

**§ 35.6060**

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EPA, but must be made available to EPA upon request.

(ii) The recipient's health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is an Indian Tribe exempt from OSHA requirements.

(2) *Quality assurance.* (i) The recipient must comply with the quality assurance requirements described in 40 CFR 31.45.

(ii) The recipient must have an EPA-approved non-site-specific quality assurance plan in place before beginning field work. The recipient must submit the plan to EPA in adequate time (generally 45 days) for approval to be granted before beginning field work.

(iii) The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

**§ 35.6060 Political subdivision-lead pre-remedial Cooperative Agreements.**

(a) If the Award Official determines that a political subdivision's lead involvement in pre-remedial activities would be more efficient, economical and appropriate than that of a State, based on the number of sites to be addressed and the political subdivision's history of program involvement, a pre-remedial Cooperative Agreement may be awarded under this section.

(b) The political subdivision must comply with all of the requirements described in § 35.6055.

**§ 35.6070 Indian Tribe-lead pre-remedial Cooperative Agreements.**

The Indian Tribe must comply with all of the requirements described in § 35.6055, except for the intergovernmental review requirements included in the "Application for Federal Assistance" (SF-424).

REMEDIAL RESPONSE COOPERATIVE AGREEMENTS

**§ 35.6100 Eligibility for remedial Cooperative Agreements.**

States, Indian Tribes, and political subdivisions may apply for remedial response Cooperative Agreements.

**§ 35.6105 State-lead remedial Cooperative Agreements.**

To receive a State-lead remedial Cooperative Agreement, the applicant must submit the following items to EPA:

(a) *Application form*, as described in § 35.6055(a). Applications for additional funding need to include only the revised pages. The application must include the following:

(1) *Budget sheets* (SF-424A) displaying costs by site, activity and operable unit, as applicable.

(2) *A Project narrative statement*, including the following:

(i) *A site description*, including a discussion of the location of each site, the physical characteristics of each site (site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at each site, and response actions still required at each site;

(ii) *A site-specific Statement of Work (SOW)*, including estimated costs per task, and a standard task to ensure that a sign is posted at the site providing the appropriate contacts for obtaining information on activities being conducted at the site, and for reporting suspected criminal activities;

(iii) *A statement designating a lead site project manager among appropriate State offices.* This statement must demonstrate that the lead State agency has conducted coordinated planning of response activities with other State agencies. The statement must identify the name and position of those individuals who will be responsible for coordinating the State offices;

(iv) *A site-specific Community Relations Plan* or an assurance that field work will not begin until one is in place. The Regional community relations coordinator must approve the Community Relations Plan before the recipient begins field work. The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan;

(v) *A site-specific health and safety plan*, or an assurance that the applicant will have a final plan before starting field work. Unless specifically

waived by the award official, the applicant must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. The site-specific health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled, "Hazardous Waste Operations and Emergency Response," unless the recipient is an Indian Tribe exempt from OSHA requirements;

(vi) *Quality assurance—(A) General.* If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 40 CFR 31.45.

(B) *Quality assurance plan.* The applicant must have a separate quality assurance project plan and/or sampling plan for each site to be covered by the Cooperative Agreement. The applicant must submit the quality assurance project plan and the sampling plan, which incorporates results of any site investigation performed at that site, to EPA with its Cooperative Agreement application. However, at the option of the EPA award official with program concurrence, the applicant may submit with its application a schedule for developing the detailed site-specific quality assurance plan (generally 45 days before beginning field work). Field work may not begin until EPA approves the site-specific quality assurance plan.

(C) *Split sampling.* The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

(vii) *A schedule of deliverables* to be prepared during response activities.

(3) *Other applicable forms and information* authorized by 40 CFR 31.10.

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

(1) *Operation and maintenance.* The State must provide an assurance that it will assume responsibility for all future operation and maintenance of CERCLA-funded remedial actions for the expected life of each such action as required by CERCLA section 104(c) and

addressed in 40 CFR 300.510(c)(1) of the NCP. In addition, even if a political subdivision is designated as being responsible for operation and maintenance, the State must guarantee that it will assume any or all operation and maintenance 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, whether privately or publicly owned, was not operated by the State or political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Fifty percent or more.* Where a facility was operated by a State or political subdivision either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the State must provide 50 percent (or such greater share as EPA may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) 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 action cannot be funded unless this assurance is provided consistent with 40 CFR 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

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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) of the NCP. The State must provide this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State must guarantee that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision disposes of the transferred real property, it shall comply with the requirements for real property in 40 CFR 31.31(c)(2). (See § 35.6400 for additional information on real property acquisition requirements.)

### § 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). 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 (40 CFR 300.510(e)(2)), this subpart 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 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-an-Indian-Tribal-

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area-of-Indian-country" for "out-of-State".

(3) Indian Tribes are not required to share in the cost of CERCLA-funded remedial actions.

### § 35.6115 Political subdivision-lead remedial Cooperative Agreements.

(a) *General.* If the State concurs, EPA may allow a political subdivision with the necessary capabilities and jurisdictional authority to conduct remedial response activities at a site. EPA will award the political subdivision a Cooperative Agreement to conduct remedial response and enter into a parallel Superfund State Contract with the State, if required (See § 35.6800, when a Superfund State Contract is required). The political subdivision may also be a signatory to the Superfund State Contract. The political subdivision must submit to the State a copy of all reports provided to EPA.

(b) *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)(3).

(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 subdivision" for the term "State" in that section.

### § 35.6120 Notification of the out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country 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-an-Indian-Tribal-area-of-Indian-country waste management facility to:

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

(2) An appropriate official of an Indian Tribe in whose area of Indian