



**DIRECTIVE NUMBER:** 9360.2-02  
**TITLE:** Policy on Management of Post-Removal Site  
Control

**APPROVAL DATE:** 12/3/90

**EFFECTIVE DATE:** 12/3/90

**ORIGINATING OFFICE:** OSWER

**FINAL**

**DRAFT**

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**REFERENCE (other documents):**

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# OSWER Directive Initiation Request

Directive Number  
9360.2-02

## 2. Originator Information

Name of Contact Person Scott Maid	Mail Code OS-210	Office ERD	Telephone Code 382-7735
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## 3. Title

Policy on Management of Post-Removal Site Control

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

Transmits OSWER policy on management of post-removal site control for Fund-financed removal actions and communicating decisions to States on the use of institutional controls.

## 5. Keywords

Superfund; removal; NCP; institutional controls

## 6a. Does This Directive Supersede Previous Directive(s)?

 No Yes

What directive (number, title)

## b. Does It Supplement Previous Directive(s)?

 No Yes

What directive (number, title)

## 7. Draft Level

A - Signed by AA/DAA

B - Signed by Office Director

C - For Review & Comment

D - In Development

## 8. Document to be distributed to States by Headquarters?

 Yes No

## This Request Meets OSWER Directives System Format Standards.

### 9. Signature of Lead Office Directives Coordinator

Betti C. VanEpps, Superfund Documents coordinator

Date

DEC 3

### 10. Name and Title of Approving Official

Don Clay, Assistant Administrator, OSWER

Date

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EPA Form 1315-17 (Rev. 8-87) Previous editions are obsolete.

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

DEC 3 1990

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

**SUBJECT:** Policy on Management of Post-Removal Site Control  
(OSWER Directive 9360.2-02)

**FROM:** Don R. Clay *DRC*  
Assistant Administrator

**TO:** Regional Administrators, Regions I-X  
Directors, Waste Management Division  
Regions I, IV, V, VII, VIII  
Directors, Hazardous Waste Management Division  
Regions III, VI  
Director, Emergency and Remedial Response Division  
Region II  
Director, Toxics and Waste Management Division  
Region IX  
Director, Hazardous Waste Division, Region X  
Directors, Environmental Services Division  
Regions I, VI, VII

**Purpose**

This memorandum transmits the Office of Solid Waste and Emergency Response (OSWER) policy on management of post-removal site control for Fund-financed removal activities and communicating decisions to States on the use of institutional controls.

**Background**

OSWER is concerned that the Superfund removal program has become increasingly involved with protracted and costly site control activities following mitigation of a release or threat of release of a hazardous substance or pollutant or contaminant. These response activities are more appropriately conducted by the affected State, local unit of government, potentially responsible party (PRP), or, in some cases, by the Superfund remedial program.

### Objective

This memorandum provides procedures to ensure that, when necessary and to the extent practicable, provision for post-removal site control at both National Priorities List (NPL) and non-NPL sites is made prior to initiation of a Fund-financed removal action. Procedures are also provided for communicating decisions to States on the use of institutional controls when waste is left on site following a removal action.

### Implementation

Prior to the initiation of Fund-financed removal activities at a site, provision for conduct of post-removal site control may be made with:

- 1) The affected State or local unit of government for any removal; or
- 2) A PRP; or
- 3) EPA's remedial program for eligible responses at an NPL site.

EPA must also inform States of any decision or recommendation concerning the use of institutional controls following removal actions where waste is left on site. No State commitment for institutional controls is required prior to the initiation of Fund-financed removal activities.

### Definitions

"Post-removal site control" refers to those response activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. Post-removal site control 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.<sup>1</sup> Post-removal site control continues until such time as:

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<sup>1</sup>Note that these "post-removal site controls" may themselves be "removal" or "remedial" actions within the meaning of CERCLA §§101(23) and 101(24).

- 1) A PRP, a unit of State or local government, or the remedial program implements a permanent remedy; or
- 2) No further site control is necessary.

"Institutional controls" generally limit human activities at or near facilities where hazardous substances, pollutants, or contaminants exist or will remain on-site. Examples of institutional controls include land and resource (e.g., water) use and deed restrictions, well-drilling prohibitions, building permits, and well use advisories and deed notices.

#### **State or PRP Commitment for Post-Removal Site Control**

Before commencing a Fund-financed removal action where post-removal site control is anticipated, the Region should obtain a commitment from the State, local government, or PRP agreeing to perform and fund the actions necessary to sustain the integrity of the removal action. Attachment 1 describes the procedures for obtaining a commitment from State or local governments for post-removal site control. For classic emergencies and some time-critical responses, the commitment may be obtained after initiation of urgent removal actions rather than risk delaying a response.

