CERCLA/OPA Notification and Coordination for Natural Resource Damages

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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
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
Removal Site Evaluation (RSE)
Assessment of RSE Results against Regulatory Criteria

Plans and negotiations
Removal Action in Progress

Removal action
Adverse impacts of removal action

Completion of removal action
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:
- Discovery
  - PA/SI
  - NPL Listing
- Site Assessment
- Remedial Planning
  - RI/FS
  - ROD
- Remediation
  - RD/RA
  - Construction Completion
  - O&M
- Post-Remediation
  - NPL Deletion
  - 5-Year Review

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

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

Proposal for inclusion on NPL

Superfund Remedial Actions:

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

- Discovery
- Site Assessment
- Remedial Planning
- Remediation
- Post-Remediation

PA/SI
NPL Listing
RI/FS
ROD
RD/RA
Construction Completion
O&M
NPL Deletion
5-Year Review
Superfund Remedial Actions:
NRD Notification and Coordination

Notify Trustees of:

Initiation/Termination of RD/RA negotiations
Completion of draft and final work plans/documents

Coordinate with Trustees:

Remedial Design/Remedial Action (RD/RA)
Remainder 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

Operation & Maintenance (O&M)
Provide opportunity for commitment on O&M plans

Superfund Remedial Actions:

Discovery → Site Assessment → Remedial Planning → Remediation → Post-Remediation
PA/NI NPL Listing → RI/FS ROD → RD/RA Construction Completion O&M → NPL Deletion 5-Year Review
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

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:

- Discovery
- Site Assessment
- Remedial Planning
- Remediation
- Post-Remediation

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

Diagram:

1. Discovery
2. Entry into Tracking System
3. OSC Notified of Spill
   - State, Local Agency or PRP Takes Lead with EPA oversight
   - Federal OSC Takes Lead
4. Removal Complete
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