

## Environmental Protection Agency

## § 35.6815

(2) Any change(s) in the SSC must be agreed to, in writing, by the signatories, except as provided elsewhere in the SSC, and must be reflected in all response agreements affected by the change(s).

(m) *List of support agency Cooperative Agreements* that are also in place for the site.

(n) *Litigation*, which describes EPA's right to bring an action against any party under section 106 of CERCLA to compel cleanup, or for cost recovery under section 107 of CERCLA.

(o) *Sanctions for failure to comply with SSC terms*, which states that if the signatories fail to comply with the terms of the SSC, EPA may proceed under the provisions of section 104(d)(2) of CERCLA and may seek in the appropriate court of competent jurisdiction to enforce the SSC or to recover any funds advanced or any costs incurred due to a breach of the SSC. Other signatories to the SSC may seek remedies in the appropriate court of competent jurisdiction.

(p) *Site access*. The State or political subdivision or Indian Tribe is expected to use its own authority to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to the SSC.

(q) *Final inspection of the remedy*. The SSC must include a statement that following completion of the remedial action, the State and EPA shall jointly inspect the project to determine that the remedy is functioning properly and is performing as designed.

(r) *Exclusion of third-party benefits*, which states that the SSC is intended to benefit only the signatories of the SSC, and extends no benefit or right to any third party not a signatory to the SSC.

(s) *Any other provision* deemed necessary by all parties to facilitate the response activities covered by the SSC.

(t) *State review*. The State or Indian Tribe must review and comment on the response actions pursuant to the SSC. Unless otherwise stated in the SSC, all time frames for review must follow those prescribed in the NCP (40 CFR part 300).

(u) *Responsible party activities*, which states that if a Responsible Party takes over any activities at the site, the SSC will be modified or terminated, as appropriate.

(v) *Out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country transfers of CERCLA waste*, which states that, unless otherwise provided for by EPA or a political subdivision, the State or Indian Tribe must provide the notification requirements described in § 35.6120.

### § 35.6815 Administrative requirements.

In addition to the requirements specified in § 35.6805, the State and/or political subdivision must comply with the following:

(a) *Financial administration*. The State and/or political subdivision must comply with the following requirements regarding financial administration:

(1) *Payment*. The State may pay for its share of the costs of the response activities in cash or credit. As appropriate, specific credit provisions should be included in the SSC consistent with the requirements described in § 35.6285(c). The State may not pay for its cost share using in-kind services, unless the State has entered into a support agency Cooperative Agreement with EPA. The use of the support agency Cooperative Agreement as a vehicle for providing cost share must be documented in the SSC. If the political subdivision agrees to provide all or part of the State's cost share pursuant to a political subdivision-lead Cooperative Agreement, the political subdivision may pay for those costs in cash or in-kind services under that agreement. The use of a political subdivision-lead Cooperative Agreement as a vehicle for providing cost share must also be documented in the SSC. The specific payment terms must be documented in the SSC pursuant to § 35.6805.

(2) *Collection of amounts due*. The State and/or political subdivision must comply with the requirements described in 40 CFR 31.52(a) regarding collection of amounts due.

(3) *Failure to comply with negotiated payment terms*. Failure to comply with negotiated payment terms may be construed as default by the State on its required assurances, even if the political

subdivision is responsible for providing all or part of the cost share. (See § 35.6805(i)(5).)

(b) *Personal property.* The State, Indian Tribe, or political subdivision is required to accept title. The following requirements apply to equipment used as all or part of the remedy:

(1) *Fixed in-place equipment.* EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(2) *Equipment that is an integral part of services to individuals.* EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and functional.

(c) *Reports.* The State and/or political subdivision or Indian Tribe must comply with the following requirements regarding reports:

(1) *EPA-lead.* The nature and frequency of reports between EPA and the State or Indian Tribe will be specified in the SSC.

(2) *Political subdivision-lead.* The political subdivision must submit to the State a copy of all reports which the political subdivision is required to submit to EPA in accordance with the requirements of its Cooperative Agreement. (See § 35.6650 for requirements regarding progress reports.)

(d) *Records.* The State and political subdivision or Indian Tribe must maintain records on a site-specific basis. The State and political subdivision or Indian Tribe must comply with the requirements regarding record retention described in § 35.6705 and the requirements regarding record access described in § 35.6710.

**§ 35.6820 Conclusion of the SSC.**

(a) In order to conclude the SSC, the signatories must:

(1) Satisfactorily complete the response activities at the site and make all payments based upon project costs determined in § 35.6805(j);

(2) Produce a final accounting of all project costs, including change orders and outstanding contractor claims;

(3) Submit all State cost share payments to EPA (See § 35.6805(i)(5));

(4) Assume responsibility for all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510 (c)(1) of the NCP, and if applicable, accept transfer of any Federal interest in real property (See § 35.6805(i)(4)).

(b) After the administrative conclusion of the Superfund State Contract, EPA may monitor the signatory's compliance with assurances to provide all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP.

**Subpart P—Financial Assistance for the National Estuary Program**

AUTHORITY: Sec. 320 of the Clean Water Act, as amended (33 U.S.C. 1330).

SOURCE: 54 FR 40804, Oct. 3, 1989, unless otherwise noted.

**§ 35.9000 Applicability.**

This subpart codifies policies and procedures for financial assistance awarded by the EPA to State, interstate, and regional water pollution control agencies and entities and other eligible agencies, institutions, organizations, and individuals for pollution abatement and control programs under the National Estuary Program (NEP). These provisions supplement the EPA general assistance regulations in 40 CFR parts 30 and 31.

**§ 35.9005 Purpose.**

Section 320(g) of the Clean Water Act (CWA) authorizes assistance to eligible States, agencies, entities, institutions, organizations, and individuals for developing a comprehensive conservation and management plan (CCMP) for an estuary.

**§ 35.9010 Definitions.**

*Aggregate costs.* The total cost of all research, surveys, studies, modeling, and other technical work completed by a Management Conference during a fiscal year to develop a Comprehensive Conservation and Management Plan for the estuary.

*Annual work plan.* The plan, developed by the Management Conference each year, which documents projects to