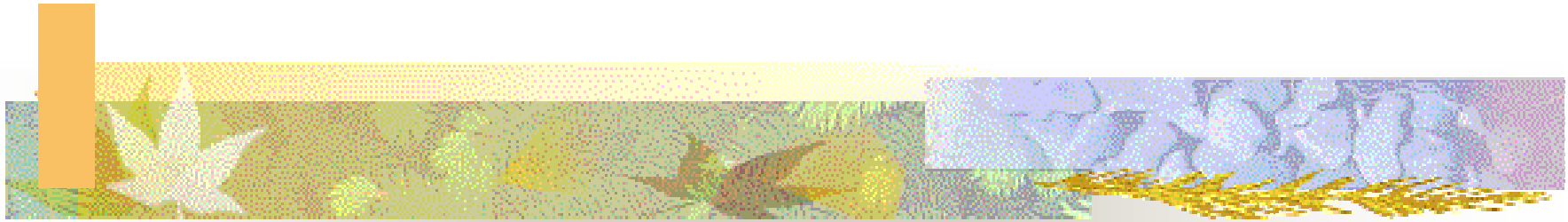


CERCLA/OPA Notification and Coordination for Natural Resource Damages

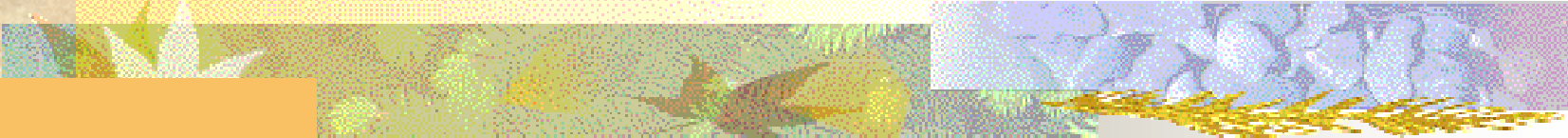


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Overview

- Statutory Background
- Who are the Trustees?
- Trustee Responsibilities
- EPA Responsibilities
- Notifying and Coordinating with Trustees
- How EPA and Trustees Work Together
- Summary



General Goals of CERCLA/OPA Notification and Coordination

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



Goals of Training

- Inform Remedial Project Managers of their important role in:
 - Notifying and coordinating with Natural Resource Trustees;
 - Helping Trustees to assess and restore damaged natural resources.



Statutory Background



Responding to Natural Resource Injury

CERCLA and OPA

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



Responding to Natural Resource Injury

CERCLA and OPA

- The measure of natural resource damages (NRD) is:
 - Cost of restoring injured resources to their baseline condition;
 - Compensation for interim loss of injured resources pending recovery; and
 - Reasonable cost of damage assessment



Who are the Trustees?



Who are the Trustees?

- No one “owns” a natural resource
- Natural resources are held in trust for the public



Who are the Trustees?

- Federal
- State
- Tribal
- Foreign (OPA only)



Who are the Trustees?

Federal Trustees

- Federal trustees are designated in Executive Order 12580 and the National Contingency Plan
- Include Secretaries of Agriculture, Commerce, Defense, Energy, Interior, and other agencies authorized to manage or protect natural resources



Who are the Trustees?

State Trustees

- Governor of each State designates State trustees



Who are the Trustees?

Tribal Trustees

- Designated by Tribal Chairmen
- Secretary of the Interior may act as Trustee at the Tribe's request



Who are the Trustees?

