

**§ 35.6115**

**40 CFR Ch. I (7-1-04 Edition)**

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,

## Environmental Protection Agency

## § 35.6155

and Indian Tribes may apply for enforcement Cooperative Agreements. To be eligible for an enforcement Cooperative Agreement, the State, political subdivision or Indian Tribe must demonstrate that it has the authority, jurisdiction, and the necessary administrative capabilities to take an enforcement action(s) to compel PRP cleanup of the site, or recovery of the cleanup costs. To accomplish this, the State, political subdivision or Indian Tribe, respectively, must submit the following for EPA approval:

(a) A letter from the State Attorney General, or comparable local official (of a political subdivision) or comparable Indian Tribal official, certifying that it has the authority, jurisdiction, and administrative capabilities that provide a basis for pursuing enforcement actions against a PRP to secure the necessary response;

(b) A copy of the applicable State, local (political subdivision) or Indian Tribal statute(s) and a description of how it is implemented;

(c) Any other documentation required by EPA to demonstrate that the State, local (political subdivision) or Indian Tribal government has the statutory authority, jurisdiction, and administrative capabilities to perform the enforcement activity(ies) to be funded under the Cooperative Agreement.

### **§ 35.6150 Activities eligible for funding under enforcement Cooperative Agreements.**

An enforcement Cooperative Agreement application from a State, political subdivision or Indian Tribe may request funding for the following enforcement activities:

(a) PRP searches;

(b) Issuance of notice letters and negotiation activities;

(c) Administrative and judicial enforcement actions taken under State or Indian Tribal law;

(d) Management assistance and oversight of PRPs during Federal enforcement response;

(e) Oversight of PRPs during a State, political subdivision or Indian Tribe enforcement response contingent on the applicant having taken all necessary action to compel PRPs to fund

the oversight of cleanup activities negotiated under the recipient's enforcement authorities. If the State, political subdivision, Indian Tribe or EPA cannot obtain PRP commitment to fund such oversight activities, then these activities will be considered eligible for CERCLA funding under an enforcement Cooperative Agreement.

### **§ 35.6155 State, political subdivision or Indian Tribe-lead enforcement Cooperative Agreements.**

(a) The State, political subdivision or Indian Tribe must comply with the requirements described in § 35.6105 (a)(1) through (a)(6) of this subpart, as appropriate.

(b) The CERCLA section 104 assurances described in § 35.6105(b) are not applicable for enforcement Cooperative Agreements.

(c) Before an enforcement Cooperative Agreement is awarded, the State, political subdivision or Indian Tribe must:

(1) Assure EPA that it will notify and consult with EPA promptly if the recipient determines that its laws or other restrictions prevent the recipient from acting consistently with CERCLA; and

(2) If the applicant is seeking funds for oversight of PRP cleanup, the applicant must:

(i) Demonstrate that the proposed Statement of Work or cleanup plan prepared by the PRP satisfies the recipient's enforcement goals for those instances in which the recipient is seeking funding for oversight of PRP cleanup activities negotiated under the recipient's own enforcement authorities; and

(ii) Demonstrate that the PRP has the capability to attain the goals set forth in the plan;

(iii) Demonstrate that it has taken all necessary action to compel PRPs to fund the oversight of cleanup activities negotiated under the recipient's enforcement authorities.