. The MOA is designed to ensure the most efficient use of personnel and resources to clean up the greatest number of sites.

With respect to improving the current Superfund program to promote a greater implementation role for states and tribes, the Agreements Workgroup has developed a *Model Agreement*, which represents what the Workgroup believes are the essential considerations needed within a written agreement to ensure successful relationships among signatories and to facilitate implementation of the Superfund program. These agreements cannot supersede existing agreements (e.g., consent decrees, administrative orders, Federal Facility Interagency Agreements).

### Recommendations

- ◆ The Workgroup recommends that states and tribes follow the *Model Agreement* to build a long-term, results-oriented MOA with EPA.
- ◆ The most important part of an MOA between a state or tribe and EPA is to clearly define the roles and responsibilities of each party.

The Workgroup intends for the *Model Agreement* to be user-friendly and widely applicable. By identifying the categories or subjects an agreement should cover, but leaving open the exact details, the Workgroup believes the agreement will provide maximum effectiveness and durability, while still remaining responsive to the specific needs of state or tribal governments and EPA regions in defining their relationship to each other. The Workgroup envisions that EPA in many cases may negotiate individual sub-agreements to clarify time-sensitive issues (e.g., pilots and new initiatives) and/or provide site-specific guidance. This will enable the *Model Agreement* to avoid time-consuming modifications. However, in other instances the division of responsibilities may be defined more easily in the *Model Agreement* itself; it is up to the region and state or tribe to determine whether sub-agreements are appropriate.

Please send comments to [Myers.Robert@epamail.epa.gov](mailto:Myers.Robert@epamail.epa.gov) or call (703) 603-8851

The Workgroup adhered to a set of guiding principles or criteria in developing the *Model Agreement*. The *Model Agreement* must:

- ◆ be easy to implement;
- ◆ be durable (long-term/multi-year);
- ◆ provide accountability;
- ◆ focus on a results-oriented approach;
- ◆ establish clearly defined roles and responsibilities;
- ◆ incorporate community participation; and
- ◆ ensure regions have an acceptable level of autonomy to implement agreements.

The Workgroup researched existing agreements under other programs through a "lessons learned" approach. By analyzing existing agreements, the Workgroup identified several common components that it considered to be essential requirements in any agreement. Presentations to the Workgroup from other program representatives provided first-hand information about the RCRA and Clean Water programs. These presentations identified problems and successes of both programs during their transition periods, as well as their current status. The more straightforward and understandable agreements that could easily and quickly be implemented by states and tribes were used as references by the Workgroup.

In addition to researching other programs and existing agreements, the Workgroup coordinated its efforts with the two workgroups developing criteria for state and tribal readiness and funding and technical assistance options. Input from these other workgroups has been incorporated into the *Model Agreement*.

By achieving the above-stated goals, the Workgroup believes that the *Model Agreement* can be used within the Superfund program both now and in the future. The *Model Agreement* is intended to work within the current Superfund program. However, given the uncertainty of what may result from reauthorization of the Superfund statute, EPA recognizes that reauthorization may dictate some changes within this model, and the Workgroup believes the model should be revisited when Superfund is reauthorized. In the meantime, any pilots using the *Model Agreement* will be implemented in accordance with applicable federal laws and regulations. EPA does not intend for regions to implement recommendations which are contrary to existing statutory or regulatory authorities during this pilot phase.

## **II. Model Agreement Analysis**

### **A. Background Section**

The Background Section of the *Model Agreement* sets the stage for EPA's and the state's or tribe's understanding of the Agreement. The section provides basic information while stressing a partnership between EPA and states or tribes to help establish a collaborative working relationship.

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To better achieve this partnership, the agreement should identify a state's or tribe's interests and goals, what it can currently do, and what assistance is needed to fulfill those goals for additional future program responsibilities.

## **B. Program Authorities Section**

The Program Authorities Section can be used to clearly identify major current federal and state or tribal laws and regulations that affect the actions identified within the Agreement. This section provides a forum for states and tribes to clearly identify their unique laws and regulations. In addition to environmental laws and regulations impacting the agreement, applicable cross-cutting socio-economic requirements (e.g., Title VI of the Civil Rights Act, Drug-Free Workplace, contract procurement and debarment and suspension provisions) could also be identified within this section.

## **C. Roles and Responsibilities Section**

One of the most important functions of this Agreement is to clearly define roles and responsibilities. Where appropriate, the Workgroup advocates a "single regulator" approach to decision-making. Where this is not possible, it is critical for EPA and the state or tribe to address the lead and support agency's roles and responsibilities, to ensure all activities are being addressed and responsibilities are divided appropriately. The negotiations between EPA and the state or tribe should address the type of sites included within the Agreement, as well as the lead for specific program activities. These early, detailed negotiations can help avoid duplicative efforts and misunderstandings while maximizing resources and capabilities.

## **D. Program Elements or Components Section**

This *Model Agreement* is intended to facilitate an appropriate division of labor by identifying all components in the Superfund process so that EPA and the state or tribe can jointly determine which party can best address the activities under each component. *Chapter 1: Readiness Recommendations*, uses generic terms to define common Superfund activities, to accommodate the differences between state and tribal terminology and potential changes to current terminology due to reauthorization. The *Model Agreement* uses both generic and Superfund-specific types of terminology. Using both types of terminology creates long-term applicability that can serve for either the current program or any future reauthorization scenario. The familiar Superfund-specific terms will serve as a reference point to facilitate better understanding and implementation.

The Workgroup identified Data Information Management as an important cross-cutting issue that should specifically be addressed within the Agreement to ensure appropriate information exchange between the state or tribe and EPA. This information exchange is necessary in order to maintain federal and state or tribal tracking and reporting needs, and will enable appropriate accountability in response to Congressional, General Accounting Office (GAO), or other inquiries.

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Environmental initiatives like Brownfields or VCPs could be identified here, to ensure responsibilities are clear and there is appropriate division of labor. However, including programs for which other criteria have been developed would not subject such programs to any additional readiness or other requirements associated with this *Model Agreement*.

## **E. Protective Cleanup Section**

The Workgroup viewed the Protective Cleanup section as necessary to highlight CERCLA's mandate to protect human health and the environment. This section also serves as an appropriate place to discuss EPA and state or tribal cleanup level issues.

## **F. Community Involvement Section**

While developing the *Model Agreement*, the Workgroup discussed including public participation within each program component as well as specific community involvement during the Agreement negotiation process. The Workgroup recommends this section address community involvement in relation to the *Model Agreement*. Individual program components or site-specific sub-agreements should address the appropriate level of community involvement for each response activity, including the steps necessary to achieve the appropriate level of community involvement.

## **G. Program Planning and Review Section**

This section is intended to emphasize a partnership approach in Program Planning and Review. This includes a shift toward recognition and measured progress based on outcome rather than process or output. These outcome-based measures could include environmental indicators. This section allows for a long-term planning and program approach. Scheduled meetings to plan and review the program at staff and management levels could also be negotiated during this time. The level of oversight will be determined by EPA and the state or tribe during this process.

## **H. Dispute Resolution Section**

The Workgroup acknowledges that disputes may arise during the lifetime of the Agreement. This section allows for a process to be developed that resolves disputes about general program issues, as well as disputes about site-specific issues. Where current successful processes already exist, those processes should be continued. The Workgroup's main concern is that disputes are resolved at a staff level in a timely manner. If disputes are not resolved in a timely manner, they should be elevated to a higher level without retribution. Note: Superfund CA recipients must comply with dispute resolution procedures described in 40 C.F.R. §35.6770.

## **I. Funding Section**

To allow for durability of the Agreement, funding information may be included in either the Agreement or assistance sub-agreements. Issues and recommendations raised in the technical and funding assistance paper are applicable to the Agreement.

## **J. Terms of the Agreement Section**

The Terms of the Agreement section is considered by the Workgroup to be an important section in any agreement. It allows for flexibility when EPA and states or tribes negotiate procedures and administrative issues. If significant change (including statutory, program or funding) occurs that affects the state's or tribe's or EPA's ability to carry out the Agreement, then it should be brought to the attention of all parties to the Agreement to decide what the implications/consequences are to the Agreement.

## **K. Signature of Agreement Section**

The Workgroup recommends that at a minimum the EPA Division Director and the equivalent state or tribal counterpart sign the Agreement. Note, however, that NCP section 40 CFR §300.505(b) currently requires the signature of the EPA Regional Administrator and the head of the state agency.

## **L. Appendices (if appropriate)**

Appendix A identifies additional reference documents. These documents could include the Technical and Funding Assistance Report, Readiness Criteria, lists of appropriate regulatory items, operating plans, and major guidance documents. Appendix B could include sub-agreements such as pilots, initiatives, functions, program components, training needs and strategies, and site-specific items. Appendix C could include supporting assistance or funding agreements.

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# Superfund Agreement between U.S. EPA and the State of \_\_\_\_\_ or \_\_\_\_\_ Tribe

## I. Background

*Note: This Model Agreement is intended to address matters at a program level. If needed, separate sub-agreements could be entered into to identify the process for sub-program activities. In addition, this Model Agreement is applicable to any state or tribal program, as it can be tailored for varying purposes.*

- Describe the purpose of the agreement.
- Identify how, and for what reasons, the agreement came into existence. Identify the state's or tribe's interests and goals for future additional program responsibilities, what can be done currently, and what assistance is needed to help the state or tribe fulfill those goals for future program responsibilities.
- Develop a results-oriented statement relaying that EPA and the state or tribe will achieve cleanup goals through a partnership approach. The commonality of their mission should be stressed.
- Identify the state or tribal authority or agency responsible for implementing the response program, or specify program components.
- Acknowledge federal government recognition that the identified state or tribe has the authority to ensure response or to carry out specific components/activities.
- Include language supportive of current environmental initiatives.

## II. Program Authorities

This section is intended to provide a framework of federal and state laws that are applicable to the implementation of this agreement. It should include citations to federal and state environmental and socio-economic laws and regulations.

## III. Roles and Responsibilities

This section is intended to specify the roles and responsibilities of each party to the agreement.

- Outline each party's responsibilities (lead and support roles) and what the state or tribe and EPA are required to do in order to carry out the agreement.
- Identify key state, tribal or EPA contacts for information relating to this agreement. These contacts should be identified by position title rather than by individual name.
- Identify the types of sites that will be included in the agreement.
- If appropriate, reference information relating to specific pilots, initiatives, and priorities that can be found in applicable sub-agreements in Appendix B of the Agreement.

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## IV. Program Elements or Components

- This section provides a list of all the Superfund Program Elements or Components from which EPA and the state or tribe can negotiate the specific program components that the state or tribe will implement. Implementation should be under applicable federal laws and regulations.
- Assigning responsibility for these program components is a necessary consideration for both capacity building and effective program implementation.
- The definitions for program components identified below use Superfund-specific terms, as these are Superfund agreements; the Readiness Chapter provides generic definitions to allow for consideration of all applicable experiences and terminology.
- Site Identification, Screening, Prioritization
  - Pre-Remedial includes Deferrals, Site Assessment (Preliminary Assessments/Site Inspection, removal assessments, pre-CERCLIS screening), HRS and NPL.
  - PRP Search, Site Access, State Authorities to Compel Site Assessment, and Notification.
- Short-Term Action Activities
  - Emergency Response.
  - Removal includes Time Critical and Non-Time Critical.
  - Site Access, Orders to Compel Cleanup and Post Cleanup, Cost Recovery, and PRP Search.
- Long-Term Action Activities
  - Remedial includes RI/FS Study, Risk Assessment, Records of Decision, Remedial Design, and Remedial Action.
  - Site Access, Orders to Compel Cleanup and Post Cleanup, Cost Recovery, and PRP Search.
- Post-Cleanup Site Monitoring and Evaluation
  - Long-term Response Action, 5-Year Reviews, and Operation and Maintenance.
  - Site Access, Orders to Compel Cleanup and Post Cleanup, Cost Recovery, and PRP Search.
- Cross-Cutting
  - Natural Resource Trustee Coordination, Data/Information Management, CERCLIS 3 Interface, and Community Participation, which includes public meetings and briefings, Fact Sheets, Update Letters, Media/Site Celebrations, Public Notices and Comment Periods, and Technical Assistance Grants (TAGs).

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- In order to clarify responsibilities, other subjects could be included as states or tribes and regions want, such as Brownfields, VCPs, Environmental Justice initiatives, etc. Programs for which other criteria have been developed would not be subject to additional requirements of the agreements, such as the readiness criteria.

## **V. Protective Cleanup**

- This section should ensure the agreement includes a statement that the cleanups undertaken by the state or tribal programs will be protective of human health and the environment, and will comply with all applicable state and federal laws and regulations.
- This section could address EPA/state cleanup level issues.

## **VI. Community Involvement**

This section is intended to identify mechanisms for providing community involvement during the development and implementation of this agreement.

- Mechanisms for public notification and response to public comments on the agreement should be included.
- Site-specific community involvement should be addressed within individual program components.

## **VII. Program Planning and Review**

This section is intended to be negotiated between EPA and state or tribal representatives to facilitate a mutually acceptable level of communication between the two parties.

- Negotiate goals and outcomes in a manner that is consistent with the GPRA. This information may be included in sub-agreements.
- Establish appropriate environmental indicators (consider ASTSWMO/EPA Workgroup products) to identify the areas of progress. Actual environmental indicators could be included in sub-agreements.
- Clarify how site-specific reporting for applicable sites (should include, at a minimum, NPL sites) will be conducted, with electronic reporting compatible with EPA's national data system preferred.
- Provide for mutual access to appropriate documents.
- Determine regularly scheduled meetings between parties to facilitate long-term relationships between programs.
- Measure, on an annual basis, the past year's accomplishments and discuss the upcoming year's plans, for both the state or tribe and EPA. See 40 CFR §300.505(b) of the NCP for current annual consultation requirements. Consider mechanisms for community participation in this planning process. Specific site details can be identified in this

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- agreement or in sub-agreements.
- Respond to and address programmatic audits by state and federal agencies.
- Define types of support that will be provided to enhance the state's or tribe's capacity.
- Negotiate appropriate level of review/oversight.