Post-removal site control may be considered part of a remedial action at a site. Therefore, where a State incurs post-removal site control expenditures for eligible response activities implemented since the passage of SARA (October 17, 1986) at a site that is currently or eventually listed on the NPL, the State may submit a claim for credit under section 104(c)(5)(B) of CERCLA. Attachment 2 provides information on the requirements for CERCLA credits and how they apply to post-removal site control expenditures. Attachment 3 describes how to obtain CERCLA credits.

The Regions may secure post-removal site control from a PRP by using a consent order or unilateral administrative order (UAO). The exact controls should be described in the order and it should be clear that the post-removal site controls are an enforceable part of the order. Although a UAO does not involve a commitment from the PRP, in most cases, a UAO will provide EPA with a mechanism for ensuring that post-removal site control will be performed. In any event, the Region must include in the site enforcement strategy a contingent approach if the PRPs do not comply with the UAO.

**Remedial Program Option for Post-Removal Site Control**

In special circumstances, EPA's remedial program may assume responsibility for post-removal site control at an NPL site when the site control measures support, or are a part of, the final remedial action to be taken at a site. The remedial program may assume responsibility for post-removal site control as part of the temporary source control measures to be incorporated into an interim action, when such action is warranted. Under this arrangement, the Remedial Project Manager (RPM) will negotiate a Superfund State Contract (SSC) or Cooperative Agreement with the State for cost share and future operation and maintenance (O&M) commitments for the remedial action. See OSWER Directive 9355.3-02, "Interim Final Guidance on Preparing Superfund Decision Documents: the Proposed Plan, the Record of Decision, Explanation of Significant Differences, and the Record of Decision Amendment" (November 1989) for further guidance on interim actions and when they may be appropriate.

**Where No Commitment for Post-Removal Site Control is Reached**

At a site where no private or governmental entity is willing or able to assume responsibility for post-removal site control, EPA should avoid taking any action that requires continuing site control activities if other reasonable response options exist. Where there are no other options, EPA will respond only to the initial threat, ensuring that the emergency created by the release or threat of release has been mitigated.

**Institutional Controls**

EPA must inform States of any decision or recommendation concerning the use of institutional controls following removal actions where waste is left on site. This information must be included in EPA's post-removal site control notification letter to the affected State. A model notification letter is provided in Attachment 4.

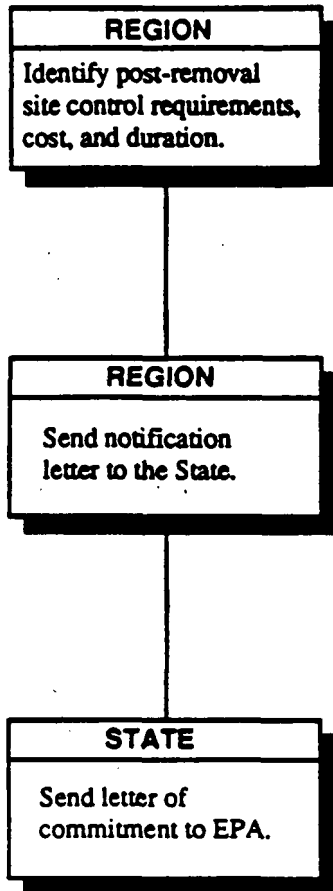
**For More Information**

If there are questions or comments on this policy, please contact Elizabeth Zeller of the Emergency Response Division at FTS 382-7735.

**Attachments**

**cc: Superfund Branch Chiefs, Regions I-X  
OHM Coordinators, Regions I-X  
Henry Longest II  
Bruce Diamond  
Timothy Fields, Jr.  
Stephen Luftig  
Paul Nadeau  
Clem Rastatter  
Larry Reed  
Earl Salo  
Howard Corcoran  
John Riley  
Elizabeth Zeller  
Betti VanEpps**

# ATTACHMENT 1. Procedures For Obtaining Post-Removal Site Control Commitment From State/Local Government



- See Attachment 4 for sample notification letter

- See Attachment 5 for sample State commitment letter.

