



## Removal Process

ASTSWMO Removal Coordination at Federal Facilities Symposium

December 4, 2006



# Objectives for Session

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- ◆ Provide overview of EPA's Removal Process through:
  - » Brief overview of authorities and limitations of an OSC
  - » Brief overview of the Removal Program tools & resources available to the OSC; time and tasks needed to complete a removal action

# Evolution of the Removal Program

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- ◆ 1968: Removal authority and OSC position created under the FWPCA, later amended by the CWA in 1972; NCP established
- ◆ 1980: Passage of CERCLA or Superfund
- ◆ 1982: NCP revised to incorporate Superfund requirements
- ◆ 1985: NCP revised to address issues encountered during Superfund implementation
- ◆ 1986: SARA enacted

# Evolution of the Removal Program

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- ◆ 1990: NCP revised to incorporate SARA requirements, and Oil Pollution Act enacted
- ◆ 1994: NCP revised to incorporate OPA requirements
- ◆ 1998 – 2002: Counterterrorism initiatives and preparedness planning
- ◆ 2002: Responses to terrorism

# Introduction to the Chronological Steps of a Removal Action

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- ◆ Removal project timeline
  - » Emergency response
  - » Time-critical response
  - » Oil response
  - » Non-time-critical response

# Legal Authority for OSCs to Direct Removal Responses

- ◆ OSC authority is derived from law, regulation, and Presidential and Agency Delegations
  - » Laws: CERCLA/SARA, CWA/OPA, and Stafford Act
  - » PDDs and Executive Orders: E.O.s 12580, 12777, and 13016
  - » Regulations: The NCP
  - » Agency Delegations
- ◆ OSC cannot redelegate authority



# The NCP

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- ◆ Established in 1968 and amended by the CWA and CERCLA
- ◆ Promotes overall coordination of the hierarchy of responders and establishes procedures for conducting responses for oil and hazardous substances
- ◆ Designates the OSC as the manager of spills of oil and removal response for hazardous substances

## *Definition of OSC:*

“Federal official predesignated by EPA, DoD, DOE, or USCG to *coordinate* and *direct* responses under Subpart D, or the government official designated by the lead agency to coordinate and direct removal actions under Subpart E of the NCP.”

# Policy and Guidance

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- ◆ EPA Headquarters and regional offices have developed policies and guidance to assist OSCs in conducting removal responses for oil spills and releases of hazardous substances
- ◆ Policies and guidance may vary among different EPA regions





# Overview of the Removal Response Process for Hazardous Substance Releases

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- ◆ Site discovery or notification
- ◆ Removal site evaluation
- ◆ Community relations activities
- ◆ Enforcement activities
- ◆ Removal Action implementation
- ◆ Removal Action documentation