## VIII. Dispute Resolution

This section is intended to establish an appropriate course of action to follow if disputes arise.

- Resolution should be based upon the exchange of documented references or citations as supportive rationale for respective positions of an issue.
- Immediate supervisors for both agencies should attempt to resolve the disputes.
- A mutually agreeable timeframe should be established. Disputes that are not resolved within this timeframe should be forwarded to designated higher-level supervisors for resolution. Final authorities for resolution need to be identified.

## IX. Funding

*Note: This agreement has not been developed for purposes of committing or transferring monies, as it is not an assistance agreement. Additional information can be found in Chapter 2: Assistance Recommendations.*

- Identify what kind of financial assistance will be available (e.g., block grants, consolidated CAs, Multi-Site CAs, etc.).
- Identify the procedure for states or tribes to access funds, e.g., funding through a CA.
- When federal monies are provided, mutually agreed upon results should be developed that are consistent with GPRA.
- Address site-specific financial audits by state and federal agencies.

## X. Terms of the Agreement

This section is intended to provide administrative information relating to the life of the agreement and how the agreement may be amended if the need arises.

- Identify the duration/period of performance of the agreement, including start and end dates, and potential extension periods.
- Develop a procedure for updating the agreement or sub-agreements, or amending the agreement; for example, as new sites are added.

- Develop and identify a procedure to ensure that significant changes affecting a state's or tribe's or EPA's ability to carry out the agreement (e.g., statute, program or funding changes) are brought to the attention of all parties to the agreement to decide what the implications/consequences are to the agreement.
- Identify the process to terminate for cause and terminate for convenience. This includes specific clauses or language that should be used for termination. Indicate that termination can occur upon request of either party after consultation with the other party.

## **XI. Signature of Agreement**

- In accordance with applicable state and federal laws, identify appropriate signatories from EPA and the state or tribe.
- Identify appropriate sub-agreement signatories. They need not be the same as signatories for the basic agreement.

## **Appendix A: Reference Documents**

This section may include documents and plans such as the Technical and Funding Assistance Report, Readiness Criteria, list of applicable cross-cutting socio-economic requirements (e.g., Title VI of the Civil Rights Act, Drug-Free Workplace, etc.), operating plans, and major guidance documents.

## **Appendix B: Additional Agreements**

This section could include sub-agreements and site specific agreements that are applicable to the agreement. These sub-agreements may include pilots, initiatives, functions, program components, training needs, and site-specific items. Alternatively, if the region and state or tribe prefer, these could be included in the agreement itself.

## **Appendix C: Funding**

This section could include assistance agreements.



## Chapter 4: Tribal Recommendations

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## I. Introduction

Federally-recognized Indian tribes are unique sovereign nations. The federal government's legal and political relationship with tribes includes the Federal Trust responsibility that arises from Indian treaties, statutes, executive orders, judicial decisions, and the historical relations between the United States and Indian tribes. The trust responsibility requires the federal government to consider the best interests of the tribes, including protection of the tribal sovereignty of each tribal government, in its interaction with them and when taking actions that may affect them. Traditionally, tribal programs have been modeled after state programs, which do not necessarily take into account tribal needs and priorities. Thus, enhancing the role of tribes in Superfund should be addressed separately from states.

The goal of the Tribal Workgroup is to make recommendations on how to improve the involvement of tribes in the Superfund program. While the other three workgroups are addressing readiness, assistance, and agreements for states, the Tribal Workgroup is focused on these same issues from a tribal perspective. Because many tribes have very little, if any, involvement in Superfund, the recommendations in this chapter emphasize assistance to tribes in Superfund program development. Section II of this chapter addresses tribal readiness; Section III discusses EPA assistance to tribes; and Section IV contains EPA-tribal partnership agreements.

## II. Readiness

While the Tribal Workgroup endorses the criteria developed by the Readiness Workgroup for assessing state and tribal Superfund capabilities, these criteria may not yet apply to all tribes. Tribes are following the same path as states in enhancing their role in Superfund, but tribes are at earlier stages, where capacity building is the highest priority.

### **Recommendations for Tribal Readiness**

- ◆ Encourage tribes to build Superfund program capacity relevant to their individual needs and priorities.
- ◆ Use existing information to identify tribes with existing tribal capacity within each EPA region.

The focus for enhancing the tribal role in Superfund should emphasize assisting tribes in building capacity to a level where the readiness criteria will apply. Due to the current level of tribal Superfund readiness, tribes should be encouraged to develop their capacity in whichever program components are most relevant to their needs and priorities.

Until tribal capacity has been strengthened, each region should develop an understanding of the existing capabilities of the tribes in its region. A region may only need to review its files for previous assessments of tribes and update that information as necessary. This information should assist regions in identifying the various tribal issues and priorities.

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### III. Assistance to Tribes

The capacity of tribes to implement the Superfund program varies greatly from tribe to tribe. The recommendations in this section detail the critical elements of assistance that EPA can offer. Some needs are similar to those of states, such as the need for a variety of flexible funding tools and increased access to federal technical resources. However, specific tribal needs depend on building a foundation of Superfund program knowledge and funding, and incorporating tribal perspectives into program elements. Recommendations for EPA assistance to tribes are organized into four main topics: A) Funding; B) Training; C) Administrative/Infrastructure; and D) Technical.

#### A. Funding

##### Recommendations for Increasing Funds

- ◆ Increase funding for tribes in the form of specific tribal funding that is allocated separately from state funding.
- ◆ Develop and apply for a class deviation from the 10% Core funding cost-share on behalf of all tribes.

Tribes are only at the early stages of Superfund involvement, in part because past funding allocations have not been adequate to support tribal participation. Because of the critical differences in needs and capacity between states and tribes, tribes should receive specific funding that is allocated separately from states, with a separate prioritization scheme for distribution of funds to tribes.

Deviations from cost-share requirements are recommended for tribes because, unlike states, some tribes do not have continuous sources of revenue, such as a reliable economic base or tax structure. Without such revenue, it is essential that tribes be able to use federal funding to address their priorities.

#### B. Training

##### Recommendations for Improving Tribal Superfund Training

- ◆ Develop and provide a consolidated resource manual, *Tribal Superfund Orientation Manual*, to all tribes.
- ◆ Design a basic tribal Superfund curriculum specifically for tribes that includes courses, currently offered through regional offices and the CERCLA Training Center, modified to incorporate tribal perspectives.

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A critical component of building tribal capacity will be to offer training that is more readily accessible and applicable to tribes than what currently exists. To facilitate the educational outreach to tribes on both administrative and technical aspects of Superfund, it is necessary to develop and offer a consolidated resource manual, *Tribal Superfund Orientation Manual*. This one-stop resource for information would consist of several notebooks that include Superfund orientation materials, guidance documents, prototype documents already developed and used by tribes, and references. The materials would cover all phases of Superfund program elements, but would focus on areas of particular concern to tribes, and would present a tribal perspective on all issues. The notebooks would be accompanied by a training course to introduce tribes to the notebook contents.

The development of the *Tribal Superfund Orientation Manual* will require the intensive involvement of tribal organizations or individual Tribes, and the training course to introduce the manual will be taught by a tribal representative. These materials and training will not replace training on specific Superfund topics, but will serve as a comprehensive reference tool that is readily available to tribal personnel. In addition to these materials, specific training courses that should comprise the basic tribal Superfund curriculum should be developed. Necessary courses may already be offered in regional offices or at the CERCLA Training Center. However, they will need to be modified to include tribal-specific concerns and perspectives. These courses are suggested in the section of this chapter where they are applicable, and a suggested list is included as Appendix C of this report.

## **C. Administrative/Infrastructure**

### **1. Regulatory Capability**

#### **Recommendations for Improving Tribal Regulatory Capability**

- ◆ Assist tribes in establishing codes and ordinances.
- ◆ Develop and regularly offer a course on regulation writing for tribes.

Not all tribes have in place the administrative processes to promulgate regulations. Tribal environmental agencies may not have the autonomy to develop administrative compliance or enforcement regulations. The federal regulations could be included in tribal codes and ordinances; however, many environmental regulations are lengthy and many tribes do not have the financial and personnel resources to develop and administer such complicated and cumbersome codes and ordinances. Assisting tribes in establishing codes and ordinances and training on regulatory issues will help them overcome these obstacles. One option would be to assist tribes in hiring consultants to develop codes and ordinances.

Furthermore, tribes do not have criminal enforcement authority for violations committed by non-Indians on tribal land. For environmental crimes, enforcement of criminal violations would be the purview of federal authorities.

## **2. Program Management Capability**

### **Recommendations for Improving Tribal Program Management Capability**

- ◆ Streamline the issuance and administration of financial assistance.
- ◆ Develop and regularly offer training courses specifically for tribes in Contract Management; Grants/Cooperative Agreement Management; and Project Management.
- ◆ Assist tribes in obtaining access to technical resources.

In comparison to many states, tribes are at a distinct disadvantage in terms of administrative project management. This is partly due to the comparatively small number of tribal staff available to assume record-keeping, procurement, program management, and technical duties. Thus, it is difficult for many tribes to meet stringent, time-consuming, administrative requirements of Superfund. In addition to the small staff sizes, many tribal staff may not have vast experience working with federal contracts, CAs, grants, property management, and procurement. Consolidating administrative requirements as much as possible (e.g., procurement certification could be submitted once a year for multiple grants) and training tribal staff in Superfund administration and program management will help tribes meet the necessary requirements.

Tribes have limited financial resources to buy computers, access the Internet, and purchase the latest technologies available. Such resources are key to building capacity.

## **D. Technical**

The program components identified in the readiness criteria and the *Model Agreement* were used as a basis for structuring these technical assistance recommendations. The definition for each program component is taken directly from those provided by the Readiness Workgroup. Because tribes are only beginning to assume Superfund program responsibilities, the focus of technical assistance is on capacity building for components in the initial stages of the program.

### **1. Site Identification, Screening, and Prioritization**

The efforts under this program element are designed to enable tribes to identify, screen, and prioritize potentially contaminated sites using a system that conforms with the policies and requirements of the current Superfund program.

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### **Recommendations for Expanding Site Identification Capacity**

- ◆ Assist tribes in developing tracking and notification systems for potentially contaminated sites and hazardous substance releases.
- ◆ Include tribes as partners in regional equipment-sharing arrangements and ensure that tribes know how to access and use the equipment. (Also see *Chapter 2: Assistance Recommendations*, Section B, Frequently Used Equipment, and Specialized or Infrequently Used Equipment.)
- ◆ Provide tribal access to CLP laboratories. (Also see *Chapter 2: Assistance Recommendations*, Section B, Contract Lab Program and Other Labs.)
- ◆ Modify and regularly offer courses to tribes, including: Site Screening, Preliminary Assessment/Site Investigation Training, 40-hour Health and Safety and 8-Hour Refresher, and Sample Taking.

Currently, little site discovery work occurs in Indian country, and therefore the universe of sites in these areas may be much greater than currently estimated. A more accurate accounting of sites that affect tribes is necessary. Mechanisms, similar to those employed by states, for the tracking and notification of potentially contaminated sites and hazardous substance releases would expand site discovery in Indian country. To further expand site identification capacity, tribes have a need to access federal resources. To ensure this access, it is necessary to provide information on what is available, how to access it, and how to use it.

### **Recommendations for Expanding Site Screening and Prioritization Capacity**

- ◆ Develop a screening and prioritization process that includes tribal cultural values.
- ◆ Assist tribes in finding cleanup alternatives for sites that cannot be addressed under the Superfund program.
- ◆ Provide interested tribes with assistance to develop VCPs and Brownfields programs.
- ◆ Develop and regularly offer a tribal-specific course on the HRS.

EPA's current methods of screening and prioritizing Superfund sites are based on toxicological principles that do not account for tribal cultural values. The HRS is the mathematical scoring system used by EPA to assess the relative risks posed by sites in order to determine whether a site is eligible for placement on the NPL. The HRS evaluates the risks posed by groundwater migration, surface water

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migration, soil exposure, and air migration in terms of the likelihood of release, constituent characteristics, and target populations. The existing HRS does not appropriately reflect risk to tribes for two primary reasons. First, Indian country is often sparsely populated and does not constitute a large enough target population to qualify on the HRS. Second, tribes use natural resources for purposes that are not typical of other populations. Tribal culture and tradition may involve using natural resources for medicinal plants, subsistence living, and sacred ceremonies. Including tribal cultural values and natural resource uses in the HRS will encourage tribal involvement and capacity building in site screening and prioritization by making the process more relevant to tribal concerns.

While states may be able to refer sites not added to the NPL to other programs for evaluation, tribes experience obstacles when addressing sites that do not qualify for Superfund resources under current national screening and prioritization standards. In states, the responsibility for such sites that have been deemed "No Further Remedial Action Planned" (NFRAP) is often assumed by other state programs, such as VCPs and Brownfields. Without such programs, tribes have no alternatives for cleaning up sites that do not qualify for federal funding, and often the risks posed by these sites remain a threat to tribal communities. Unless such programs are in place, other mechanisms need to be created to ensure that tribal protection from hazardous waste releases is not neglected.

## **2. Short-term Actions**

The efforts under this program component are designed to ensure that tribes have the ability to conduct short-term actions.

### **Recommendations for Building Short-term Action Capacity**

- ◆ Improve tribal access to experts to assist in emergency situations or critical areas where a tribe has not yet developed expertise. (Also see *Chapter 2: Assistance Recommendations*, Section B, Expert Assistance)
- ◆ Improve funding and the ability for tribes to secure their own small, private contractors.

Until a tribe has developed its own in-house expertise, access to experts will be particularly important in time-critical situations. IPAs, EPA experts on a short-term basis (e.g., Emergency Response Team, EPA labs), and contractors are options available to fulfill this need. However, because many tribes are located in remote, rural areas, IPAs are often difficult to fill and can be very costly. Contractors may be more available to tribes, but may also be expensive. Because tribes may have limited legal resources, expert assistance with PRP searches, enforcement actions and negotiations is also extremely valuable.



### 3. Long-term Actions

The efforts under this program component are designed to build tribal capacity to conduct technically complex, long-term remediation activities. The capacity to perform long-term actions is contingent upon strengthening tribal Superfund capabilities. In addition, incorporating tribal values in long-term actions may require modifications to the risk assessment process.

