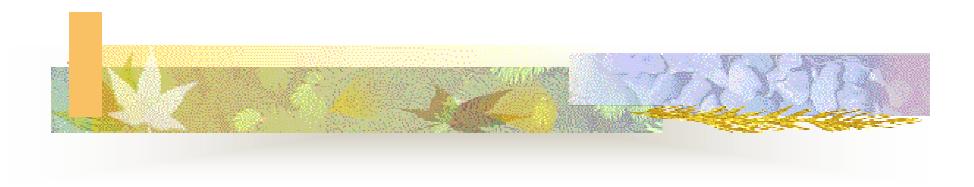
CERCLA/OPA Notification and Coordination for Natural Resource Damages



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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

Discovery Removal Site

Coordinate with Trustees:

Invite/encourage involvement in response

RSE Results

Evaluation (RSE)

Plans and negotiations

Assessment of RSF Results against Regulatory Criteria

> Removal Action in Progress

Coordinate assessments, evaluations, and inspections

Removal action

Adverse impacts of removal action

Completion of removal action

Removal Action Complete

Provide Action Memorandum for site

Provide opportunity to review and comment on removal action documentation

NRD Notification and Coordination

Superfund Remedial Actions:



Notification and Coordination with Trustees throughout Pipeline

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

N&O

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



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)

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

Record of Decision (ROD)

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:

Discovery

Site Assessment

PA/SI NPL Listing Remedial Planning

RI/FS ROD Remediation

RD/RA Construction Completion O&M **Post-Remediation**

NPL Deletion 5-Year Review

NRD Notification and Coordination

Notify Trustees of:

Remediation -

Coordinate with Trustees:

Initiation/Termination of RD/RA negotiations

Completion of draft and final work plans/documents

Remedial Design/ Remedial Action (RD/RA) 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

Construction Completion determination

Construction Completion

Operation & Maintenance (O&M)

Provide opportunity for commitment on O&M plans



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

NPI 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:

Site Assessment Discovery PA/SI

NPL Listing

Remedial Planning RI/FS ROD

Remediation RD/RA

N&O

Construction Completion

Post-Remediation NPL Deletion 5-Year Review

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

<u>www.achp.gov</u> (Advisory Council on Historic Preservation)

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