



DIRECTIVE NUMBER: 9831.7

TITLE: Supporting State Attorneys General CERCLA Remedial
and Enforcement Activities at NPL Sites

APPROVAL DATE: JUN 21 1988

EFFECTIVE DATE: JUN 21 1988

ORIGINATING OFFICE: OWPE/OERR

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

☐ A — Signed by AA or DAA

☒ B — Signed by Office Director

☐ C — Review & Comment

REFERENCE (other documents): 9831.6

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United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1 Directive Number

9831.7

2. Originator Information

Name of Contact Person

TONY DIECIDUE

Mail Code

WH-527

Office

WASTE PROGRAMS ENFORCEMENT

Telephone Code

382-4841

3 Title

SUPPORTING STATE ATTORNEYS GENERAL CERCLA REMEDIAL AND ENFORCEMENT RESPONSE
ACTIVITIES AT NPL SITES

4 Summary of Directive (include brief statement of purpose)

Reaffirms role of State lead agency for award of cooperative agreements and that funds can none-the-less be available to State Attorneys General via pass through from the lead agency. Summarizes types of cooperative agreements available.

5 Keywords

State Attorneys General/Cooperative Agreements

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)

9831.6

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?

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Yes

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No

This Request Meets OSWER Directives System Format Standards.

9 Signature of Lead Office Directives Coordinator

Darlene M. Williams

Date

6/24/88

10 Name and Title of Approving Official

Walter Hubbard

Date

24 June 88

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete

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

JUN 21 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

9831.7

MEMORANDUM

SUBJECT: Supporting State Attorneys General CERCLA Remedial
and Enforcement Response Activities at NPL Sites

FROM: Henry L. Longest, Director
Office of Emergency and Remedial Response

Walter W. Karabel for
Jonathan Z. Cannon
Jonathan Z. Cannon, Acting Director
Office of Waste Programs Enforcement

TO: Waste Management Division Directors
Regions I - X

PURPOSE

The Agency has received several inquiries over the last few months about the eligibility of State Attorneys General (AG) to receive funds to support their CERCLA response activities at NPL sites, and the specific funding mechanisms for awarding these funds. Administrator Lee M. Thomas has also asked that we clarify the Agency's position on funding State AGs.

This memorandum reaffirms that it is the Agency's policy to enter into cooperative agreements with a single designated State lead agency. However, it also reaffirms that CERCLA funds may be available to State AGs, and describes three types of cooperative agreements by which funds may be passed through the State lead agency to the State AG.

BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), authorizes EPA to enter into cooperative agreements with States to conduct response actions at hazardous waste sites. A Superfund cooperative agreement award is the assistance vehicle that transfers funds for response to the States and documents both EPA and State responsibilities for a site. EPA will only enter into cooperative agreements with the State lead agency (usually the State's pollution control agency) as designated by the State's Governor.

To involve other essential State agencies, such as the State AG's office, the State lead agency typically enters into an intergovernmental agreement with these other agencies. Therefore, the mechanism for providing funds to other State agencies is:

- A cooperative agreement with the State lead agency; along with
- A pass-through by the State lead agency to another agency by way of a two-party intergovernmental agreement prior to costs being incurred.

PROCEDURES FOR STATES AND EPA REGIONAL OFFICES

The State

The State AG may require Fund money to conduct their responsibilities for the State's CERCLA program, or the State lead agency may require State AG support to conduct their responsibilities. In either case, any request for funding from EPA must come from the State lead agency.

Therefore, in developing a cooperative agreement application, the State lead agency must:

- Indicate which portion of the funds requested are for the State AG's efforts; and
- Identify the specific tasks the State AG will conduct with the funds.

The EPA Regional Office

When reviewing cooperative agreement applications, Regional offices must consider how CERCLA funds will be allocated among State agencies, such as the State AG, whose participation may be necessary or required to achieve cleanup of the site. This step is essential, in order to determine that the State lead agency will have the necessary technical and legal support for completing all remedial and enforcement response activities at the site.

Knowledge of each State agency's roles and responsibilities will also enhance communication between those offices and between the State lead agency and Regional office in developing and implementing State projects.

Therefore, in reviewing a cooperative agreement application, the Region must determine:

- o Whether the funding requirements and tasks of the State AG are addressed; and if not reflected in the application,
- o Whether the State AG has been notified and consulted with by the State lead agency prior to awarding the agreement.

This will ensure that the State AG is fully informed of the project, and will have the necessary or required resources and staff to uphold its project responsibilities.

TYPES OF COOPERATIVE AGREEMENTS AVAILABLE FOR AG FUNDING

Generally, the three existing types of cooperative agreements will continue to be used to fund State AG efforts. These are (1) a Core Program Cooperative Agreement; (2) a Cooperative Agreement for Support Agencies at Federal-lead sites; and (3) a Site-specific Cooperative Agreement.