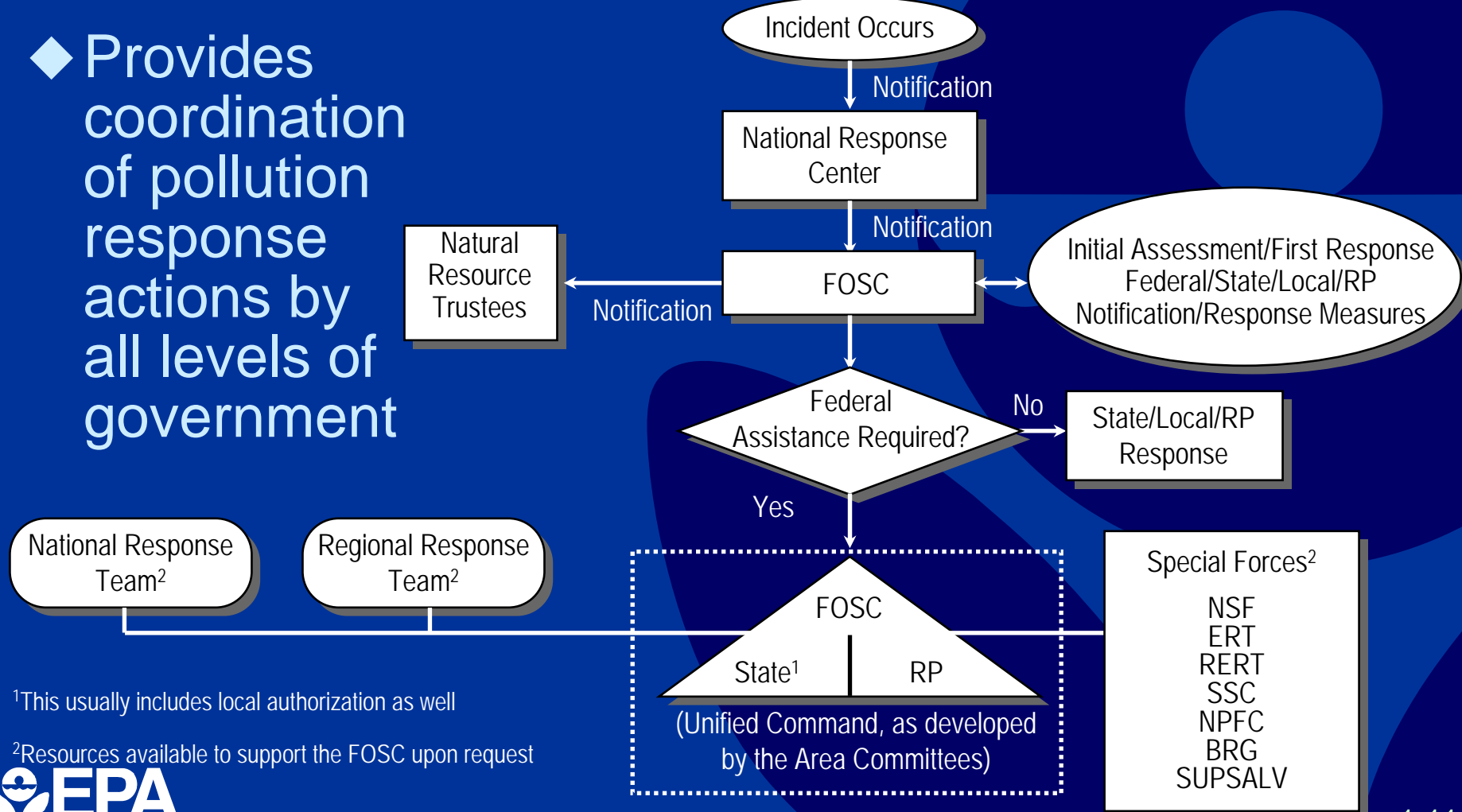
# OSC's Responsibilities for Coordination

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- ◆ The NCP requires that the OSC's efforts be coordinated with other federal, state, local, and private response agencies
- ◆ State and local agencies have a meaningful role and will participate in the response
- ◆ OSC should maintain a dialogue with all appropriate public and private interests
- ◆ OSC is responsible for directing Area Committees in the development of ACPs

# The National Response System

◆ Provides coordination of pollution response actions by all levels of government