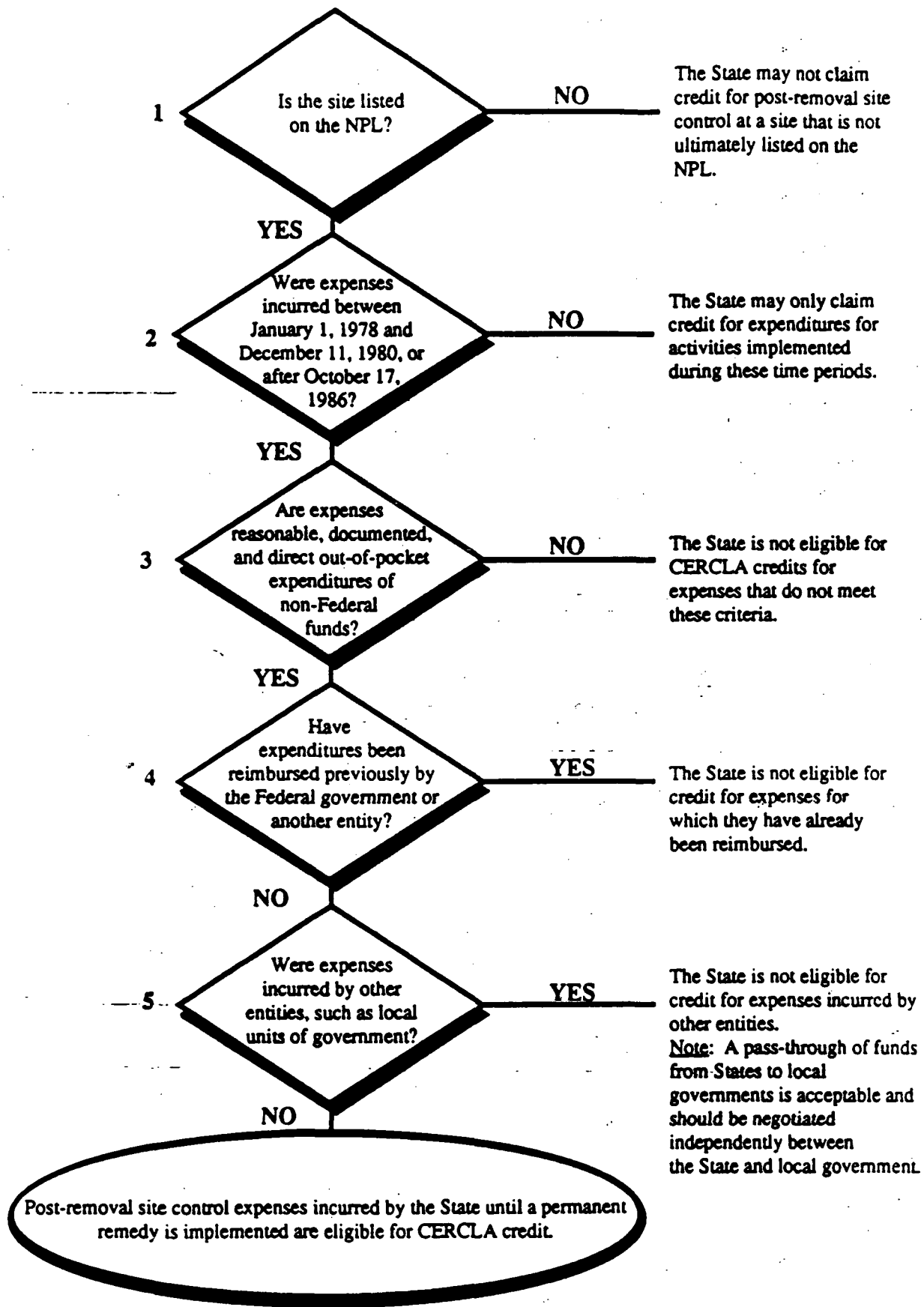
- **Note:** If the State intends that a local government will assume responsibility for post-removal site control, the State, local government, and EPA should document that decision in correspondence. In these cases, the local government may prepare and submit the letter of commitment.\* The State must also provide assurances under CERCLA section 104 in a Superfund State Contract (SSC) before a local government may take the lead for any phase of a remedial response (see Attachment 6 for SSC clauses).

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\* States may not claim credit for expenditures by local governments. A pass-through of funds from States to local governments is, however, acceptable. See Attachment 2 for additional eligibility requirements for obtaining CERCLA credit.



**ATTACHMENT 2. Eligibility Requirements for Obtaining CERCLA Credits for Post-Removal Site Control Activities**



Document pre- and post-removal expenditures in the response agreement.

