

# Superfund State Contracts and Cooperative Agreements: How EPA and States Work Together in the Superfund Program

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# Overview of Session

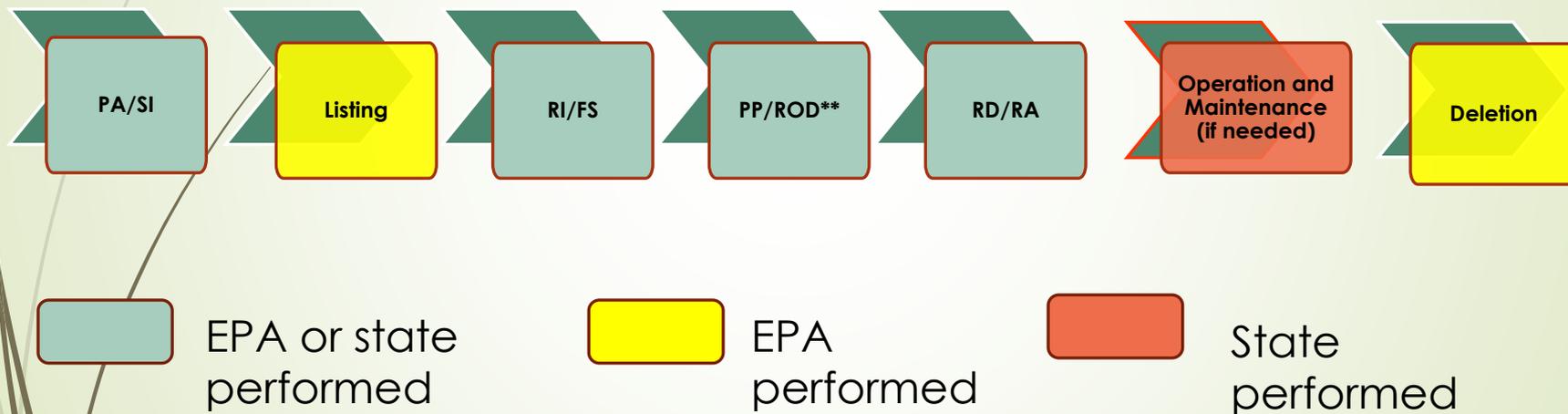
Why are Superfund State Contracts and Cooperative Agreements important?

What are the eligible activities under Superfund Cooperative Agreements?

An opportunity to hear from YOU - successful strategies and issues

## States and the Superfund Program\*

*CERCLA §121(f)(1) provides “for substantial and meaningful involvement of each state in the initiation, development, and selection of remedial response actions to be undertaken in that state.”*



\*These are roles for a typical, Fund lead NPL site.

\*\* If state performed, EPA concurrence needed.

## The Comprehensive Environmental Response, Compensation, and Liability Act (“Superfund”)

- CERCLA § 104(c)(3) states: “the **President shall not provide** any **remedial** actions pursuant to [section 104] unless the **State** in which the release occurs first enters into a **contract** or **cooperative agreement** with the President
- CERCLA § 104(d) authorizes the President to enter into contracts and cooperative agreements, subject to terms and conditions that the President prescribes, with states, tribes, or political subdivisions to carry out response activities

# 40 CFR Part 35, Subpart O Regulation

- ▶ EPA's regulation that governs Superfund State Contracts (SSCs) and cooperative agreements (CA).
- ▶ Outlines what must be contained in an SSC
- ▶ Creates different types of Superfund CAs
- ▶ Contains property disposition, procurement, reporting, records, and financial administration requirements that apply to SSCs and CAs

# The 5 CERCLA State Assurances

- ▶ Payment of **cost share** (10% or 50%)
- ▶ All future **operation and maintenance** (including maintaining **Institutional Controls**)
- ▶ Availability of hazardous waste **disposal facilities** for offsite storage, destruction, treatment, or secure disposition
- ▶ Availability of hazardous waste **disposal facilities** which have adequate **capacity** during the next **20 years**
- ▶ Acceptance of **real property acquired by EPA**

# An SSC is . . .

- ▶ A legally binding agreement between:
  - ▶ EPA and a state if EPA-lead
  - ▶ EPA, a state, and political subdivision if political subdivision-lead
- ▶ Includes:
  - ▶ State's CERCLA assurances
  - ▶ Roles and responsibilities of each party
  - ▶ Statement of Work
  - ▶ See 40 CFR 35.6800 – 6820

SSC Model Provisions (2022):

[https://www.epa.gov/superfund/superfund-remedial-design-remedial-action#ssc\\_anchor](https://www.epa.gov/superfund/superfund-remedial-design-remedial-action#ssc_anchor)

## An SSC is **not** a . . .

- Procurement Contract: a contract between EPA and another party to procure services. EPA does not use SSCs to procure services
- Memorandum of Agreement (MOA) - a good faith agreement between EPA and another party. MOAs are not legally binding or enforceable.
- Cooperative Agreement: EPA does not use SSCs to award funds

# Cooperative Agreements

- ▶ A legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose.
- ▶ Substantial EPA involvement is anticipated during the performance of the project.

