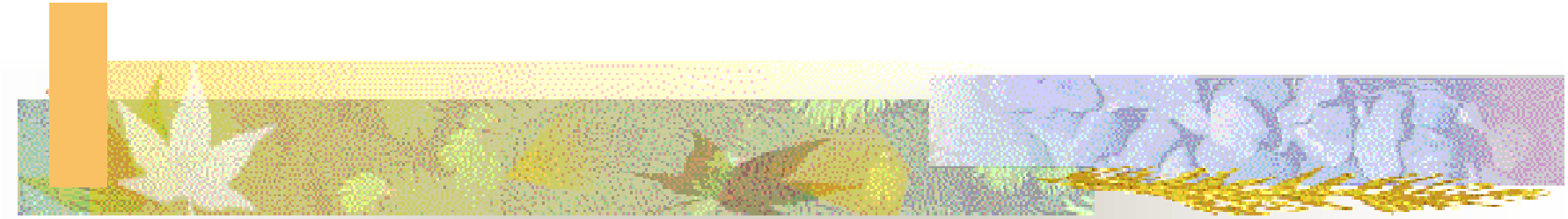
CERCLA/OPA Notification and Coordination for Natural Resource Damages



Larry Zaragoza, OERR
703-603-8867
NARPM 2002

What are Natural Resources?

- Definition of “natural resources” under CERCLA 101(6) and 1001(20): “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources”
- Natural resources of concern are held in trust for the public

Responding to Natural Resource Injury

CERCLA and OPA

- Provides authority for Trustees to respond to natural resource injuries
- Allows damages to be recovered by Trustees

Responding to Natural Resource Injury

Trustee responsibilities

- Assessing the extent of natural resource injuries; and
- Restoring natural processes injured or services lost

Who Are the Trustees?

- Federal – Secretaries of Agriculture, Commerce, Defense, Energy, Interior, and other agencies
- State – designated by the Governor
- Tribal – designated by Tribal Chairmen or the Secretary of the Interior may serve as trustee at request of the tribe.
- Foreign (OPA only)

EPA's Coordination and Notification Goals

- Provide Trustees with the information needed to meet their legal obligations for action;
- Share information to better protect human health and the environment; and
- Reduce the time for settlement of all liabilities

EPA's Role

- EPA encourages participation by all affected Trustees
- Participation encouraged at every stage of the process
- EPA cannot assess whether any impact has or has not taken place so notification needs to be provided to trustees

Statute of Limitations Considerations

- Section 113(g)(1)(A) of CERCLA:
  - Claims must be brought within 3 years of the date of discovery of the loss and its connection with the release
  - For NPL sites, claims must be brought within 3 years of completion of the remedial action
- If the statute of limitations is threatened by delays—a tolling agreement with the responsible party may be sought

Trustee Responsibilities

- Coordinate with EPA in assessments, investigations, and planning

EPA and Trustees: Mutual Notification and Coordination

- Superfund Removals
- Superfund Remedial Actions
- OPA Removals

Superfund Removals:

NRD Notification and Coordination

Notify Trustees of:		Coordinate with Trustees:
Releases or threatened releases *Location of releases*	Discovery	*Invite/encourage involvement in response*
RSE Results	Removal Site Evaluation (RSE)	
Plans and negotiations	Assessment of RSE Results against Regulatory Criteria	*Coordinate assessments, evaluations, and inspections*
Removal action *Adverse impacts of removal action*	Removal Action in Progress	*Provide Action Memorandum for site* *Provide opportunity to review and comment on removal action documentation*
Completion of removal action	Removal Action Complete	

Superfund Remedial Actions:

NRD Notification and Coordination

Superfund Remedial Actions:

Discovery	Site Assessment	Remedial Planning	Remediation	Post-Remediation
	PA/SI NPL Listing	RI/FS ROD	RD/RA Construction Completion O&M	NPL Deletion 5-Year Review

Notification and Coordination
with Trustees throughout Pipeline

Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:

Releases or threatened releases

Location of releases

Initiation/termination of discovery

Discovery

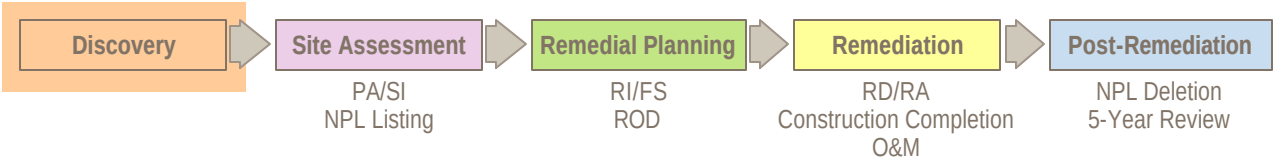
Coordinate with Trustees:

Invite/encourage involvement in response

Respond to requests for enforcement

Exchange PRP information and coordinate CERCLA §104 requests

Superfund Remedial Actions:

