§ 300.500 Subpart F—State Involvement in Hazardous Substance Response

SOURCE: 55 FR 8853, Mar. 8, 1990, unless otherwise noted.

§ 300.500 General.

(a) EPA shall ensure meaningful and substantial state involvement in hazardous substance response as specified in this subpart. EPA shall provide an opportunity for state participation in removal, pre-remedial, remedial, and enforcement response activities. EPA shall encourage states to enter into an EPA/state Superfund Memorandum of Agreement (SMOA) under §300.505 to increase state involvement and strengthen the EPA/state partnership.

(b) EPA shall encourage states to participate in Fund-financed response in two ways. Pursuant to §300.515(a), states may either assume the lead through a cooperative agreement for the response action or may be the support agency in EPA-lead remedial response. Section 300.515 sets forth requirements for state involvement in EPA-lead remedial and enforcement response and also addresses comparable requirements for EPA involvement in state-lead remedial and enforcement response.

§ 300.505 EPA/State Superfund Memorandum of Agreement (SMOA).

(a) The SMOA may establish the nature and extent of EPA and state interaction during EPA-lead and state-lead response. EPA shall enter into SMOA discussions if requested by a state. The following may be addressed in a SMOA:

(1) The relationship for removal, pre-remedial, remedial, and enforcement response, including a description of the roles and responsibilities of each.

(2) The general requirements for EPA oversight. Oversight requirements may be more specifically defined in cooperative agreements.

(3) The general nature of lead and support agency interaction regarding the review of key documents and/or decision points in removal, pre-remedial, remedial, and enforcement response. The requirements for EPA and state review of each other’s key documents when each is serving as the support agency shall be equivalent to the extent practicable. Review times agreed to in the SMOA must also be documented in site-specific cooperative agreements or Superfund state contracts in order to be binding.

(4) Procedures for modification of the SMOA (e.g., if EPA and a state agree that the lead and support agency roles and responsibilities have changed, or if modifications are required to achieve desired goals).

(b) The SMOA and any modifications thereto shall be executed by the EPA Regional Administrator and the head of the state agency designated as lead agency for state implementation of CERCLA.

(c) Site-specific agreements entered into pursuant to section 104(d)(1) of CERCLA shall be developed in accordance with 40 CFR part 35, subpart O. “Cooperative Agreements and Superfund State Contracts for Superfund Response Actions,” contains further requirements for state participation during response.
§ 300.510 State assurances.

(a) A Fund-financed remedial action undertaken pursuant to CERCLA section 104(a) cannot proceed unless a state provides its applicable required assurances. The assurances must be provided by the state prior to the initiation of remedial action pursuant to a Superfund state contract for EPA-lead (or political subdivision-lead) remedial action or pursuant to a cooperative agreement for a state-lead remedial action. The SMOA may not be used for this purpose. Federally recognized Indian tribes are not required to provide CERCLA section 104(c)(3) assurances for Fund-financed response actions. Further requirements pertaining to state, political subdivision, and federally recognized Indian tribe involvement in CERCLA response are found in 40 CFR part 35, subpart O.

(b)(1) The state is not required to share in the cost of state- or EPA-lead Fund-financed removal actions (including remedial planning activities associated with remedial actions) conducted pursuant to CERCLA section 104 unless the facility was operated by the state or a political subdivision thereof at the time of disposal of hazardous substances therein and a remedial action is ultimately undertaken at the site. Such remedial planning activities include, but are not limited to, remedial investigations (RIs), feasibility studies (FSs), and remedial design (RD). States shall be required to share 50 percent, or greater, in the cost of all Fund-financed response actions if the facility was publicly operated at the time of the disposal of hazardous substances. For other facilities, except federal facilities, the state shall be required to share 10 percent of the cost of the remedial action.

(2) CERCLA section 104(c)(5) provides that EPA shall grant a state credit for reasonable, documented, direct, out-of-pocket, non-federal expenditures subject to the limitations specified in CERCLA section 104(c)(5). For a state to apply credit toward its cost share, it must enter into a cooperative agreement or Superfund state contract. The state must submit as soon as possible, but no later than at the time CERCLA section 104 assurances are provided for a remedial action, its accounting of eligible credit expenditures for EPA verification. Additional credit requirements are contained in 40 CFR part 35, subpart O.

(3) Credit may be applied to a state’s future cost share requirements at NPL sites for response expenditures or obligations incurred by the state or a political subdivision from January 1, 1978.