

Environmental Protection Agency

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must follow the requirements in the Interim Final Rule entitled, "New Restrictions on Lobbying" published on February 26, 1990.

(b) *CERCLA Assurances*. Before a Cooperative Agreement for remedial action can be awarded, the State must provide EPA with written assurances as specified below.

(1) *Operation and maintenance*. The State must provide an assurance that it will assume responsibility for the operation and maintenance (O&M) of implemented CERCLA-funded remedial actions for the expected life of each such action. In addition, even if a political subdivision is designated as being responsible for O&M, the State must guarantee that it will assume any or all O&M activities in the event of default by the political subdivision.

(2) *Cost sharing*. The State must provide assurances for cost sharing as follows:

(i) *Ten percent*. Where a facility was privately operated, whether privately or publicly owned, at the time of disposal, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Fifty percent*. Where a facility was publicly operated by a State or political subdivision at the time of disposal of hazardous substances at the facility, the State must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(3) *Twenty-year waste capacity*. The State must assure EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of the response agreement. A remedial response action cannot be funded unless this assurance is provided consistent with § 300.510 of the NCP. EPA will determine whether the State's assurance is adequate.

(4) *Off-site storage, treatment, or disposal*. If off-site storage, destruction, treatment, or disposal is required, the

State must assure the availability of a hazardous waste disposal facility that is in compliance with subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The lead agency of the State must provide the notification required at § 35.6120, if applicable.

(5) *Real property acquisition*. If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f). The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

[55 FR 23007, June 5, 1990, as amended at 59 FR 35853, July 14, 1994]

§ 35.6110 Indian Tribe-lead remedial Cooperative Agreements.

(a) *Application requirements*. The Indian Tribe must comply with all of the requirements described in § 35.6105(a) and, if appropriate, § 35.6105(b)(5) of this subpart. Indian tribes are not required to comply with the intergovernmental review requirements included in the "Application for Federal Assistance" (SF-424). Consistent with the NCP (§ 300.510(e)(2)), this rule does not address whether Indian tribes are States for the purpose of CERCLA section 104(c)(9).

(b) *Cooperative Agreement requirements*. (1) The Indian tribe must comply with all terms and conditions in the Cooperative Agreement.

(2) If EPA determines as part of the remedy selection process that an interest in real property must be acquired in order to conduct the site-specific response action, the Indian tribe will be required, to the extent of its legal authority, to assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds, including any interest in property that is acquired to ensure the reliability of institutional controls restricting the use

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of that property. (See §35.6400 of this subpart regarding information on property title and interest requirements.)

(3) If it is designated the lead for remedial action, the Indian Tribe must provide the notification required at §35.6120, substituting the term Indian Tribe for the term State in that section, and out-of-jurisdiction for out-of-State.

§ 35.6115 Political subdivision-lead remedial Cooperative Agreements.

(a) *General.* If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume the lead responsibility for the remedial activity, or a portion thereof, at a site. The State and political subdivision must enter into a three-party Superfund State Contract (SSC) with EPA before a political subdivision can enter into a Cooperative Agreement.

(b) *Three-party Superfund State Contract requirements.* The three-party SSC must specify the responsibilities of the signatories. By signing the SSC, the State and the political subdivision agree to follow the appropriate administrative requirements regarding SSCs described in §§35.6805, 35.6815, and 35.6820 of this subpart. Furthermore, EPA, the State, and the political subdivision agree that the SSC:

(1) Specifies the substantial and meaningful involvement of the State as required by section 121(f)(1) of CERCLA, as amended; and

(2) Includes the State's CERCLA section 104 assurances, if the political subdivision is designated the lead for remedial action.

(c) *Political subdivision Cooperative Agreement requirements—(1) Application requirements.* To receive a remedial Cooperative Agreement, the political subdivision must prepare an application which includes the documentation described in §35.6105 (a)(1) through (a)(6).

(2) *Cooperative Agreement requirements.* The political subdivision must comply with all terms and conditions in the Cooperative Agreement. If it is designated the lead for remedial action, the political subdivision must provide the notification required at §35.6120, substituting the term “political sub-

division” for the term “State” in that section.

§ 35.6120 Notification of the out-of-State or out-of-Indian Tribal jurisdiction transfer of CERCLA waste.

(a) The recipient must provide written notification of off-site shipments of CERCLA waste from a site to an out-of-State or out-of-Indian Tribal jurisdiction waste management facility to:

(1) The appropriate State environmental official for the State in which the waste management facility is located; and/or

(2) The appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located; and

(3) The EPA Award Official.

(b) The notification of off-site shipments does not apply when the total volume of all such shipments from the site does not exceed 10 cubic yards.

(c) The notification must be in writing and must provide the following information, where available:

(1) The name and location of the facility to which the CERCLA waste is to be shipped;

(2) The type and quantity of CERCLA waste to be shipped;

(3) The expected schedule for the shipments of the CERCLA waste; and

(4) The method of transportation of the CERCLA waste.

(d) The recipient must notify the State or Indian Tribal government in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the CERCLA waste to another facility within the same receiving State, or to a facility in another State.

(e) The recipient must provide relevant information on the off-site shipments, including the information in paragraph (c) above, as soon as possible after the award of the contract and, where practicable, before the CERCLA waste is actually shipped.

ENFORCEMENT COOPERATIVE AGREEMENTS

§ 35.6145 Eligibility for enforcement Cooperative Agreements.

Pursuant to CERCLA section 104(d), States, political subdivisions thereof,