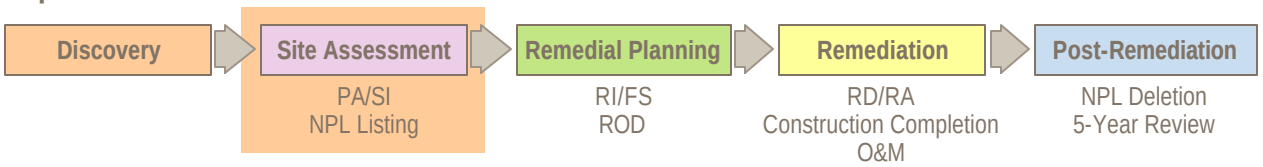


Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:	Site Assessment	Coordinate with Trustees:
Request for PA/SI *Initiation/termination of PA/SI* *Completion of draft and final documents*	Preliminary Assessment/ Site Investigation (PA/SI)	*Provide PA checklist* *Coordinate assessments, evaluations, investigations, and planning* *Provide opportunity to participate in human health and ecological risk screening*
Proposal for inclusion on NPL	NPL Listing	*Provide national lists and site-specific information supporting NPL listing*

Superfund Remedial Actions:

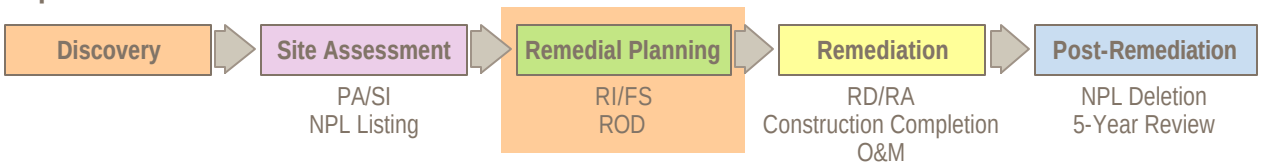


Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:	Remedial Planning	Coordinate with Trustees:
Initiation/Termination of RI/FS activities *Receipt of draft and final work plans* *Completion of draft and final RI/FS reports* *Development of human health and ecological risk assessment*	Remedial Investigation/ Feasibility Study (RI/FS)	*Provide opportunity for Trustees to comment on work plans, RI/FS reports, remedial alternatives, ARARs, and the proposed plan* *Coordinate necessary assessments with Trustees*
Initiation/Termination of ROD	Record of Decision (ROD)	*Provide opportunity for Trustees to comment on ROD* *Provide opportunity to review and comment on negotiated draft agreements* *Provide copy of final ROD*

Superfund Remedial Actions:



Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:	Remediation	Coordinate with Trustees:
Initiation/Termination of RD/RA negotiations *Completion of draft and final work plans/documents*	Remedial Design/ Remedial Action (RD/RA)	*Provide opportunity to review draft work plan and RD/RA documents* *Invite/encourage Trustee involvement in planning response actions* *Provide opportunity for Trustee to negotiate with PRPs*
Construction Completion determination	Construction Completion	
	Operation & Maintenance (O&M)	*Provide opportunity for commitment on O&M plans*

Superfund Remedial Actions:

Discovery	Site Assessment	Remedial Planning	Remediation	Post-Remediation
	PA/SI NPL Listing	RI/FS ROD	RD/RA Construction Completion O&M	NPL Deletion 5-Year Review

Superfund Remedial Actions:

NRD Notification and Coordination

Notify Trustees of:	Post-Remediation	Coordinate with Trustees:
Notice of Intent to Delete, Final Notice of Deletion, or Notice of Intent of Partial Deletion	NPL Deletion	*Provide opportunity to participate in close-out activities* *Provide opportunity to comment on draft close-out report*
Provide copy of Five-Year Review report	Five-Year Review	*Provide copy of Five-Year Review report*

Superfund Remedial Actions:

OPA Removals:

NRD Notification and Coordination

Notify Trustees of:

Coordinate with Trustees:

Discovery

Spills or threatened spills

Location of spills

Entry into Tracking System

Invite/encourage involvement in response

OSC Notified of Spill

Removal action

State, Local Agency or PRP Takes Lead with EPA oversight

Federal OSC Takes Lead

Coordinate assessments, evaluations, and inspections

Completion of removal action

Removal Complete

Provide opportunity to review and comment on documentation

Summary

When a Natural Resource is injured, Trustees are responsible for:

- Assessment
- Restoration

Summary

EPA is Responsible for:

- Notifying Trustees
- Coordinating activities

Summary

- EPA encourages participation by all affected Trustees
- Notification and coordination occurs throughout CERCLA and OPA processes

NRD/Historic Preservation Web Sites

www.epa.gov/superfund/programs/nrd/index.htm

www.achp.gov (Advisory Council on Historic Preservation)

http://es.epa.gov/oeca/ofa/crosscut.html
(cross cutting Environmental laws)