Foreign Trustees

- Foreign officials can choose officials to act as trustees under OPA
- Sue in Federal court if:
 - Spill has a strong connection to the U.S.; and
 - OPA recovery provided for in a treaty or executive agreement



Trustee Responsibilities



Trustee Responsibilities

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



Trustee Responsibilities

Conducting Assessments

- NRD assessments determine the extent of injury and determine ways of restoring and compensating for that injury
- Assessment methodologies have been prescribed by:
 - DOI (for CERCLA)
 - NOAA (for OPA)



Trustee Responsibilities

Conducting Restorations

- Restorations are primarily designed to return injured resources to baseline conditions
- Restorations can also compensate the public for the interim loss of injured resources until baseline conditions are re-established



Trustee Responsibilities

Conducting Restorations

- Monies recovered under CERCLA must be used for:
 - Restorations;
 - Replacement of the injured resource; or
 - Acquisition of an equivalent resource
- Monies recovered under OPA must be to reimburse or pay costs of the Trustee for assessment or restoration



Trustee Responsibilities

Cost Recovery

- Trustees can seek compensation for assessments/restorations by:
 - Suing PRPs in court;
 - Filing a claim for Trust Fund reimbursement (OPA only)



EPA Responsibilities



EPA Responsibilities

- EPA is not a Trustee
- EPA is not authorized to act on behalf of Trustees



EPA Responsibilities

- Notifying Trustees of potential natural resources injuries
- Coordinating assessments, investigations, and planning with Trustees



EPA Responsibilities

- 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



EPA Responsibilities

Sharing of Responsibilities with Coast Guard

- EPA responsible for contamination on land and inland waters
- Coast Guard primarily responsible for contamination involving the coastal zone, the Great Lakes, and deepwater ports



Notifying and Coordinating with Trustees



Goals of Notification and Coordination

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



Notification and Coordination

Providing Trustees with Needed Information

- Coordination between EPA and Trustees will assist the Trustees:
 - In making decisions about whether restoration is needed in light of response actions; and
 - Should generally result in more efficient negotiations and an opportunity to address all liabilities at the site simultaneously



Notification and Coordination

Providing Trustees with Needed Information

- Trustees given the opportunity to review and provide comment on EPA decision documents
- If any portion of these documents addresses restoration and/or compensation for injured resources - that portion of the document will be the sole responsibility of the Trustees



Notification and Coordination

Better Protection of Human Health and the Environment

- Trustees coordinate with EPA on assessments, investigations, and planning
- Trustees often have information and technical expertise about biological effects, as well as location of sensitive species and habitats
- Avoid danger that cleanup could cause additional NR damages



Notification and Coordination

Reduce Time for Settlement

- If natural resource liability not resolved in CERCLA settlement, Trustee may undertake natural resource damage assessment (NRDA) efforts
- NRDA used to identify additional actions (beyond response) to address natural resources



Notification and Coordination

Reduce Time for Settlement

- CERCLA - NRD claim must be filed within 3 years of:
 - Date of discovery of loss and its connection to the release; or
 - At NPL sites, completion of remedial action
- OPA - NRD claim must be filed within 3 years of damage assessment completion



Notification and Coordination

Reduce Time for Settlement

- Notify Federal Trustees of settlement negotiations with PRPs if the release may have resulted in injuries to resources under their Trusteeship
- Encourage participation of Federal trustees in settlement negotiations



How EPA and Trustees Work Together



EPA and Trustees: Mutual Notification and Coordination

- CERCLA
 - Removals
 - Remedial Actions
- OPA Removals



CERCLA Notification and Coordination

- Promptly notify Trustees of potential injuries to natural resources from releases
- Coordinate assessments, investigations, and planning with Trustees
- Notify and encourage Trustee participation in settlement negotiations with PRPs

Superfund Removals:

