Module 2:

Superfund Response Authorities
Module Overview

◆ Module objective: Explain how sites are discovered, funded, and responded to, and how communities are involved in the process

◆ Topics
  » Discovering and assessing sites
  » Funding response actions
  » Removal response
  » Remedial response
  » Enforcement response
  » Community involvement
How Are Sites Discovered and Assessed?

Discovery/Notification

Pre-CERCLIS Screening

Site Entered In CERCLIS

Preliminary Assessment (PA)

Site Inspection (SI)

Conduct Removal Site Evaluation

Removal Action

HRS Package

Placement on the NPL (NPL Listing Process)

No Further Remedial Action Planned (NFRAP)
Determining the Lead Agency for the Response

◆ The lead agency for response is the agency that supplies the On-Scene Coordinator or Remedial Project Manager
  » EPA and USCG
  » Other federal agency
  » States

◆ Definitions of lead agency and support agency
CERCLA Implementation by EPA Regions in Federal-lead Response

EPA Region

- Regional Administrator

EPA Headquarters
- OSRTI
- OECA
- OEM
- Other

Superfund Division
- OSCs
- RPMs

Other Programs
- Federal Facilities
- Regional Counsel
- RCRA Programs
- Public Affairs

Other Stakeholders
- Federal Agencies
- Public
- State and Local Governments
- Industry
- PRPs
Paying for Response Actions

◆ CERCLA provides three options:
  » PRPs agree to perform or pay for cleanup
  » Compel PRPs to perform cleanup through orders
  » Conduct response actions using trust fund and recover costs from PRPs
How the Trust Fund Works

**SOURCES**
- General Tax Revenue
- Tax on Crude Oil
- Environmental Tax on Corporations
- Recovery of Response Costs from PRPs
- Tax on Imported Petroleum Products
- Tax on Chemicals

**USES**
- Government Actions to Respond to an Emergency or Conduct a Cleanup
- Reimbursement to Local Governments
- Claims by Entities Other Than the Federal Government
- Research, Development, and Demonstration Costs
- Claims for Natural Resource Damages
Definition of a Removal Response for Release of Hazardous Substances

- Removals are generally short-term actions to protect human health and welfare or the environment.
Specific Requirements for Removal Responses

◆ Fund-financed removal statutory limitations
  » $2 million
  » 12 months
  » Exceptions allowed
◆ Must be compatible with long-term remedial action
◆ Authority to undertake removals not limited to single category of incident
◆ NCP removal factors assessed to determine if response is warranted
Responsibilities of the OSC

The OSC has the authority and responsibility to:

» Coordinate with other response agencies
» Maintain a dialogue with all parties
» Carry out duties identified in the NCP
Removal Actions Under CERCLA

- Three types of removal actions:
  - Emergency – action is required within hours
  - Time-critical – action is required within 6 months
  - Non-time-critical – planning period of more than 6 months is available

- OSC assesses urgency

- Decision to conduct removal documented in Action Memorandum
Paying for Removal Actions

- Trust Fund
- PRPs
- State
- Federal Facilities
- Stafford Act

Installing boom to contain oil
Oil Spill Response Under CWA/OPA

- EPA leads responses to inland oil spills
- USCG leads responses to spills in coastal and major navigable waters
- Regional documents govern specific areas of jurisdiction
- Funding of oil responses

Installing oil collection boom near shore
Emergency Response Planning and Operations

- National Approach to Response
  - NAR ER
- National Response System
- National Incident Management System
- National Response Framework
- Incident Command System
Emergency Response Organization – National Level

◆ EPA Headquarters Office of Emergency Management
  » NRS and National Response Team
  » National Response Framework and National Incident Coordination Team
  » Emergency Operations Center
Emergency Response Organization – Regional and Incident Levels

◆ 10 EPA Regions
  » NRS
    – 13 Regional Response Teams
    – Special Teams
  » NRF
    – Regional Incident Coordination Teams
  » Regional Emergency Operations Centers
◆ Incident Management Teams
  » Response Support Corps
Remedial Response
Definition of Remedial Action

- Long-term action to achieve a permanent remedy
- Typical remedial actions
NCP defines five major phases in the remedial process:

- RI/FS
- Selection of remedy
- RD
- RA
- O&M and site close out
Remedial Program Goal and Management Principles

◆ National goal of remedy selection
  » Protective of human health and the environment
  » Maintain protection over time
  » Minimize untreated waste

◆ Management principles
  » Manage site in OUs, as appropriate
  » OUs should not be inconsistent with final remedy
  » Data collection and alternative analysis reflect scope and complexity of site problems
Expectations for Developing Appropriate Remedial Alternatives

- Use treatment to address principal threats
- Use engineering controls to address lower level threats
- Use a combination of treatment, engineering controls, and institutional controls
- Use institutional controls to supplement engineering controls
- Consider using innovative technologies
- Return groundwater to its beneficial uses
Responsibilities of the RPM

