



Indian Tribal Involvement In The Superfund Program

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

Quick Reference Fact Sheet

INTRODUCTION

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, the U.S. Environmental Protection Agency (EPA) is required to treat Indian Tribal governments substantially the same as States and to ensure meaningful involvement by States, political subdivisions, and Indian Tribes. This fact sheet describes the specific requirements of CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan for Tribal involvement in the Superfund program.

CRITERIA FOR TREATMENT AS A STATE

Indian Tribes are treated essentially as States when they meet three criteria:

- Are federally recognized
- Have a Tribal governing body that is currently performing governmental functions to promote health, safety and welfare of the affected population or to protect the environment within a defined geographic area
- Have jurisdiction over a site that is listed in CERCLIS (EPA's data base of information on hazardous waste sites), or have jurisdiction over a site that is proposed or listed on the National Priorities List (EPA's list of the nation's most serious hazardous waste sites), at which a Fund-financed response is contemplated.

DETERMINATION OF "FEDERALLY RECOGNIZED"

Section 101(36) of CERCLA defines an Indian Tribe to be "any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native village but not including any Alaskan Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." The Bureau of Indian Affairs (BIA) establishes criteria to determine whether an Indian Tribe is federally recognized and publishes a list of these Tribes in the Federal Register annually.

In some instances, a Tribe that has been federally recognized may not yet have been added to the published BIA list. To verify the status of a Tribe, more recent information can be obtained from the Branch of Acknowledgment and Research, BIA Headquarters, Washington, D.C., (202)343-1710.



OPPORTUNITIES FOR TRIBAL INVOLVEMENT

Federally recognized Indian Tribes may participate in Superfund response as either a lead or support agency for Fund-financed activities during each phase of response. Indian Tribes may obtain funds for both lead and support agency involvement through a Superfund Cooperative Agreement. In addition, Tribes may seek funding for non-site-specific activities that facilitate their involvement in the Superfund program through a Core Program Cooperative Agreement.

CERCLA, as amended, prohibits EPA from undertaking a remedial action unless a State makes certain assurances or guarantees, including paying for part of the cleanup, ensuring disposal capacity, and conducting operation and maintenance of the remedy. Federally recognized Indian Tribes may not have to provide these CERCLA Section 104 assurances in all cases. In many cases, EPA provides the required assurances for the Indian Tribes.

EPA retains primary enforcement authority under CERCLA for sites within the jurisdiction of States, political subdivisions, and Indian Tribes. Indian Tribal governments are afforded the opportunity similar to States to participate in EPA negotiations with responsible parties for actions relating to, or directly impacting, land under Tribal jurisdiction. If a Tribal government participates in negotiations, it may become a signatory.



FOR MORE INFORMATION

EPA has developed a series of documents describing opportunities and requirements for Tribal involvement. These include:

- Subpart F of the NCP, 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 administrative procedures for entering into "Cooperative Agreements and Superfund State Contracts for Superfund Response"
- "Hazardous Waste Releases on Indian Land: Beginning the Superfund Process" (EPA/540/8-89/001), which is a handbook to assist Tribes in dealing with releases
- OSWER directives in the 9375.5 series, which pertain to State, political subdivision, and federally recognized Indian Tribal involvement in the Superfund program.

For a complete list of EPA directives and publications on Indian Tribal involvement in the Superfund program or information on obtaining copies, contact the Superfund Docket and Information Center at (202)382-3046. Further information on Indian Tribal involvement in the Superfund program can be obtained from the RCRA/Superfund Hotline at (202)382-3000 or (800)424-9346.

