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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

**Superfund Community
Involvement**

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SUPERFUND COMMUNITY INVOLVEMENT

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1. INTRODUCTION

This module covers EPA's Superfund community involvement program, a set of requirements under the National Contingency Plan (NCP) designed to ensure that the public is informed about site conditions and given the opportunity to comment on the proposed remedy of a Superfund site. EPA, through the response authority granted by CERCLA, is required to protect human health and the environment, but must also address the concerns of citizens within the immediate proximity of a site. The NCP serves to uphold the public's right to voice opinions and express concerns about Superfund site activities. EPA must involve communities throughout the Superfund process — particularly at critical decision-making steps in the process.

Community involvement in Superfund response actions is intended to build citizen's trust and enhance EPA's or the lead agency's credibility. The process allows community representatives such as citizens directly affected by abandoned or uncontrolled release sites, interested parties, organized citizen groups, elected officials, and potentially responsible parties to voice concerns and express preferences regarding proposed and final remedies. Open communication between EPA and the community facilitates the collection of information about site conditions.

The goal of this module is to describe the community involvement requirements and policies as they relate to removal actions, remedial priorities, remedial responses, and administrative records.

After completing this module, you will be able to:

- Provide the statutory authority for and purpose of Superfund community involvement activities
- Explain how citizens may participate in the discovery and notification process and may prompt a preliminary assessment and site investigation
- Identify the community involvement activities which must take place regarding removal actions
- Specify the community involvement activities necessary to respond to the establishment of remedial priorities (placement on or deletion from the National Priorities List)
- Identify the community involvement activities which must take place in conjunction with remedial actions (remedial investigation/feasibility study, selection of remedy, record of decision, and remedial decision/remedial action)

- Identify the steps necessary to establish an administrative record file containing the documents that form the basis for the selection of a response action.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. REGULATORY SUMMARY

When CERCLA was reauthorized in 1986, Congress wanted to ensure that citizens living near Superfund sites were given the opportunity to influence cleanup decisions affecting their community, and that they could voice concerns throughout the cleanup process. Soliciting input from citizens living near Superfund sites provides EPA with valuable information for selecting and implementing appropriate remedies. Community involvement allows potentially affected citizens, interested parties, organized citizen groups, elected officials, and potentially responsible parties to engage in meaningful dialogue with the lead agency implementing the Superfund remedy. This two-way communication ensures public concerns are accounted for when final remedy selection decisions are made.

The NCP requires community involvement activities at specific points in the Superfund process. Compliance with these regulations is necessary at all Superfund sites, but the program is flexible enough to be tailored to meet individual community needs. The community involvement program has demonstrated that including citizens as stakeholders enhances the effectiveness of the cleanup process.

2.1 DEFINITIONS

Familiarity with the following terms is key to understanding this module.

ADMINISTRATIVE RECORD

The administrative record contains the information the lead agency uses to select a response action under CERCLA. This file must be available for public review and a copy must be kept at or near the site, usually at one of the information repositories. A duplicate file is held in a central location, such as a regional or state office.

COMMUNITY ADVISORY GROUPS

As part of EPA's initiative to increase public participation during the Superfund response process, EPA is encouraging the use of Community Advisory Groups (CAGs). CAGs are made up of representatives with diverse community interests and provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at sites affecting them.

COMMUNITY INVOLVEMENT

This term refers to EPA's program to inform and encourage public participation by citizens located near a Superfund site, other interested citizens or parties, organized

groups, elected officials, and potentially responsible parties in the Superfund process, as well as to respond to community concerns.

COMMUNITY INVOLVEMENT COORDINATOR

The Community Involvement Coordinator (CIC) is a lead agency staff member who works with the on-scene coordinator or remedial project manager to inform the public about response actions in accordance with the interactive community involvement requirements set forth in the NCP.

COMMUNITY RELATION PLAN

The community relations plan (CRP) is a formal plan for conducting EPA community involvement activities at a Superfund site.

INFORMATION REPOSITORY

The information repository is a file containing current information, technical reports, and reference documents regarding a Superfund site. The information repository is usually located in a public building that is convenient for local residents, such as a public school, city hall, or library.

TECHNICAL ASSISTANCE GRANT PROGRAM

The Technical Assistance Grant (TAG) program awards grants of up to \$50,000 for qualified citizens' groups to hire independent technical advisors to assist them in understanding and commenting on technical factors in cleanup decisions. The money may also be used to communicate technical comments to other members of the community.