- A Cooperative Agreement or a Superfund State Contract (SSC) is required before remedial activities commence at an NPL site, or at the time a site is ultimately listed on the NPL.

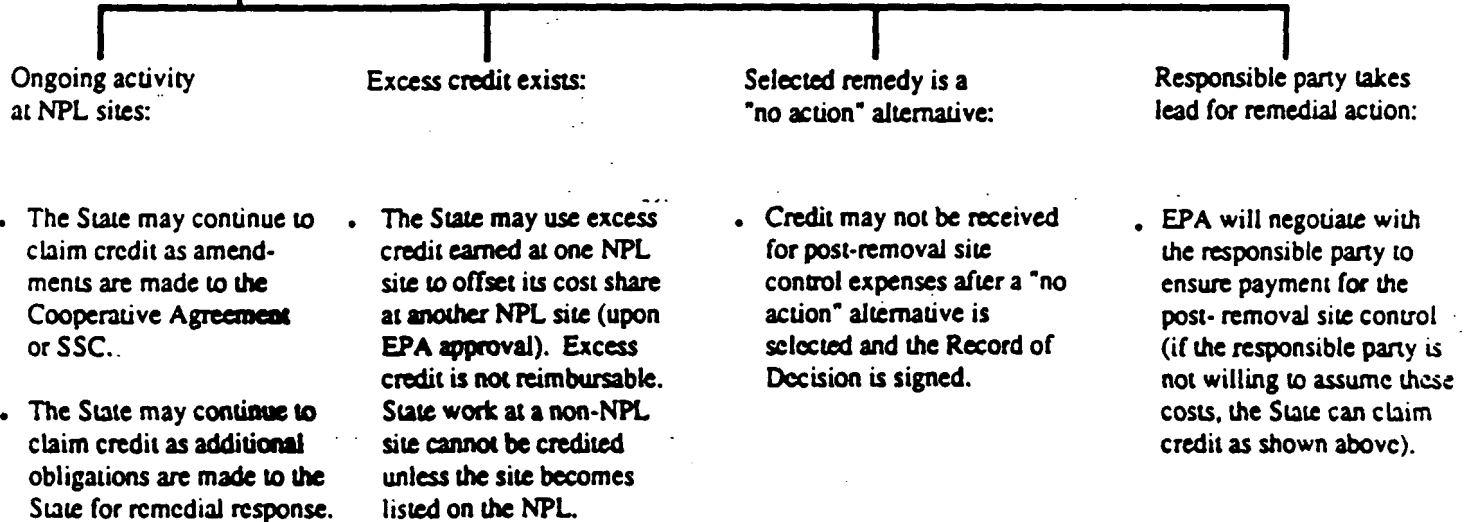
Document post-removal site control activities in a Statement of Work (SOW) and the response agreement.

- The SOW should include sufficient detail to facilitate both technical and financial review.
- If changes in the SOW are needed, an amendment should be made to the appropriate response agreement to preserve the State's credit.

Claim credit on a site-specific basis and apply credit first to off-set cost share at the site where it was originally earned.

- If the amount of credit is insufficient to meet the State's cost-share requirement, the State is responsible for providing the remainder of the cost-share in cash or services.

If the following conditions apply:



Attachment 4

SAMPLE EPA NOTIFICATION LETTER

Name of State  
State Hazardous Waste Management Official  
Address

Dear :

As discussed in a conversation on [date] between the U.S. Environmental Protection Agency (EPA) and the State of [name], EPA is planning to initiate (or has initiated) a Fund-financed removal action at the [site name] site pursuant to section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). To ensure the continuing effectiveness of the removal action, post-removal site control and institutional control activities are necessary.

The purpose of this letter is to request that the State of [name] provide EPA with a written commitment that the State will assume responsibility for all post-removal site control activities at the [site name] site until such time as a permanent remedy is implemented or until no further site control is needed. EPA would also like to use this opportunity to inform the State of [name] about the use of institutional controls at [site name] site.

Removal activities planned (or being conducted) by EPA at the site include: [list]. EPA expects that the Fund-financed removal action will be complete on [date], at which time post-removal site control and institutional control activities must commence.

At this time, EPA anticipates the need for the State to conduct the following post-removal site control activities: [list]. EPA also anticipates the need for implementation of the following institutional controls: [list]. These and any other actions necessary to ensure the effectiveness of the removal action are considered essential post-removal site control activities.

