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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
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MANAGEMENT

MEMORANDUM

SUBJECT: Guide for Preparing and Reviewing Superfund
Cooperative Agreements

FROM:

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TO: Assistant Regional Administrators
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Planning and Management Division Directors
Regions I & V

Management Division Director
Region X

Waste Management Division Directors
Regions I - X

We are providing for your use and that of your staff the recently completed "Guide for Preparing and Reviewing Superfund Cooperative Agreements". The Guide was developed as a joint effort between our Divisions with considerable input from other affected offices. It is to be used to more clearly assign responsibilities and contacts in the process and is the most current and accurate guidance on the inclusion of special conditions.

In order to assure the copies in your respective Regions remain current, it is important that you notify the Chief, Grants Policy and Procedures Branch (GPPB), Grants Administration Division of each recipient's name and address. Several reserved sections will be completed in the near future and policy changes will be incorporated as they occur.

We know you will find this to be a useful tool as you develop and manage Superfund cooperative agreements. If you have comments for changes or enhancements, be sure to provide those to the Chief, GPPB.

Attachment

U.S. Environmental Protection Agency
Region V, Library
230 South Dearborn Street
Chicago, Illinois 60604

GUIDE FOR PREPARING AND REVIEWING SUPERFUND COOPERATIVE AGREEMENTS

**Prepared by:
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This guide will be updated periodically as new procedures are developed and new replacement pages will be added to the document. Receipt of the replacement pages is necessary to ensure that all concerned staff are operating in a current and consistent manner. To ensure inclusion on the update mailing list, please fill out the form below, fold on the dotted lines as indicated, and return to the address provided on the reverse side.

Please place my name on the Update Mailing List for the document Guide to Preparing and Reviewing Superfund Cooperative Agreements.

NAME

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Seal here with tape.

FOLD #2

Chief, Policy and Procedures Branch
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FOLD #1

INTRODUCTION

This guide is designed to provide an outline for reviewers of Superfund Cooperative Agreements to follow. The technical review for adequacy of the proposed work is the responsibility of the Program staff, while the definition of and review of adherence to administrative requirements is the responsibility of the Grants Administration Division and the Assistance Administration Units (AAU) in the Regions. The guidance more clearly defines respective roles and explains the process to be followed in reviewing and awarding a Cooperative Agreement. Use of this guide and a well-coordinated implementation of Regional Program Office and AAU roles will assure that each Cooperative Agreement is consistent with the Agency's high standard of fiscal integrity.

The paper reflects two recent changes in the Superfund Cooperative Agreement process: (1) a new 90-day deadline for EPA review of these applications (mandated by the Superfund Amendments and Reauthorization Act); and (2) the notion that AAU staff need to become more involved in the review and development of Superfund Cooperative Agreements. Interim guidance from the Superfund Headquarters Office suggests that Regions offer "preapplication assistance" to States seeking Cooperative Agreements, to ensure that applications can be reviewed and revised within the 90-day limit. It is important that both Regional Program Office and AAU staff be involved in the preapplication assistance as well as the application review.

This paper offers AAU staff guidance on how to:

- Determine whether a Cooperative Agreement application provides sufficient information to make an accurate assessment of the proposed project;
- Determine whether the State assurances in the Cooperative Agreement application will ensure successful completion of the proposed project; and
- Identify additional State assurances or conditions that must be added to the application or the award document.

The paper consists of four chapters. Chapter 1 presents a brief overview of the Cooperative Agreement review and approval process. Chapter 2 describes Cooperative Agreement applications, amendments, and award documents. Chapter 3 presents an in-depth discussion of special management concerns that should be considered when reviewing Cooperative Agreement applications. Chapter 4 presents a checklist that Regional Office staff may use to guide them through preapplication assistance and application review processes.

CHAPTER 1: OVERVIEW OF THE COOPERATIVE AGREEMENT REVIEW AND APPROVAL PROCESS

The process of developing a Cooperative Agreement between EPA and a State, a political subdivision thereof, or an Indian tribe* actually begins during two preapplication planning phases: Superfund Memorandum of Agreement (SMOA), and Superfund Comprehensive Accomplishments Plan (SCAP). Once the final SCAP has been prepared, a State may submit a Cooperative Agreement application for one or more sites identified in the SCAP. This chapter briefly describes these early planning phases, then discusses the Cooperative Agreement application submittal, review, and approval process. (See Exhibit 1) Throughout this discussion, the appropriate roles of the Superfund Program Office and Assistance Administration Units staff are identified.