NRD Notification and Coordination

Notify Trustees of:
Releases or threatened releases
Location of releases

Coordinate with Trustees:
Invite/encourage involvement
in response

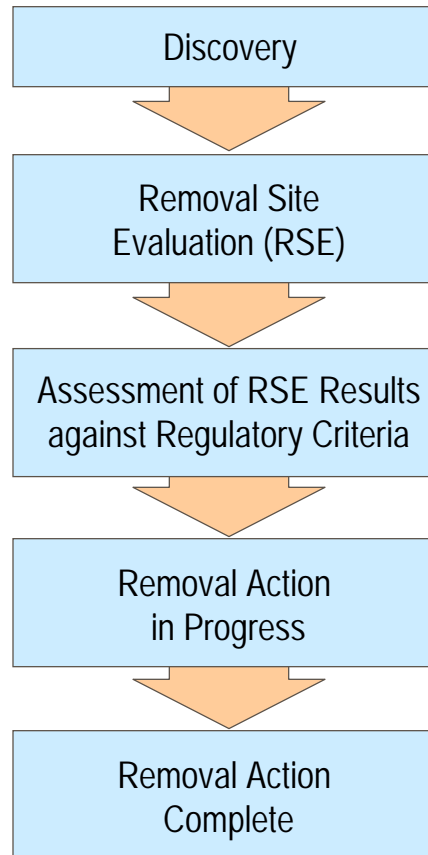
RSE Results

Plans and negotiations

Removal action

Adverse impacts of removal
action

Completion of removal action



Coordinate assessments,
evaluations, and inspections

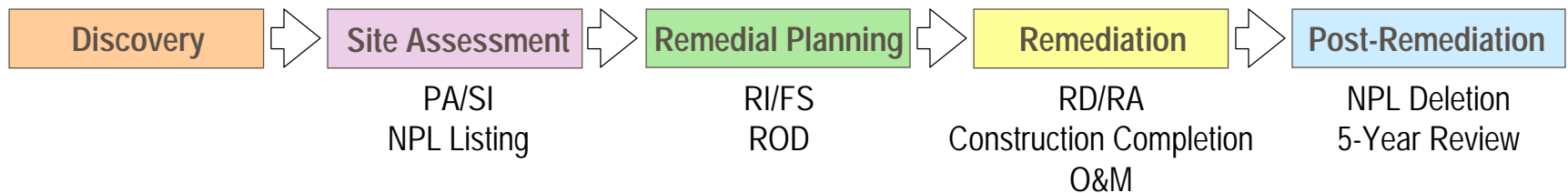
Provide Action Memorandum for site

Provide opportunity to review
and comment on removal action
documentation

Superfund Remedial Actions:

NRD Notification and Coordination

Superfund Remedial Actions:



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



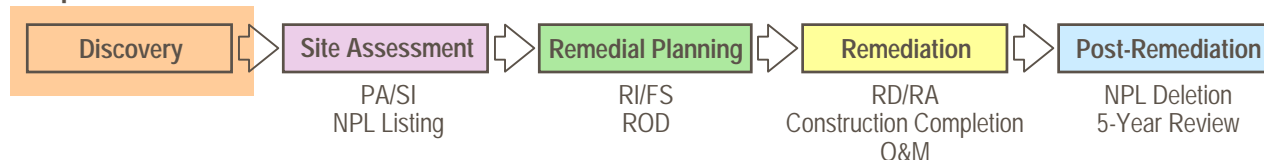
Coordinate with Trustees:

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)

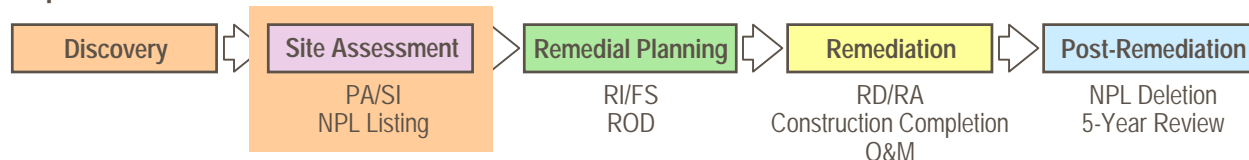
Provide PA checklist
Coordinate assessments, evaluations, investigations, and planning
Provide opportunity to participate in human health and ecological risk screening

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:

*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*

Initiation/Termination of ROD

— Remedial Planning —

Remedial Investigation/
Feasibility Study (RI/FS)

Record of Decision
(ROD)

Coordinate with Trustees:

