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?

- 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

Coordinate with Trustees:
- Invite/encourage involvement in response

RSE Results
- Removal Site Evaluation (RSE)

Plans and negotiations
- Assessment of RSE Results against Regulatory Criteria

Removal action
- Removal Action in Progress
  - Adverse impacts of removal action
- Removal Action Complete
  - Completion of removal action

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

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: NRD Notification and Coordination

Notify Trustees of:

- Request for PA/SI
  - Initiation/termination of PA/SI
  - Completion of draft and final documents
- Proposal for inclusion on NPL

Coordinate with Trustees:

- Provide PA checklist
- Coordinate assessments, evaluations, investigations, and planning
- Provide opportunity to participate in human health and ecological risk screening
- Provide national lists and site-specific information supporting NPL listing

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
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

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: NRD Notification and Coordination

Notify Trustees of:
- Initiation/Termination of RD/RA negotiations
- Completion of draft and final work plans/documents
- Remediation
- Remedial Design/Remedial Action (RD/RA)

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
- Construction Completion
- Operation & Maintenance (O&M)

Provide opportunity for commitment on O&M plans

Superfund Remedial Actions:
- Discovery
- Site Assessment
- Remedial Planning
- Remediation
- Post-Remediation
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

协调与信托人:

- 提供参与告别活动的机会
- 提供机会对草案告别报告提出意见
- 提供五年审查报告副本

Superfund Remedial Actions:

1. 发现
2. 现场评估
3. 整改规划
4. 整改
5. 整改后

- PA/SI NPL listing
- RI/FS ROD
- RD/RA Construction Completion O&M
- NPL Deletion 5-Year Review
OPA Removals: OPA Removals: OPA Removals: OPA Removals:

NRD Notification and Coordination

Notify Trustees of:

- Spills or threatened spills
- Location of spills

Spills or threatened spills

Coordinate with Trustees:

- Invite/encourage involvement in response
- Coordinate assessments, evaluations, and inspections
- Provide opportunity to review and comment on documentation

State, Local Agency or PRP Takes Lead with EPA oversight

Entry into Tracking System

Remove Complete

Federal OSC Takes Lead

OSC Notified of Spill

Discovery

Removal action

Completion of removal action
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


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