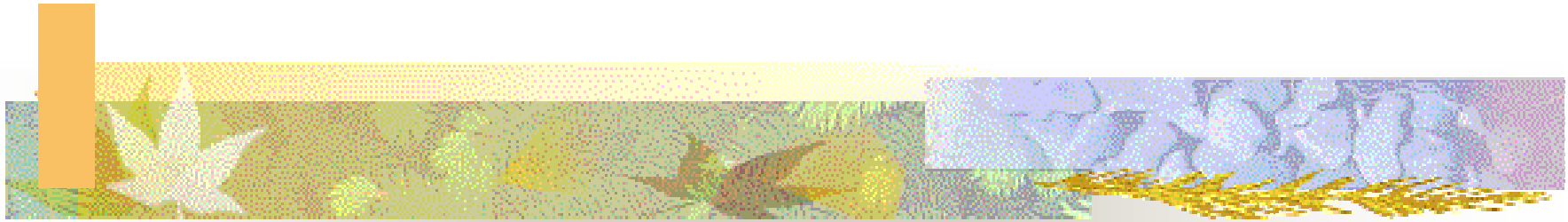


# CERCLA/OPA Notification and Coordination for Natural Resource Damages

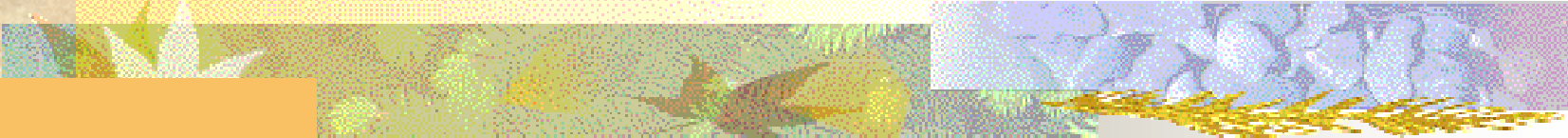


Larry Zaragoza, OERR  
(703) 603-8867



# Overview

- Statutory Background
- Who are the Trustees?
- Trustee Responsibilities
- EPA Responsibilities
- Notifying and Coordinating with Trustees
- How EPA and Trustees Work Together
- Summary



# General Goals of CERCLA/OPA Notification and Coordination

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



# Goals of Training

- Inform Remedial Project Managers of their important role in:
  - Notifying and coordinating with Natural Resource Trustees;
  - Helping Trustees to assess and restore damaged natural resources.



# Statutory Background



# Responding to Natural Resource Injury

## CERCLA and OPA

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



# Responding to Natural Resource Injury

## CERCLA and OPA

- The measure of natural resource damages (NRD) is:
  - Cost of restoring injured resources to their baseline condition;
  - Compensation for interim loss of injured resources pending recovery; and
  - Reasonable cost of damage assessment



# Who are the Trustees?





# Who are the Trustees?

- No one “owns” a natural resource
- Natural resources are held in trust for the public



# Who are the Trustees?

- Federal
- State
- Tribal
- Foreign (OPA only)



# Who are the Trustees?

## Federal Trustees

- Federal trustees are designated in Executive Order 12580 and the National Contingency Plan
- Include Secretaries of Agriculture, Commerce, Defense, Energy, Interior, and other agencies authorized to manage or protect natural resources



# Who are the Trustees?

## State Trustees

- Governor of each State designates State trustees



# Who are the Trustees?

## Tribal Trustees

- Designated by Tribal Chairmen
- Secretary of the Interior may act as Trustee at the Tribe's request



# Who are the Trustees?

## Foreign Trustees

- Foreign officials can choose officials to act as trustees under OPA
- Sue in Federal court if:
  - Spill has a strong connection to the U.S.; and
  - OPA recovery provided for in a treaty or executive agreement



# Trustee Responsibilities



# Trustee Responsibilities

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





# Trustee Responsibilities

## Conducting Assessments

- NRD assessments determine the extent of injury and determine ways of restoring and compensating for that injury
- Assessment methodologies have been prescribed by:
  - DOI (for CERCLA)
  - NOAA (for OPA)



# Trustee Responsibilities

## Conducting Restorations

- Restorations are primarily designed to return injured resources to baseline conditions
- Restorations can also compensate the public for the interim loss of injured resources until baseline conditions are re-established



