

APPENDIX C TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS, WHICH IS TO BE PLACED IN THE FEDERAL REGISTER PREAMBLE WHENEVER SITES ARE ADDED TO THE FINAL NPL

*Limitations on the Payment of Claims for Response Actions*

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or “preauthorization,” from EPA.

APPENDIX D TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS WHICH IS TO BE PLACED IN PUBLIC DOCKETS

*Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Sections 111(a)(2) and 122(b)(1) of CERCLA*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes can receive funding for response activities through other authorities of section 111(a) or section 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan

(NCP), 40 CFR part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or “preauthorization,” from EPA. This means that before response work is initiated, the party must:

- (1) Notify EPA of its intent to file a claim;
- (2) Demonstrate that the release merits priority consideration;
- (3) Propose activities to remedy the release that can be carried out consistent with the NCP; and
- (4) Demonstrate the capabilities necessary to carry out such activities in a safe and effective manner.

In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a Consent Decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307. Additional information can be obtained by contacting Phyllis Anderson, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 603-8971, or the RCRA/CERCLA Hotline, (800) 424-9346 (or (703) 920-9810 in the Washington, DC metropolitan area).

[58 FR 5475, Jan. 21, 1993, as amended at 65 FR 47325, Aug. 2, 2000]

**PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES**

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