

CERCLA/OPA Notification and Coordination for Natural Resource Damages



**Larry Zaragoza, OERR
703-603-8867
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What are Natural Resources?

- Definition of “natural resources” under CERCLA 101(6) and 1001(20):
“land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources”
- Natural resources of concern are held in trust for the public



Responding to Natural Resource Injury

CERCLA and OPA

- Provides authority for Trustees to respond to natural resource injuries
- Allows damages to be recovered by Trustees



Responding to Natural Resource Injury

Trustee responsibilities

- Assessing the extent of natural resource injuries; and
- Restoring natural processes injured or services lost



Who Are the Trustees?

- Federal – Secretaries of Agriculture, Commerce, Defense, Energy, Interior, and other agencies
- State – designated by the Governor
- Tribal – designated by Tribal Chairmen or the Secretary of the Interior may serve as trustee at request of the tribe.
- Foreign (OPA only)



EPA's Coordination and Notification Goals

- Provide Trustees with the information needed to meet their legal obligations for action;
- Share information to better protect human health and the environment; and
- Reduce the time for settlement of all liabilities



EPA's Role

- EPA encourages participation by all affected Trustees
- Participation encouraged at every stage of the process
- EPA cannot assess whether any impact has or has not taken place so notification needs to be provided to trustees



Statute of Limitations Considerations

- Section 113(g)(1)(A) of CERCLA:
 - Claims must be brought within 3 years of the date of discovery of the loss and its connection with the release
 - For NPL sites, claims must be brought within 3 years of completion of the remedial action
- If the statute of limitations is threatened by delays—a tolling agreement with the responsible party may be sought



Trustee Responsibilities

- Coordinate with EPA in assessments, investigations, and planning



EPA and Trustees: Mutual Notification and Coordination

- Superfund Removals
- Superfund Remedial Actions
- OPA Removals

Superfund Removals:

NRD Notification and Coordination

Notify Trustees of:
Releases or threatened releases
Location of releases

RSE Results

Plans and negotiations

Removal action
Adverse impacts of removal
action

Completion of removal action

Discovery

Removal Site
Evaluation (RSE)

Assessment of RSE Results
against Regulatory Criteria

Removal Action
in Progress

Removal Action
Complete

Coordinate with Trustees:
Invite/encourage involvement
in response

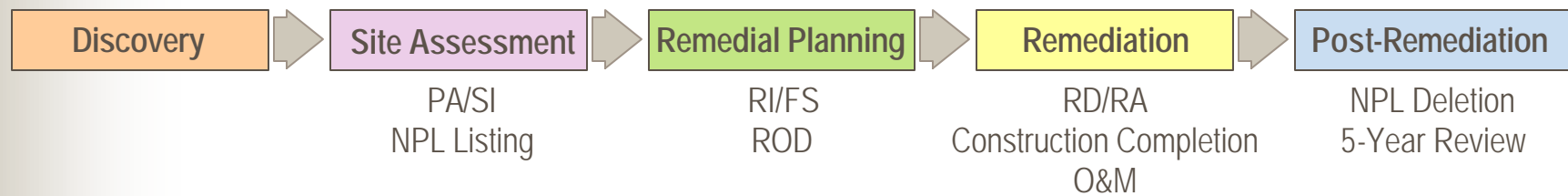
Coordinate assessments,
evaluations, and inspections

Provide Action Memorandum for site
Provide opportunity to review
and comment on removal action
documentation

Superfund Remedial Actions:

NRD Notification and Coordination

Superfund Remedial Actions:



Notification and Coordination
with Trustees throughout Pipeline

Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

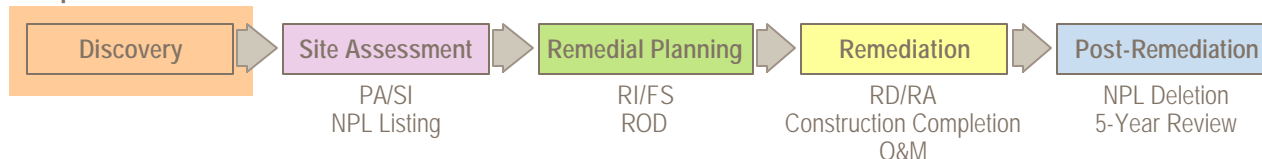
Releases or threatened releases
Location of releases
Initiation/termination of discovery