2.2 BACKGROUND

In order to ensure that citizens have the opportunity to make an impact on cleanup decisions affecting their community, and to ensure that citizens have access to all pertinent information about a site, Congress included language in SARA §§113(k), 117, 122(d)(2), and 122(i) stipulating community involvement activities at Superfund sites and authorizing EPA to promulgate regulations designed to support community involvement efforts. These authorities provide citizens the tools and information needed to become active participants in the cleanup process, and to significantly influence the scope and direction of a cleanup.

COMMUNITY INVOLVEMENT PHILOSOPHY

Although CERCLA and the NCP require a number of community involvement activities throughout removal and remedial processes, EPA has learned that early

and continuous involvement of affected citizens is a crucial aspect to successful Superfund cleanups. The present community involvement program stresses:

- early and continuous involvement
- direct contact with citizens
- innovative activities above and beyond the statutory and regulatory requirements.

The combination of these program goals ensures the community is included throughout all major steps in the response process.

2.3 COMMUNITY INVOLVEMENT IN SITE DISCOVERY AND NOTIFICATION

The public may inform EPA of a hazardous substance release by using one of the methods specified in 40 CFR §300.405(a) which include:

- Notifying EPA in accordance with CERCLA §§103(a) or 103(c)
- Reporting an observation of a release by a government agency or a citizen
- Submitting a petition to EPA or the appropriate federal facility, in accordance with §105(d) of CERCLA, requesting a preliminary assessment of the site of a possible hazardous substance release.

These options give citizens tools to initiate interaction with EPA through the Superfund site discovery and notification process. Should EPA determine that further action is necessary at a site identified by any of the discovery methods above, more formalized programs of community involvement are made available to the public. These programs are discussed in the following sections.

2.4 COMMUNITY INVOLVEMENT IN RESPONSE ACTIONS

Response actions include all removal actions, remedial actions, and related enforcement activities conducted at a site identified as the source of a hazardous substance release. Most of the community involvement regulatory requirements require notification of availability of information, public comment periods, and other discrete actions taken at various stages of a response. The NCP also provides assurances for certain ongoing community involvement activities. For example, a plan of action for implementing community involvement programs addressing the needs and concerns voiced by the community must be developed and implemented throughout the response action.

ADMINISTRATIVE RECORD

Section 113(k) of CERCLA requires the establishment of an administrative record file containing all information and documentation used in the selection of a response action. This file must contain not only those documents relevant to the chosen response action, but also relevant comments and information, site-specific data, guidance documents, and technical references that the lead agency considered in the ultimate response selection decision. This record provides a legal basis for challenging and defending response action decisions.

The administrative record file must be made available for public inspection. Regulations in 40 CFR §300.800 pertaining to the administrative record establish procedures for public participation in the development of the file.

REMOVAL ACTIONS

A removal action is an immediate response intended to protect people from threats posed by hazardous waste sites. In response to a removal action (40 CFR §300.415) or a CERCLA enforcement action, a spokesperson designated by the lead agency must be available to inform the community of all actions taken, respond to inquiries, and provide information concerning the release (40 CFR §300.415(n)(1)). The spokesperson is responsible for notifying all affected citizens, state and local officials, and when appropriate, civil defense or emergency management agencies of such removal or enforcement actions. Any news releases and statements made by participating agencies will also be coordinated between the spokesperson and the on-scene coordinator or remedial project manager. Depending on the length of the removal or the length of the removal planning period, the required community involvement activities vary.

Removal Action Planning Period of Less Than Six Months

For removal actions with planning periods of less than six months, before on-site removal activity begins, a notice must be published informing the public of the availability of the site's administrative record file. The notice of availability must be published in a major local newspaper within 60 days of initiation of on-site removal activity. The public must then be given a period of at least 30 days to provide comments on the removal action based on the supporting materials provided in the administrative record file. After the comment period, the lead agency must prepare a written response to significant comments submitted and add all comments and responses to the administrative record file (40 CFR §300.415(n)(2)).

Removal Actions Extending Beyond 120 Days

If a removal action is expected to extend beyond 120 days, within the first 120 days the lead agency must conduct interviews with local officials, community residents, public interest groups, and other interested or affected parties to solicit their

concerns and informational needs. The lead agency must also use the information from these interviews to determine how or when citizens would like to become involved in the Superfund process (40 CFR §300.415(n)(3)).

The lead agency must prepare a community relations plan utilizing the information gathered from the interviews. This plan outlines the community involvement activities that the lead agency will conduct during the removal action. Its purpose is to:

- Ensure that the public receives appropriate opportunity for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy
- Determine, based on community interviews, appropriate activities to ensure public involvement
- Provide appropriate opportunity for the community to learn about the site.

Finally, the lead agency must establish an information repository at or near the site, containing all documentation relating to the removal action. The information repository also contains the administrative record file. A notice must again be published in a local newspaper, alerting the public to both the availability of the administrative record file and the establishment of the information repository. The information repository is often located at a public library, or in a local government building.

