



Political Subdivision Involvement in Superfund

Office of Emergency and Remedial Response
Hazardous Site Control Division (OS-220)

Quick Reference Fact Sheet

INTRODUCTION

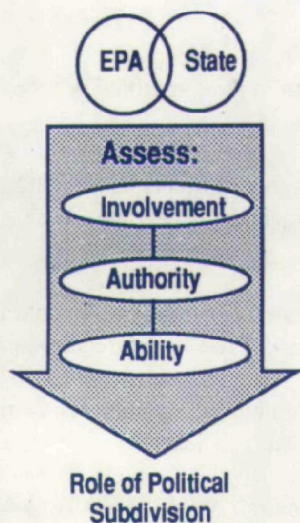
Political Subdivisions May Include:

- Counties
- Towns
- Water Districts
- Parishes

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, allows EPA to provide funds to States, political subdivisions thereof, and federally recognized Indian Tribes for Superfund response. The definition of political subdivision varies from State to State, so each State determines what units of government meet its legislative definition. A political subdivision can participate in Superfund cleanup as a lead or support agency when EPA and the State agree that this enhances the cleanup process and results in an efficient, economical, and well-coordinated use of resources.

A POLITICAL SUBDIVISION CAN LEAD A SUPERFUND RESPONSE

A political subdivision can participate in Superfund as the lead agency, the primary party planning and implementing the response action, or as a support agency, furnishing data, reviewing documents, and assisting the lead agency as requested. EPA, the State, and the political subdivision work together to gauge when a political subdivision is best suited to lead Superfund cleanups. To determine this, EPA and the State assess the political subdivision's involvement and agree that:



- It is economical and advantageous to designate the political subdivision as lead
- The political subdivision has the authority to enter into a Cooperative Agreement with the Federal Government and to administer Federal dollars
- The political subdivision is able to conduct the response activities.

To receive CERCLA funds directly from EPA in a Cooperative Agreement, a political subdivision acting as lead agency must meet Federal regulatory requirements and be accountable for the Superfund cleanup. A political subdivision can also receive CERCLA funds through the State to perform cleanup activities under the State's Cooperative Agreement with EPA. In this case, the State remains accountable to EPA under 40 CFR Part 35 Subpart O for the successful completion of the task.

When the political subdivision receives funds as the lead agency, EPA and the State are required by law to fulfill certain roles. To clearly define the role of each party, EPA requires a 3-party Superfund State Contract.

HOW DOES THE 3-PARTY PARTNERSHIP WORK?

Even when a political subdivision is authorized to undertake the lead, State involvement must be ensured in a Superfund State Contract. Pursuant to CERCLA Section 121(f), States must be involved in the decision-making process, and must have an opportunity to:



- Review political subdivision planning documentation
- Consult on the remedy
- Respond to decisions made by the political subdivision.

In addition, CERCLA Section 104 requires that, once a remedy is selected, States must provide certain assurances prior to Fund-financed remedial actions at a site. A three-party Superfund State Contract entered into by EPA, the State, and the political subdivision is the mechanism that provides for these assurances when a political subdivision takes the lead for Superfund activities. CERCLA requires EPA to accept these written assurances only from the State, not from a political subdivision or any other entity, even if the political subdivision will implement them. The State must guarantee EPA that it will share in the cost of cleanup, and provide for O&M after the remedy is in place. If necessary, the State must accept title to interest in real property acquired to do the response activities, and ensure the availability of a facility(ies) for disposal of hazardous materials removed from a site during cleanup. Finally, before entering into a Superfund State Contract, EPA must find that the State has adequate disposal capacity for all hazardous waste (not just Superfund hazardous waste) to be generated within its borders for 20 years.

WHAT IS THE LOCAL REIMBURSEMENT PROGRAM?



In addition to funding through Superfund Cooperative Agreements, local governments may also receive reimbursement from EPA for expenses incurred (up to \$25,000) in carrying out temporary emergency measures in response to hazardous substance threats, pursuant to CERCLA Section 123. Temporary measures may include such activities as erecting security fences to limit access to a site, and responding to fires and explosions. To be eligible for reimbursement under this program, these measures must be necessary to prevent or mitigate injury to human health or the environment. EPA allocates funds available under the local reimbursement program to applicants who demonstrate the greatest financial burden.

FOR ADDITIONAL INFORMATION

Opportunities and requirements for political subdivision involvement in the Superfund program are described in detail in EPA regulations and directives. These include:



- Subpart F of the NCP, 40 CFR Part 300, which outlines the requirements for State, local, and Indian Tribal involvement as lead or support agency in all phases of Superfund response
- 40 CFR Part 35 Subpart O, which describes the administrative procedures for entering into Cooperative Agreements and Superfund State Contracts for Superfund response
- 40 CFR Part 310, which describes the procedures for reimbursement to local governments that respond to hazardous substance releases in emergencies
- OSWER directives in the 9375.5 series which pertain to State, political subdivision, and Indian Tribal involvement in the Superfund program.

For additional information on political subdivision involvement in the Superfund program, contact the RCRA/Superfund Hotline at 202-382-3000 or 1-800-424-9346. For a complete list of directives and publications, contact the Superfund Docket and Information Center (SDIC) at 202-382-6940.