

§ 35.6110

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

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country 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) of this section, 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, 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, certi-

fying 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)(3), as appropriate.