#### **Recommendations for Building Long-term Action Capacity**

- ◆ Assist tribes in developing the capability to select remedies.
- ◆ Ensure consultation and involvement with tribes throughout all long-term actions, including the risk assessment process that are conducted in Indian country or where tribes are affected by the action.
- ◆ Incorporate tribal concerns by integrating human health and ecological factors and cultural values in the risk assessment process and modify EPA guidance appropriately.
- ◆ Consider potential damage to tribal cultural resources resulting from any remedial action which may impact tribal lands.
- ◆ Support tribes' role as an Natural Resource Damage Assessment (NRDA) Trustee by promoting coordination with tribes on any remedial action which may impact tribal lands.
- ◆ Modify current courses to include tribal perspectives on risk assessment, eco-assessment, risk communication, data quality objectives, quality assurance management plans, and quality assurance project plans.

Human health and ecological risk assessments are conducted to assess the dangers that are posed to human and ecological populations if no remedial action were to occur. Similar to the HRS, the exposure pathways that are developed in risk assessments do not account for tribal traditions and cultural values. Typical risk assessment scenarios estimate the extent of exposure by assuming standard population characteristics that have been developed by EPA. These assumptions may not be accurate for tribal populations who use natural resources for subsistence fishing, farming, ranching, and gathering; medicine; and/or traditional ceremonies.

Current assumptions of safe risk levels and standards may also be inappropriate for tribes. Acceptable risk levels are determined by communities through the public discussion and political process. Each community has concerns that may differ from other communities. Tribal communities generally have some differences in concerns from those of states (e.g., tribes' culture and livelihood is inextricably linked with the land and its use for sustenance, religion, and other purposes). Some tribes

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may utilize the federal preliminary remedial guidelines for acceptable risk levels, while others may develop their own. Each tribe should be involved in and consulted on decisions regarding risk levels. During long-term actions, direct discussions with the tribe are necessary for tribal risk assessments.

The risk assessment process was developed to help EPA meet its Superfund mandate to protect human health and the environment from current and potential threats posed by hazardous substances. The process examines risks to human health and the environment separately; for many tribes, human health and the environment are inseparable. Risk assessments in Indian country should integrate human health, ecological, and cultural considerations and emphasize a comprehensive approach by allowing public participation in the decision-making process. Examples of tribes and references to unique tribal considerations could be incorporated into the guidance manuals.

In addition, the process needs to address the potential loss of use due to remedial activity. Risk assessments estimate the danger to current and future populations near the site posed by contaminants if no remedial activity is taken. The results of the risk assessment are used to help select the remedies for reducing site risks. However, the process of remediation itself can cause irreparable damage to historically sacred Indian sites or other cultural resources, and should be considered when selecting appropriate remedies for sites in Indian country.

#### *4. Superfund Amendments and Reauthorization Act (SARA) Title III*

##### **Recommendations for Building Emergency Planning and Preparedness Capacity**

- ◆ Assess existing emergency response infrastructure within tribal communities using existing regional information.
- ◆ Assist tribes in developing a Tribal Emergency Response Commission/Local Emergency Planning Committee (TERC/LEPC) structure and in applying for appropriate grants.
- ◆ Increase funding for Chemical Emergency Preparedness and Prevention Office (CEPPO) grants to tribes and support deviations and creative solutions from the 25% in-kind matching contribution.
- ◆ Regularly offer a basic tribal-specific SARA Title III course.

Emergency preparedness and prevention is of critical importance to tribes due to the increasing number of hazardous materials transported over Indian country. Thus, an assessment of existing tribal infrastructure would help identify the next steps for assisting tribes and determining effective methods for building emergency response and preparedness capabilities. CEPPO within EPA awards annual grants to states and tribes for the establishment of state or tribal Emergency Response Commissions and for training, technical assistance, and coordination with LEPCs. Tribes have received an average of

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\$150,000 annually since 1990. However, the 25% matching funds requirement for CEPPPO grants can be a barrier for tribes. CEPPPO has also made funds available to tribes through the General Assistance Program. Additional assistance, such as a tribal-specific course in SARA Title III, will be necessary to help tribes overcome obstacles to building their emergency response, preparedness, and prevention capabilities.

## IV. Agreements

The Tribal Workgroup endorses the general *Model Agreement* developed by the Agreements Workgroup; however, other considerations and options that are unique to tribes could be applied to EPA-tribal relations. The two recommendation areas in this section address the critical components that are necessary for improving EPA-tribal partnerships. Section A addresses how EPA staff understanding of tribal governments can be improved. Section B promotes inter-agency coordination.

### A. Understanding Tribal Governments

#### **Recommendations for Increasing EPA Staff Understanding of Tribal Governments**

- ◆ Offer a tribal cultural awareness and tribal-EPA government relations course to Superfund staff.
- ◆ Increase awareness of availability of information about tribal governments, treaties, and activities to Superfund staff.
- ◆ Revisit and frequently update any agreements that are established with tribes so as to reflect current tribal priorities.

A tribal cultural awareness course for Superfund staff would facilitate partnership and understanding between tribes and EPA Superfund staff. Tribal governments are sovereign nations that assert jurisdiction over their people and land. Many tribal governments combine aspects of their traditional styles and institutions with common western forms. The structures of tribal governments have developed in response to the same kinds of factors that affect the development of any government: population size, land base, and economic, cultural, and political considerations. Like other governments, tribes experience changing politics and priorities with changing administrations. Thus, any agreements that are established with tribes should be frequently revisited and updated.

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## **B. Inter-agency Coordination**

### **Recommendation for Enhancing Inter-agency Coordination within Superfund**

- ◆ Increase commitment and efforts, at all levels within EPA, to enhance communication and enact inter-agency agreements among federal agencies working with tribes.

Every federal department and agency is responsible for upholding the Federal Trust responsibility to the federally-recognized Indian tribes. Thus, inter-agency coordination is particularly important in relations between the federal government and tribes to ensure that the trust responsibility is fulfilled.

All of the federal agencies that are involved in protecting tribal environmental and cultural health need to develop inter-agency communication and coordination of their activities. An example of such inter-agency coordination is the EPA, Bureau of Indian Affairs, Department of Housing and Urban Development, and Indian Health Service Memorandum of Understanding signed in 1991. This agreement details the respective authorities and responsibilities of each agency and highlights areas of potential overlap. The MOU also establishes mechanisms for coordinating the priorities and actions of the individual agencies. While this agreement is a good starting point for developing inter-agency coordination, the signatory agencies need to increase their commitment to implementing this agreement.

Other examples where inter-agency coordination is necessary are the NRDA's administered by the Department of Interior and the federal facilities managed by Department of Defense or Department of Energy. EPA's role should be to coordinate and facilitate activities at these sites and promote tribal consultation and involvement. Inter-agency coordination and communication regarding NRDA sites and federal facility sites would enhance the protection of human health, the environment, and the culture of tribes impacted by these sites.

## **V. Tribal Workgroup's Four Priority Recommendations**

- ◆ Increase funding for tribal Superfund programs and allocate this separately from state funding.
- ◆ Develop tribal-specific Superfund training and increase training efforts.
- ◆ Incorporate tribal cultural values into the Superfund program.
- ◆ Advocate inter-agency coordination among agencies with environmental federal Trust responsibilities.

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## VI. Summary of Recommendations

- ✓ Indicates activities that EPA can conduct under the current Superfund program.
- ✦ Indicates activities that require policy changes.
- ☆ Indicates activities that require regulatory changes.
- Indicates activities that require statutory changes to the Superfund program.

<b>Assessing Readiness</b>	✓ Encourage tribes to build program capacity relevant to their individual needs and priorities.
	✓ Use existing information to identify tribes with existing tribal capacity within each EPA region.
<b>Funding</b>	✓ Increase funding for tribes in the form of specific tribal funding that is allocated separately from states.
	✓ Develop and apply for a class deviation from the 10% Core funding cost-share on behalf of tribes.
<b>Training</b>	✓ Develop and provide a consolidated resource manual, <i>Tribal Superfund Orientation Manual</i> , to all tribes.
	✓ Design a basic Superfund curriculum specifically for tribes.
<b>Regulatory Capability</b>	✓ Assist tribes in establishing codes and ordinances.
<b>Program Management</b>	✓ Streamline the issuance and administration of financial assistance.
	✓ Assist tribes in obtaining access to technical resources.
<b>Site Identification Capacity</b>	✓ Assist tribes in developing tracking and notification systems for potentially contaminated sites and hazardous substance releases.
	✓ Include tribes as partners in regional equipment-sharing arrangements and ensure that tribes know how to access and use the equipment.
	✓ Provide tribal access to CLP laboratories.
<b>Site Screening and Prioritization Capacity</b>	✓ Develop a screening and prioritization process that includes tribal cultural values.
	✓ Assist tribes in finding cleanup alternatives for sites that cannot be addressed under the Superfund program.
	✓ Provide interested tribes with assistance to develop VCPs and Brownfields programs.

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<b>Short-term Action</b>	✓ Improve tribal access to experts to assist in emergency situations or critical areas where a tribe has not yet developed expertise.
	✓ Improve funding and ability for tribes to secure their own small, private contractors.
<b>Long-term Action</b>	✓ Assist tribes in developing the capability to select remedies.
	✓ Ensure consultations and involvement with tribes throughout all long-term actions, including the risk assessment process, that are conducted in Indian country and in other areas where tribes are affected by the action.
	✓ Incorporate tribal concerns by integrating human health and ecological factors, and cultural values in the risk assessment process, and modify EPA guidance appropriately.
	✓ Consider potential damage to tribal cultural resources resulting from any remedial action which may impact tribal lands.
	✓ Support tribes' role as an NRDA Trustee by promoting coordination with tribes on any remedial action which may impact tribal lands.
<b>Emergency Planning and Preparedness</b>	✓ Assess existing emergency response infrastructure within tribal communities using existing regional information.
	✓ Assist tribes in developing a TERC/LEPC structure and applying for appropriate grants.
	✓ Increase funding for CEPPO grants to tribes and support deviations and creative solutions from the 25% in-kind matching contribution.
<b>Understanding Tribal Governments</b>	✓ Offer a tribal cultural awareness and tribal-EPA government relations course to Superfund staff.
	✓ Increase awareness of availability of information on tribal governments, treaties, and activities to Superfund staff.
	✓ Revisit and frequently update any agreements that are established with tribes.
<b>Inter-agency Coordination</b>	✓ Increase commitment and efforts, at all levels within EPA, to enhance communication and enact inter-agency agreements among federal agencies working with tribes.

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## **VII. Conclusion**

The tribal Workgroup's recommendations describe the actions that should be taken by EPA to enhance the tribal role in Superfund. All of the recommendations can be implemented without a statutory or regulatory change, which means that EPA could take immediate actions toward initiating this proposal. When implementing these suggestions, regular consultation and collaboration with the tribes will be essential.

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# **Appendix A: Readiness Modules**

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## MODULE 1: IDENTIFY AND SCREEN SITES (1 of 2)

When a state or tribe seeks to assume responsibility for *Module 1: Identify and Screen Sites*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into cooperative agreements (CA) with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

## MODULE 1: IDENTIFY AND SCREEN SITES (2 of 2)

### 1. Identify potentially contaminated sites.

- A. Maintain a system for tracking newly discovered potentially contaminated sites.
- B. Maintain a system for notification of a hazardous substance release.

### 2. Determine which of these sites should be added to a national inventory of potentially contaminated sites (presently known as CERCLIS).<sup>1</sup>

- A. Screen sites for inclusion in a national inventory of potentially contaminated sites. States and tribes can provide the rationale.
- B. Maintain an electronic system for tracking site identification, screening, and prioritization data.
- C. Refer sites not added to the national inventory to other programs for evaluation, when appropriate.
- D. Enter site information into a national inventory (presently known as CERCLIS)<sup>2</sup> or transmit site information to EPA for entry, as appropriate.
- E. Obtain adequate PRP information as necessary.

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<sup>1</sup> 40 CFR §300.5 defines CERCLIS as "...the CERCLA Information System, EPA's comprehensive database and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPA's site planning and tracking functions."

<sup>2</sup> See footnote 1.

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## MODULE 2: IDENTIFY, SCREEN, AND PRIORITIZE SITES (1 of 2)

When a state or tribe seeks to assume responsibility for *Module 2: Identify, Screen, and Prioritize Sites*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

## **MODULE 2: IDENTIFY, SCREEN, AND PRIORITIZE SITES (2 of 2)**

### **1. Identify potentially contaminated sites.**

- A. Maintain a system for tracking newly discovered potentially contaminated sites.
- B. Maintain a system for notification of a hazardous substance release.

### **2. Determine which of these sites should be added to a national inventory of potentially contaminated sites (presently known as CERCLIS).<sup>3</sup>**

- A. Screen sites for inclusion in a national inventory of potentially contaminated sites. States and tribes can provide the rationale.
- B. Maintain an electronic system for tracking site identification, screening, and prioritization data.
- C. Refer sites not added to national inventory to other programs for evaluation, when appropriate.
- D. Enter site information into a national inventory (presently known as CERCLIS)<sup>4</sup> or transmit site information to EPA for entry, as appropriate.
- E. Obtain adequate PRP information as necessary.

### **3. Prioritize these sites among the state's or tribe's other CERCLA sites competing for funding and other resources.**

- A. Prioritize sites for assessment. States and tribes can provide the rationale.

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<sup>3</sup> See footnote 1.

<sup>4</sup> See footnote 1.

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## MODULE 3: PRIORITIZE AND EVALUATE SITES FOR CLEANUP (1 of 2)

When a state or tribe seeks to assume responsibility for *Module 3: Prioritize and Evaluate Sites for Cleanup*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

## **MODULE 3: PRIORITIZE AND EVALUATE SITES FOR CLEANUP**

### **(2 of 2)**

#### **1. Prioritize these sites among the state's or tribe's other CERCLA sites competing for funding and other resources.**

- A. Prioritize sites for assessment. States and tribes can provide the rationale.