# Trustee Responsibilities

## Conducting Restorations

- Monies recovered under CERCLA must be used for:
  - Restorations;
  - Replacement of the injured resource; or
  - Acquisition of an equivalent resource
- Monies recovered under OPA must be to reimburse or pay costs of the Trustee for assessment or restoration



# Trustee Responsibilities

## Cost Recovery

- Trustees can seek compensation for assessments/restorations by:
  - Suing PRPs in court;
  - Filing a claim for Trust Fund reimbursement (OPA only)



# EPA Responsibilities



# EPA Responsibilities

- EPA is not a Trustee
- EPA is not authorized to act on behalf of Trustees



# EPA Responsibilities

- Notifying Trustees of potential natural resources injuries
- Coordinating assessments, investigations, and planning with Trustees



# EPA Responsibilities

- 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





# EPA Responsibilities

## Sharing of Responsibilities with Coast Guard

- EPA responsible for contamination on land and inland waters
- Coast Guard primarily responsible for contamination involving the coastal zone, the Great Lakes, and deepwater ports



# Notifying and Coordinating with Trustees



# Goals of Notification and Coordination

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



# Notification and Coordination

## Providing Trustees with Needed Information

- Coordination between EPA and Trustees will assist the Trustees:
  - In making decisions about whether restoration is needed in light of response actions; and
  - Should generally result in more efficient negotiations and an opportunity to address all liabilities at the site simultaneously



# Notification and Coordination

## Providing Trustees with Needed Information

- Trustees given the opportunity to review and provide comment on EPA decision documents
- If any portion of these documents addresses restoration and/or compensation for injured resources - that portion of the document will be the sole responsibility of the Trustees



# Notification and Coordination

## Better Protection of Human Health and the Environment

- Trustees coordinate with EPA on assessments, investigations, and planning
- Trustees often have information and technical expertise about biological effects, as well as location of sensitive species and habitats
- Avoid danger that cleanup could cause additional NR damages



# Notification and Coordination

## Reduce Time for Settlement

- If natural resource liability not resolved in CERCLA settlement, Trustee may undertake natural resource damage assessment (NRDA) efforts
- NRDA used to identify additional actions (beyond response) to address natural resources



# Notification and Coordination

## Reduce Time for Settlement

- CERCLA - NRD claim must be filed within 3 years of:
  - Date of discovery of loss and its connection to the release; or
  - At NPL sites, completion of remedial action
- OPA - NRD claim must be filed within 3 years of damage assessment completion





# Notification and Coordination

## Reduce Time for Settlement

- Notify Federal Trustees of settlement negotiations with PRPs if the release may have resulted in injuries to resources under their Trusteeship
- Encourage participation of Federal trustees in settlement negotiations



# How EPA and Trustees Work Together



# EPA and Trustees: Mutual Notification and Coordination

- CERCLA
  - Removals
  - Remedial Actions
- OPA Removals



# CERCLA Notification and Coordination

- Promptly notify Trustees of potential injuries to natural resources from releases
- Coordinate assessments, investigations, and planning with Trustees
- Notify and encourage Trustee participation in settlement negotiations with PRPs

# Superfund Removals:

## NRD Notification and Coordination

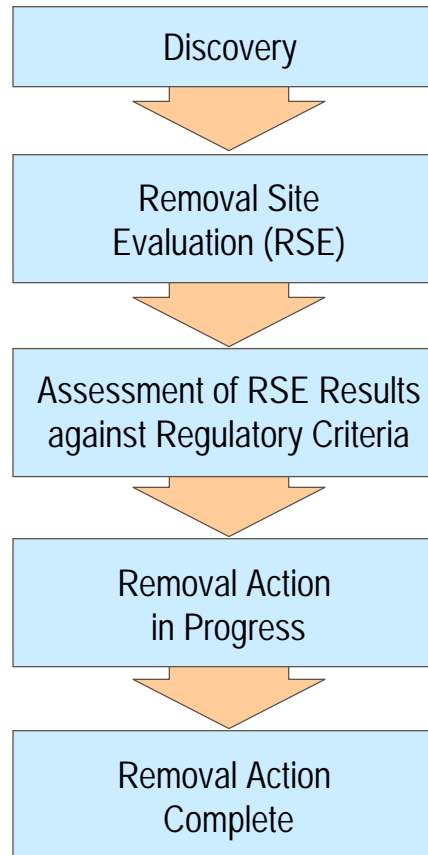
**Notify Trustees of:**  
*Releases or threatened releases*  
*Location of releases*