◆ The RPM has the authority and the responsibility to:

» Participate in all decision-making processes
» Coordinate with all parties involved
Overview of the RI/FS Process

- RI/FS supports selection of the remedy
- RI characterizes the site
- FS develops and analyzes remedial action alternatives
- Various lead agencies may conduct the RI/FS
Main Activities of the RI

- Site characterization
- Baseline risk assessment
- Treatability studies

Well casings of nested monitoring wells
Main Activities of the FS

- Develop and screen alternatives
- Detailed analysis of alternatives
  - Nine evaluation criteria are basis for remedy selection
CERCLA Requirements for Remedy Selection

- Protect human health and the environment
- Attain (or waive) ARARs
- Be cost-effective
- Use permanent solutions and alternative treatment technologies to the maximum extent practicable
- Satisfy the preference for treatment as a principal element of the remedy
- Involve states in a substantial and meaningful manner
- Consistency with the NCP
The Remedy Selection Process

Step 1: Identify and select the preferred alternative in a proposed plan
- Review the RI/FS report
- Select the preferred alternative
- Prepare the proposed plan

Public comment on proposed plan

Step 2: Document the final selection of the remedy in a ROD
- Review public comments
- Reassess the initial determination of the preferred alternative
- Select the final remedy
- Prepare a ROD and a responsiveness summary
A ROD is:
» Official decision document on remedy selection
» Technical, legal, and public document

A responsiveness summary is:
» Written summary of responses to each significant comment
Overview of Remedial Design Process

- Definition of RD
- Various leads may undertake RD
- Key components of RD
Overview of the Remedial Action Process

- RA planning activities
- Procurement of RA contractor
- Preconstruction activities and RA submittals
- Construction
- Completion

Slope stabilization
O&M and Post-Construction Completion Activities

◆ O&M
◆ Site completion
◆ Five-year reviews
Major Milestones in the Close Out of NPL Sites

- Remedial action completion – completion of individual OUs at a site
- Construction completion – completion of construction at final OU at a site
- Site completion – completion of all response activities at a site
- NPL deletion – removal of all or part of a site from the NPL
Enforcement Response
Overview of CERCLA Enforcement

◆ Enforcement is a response action
◆ The Enforcement Principle – PRP pays or performs the cleanup
◆ Statute provides authorities and tools
Liability Under CERCLA

- Liability is defined in CERCLA Section 107(a)
  - A person is liable for response costs when:
    - There is a release or a threatened release
    - Of a hazardous substance
    - From a facility into the environment
    - Which causes incurrence of response costs
    - The person is included in at least one class of PRPs
PRP Liability

◆ Strict liability
  » Liable without “fault”
◆ Joint and several liability
  » Liable for entire cost
◆ Civil liability
◆ Enforcement discretion
◆ Defenses against liability
CERCLA Enforcement Process

1. Site Discovery
2. Identification of PRPs
3. Negotiations
   - Settlement
     - PRP Response/EPA Oversight
6. Issue Unilateral Administrative Order
   - No Settlement
     - PRP Response/EPA Oversight
7. No Compliance
   - Pursue Other Enforcement Options
Oversight

- EPA monitors all PRP work
  - Field oversight of the PRPs or their contractors
  - Review of all reports
  - Parallel sampling and analysis to ensure accuracy
- PRPs pay for EPA’s oversight expenses as a part of the settlement
Cost Recovery

◆ May be used if PRPs do not agree to conduct or pay for response
◆ EPA issues a demand letter to PRPs
◆ PRPs and EPA negotiate to achieve a settlement
◆ EPA refers judicial action to DOJ if PRP refuses to settle costs
◆ Cost documentation is critical
Superfund Alternative Sites

- Enforcement policy that allows settlements with PRPs without listing site on the NPL
- Site must meet certain criteria
- EPA and state should agree on Superfund alternative site status and coordinate
- Response selection and oversight same as NPL sites
- Settlements achieve similar results to NPL sites
Community Involvement
Trends in Superfund Public Participation

1980

Public Relations/
Public Information

Inform the public

1986

Community Relations

Inform and listen to
the public before
the decision

1994

Community Involvement

Involve people in
decisions that
directly affect them
Implementing Community Involvement in Removal Actions

◆ Community involvement activities vary depending on the type of removal action

» All removal actions including emergency responses
» All time-critical responses
» Time-critical responses that last more than 120 days
» Non-time-critical responses
Implementing Community Involvement in Remedial Actions

- Each remedial phase has its own set of community involvement activities
  - PA/SI
  - Listing on the NPL
  - RI/FS
  - Selection of remedy
  - RD/RA

Placement of oil sorption pads
In Review

- OSCs and RPMs direct response actions
- States and tribal governments participate extensively
- PRPs conduct response actions with oversight
- Community involvement activities are conducted throughout the response process