Removal Action Planning Period Longer Than Six Months

When the planning period for a removal action exceeds 6 months, the lead agency must comply with all procedures outlined above for removal actions extending beyond 120 days. The establishment of the administrative record file and the information repository must be completed before final approval of the engineering evaluation/cost analysis (EE/CA) for the removal action. The development of an EE/CA is a key part of the removal action process, consisting of an analysis of removal alternatives for a site as required under 40 CFR §300.415(b)(4)(i).

A 30-day public comment period on the EE/CA must be announced when it is completed. The lead agency must respond in writing to significant comments submitted and add all comments and responses to the administrative record file.

THE NATIONAL PRIORITIES LIST

The National Priorities List (NPL) is the list of hazardous substance release sites that EPA has identified as having highest priority for long-term remedial evaluation and response. The aforementioned removal activities can take place at NPL sites. A non federally-owned site placed on the NPL is eligible for Superfund-financed

remedial action. The procedures that must be followed to place a site on, or delete a site from, the NPL include several community involvement requirements.

Placement of Sites on the NPL

Several different methods may be used to determine if a site is eligible to be placed on the NPL (40 CFR §300.425(d)). Once the lead agency has identified a site as a candidate for the NPL, EPA may formally propose that the site be included on the list.

To ensure public involvement during the proposal process, EPA must publish a notice of proposed rulemaking in the Federal Register declaring the Agency's intent to list the site. The proposed rule will include a request for public comments. When the proposed rule has been finalized and the site becomes a part of the NPL, EPA will again inform the public of its actions by publishing a Final Rule in the Federal Register. The rule will include a response to all significant comments and information submitted during the comment period (40 CFR §300.425(d)(5)).

Deletion of Sites from the NPL

Deletion of a site, or parcel of a site, from the NPL is warranted when no further response action is planned. Once it has been determined that all applicable response actions have indeed been completed, that no further response is necessary, and that the site, or parcel, no longer poses a threat to public health or the environment, EPA (with concurrence from the appropriate state) may propose to have the site deleted from the NPL (40 CFR §300.425(e)). This proposal must appear as a notice of intent to delete in the Federal Register and must provide a 30-day public comment period. EPA must also publish a notice in a local newspaper, informing the public of both the intent to delete the site and of the availability of the Federal Register notice of intent.

The Agency must make all documentation supporting the proposed deletion available by placing it in the information repository. EPA must then place its response to comments and any additional information submitted during the public comment period in the information repository once the notice of final deletion has appeared in the Federal Register.

REMEDIAL ACTIONS

Remedial actions are long-term cleanups designed to prevent or minimize the release of hazardous substances to reduce the risk and danger to public health or welfare, or the environment.

EPA has established under the NCP at 40 CFR §300.430 and 300.435, a formal selection and implementation process known as the remedial investigation/feasibility study (RI/FS) and the remedial design/remedial action (RD/RA). In an

effort to select remedies for hazardous substance release sites that are protective of human health and the environment, the RI/FS and RD/RA assess site conditions, evaluate relevant alternatives for remediation, and implement the remedy. It is during these processes that public participation in the remediation selection and implementation process is addressed.

Remedial Investigation/Feasibility Study

The lead agency conducts all community involvement activities relating to the RI/FS. These activities, found in 40 CFR §§300.430(c), are similar to those required for removal actions. Certain activities should be conducted prior to the beginning of the remedial investigation. They include:

- Conducting interviews with local officials, community residents, public interest groups, and other interested parties to solicit concerns, informational needs, and citizens' preferences regarding the extent of their involvement in the Superfund process
- Preparing a formal community relations plan specifying the community involvement activities that the lead agency expects to undertake during the remedial response
- Informing the community of the establishment of at least one information repository at or near the site
- Informing the community of the availability of TAGs from EPA, and placing information concerning the application process in the information repository (see Section 2-5).

The feasibility study must include a detailed analysis of the different remedial alternatives (40 CFR §300.430(e)(9)). This analysis must determine which components of each alternative the community supports, has reservations about, or opposes.

During the RI/FS process, the lead agency identifies and evaluates potential suitable technologies, including innovative technologies. EPA has developed the Superfund Innovative Technology Evaluation (SITE) program to encourage commercial development of new and effective remediation techniques. The SITE demonstration program involves soliciting public comment, opinion, and concerns on the selected technology and proposed site usage. To aid in this process, EPA may produce videos, brochures, and fact sheets on the SITE demonstration project, and it may also hold public meetings and conduct site visits to facilitate public information efforts.