1.1 SUPERFUND MEMORANDUM OF AGREEMENT (SMOA)

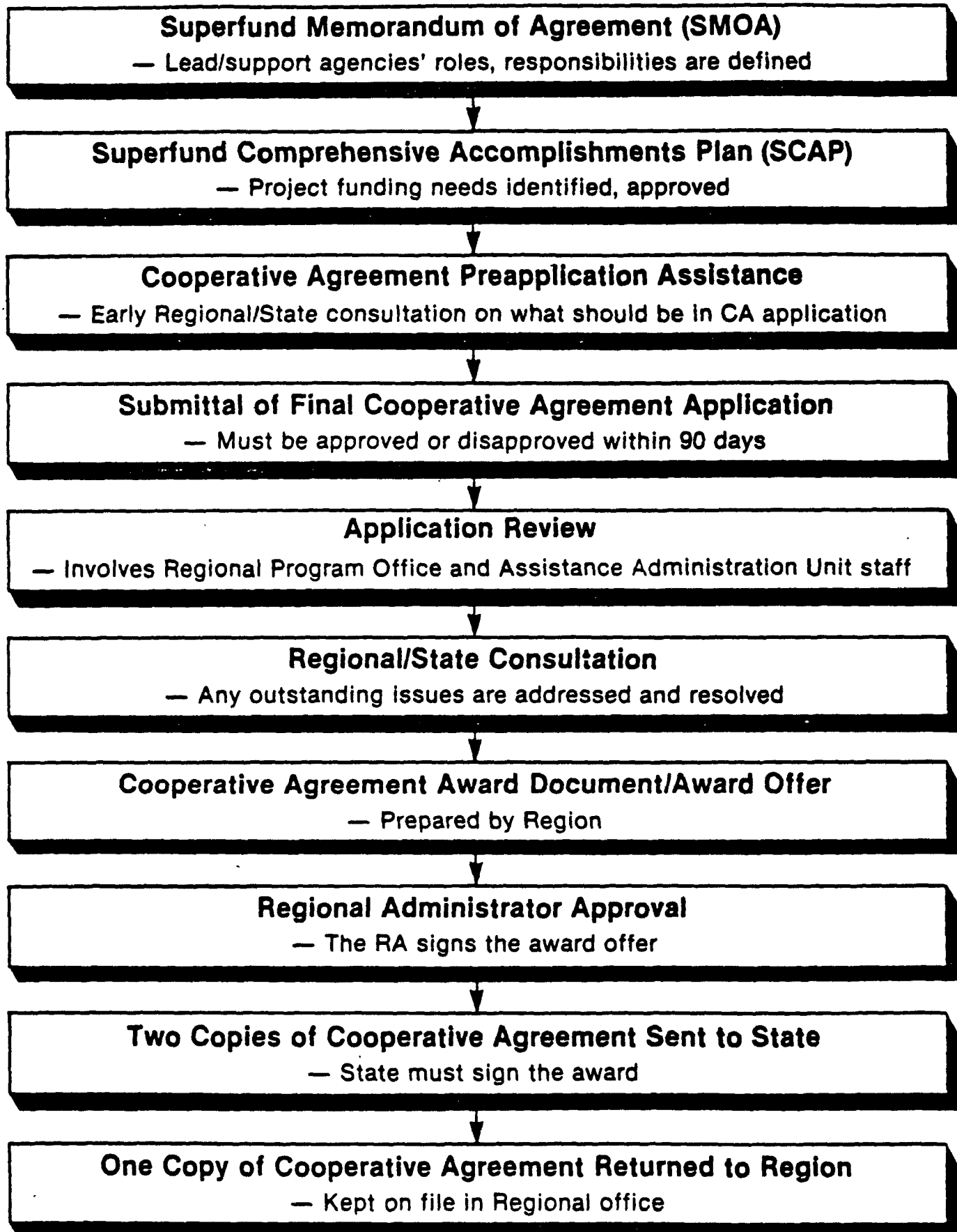
The revised National Contingency Plan (40 CFR 300) creates an EPA/State Superfund Memorandum of Agreement (SMOA) to describe State involvement in Superfund response activities and to improve EPA/State partnerships. The SMOA is a written document executed by an EPA Regional Administrator and the head of a State agency. Entering into SMOAs is not mandatory but strongly encouraged. The SMOA introduces the concept of "lead" and "support" agency, which will shift depending on whether a site is EPA-lead or State-lead. It defines the roles and responsibilities of the lead and support agency regarding review of key documents and/or decision points in pre-remedial, remedial and enforcement responses. The SMOA is not site-specific, and will apply to all future response actions undertaken by the designated lead and support agencies. It is not a substitute for a Cooperative Agreement. Instead, the site-specific Cooperative Agreements, which will specify all technical oversight responsibilities, should be consistent with the general oversight requirements agreed to in the SMOA.

The revised NCP also stipulates that the SMOA will describe a time frame and process whereby EPA and the State will jointly determine priorities and lead responsibility for pre-remedial, remedial and enforcement responses to be conducted during each fiscal year. During these discussions, EPA and the State should also discuss future priorities and long-term requirements for response.

Development of a SMOA will largely be the responsibility of the Superfund Program Office staff and their State equivalents. However, it will be useful if the SMOA identifies the role of Assistance Administration Unit staff and their State equivalents in the development, implementation, and management oversight of Superfund Cooperative Agreements. For instance, two points should be added in the SMOA specifying that, in general, for any response activity to be funded:

* The term "State," as defined in the revised National Contingency Plan, includes Indian tribes meeting certain requirements who wish to be treated as States with respect to certain provisions of CERCLA. Section 300.515 of the NCP describes these requirements for Indian tribes. Throughout this guidance, the term "State" means "State or Indian tribes". A cooperative agreement with a political subdivision requires a three-party agreement (EPA, the state, and the political subdivision).

EXHIBIT 1: COOPERATIVE AGREEMENT REVIEW AND APPROVAL PROCESS



- Lead and support Agency Program Office staff are responsible for ensuring that the response is consistent with all requirements in the NCP (40 CFR 300).
- Lead and support Assistance Administration Unit staff are responsible for ensuring that state-lead, CERCLA-funded, site-specific response complies with all provisions in: 40 CFR Part 2 (Public Information); 40 CFR Part 4 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs); 40 CFR Part 29 (Intergovernmental Review of Environmental Protection Agency Programs and Activities); 40 CFR Part 30 (General Regulation for Assistance Programs); 40 CFR Part 32; and 40 CFR Part 33 (Procurement under Assistance Agreements).

These two statements would introduce the notion early in the Superfund planning process that both the Assistance Administration and Program Office staff at both the Federal and State levels are essential for effective program oversight.

1.2 SUPERFUND COMPREHENSIVE ACCOMPLISHMENT PLAN (SCAP)

The SCAP is the official mechanism through which funding needs for proposed Superfund activities are approved. All activities must be on the approved SCAP to receive funding. The Superfund Program Office coordinates with the Regional SCAP contact to ensure that information on the SCAP is accurate, and that sufficient funding has been budgeted to maintain site progress. Identification of funding needs is an EPA Superfund Program Office responsibility.

1.3 PREAPPLICATION/APPLICATION REVIEW PROCESS

EPA faces a stringent time limit for review of Superfund Cooperative Agreement applications. To ensure that Cooperative Agreement applications are not disapproved because of insufficient time for review and revisions, EPA Regional Program Office and AAU staff should provide preapplication assistance to States intending to submit applications. Regional Program Office staff should request that State Program Office staff provide a preapplication outline of activities that would be included under the Cooperative Agreement. Regional Program Office staff should review the outline and consult with the State on how to structure the application so that it demonstrates compliance with NCP requirements as well as 40 CFR 29, 30, 32, and 33. Regional Program Office staff should also check to make sure that the activities in the outline are included in the SCAP.