#### **2. Evaluate site comprehensively and determine what needs to be done based on what is known about the site at the time. Determine the next course of action (e.g., expedited action, design/long-term cleanup, and the associated funding/resource/scheduling requirements).**

- A. Have the ability to conduct or contract the following activities, either through in-house, private sector, or other state or federal agencies, when appropriate:<sup>5</sup> (1) review historical site records; (2) gain site access; (3) conduct site sampling; (4) analyze samples; (5) review and interpret environmental/analytical data; (6) evaluate hydrology/geology; (7) evaluate toxicological/health effects/ecosystem data; (8) complete report/case preparation; and (9) conduct legal/case development.

If any of the above site assessment services are to be contracted, the state or tribe must have appropriately trained personnel to provide oversight, product review, or third-party verification of the assessment.

- B. Have access to the requisite equipment to conduct the activities outlined in these criteria.
- C. Have the capability to determine the need for, or appropriateness of, other actions, which may include: (1) urgent evaluations and cleanups; (2) expedited evaluations and cleanups; (3) enforcement actions; (4) long-term actions; (5) VCPs; and (6) Brownfields programs.
- D. Have the ability to provide adequate opportunity for meaningful community involvement and notification.

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<sup>5</sup> It is not appropriate for contractors to perform inherently governmental functions (e.g., making cleanup and enforcement decisions and deciding on a state's/tribe's priorities).

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## MODULE 4: PRIORITIZE AND EVALUATE SITES FOR CLEANUP AND FOR FEDERAL ELIGIBILITY (1 of 2)

When a state or tribe seeks to assume responsibility for *Module 4: Prioritize and Evaluate Sites for Cleanup and for Federal Eligibility*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

## **MODULE 4: PRIORITIZE AND EVALUATE SITES FOR CLEANUP AND FOR FEDERAL ELIGIBILITY (2 of 2)**

### **1. Prioritize these sites among the state's or tribe's other CERCLA sites competing for funding and other resources.**

- A. Prioritize sites for assessment. States and tribes can provide the rationale.

### **2. Evaluate site comprehensively and determine what needs to be done based on what is known about the site at the time. Determine the next course of action (e.g., expedited action, design/long-term cleanup, and the associated funding/resource/scheduling requirements).**

- A. Have the ability to conduct or contract the following activities, either through in-house, private sector, or other state or federal agencies, when appropriate:<sup>6</sup> (1) review historical site records; (2) gain site access; (3) conduct site sampling; (4) analyze samples; (5) review and interpret environmental/analytical data; (6) evaluate hydrology/geology; (7) evaluate toxicological/health effects/ecosystem data; (8) complete report/case preparation; and (9) conduct legal/case development.

If any of the above site assessment services are to be contracted, the state or tribe must have appropriately trained personnel to provide oversight, product review, or third-party verification of the assessment.

- B. Have access to the requisite equipment to conduct the activities outlined in these criteria.
- C. Have the capability to determine the need for, or appropriateness of, other actions, which may include: (1) urgent evaluations and cleanup; (2) expedited evaluations and cleanup; (3) enforcement actions; (4) long-term actions; (5) VCPs; and (6) Brownfields programs.
- D. Have the ability to provide adequate opportunity for meaningful community involvement and notification.

### **3. Have the means to evaluate sites for federal cleanup program eligibility.**

- A. Have the ability to apply a national system to identify federal priority sites. If support services are to be contracted, the state or tribe will have appropriately trained personnel to provide sufficient oversight, product review, and quality control of documentation. (Current national system is the HRS.)

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<sup>6</sup> See footnote 5.

## MODULE 5: CONDUCT AND COMPEL URGENT EVALUATION AND CLEANUP (1 of 3)

When a state or tribe seeks to assume responsibility for *Module 5: Conduct and Compel Urgent Evaluation and Cleanup*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs. Under the current Superfund program, short-term activities are grouped into three categories: emergency, time-critical, and non-time-critical removals. Subpart O restricts funding of state-lead short-term actions to non-time-critical removals (40 CFR §35.6200). On a case-by-case basis, EPA may consider requests for a deviation from this restriction to allow a state or tribe to carry out emergency or time-critical actions (40 CFR §35.6025). The Readiness Workgroup, using generic terminology, classified short-term actions into either urgent or expedited evaluations/cleanups.

### Definition

Urgent responses stabilize, reduce, or eliminate immediate threats and/or imminent hazards to human health and property or the environment quickly.

### Assumptions

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), another assumption of this Module is to provide PRPs the opportunity to undertake cleanups within appropriate time constraints. Further, urgent responses will receive priority attention from states and tribes.

## **MODULE 5: CONDUCT AND COMPEL URGENT EVALUATION AND CLEANUP (2 of 3)**

### **1. To conduct an urgent evaluation and cleanup, the state or tribe should undertake the following activities.**

- A. Secure site access.
- B. Identify and evaluate site contaminants.
- C. Undertake initial evaluation to determine hazards present, including the ability to evaluate potential human health and ecological risks.
- D. Manage and oversee contractors, if appropriate.<sup>7</sup>
- E. Ensure tracking and management of hazardous substance(s).
- F. Make field decisions as site conditions warrant.
- G. Address ecological impacts.
- H. Coordinate with initial site responders/fire/police, etc. (e.g., Incident Commander under the Unified Command System).
- I. Have specialized urgent response training (e.g., expertise in responses addressing biological threats, such as ricin).
- J. Determine response objective and response action.
- K. Monitor/undertake follow-up evaluation to determine if response objective was achieved.
- L. Conduct initial PRP search, if practicable, during site evaluation period.
- M. Enter into agreements with PRPs to perform urgent evaluations and cleanups.<sup>8</sup>
- N. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or urgent evaluations and cleanups).<sup>9</sup>

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<sup>7</sup> See footnote 5.

<sup>8</sup> For the purposes of this matrix, any enforcement authorities used by the state or tribe under the current program should be state enforcement authorities. PRP response actions should be conducted under state or tribal oversight.

<sup>9</sup> See footnote 8.

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## MODULE 5: CONDUCT AND COMPEL URGENT EVALUATION AND CLEANUP (3 of 3)

- O. Compel PRPs to perform urgent evaluations and cleanups (e.g., legal orders, fines).<sup>10</sup>
- P. Manage and oversee PRPs.
- Q. Take over PRP-lead urgent evaluations and cleanups (includes access to and availability of legal resources, dollars).
- R. Assess or seek penalties for non-compliance with cleanup orders.<sup>11</sup>
- S. Recover costs associated with conducting urgent evaluations and cleanups.
- T. Determine if additional work is necessary.

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<sup>10</sup> See footnote 8.

<sup>11</sup> See footnote 8.

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## MODULE 6: CONDUCT AND COMPEL EXPEDITED EVALUATION

### (1 of 2)

When a state or tribe seeks to assume responsibility for *Module 6: Conduct and Compel Expedited Evaluation*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs. Under the current Superfund program, short-term activities are grouped into three categories: emergency, time-critical, and non-time-critical removals. Subpart O restricts funding of state-lead short-term actions to non-time-critical removals (40 CFR §35.6200). On a case-by-case basis, EPA may consider requests for a deviation from this restriction to allow a state or tribe to carry out emergency or time-critical actions (40 CFR §35.6025). The Readiness Workgroup, using generic terminology, classified short actions into either urgent or expedited evaluations/cleanups.

### Definition

Expedited actions provide risk reduction and can include containment and reduction of direct exposure to risk. Site conditions are such that planning time is limited before a response action needs to be taken to mitigate threats posed by the site. In general, expedited actions will be based upon considerations of current land use, but may also consider future land use. Such actions may be interim actions or may constitute the final cleanups. Expedited actions can be conducted by states, tribes, or private parties.

### Assumptions

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 6: CONDUCT AND COMPEL EXPEDITED EVALUATION**

### **(2 of 2)**

#### **1. To conduct an expedited evaluation, the state or tribe should undertake the following activities.**

- A. Secure site access.
- B. Undertake initial site evaluation to determine hazards present.
- C. Evaluate site for health and ecological risks.
- D. Identify and evaluate site contaminants.
- E. Compare/rank the site with others in the state's or tribe's jurisdiction and place site in the funding queue, if appropriate. Determine the urgency of site actions.
- F. Enter into agreements with PRPs to perform expedited evaluations.<sup>12</sup>
- G. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or expedited site evaluations).<sup>13</sup>
- H. Compel PRPs to perform expedited site evaluations (e.g., legal orders).<sup>14</sup>
- I. Assess or seek penalties for non-compliance with orders for expedited site evaluations.<sup>15</sup>
- J. Take over PRP-lead expedited site evaluations (includes access and availability of legal resources, dollars).
- K. Manage and oversee PRPs.
- L. Determine if additional work is necessary.
- M. Recover costs associated with conducting expedited site evaluations.

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<sup>12</sup> See footnote 8.

<sup>13</sup> See footnote 8.

<sup>14</sup> See footnote 8.

<sup>15</sup> See footnote 8.

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## **MODULE 7: CONDUCT AND COMPEL EXPEDITED CLEANUP**

### **(1 of 3)**

When a state or tribe seeks to assume responsibility for *Module 7: Conduct and Compel Expedited Cleanup*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs. Under the current Superfund program, short-term activities are grouped into three categories: emergency, time-critical, and non-time-critical removals. Subpart O restricts funding of state-lead short-term actions to non-time-critical removals (40 CFR §35.6200). On a case-by-case basis, EPA may consider requests for a deviation from this restriction to allow a state or tribe to carry out emergency or time-critical actions (40 CFR §35.6025). The Readiness Workgroup, using generic terminology, classified short actions into either urgent or expedited evaluations/cleanups.

### **Definition**

Expedited actions provide risk reduction and can include containment and reduction of direct exposure to risk. Site conditions are such that planning time is limited before a response action needs to be taken to mitigate threats posed by the site. In general, expedited actions will be based upon considerations of current land use, but may also consider future land use. Such actions may be interim actions or may constitute the final cleanups. Expedited actions can be conducted by states, tribes, or private parties.

### **Assumptions**

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 7: CONDUCT AND COMPEL EXPEDITED CLEANUP**

### **(2 of 3)**

#### **1. To conduct an expedited cleanup, the state or tribe should undertake the following activities, when appropriate.**

- A. Develop appropriate engineering documents.
- B. Determine site cleanup levels.
- C. Issue the appropriate decision document that includes appropriate supporting documentation.
- D. Implement short-term action per engineering documents.
- E. Manage and oversee contractors, if appropriate.<sup>16</sup>
- F. Ensure tracking and management of hazardous substance(s).
- G. Make field decisions as site conditions warrant.
- H. Notify appropriate Natural Resources Trustees.
- I. Address ecological impacts.
- J. Undertake follow-up evaluation, which may include sampling to determine whether cleanup levels were achieved, and/or an evaluation of site risks as necessary.
- K. Assure ability to obtain site access agreements/real estate easements as required.
- L. Conduct PRP search during site evaluation period.
- M. Draft and send PRP notice letters in a timely fashion.
- N. Enter into agreements with PRPs to perform expedited cleanups.<sup>17</sup>
- O. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or expedited cleanups).<sup>18</sup>

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<sup>16</sup> See footnote 5.

<sup>17</sup> See footnote 8.

<sup>18</sup> See footnote 8.

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## MODULE 7: CONDUCT AND COMPEL EXPEDITED CLEANUP

(3 of 3)

- P. Compel PRPs to perform expedited cleanups and post-cleanup site monitoring and evaluation (e.g., legal orders).<sup>19</sup>
- Q. Assess or seek penalties for non-compliance with orders for expedited cleanups.<sup>20</sup>
- R. Take over PRP-lead expedited cleanups (includes access to and availability of legal resources, dollars).
- S. Manage and oversee PRPs.
- T. Recover costs associated with conducting expedited cleanups.
- U. Determine if additional work is necessary.
- V. Have the legal authority, infrastructure, and resources to acquire property or property interests to enable, for example, site access.<sup>21</sup>
- X. If federal dollars or CERCLA enforcement authorities are used to conduct temporary relocations, the Uniform Relocation Act (URA) and the implementing regulations should be followed as guidance in furnishing relocation benefits.

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<sup>19</sup> See footnote 8.

<sup>20</sup> See footnote 8.

<sup>21</sup> Under CERCLA §104(j), EPA cannot acquire property without an assurance from the state in which the property is located that the state will accept transfer of the property following completion of the remedial action (or earlier if agreed to in writing by EPA and the state). CERCLA §104(j)(3) exempts any state which acquires property in this manner from CERCLA liability. The liability provision provided under CERCLA §104(j)(3) may not apply when a state acquires property directly; however, a state or tribe which directly acquires property may still have a third-party defense from CERCLA liability as long as all conditions for this type of defense are met pursuant to CERCLA §107(b)(3) and §101(35)(A).

Please send comments to [Frey.Sharon@epamail.epa.gov](mailto:Frey.Sharon@epamail.epa.gov) or call (703) 603-8817

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## MODULE 8: CHARACTERIZE, OR COMPEL THE CHARACTERIZATION OF, THE SITE FOR LONG-TERM ACTION

(1 of 2)

When a state or tribe seeks to assume responsibility for *Module 8: Characterize, or Compel the Characterization of, the Site for Long-term Action*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

### Definition

Long-term actions are technically complex and take a long time to study and/or remediate. They also consider risks reduced as a result of expedited activities (where applicable) and consider future land use.

### Assumptions

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 8: CHARACTERIZE, OR COMPEL THE CHARACTERIZATION OF, THE SITE FOR LONG-TERM ACTION (2 of 2)**

### **1. Fully characterize the site for long-term cleanup action.**

- A. Possess the technical expertise and ability to characterize the nature, extent and risk of contamination, and assess sites adequately for development of cleanup alternatives.
- B. Have access to the equipment necessary to conduct sampling and field screening and analysis for site characterization.
- C. Have access to laboratory analysis necessary to support toxicity evaluation in the risk assessment (e.g., leaching test, toxicity testing).

