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Office of Solid Waste and Emergency Response

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EPA

State and Local Involvement in the Superfund Program

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

Quick Reference Fact Sheet

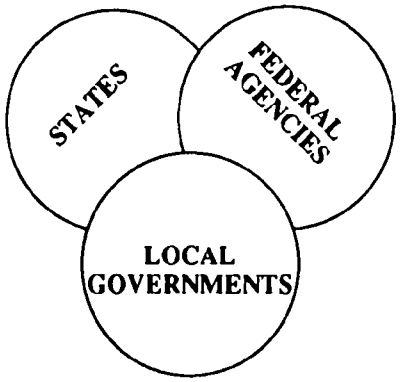
INTRODUCTION

When Congress first enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980, it required States to be active partners during Superfund response actions. Under CERCLA, States with the technical and management capabilities to carry out a response action were authorized to lead cleanup efforts at a site. Local communities and certain local government agencies (such as fire departments and public health agencies) also participated in Superfund cleanup operations.

In 1986, Congress amended CERCLA by passing the Superfund Amendments and Reauthorization Act of 1986 (SARA). CERCLA, as amended, strengthens EPA's partnership with the States and provides for increased opportunities for State and local involvement. More recently, EPA promulgated the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to implement the regulatory changes necessitated by SARA. The NCP serves as the blueprint for implementing Superfund response actions. Specifically, Subpart F of the NCP details the State's role during cleanup and outlines those areas where EPA must consult with the State.

To further describe the requirements for managing Superfund Cooperative Agreements and Superfund State contracts, EPA promulgated 40 CFR Part 35, Subpart O. This regulation outlines the financial and administrative mechanisms that must be in place for States to carry out the response actions described in the NCP.

HOW STATES AND LOCAL GOVERNMENTS BECOME INVOLVED



CERCLA, as amended, authorizes the Federal Government to take response actions at a site (Federal-lead), or to transfer the necessary funds and management responsibility to a State (State-lead), to political subdivisions of States or to federally recognized Indian Tribes. Together, CERCLA, as amended, and the NCP ensure States' involvement in response by requiring EPA to work with States during: 1) negotiations with potentially responsible parties (PRPs), 2) the National Priorities List (NPL) listing and deleting process, 3) study of the site to determine cleanup options, and 4) selection and implementation of the remedy.

The law prohibits EPA from providing funding for a remedial action unless the State makes the following 5 assurances or guarantees:

- Pay part of the cleanup. A State is required to pay 10 percent of the cost of actual cleanup if the site was privately operated at the time of the hazardous substance release. A State is required to pay 50 percent or more of the total response costs if the State or locality operated the site at the time hazardous wastes were disposed there Political subdivisions may provide the cost share, but the State must always assure payment in case of default.
- Ensure the availability of a facility(ies) for disposal of hazardous materials removed from a site during cleanup. Disposal facilities must comply with Subtitle C of the Solid Waste Disposal Act to ensure that current land disposal does not threaten the quality of human health and the environment
- Ensure that the State's disposal capacity can adequately handle all hazardous wastes generated within the State over the next 20 years. The State provides this assurance through a Capacity Assurance Plan that must be approved by EPA.

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- Operate and maintain the selected remedy once the cleanup is completed and is proven to be operational and functional. The State assumes full responsibility for future operation and maintenance. Although a political subdivision may manage the actual operation and maintenance of the selected remedy, the State retains ultimate responsibility.

- Accept interest in real property on or before completion of the response actions. The State must assure EPA that it will also ensure the reliability of any institutional controls restricting the use of that property. These controls must be maintained by the State even if the interest in real property is transferred to a local government

OVERVIEW OF CERCLA

Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, in 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or welfare or the environment. Over five years, $1.6 billion were collected, and the tax went to a Trust Fund for cleaning up abandoned or uncontrolled hazardous waste sites.

On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) was signed into law. SARA increases the Trust Fund to $8.5 billion over five years, and strengthens EPA's authority to conduct cleanup and enforcement activities.