Regional AAU staff should also review the outline, and should contact the State Program Office and Assistance Administration staff to discuss the assistance requirements that they must meet (in particular, the provisions from 40 CFR 30 and 40 CFR 33).

Regions should initiate preapplication assistance at least two quarters before the target quarter for funding. This will allow the State enough time to prepare its application.

The Cooperative Agreement review process begins when an application is formally submitted by a State. The application must be dated and entered into GICS by the Assistance Administration Unit (AAU), which forwards it to the Program Office. Section 104(d)(1)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires EPA to make a determination on Cooperative Agreement applications within 90 days of receipt. If an application is incomplete and cannot be completed within 90 days, or if consensus cannot be reached on the terms of the Cooperative Agreement within the 90-day limit, then EPA must disapprove the application.

Once a Cooperative Agreement application has been submitted, it is reviewed by Regional Program Office and AAU staff for compliance with technical and administrative requirements. (Chapter 4 of this document includes a checklist that AAU staff should use in their review of Cooperative Agreement applications.)

When the review is completed, the Region contacts the State to discuss any issues pertaining to the application. Both the Program Office and AAU staff from the Region and the State should participate in these discussions. If agreement can be reached on these issues, Regional Program Office or AAU staff will fill out EPA Form 5700-20C or 5700-20A ("C" replaced "A"; use "A" until supply exhausted), which functions as the offer of award. Depending on the nature of the application issues, the Region may want to include some special conditions in the document. Special conditions may be added to:

- Emphasize to a State the need to comply with a particular requirement;
- Correct deficiencies in the content of the application; or
- Add requirements not contained in the application or regulations.

Depending on the Region, the Program Office or AAU staff will prepare the award package and obtain all necessary concurrences. The AAU sends the award offer to the Regional Administrator (RA) for signature and sends two signed copies with a cover letter to the State. After signing the offer, the State returns one copy of the agreement to the Region's AAU (i.e., Award Official).

CHAPTER 2: COOPERATIVE AGREEMENT APPLICATION, AWARD, AND AMENDMENT

2.1 COOPERATIVE AGREEMENT APPLICATION

To apply for a Cooperative Agreement under CERCLA, the State must use the "Application for Federal Assistance - State and Local Nonconstruction Programs" (EPA Form 5700-33, Rev. 11-86). The form consists of five parts, plus attachments:

1. Part I - General Information, Signature and Certification
2. Part II - Project Approval Information
3. Part III - Budget Information
4. Part IV - Project Narrative Statement, with Scope of Work
5. Part V - Assurances
6. Attachments

(See model Cooperative Agreement application, Exhibit 2, at the end of this chapter).

2.1.1 Part I - General Summary Information (SF 424)

This section provides general administrative information about the applicant and project. For example, it asks for total proposed project funding, project start and end dates, project duration, and an administrative contact (project manager). Detailed instructions for completing the form appear on the form.

2.1.2 Part II - Project Approval Information

This section requires responses to eleven questions, and must be completed to assure compliance with Federal regulations. (See "Part II" of the model Cooperative Agreement application in this chapter). Each of the eleven questions has a "Yes" or "No" response. For each "Yes", the State must provide some additional information.

EPA Regional Office reviewers must compare information in Part II of the application with other sections, such as the Statement of Work and comments in the Intergovernmental Review Section. For instance:

- If Item #2 (Does this assistance request require State or local advisory, educational, or health clearances?) has a "Yes" response, then the identified agency should be included in the intergovernmental review. Similarly, if the proposed project is covered by an approved comprehensive plan (Item #5), then the appropriate planning agency should also be included in the intergovernmental review. (A "comprehensive plan" could be a land use plan, public health plan, or environmental management plan for a State or local government jurisdiction.)

- If the project will cause the displacement of any individual, family, business, or farm, a relocation task should be in the applicant's Statement of Work.

2.1.3 Part III - Budget Information

This section identifies total costs for all activities to be undertaken as part of the proposed project. The Budget Information Part includes six sections:

- Section A: Budget Summary--identifies the cost per response activity, (remedial, removal, or enforcement) to be funded.
- Section B: Budget Categories--displays detailed breakdown of costs by phase of response (pre-remedial, remedial, removal, or enforcement), by site, and by activity (PA/SI, RI/FS, remedial design, remedial action).*
- Section C: Non-Federal Resources--provides an area for listing funding sources and amounts other than those provided by EPA.
- Section D: Forecasted Cash Needs--projects drawdowns for each quarter of the first-year budget period, by response activity.
- Section E: Budget Estimates--projects funds necessary to complete the project. For instance, if an application is for RI/FS work, Section E is where the applicant estimates costs for remedial design and remedial action.
- Section F: Other Budget Information--lists other out-of-the-ordinary direct charges, previously negotiated indirect charges, and includes a "remarks" section. Under Item 22 ("Indirect charges") of this section, States indicate whether their indirect cost rate has been negotiated with and approved by the recipient's cognizant agency. (It is also acceptable to include a rate that is being negotiated.)

* A complete listing of obligation codes is available in Financial Management of the Superfund Program, 1987. These codes are used in making the award and in tracking drawdowns by the State against its letter of credit. Contact the Financial Management Division for details.