### **2. State or tribe should have the legal authority to:**

- A. Enter into agreements with PRPs to perform investigations.<sup>22</sup>
- B. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or investigations).<sup>23</sup>
- C. Compel PRPs to perform investigations (e.g., legal orders).<sup>24</sup>
- D. Assess or seek penalties for non-compliance with orders for investigations.<sup>25</sup>
- E. Take over PRP-lead investigations (includes access to and availability of legal resources, dollars).
- F. Manage and oversee PRPs.
- G. Recover costs associated with investigations.
- H. Create and maintain document history to support long-term actions for administrative and judicial purposes.

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<sup>22</sup> See footnote 8.

<sup>23</sup> See footnote 8.

<sup>24</sup> See footnote 8.

<sup>25</sup> See footnote 8.

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## MODULE 9: IDENTIFY, EVALUATE, SELECT, AND COMPEL LONG-TERM CLEANUP ACTIONS (1 OF 3)

When a state or tribe seeks to assume responsibility for *Module 9: Identify, Evaluate, Select, and Compel Long-term Cleanup Actions*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

### Definition

Long-term actions are technically complex and take a long time to study and/or remediate. They also consider risks reduced as a result of short-term activities (where applicable) and consider future land use as well.

### Assumptions

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 9: IDENTIFY, EVALUATE, SELECT, AND COMPEL LONG-TERM CLEANUP ACTIONS (2 OF 3)**

### **1. Identify and evaluate potential cleanup actions.**

- A. Develop cleanup goals that are protective of human health and the environment.
- B. Identify and evaluate cleanup alternatives, and determine which are reasonably likely to achieve the cleanup goals established, considering the hazardous materials present, media contaminated, site characteristics, technical implementability, and cost effectiveness.
- C. Identify a cleanup plan alternative which achieves the cleanup goals that are cost effective and protective of human health and the environment over the long term.
- D. Have access to the equipment necessary to conduct treatability studies as appropriate.

### **2. Select cleanup action.**

- A. Have the ability to conduct analyses that compare the most appropriate cleanup alternatives.
- B. Have the ability to select an implementable cleanup plan that is projected to be cost effective and protective of human health and the environment over the long term.

### **3. State or tribe should have the legal authority to:**

- A. Enter into agreements with PRPs to perform identification and evaluation of alternatives.<sup>26</sup>
- B. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or identification and evaluation of alternatives).<sup>27</sup>
- C. Compel PRPs to perform identification and evaluation of alternatives (e.g., legal orders).<sup>28</sup>
- D. Assess or seek penalties for non-compliance with identification and evaluation of alternatives.<sup>29</sup>
- E. Take over PRP-lead identification and evaluation of alternatives (includes access to and availability of legal resources, dollars).
- F. Manage and oversee PRPs.

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<sup>26</sup> See footnote 8.

<sup>27</sup> See footnote 8.

<sup>28</sup> See footnote 8.

<sup>29</sup> See footnote 8.

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## **MODULE 9: IDENTIFY, EVALUATE, SELECT, AND COMPEL LONG-TERM CLEANUP ACTIONS (3 OF 3)**

- G. Recover costs associated with identification and evaluation of alternatives.
- H. Create and maintain document history to support long-term actions for administrative and judicial purposes.

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## MODULE 10: DESIGN, IMPLEMENT, AND COMPEL LONG-TERM CLEANUP (1 of 3)

When a state or tribe seeks to assume responsibility for *Module 10: Design, Implement, and Compel Long-term Cleanup*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

### Definition

Long-term actions are technically complex and take a long time to study and/or remediate. They also consider risks reduced as a result of short-term activities (where applicable) and consider future land use as well.

### Assumptions

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 10: DESIGN, IMPLEMENT, AND COMPEL LONG-TERM CLEANUP (2 of 3)**

### **1. Design and implement site cleanup.**

- A. Have a design or cleanup strategy that is technically sound and that is consistent with the cleanup goals.
- B. Have the ability to implement the site cleanup per the design or cleanup strategy. (A state or tribe may not proceed with a Fund-financed remedial action unless EPA has first concurred in and adopted the remedy selection decision (40 CFR §300.515(e)(ii)).
- C. Have the ability to make field decisions as site conditions warrant while maintaining the overall integrity of the cleanup.
- D. Have access to any construction equipment necessary to implement cleanup.
- E. Have access to the equipment necessary to conduct treatability studies as appropriate.
- F. Have the ability to implement a legal control or administrative means (e.g., institutional controls) of limiting exposure to hazardous materials to levels consistent with cleanup goals, and reduce future risk at a site from changes in site use.
- G. Have the legal authority, infrastructure, and resources to acquire properties or property interests to enable, for example, permanent relocations and site access.<sup>30</sup>

### **2. State or tribe should have the legal authority to:**

- A. Enter into agreements with PRPs to design and implement cleanup.<sup>31</sup>
- B. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or design and implementation of cleanup).<sup>32</sup>
- C. Compel PRPs to design and implement cleanup (e.g., legal orders).<sup>33</sup>
- D. Assess or seek penalties for non-compliance with design and implementation of cleanup orders.<sup>34</sup>
- E. Take over PRP-lead design and implementation of cleanups (includes access to and availability of legal resources, dollars).

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<sup>30</sup> See footnote 21.

<sup>31</sup> See footnote 8.

<sup>32</sup> See footnote 8.

<sup>33</sup> See footnote 8.

<sup>34</sup> See footnote 8.

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## **MODULE 10: DESIGN, IMPLEMENT, AND COMPEL LONG-TERM CLEANUP (3 of 3)**

- F. Manage and oversee PRPs.
- G. Recover costs associated with the design and implementation of cleanups.
- H. Create and maintain document history to support long-term actions for administrative and judicial purposes.

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## **MODULE 11: CONDUCT AND COMPEL POST-CLEANUP MONITORING AND EVALUATION (1 of 2)**

When a state or tribe seeks to assume responsibility for *Module 12: Conduct and Compel Post-cleanup Monitoring and Evaluation*, then the state or tribe should demonstrate capability (including legal authority) to carry out each activity in this Module. In situations where the state or tribe cannot demonstrate capability, then it may be possible for a state or tribe to reach an arrangement with its EPA region to divide work, as long as all of the Module's activities are addressed. The state, tribe, and EPA region have a shared responsibility to ensure that all of the program activities are completed.

Unless otherwise indicated, EPA may fund each activity described in this Module under the current statute, regulations, and program. CERCLA §104(d) authorizes EPA to enter into CAs with states and Indian tribes to carry out activities authorized by CERCLA §104. 40 CFR Part 35, Subpart O, codifies the requirements for Superfund CAs.

### **Definition**

Long-term actions are technically complex and take a long time to study and/or remediate. They also consider risks reduced as a result of short-term activities (where applicable) and consider future land use as well.

### **Assumptions**

In addition to the Readiness Workgroup's assumptions (see pages 2 and 3, *Chapter 1: Readiness Recommendations*), the preference is that PRPs will still be leading the majority of the cleanup work.

## **MODULE 11: CONDUCT AND COMPEL POST-CLEANUP MONITORING AND EVALUATION (2 of 2)**

### **1. Post-cleanup site monitoring and evaluation goals.**

- A. Have the ability to conduct appropriate operation and maintenance (O&M) activities to ensure effectiveness of long-term actions. (For Fund-financed remedial actions, states and tribes are responsible for funding and conducting all O&M activities (CERCLA §104(c)(3)).
- B. Have the ability to determine when the cleanup goals as stated in the cleanup plan have been met.
- C. Have access to any construction equipment necessary to implement post-cleanup site monitoring and evaluation. (For Fund-financed remedial actions, states and tribes are responsible for funding and conducting all O&M activities (CERCLA §104(c)(3)).

### **2. State or tribe should have the legal authority to:**

- A. Enter into agreements with PRPs to perform post-cleanup site monitoring and evaluation.<sup>35</sup>
- B. Issue administrative orders or obtain judicial documents (e.g., warrants, requests for information, administrative orders for access or performing post-cleanup site monitoring and evaluation).
- C. Compel PRPs to perform post-cleanup site monitoring and evaluation (e.g., legal orders).<sup>36</sup>
- D. Assess or seek penalties for non-compliance with post-cleanup site monitoring and evaluation orders.<sup>37</sup>
- E. Take over PRP-lead post-cleanup site monitoring and evaluation (including access to and availability of legal resources, dollars).<sup>38</sup>
- F. Recover costs associated with post-cleanup site monitoring and evaluation.
- G. Manage and oversee PRPs.
- H. Create and maintain document history to support long-term actions for administrative or judicial purposes.

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<sup>35</sup> See footnote 8.

<sup>36</sup> See footnote 8.

<sup>37</sup> See footnote 8.

<sup>38</sup> See footnote 8.



**Appendix B: OSWER Training Database  
And Videotape Inventory/National  
Enforcement Training Institute Training  
Courses**

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## **Training Courses**

### **Site Identification, Screening, and Prioritization**

Applied Statistics and Ecology  
Biohazard Awareness  
Exploring Rangeland Ecosystems  
Introduction to Human Health and Ecological Risk Assessment for Site Managers  
ASTSWMO Inspector Training  
Advanced Groundwater Investigations  
Chemical Safety Audits (165.19)  
Data Quality Objectives  
Ecological Risk Assessment Training  
Ecological Risk Assessment for Superfund  
Ecological Risk Characterization  
Ecological Risk and Decision Making  
Field-Based Site Characterization Technologies Workshop (CEC)  
Fundamentals of Radiation for Environmental Professionals  
Groundwater Investigations  
Groundwater Association  
Groundwater Contamination  
Groundwater Hydrology and Behavior of Contaminants in the Subsurface  
Groundwater Sampling  
Hazard Ranking System (HRS)  
Hazard Ranking System (HRS) Documentation Record  
Hazardous Waste Identification  
Introduction to Groundwater Investigations (165.7)  
Introductory Federal Facility Preliminary Assessment Training  
Introductory Federal Facility Preliminary Site Inspection Training  
Introductory Preliminary Assessment Training  
Introductory Site Inspection Training  
Nonaqueous Phase Liquids in the Subsurface  
Risk Assessment Guidance for Superfund (165.6)  
Risk and Decision-Making  
Sampling for Hazardous Materials (165.9)  
Soil Sampling and Quality Assurance for Superfund  
Subsurface Modeling

### **Short-Term Action Activities**

RCRA Hazardous Waste Incinerator Inspection Workshop; 2 Parts  
Basic Incineration and BIF Permitting  
Chemical Emergency Preparedness and Prevention  
Emergency Response to Hazardous Material Incidents (165.15 Training)  
First Responders/Awareness Level

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Hazardous Materials Incident Response Operations (165.5)  
Hazardous Waste Incineration  
Hazardous Waste Incinerator/Inspection Manual  
Incident Command/Unified Command  
Incinerator Inspection Workshop  
Inland Oil Spills (165.18)  
Permit and Interim Status  
Radiation Safety at Superfund Sites (165.11)  
Remedial Process (CEC)  
U.S. EPA Emergency Response Capabilities

### **Long-Term Action Activities**

Air Monitoring for Hazardous Materials (165.4)  
Boilers and Industrial Furnaces  
Burning of Hazardous Waste in Boilers and Industrial Furnaces (BIF) Rule  
Closure/Post Closure  
Containers  
Containment Buildings  
D.O.E. Land Disposal Restrictions Video Course  
Decontamination Course  
Definition of Solid Waste and Hazardous Waste Recycling  
Designs for Air Impact Assessments at Hazardous Waste Sites  
Federal Facility Remediation (CEC)  
Groundwater Monitoring  
Groundwater Research/Education - Geology  
Hazardous Waste Tanks  
Innovative Treatment Technologies (CEC)  
Innovative Treatment Technologies Short Course (CEC)  
Land Disposal Units  
Managing Environmental Problems at Metals Mine Site  
Municipal Solid Waste Disposal Facility Criteria  
Natural Attenuation Short Course  
Past Clean-Up Options  
Pine River Used Oil Recycle Program  
Public Involvement Workshop  
RCRA Ground Water Monitoring  
Recycling (secondary students)  
Removal Cost Management System (165.17)  
Removal Process (CEC)  
Solid Waste Disposal Criteria (long and short versions)  
Tank Talk  
Treatment Technologies Overview for Management  
Treatment Technologies for Superfund (165.3)  
Treatment, Storage, and Disposal Facilities

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## **Enforcement**

### ***OSWER Training Database***

Basics of the Endangered Species Act  
Environmental Dispute Resolution  
NEPA and Clean Air Act, Section 309 Review  
Pollution Prevention Training for Enforcement and Compliance Officers  
ARD Case Evaluation/Mediation Demonstration  
Advanced Removal Enforcement Workshop  
An Agenda for Action  
Attack on Hazardous Waste: Challenge of the 80's  
Enforcement Process Overview (CEC)  
Generators  
Identification of Environmental Crimes  
Introduction to Superfund Enforcement  
Land Disposal Restrictions (with Manual)  
Land Disposal Restrictions  
Land Disposal Restrictions (LDR) Enforcement Training: Interactive Computer Program  
Land Disposal Restrictions Workshop  
Libby Groundwater- (See CERCLA- Superfund)  
New Superfund Attorney Orientation  
OSC Warrant Authority Training (CEC)  
Other Laws that Interface with RCRA  
RCRA Corrective Action  
RCRA Enforcement and Compliance  
RCRA Statutory Overview  
RCRA Subtitle 1: Underground Storage Tanks

### ***National Enforcement Training Institute***

#### **Air Training**

Air Inspector/Source Specific Inspection/Case Worker Training (Basic, Intermediate, Advanced)  
AIRS Input and Reporting Training  
ACTS/NARS Training  
CARB: Mock Trial Enforcement Symposium  
CAA Field Citations

#### **Case Support Training**

ABEL  
Alternative Dispute Resolution  
BEN  
SEP Policy Training - Classroom Format  
Basic Inspector Course  
Interviewing Techniques for Regulators  
Negotiations Skills Training (NEEP)