Most recently, as part of the Budget Reconciliation Act of 1990 passed in October, the taxing authority of CERCLA, as amended, was extended through December 31, 1995 and the total amount of revenue that may be collected increased to $11.97 billion. A separate provision reauthorized the program without change until September 30, 1994. Without these actions, Superfund authorities would have expired in October 1991.

Under the Superfund program, EPA can.

- Pay for the cleanup of hazardous waste sites when those responsible for such sites cannot be found or are unwilling or unable to clean up a site.

- Take legal action to force those responsible for hazardous waste sites that threaten public health or the environment to clean up those sites or pay back the Federal Government for the costs of cleanup

The law authorizes two kinds of response actions:

- Short-term removals where actions may be taken to address releases or threatened releases requiring prompt response.

- Longer-term remedial responses that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious but not immediately life threatening. They can be conducted only at sites on EPA's National Priorities List (NPL)

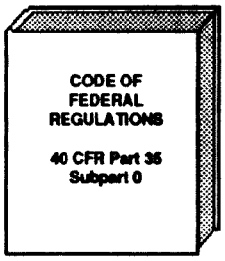
OVERVIEW OF SUPERFUND PROCESS

REMOVAL ACTIONS, PUBLIC PARTICIPATION AND ENFORCEMENT ACTIVITIES MAY OCCUR DURING ALL REMEDIAL PHASES

State and local involvement in the Superfund program varies depending upon the type of response action. During a removal, which is an action taken over the short term to address a release or threatened release of hazardous substances, often local authorities are the first responders at the incident. For example, a city fire or police department can respond immediately to hazardous substance releases or may serve in a support role to a State or Federal authority conducting removal cleanup activities.

During a remedial action, which is an action intended to stop permanently or substantially reduce over the long term a release or threatened release of hazardous substances, there are many ways for State and local governments to participate States may conduct the Preliminary Assessment and Site Inspection (PA/SI), the Remedial Investigation and Feasibility Study (RI/FS) or the Remedial Design and Remedial Action (RD/RA). States and local governments also may help identify potentially responsible parties and inform local communities about a cleanup. Whether a site requires a remedial or removal response, the role of State and local agencies is critical in protecting public health and the environment.

MECHANISMS TO ENSURE STATE AND LOCAL INVOLVEMENT



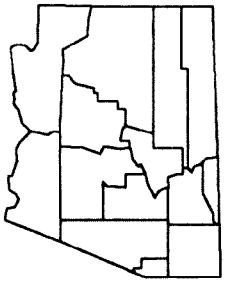
Superfund provides the following mechanisms for State and local involvement:

- Cooperative Agreements transfer funds from EPA to States, political subdivisions thereof, and/or Indian Tribal governments to undertake the lead for site-specific response, or to defray their costs associated with participation in Federal-lead or political subdivision-lead responses or other CERCLA implementation activities. Cooperative Agreements are also necessary to document the State's assurances before remedial action begins.

- Superfund State Contracts provide a vehicle for accepting the State's CERCLA 104 assurances including cost-sharing, when EPA or a political subdivision undertakes the lead for response.

Procedures for using Cooperative Agreements and Superfund State Contracts for Superfund responses can be found at 40 CFR Part 35, Subpart O.

THE ROLE OF POLITICAL SUBDIVISIONS

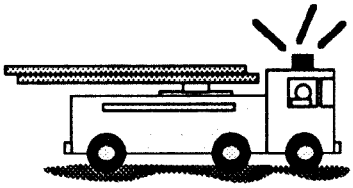


The definition of political subdivision varies from State to State; each State determines what units of government meet its legislative definition. Political subdivisions may be involved in Superfund response actions by directly leading the response or by providing support to an EPA or State-lead action. As a support agency, local governments can provide important information about the site, including information on the site history and potentially responsible parties.

If a political subdivision leads the Superfund response, EPA may enter into a Cooperative Agreement with the political subdivision or may provide funds through the State. When EPA awards funds directly to the political subdivision, EPA, the State, and the political subdivision must first sign a three-party Superfund State Contract. The Superfund State Contract is necessary to document the State's assurances and ensure State involvement consistent with CERCLA section 121(f). If EPA enters into a Cooperative Agreement with the State to lead the response, the political subdivision may still receive funds through an intergovernmental agreement. In this case, the State remains accountable to EPA under 40 CFR Part 35, Subpart O for the successful completion of the activities.