EPA Regional Office reviewers should evaluate these budget sheets for several factors:

- Sufficient level of detail: The budget information sheets summarize Federal and State costs for each proposed activity. Sections A and B of the "Budget Information" forms in the model Cooperative Agreement (Exhibit 3) show the appropriate level of detail for activities. In Section B, costs for each site/activity are further divided by object class category. Object class categories include personnel, fringe benefits, travel, equipment, materials and supplies, contractual services, construction, other direct costs, and indirect costs.
- Consistency with Statement of Work: The budget information sheet provides summary budget figures, while the Statement of Work (SOW) in the Project Narrative (Part 4) provides a detailed budget breakdown. In the Statement of Work, cost estimates are broken down for each activity. The aggregated costs in the Statement of Work must match those in the Budget Information sheets.
- State Cost Share: The State must identify both Federal and non-Federal costs for each activity. Section 104(c)(3) of CERCLA requires States to share in the cost of remedial actions funded by EPA's Superfund program. States are required to pay 10 percent of remedial action costs at sites that were privately operated and owned at the time of disposal. For facilities operated by a State or political subdivision, States are required to pay at least 50 percent of all response costs at the facility (including past Fund-financed remedial planning, remedial actions, removals, enforcement activities).^{*} The cost share may be in the form of cash and/or services (i.e., in-kind contributions).
- Allowable Costs: Costs included in the application must be allowable for payment under CERCLA. Allowable costs are defined as those costs that are "eligible, reasonable, necessary, and allocable." All costs must be consistent with Section 111 of CERCLA and with OMB Circular A-87 "Cost Principles for State and Local Governments." Final determination of the reasonableness of the cost estimates in the application will be made by EPA.

* SARA amended this provision. Previously, the requirement was that States paid 50 percent of all response costs at publicly-owned facilities; and the definition of "response" did not include enforcement activities.

- Indirect Cost Rate: The rate for indirect costs must be negotiated with and approved by the recipient's cognizant agency. (It is also acceptable to include a rate that is being negotiated.) Federal cognizant agencies are assigned by the Office of Management and Budget.

2.1.4 Part IV - Project Narrative Statement

This part of the application is a description of the type of response activities to be performed by the recipient. In general, the Project Narrative Statement includes a site description, activities, schedule, and milestones.

The schedule and milestones identified in the Project Narrative Statement should be used by AAU staff to monitor the progress of that response action. If the AAU staff notices that a milestone has been missed, he or she should bring it to the attention of the appropriate Regional Program Office staff.

Because the Project Narrative Statement information can be so helpful in monitoring a project's progress, the Regional Program Office and AAU may want to specify a minimum level of detail, and a format that States are requested to follow. This Regional request should be conveyed to the States during preapplication assistance. It is suggested that Regional Program Office and AAU staff develop guidance for States on the desired level of detail for SOWs. This guidance could then be discussed with the States during preapplication assistance.

The SOW describes the purpose and scope of activities to be carried out as part of the proposed project. For each activity, the SOW should include estimated start and completion milestones. Where appropriate, the SOW should also identify outputs and should contain cost estimates for each activity: (1) pre-remedial; (2) remedial; (3) removal; and (4) enforcement.

The determination of an acceptable level of detail for the Statement of Work will vary from Region to Region. The model Cooperative Agreement at the end of this chapter shows one appropriate level of detail; but there may be others, depending on Regional practices. However, it is the responsibility of the Regional Program Office and AAU to make sure that the Statements of Work have enough detail to allow the Region to evaluate whether EPA will be "getting what it pays for."

The SOW should also include tasks for the development of a number of plans and management reports, including a Community Relations Plan, a Quality Assurance Project Plan, and a Site Safety Plan (if they are not already attached to the Cooperative Agreement application).

2.1.5 Part V - Assurances

Part V of the application form identifies standard assurances to which the recipient must agree in signing the Cooperative Agreement application form. The recipient must:

- Possess legal authority to apply for the award.
- Comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), regarding:
 - who will benefit from the award; and
 - prohibiting discriminating employment practices.
- Comply with requirements of provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
- Comply with provisions of the Hatch Act, which limit the political activity of employees.
- Comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
- Establish or maintain safeguards to prohibit employees from using their positions for private gain for themselves, their families, their businesses, or others with whom they have ties.
- Give the recipient agency and the Comptroller General access to all records, books, papers, or documents related to the grant.
- Comply with all requirements imposed by the Federal award agency.
- Ensure that facilities under its ownership, lease, or supervision that are used to carry out the project are not listed on EPA's list of "Violating Facilities."
- Comply with the flood insurance requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which pertains to the purchase of flood insurance.

Although these assurances are clearly identified in the application form, EPA Regional Office staff may choose to emphasize one or more of these in the "special conditions" section of the award offer (5700-20 C/A).

A variety of other assurances that do not appear in the application form should be included as special conditions, e.g., not to award subagreements to firms/individuals on EPA's Master List for Suspended, Debarred, and Voluntarily Excluded Persons. These requirements are discussed in Chapter 3.

2.1.6 Attachments

There should be at least three attachments to a Cooperative Agreement application:

- A certification letter from the State Governor or Attorney General;
- Evidence of compliance with the State's intergovernmental review process; and
- A procurement system certification form.

Certification Letter

The State must have submitted a letter to EPA with the application package certifying that the State agency submitting the application has the legal and administrative authority to enter into a Cooperative Agreement with EPA and to make any CERCLA Section 104 assurances (e.g., state cost share) that are necessary to complete the project. The letter may be from the State's Governor or Attorney General.

The letter does not need to be site-specific; a State may prepare one letter applying to all of its NPL sites and submit a copy with each application. However, the State has the obligation to inform EPA of any changes in the State's law or policy that affects its certification letter and to provide a new certification letter if needed.

Intergovernmental Review (E.O. 12372) Requirements

The State lead agency must send out a Cooperative Agreement application to the state's SPOC for review and comment by appropriate State and local agencies. The subsequent, formal application to EPA must evidence compliance with the state's process before EPA can offer an award. Executive Order 12372 allows States to establish their own process for reviewing Federal financial assistance proposals. Under this order, States are required to:

- (1) Inform each Federal agency which of its programs are included in the State review process;
- (2) Provide assurances that they have consulted with local officials before revising the list of selected programs that fall under State intergovernmental review processes;
- (3) Submit official State process recommendations (if any) to EPA through the State's "Single Point of Contact."

If States do not develop their own review process, then existing consultation requirements from other statutes continue in effect, (i.e., Sec. 204, Demonstration Cities and Metropolitan Development Act; Sec. 401, Intergovernmental Cooperation Act of 1968).