*RSE Results*

*Plans and negotiations*

*Removal action*  
*Adverse impacts of removal*  
*action*

*Completion of removal action*



**Coordinate with Trustees:**  
*Invite/encourage involvement*  
*in response*

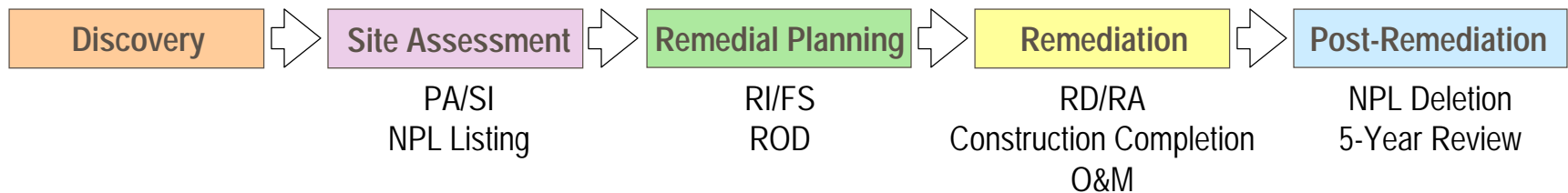
*Coordinate assessments,*  
*evaluations, and inspections*

*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

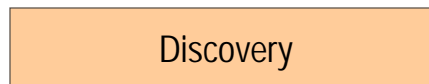
# Superfund Remedial Actions: NRD Notification and Coordination

## Notify Trustees of:

*Releases or threatened releases*

*Location of releases*

*Initiation/termination of discovery*



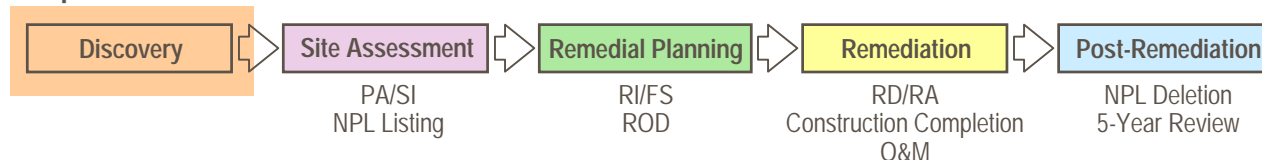
## Coordinate with Trustees:

*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)

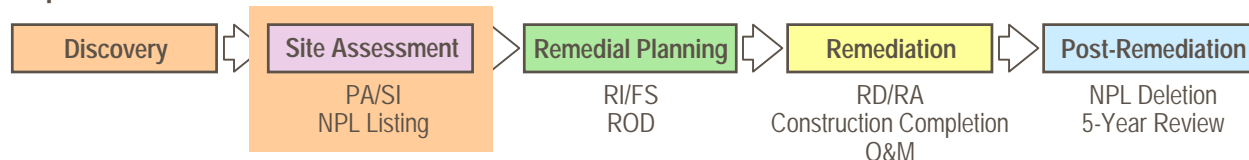
*Provide PA checklist*  
*Coordinate assessments, evaluations, investigations, and planning*  
*Provide opportunity to participate in human health and ecological risk screening*

*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*

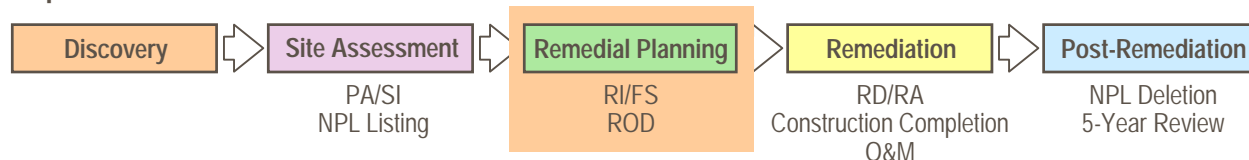
*Coordinate necessary assessments with Trustees*