Discovery

Coordinate with Trustees:

Invite/encourage involvement in response
Respond to requests for enforcement
Exchange PRP information and coordinate CERCLA §104 requests

Superfund Remedial Actions:



Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

—— Site Assessment ——

Coordinate with Trustees:

Request for PA/SI
Initiation/termination of PA/SI
Completion of draft and final documents

Preliminary Assessment/
 Site Investigation (PA/SI)

Provide PA checklist

Coordinate assessments, evaluations, investigations, and planning

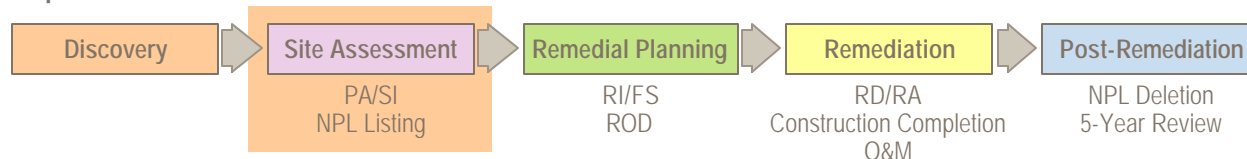
Provide opportunity to participate in human health and ecological risk screening

Proposal for inclusion on NPL

NPL Listing

Provide national lists and site-specific information supporting NPL listing

Superfund Remedial Actions:



Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

*Initiation/Termination of
RI/FS activities*

*Receipt of draft and final
work plans*

*Completion of draft and final
RI/FS reports*

*Development of human health
and ecological risk assessment*

Initiation/Termination of ROD

— Remedial Planning —

Remedial Investigation/
Feasibility Study (RI/FS)

Record of Decision
(ROD)

Coordinate with Trustees:

*Provide opportunity for Trustees to
comment on work plans, RI/FS reports,
remedial alternatives, ARARs, and the
proposed plan*

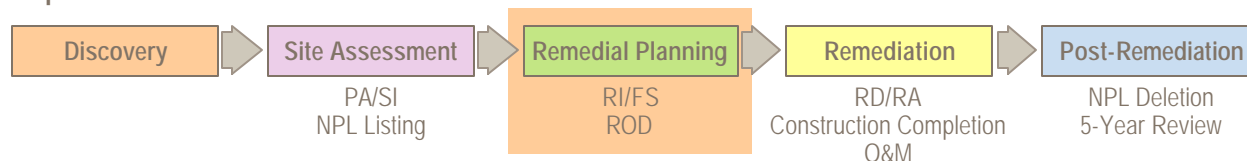
*Coordinate necessary assessments with
Trustees*

*Provide opportunity for Trustees to
comment on ROD*

*Provide opportunity to review and
comment on negotiated draft
agreements*

Provide copy of final ROD

Superfund Remedial Actions:



Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

Initiation/Termination of RD/RA negotiations

Completion of draft and final work plans/documents

Construction Completion determination

Remediation

Remedial Design/
Remedial Action (RD/RA)

Construction Completion

Operation & Maintenance
(O&M)

Coordinate with Trustees:

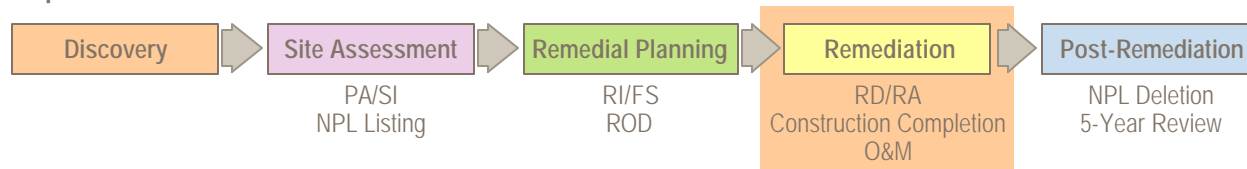
Provide opportunity to review draft work plan and RD/RA documents