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Negotiations Skills Training (SEEN)  
Administrative Enforcement and Case Development  
Financial Analysis - Module 1 and Intermediate Ability to Pay  
Basic Training in Court Room Procedures  
Intermediate Ability to Pay Course  
Financial Analysts' Workshop  
Negotiation Skills - Advanced  
PROJECT - SEP Training  
Skills Development in the Negotiation of RCRA/CERCLA Disputes  
Administrative Hearings and Trials Training  
Interviewing and Interrogation Techniques (MEEA)  
Advanced Administrative Practice Institute  
Pleading and Litigating Civil Penalties  
Advanced Interviewing and Interrogation Workshop (MEEA)  
MUNIPAY  
INDIPAY  
SEP Policy Training - Video Format  
Negotiations Skills (Basic) - Video Format

#### Compliance Assistance Training 12

Compliance Assistance via Electronic Resources  
Pollution Prevention for Enforcement and Compliance Officers

#### Criminal Enforcement Training 13

Environmental Crimes Awareness  
International Association of Chiefs of Police Environmental Crimes Training Conference  
Basic Criminal Environmental Investigations (MEEA)  
Basic Environmental Enforcement Training (NEEP)  
Environmental Investigations - Basic  
Basic Environmental Investigations Training (WSP)  
OCEFT/DOJ Training Conference  
CID/SAC Conference  
Criminal Enforcement Counsel Training Conference  
Criminal Investigator Training Program  
Basic Environmental Investigations Training (SEEN)  
Environmental Crimes Awareness for Local Law Enforcement (MEEA)  
Introduction to Clandestine Drug Laboratory Enforcement (MEEA)  
Technical Personnel Training Program  
Advanced Environmental Crimes Training Program  
Basic Environmental Crimes Investigations (SEEN)  
Environmental Crimes Instructor Training Program  
EPA Special Agent In-Service Training  
Prosecuting Environmental Crimes (SEEN)  
Environmental Crimes Prosecution Orientation (WSP)  
Environmental Enforcement Training  
Advanced Environmental Investigative Operations Training Program

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### Environmental Justice Training 17

EJ Seminar Series I - Legal Tools for Environmental Justice  
EJ Seminar Series II - Community Outreach Public Participation Model  
EJ Seminar Series III - Science and Environmental Justice  
EJ Seminar Series IV - Focusing on Environmental Justice Solutions

### Federal Agency/Facility Training 18

Endangered Species  
NEPA/309  
Overview of Cross-Cutter Statutes and Executive Orders

### FIFRA Training 18

PREP: Compliance Management Part 1  
FIFRA/TSCA Tracking System (FTTS) Training  
Case Development Training for FIFRA/TSCA/EPCRA  
PREP: Compliance Management Part II/III  
PREP: Senior Comprehensive Course  
Pesticide Product Enforcement Course  
Use Enforcement Course (Workers Protection Standards)  
Strategies for Managing Pesticides  
Pesticides and Water Quality  
PREP: Senior Comprehensive Course (Refresher)

### Information Management Training 20

IDEA Basic Training  
IDEAWin for the New User  
DOCKET/Case Conclusion Data Sheets  
IDEA Advanced Training  
IDEAWin for the Experienced User

### International Training 20

Hazardous Waste Compliance Monitoring for Customs and Environmental Inspectors  
Principles of Environmental Compliance and Enforcement  
Field Investigations Sampling and Laboratory Analysis for Mexican Inspectors  
Conducting Multimedia Inspections  
Principles of Environmental Impact Assessment  
Border Interdiction

### Multi Statute Training 22

Multimedia Inspections  
Multimedia Training for Regulators (MEEA)  
Advanced Multimedia Course for Regulators (NEEP)

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### Oil Pollution Act Training 23

Spill Prevention, Control and Countermeasures (SPCC) Inspector Training

### RCRA Training 23

RCRA Inspector Institute - Basic

RCRA Inspector Institute - Advanced

RCRA Enforceability of Regulations

RCRA Enforcement Practitioners Workshop

Comprehensive Ground-Water Monitoring Evaluation (CME) Inspection Training - CBT

### Superfund (CERCLA) Training 24

CERCLA Education Center - Fundamentals of Superfund

CERCLA Education Center - The Enforcement Process

New Attorney Orientation Training - Superfund

Introduction to Superfund Enforcement - CBT

### TSCA Training 25

Lead Based Paint Real Estate Notification and Disclosure Rule for Investigators

### Water Training 25

Permit Compliance Data System (PCS) Basic Training

Clean Water Act (CWA) Penalty Policy

EDI DMR Implementation for Trading Partners

NPDES Minimum Program Specific Inspector Training

Pretreatment Compliance Inspection Training

Sanitary Survey Training for Inspectors of PWS

NPDES Performance Audit at Biomonitoring Laboratory

Diagnostic Compliance Inspection Training

EDI DMR Implementation for EDI Coordinators

PCS Advanced Generalized Retrieval

PCS QNCR Training

### Other Training Opportunities

Regional Review Interview Training

New Directions in the Enforcement and Compliance Assurance Program

### Financial, Administrative, Etc.

ADR Tools for Environmental Professionals

Advanced ADR Methods and Applications

Bank Card and Call Ordering Officer Training (CEC)

CERCLIS 3 Training for Headquarters

CERCLIS 3 Training for Regions

CERCLIS/WasteLAN Case Budget Overview

Coaching Skills for Managers and Supervisors

Contract Administration Training for Supervisors and Managers

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App. B-6



Contract Administration for Project Officers  
Effective Leadership Skills  
Empowerment  
Financial Assurance  
Fundamentals of Superfund  
Health and Safety Plan Workshop (165.12)  
LandView II (Software) NB: (Self-taught)  
LandView II  
Leadership: Attitude, Function, and Style (CEC)  
Local Government Reimbursement  
Partners in Change...Labor and Management Working Better Together  
Permit Writer's Training Manual  
RCRIS Implementation Training  
RCRIS Instructional Series  
Safety and Health Decision-Making for Managers (165.8)  
Superfund Public Participation: Tools and Skills for Site Teams  
The Quality Course - TQM Building Blocks for Successful Environmental Management  
What You Don't Know Can Hurt You - (EPA Teleconference)  
Wood Preserving Rule Training Course  
Working Together: Managing Cultural Diversity  
Workshop on Risk and Decision-Making

### **Miscellaneous**

Air Emissions Standards  
Drip Pads  
Introduction to Borehole Geophysics  
Introduction to Environmental Geophysics (165.20)  
Introduction to Magnetism  
Miscellaneous and Other Units  
Orientation to Quality Assurance Management  
RCRA Orientation Manual - 1990 Edition  
RCRA State Programs  
Response Action Contract User  
Rocky Mountain Arsenal: Miscellaneous Slides  
STIR Slide Show  
Solid Waste Programs  
Solid and Hazardous Waste Inclusions  
TOMES Training  
Training Program on Small Quantity Generators  
Transporters  
Used Oil

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## **General Courses**

Team Building  
The Art of Communicating  
The Business of Listening  
The Confident Women  
The Procrastination Cure  
Coaching and Counseling  
How to Make Presentations with Confidence and Power  
How to Manage Priorities and Deadlines  
How to Master Your Time  
How to Supervise People  
The Seven Habits of Highly Effective People - Covey  
Time Management Plus  
Principle-Centered Leadership  
Quality Customer Service  
Attitude: Your Most Priceless Possession

## **VIDEOTAPES**

### **Site Identification, Screening, and Prioritization**

ARCHIE: Animated Resource for Chemical Hazard Incident Evaluation  
Accidents Will Happen  
Alabama Oil Burn  
Alert 3, The Crash of UAL Flight 232  
Awareness for Initial Response to Hazardous Materials Incidents  
Chemical Emergency Preparedness Program: Title III  
Chemical Emergency Preparedness Program: Title III  
Conceptual Approach for Characterizing Problems at Hazardous Waste Sites  
Consortium on Oil Spill Training  
Contingency Planning at the Spill  
Developing a Comprehensive HazMat Exercise Program  
Dioxin Destruction, EPA, Ecology, and Environment  
First on the Scene  
Haz Mats! - Case Studies for Emergency Responders  
HazMat Response, Parts 1 & 2 CDC #0454, 0455  
Hazard Analysis Presentation (Bill Finan)  
Hazardous Materials Clean-Up in West Jordan  
Hazardous Waste Operations and Emergency Response  
Hazmat Contingency Planning Course - Part 1; Parts 1 & 2  
Hydrogeology Lecture with Dr. Benjamin Ross  
Hydrogeology Lecture; EPA RFI Training  
Introduction to Surface and Borehole Geophysics  
Management Strategies for Small Quantity Generators

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App. B-8

National Fire Protection Association Training Program on Small Quantity Generators  
Navajo Vats II - English Version  
Navajo Vats- English Version  
Physical Modeling of Fuel Leaks in Simulated Underground Environments  
Program 5 - Fall 1994 Response and Removal Regions 6, 8, & 9.  
Region III Emergency Response Exercise-1995  
Region III Emergency Response Exercise-1995  
Summitville Early Action  
Technologies for Remedial Response  
Technology for the Environment: High Temperature Hazardous Waste Incineration

### **Short-Term Action Activities**

A Conceptual Approach for Characterizing Problems at Hazardous Waste Sites  
A Question of Risk  
Discovery and Initial Evaluation  
Health and Safety for UST Workers  
How to Make a Hazardous Waste Determination  
Inspector Training Manual: ASTSWMO  
Introduction to Groundwater Contamination  
Introduction to Superfund Training  
Investigation and Clean-Up of Wood Treatment Sites  
Jim Knoy at Limon Elavator Initial Site Visit, Emergency Response  
LCP Chemical Site  
LDR Video Course (3 volumes); Note: See Also RCRA; LDR  
Leaking Underground Storage...Little Timebombs Ticking  
Petroleum Leaks Underground  
RA/RD  
RCRA Analytical Strategies and Methods  
RCRA Inspector Training  
RCRA Inspector Workshop  
RCRA Orientation  
RCRA Orientation  
RCRA Orientation Course  
RCRA Orientation Program  
RCRA Overview  
Rocky Flats Radiological Risk Assessment, Sessions 1&2  
STI-P3 Cathodic Protection Monitoring  
Sampling Ground Water and Hydrocarbons Without Wells  
Sampling Techniques  
Sampling Techniques  
Sampling Technologies  
Sampling Strategies  
Site Access Problem  
Site Assessment Training (With Handbook)  
Site Program (6 Technology Demonstrations)

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Site Programs (4 Technology Demonstrations)  
Soil Gas Monitoring; EPA RFI Training  
Soil Gas Monitoring  
Straight Talk on Leak Detection  
Superfund Innovative Technology Evaluation Program: HAZCON/ Solidification Demo  
Superfund Innovative Technology Evaluation Program: Shirco  
Superfund Innovative Technology Evaluation Program: Solidtech  
Superfund Innovative Technology Evaluation Program: TTUSA Technology  
Superfund Site Assessment Screening: A National Priority  
Superfund Site Exercises: Practice Makes Perfect  
Tank Closure Without Tears: An Inspector's Safety Guide  
Tank Tips  
Use of GIS for Hazardous Waste Site Characterization  
What Do We Have Here? (Site Assessment at Tank Closure)  
What Do We Have Here? An Inspector's Guide to Site Assessment at Tank Closure

### **Long-Term Action Activities**

Air Monitoring at a Waste Facility in Utah  
American Barrel: Barrel Removal  
Basic Groundwater Hydrology  
Bingham Creek Soil Clean-up  
Boiler Chemical Cleaning Waste Management at LRS  
Boiler Chemical Cleaning  
Boiling Liquid Expanding Vapor Explosion (BLEVE)  
Divex Response and Removal Action  
Drum Site  
Effective Management of USTs  
Hazardous Waste Incinerator Inspection  
Hazardous Waste Management; Methods  
High Temperature Hazardous Waste Incinerators  
Monitoring Well Installation  
Remedial Investigation  
Removal  
Sand Creek Remedial Action Kickoff  
Superfund in Action-LaSalle (III.) PCB Clean-Up  
Tank Closure Without Tears  
The Solid Waste Problem: Anaerobic Conversion, an Option for Reduction  
Toxicity Characteristic Leaching Procedure (Method 1311)  
Utilization of Chemical Protective Equipment for Decontamination Procedures  
Wood-Treatment Site Cleanup

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## **Enforcement**

BIF Teleconference #3: Enforcement Overview and Inspections  
CERCLA Enforcement Process Satellite Training Course  
Kitchens of Death  
Kitchens of Death (Law Enforcement Version)  
Keeping it Clean: Making Safe and Spill-Free Motor Fuel Deliveries  
Land Disposal Regulations (BETA)  
Land Disposal Restrictions Conference Call for DOE  
Land Disposal Workshop  
Liability Scheme and PRP Identification  
Personal Protection and Safety  
Protective Actions for HazMat  
RCRA: What Is, Who Is Regulated, What are the Sources?  
Settlements and Cost Recovery  
The New RCRA (Teleconference-2 volumes)  
The New RCRA/Hazardous and Solid Waste Amendments of 1984  
The New RCRA: Teleconference  
The Plating Industry & RCRA Compliance

## **Administrative, Financial, Etc.**

ASTSWMO Inspector Training; RCRA Units 1-12  
BIF Teleconference #1: Course Introduction: Overview of Regulations and Permitting  
BIF Teleconference #2: Technology Overview  
Beyond Business as Usual: Meeting the Challenge of Hazardous Waste  
Community Relations Skills Training  
Cost Control Manual for Superfund Removals  
EPA Announces Program to Revitalize Superfund (10/2/91)  
EPA Superfund Community Relations Training - Success Stories (Vanessa Musgrave)  
EPA Superfund Community Relations - Media Relations  
EPA Training Video: Angry Citizens Town Meeting  
First National Outdoor Action Conference on Aquifer Restoration, Groundwater Monitoring, and Geophysical Methods  
Ground Water Information Transfer  
Groundwater Information Transfer - Series II (Geology)  
Hazardous Substance Research Center Program Procedure (Method 1311)  
Innovations in Management  
Permit Writer's Training Manual (with manual)  
Permit Writer's Training Manual - Chapters 1-7 - ASTSWMO  
Registrar Master Software Demo  
Resource Conservation and Recovery Act Overview  
Seymour, Indiana: Profile of a Hazardous Waste Clean-Up  
Succeed by Listening  
Successful Stress Control