After completion of the RI/FS, the lead agency prepares a proposed plan, analyzing the selection of a selection remedy to be used at a hazardous release site. In order to

make this information available to the public, the lead agency must publish a notice of availability of both the proposed plan and the analysis in a local newspaper, ensure that the proposed plan and analysis are available for public inspection in the administrative record file, hold a public meeting, and provide a 30-day comment period to collect public responses to the plan and analysis (40 CFR §300.430(f)(3)).

After the lead agency has selected the remedial action, that decision must be documented in a record of decision, or ROD. The lead agency must publish a notice of availability of the ROD in a local newspaper and make the ROD available for public inspection at or near the facility prior to the start of the actual remedial activities (40 CFR §300.430(f)(6)).

Remedial Design/Remedial Action

RD/RA activities involve the actual design, construction, and implementation of the remedy selected to clean up a hazardous substance release into the environment. The community involvement activities at this stage include reviewing the community relations plan to ensure that it continues to adequately provide for public involvement activities during the RD/RA, issuing a fact sheet after the completion of the engineering design, and providing a public briefing prior to the initiation of the remedial action (40 CFR §300.435(c)(1) and (3)).

If significant changes are made to the remedy chosen in the ROD, but the changes do not fundamentally alter the remedy, the lead agency must publish an explanation of significant differences (ESD), place the ESD in the administrative record, and publish a summary of the ESD in a major local newspaper (40 CFR §300.435(c)(2)(i)).

If significant changes are made to the remedy chosen in the ROD, and the changes fundamentally alter the remedy, the lead agency must propose an amendment to the ROD. The community involvement activities required for amending a ROD, include: publishing a notice of availability and description of the proposed amendment in a local newspaper; providing opportunity for comment and a public meeting; responding to significant public comments; and placing the amended ROD in the administrative record file prior to the commencement of the affected remedial activity (40 CFR §300.435(c)(2)(ii)).

COMMUNITY INVOLVEMENT IN PRIVATE PARTY RESPONSE ACTIONS

Any person may undertake a response action to reduce or eliminate a release of a hazardous substance under 40 CFR §300.700(a). Private parties must adhere to all of the community involvement requirements found in §§300.155, 300.415(n), 300.430(c)(1-4), 300A30(f)(2), (3) and (6), and 300.435(c). It is important that private parties are “consistent with NCP” requirements for cost recovery purposes under CERCLA §107(a)(4)(B). Private parties need not, however, establish an administrative record or an information repository (§300.700(c)(6)).

2.5 TECHNICAL ASSISTANCE GRANTS

SARA §117(e) amended CERCLA by authorizing the President to make \$50,000 TAGs available to citizen groups living near NPL sites. On October 1, 1992, EPA issued a final rule for TAG applications (57 FR 45311). These grants allow communities to obtain expert, independent technical advice on monitoring and interpreting activities related to a site cleanup. Funds are primarily used to hire an advisor who acts as a special liaison between the citizens and lead agency personnel. Only one TAG per site can be awarded and there are eligibility requirements.

To be eligible, a group must be a citizen association, or an environmental or health advocacy group that demonstrates a genuine interest in the site. The group also must be incorporated as a nonprofit organization. In addition, the group must “match” the TAG funds they receive by contributing 20 percent of the total cost of the project using cash or “in-kind” donations (e.g., office supplies, bookkeeping services). Groups can receive a matching fund waiver if requested. Detailed guidelines on what the grant funds may or may not be used for are outlined in a four-part handbook series: Superfund Technical Assistant Grant (TAG) Handbook: Applying For Your Grant (OSWER 9230.1-09A); Superfund Technical Assistance Grant (TAG) Handbook: The Application Forms with Instructions (OSWER Directive 9230.1-09B); Superfund Technical Assistance Grant (TAG) Handbook: Procurement--Using TAG Funds (OSWER Directive 9230.1-09C); and Superfund Technical Assistance -Grant (TAG) Handbook: Managing Your Grant (OSWER Directive 9230.1-09D).

2.6 COMMUNITY ADVISORY GROUPS (CAGS)

Community Advisory Groups (CAGs) are designed to enhance public participation in the Superfund process. CAGs effectively facilitate community involvement allowing members of the community, particularly those from low-income and minority groups, to participate in the decision-making process at Superfund sites. In December 1995, EPA published the document Guidance for Community Advisory Groups at Superfund Sites, designed to assist EPA in developing and working with CAGs (OSWER Directive 9230.0-28). Membership in the CAG should be as inclusive as possible, and to the extent practicable, reflect the composition of the community near the site. Through CAGs, community members have a direct line of communication with EPA and many opportunities for expressing their opinions regarding issues such as cleanup levels, future land use, and remedy selection.

