



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

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Environmental Cleanup Office

MEMORANDUM

OSWER Directive 9375.3-03A

SUBJECT: Pilot Implementation of the Plan to Enhance
the Role of States and Tribes in the Superfund Program

TO: Superfund Policy Managers, Regions I-X
Regional Counsels, Regions I-X

FROM: Timothy Fields, Jr., Acting Assistant Administrator
Office of Solid Waste and Emergency Response

Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance

Purpose: This directive transmits the recently completed "Plan to Enhance the Role of States and Tribes in the Superfund Program" (the Plan - Attachment #1). The Plan contains a comprehensive National approach to more fully share Superfund program responsibilities with interested and capable States and Tribes, with the ultimate objective of more quickly cleaning up more sites. It is intended to provide a comprehensive method for States, Tribes, and EPA to more flexibly manage contaminated sites, within the overall Superfund goal of protecting human health and the environment.

Regions should discuss the Plan with all States and Tribes currently involved in the Superfund program, with the goal of selecting one State as well as one Tribe* to pilot this initiative, and test the concepts addressed in the Plan. Regions should identify their proposed pilot in a written response to Steve Luftig and Barry Breen by not later than June 19, 1998.

The primary purpose of this National pilot implementation is to gain working experience with the Plan's integrated process of readiness assessment and negotiated assistance and agreements. The integrated process is intended to strengthen EPA's program-level working relationships with States and Tribes.

Background: In November, 1996, the 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/barriers to enhancing the role of States and Tribes in Superfund. This message stressed

* Region III has no Federally-recognized Indian Tribes, so this expectation is not applicable in Region III.

the importance of EPA, in coordination with States and Tribes, proactively working through issues surrounding State readiness, assistance to States, EPA-State program agreements, and the unique considerations of enhancing Tribal participation. The statement asked for recommendations on how EPA can work to further build "strong partnerships" between the Federal government and States and Tribes.

Workgroups consisting of EPA, State and Tribal representatives were formed around these issue areas. A broad-based group of Superfund program and enforcement personnel, and a council of senior State, Tribal, and EPA executives oversaw the direction of the workgroups. These groups have completed the work of crafting a comprehensive plan to enhance the State and Tribal role in Superfund.

Implementation: The Plan frames a process to increase the State/Tribal role as co-implementors of the Superfund Program. As stated above, the goal is for each Region to select one State, and, as appropriate, one Tribe. The scope of the pilots may vary considerably depending on State or Tribal interest and readiness. To benefit from a broad range of experiences during pilot implementation, we hope to have pilots with State and Tribal programs at varying levels of development.

Tribal pilots may consist of any or several of the 28 recommendations identified in the Tribal chapter of the Plan, which focus on building capability for enhanced participation in Superfund, and cover areas like site assessment, training, and infrastructure development. For example, in small/developing State programs, the focus of pilot activity may be on site assessment components or an increased role at one or more National Priorities List (NPL) sites. Similarly, for more developed State programs, the scope may include multiple sites and a greater range of program roles. However, while piloting this Plan, neither full-scale program transfers nor major shifts in responsibility for ongoing NPL actions is expected. Some States are already playing a significant role in the implementation of the Federal Superfund program under existing agreements. This effort is in no way intended to curtail existing arrangements -- in fact in some cases it may be useful to evaluate them as if they were pilots for purposes of analyzing the viability of this plan.

The readiness assessment is a critical first phase of pilots. This assessment will vary as a function of the State or Tribes's program interest, and precedes EPA's decision on an enhanced role agreement. During pilot implementation, readiness assessments may vary in their degree of formality; however, written documentation should be prepared for each assessment. And, although the readiness criteria are framed in objective terms, they are not so precise as to result in automatic decisions about the appropriate role for a given State or Tribe. Discussion among program managers is an essential element of readiness assessments, and Regions will need to decide how this initiative will be implemented with respect to individual States and Tribes.

Completed pilots will consist of a program agreement, sub-agreements (if appropriate) and the effectuating assistance agreement. (With few exceptions, Regions will need to meet financial assistance needs for pilots from currently allocated resources.) Regions will be asked to submit a written summary describing how the Region selected the pilot State and Tribe, how the scope of the agreement was defined, and how the readiness assessment was conducted.

Regions should maintain close consultation with Headquarters over the coming months as they frame their pilots, and OSWER and OECA will maintain a concurrence role on all pilots. Our offices will work closely with Regions to develop appropriate evaluation criteria to measure the success of the pilots. Details on pilot implementation procedures, including HQ concurrence and pilot evaluations, will be provided in a followup memorandum.

These steps should be followed to pilot the Plan:

1. Regions should discuss the Plan with all State and Tribal Superfund program managers to inform them of the opportunity to express interest in a pilot. Regions may wish to propose specific pilot initiatives to individual States or Tribes, rather than depend exclusively on proposals from States and Tribes.
2. When a State or Tribe expresses interest in participating in a pilot, the Region meets with the State or Tribe to scope the range of program activities that the State or Tribe would like to implement. The Region then works with the State/Tribe to gauge the current level of readiness to assume desired program responsibilities. (see Readiness Chapter)
3. The State or Tribe and Region review the technical and financial assistance currently provided to the current level of readiness. Then the parties jointly ascertain any supplementary resources needed to implement requested program component(s) and resources the State or Tribe will need (longer-term) to prepare for new responsibilities. (see Assistance Chapter)
4. The Region and State/Tribe negotiate and sign a pilot program agreement to formally establish and document their roles and responsibilities to implement Superfund, and identify lead responsibilities for specific Superfund activities. (See Agreements Chapter)

Action: Please inform us by June 19, in a written response to Steve Luftig and Barry Breen, of the following points:

1. Which States and Tribes you discussed the Plan with;
2. Which States and Tribes expressed interest and which did not;
3. Whether a State or Tribe has agreed to pilot the Plan; and
4. Where you stand in the process of developing a pilot.

Attachment #2 provides a suggested format for your response. Our staff are available to assist Regions, States, and Tribes in all phases of pilot implementation. Contact David Evans (OERR) at 703-603-8885 if you have questions regarding pilot implementation of the Plan or to discuss Headquarters assistance possibilities. For enforcement aspects of this effort, you may contact Victoria van Roden (OSRE) at 202-564-4268. Thank you for your participation in this comprehensive plan to enhance the role of States and Tribes in the Superfund program.

Attachments: 1. Plan to Enhance the Role of States and Tribes in the Superfund Program
2. Suggested format for Status Report.

cc: Lois Schiffer, DOJ
Lisa Friedman, OGC
Sallyanne Harper, OCFO

ATTACHMENT 2

Format for June 19, 1998 Status Report on Enhancing the State and Tribal Role Plan

Regional Contact Person(s) : _____

Phone: _____ Fax _____

1a. States and Tribes with whom the Region has discussed the Plan.

1b. Method of communication.

2a. Which States and Tribes expressed interest.

2b. List those not interested and reason.

3. Proposed Pilots and Preliminary Scope.

State: _____

Scope: _____

Tribe: _____

Scope: _____

4. Planned next steps this fiscal year.