<sup>1</sup>This usually includes local authorization as well

<sup>2</sup>Resources available to support the FOSC upon request



# Site Discovery or Notification

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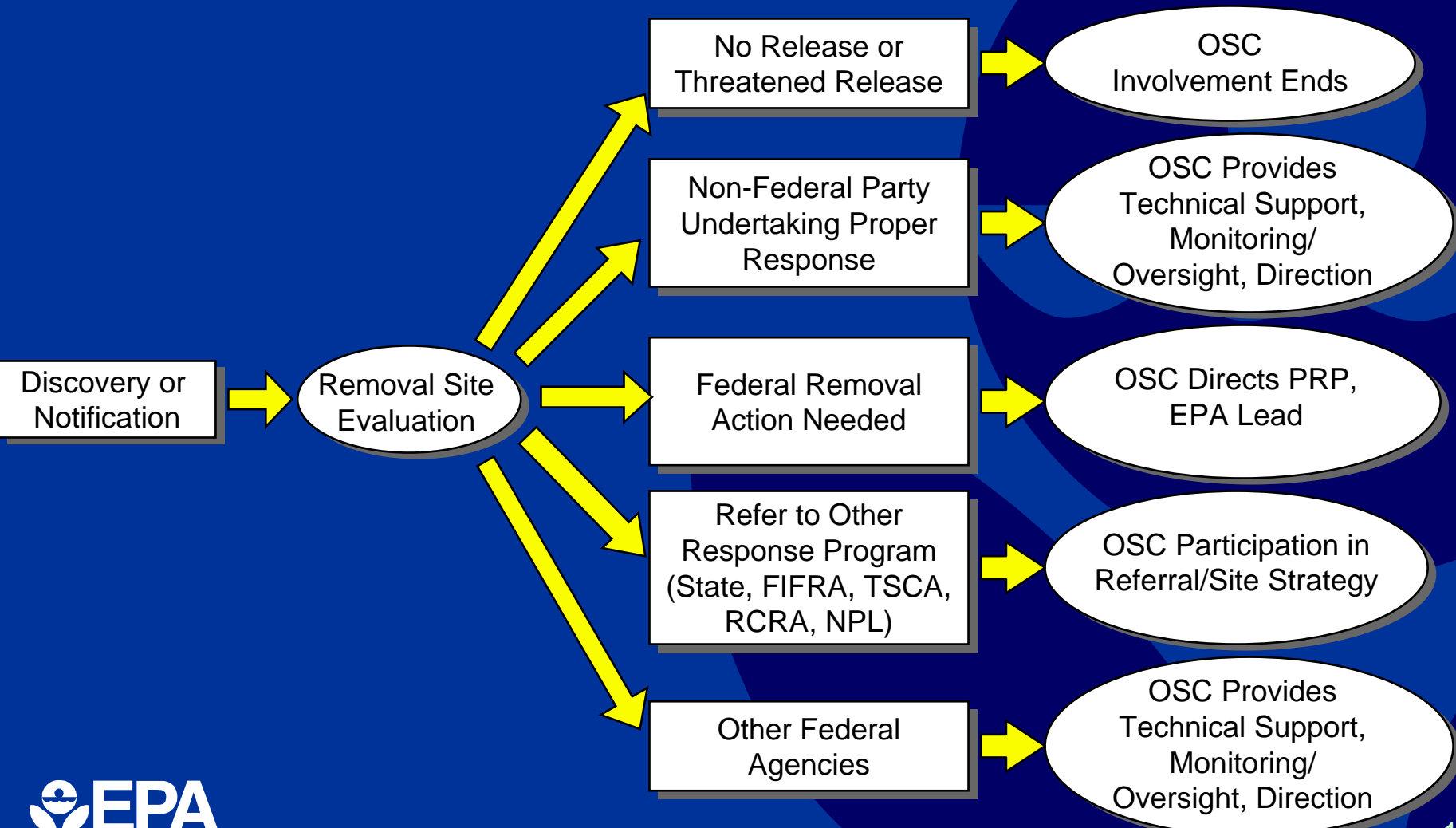
## Discovery:

- ◆ Inspections of the regulated community under
  - » Federal authorities
  - » State authorities
- ◆ Specific inventory or survey projects
- ◆ Complaints from citizens
- ◆ PA petition filed by citizens
- ◆ Media investigations

## Notification:

- ◆ Historical basis of Superfund notification
- ◆ Informal notification and discovery mechanisms
- ◆ Formal, ongoing notification mechanisms

# The OSC Decision-Making Process



# OSC Role at State-, Local-, and PRP-led Responses

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- ◆ Local responders lead public safety response efforts
- ◆ First response capabilities vary
- ◆ Technical support vs. direction
  - » Become part of the existing ICS/UC
  - » Monitor the incident and provide support or technical assistance
  - » Mobilize Federal resources



# Removal Actions - Types

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- ◆ Two NCP categories of removal actions
- ◆ Three types of removal actions
  - » Emergency type of removal action
  - » Time-critical type of removal action
  - » Non-time-critical type of removal action



# Determining the Need for a Removal Action

- ◆ Eight removal factors used to initiate a CERCLA removal action
  - » Actual or potential exposure to nearby human populations, animals, or the food chain;
  - » Actual or potential contamination of drinking water supplies or sensitive ecosystems;
  - » Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release;
  - » High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;
  - » Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
  - » Threat of fire or explosion;
  - » Availability of other appropriate federal or state response mechanisms to respond to the release;
  - » Other situations or factors that may pose threats to public health or welfare or the environment.



