

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

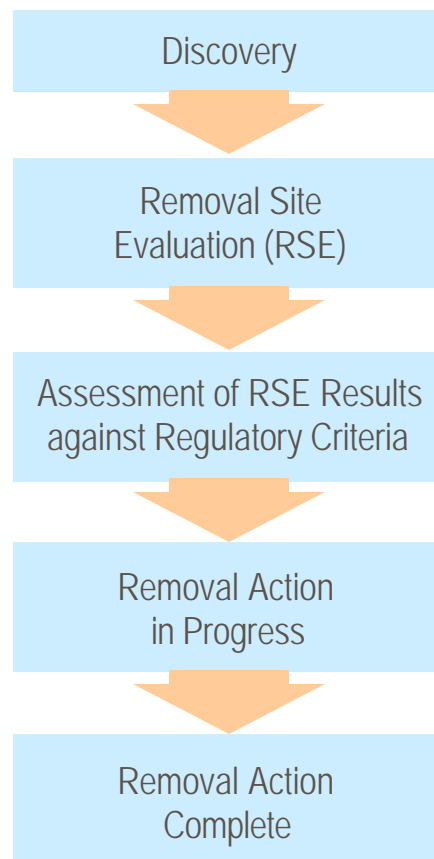
Notify Trustees of:
Releases or threatened releases
Location of releases

RSE Results

Plans and negotiations

Removal action
Adverse impacts of removal
action

Completion of removal action



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:

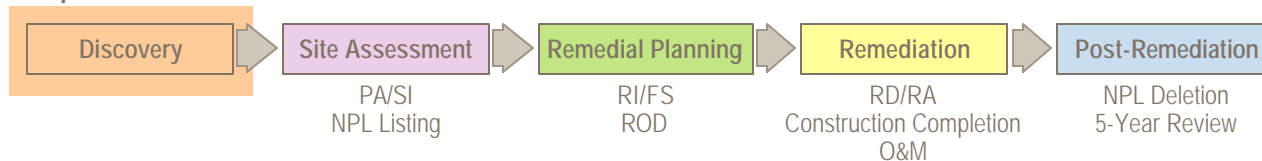
Releases or threatened releases
Location of releases
Initiation/termination of discovery

Discovery

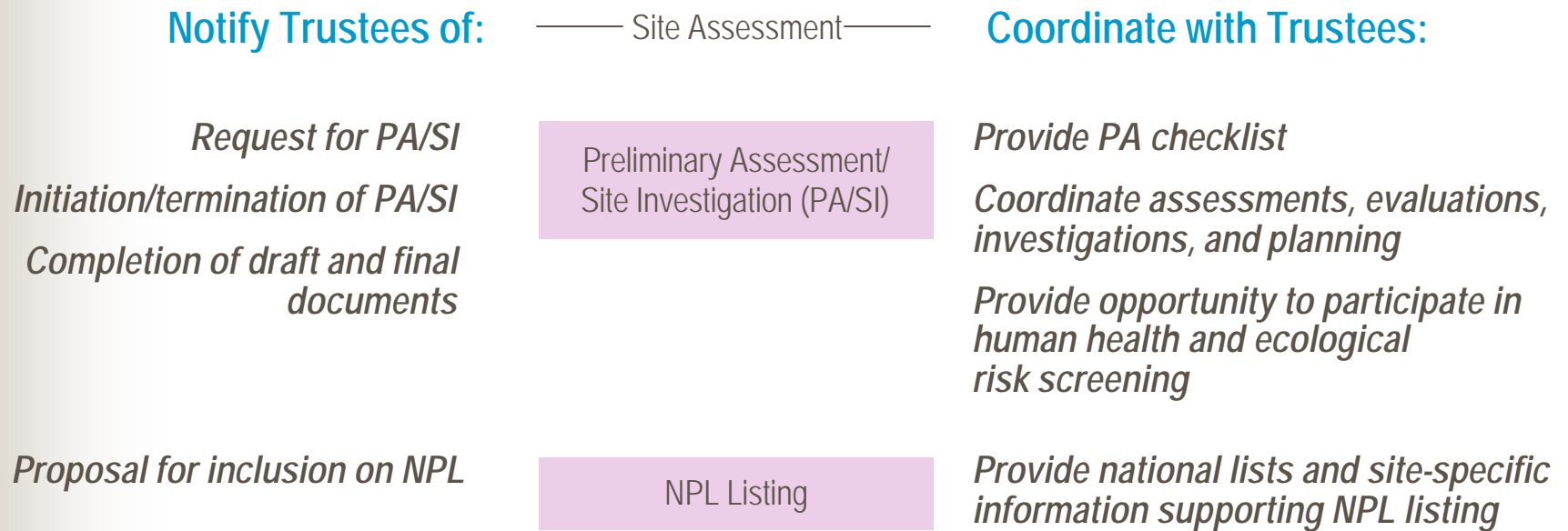
Coordinate with Trustees:

