

EPA State Participation in Federal-Lead Removal Actions

Office of Emergency and Remedial Response (5202G)

Quick Reference Fact Sheet

This fact sheet, based on OSWER Directive 9360.3-07, entitled "State Participation in Federal-Lead Removal Actions," provides information to On-Scene Coordinators, Remedial Project Managers, and other Superfund personnel to encourage State participation in Federal-lead Superfund removal actions. The Directive is one of a 10-part series of volumes replacing the Superfund Removal Procedures (SRP) manual (OSWER Directive 9360.0-03B, February 1988). For further information on the SRP series, refer to the SRP Manual Bulletin (Publication 9360.3-111).

INTRODUCTION

EPA's intent is to foster an effective and cooperative relationship with States in implementing the goals of the Superfund program and to provide the States with the opportunity for substantial and meaningful involvement in the Superfund program. Broadened authority under the current National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and recent management mandates widen the scope of the removal program.

AUTHORIZATION/LEGAL BASIS

The NCP (§300.525) outlines the requirements for State involvement as the lead or support agency for Superfund removal actions. 40 CFR Part 35, Subpart O (§35.6205) describes requirements for entering into Cooperative Agreements with States to lead or support response actions under Superfund. Cooperative Agreements may be used in the removal program in two areas:

1. Site-specific State-lead non-time-critical removal actions. In such cases, the State is fully responsible for the action, hires and manages cleanup contractors, and takes enforcement actions.
2. Management support to site-specific EPA-lead non-time-critical removal actions. Management support is given on a case-by-case basis, and with EPA Headquarters concurrence.

REMOVAL PROGRAM COORDINATION WITH THE STATES

EPA Regions should involve States as often as possible in an appropriate manner. An EPA Region should consult with a State and consider its concerns when conducting removal actions in that State. Regions should consult with States especially on anticipated or newly initiated site activities, institutional controls, and post-removal site control.

STATE SUPPORT IN FEDERAL-LEAD REMOVAL ACTIONS

States may become involved in any type of removal action: emergency, time-critical, and non-time-critical. States may only provide voluntary support at emergency and time-critical removal actions, but may become involved as a lead or support agency in non-time-critical removal actions. However, when at least six months is available before an on-site response action must be initiated, the NCP requires that the lead agency conduct an engineering evaluation/cost analysis (EE/CA) (NCP §300.415(b)(4)(i)) and expanded public participation (NCP §300.415(n)(4)). Site cleanup need not be delayed if fulfilling the requirements of the NCP, including the EE/CA and public participation, actually takes less than six months. The role of the State in Federal-lead removal actions should be documented by the OSC in the Action Memorandum, the Pollution Reports, and/or the OSC Report, if prepared.

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TYPES OF STATE ACTIVITIES

States are required to identify applicable or relevant and appropriate requirements (ARARs) in a timely manner (NCP §300.400(g) and §300.525(d)). In addition, States are expected to initiate public safety measures, direct evacuation, if necessary (NCP §300.180(f)), and conduct post-removal site control (NCP §300.415(l) and §300.525).

- **ARARs:** The NCP requires States to identify and provide any potential State ARARs to the lead agency in a timely manner, to ensure that State ARARs are considered during the removal planning process. However, for removal actions, compliance is not mandatory, because the scope of the removal or the urgency of the situation may make it impractical for OSCs to identify and meet all ARARs. Although CERCLA does not require the removal program to comply with ARARs, the NCP and current EPA policy have established that ARARs will be attained to the extent practicable considering the exigencies of the situation (NCP §300.415(j)).
- **Evacuation:** State and local agencies have the authority and are expected to initiate and direct public safety measures that are necessary to protect public health and welfare. State and local authorities are responsible for coordinating all State and local evacuation measures, and temporarily relocating the affected persons after the initial discovery of the release of a hazardous substance, pollutant, or contaminant, and prior to the arrival of the OSC and the start of a Fund-financed response.
- **Post-Removal Site Control:** Post-removal site control (PRSC) refers to those activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. These activities, such as relighting gas flares, replacing filters, and collecting leachate, are necessary for assuring the continuing effectiveness of a removal action after the completion of the Fund-financed removal activities. PRSC is more appropriately conducted by the State, local government, potentially responsible party (PRP), or in some cases, by the remedial program. Therefore, EPA will request that the State, local government, or the PRP provide PRSC.