# Enforcement: PRP Participation

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- ◆ Enforcement authorities and concerns at removal responses
  - » enforcement authorities and limitations
    - CERCLA: Sections 104 (a) & (e), 106, 107, 122
    - CWA/OPA: Sections 308, 309, 311(b) and (c) and (e)
  - » Integration of enforcement activities with removal response actions
    - Site access
    - Investigation and PRP searches
    - PRP notification and negotiations
    - AOCs and UAOs
    - Oversight of PRP-led response
  - » Cost recovery

# Writing the Action Memo

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- ◆ Importance of AM
  - » Summarizes past, current, and proposed activities
  - » Substantiates need for removal action and reserves funds
  - » Critical component of AR and cost recovery efforts
    - Basis for judicial review and cost recovery efforts
    - Provides for public participation
- ◆ Sections of AM
  - » Including identification of Applicable or Relevant and Appropriate Requirements (ARARs)
- ◆ Amending the AM
  - » Statutory exemptions (12 month, \$2M limit)
  - » Change in scope
- ◆ Nationally significant and precedent-setting issues
- ◆ Approval authorities

# Planning a Removal Action

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- ◆ Considerations for planning removal actions
  - » Removal scoping
  - » AR
  - » Public participation
  - » Contracting services and technical assistance

# Administrative Record

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- ◆ AR is required by the NCP
- ◆ Relationship to site files
- ◆ CBI



# Public Participation

- ◆ CERCLA requires public participation throughout the planning and implementation of responses
  - » Public participation objectives:
    - Inform the public of risks associated with the site, planned or on-going actions, and other issues
    - Provide an opportunity to comment on decisions
    - Identify and respond to concerns
- ◆ NCP specifies two forms of public participation
  - » Community relations
  - » AR



# Community Involvement Activities for Different Types of Removal Actions

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- ◆ Time-critical removal actions
- ◆ Removal actions with greater than 120 days of on-site activity
- ◆ Non-time-critical removal actions

# Community Involvement Activities to Enhance Public Participation

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- ◆ Circumstances that may require additional activities
- ◆ Meet directly with the public
- ◆ Develop and distribute written public information materials
- ◆ Develop community involvement mailing list
- ◆ Prepare meeting summaries
- ◆ Establish on-scene information office

# Conducting a Removal Action: Planning and Reporting Documents

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## ◆ Key Documents

- » HASP
- » Sampling QA/QC plan
- » CIP
- » POLREPs
- » OSC report/removal summary



# Access to Information and Public Interaction

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- ◆ FOIA requests and congressional inquiries
- ◆ CBI
- ◆ OSCs must make appropriate information readily accessible to the public