EPA will award a Cooperative Agreement only after receipt of intergovernmental review comments, after receipt of documentation that a review was conducted and there were no comments, or after the review period ends and no comments were received. The model Cooperative Agreement application has an example of an intergovernmental review package.

States are responsible for ensuring that applicants comply with the State's intergovernmental review requirements. AAU staff should refer to the intergovernmental review requirements of a particular State on file in AAU's office, and should review the Cooperative Agreement application with this in mind. EPA's Administrative Assistance Manual provides further guidance on this (see Chapter 6 of that document).

Procurement System Certification Form

Each application must be accompanied by a completed Procurement System Certification (EPA Form 5700-48). The State must include a signed original of this form in its application package. To complete this form, the State must determine whether its procurement system meets the requirements of EPA's procurement regulation (40 CFR Part 33). A responsible official must certify on the form whether the State's procurement system meets the requirements of this regulation.

If the State does not certify its system, the State must indicate that its procurement activities will be conducted in accordance with the requirements of Part 33. States that do not certify are subject to EPA review and pre-award approval of all proposed procurement actions. States are subject to the provisions in 40 CFR 33, Appendix A if they have not certified their procurement system. EPA reserves the right to review a recipient's procurement system or any State procurement action funded wholly or in part by the Agency regardless of whether the State has certified its procurement system.

A State's certification is valid for two years or for the length of the project period in the award, whichever is greater, unless the recipient substantially changes its procurement system. If the State has previously provided its required certification, a responsible official should complete Part A of the Certification Form, indicating the month and year in which this certification was submitted.

The procurement requirements in 40 CFR 33 are numerous and fairly complex. If a State submitting a Cooperative Agreement application has self-certified its procurement system, the AAU should try to determine whether: (1) the State has a thorough understanding of these provisions; and (2) the State procurement regulations actually have all of the necessary provisions found in 40 CFR 33. AAU staff can make these determinations by contacting State procurement administration staff to discuss these concerns during preapplication assistance, and/or during review of the Cooperative Agreement application. Here again, the checklist in Chapter 4 should assist AAU staff in these efforts.

2.2 COOPERATIVE AGREEMENT AWARD DOCUMENTS

When the State and EPA have resolved all of the issues pertaining to the Cooperative Agreement application, the EPA fills out EPA Form 5700-20C/A, "EPA Assistance Agreement Amendment," which replaces the 5700-20A "EPA Assistance Agreement". This form, when properly completed and signed, serves as the Cooperative Agreement award document. (See model award document in Exhibit 3 at the end of Chapter 2). The information in the award document corresponds with the model application included in this Chapter. It should be noted that EPA Form 5700-20C can serve as the award document for a new Cooperative Agreement and can be used to amend an existing Cooperative Agreement by adding or removing funds. When the form is being used for a new award (as in this example), lines 30 through 38 on page 1 will have no entries in the "Former Award" column. Only the second column ("This Action") needs to be filled in for new awards.

Part I of the award document requires EPA to provide some basic information about the project. The requested information includes: project manager's name and telephone number; statutory authority; regulatory authority; description of project; location of project; budget period; and amount of award.

Part II requires EPA to provide information on the approved budget. Because the model award document in Section 2.2 covers RI/FS work, only Tables A ("Object Class Category") and B ("Program Element Classification") are filled in. Table C calls for fairly detailed construction cost estimates.

Part III of the award document provides space for EPA Regional Offices to add any special conditions that they deem necessary. This is determined jointly by Assistance Administration Unit and the Regional Program Office staff. The example illustrates that, even though the State had a fairly complete application, EPA thought it prudent to include a few more conditions. In this example, EPA decided that the oversight role needed to be emphasized; all of the special conditions pertain to EPA's monitoring and oversight responsibilities. As mentioned previously, possible reasons for adding special conditions include: (1) to emphasize a particular requirement; (2) to correct a substantive deficiency in the Cooperative Agreement application; or (3) add requirements not contained in the application or regulations. Examples of special conditions that apply to all EPA financial assistance programs and that may be added by the AAU staff are found in Chapter 3. Other fiscal provisions unique to the Superfund program may also be required.

2.3 COOPERATIVE AGREEMENT AMENDMENTS

A model amendment document at the end of this chapter (Exhibit 4) shows how EPA Form 5700-20C or 5700-20A is used to amend Cooperative Agreements. The example is based on the premise that the project identified in Section 2.1 (the original application) is now moving into the remedial design phase.

Part I of the form is filled out differently if it is used to amend an existing Cooperative Agreement. In remedial cases, all three columns should be filled out for lines 30 through 38. This gives the Regional Office a complete picture of original, amended, and total award. In Part II of the form, only Tables A and B are filled in, since the proposed new work does not cover construction.

The special conditions are especially important on a Cooperative Agreement amendment, particularly if the project is moving into a new phase. For example, projects proceeding into the remedial design and remedial action phases may require one or more of the special conditions noted below:

- The State will submit its remedial design to EPA for review.
- The State will provide for all O&M for the life of the remedy.
- The State will pay 10 percent of remedial action costs at privately owned and operated sites. (For sites operated by a State or political subdivision thereof, the State will pay 50 percent of all response costs).
- If the remedial action includes off-site treatment, storage, or disposal of hazardous substances, the State will find a RCRA facility to handle these substances that is acceptable to EPA.
- The need to identify private property for response purposes may raise the issue of acquiring an interest in the property. The Assistant Administrator for the Office of Solid Waste and Emergency Response, with concurrence of the General Counsel, will determine when the purchase of a property interest is necessary. If such a determination is made, the State must acquire the interest before the fund-financed action can begin.
- Beginning October 17, 1989, the State will be required to assure EPA that it has adequate capacity to dispose of or treat all hazardous wastes expected to be generated by that State in the next 20 years. (States may enter into inter-regional compacts to assure this capacity.)