*Provide opportunity for Trustees to
comment on work plans, RI/FS reports,
remedial alternatives, ARARs, and the
proposed plan*

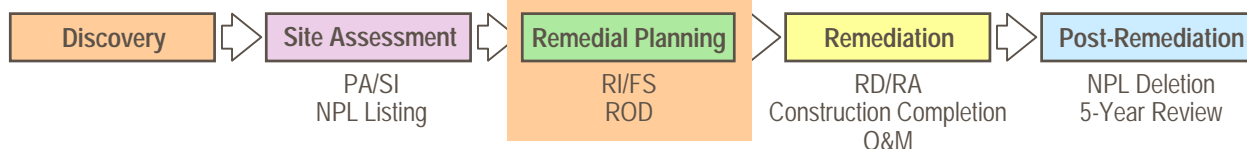
*Coordinate necessary assessments with
Trustees*

*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

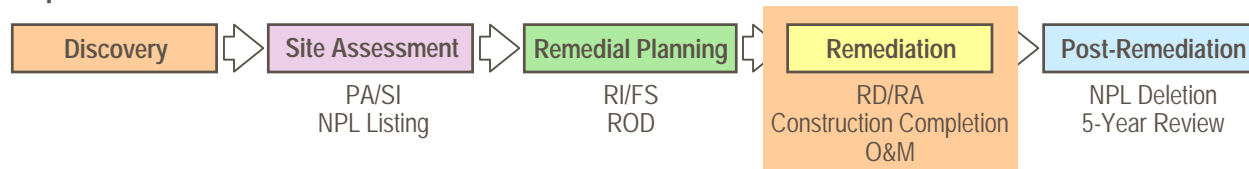
Construction Completion determination

Construction Completion

Operation & Maintenance (O&M)

Provide opportunity for commitment on O&M plans

Superfund Remedial Actions:



Superfund Remedial Actions: NRD Notification and Coordination

Notify Trustees of:

*Notice of Intent to Delete,
Final Notice of Deletion, or
Notice of Intent of Partial Deletion*

*Provide copy of
Five-Year Review report*

— Post-Remediation —

NPL Deletion

Five-Year Review

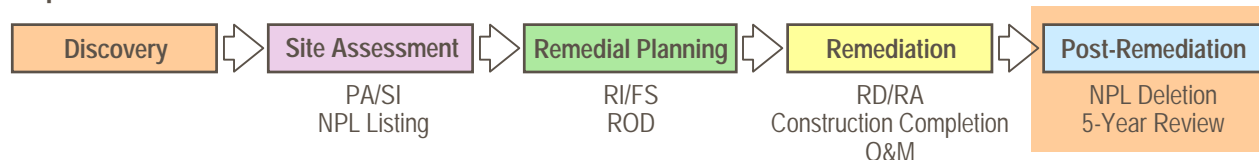
Coordinate with Trustees:

*Provide opportunity to participate
in close-out activities*

*Provide opportunity to comment
on draft close-out report*

*Provide copy of Five-Year Review
report*

Superfund Remedial Actions:





OPA Notification and Coordination

- Initiate a removal action when there is a discharge that may affect U.S. natural resources
- Consult with Trustees on removal actions

OPA Removals:

NRD Notification and Coordination

Notify Trustees of:

Coordinate with Trustees:

Spills or threatened spills
Location of spills

*Invite/encourage involvement
in response*

Discovery

Entry into Tracking System

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



Summary

When Natural Resources are injured, Trustees are responsible for:

- Assessing the extent of injury
- Restoring the resources by:
 - Returning them to their baseline condition
 - Compensating the public for interim loss of resources



Summary

EPA is Responsible for:

- Notifying Trustees of potential natural resource injuries
- Coordinating assessments, investigations, and planning with the Trustees



Summary

- EPA encourages participation by all affected Trustees
- Notification and coordination occurs throughout:
 - Superfund removals and remedial actions
 - OPA removals



Summary

Goals of EPA Notification and Coordination

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