Other State Activities

Each State government is encouraged to:

- Assign an office or agency to represent the State on the appropriate Regional Response Team (RRT);
- Designate the lead State agency that will direct State supervised response operations when the State has been designated as the lead agency at Superfund sites;
- Include contingency planning for responses, consistent with the NCP and Regional Contingency Plans, in all emergency and disaster planning;
- Support enforcement actions by providing PRP information to the EPA and/or the Regional Decision Team; and
- Undertake response actions, if necessary, or use State authorities to compel PRPs to undertake response actions.

Suggested State Activities

States may provide voluntary support to EPA in other areas. Such support includes, but is not limited to:

- **Community Relations:** While States are not required to provide community relations support for removal actions, they are usually more familiar with local communities and therefore may be better suited for communicating directly with local citizens about their concerns. Community relations assistance may include: responding to questions about the removal action; holding meetings and drafting press releases; interviewing local officials, community residents, public interest groups, about the PRP(s) and the site; assisting in the preparation of community relations plans; and establishing local information repositories.
- **Site Security:** Some sites need barriers to trespassers, vandals, children, or stray animals until the site is rendered safe. When police protection or security services are warranted, States may provide the Federal removal program with these services until the removal has been completed or the immediate threat has been mitigated.
- **Analytical Support:** Many States have efficient and reliable analytical laboratories and have occasionally provided analytical laboratory

support at Federal-lead removal sites. States may provide the services of State laboratories at a Federal-lead response. State laboratories generally charge for their services. Agreements for exchanging services between EPA and the States would be required to use State laboratories.

- PRP Searches, Enforcement, and Oversight Activities: State capabilities and authorities to conduct enforcement activities vary. Most States have the capability and authority to conduct a PRP search and issue notice letters, where applicable.
- Specialized Response and Monitoring Equipment: Some States have specialized response and monitoring equipment which could be very useful during a Federal-lead response. Such support includes provision of weather stations, technical references, air monitoring and drum sampling equipment, flow-meters, hazard categorization supplies, overpack drums, and related items.

Other Suggested State Activities

There are numerous support activities where States can be involved, particularly where States have their own programs that deal with hazardous waste sites. These activities include, but are not limited to:

- Providing site background information, permit and compliance histories, prior analytical results, and potential information on hazards to the OSC;
- Facilitating technology-sharing between Federal removal personnel and industry experts;
- Identifying off-site treatment, storage, and disposal facilities;
- Assisting in the identification of sensitive areas and ecosystems;
- Performing a complete phase of the Superfund process, for example, an engineering evaluation/cost analysis or even a remedial investigation, under a Cooperative Agreement with EPA;
- Performing contractor or PRP oversight;
- Performing a cleanup, or mitigative, or enforcement action at sites at which no further remedial action is planned; and

Responding (under State authority) to NPL-caliber sites under EPA's new State deferral policy.

RESOURCES FOR INCREASING STATE RESPONSE CAPABILITIES

1. The Core Program, authorized in CERCLA and referenced in 40 CFR Part 35, Subpart O, is available to States to begin or continue to participate in the Superfund program. States can receive Federal funding under the Core Program, to implement all types of CERCLA activities, after they enter into a Core Program Cooperative Agreement with EPA.
2. The Peer Match Program is funded by EPA's Office of Emergency and Remedial Response and implemented by the Association of State and Territorial Solid Waste Management Officials. The Peer Match program offers State-to-State technology transfer, which allows States to share their expertise with other States having less developed Superfund programs.
3. Funding is provided by EPA to States through Cooperative Agreements that may be used for cleanup, enforcement, and support functions at non-time-critical removal actions. For information on requirements for Cooperative Agreements, refer to 40 CFR Part 35, Subpart O. Use of these funds carries specific regulatory requirements regarding involvement of Disadvantaged Business Enterprises. EPA will not fund State support costs which are not specifically authorized by the OSC or outlined in a Cooperative Agreement.
4. Training is offered by EPA for personnel who respond to emergencies or investigate and cleanup hazardous waste sites. The training program is a compilation of several training courses for EPA and other Federal, State, and local personnel. There is no tuition cost for State or local government response personnel.

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FURTHER INFORMATION

For a copy of "State Participation in Federal-Lead Removal Actions" or any other volume of the SRP manual, contact:

National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161
Phone: (703) 487-4650

EPA employees can order a copy by calling the Superfund Document Center at (703) 603-8917.

Notice: The policies set out in this fact sheet are not final Agency action, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this fact sheet, or to act at variance with the guidance, based on an analysis of site-specific circumstances. The Agency also reserves the right to change this guidance at any time without public notice.



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