It must be emphasized that the conditions used in this example may not be required for every site. The EPA Project Office staff must make a judgment about whether site-specific circumstances warrant the need for any special conditions. The distinction between conditions that all applicants must comply with and those that might be applied on a case-by-case basis is explained more fully in Chapter 3.

2.4 MULTI-SITE/MULTI-ACTIVITY COOPERATIVE AGREEMENTS (MSCA)

An MSCA is an "umbrella" Cooperative Agreement that, under one funding document, may include several response activities at more than one site within a State. This concept provides States with the flexibility to select from a

range of options in developing MSCAs covering State-lead projects and/or State participation in Federal-lead projects. Although all costs must be accounted for on a site-specific basis, one important attribute of an MSCA is the ease with which obligated funds may be transferred among activities and/or sites covered within the same MSCA.

An MSCA may be developed either as a new Cooperative Agreement or by adding several sites/activities to an existing, site-specific Cooperative Agreement. After the initial award, MSCAs can be amended at any time to include funds for additional sites and/or activities. Two or more existing single-site Cooperative Agreements can be combined to create an MSCA by closing out one (or more) agreement(s) at the conclusion of a remedial activity and then amending the remaining single-site Cooperative Agreement.

An MSCA can fund various activities within the following program categories:

- Pre-remedial
- Remedial
- Removal
- Enforcement

Generally, MSCAs must follow the same requirements as single-site Cooperative Agreements. The following paragraphs describe special requirements relating to MSCAs.

Intergovernmental review notification of various activities can be handled by a single letter, which specifies site names and locations covered, the problems at each site, and likely activities.

In applying, EPA Form 5700-33 (Rev. 11-86) is used. A separate budget sheet is required for each site. Separate project narrative statements may be needed depending on the activities covered. Site management, accounting, and other procedures do not vary significantly from single-site agreements.

Funds cannot be shifted between Cooperative Agreements without undergoing a formal deobligation/reobligation process. It is particularly difficult if the shift occurs in a fiscal year later than the one in which the original obligation was made. In such a case, the funds are classified as carryover and must be recertified to the allowance holder before they can be reobligated. With single-site Cooperative Agreements, the need for recertification made it difficult to move funds from a site where actual costs were less than projected to another where additional funds are required. MSCAs, however, allow the shifting of funds among sites and activities. EPA does not require formal deobligation of funds for accounting changes under an MSCA if the activity or site to which funds are being moved is clearly encompassed by the scope of the MSCA. This is because the use of the funds is still considered to be for the purpose of the initial obligation. Therefore, with the Award Official's approval (via a formal amendment), funds within an MSCA may be transferred from:

- One site to another site in the MSCA; or
- One activity at a site to another activity at that site if the second activity is included in the MSCA.

States need not receive funding for all sites/activities in the initial MSCA award for those sites/activities to be within the scope of the MSCA and, therefore, to qualify for potential transfer of funds.

Transfer of funds between sites or activities within an MSCA must be accomplished through the Cooperative Agreement amendment process since funds are obligated on a site-specific/activity-specific basis (except for pre-remedial activities). While this will result in a financial transaction that appears to be deobligation/reobligation, it will not be reported as such and will not require recertification of funds to the allowance holder. The AAU is responsible for developing the amendment and ensuring that the amounts proposed for transfer have not been drawn down or expended by the State. A different Document Control Number (DCN) must be assigned to each amendment to ensure that the date of the amendment is recorded in the EPA Financial Management System, thus allowing site activities to be tracked. All cost-sharing is site-specific. State costs incurred at one site may not be used to meet the State's cost-sharing obligation at another site.*

Because of the financial advantages associated with MSCAs, both the State and the Superfund program staff need the AAU to monitor whether the addition of more sites or activities to a Cooperative Agreement makes sense. The usefulness of an MSCA can be quickly eroded if the administrative responsibilities associated with proper accounting (obligation and drawdown) and recordkeeping become a burden to both EPA and the State. Therefore, AAUs must work closely with the program staff to ensure that MSCAs reflect a logical progression of work and responsibilities. For instance, one MSCA may contain the pre-remedial activities that a State is performing; another may contain all the management assistance activities associated with State involvement during a Federal-lead response; another may contain remedial investigation/feasibility studies at several sites; another may cover remedial design and remedial action activities (including State cost-sharing). (See MSCA Model, Exhibit 5.)

Site-Specific Accounting

Since EPA seeks to recover costs for Fund-financed response actions, management of Superfund dollars requires a detailed accounting structure. A State's MSCA application must allocate all projects costs to a site and activity (RI/FS/RD, etc.) except for pre-remedial work, which is handled differently. This should be done in two ways. First, the budget sheets in the application should display the Federal and non-Federal cost of the project

* Note: Statutory credits earned at one site may be used to offset the cost share required at another site in some circumstances. CERCLA credit provisions are complex; AAUs should work closely with FMOs and program staff when credit questions arise.

by site and activity; second, the award document should obligate Federal funds by site and activity.

The Application

For pre-remedial activities, the budget categories in Section B of Form 5700-33 must be broken into separate activities. Sites are listed separately in the MSCA application. The award of funds for this phase of response is not done by site but rather by activity only.

For remedial, removal, and enforcement activities the application must reflect the budget for each phase of response at each site separately. For example, site xyz/RI/FS or site xyz/RD or site xyz/RA. For multi-site cooperative agreements, the display might be a combination of sites and activities, but each must still be displayed separately.

The Award Document

Funds are obligated using EPA's 10-digit account number. See Figure 1. States are not allowed to draw funds from one account to cover expenses for another phase of response, or in an MSCA at another site, without the Award Official's approval. The letter of credit assurances/special conditions for each Superfund Cooperative Agreement must be followed.

Cost Sharing

As for single-site Cooperative Agreements, states are required to share in the cost of response as follows:

- 10 percent of the remedial action for privately owned and operated sites;
- 50 percent of all response costs for publicly operated sites; the 50 percent cost share for previously fund-financed activities is required at the time remedial action is funded; and
- Statutory credits may be used to offset this required assurance; and, although advance match is no longer permitted, pre-SARA agreements with advance match will be honored. AAUs should refer to program guidance and FMD guidance on credits if the State wants to use credit/advance match.