# What is a Superfund CA?

- ▶ An assistance agreement that EPA uses to award funds to a state, tribe, or local government to carry out activities authorized in CERCLA 104
- ▶ Six Types of Superfund CAs
  - ▶ Pre-Remedial
  - ▶ Remedial Response
  - ▶ Removal Response
  - ▶ Support Agency
  - ▶ Core program
  - ▶ Enforcement

*\* See 40 CFR 35.6000-35.6820 for more information.*

# CA Requirements

- Application for Federal Assistance (SF-424)
  - Budget Sheets
  - Project Narrative Statement
    - Site Description
    - Statement of Work
    - Identify Lead Site Project Manager
    - Site-Specific Community Relations Plan
    - Site-Specific Health and Safety Plan
    - Quality Assurance
  - Schedule of Deliverables
  - Other applicable forms and information

# Pre-Remedial Response CA

- ▶ Eligibility
  - ▶ States, political subdivisions, Indian tribes
- ▶ Eligible Activities
  - ▶ Preliminary Assessment
  - ▶ Site Inspection
  - ▶ Hazard Ranking System related activities

# Remedial Response CA

- Eligibility
  - States, political subdivisions, Indian tribes
- Eligible Activities
  - Remedial investigations
  - Feasibility studies
  - Remedial designs
  - Remedial actions

# State Cost Share for Remedial Action

- ▶ Cash: Lump sum or incremental payments
- ▶ Credit: direct, out-of-pocket expenditures consistent with the remedy at a site
- ▶ In-kind Contributions: equipment or services that directly benefit the remedy for which there is no bill or receipt
- ▶ No cost share for remedial action funded by Infrastructure Investment and Jobs Act (IIJA) or Special Accounts

Cost Share Fact Sheet:

<https://semspub.epa.gov/work/HQ/100001811.pdf>

# Removal Response CA

- Eligibility
  - States, political subdivisions, Indian Tribes
  - Planning period of more than six months
- Eligible Activities
  - When based on the site evaluation, EPA determines that a planning period of more than six months before removal activities must begin
  - Non-Time Critical Removal Actions

# Core Program CA

- ▶ Funds a State or Indian Tribe to conduct implementation activities to develop and maintain their ability to participate in the CERCLA response program
- ▶ Eligible Activities
  - ▶ Procedures for emergency response actions and longer-term remediation of environmental and health risks at hazardous waste sites
  - ▶ Development of legal authorities and enforcement support
  - ▶ Hire and train staff
  - ▶ Maintain sustained EPA/recipient interaction in CERCLA implementation

# Support Agency CA

- ▶ Support Agency: The agency that furnishes necessary data to the lead agency, reviews response data and documents, and provides other assistance to the lead agency.
- ▶ Eligibility
  - ▶ States, political subdivisions, Indian Tribes
  - ▶ To ensure meaningful and substantial involvement in response activities, as specified in sections 104 and 121(f)(1) of CERCLA and the NCP (40 CFR part 300)

# Support Agency CA

- ▶ Review of and comment on documents related to:
  - ▶ PA/SI
  - ▶ NPL listing process
  - ▶ RI/FS
  - ▶ ARAR waivers
  - ▶ Remedy selection
- ▶ Participation in
  - ▶ Long-term planning process
  - ▶ PRP negotiations
  - ▶ Five-year review process

# Enforcement CA

- ▶ Eligibility
  - ▶ State or 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 cleanup costs
- ▶ Submit
  - ▶ Letter from state or tribe certifying authority, jurisdiction and administrative capabilities
  - ▶ Copy of applicable state or tribal statute(s) and description of how it is implemented
  - ▶ Any other documentation required by EPA

# Enforcement CA

- ▶ Eligible Activities
  - ▶ Identify Potentially Responsible Parties (PRPs)
  - ▶ Conduct settlement negotiations
  - ▶ Take enforcement actions against PRPs

# Can you DO that under a Superfund Cooperative Agreement?

- ▶ Example 1 – Purchase a drone for site assessment
- ▶ Example 2 – Install a cap to support construction of a parking lot instead of vegetative cover per Record of Decision (ROD)
- ▶ Example 3 - Provide cost share through contributing gravel to create an access road to the remedial project

# Your Turn to Share

- ▶ Do you have approaches/lessons learned from managing SSCs and Cooperative Agreements that would benefit other states and their EPA regions?
- ▶ Are there policy issues needing national Superfund program attention?