Throughout the cleanup actions, political subdivisions should be kept informed of plans and progress and may also review and comment on reports, studies, and proposed actions.

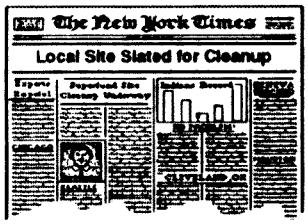
EMERGENCY RESPONSE



Local governments also play an important role during a Superfund cleanup. Although most local governments do not have the resources to conduct entire cleanups at hazardous waste sites, localities often provide important public safety measures during emergencies, and may receive some financial assistance under the Local Government Reimbursement (LGR) program (Section 123 of CERCLA, as amended).

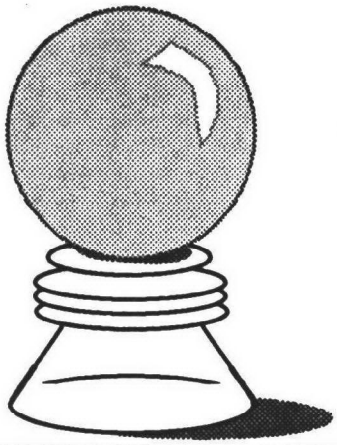
The LGR program is intended to alleviate significant financial burden on local governments as a result of conducting temporary emergency measures in response to a hazardous substance threat, and offers assistance of up to $25,000 per response directly to local governments. Requirements for pursuing reimbursement under CERCLA Section 123 are found in EPA's Interim Final Rule on Reimbursement to Local Governments for Emergency Response to Hazardous Substances Releases (40 CFR Part 310). In addition, EPA has prepared a fact sheet and application package that can be obtained by contacting EPA's RCRA/Superfund Hotline.

COMMUNITY RELATIONS



Each NPL site designated for remedial response under Superfund must have an approved Community Relations Plan (CRP) in place before field activities can begin. The Superfund community relations effort may be implemented by the State, political subdivision or EPA. These activities ensure that the local public is provided with accurate and timely information about response plans and progress and that their concerns about planned actions are heard by the lead agency.

FUTURE DIRECTIONS



As the Superfund program continues to address the hazardous waste issue nationwide, State and local governments will assume an increasingly active role in confronting issues at Superfund sites. Most States have already developed their own State-wide cleanup program to address sites not included on EPA's National Priorities List.

In an effort to support State and local involvement in Superfund responses, EPA has expanded the Core Program to allow greater flexibility in funding options. The Core Program provides funds for States to conduct CERCLA activities that are not assignable to specific sites, but support a site-specific response program. Although EPA awards Core Program Cooperative Agreements only to States and Indian Tribes, a political subdivision or other government entity may receive funds through an intergovernmental agreement with the lead Superfund agency in the State. Using Core Program funds, the State or political subdivision can develop the capability to effectively implement the requirements of CERCLA section 121(f), the NCP and 40 CFR Part 35, Subpart O.

FOR MORE INFORMATION

Opportunities and requirements for State and local involvement in Superfund are described in greater detail in EPA regulations and directives. These include:

- The NCP, 40 CFR Part 300, the roadmap to conducting responses under CERCLA. Subpart F outlines the requirements for State and local involvement in all phases of response.
- 40 CFR Part 35, Subpart O, which describes the administrative procedures for entering into Cooperative Agreements and Superfund State Contracts.
- OSWER directives in the 9375.5 series which pertain to State and political subdivision involvement in the Superfund Program.

For additional information on State and local involvement in the Superfund program, contact the RCRA/Superfund Hotline toll-free at 1-800-424-9346, or 703-920-9810. EPA employees must make their request by E-Mail at OERR/PUBS, Box 5248 or in writing to Superfund Documents, OS-240, 401 M Street S.W., Washington, D.C. 20460. Requests should include full name, address, telephone number, and the title(s) or number(s) of the document(s) being requested.

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