*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

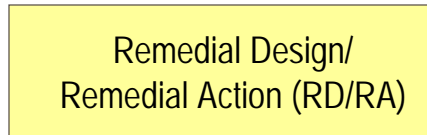
### Notify Trustees of:

Remediation

### Coordinate with Trustees:

*Initiation/Termination of RD/RA negotiations*

*Completion of draft and final work plans/documents*

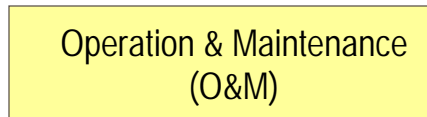
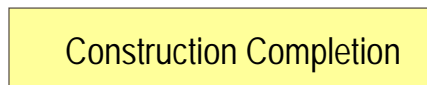


*Provide opportunity to review draft work plan and RD/RA documents*

*Invite/encourage Trustee involvement in planning response actions*

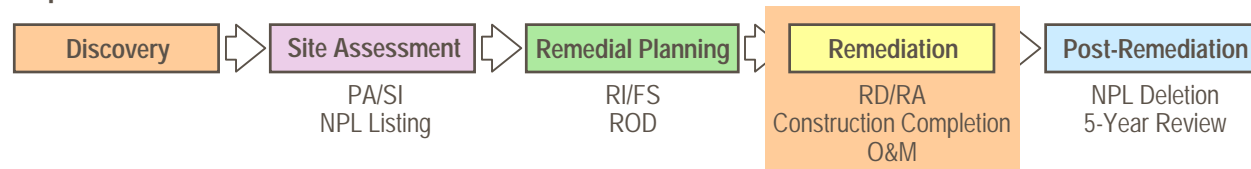
*Provide opportunity for Trustee to negotiate with PRPs*

*Construction Completion determination*



*Provide opportunity for commitment on O&M plans*

### Superfund Remedial Actions:



# Superfund Remedial Actions: NRD Notification and Coordination

## Notify Trustees of:

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

*Provide copy of  
Five-Year Review report*

— Post-Remediation —

NPL Deletion

Five-Year Review

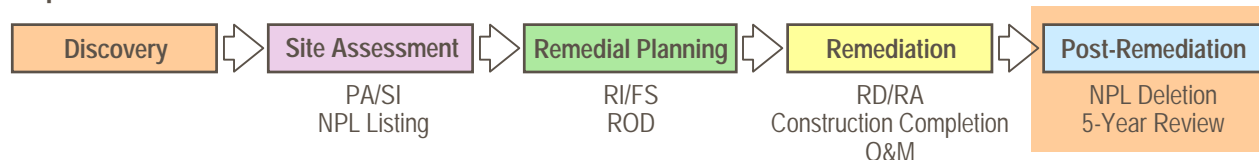
## Coordinate with Trustees:

*Provide opportunity to participate  
in close-out activities*

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

*Provide copy of Five-Year Review  
report*

### Superfund Remedial Actions:





# OPA Notification and Coordination

- Initiate a removal action when there is a discharge that may affect U.S. natural resources
- Consult with Trustees on removal actions

# OPA Removals:

## NRD Notification and Coordination

Notify Trustees of:

Coordinate with Trustees:

*Spills or threatened spills*  
*Location of spills*

*Invite/encourage involvement  
in response*

Discovery

Entry into Tracking System

OSC Notified of Spill

*Removal action*

State, Local Agency  
or PRP Takes Lead  
with EPA oversight

Federal OSC  
Takes Lead

*Coordinate assessments,  
evaluations, and inspections*

*Completion of removal action*

Removal Complete

*Provide opportunity to review  
and comment on documentation*



# Summary



# Summary

When Natural Resources are injured, Trustees are responsible for:

- Assessing the extent of injury
- Restoring the resources by:
  - Returning them to their baseline condition
  - Compensating the public for interim loss of resources



# Summary

## EPA is Responsible for:

- Notifying Trustees of potential natural resource injuries
- Coordinating assessments, investigations, and planning with the Trustees





# Summary

- EPA encourages participation by all affected Trustees
- Notification and coordination occurs throughout:
  - Superfund removals and remedial actions
  - OPA removals



# Summary

## Goals of EPA Notification and Coordination

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