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Superfund Community Relations Training (Lee Thomas)  
T3 Video Conference  
TAGs (technical Assistance Grants)  
Technical Assistance Grant (TAG) Training  
Technology Update ISV  
The Art of Influencing People Positively  
The Five Star Communicator  
The Five Star Leader  
The Five Star Motivator  
The Five Star Team Builder  
The Technology Transfer Electronic Bulletin Board System  
This is Superfund  
This is Superfund (English and Spanish Versions)  
Toxic Chemicals: Information is the Best Defense  
Toxic Chemicals: Information is the Best Defense Part II  
U.S. EPA: For the Health of It-Small Quantity Generators  
U.S. EPA "An Intro to Superfund Training" with William K. Reilly  
Understanding Title III: Emergency Planning and Community Right to Know  
Waste Management  
Watching Your Waste  
We Recycle the Earth  
What It Means to You  
When the Siren Sounds  
Why Waste a Second Chance? (Adults)  
Women and Negotiation  
Wonderful World of Recycle  
Wood Preserving Rule Satellite Training Course  
Worker Protection Standards

### **Miscellaneous**

72 Hours  
A Question of When  
A Recollection of Milling and Smelting, Midvale, Utah  
A Toast of Water  
Air Lecture: RFI Training  
Aircheck 4  
Arctic Refuge  
Arsenic Trioxide and Superfund Site  
BIF Teleconference - 1992  
BIF Teleconference Technology Overview  
BNFL - Who Cares  
BNFL: Building the Future  
Basket Creek  
Bayou Bonfouca  
Benzene, Toluene, and Xylene

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Big Apple, Hot Apple  
 Bingham Creek  
 Boom Deployment  
 Burning Question: The Poisoning of America (Hugh Downs, 9/8/88)  
 Changing Skylines  
 Changing Skylines: The Garbage Crisis  
 Chemical Safety  
 Chlor-Detect Field Kit  
 Cleanup by the CRV  
 Completing the Recycling Cycle  
 Concern for the Future  
 Dangerous Mines  
 Deadline on D: A Landfill Update  
 Doing it Right  
 Doing it Right II  
 Going it Right and Doing it Right II  
 Down in the Dumps (for schools)  
 EPA Billings, Mont., Table Top Exercise: Table Top 1&2  
 EPA Recycling Event  
 EPA Sampling Technologies  
 EPA's Eye in the Sky  
 Earthquake 101 Training Vols. 1 and 2  
 Eight Lessons in Dealing with a Hostile Crowd  
 Enpro Consulting Group  
 Environmental Defense Fund, WAVE Announcements  
 Environmental News Response Video: News Magazine #4; Winter 1994  
 Environmental News Response Video: News Magazine #6; Fall 1995  
 Environmental News Response Video: News Magazine #7; Spring 1996  
 Environmental Response, Programs 2 and 3  
 Equipment Training  
 Explosives and Reactives  
 FEMA - Hurricane Hugo in the Virgin Islands  
 Gas Tanks and Gargoyles  
 Greenpeace: The Rush to Burn  
 HSCR Program Infomercial  
 Handling Hazardous Waste Program - Unit 5; Lab Packing  
 Hazardous Waste: "From Cradle to Grave"  
 Hazardous/ Radioactive Waste Management Promotional Tape  
 How Clean is the Rocky Mountain Arsenal?  
 How the Waste was Won  
 How the Waste was Won (high school to adult)  
 How to Become an Effective Listener  
 How to Manage Time  
 I Need the Earth; the Earth Needs Me  
 In Your Own Backyard  
 Interaction with Other Laws

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Lawyers and Technical Staff: Making the Case for Superfund  
 Less is More: Pollution Prevention is Good Business  
 Let's Make a Difference (plastics)  
 Libby Groundwater, Libby Mountain, a Success Story  
 Limon Elevator  
 Loraine County Pesticide Removal Site  
 Lowry Landfill: A Closer Look  
 Lustbusters  
 Management and Leadership Skills for Women  
 Manufacturing Sciences Tour-Central Avenue NCPP Building Surveys  
 Manufacturing Sciences: Exotic Metals Processing  
 Minnesota Public Hearing  
 Monsanto Wrap-Up  
 Montana DES: Derailment Disaster, Helena, MT., 2/2/89  
 Montana Post and Pole Groundwater Treatment Facility  
 Non-Verbal Communication - How to Read Body Language  
 North Dakota Arsenic Trioxide Superfund Site  
 Operation Border Crossing  
 Operation Clean Sweep - Presentation by Sandy Friedman, El Paso  
 Operation Diamond Head  
 Operation Golden Isle II  
 Operation Inland Response  
 Operation Wildfire  
 Overview of Superfund  
 PM Magazine - TES Course  
 Participation, Partnerships, Protection: Local Governments and Superfund  
 Petroleum Fire  
 Poison in the Rockies  
 Professional Displays Training Video  
 Public Hearing for Proposed Sand Creek Clean-Up Alternatives - Commerce City Hall  
 Quiet Steel: Our Energy Lifeline  
 RCRA Public Involvement  
 RCRIS National Teleconference  
 RFI Training-Air Lecture  
 RFI Training-Soil Gas Monitoring  
 RMA Contamination Containment  
 RMA Groundwater Treatment Systems  
 RMA: Submerged Quench Incinerator  
 RMA: Submerged Quench Incinerator Tour  
 RMA: Wildlife Reserve  
 RREL/RCB Research Programs  
 Recycling Campaign: Air, Trees, Product, Rocketman  
 Recycling: Once is Not Enough  
 Responsibility and Organization for Response  
 Rest In Peace  
 Rockett Ambassador Consumer Video

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Rocky Mountain Arsenal  
Rocky Mountain Arsenal: Hard Choices Ahead  
Sand Creek Organic Chemicals  
Sand Creek Superfund Site  
Searching for the Honest Tank: A Guide to UST Facility Compliance Inspection  
Searching for the Honest Tank  
Shelter in Place  
Stapleton Airport Fire  
Street Stories - Kids and Lead  
Summitville '93: Superfund Early Action at Summitville Mine  
Summitville Mine  
Superfund Seniors  
Swimming in Sewer (NOVA)  
Swimming in Sewers  
Tank Car Safety Course  
The Klein Water Treatment Facility  
The LRT Device  
The Lowry Landfill: A Closer Look  
The Rush to Burn  
The Solid Waste Problem  
The Winning Team  
The Wonderful World of Recycle  
Tire Fires  
Tire Fires: A Burning Issue  
Trash Can Inquisition  
U.S. EPA Region VI Oil Pollution Prevention  
Working Fire (1994)  
Yak Water Plant

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# **Appendix C:**

## **Basic Superfund Curriculum**

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## **Appendix C: Basic Superfund Curriculum**

The following is a list of courses that the Tribal Workgroup deemed essential as a basic background for tribal Superfund staff. All of the courses have been offered through regional offices, the CERCLA Training Center, or contractors. However, the courses will need to be modified to incorporate tribal perspectives and concerns.

- CERCLA Orientation
- Contract Management
- Grants/Cooperative Agreement Management
- Introduction to Superfund Enforcement
- Project Management
- Regulation Writing
- 40-Hour Health and Safety and 8-Hour Refresher
- Public Participation
- Preliminary Assessment/Site Inspection Training
- Hazardous Ranking System
- Quality Assurance Project Plan/Data Quality Objectives/Quality Assurance Management Plan
- Sample Taking
- Eco-Assessment
- Risk Communication
- Risk Assessment
- SARA Title III 101

Please send comments to [Boynton.Lisa@epamail.epa.gov](mailto:Boynton.Lisa@epamail.epa.gov) or call (703) 603-9052

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## **Appendix D: SMC Issue Discussion Summaries**

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## **SMC Issue Discussion Summaries**

The SMC held four meetings and several conference calls to provide executive input during the course of the Enhanced State and Tribal Role in Superfund Initiative. Below is a summary of the discussions that helped frame the approach taken on several issues by the LIT and the four workgroups—Readiness, Assistance, Agreements, and Tribal.

### **What Is the Planning Context of this Initiative?**

Characterizing the planning context of the initiative was the primary topic of discussion during the initial SMC meeting in November 1996. The basic issue was whether the initiative should be undertaken within the context of the current CERCLA statutory and regulatory framework or whether it should anticipate statutory change that would provide for a greater role by states and tribes.

Several SMC members felt that the focus should be on the current law. They felt that because the current law was not considered to be a significant constraint to providing authority to states and tribes, the workgroups should design recommendations that could be implemented under the current law. Other SMC members, particularly state representatives, did not want to limit thinking and recommendations to the current legal framework. They felt that looking at the possibilities of a new law that would grant states and tribes a greater role in Superfund would prepare the program for future statutory scenarios. However, state representatives did not want their participation or support for this initiative to be misconstrued as a position on reauthorization.

The SMC reached consensus by deciding that the initiative should address both the present and the future statutory and regulatory framework. With concurrence from the Assistant Administrators of OSWER and OECA, the SMC instructed the LIT and workgroups to approach this effort with open minds, neither constrained by the current law/regulations or anticipating any specific future framework (delegation or authorization). In making recommendations, the LIT agreed to identify whether given recommendations could be accomplished at present, or whether a statutory or regulatory change would be required.

### **The Need for Flexibility**

The need for flexibility was raised frequently and by nearly all SMC members. Flexibility is considered necessary because state and tribal programs and priorities change over time; each state and tribe has unique characteristics that will affect implementation, and the needs of each state and tribe are different. SMC members asked the workgroups to develop a flexible program structure that would accommodate changing state and tribal priorities and programs. SMC members also wanted to ensure that the workgroups take into account the individual nature of state budgets, legislation, organization, and site problems. However, state- and tribal-specific interests also need to be balanced with the need for broadly applicable criteria that states and tribes can be expected to meet. Ideally, a flexible framework that enables the maximum number of states and tribes to meet program criteria and produces consistent end-results should be established.

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## **Are There Basic Elements or Standard Principles for Response?**

Consistent with the desire for flexibility, SMC members agreed that the federal interest should be focused on end-results. However, some standardized elements for Superfund responses and response programs would still be necessary. Specific elements of the program that should be considered to be included are:

- ◆ Community involvement;
- ◆ Protectiveness of remedies;
- ◆ Adequate staffing/expertise and resources;
- ◆ State approval and oversight of the response;
- ◆ Enforcement/compliance assurance authorities; and
- ◆ Liability and cost recovery provisions similar to CERCLA's, providing for enforcement "fairness," ensuring timely response actions, and verifying cleanup completion according to performance measures.

Because the development of capabilities is not dependent solely on the availability of resources, resource availability should not be used on its own as a program element for evaluating states and tribes. SMC members also agreed that when federal site-specific resources are involved, the requirements would need to be more specific. The SMC endorsed the Readiness Workgroup's plans to develop performance-based criteria for Superfund program elements.

## **What Is the Universe of Sites with a Federal Interest?**

SMC members discussed what should be considered as the universe of sites where there should be federal involvement, and whether there are some sites where no federal involvement should occur. Under present law, the federal government must be involved in all NPL site responses and take the lead at federal removal action sites. EPA involvement is also possible for sites that are considered a high priority for NPL listing upon completion of a site inspection. However, there is no EPA involvement (beyond site assessment) in the majority of sites included in the CERCLIS inventory, and there is minimal or no EPA involvement in the broader universe of sites that are not in CERCLIS.

All SMC members agreed that low-risk sites with no unusual circumstances or community demand are not federal interest sites. However, consensus was not reached among SMC members on when federal interest would be appropriate at higher-risk sites. Many EPA members believed that sites with HRS scores that would qualify them for the NPL were a high enough risk to incur federal interest. In such cases, EPA's involvement would vary from reviewing the program to leading the response actions, depending on the state's or tribe's readiness and terms of program agreements. State members expressed concern that federal interest might result in independent EPA response and/or enforcement actions that could undermine state or tribal programs.

## How Does Federal Involvement in Response Vary?

During the January 1997 SMC meeting, members addressed how the level of federal involvement may vary depending on the type of site and the capability of the state or tribe. SMC members generally agreed that there should be an inverse relationship between the capability of a state or tribe and the level of EPA involvement. Also, the complexity of the site (from either a response or enforcement standpoint) may be an important variable.

Many members felt that while there is a federal interest in the highest-risk sites, the level of EPA involvement might vary significantly. For example, EPA may take the lead responsibility for higher-risk sites in state or tribal lands where the state or tribe has a low level of readiness. EPA's involvement may be minimal for high-risk sites when the state or tribe has a high level of readiness. An objective and collaborative assessment of a state's or tribe's readiness should be the basis for determining EPA involvement. EPA involvement may include:

- ◆ Requested assistance and program-level review for the states and tribes with the highest levels of readiness.
- ◆ Technical and managerial assistance, support agency site review/oversight, or direct EPA response and enforcement for states and tribes with less developed programs.

Comments from individual SMC members that highlight the vision of how federal involvement will vary include the following:

- ◆ Rather than putting in place abstract or generalized decisions or rules, it is preferred that EPA and states and tribes negotiate partnership agreements that provide for either EPA or the state or tribe to take the lead at given sites. These decisions would be reached by considering resources, capabilities, and the most efficient division of labor.
- ◆ States understand that EPA will have greater interest/involvement in sites perceived to have a higher risk. The framework for involvement must provide for a full range of options on a state-by-state, tribe-by-tribe, site-by-site basis, in the context of a dynamic situation.
- ◆ For the next several years, even in cases of the most highly capable states and tribes, it seems prudent to proceed under a division-of-labor model to address high-risk sites. This is in contrast to scenarios where (1) EPA disengages from all site-specific involvement, or (2) EPA continues to be involved in a detailed oversight mode with state- or tribal-lead responses.
- ◆ Site risks are a factor in deciding EPA's involvement, but other factors are also relevant; among these are cultural, social and economic factors and local community impacts and interests.
- ◆ Over time, as a state or tribe gains experience and demonstrates capability, EPA oversight and involvement should decrease.