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

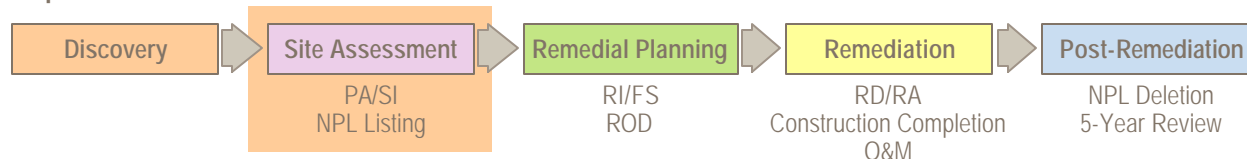
Superfund Remedial Actions:



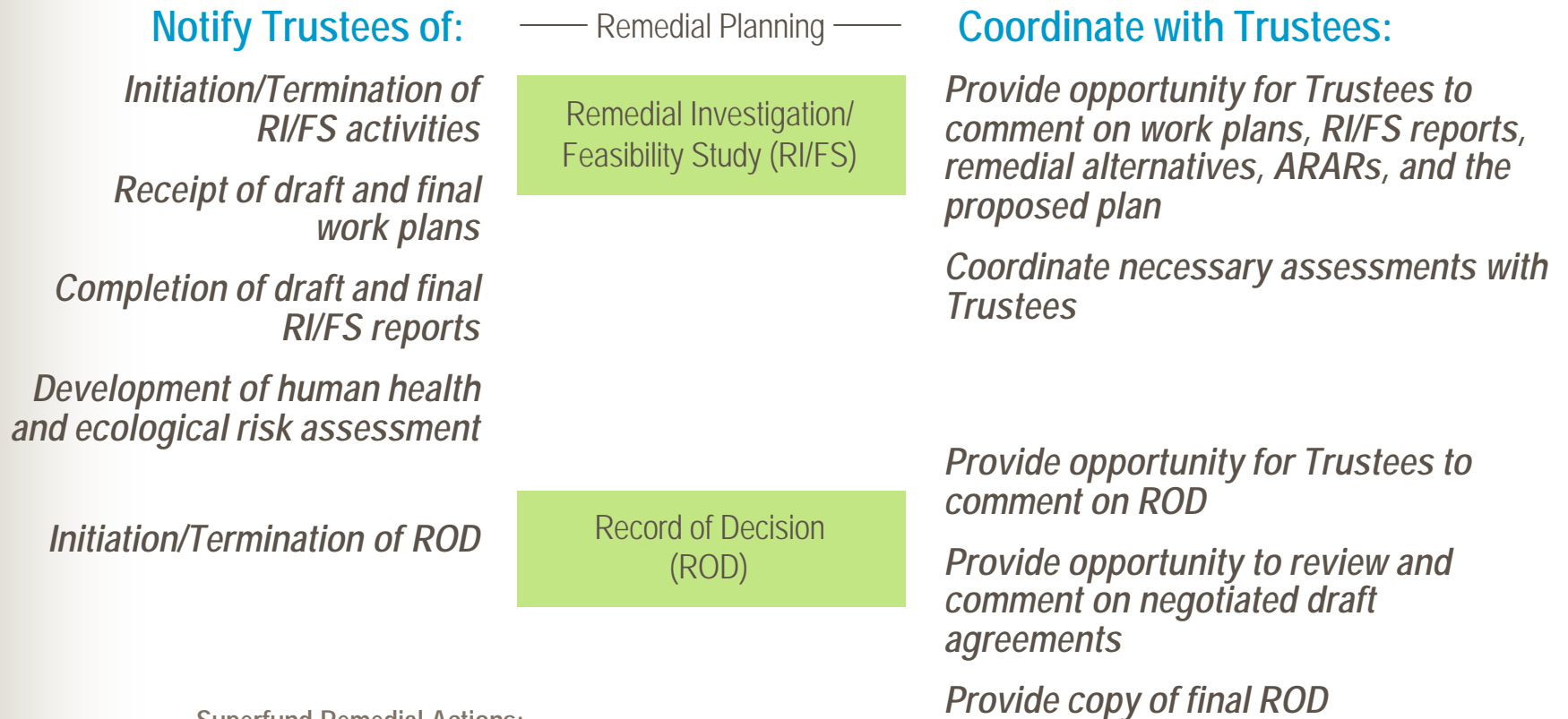
Superfund Remedial Actions: NRD Notification and Coordination