Post-removal site control is considered to be part of the remedial action at sites that are currently or eventually listed on the National Priorities List (NPL). Therefore, the State may claim credit for all post-removal site control activities implemented subsequent to the Superfund Amendments and Reauthorization Act of 1986 (October 17, 1986). Please note that to claim credit for direct, out-of-pocket post-removal site control expenditures

incurred by the State, a Superfund Cooperative Agreement or Superfund State Contract must be in place. All CERCLA credits are subject to verification in an audit conducted by the EPA Office of the Inspector General. Letters from the State to EPA assuming responsibility for post-removal site control are not appropriate vehicles for documenting expenditures and do not replace the statutory requirements for a Cooperative Agreement or Superfund State Contract for the purpose of applying a credit to offset the cost of remedial action at an NPL site.

Regulatory requirements for post-removal site control are contained at 40 CFR Part 300 (the National Oil and Hazardous Substances Pollution Contingency Plan). [The regulations and procedures to obtain credit are specified at 40 CFR Part 35, Subpart O (Final Rule for Cooperative Agreements and Superfund State Contracts for Superfund Response Actions).] You may obtain EPA guidance on post-removal site control and institutional controls from [contact, phone number]. Please provide your post-removal site control commitment for this site to [name], Regional Administrator, by [date]. If you have questions regarding these issues, please direct your inquiries to [contact, phone number].

Sincerely,

[Name]  
Superfund Branch Chief  
Region [Number]

cc: Region [number] Coordinator, ERD (OS-210)

(Add all appropriate recipients)

Attachment 5

SAMPLE STATE COMMITMENT LETTER

Name  
Regional Administrator  
Region [Number]  
U.S. Environmental Protection Agency  
Address

Dear :

In response to your letter of [date], the State of [name] understands that Superfund monies are being used to perform removal activities at [site name] pursuant to section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), and that post-removal site control will be necessary to ensure the continuing effectiveness of the Fund-financed removal action. The State of [name] commits to assume responsibility for post-removal site control activities at the [site name] hazardous waste site until such time as a permanent remedy is implemented or until no further site control is needed.

It is expected that Fund-financed removal activities conducted by the U.S. Environmental Protection Agency (EPA) will cease on [date], at which time the State will commence post-removal site control. The State acknowledges that the following post-removal site control activities may be required: [list]. The State commits to conduct these and any other actions necessary to ensure the effectiveness of the removal actions.

The State understands that it may claim a credit for direct, out-of-pocket expenditures of non-Federal funds associated with post-removal site control at the [site name] hazardous waste site if this site is currently or eventually listed on the National Priorities List (NPL). The State also acknowledges that there must be a Superfund Cooperative Agreement or Superfund State Contract in place prior to claiming a credit for State expenditures associated with these activities and assumes responsibility for initiating an appropriate response agreement.

If questions arise pertaining to post-removal site control activities at the [site name] in the future, please direct your inquiries to [contact, phone number].

Sincerely,

[Name]  
Hazardous Waste Management Official

cc: Superfund Branch Chief, Region [number]  
(Add all appropriate recipients)

## Attachment 6

SUPERFUND STATE CONTRACT CLAUSES  
SPECIFIC TO POST-REMOVAL SITE CONTROL

A Superfund State Contract (SSC) is a legally binding and enforceable document that details a State's compliance with statutory and regulatory requirements for Superfund responses, that ensures State involvement under section 121 of CERCLA, and that provides the necessary assurances required under CERCLA section 104 when either EPA or a political subdivision assumes lead responsibility for performing a Fund-financed response. The SSC includes post-removal site control, where applicable, and sample clauses containing standard language concerning post-removal site control are provided below.<sup>2</sup>

**Contents of an SSC**

*For all SSCs involving post-removal site control, include this clause:*

This is an agreement between the U.S. Environmental Protection Agency (EPA) and the State of [name] to conduct post-removal site control including the following activities [type of activities] to be undertaken at [site name], to satisfy the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), and all applicable regulations. The Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) identification code for this site is [number]. This Contract covers only those activities described in the Statement of Work (SOW) attached hereto and incorporated herein as Appendix [\_\_\_]. This Contract may be amended if the parties agree to undertake additional remedial activities beyond the SOW.

**Commitment to Perform Post-Removal Site Control**

*For all SSCs involving post-removal site control, include this clause:*

The State [name] agrees to implement all future post-removal site control activities required at the site provided for under this Contract for the expected life of such actions. EPA will ensure that the State is adequately informed of progress during

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<sup>2</sup> All clauses must comply with EPA's Final Rule on Cooperative Agreements and Superfund State Contracts for Superfund Response Actions at 40 CFR Part 35, Subpart 0 (54 Federal Register 22994, June 5, 1990).

removal actions and of requirements for implementing post-removal site control.