Core Program Cooperative Agreements (CPCAs)

CPCAs were created by EPA to ensure that each State has the funds it needs to develop and manage a program to carry out its CERCLA activities at NPL sites. Under a CPCA, a State may receive up to \$250,000 to cover administrative, management and coordination costs associated with building, strengthening and maintaining a State's CERCLA program.

Under a CPCA, the State lead agency requests funds for developing, managing and/or supporting the State's CERCLA response program. Of the several functions that are eligible for CPCA funding some portion of the \$250,000 may be provided to the State AG for its assistance in these areas, including such things as:

- o Development and refinement of a State CERCLA enforcement program and procedures for implementation;
- o Development of legal authorities;
- o Protocols for document review for legal sufficiency and enforceability;
- o Legal assistance, such as for coordinating the identification of ARARs and development of administrative records; and
- o Other general legal assistance as appropriate.

With specific regard to the above tasks, if the State lead agency needs to identify a portion of the State's CPCA funds for the State AG, it must do so both in the cooperative agreement application and statement of work. If the State AG agrees to provide such assistance, a copy of the intergovernmental agreement to this effect must be attached to the application.

Please refer to the "Final Guidance on State Core Program Funding Cooperative Agreements," dated December 18, 1987, (OSWER Directive Number 9375.2-01) for more information on CPCAs.

Cooperative Agreements for Support Agencies at Federal-lead Sites

EPA coordinates all site-specific Federal-lead response activities with States. To monitor progress and meaningfully consult with EPA at these sites, States may review significant documents produced during a project, attend important meetings about site progress, and make site visits. Such site-specific activities performed by the State are known as management assistance.

Management assistance applies to Federal-lead enforcement sites as well as Federal-lead Fund-financed sites. With specific reference to Federal-lead enforcement sites, States may request management assistance funds so that they may be involved or participate in programmatic discussions and review activities with EPA and potentially responsible parties (PRPs). One example of this programmatic responsibility may be making a legal determination of applicable State requirements for an NPL site as part of the ARAR identification process. Management assistance funds are available to the State lead agency for these tasks. Assistance for such tasks may be provided by the State AG. However, even where the State AG is directly responsible for various tasks, the State lead agency must still request the funds from EPA for the State AG.

Cooperative Agreements for Site-specific Response at State-lead Sites (Single or Multi-Site Agreements)

EPA and the State will typically negotiate annually to determine who will have the lead for response activities at NPL sites. This holds true for both Fund-lead and enforcement-lead sites. Again, with specific reference to enforcement sites, EPA and the State may agree to designate a site as State-lead enforcement. If so, the State may receive funding for various enforcement activities, including (1) PRP searches; (2) issuance of notice letters to PRPs; (3) negotiations with PRPs to secure their commitment for site cleanup; (4) administrative or judicial enforcement actions to compel PRP cleanup; and (5) oversight of PRP response activities. The State lead agency may either have

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the legal capability or responsibility to perform these tasks itself, or it may request or require that the State AG perform these tasks. In the latter case, the State lead agency must request the funds in its cooperative agreement application for State AG performance of these tasks. Under a multi-site cooperative agreement, the State lead agency may request funds for the State AG allocated to the sites at which the State AG may have a role.

Please see OERR's manual on "State Participation in the Superfund Program" and OWPE's "Interim Final Guidance Package on Funding CERCLA State Enforcement Actions at NPL Sites," dated April 7, 1987, (OSWER Directive Number 9831.6) for additional information on management assistance and site-specific cooperative agreements.

STATUS OF FUNDING TO SUPPORT STATE AG EFFORTS

For your information, we have attached a list of States which have identified funds for their State AG in either a CPCA or site-specific cooperative agreement with EPA. The site-specific cooperative agreements which have funds for pass-through to the State AG are currently all related to management assistance at enforcement sites.

Should you have any questions on this matter, please contact Tony Diecidue at FTS-382-4841 (enforcement-lead) or John Banks (Fund-lead) at FTS-382-2450.

Attachment

cc: Superfund Branch Chiefs, Region I - X
Superfund Section Chiefs, Region I - X
Regional Counsels, I - X
Grants Administration Contacts, Region I - X
National Association of Attorneys General

ATTACHMENT

STATUS OF FUNDING TO SUPPORT STATE AG EFFORTS*

<u>REGION</u>	<u>SITE-SPECIFIC COOPERATIVE AGREEMENTS</u>	<u>CORE PROGRAM COOPERATIVE AGREEMENTS</u>
1	None	None
2	None	Regional discussions with Puerto Rico indicate they may fund AG.
3	None	Virginia and Maryland
4	None	Regional discussions with South Carolina indicate they may fund AG.
5	None	None
6	Management assistance CA at an enforcement site (Combustion Inc., LA).	None. All State lead agencies have own legal support.
7	None	None
8	Colorado	Colorado
9	None	None
10	Oregon and Idaho	None

*Information gathered from phone survey of Regions I-X.