

§ 35.6060

is an Indian Tribe which is exempt from OSHA requirements.

(2) *Quality assurance.* (i) The recipient must comply with the quality assurance requirements described in 40 CFR 31.45.

(ii) The recipient must have an EPA-approved non-site-specific quality assurance plan in place before beginning field work. The recipient must submit the plan to EPA in adequate time (generally 45 days) for approval to be granted before beginning field work.

(iii) The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

§ 35.6060 Political subdivision-lead pre-remedial Cooperative Agreements.

(a) If the Award Official determines that a political subdivision's lead involvement in pre-remedial activities would be more efficient, economical and appropriate than that of a State, based on the number of sites to be addressed and the political subdivision's history of program involvement, a pre-remedial Cooperative Agreement may be awarded under this section.

(b) The political subdivision must comply with all of the requirements described in § 35.6055 of this subpart.

(c) The Award Official may require a three-party Superfund State Contract for pre-remedial activities.

(d) If the preliminary assessment/site investigation (PA/SI) shows that listing the site on the NPL is necessary, the political subdivision must enter into a three-party Superfund State Contract before any remedial activities begin.

§ 35.6070 Indian Tribe-lead pre-remedial Cooperative Agreements.

The Indian Tribe must comply with all of the requirements described in § 35.6055 of this subpart, except for the intergovernmental review requirements included in the "Application for Federal Assistance" (SF-424).

40 CFR Ch. I (7-1-00 Edition)

REMEDIAL RESPONSE COOPERATIVE AGREEMENTS

§ 35.6100 Eligibility for remedial Cooperative Agreements.

States, Indian Tribes, and political subdivisions may apply for remedial response Cooperative Agreements.

§ 35.6105 State-lead remedial Cooperative Agreements.

To receive a State-lead remedial Cooperative Agreement, the applicant must submit the following items to EPA:

(a) *Application form*, as described in § 35.6055(a) of this subpart, accompanied by the following:

(1) *Budget sheets* (SF-424A) displaying costs by site, activity and operable unit, as applicable;

(2) *A Project narrative statement*, including the following:

(i) *A site description*, including a discussion of the location of each site, the physical characteristics of each site (site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at each site, and response actions still required at each site;

(ii) *A site-specific Statement of Work (SOW)*, including estimated costs per task, and a standard task to ensure that a sign is posted at the site providing the appropriate contacts for obtaining information on activities being conducted at the site, and for reporting suspected criminal activities;

(iii) *A statement designating a lead site project manager* among appropriate State offices. This statement must demonstrate that the lead State agency has conducted coordinated planning of response activities with other State agencies. The statement must identify the name and position of those individuals who will be responsible for coordinating the State offices;

(iv) *A site-specific Community Relations Plan* or an assurance that field work will not begin until one is in place. The Regional community relations coordinator must approve the Community

Relations Plan before the recipient begins field work. The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan (NCP);

(v) *A site-specific health and safety plan*, or an assurance that the applicant will have a final plan before starting field work. Unless specifically waived by the award official, the applicant must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. The site-specific health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is an Indian Tribe exempt from OSHA requirements;

(vi) *Quality assurance*—(A) *General*. If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 40 CFR 31.45.

(B) *Quality assurance plan*. The applicant must have a separate quality assurance project plan and/or sampling plan for each site to be covered by the Cooperative Agreement. The applicant must submit the quality assurance project plan and sampling plan, which incorporates results of any site investigation performed at that site, to EPA with its Cooperative Agreement application. However, at the option of the EPA award official with program concurrence, the applicant may submit with its application a schedule for developing the detailed site-specific quality assurance plan (generally 45 days before beginning field work). Field work may not begin until EPA approves the site-specific quality assurance plan.

(C) *Split sampling*. The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

(vii) *A schedule of deliverables* to be prepared during response activities.

(3) *Drug-Free Workplace Certification*. The applicant must certify (40 CFR part 32, subpart F) that it is in compliance with the Drug-Free Workplace

Act of 1988 (Pub. L. 100-690, title V, subtitle D), which requires applicants to certify in writing that they will provide a drug-free workplace.

(4) *Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49)*. The applicant must certify that it is in compliance with Executive Order 12549 and 40 CFR part 32.

(5) *Procurement Certification*. The applicant must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the "Procurement System Certification" (EPA Form 5700-48) and submit the form to EPA with its application.

(6) *Anti-Lobbying Certification*. The applicant must certify (40 CFR part 34, appendix A) that no appropriated funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal award in excess of \$100,000, in accordance with section 319 of Public Law 101-121. The applicant must follow the requirements in the Interim Final Rule entitled, "New Restrictions on Lobbying" published on February 26, 1990.

(b) *CERCLA Assurances*. Before a Cooperative Agreement for remedial action can be awarded, the State must provide EPA with written assurances as specified below.

(1) *Operation and maintenance*. The State must provide an assurance that it will assume responsibility for the operation and maintenance (O&M) of implemented CERCLA-funded remedial actions for the expected life of each such action. In addition, even if a political subdivision is designated as being responsible for O&M, the State must guarantee that it will assume any or all O&M activities in the event of default by the political subdivision.

(2) *Cost sharing*. The State must provide assurances for cost sharing as follows:

(i) *Ten percent*. Where a facility was privately operated, whether privately

or publicly owned, at the time of disposal, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Fifty percent.* Where a facility was publicly operated by a State or political subdivision at the time of disposal of hazardous substances at the facility, the State must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(3) *Twenty-year waste capacity.* The State must assure EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of the response agreement. A remedial response action cannot be funded unless this assurance is provided consistent with § 300.510 of the NCP. EPA will determine whether the State's assurance is adequate.

(4) *Off-site storage, treatment, or disposal.* If off-site storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that is in compliance with subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The lead agency of the State must provide the notification required at § 35.6120, if applicable.

(5) *Real property acquisition.* If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f). The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

[55 FR 23007, June 5, 1990, as amended at 59 FR 35853, July 14, 1994]

§ 35.6110 Indian Tribe-lead remedial Cooperative Agreements.

(a) *Application requirements.* The Indian Tribe must comply with all of the requirements described in § 35.6105(a) and, if appropriate, § 35.6105(b)(5) of this subpart. Indian tribes are not required to comply with the intergovernmental review requirements included in the "Application for Federal Assistance" (SF-424). Consistent with the NCP (§ 300.510(e)(2)), this rule does not address whether Indian tribes are States for the purpose of CERCLA section 104(c)(9).

(b) *Cooperative Agreement requirements.* (1) The Indian tribe must comply with all terms and conditions in the Cooperative Agreement.

(2) If EPA determines as part of the remedy selection process that an interest in real property must be acquired in order to conduct the site-specific response action, the Indian tribe will be required, to the extent of its legal authority, to assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds, including any interest in property that is acquired to ensure the reliability of institutional controls restricting the use of that property. (See § 35.6400 of this subpart regarding information on property title and interest requirements.)

(3) If it is designated the lead for remedial action, the Indian Tribe must provide the notification required at § 35.6120, substituting the term Indian Tribe for the term State in that section, and out-of-jurisdiction for out-of-State.

§ 35.6115 Political subdivision-lead remedial Cooperative Agreements.

(a) *General.* If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume the lead responsibility for the remedial activity, or a portion thereof, at a site. The State and political subdivision must enter into a three-party Superfund State Contract (SSC) with EPA before a political subdivision can enter into a Cooperative Agreement.

(b) *Three-party Superfund State Contract requirements.* The three-party SSC must specify the responsibilities of the