2.5 CORE PROGRAM COOPERATIVE AGREEMENTS

(Reserved)

2.6 PRE-REMEDIAL COOPERATIVE AGREEMENTS

(Reserved)

2.7 ENFORCEMENT PROGRAM FUNDING

(Reserved)

FIGURE 1
SUPERFUND ACCOUNT NUMBER EXAMPLE

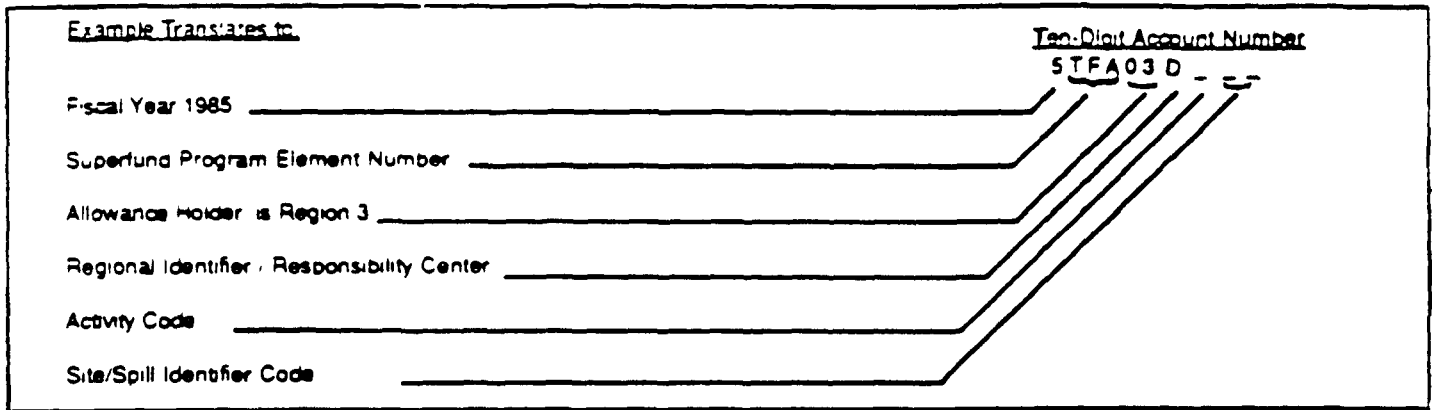


EXHIBIT 2
MODEL COOPERATIVE AGREEMENT APPLICATION

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
1. TYPE OF SUBMISSION (Mark appropriate) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION		b. DATE Year month day 19 86 2 10		NOTE TO BE ASSIGNED BY STATE	
b. DATE		b. DATE		b. DATE	
Leave Blank		Leave Blank		Leave Blank	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name Dept. of Water Resources b. Organization Unit Environmental Services Division c. Street/P.O. Box Ecology Building, Room 2002 d. City Help e. County Sand f. State Euphoria g. ZIP Code. 00013 h. Contact Person (Name & Telephone No.) L.G. Smith ESD, DWR (613)555-1003				5. EMPLOYER IDENTIFICATION NUMBER (EIN) 376002957 a. NUMBER 6 6 8 0 2 b. TITLE Hazardous Substance Response Trust Fund	
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.) Albatross Chemical Co., Hazardous Waste Site Remedial Investigation, Feasibility Study				8. TYPE OF APPLICANT/RECIPIENT A-State B-Insurance C-Business Organization D-County E-City F-School District G-Social Purpose Organi H-Community Action Agency I-Higher Educational Institution J-Indian Tribe K-Other (Specify): Enter appropriate letter <input checked="" type="checkbox"/>	
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.) Toxland, Seaside, Hilltop (cities), all in Sand County		10. ESTIMATED NUMBER OF PERSONS BENEFITING 65,000		11. TYPE OF ASSISTANCE A-State Grant B-Supplemental Grant C-Loss D-Insurance E-Other Enter appropriate letter(s) <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
12. PROPOSED FUNDING a. FEDERAL \$ 301,999.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$ 301,999.00		13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT 2 b. PROJECT 5 15. PROJECT START DATE Year month day 19 86 09 01 16. PROJECT DURATION 24 Months 18. DATE DUE TO FEDERAL AGENCY Year month day 19 N/A		14. TYPE OF APPLICATION A-New B-Renewal C-Revision D-Contribution E-Augmentation Enter appropriate letter <input checked="" type="checkbox"/> 17. TYPE OF CHANGE (For 14c or 14e) A-Increase Dollars B-Decrease Dollars C-Increase Duration D-Decrease Duration E-Continuation F-Other (Specify): N/A Enter appropriate letter(s) <input type="checkbox"/> <input type="checkbox"/>	
19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. EPA, Region XII a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Superfund Branch b. ADMINISTRATIVE CONTACT (IF KNOWN) Joseph Klutz c. ADDRESS 999 West 57th Street Lanview, Euphoria 00014				20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER N/A 21. REMARKS ADDED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE 1/10/86 b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE Heidi M. Kleen, Director b. SIGNATURE		24. APPLICATION RECEIVED 19		25. FEDERAL APPLICATION IDENTIFICATION NUMBER	
27. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		28. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		29. ACTION DATE 19	
		31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		30. STARTING DATE 19 32. ENDING DATE 19 33. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	

PART II

Form Approved.
OMB No. 2030-0020
Approval expires 7-31-89

PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request State, local, regional, or other priority rating?

_____ Yes X No

Name of Governing Body U.S. EPA
Priority Rating National Priority List
(already listed)

Item 2.
Does this assistance request require State or local advisory, educational, or health clearances?

_____ Yes X No

Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with Executive Order 12372?

 X Yes _____ No

(Attach Comments) (Note: If required with submittal by State process).

Item 4.
Does this assistance request require State, local, regional or other planning approval?

_____ Yes X No

Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan?

_____ Yes X No

Check one: State
Local
Regional
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation?

