Refresher
Superfund State Contracts
a Reference for State and Territories
Background

- Regulatory Framework
- SSC Documents
- Purpose
  - CERCLA Assurances
  - Describes Responsibilities and Benefits
  - Documents State’s Involvement
Functions of an SSC

- Define the Project
- Describe Work Covered
- Provide Cost Estimates
- Establish payment schedule
- Issue Resolution
EPA 2015 Model Clauses

- Contains model provisions for use in standard SSCs
- States and Regions may alter provisions to suit their agreements
  - Alterations or additions may require consultation with EPA Headquarters and must comply with statutory and regulatory requirements set forth in CERCLA
2015 SSC Model Highlights

- Developed by EPA and States
- EPA recognizes State agencies cannot make cost share payment assurances on behalf of their State legislatures
- Cost Share Assurance provision(s) clarified & payment terms modified to allow more flexibility
- Institutional Control implementation and maintenance clarified
- SSC conclusion has been greatly clarified
Maximizing the SSC Model Provisions

- **Section 6**: Site description includes what response actions are still required
- **Section 7**: Site Specific Statement of Work
- **Section 11**: Outlines O&M responsibilities, note statement “remains in effect for the expected life of such actions”
- **Section 18**: Site access, note the SSC indicates the State obtains its own site access
• **Section 24**: Operational and Functional

  • 40 CFR 300.435 “the remedy becomes operational and functional either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and performing as designed, whichever is earlier”

  • Importance of pre-final inspection

  • Use the Statement of Work to define what constitutes construction completion

  • EPA may grant extensions
When and How to Use an SSC or Cooperative Agreement (CA)
<table>
<thead>
<tr>
<th>Who Leads/How Funded?</th>
<th>SSC Required?</th>
<th>Cooperative Agreement Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPA-lead (Fund-financed)</td>
<td>Yes</td>
<td>No, unless State uses in-kind services to meet CERCLA cost share assurance (documented in a Support Agency CA)</td>
</tr>
<tr>
<td>EPA-lead (Special Account Funded)</td>
<td>No, unless RA becomes Fund-financed</td>
<td>No</td>
</tr>
<tr>
<td>State/Tribal-lead (Fund-financed or Special Account Funded)</td>
<td>No</td>
<td>Yes, a Remedial Response CA to transfer $. CERCLA assurances not required if Tribal-lead or if Special Account Funded</td>
</tr>
<tr>
<td>State-lead (State-funded)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Political Sub-division lead (Fund-financed)</td>
<td>Yes</td>
<td>Yes, a Remedial Response CA. The State provides CERCLA assurances.</td>
</tr>
<tr>
<td>EPA funds State/Tribe/Political Subdivisions to Conduct Support Activities</td>
<td>No</td>
<td>Support Agency CA is used to transfer funds; no CERCLA assurances required.</td>
</tr>
</tbody>
</table>
Looking Ahead

• Be engaged from the beginning!

Chronology of a Superfund Cleanup

<table>
<thead>
<tr>
<th>Preliminary Assessment / Site Inspection</th>
<th>NPL Listing</th>
<th>Remedial Investigation/Feasibility Study</th>
<th>Proposed Plan</th>
<th>Record of Decision</th>
<th>Remedial Design</th>
<th>Remedial Action (includes LTRA, if needed)</th>
<th>Operation and Maintenance</th>
</tr>
</thead>
</table>

Typical SSC Negotiation Period

Cost Share

State takes over
Remedial Investigation and Feasibility Studies

- States don’t share cost for investigations or remedy selection studies
- Ensure data gaps are filled during the RI
- Perform treatability studies and pilot tests during the FS
- Propose and/or support Interim Remedial Measures that remove sources
Remedy Selection

- Support the remedies that are efficient, workable and sustainable, considering the overall effectiveness and costs of remedies
- Understand the long term cost to the State
- If data gaps exist or treatability studies have not been conducted, think about how this will impact your SSC
- The ROD may indicate when the project is transferred (LTRA or O&F)
Funding Considerations

• The State will need to identify a funding source
• State and EPA can negotiate a feasible payment plan that works for the State
• Long Term Remedial Action; the EPA will fund the project up to ten years or until the level of protectiveness is achieved
• Ensure that your O&M costs are estimated as accurately as possible
• Identify potential State in kind contributions
Cost Share

- The portion of allowable project costs that a recipient contributes toward completing its project

- State share:
  - 10% of the allowable costs, where a facility was not operated by the State or political subdivision, as the time of any disposal of hazardous substances at the facility
  - 50% or more of the allowable costs, where a facility was operated by a State or political subdivision at the time of any disposal of hazardous substance at the facility
Three Ways to Meet Cost Share Assurance

• Cash

• Credit

• In-kind Services
Examples of In-kind Services

- Raw materials
- Property
- Water rights
- The value/cost of publicly owned treatment works (POTW) treatment and discharge of contaminated water that is part of the remedy
Overpayments

• Cash
• Credit
• In-kind

• Transfer of overmatch is typically done after a financial reconciliation has been performed by EPA on the SSC
Special Account Funds

• No State match required

• Recommended that an SSC is put into place if it is uncertain that the special account funding can cover the full cost of the cleanup or O&M

• SSC lay out roles and responsibilities of both parties if/when federal and State funds are needed
Invoicing

• Follow payment schedule in SSC (may vary significantly between SSCs)

• Work with Region to ensure provided proper and sufficient financial backup documentation

• Ask for status updates on amount spent at a regular basis
Final Financial Reconciliation

- Keep very good records of all invoices and payments for final financial reconciliation

- Keep in mind that final reconciliation will take place at some date in the future
  - 2015 model clauses - one year after the O&F determination or LTRA completion
  - Older SSCs do not have a timeframe (could be 10+ years)
Amendments

- Required for:
  - Cost increases
  - Deviations from the SOW
  - Payment schedule changes
  - Credit approval/transfer
  - Significant ROD Amendments

- May require a revision SOW
- Signed by EPA and State
- Keep amendments with the original SSC
Closing and Concluding Your SSC

- **Administrative Closure**
  - Response activities are complete, financial reconciliation is completed, property transfer has been accepted, State has assumed O&M

- **Final SSC Conclusion**
  - Occurs after Administrative Closure
  - Occurs only once O&M is concluded or a PRP takes over O&M

Process Ensures that State’s O&M Assurance Remains in Force
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5  Mark Rickrich, OH
6  Monica Harris, TX
7  Hylton Jackson, IA
8  Jenny Chambers, MT (Vice-Chair)
9  Peter Garcia, CA
10 Bill O’Connell, AK