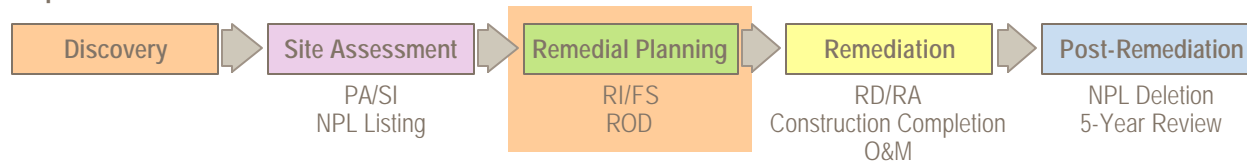
Superfund Remedial Actions:



Superfund Remedial Actions: NRD Notification and Coordination



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:

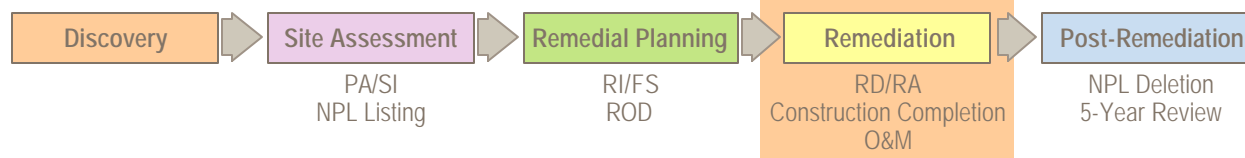
Provide opportunity to review draft work plan and RD/RA documents

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*

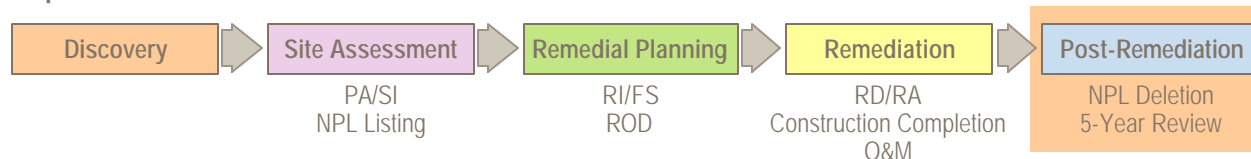
*Provide opportunity to comment
on draft close-out report*

*Provide copy of
Five-Year Review report*

Five-Year Review

*Provide copy of Five-Year Review
report*

Superfund Remedial Actions:



OPA Removals:

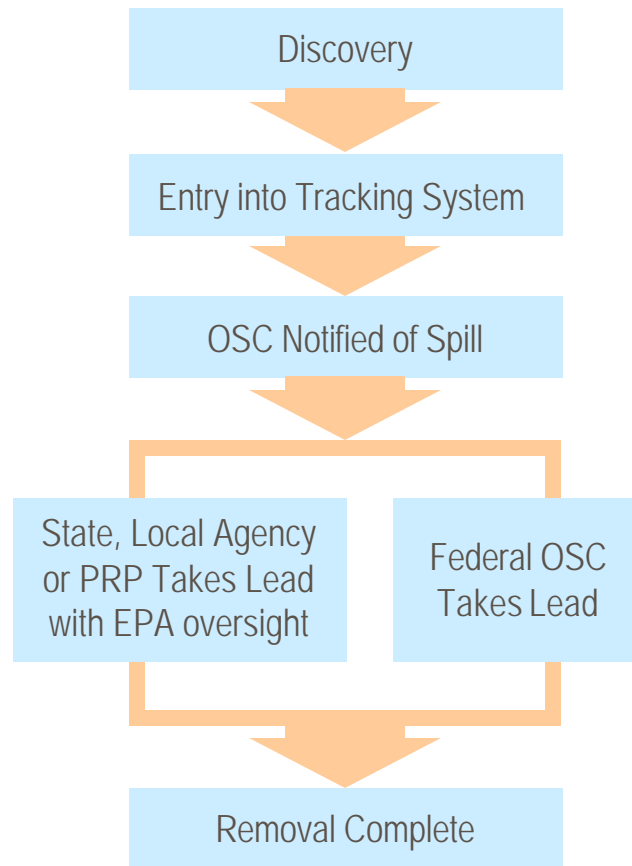
NRD Notification and Coordination

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)