**Cost-Share**

*The following clause<sup>3</sup> should be used to document State cost-share:*

Sections 104(c)(3) and 104(d)(1) of CERCLA, as amended, require that EPA determine whether the Site was publicly or privately operated at the time of the release, in order to determine the State's cost-share. This Site was [CHOOSE] (publicly) (privately) operated; therefore, the State's cost-share is [CHOOSE] (10) (50) percent. The estimated cost of the remedial action (excluding EPA's indirect costs) is [\$\_\_\_\_]. This estimate is derived from the [CHOOSE source] (costs itemized in the SOW) (Record Of Decision) (design specifications) and includes contingencies for change orders, which may or may not be invoked, and construction management services.

**State CERCLA Credit**

*The following sample clause<sup>4</sup> should be used to document applicable CERCLA credits:*

CERCLA credit may be applied to offset the State's cost-share requirements of this contract, including provisions for post-removal site control. The State [CHOOSE] (declares) (does not declare) credit for costs incurred at the Site. [Include the following, as appropriate:] Credits are limited to site-specific expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds that have not been previously applied or reimbursed. [CAVEAT: States may not transfer remaining credits from another site, unless EPA gives prior, written approval. Call EPA Headquarters--Superfund State Involvement Section--for assistance.]

The State declares that it has a CERCLA credit of [\$\_\_\_\_] for costs incurred at this Site, satisfying [cite applicable requirements in 40 CFR 35.6285(c)(1)]. Technical and financial documentation to support this credit declaration may be examined

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<sup>3</sup>The language of these clauses is taken directly from the document "Classic Two-Party Superfund State Contract (SSC) Model Clauses," Version 1.0, August 1990.

<sup>4</sup> See footnote 3.



to verify the credit, pursuant to 40 CFR 35.6285(c)(2)(i). This documentation is available for inspection at [specify State location]. In the event that verification reveals less than [\$\_\_\_] in available credit, then the State shall pay the difference and document such in this Contract. Excess credit will not be reimbursed, but with EPA approval, excess credit may be applied to another site.

[If the State has incurred costs pursuant to a Cooperative Agreement or Superfund State Contract for either remedial planning activities before 1984, or advance match prior to October 17, 1986, pursuant to 40 CFR 35.6285(f), then include these costs in this section to off-set State's cost-share requirement, and enumerate such agreements under List of Site-Specific Agreements section of the SSC for the site.]

The State [CHOOSE] (has) (has not) entered into a Cooperative Agreement before incurring costs at the Site. [If a CA was entered into prior to costs incurred, then include the following:] EPA has authorized the State to incur costs for the remedial action expenditures after the Site is listed on the NPL and after October 17, 1986, to obtain credit, which is accepted at face value, until verified by audit and technical review of the activities undertaken at the [CHOOSE Scope of Inspection] (Site) (operable units). [Reference CA/SSC in List of Site-Specific Agreements section of the SSC for the site.]

1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE	3. REPORT TYPE AND DATES COVERED	
4. TITLE AND SUBTITLE Policy on Management of Post-Removal Site Control (OSWER Directive 9360.2-02)			5. FUNDING NUMBERS
6. AUTHOR(S) Scott Maid, OERR/ERD, 382-4671			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Environmental Protection Agency Office of Solid Waste and Emergency Response 401 M Street SW Washington, D.C. 20460			8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) Environmental Protection Agency Office of Emergency and Remedial Response 401 M Street SW Washington D.C. 20460			10. SPONSORING MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES			
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13. ABSTRACT (Maximum 200 words)  Prior to the initiation of removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), provisions should be made for post-removal site control. Post-removal site control comprises those response activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. This guidance document (OSWER Directive 9360.2-02) provides procedures to ensure that, when necessary and to the extent practicable, provision is made for post-removal site control at all sites where Fund-financed removal actions are conducted. The guidance also discusses State CERCLA credit procedures.			
14. SUBJECT TERMS			15. NUMBER OF PAGES
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17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT

AUG 13 1990

NOTE TO: Betty MacEpps  
Superfund Document Coordinator

This note is to inform you that the original copies for the graphics used in Directive 4360.2-02, Policy on Management of Waste Removal Site Control, are on disks stored at the following location:

Kimberly Beidler  
Scott Wilson & Hamilton Inc.  
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Scott Reid  
ERD, 382-4571