

Subpart D—Payments and Subrogation

§ 307.40 Payment of approved claims.

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

§ 307.41 Subrogation of claimants' rights to the Fund.

(a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.

(b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts.

The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the PDD shall expressly require their contractors to provide this cost recovery assistance.

§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA section 122.

(a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.

(b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the Consent Decree or order regarding the site cleanup entered into by EPA and the claimant.

APPENDIX A TO PART 307—APPLICATION FOR PREAUTHORIZATION OF A CERCLA RESPONSE ACTION



United States Environmental Protection Agency
Washington, DC 20460

Form Approved. OMB No. 2050-0106
Expiration Date 12-31-94

Application for Preauthorization of a CERCLA Response Action

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Applicant(s): B. Name of Site: C. Eligibility:
 Individual PRP
 Firm Other
 Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known): B. Location of the release:
C. Is the release or threat of release at an NPL site? Yes No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? Yes If yes, provide the date and the manner of the notice:
 No If no, explain why not:

III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? Yes No
If yes, provide date of notice letter:

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? Yes No
If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? Yes No
If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? Yes No
If yes, attach a list of known PRPs and describe the results of any contacts with them.
If no, describe efforts to identify PRPs.

IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

B. Identify which provisions of the National Contingency Plan (NCP) are applicable for the proposed types of response activity (e.g., removal, RI/FS) and describe how the proposed action will be conducted in accordance with those provisions.

- C. Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:
1. Worker training, health and safety, and the safety of the public.
 2. Community relations plan
 3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? Yes No If no, explain.

VII. Relates to Long-Term Operations and Maintenance (O&M) (if applicable)

- I will provide a bond or other financial assurance for O&M. The State has agreed to provide for O&M.

Attach documentation to support your assertion.

VIII. Relates to Projected Costs

- | | | | | | | | | | | | |
|---|----------|----------|----------|----------|----------|----------|----------|----------|-------|----------|---|
| <p>A. Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">1. _____</td> <td style="width: 40%;">\$ _____</td> </tr> <tr> <td>2. _____</td> <td>\$ _____</td> </tr> <tr> <td>3. _____</td> <td>\$ _____</td> </tr> <tr> <td>4. _____</td> <td>\$ _____</td> </tr> <tr> <td style="text-align: center;">TOTAL</td> <td>\$ _____</td> </tr> </table> | 1. _____ | \$ _____ | 2. _____ | \$ _____ | 3. _____ | \$ _____ | 4. _____ | \$ _____ | TOTAL | \$ _____ | <p>B. Provide a proposed schedule for the submission of claims.</p> |
| 1. _____ | \$ _____ | | | | | | | | | | |
| 2. _____ | \$ _____ | | | | | | | | | | |
| 3. _____ | \$ _____ | | | | | | | | | | |
| 4. _____ | \$ _____ | | | | | | | | | | |
| TOTAL | \$ _____ | | | | | | | | | | |

IX. Relates to Project Management

- A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.
- B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.
- C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.
- D. Describe your proposed procurement procedures.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant _____

Date _____

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of \$2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both (See 62 Stat. 696, 749, 18 USC 287, 1601)

**INSTRUCTIONS TO APPLY
FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM**

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 196 and 330 hours – averaging 256 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses:

<p>Chief, Information Policy Branch, PM-223 U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460</p>	and	<p>Office of Information and Regulatory Affairs Office of Management and Budget 726 Jackson Place, N.W. Washington, D.C. 20503 Attention: Desk Officer for EPA</p>
--	-----	--

The applicant bears the burden for demonstrating that scarce Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to:
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

- I. A. Provide the name, title and address of the person(s) submitting this application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.
- B. Self-explanatory.
- C. Check all that apply.
- D. "Agent" refers to any duly authorized agent, executor, administrator, or other legal representative of the applicant. If this preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20).
- II. A-C. Self-explanatory.
- D. This description must include the following information: the type of vessel and facility; the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102); and a description of the surrounding population and/or environmental risk.
- E. Self-explanatory.
- III. A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).
- B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:
 - 1) the owner or operator of a vessel or facility,
 - 2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
 - 3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance, or
 - 4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.
- C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.
- D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.
- IV. A. Self-explanatory.
- B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.
- C. Worker/community health and safety plan. The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.
Community Relations Plan. The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.
ABAPs. See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv).
- V. Include a discussion of financial and technical/scientific capabilities.
- VI. If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.
- VII. Self-explanatory.
- VIII. A. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In addition, the applicant must explain why each of the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable according to Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR sections 31.1, 31.2 (profit-making organizations).
- B. A proposed schedule for the submission of claims should be provided. Applicants are encouraged to propose reimbursement based upon cash-flow considerations. The goal of an applicant should be to balance major capital expenditures and the completion of discussed tasks against the number and frequency of claims.
- IX. Self-explanatory.