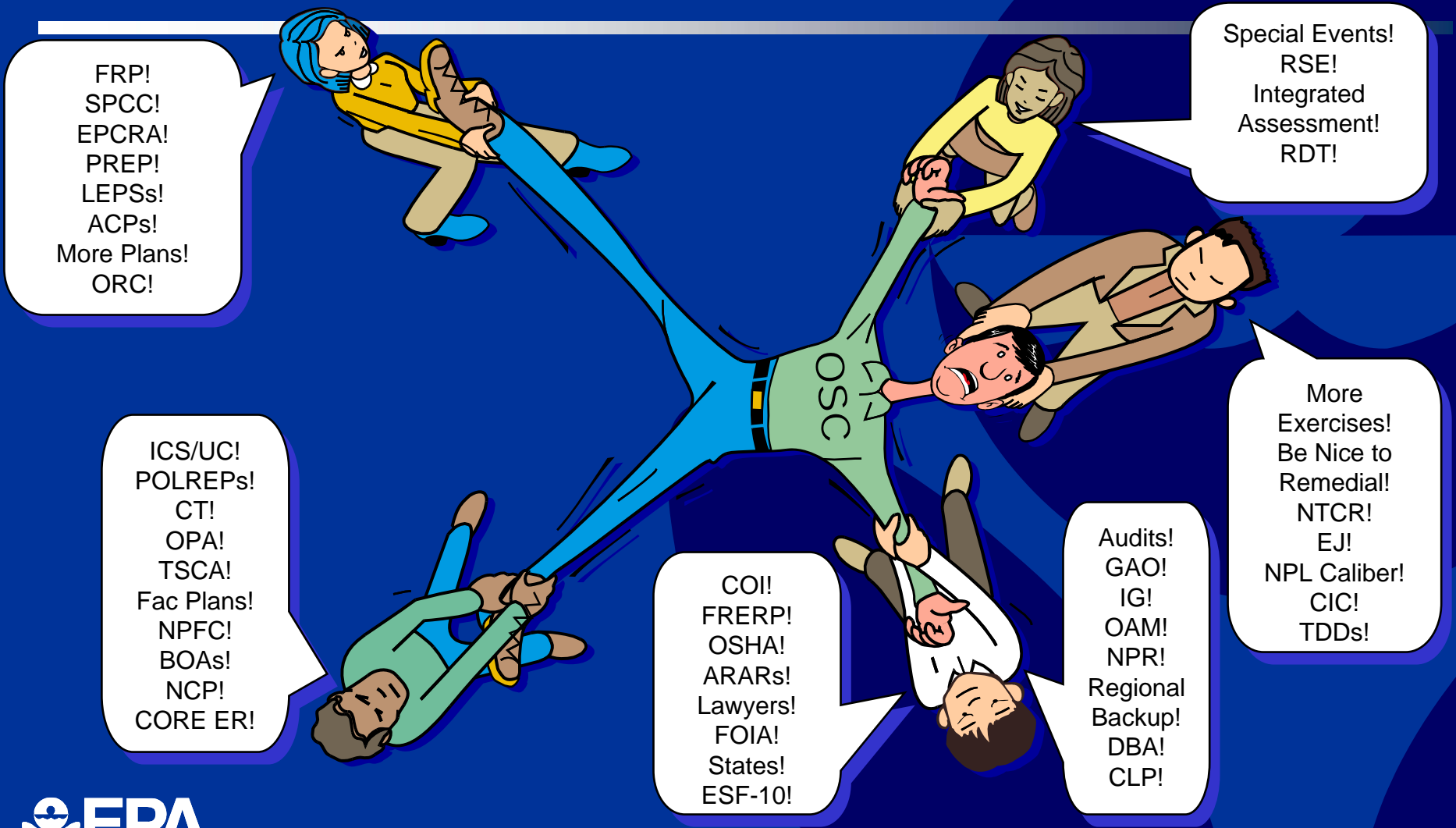


# Completing a Removal Action

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- ◆ A removal action has been completed when:
  - » The threat posed by the site has been abated or mitigated and all restoration is finished
  - » All work specified in the AM has been completed
  - » Cleanup contractor, PRP, and OSC have demobilized permanently from the site
  - » The final POLREP documents completion
- ◆ Completion of removal contract
- ◆ Post-Removal Site Control (PRSC)
- ◆ Final OSC report (optional)

# A Torn OSC



FRP!  
SPCC!  
EPCRA!  
PREP!  
LEPSs!  
ACPs!  
More Plans!  
ORC!

Special Events!  
RSE!  
Integrated Assessment!  
RDT!

ICS/UC!  
POLREPs!  
CT!  
OPA!  
TSCA!  
Fac Plans!  
NPFC!  
BOAs!  
NCP!  
CORE ER!

COI!  
FRERP!  
OSHA!  
ARARs!  
Lawyers!  
FOIA!  
States!  
ESF-10!

Audits!  
GAO!  
IG!  
OAM!  
NPR!  
Regional Backup!  
DBA!  
CLP!

More Exercises!  
Be Nice to Remedial!  
NTCR!  
EJ!  
NPL Caliber!  
CIC!  
TDDs!