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## **Who Determines Federal Involvement?**

The SMC discussed how federal involvement will be determined and what control states and tribes will have over the extent of federal involvement. There was general agreement that the level of EPA involvement in a site should be determined by consultation and collaboration to reach mutual agreement with the state or tribe. If a state or tribe wants assistance, EPA should offer as much help as resources will permit to conduct responses. If a state or tribe requests to conduct a site's response or enforcement action independently, then EPA should limit its involvement as much as possible, unless it is apparent that human health and/or the environment will not be protected by the state's or tribe's actions. All SMC members agreed that while EPA must be able to act independently, its involvement in a state- or tribal-lead site could not be justified by professional difference of opinion about a site's response, but required when human health and/or the environment are not being protected or an imminent threat exists. However, there was no consensus about how to determine when EPA should become involved or fairly implement federal involvement.

## **What Models Are There for EPA-State and EPA-Tribal Interaction?**

SMC members discussed current models for state-EPA interaction. These models include site-specific and multi-site CAs, Core Program CAs, VCP MOUs, and Superfund State MOAs. In 1996, regional Superfund policy managers proposed new program agreements that divided the universe of sites and provided States the opportunity to lead new responses. The proposed agreements also provided for EPA technical assistance and state reporting. A few agreements currently exist that were the result of this proposal.

SMC members favored broad, encompassing agreements between EPA and states or tribes that cover the full range of contaminated site cleanups. The SMC endorsed the Agreements Workgroup's plan to develop a proposed model program agreement with standardized components that could be customized to individual regional, state, or tribal needs.

Some members of the SMC also recommended using a collaborative process for developing state- or tribal-specific operating plans to provide for the efficient use of joint state and EPA resources. Members also considered research on the possibility of partnership agreements without a formal "delegation/authorization" application and approval process.

## **What Considerations Are Specific to Tribal Programs?**

During the May 1997 SMC meeting, there was a focused discussion on unique considerations for enhancing the role of tribes in the Superfund program. The SMC endorsed the Tribal Workgroup's efforts to develop customized recommendations that address the unique needs of tribes for enhancing their role in Superfund. Highlights of that discussion follow:

- ◆ It is important to simplify and clarify communication materials and administrative requirements with tribes, as the technical aspects of EPA's programs are a major hurdle for many tribes. This points to the critical need for much training and assistance to

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enhance tribal capabilities. Federal agency hands-on assistance via IPAs could be very helpful.

- ◆ A fundamental issue is the federal government's trustee responsibility that flows from treaties. EPA must look out for the interests of tribes in Superfund decisions.
- ◆ Tribes want to be in control of site assessment decisions and provide strong input to site response decisions. Tribal cleanup standards can be more demanding than either EPA or state cleanup requirements.
- ◆ Management assistance is a critical need for developing tribal programs. Tribes face significant hurdles prior to conducting technical field work. Among these are understanding how to address administrative needs for EPA assistance and receiving the needed technical training. EPA historically provided management assistance reviews/training to states, and this helped prepare states for potential financial audits. The same could be done for developing tribal programs.
- ◆ Consider targeting a part of the national removal budget to address sites of priority to tribes that may not be of high priority to the national Superfund program.
- ◆ EPA needs to consider and understand that tribes view environmental problems differently than EPA and states do. The compartmentalization of programs is not understood by tribes; a "loosening" of the bounds of the use of Superfund resources for tribes should be considered. NRDA prohibitions are a particular concern.
- ◆ EPA should consider the possibility of retaining the federal lead for sites that impact tribal lands and resources directly. EPA may want to negotiate site-specific agreements with states and tribes for these sites.

### **What Issues Link Enforcement and Funding?**

During the May 1997 meeting, the SMC discussed how EPA's enforcement policies would be implemented by states and tribes, and how enforcement activities were linked to decisions on the use of federal Superfund response funds.

Some SMC members expressed concern whether the enforcement first and fairness policies applied by the Federal government would be continued by states or tribes if states or tribes have authority to obligate remedial action funding. Members discussed the importance of developing lists of agreed-to orphan sites, PRP-lead sites, and the "enforcement possibility" sites. After agreeing to these lists of sites, the EPA-state or EPA-tribe dialogue about funds management would focus on sites with potential for enforcement.

Some specific comments from SMC members follow:

- ◆ The negotiation with PRPs and decision to Fund-finance a response are critically linked. Enforcement is an integral aspect of the response program, not a separate capability. EPA needs to consider and evaluate what enforcement capabilities are needed to successfully implement given aspects of the response program.
- ◆ There is an important link between cost-recovery capability and Fund-financed response actions. It is unlikely that the federal government will be entirely comfortable with states

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making cost-recovery "deals" (e.g., settle for 50 cents on the dollar). The Department of Justice (DOJ) is reluctant to allow EPA to make such decisions.

- ◆ State members said they envision that EPA would retain enforcement discretion prior to Fund-financed remedial action. This is consistent with discussions with the ASTSWMO Board of Directors at its April 1997 meeting.
- ◆ When considering access to Superfund response funding, how to address cases where a state that does not have the same liability standard as federal Superfund will need to be considered. There was a suggestion that before accessing the federal funds (remedial action), states would need to match the federal liability approach.
- ◆ EPA needs to be prepared to face criticisms of inconsistency in funds management as states take on new responsibilities in this area; there are already concerns with just 10 EPA Regions making these decisions.
- ◆ The following conceptual approach for enforcement/funds-management was discussed:

1. Are there PRPs? How and when can they be sought? Statute of limitation considerations must be addressed.
2. Negotiating with PRPs:
  - A. Cooperative PRP: no issues (no need for Fund-financing)
  - B. Hard Negotiations: EPA involvement/state consultation needed
    - Compromising on federal costs
    - DeMinimis/DeMicromis settlements
    - Municipal liability
    - Unilateral administrative orders (all or some parties)
    - Orphan share funding
    - Mixed funding settlements
3. Fund-lead response actions: site-specific prioritization vs. state allocations
4. Cost recovery: Key questions are (1) who conducts cost recovery, (2) how hard must cost recovery be pursued, and (3) who has the authority to compromise federal costs.

The SMC asked that existing workgroup members form a focus group to give greater attention to these issues. SMC members agreed with the Assistance Workgroup's recommendation that remedial action funding would continue to be allocated based on decisions by a national priority panel, while states and tribes would have some discretion on funding allocations for pre-construction activities.

## **Who Are the Stakeholders?**

The SMC discussed the target audience and timing of a stakeholder review of the report's recommendations. Initially, a broad variety of groups were identified, including:

**States:** ASTSWMO CERCLA Subcommittee and Co-Implementation Task Force, National Association of Attorneys Generals, National Governors Association, and Environmental Commissioners.

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**Federal:** All regions, other federal agency Superfund contacts, DOJ, and some Congressional staff.

**Tribal:** National Tribal Environmental Committee, Tribal Operations Committee, National Congress of American Indians, Tribal Consortia/Tribes with Superfund programs, Inter-Tribal Consortia of Arizona, and EPA's American Indian Environmental Office.

**Environmental Groups:** Natural Resources Defense Council, Environmental Defense Fund.

**Industry:** Chemical Manufacturer's Association, International Network on Superfund Settlements.

**Local/Others:** National Environmental Justice Action Committee, International County and City Manager's Association.

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## **Appendix E: Membership List**

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## Appendix E: Membership List

Annabelle Allison	All Indian Pueblo Council
Terry Ayers	Illinois
Rick Bean	Kansas
Ray Beaumier	Ohio
Gary Behrns	Missouri
Kirby Biggs	OERR
John Blanchard	OERR
David Bloom	OFCO
Lisa Boynton	OERR
Susan Bromm	OECA
Chris Burford	Umatilla Tribes
Angelo Carasea	OERR
George Carpenter	Michigan
Everett Chavez	All-Indian Pueblo Council
Dan Chellaraj	OERR
Fred Corey	Aroostook Band of Micmac Indians
Robin Coursen	Region 8
Cal Curington	USACE
Glenn Curtis	Region 7
Elaine Davies	OERR
Pat DeRosa	North Carolina
Charlie De Saillian	New Mexico (AG Office)
Nick DiPasquale	Delaware
Carolyn Douglas	Region 9
Charlene Dunn	OSWER
Bruce Engelbert	OERR
Dave Evans	OERR
Laura Fay	Ohio
Valerie Ferry	Mashantucket Pequot Tribal Nation
Ken Fisher	OERR
Schatzi Fitz-James	OERR
Sean Flynn	FFRRO
Crystal Ford	OERR
Sharon Frey	OERR
Lisa Friedman	OGC
Ted Garcia	All Indian Pueblo Council
Lois Gartner	CIOC

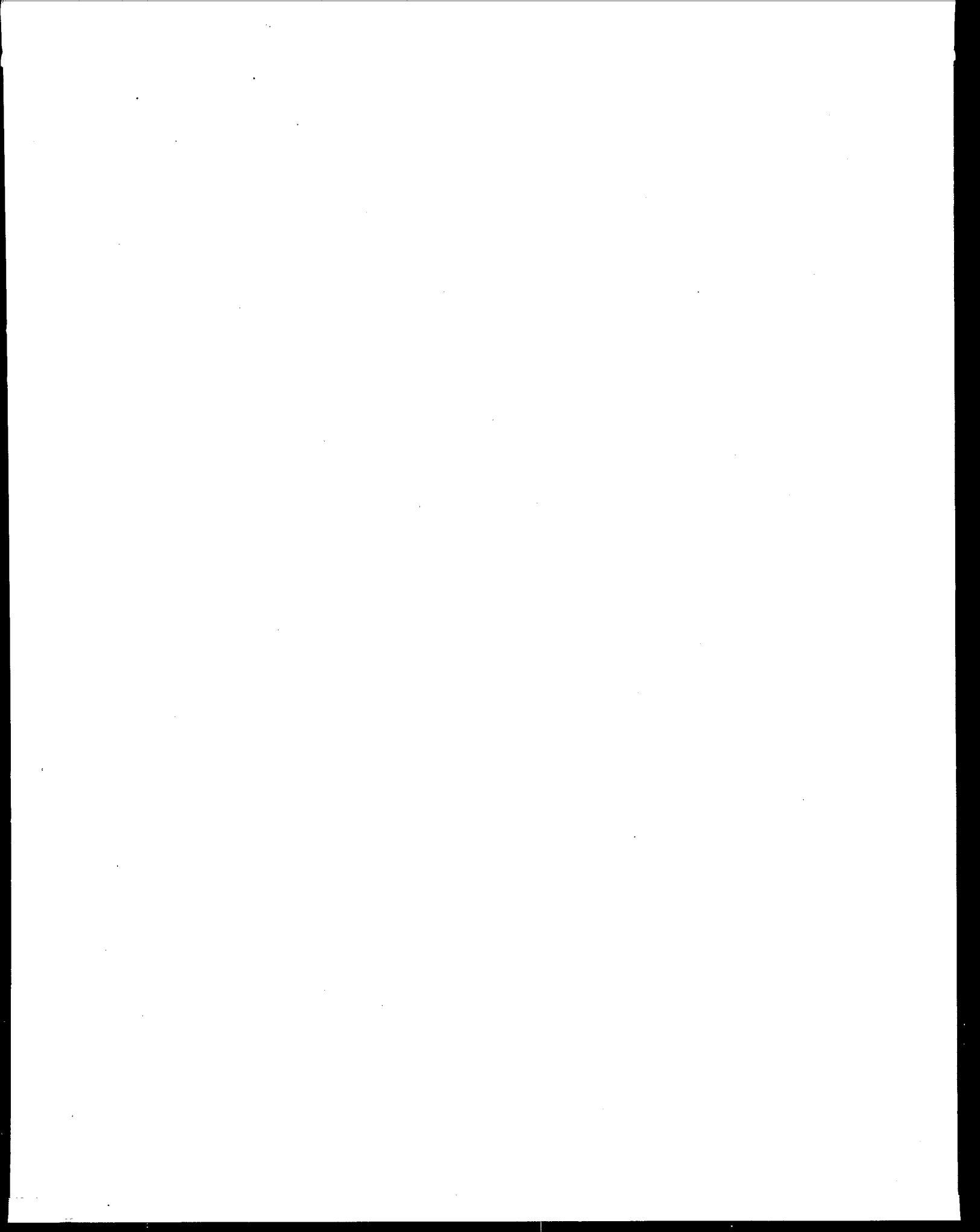
Mark Giesfeldt  
Kent Gray  
Pat Gwin  
Susan Hanson  
Phyllis Harris  
Jim Havard  
Tessa Hendrickson  
Hobby Hevewah  
Juline Holleran  
Mike Hurd  
Sheila Igoe  
Ken Jock  
Dick Kalnicky  
Anne Kelly  
Sheila Kelly  
Jim Konz  
Karen Kraus  
Ken Kryszczun  
Pat Mariella  
Dan Marsin  
Dee Maxey  
Clara Mickles  
Jim Morton  
Walter Mugdan  
Bill Muno  
Bob Myers  
Peter Neves  
Bruce Nicholson  
Craig Olewiler  
Jerry Pardilla  
  
Leslie Peterson  
Susan Prout  
Rey Rivera  
Howard Rubin  
Rich Sandberg  
Mike Sanderson  
Chuck Sands  
Ann Sasahara

Wisconsin  
Utah  
Inter-Tribal Environmental Council  
Shoshone-Bannock Tribes  
Region 4  
OGC  
OSRE  
Shoshone-Bannock Tribes  
Minnesota  
OERR  
OGC  
St. Regis Mohawk  
Wisconsin  
Region 2  
FFRRO  
OERR  
OGC  
Region 3  
Gila River Indian Community  
Gila River Indian Community  
Region 5  
AIEO  
New York  
Region 2  
Region 5  
OERR  
OECA, OSRE  
North Carolina  
Pennsylvania  
National Tribal Environmental  
Council  
Region 2  
Region 5  
Region 5  
OSRE  
Minnesota  
Region 7  
OERR  
Navajo Nation

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Rich Schlenker  
Randy Smith  
Peter Tsirigotis  
Victoria van Roden  
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Linda Yancey  
Karen Yeates  
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Region 7  
Nebraska  
Region 10  
OSRE  
OECA  
Massachusetts  
OERR  
Region 3  
FFRRO  
OERR  
OERR  
GAD  
Region 5  
OERR

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