APPENDIX B TO PART 307—CLAIM FOR CERCLA RESPONSE ACTION

 <p>United States Environmental Protection Agency Washington, DC 20460</p> <p>Claim for CERCLA Response Action</p>	<p>Form Approved. OMB No. 2050-0106 Expiration Date 12-31-94</p>	
<p><small>General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.</small></p>		
I. Introductory Material		
<p>A. Name, Title and Address of Claimant(s):</p>	<p>B. Name of Site:</p>	<p>C. Pre-authorization Decision Document (PDD): Number _____ Date _____ (attach copy)</p>
<p>D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:</p>		
II. Relates to Potentially Responsible Parties (PRPs)		
<p>A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.</p>	<p>B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)? <input type="checkbox"/> Yes <input type="checkbox"/> No Attach names, addresses and dates of presentation. Describe any responses.</p>	
<p>C. If a partial settlement was reached with PRPs after presentation of the claim as described in II B, did EPA approve any release? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, explain.</p>	<p>D. Is there any action pending in court regarding this site or response actions? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain.</p>	
III. Relates to Claims for a Preauthorized Phase		
<p>A. Is this a claim for a preauthorized phase? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, provide the completion date of the subject response action and skip B, C, D and E.</p>		
<p>B. How many claims are authorized in the PDD?</p>	<p>C. For which preauthorized phase are you filing a claim at this time?</p>	
<p>D. Is completion of the next preauthorized phase on schedule? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, explain.</p>	<p>E. Estimated date for submitting claim for the next preauthorized phase.</p>	
IV. Relates to Response Action		
<p>A. Was the response/preauthorized phase completed in accordance with the PDD? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, skip B</p>		
<p>B. Was a modification to the preauthorization request submitted to and approved by EPA? <input type="checkbox"/> Yes -- Supply number and date _____ <input type="checkbox"/> No -- Explain how and why response differs from PDD.</p>		
<p>C. Was the response completed in accordance with the Statement of Work and the Work Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, skip D</p>		
<p>D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.</p>		
<p>E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD). Provide documentation of such adherence in an appendix.</p>		
<p>F. Provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.</p>		

V. Relates to Amount of Response Claim

- A Provide the following summary information
- Re: Current Claim Submission
 - Type of Response Activity(ies) Represented by Claim - _____
 - Total Eligible Response Costs Represented by Claim - \$ _____
 - Percentage of Claimed Costs to Total Response Costs - _____ %
 - Dollar Amount of Reimbursement Claimed - \$ _____
 - Re: Any Past Claim Awards Under the Subject PDD
 - Number of Previous Claims - _____
 - Total Sum of Previous Awards - \$ _____
 - Re: PDD
 - Reimbursement Cap Set For All Claim Submissions - \$ _____

B Provide the following breakdown of the eligible response costs asserted in this claim submission

Labor	\$ _____
Travel	\$ _____
Equipment	\$ _____
Materials and Supplies	\$ _____
Contractual Services	\$ _____
Other Direct Costs	\$ _____
Indirect Costs	\$ _____

TOTAL RESPONSE COSTS \$ _____

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

C Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant _____ Date _____

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction) or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of \$2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749, 18 USC 287, 1001)

**INSTRUCTIONS FOR SUBMITTING A CLAIM
FOR A CERCLA RESPONSE ACTION**

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307.

The public reporting burden for the completion of this form is estimated to vary between 25 and 59 hours -- averaging 42 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223 U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460	and	Office of Information and Regulatory Affairs Office of Management and Budget 726 Jackson Place, N.W. Washington, D.C. 20503 Attention: Desk Officer for EPA
--	-----	---

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality.

When completed, this form should be sent to: U.S. Environmental Protection Agency
 401 M Street, S.W.
 Washington, D.C. 20460
 Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

- I A Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.
- B Provide the site name as it appears on the PDD.
- C Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix. If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided.
- D "Agent" refers to any duly authorized agent, executor, administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.
- II A Self-explanatory.
- B Pursuant to 40 CFR Section 307.33(e), if 1) the first claim was denied by the responsible party or not responded to within 60 days, and 2) EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered a denial of every subsequent claim. The claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's agreement when the claimant is notified in writing regarding the award or denial of the claim.
- C-D Self-explanatory.
- III-IV Self-explanatory.
- V A Self-explanatory.
- B This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes), OMB Circular A-122 (non-profit organizations), 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.
- C Contractual services will vary depending on the response action performed and the operative unit represented by the claim submission. Typical categories of response activity include:
 - Security
 - Groundwater sampling
 - Construction
 - Administrative Expenses
 - Materials
 - Operation & Maintenance.

APPENDIX C TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS, WHICH IS TO BE PLACED IN THE FEDERAL REGISTER PREAMBLE WHENEVER SITES ARE ADDED TO THE FINAL NPL

Limitations on the Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or “preauthorization,” from EPA.

APPENDIX D TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS WHICH IS TO BE PLACED IN PUBLIC DOCKETS

Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Sections 111(a)(2) and 122(b)(1) of CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes can receive funding for response activities through other authorities of section 111(a) or section 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan

(NCP), 40 CFR part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or “preauthorization,” from EPA. This means that before response work is initiated, the party must:

- (1) Notify EPA of its intent to file a claim;
- (2) Demonstrate that the release merits priority consideration;
- (3) Propose activities to remedy the release that can be carried out consistent with the NCP; and
- (4) Demonstrate the capabilities necessary to carry out such activities in a safe and effective manner.

In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a Consent Decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307. Additional information can be obtained by contacting Phyllis Anderson, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 603-8971, or the RCRA/CERCLA Hotline, (800) 424-9346 (or (703) 920-9810 in the Washington, DC metropolitan area).

[58 FR 5475, Jan. 21, 1993, as amended at 65 FR 47325, Aug. 2, 2000]

PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES

Subpart A—General Information

Sec.

- 310.1 What is the purpose of this part?
- 310.2 What is the statutory authority for this part?
- 310.3 What terms have specific definitions?
- 310.4 What abbreviations should I know?

Subpart B—Provisions

WHO CAN BE REIMBURSED?

- 310.5 Am I eligible for reimbursement?
- 310.6 Are states eligible?
- 310.7 Can more than one local agency or government be reimbursed for response to the same incident?

WHAT CAN BE REIMBURSED?

- 310.8 Can EPA reimburse the entire cost of my response?