Invite/encourage Trustee involvement in planning response actions

Provide opportunity for Trustee to negotiate with PRPs

Provide opportunity for commitment on O&M plans

Superfund Remedial Actions:



Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

—— Post-Remediation ——

Coordinate with Trustees:

*Notice of Intent to Delete,
Final Notice of Deletion, or
Notice of Intent of Partial Deletion*

NPL Deletion

*Provide opportunity to participate
in close-out activities*

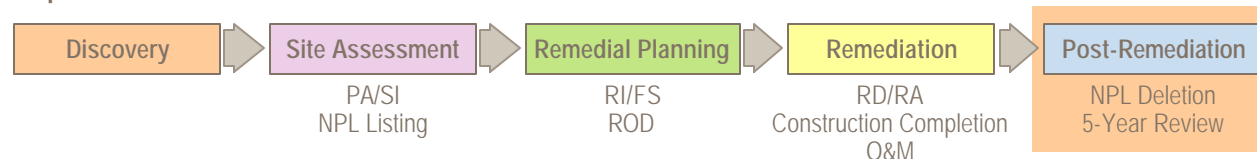
*Provide opportunity to comment
on draft close-out report*

*Provide copy of
Five-Year Review report*

Five-Year Review

*Provide copy of Five-Year Review
report*

Superfund Remedial Actions:



OPA Removals:

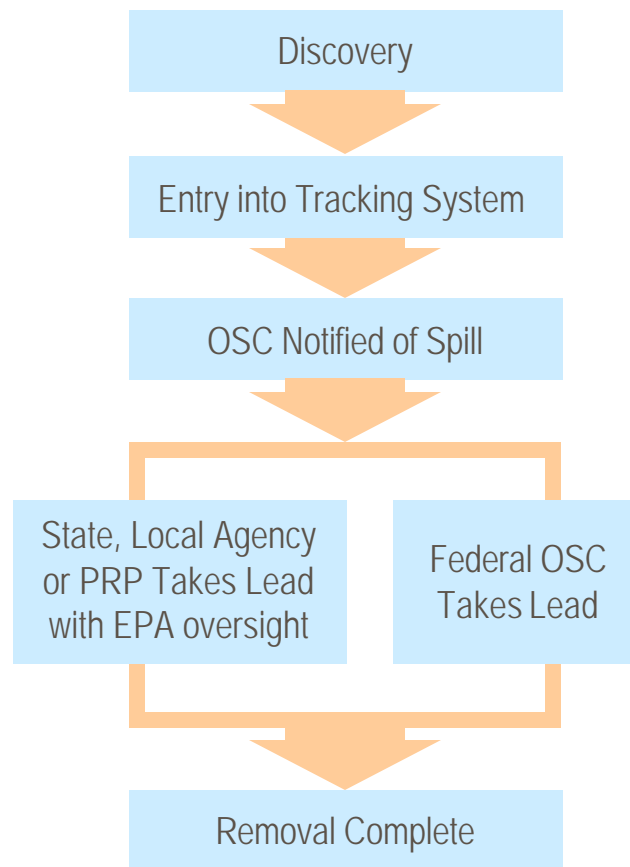
NRD Notification and Coordination

Notify Trustees of:

Spills or threatened spills
Location of spills

Removal action

Completion of removal action



Coordinate with Trustees:

Invite/encourage involvement in response

Coordinate assessments, evaluations, and inspections

Provide opportunity to review and comment on documentation



Summary

**When a Natural Resource
is injured, Trustees are
responsible for:**

- Assessment
- Restoration



Summary

EPA is Responsible for:

- Notifying Trustees
- Coordinating activities



Summary

- EPA encourages participation by all affected Trustees
- Notification and coordination occurs throughout CERCLA and OPA processes



NRD/Historic Preservation Web Sites

www.epa.gov/superfund/programs/nrd/index.htm

www.achp.gov (Advisory Council on Historic
Preservation)

<http://es.epa.gov/oeca/ofa/crosscut.html>
(cross cutting Environmental laws)