_____ Yes X No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.
Will the assistance requested be on Federal land or installation?

_____ Yes X No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment?

_____ Yes X No

See instructions for additional information to be provided.

No negative impact.

Item 9.
Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm?

_____ Yes X No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticipated?

_____ Yes X No

See instructions for additional information to be provided.

Item 11.
Is project in a Designated Flood Hazard Area?

_____ Yes X No

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

GRANT PROGRAM, FUNCTION OR ACTIVITY (a)	FEDERAL CATALOG NO. (b)	ESTIMATED UNOBLIGATED FUNDS		NEW OR REVISED BUDGET		
		FEDERAL (c)	NON-FEDERAL (d)	FEDERAL (e)	NON-FEDERAL (f)	TOTAL (g)
1. Remedial Planning(RI/FS)	66-802	\$	\$	\$301,999	\$	\$301,999
2.						
3.						
4.						
5. TOTALS		\$	\$	\$ 301, 999	\$	\$301,999

SECTION B - SCHEDULE A BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					TOTAL (6)
	(1) Planning (RI/FS)	(2)	(3)	(4)	(5)	
a. Personnel	\$ 32,858	\$	\$	\$	\$	\$ 32,858
b. Fringe Benefits @ 25%	8,215					8,215
c. Travel	9,905					9,905
d. Equipment	3,000					3,000
e. Supplies	4,500					4,500
f. Contractual	233,949					233,949
g. Construction	0					0
h. Other	3,000					3,000
i. Total Direct Charges	295,427					295,427
j. Indirect Charges @ 20%	6,572					6,572
k. TOTALS	\$301,999	\$	\$	\$	\$	\$301,999
7. Program Income	\$	\$	\$	\$	\$	\$

SECTION B - SCHEDULE B - BUDGET CATEGORIES

B. Program Elements	FUNDING			(4) MAN- YEARS
	(1) FEDERAL	(2) NON-FEDERAL	(3) TOTAL	
a. Remedial Investigation/ Feasibility Study	\$ 301,999	\$	\$ 301,999	
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i. Total Program Elements	\$	\$	\$	
j. STATE TOTAL	\$301,999	\$	\$ 301,999	

SECTION C--NON-FEDERAL RESOURCES

(a) GRANT PROGRAM	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D--FORECASTED CASH NEEDS

TOTAL FOR 1st YEAR	1st QUARTER	2nd QUARTER	3rd QUARTER	4th QUARTER
13. Federal	\$ 301,999	\$ 97,650	\$ 97,644	\$ 97,644
14. Non-Federal				
15. TOTALS	\$ 301,999	\$ 97,650	\$ 97,644	\$ 97,644

SECTION E--BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) GRANT PROGRAM	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$ 300,000	\$	\$	\$
17.		2,000,000		
18.				
19.				
20. TOTALS	\$ 300,000	\$ 2,000,000	\$	\$

SECTION F--OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

The indirect cost rate of 20% has been negotiated with _____, the cognizant agency.

23. Remarks:

PART V ASSURANCES

The Applicant agrees and certifies that he or she will comply with the regulations, policies, guidelines, and requirements, including OMB Circulars No. A-102 and A-87, and Executive Order 12372, as they relate to the application, acceptance, and use of Federal funds for this Federally assisted project. Also, the Applicant agrees and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or nation origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary source of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to employees of institutions of higher education, hospitals, other non-profit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the grantor agency and the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will comply with all applicable requirements of Section 13 of the Clean Water Act Amendments of 1972 (P.L. 92-500) if the grant is awarded under any grant authority of that Act, which provides that no person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity under the said Clean Water Act Amendments for which the applicant receives financial assistance and will take all necessary measures to effectuate this agreement.

ALBATROSS CHEMICAL CO., SITE HISTORY AND INVESTIGATION OBJECTIVES

Background

The Smith Road facilities of the Albatross Chemical Company, located near Toxland in Sand County, were constructed in 1968. The plant produced arsenic-based herbicides such as monosodium methylarsenate (MSMA) along with a wide spectrum of phenolic and amine-based herbicides. The arsenic-based product of MSMA and the raw materials required for its production are the major sources of the problems at Albatross.

During the plant operations, both raw and finished containerized materials were stored in the open, on the ground. These materials subsequently spilled/leaked into the surface soils. In addition, the spread of arsenic materials outside of the process areas occurred in June 1976, when rainfall events caused the wastewater ponds to overflow the plant site.

Although the perimeter dikes initially contained the wastewater on site, subsequent sampling indicated overflows and seepage to the adjacent drainage ditches, which discharged into Brays Bayou. These discharges of arsenic waste water led to litigation between the State and Albatross Chemical Company. To solve the wastewater problems, the company applied to the Department for an injection well permit in September 1978. The Department requested proof of subsurface ownership, which Albatross supplied in the summer of 1979. The hearing on the application convened March 11, 1980 and closed on July 31, 1981. In October 1981, Albatross declared bankruptcy under Chapter 7. The site was left flooded with arsenic-contaminated wastewaters.

Present Status

An emergency action by EPA 1) dewatered the site, 2) filled in the ponds with contaminated soils, 3) temporarily capped most of the plant site with 6 inches of clay, and 4) added topsoil and seed. Currently, ground water and surface water contamination have been recorded at the site. It is anticipated that erosion of the clay could create an air problem of arsenic dust particles.

Investigation/Feasibility Plan Objectives

The objectives of the investigation study are to:

1. Identify target receptors (population at risk, sensitive ecosystem, threatened resources).
2. Establish rate and direction of migration (if any) of wastes from site.
3. Determine local geological conditions, hydrology, and site suitability.
4. Establish waste characteristics and volumes in order to determine possibilities for reuse, treatment, or destruction.

The objectives of the feasibility study are to:

1. Develop and evaluate alternative viable remedial measures considering economic feasibility, technology feasibility, environmental impacts, regulatory constraints, and timeliness of completion.
2. Develop technological feasibility through data review and bench/pilot testing.
3. Determine operations and maintenance options (including cost) for the alternative remedial measures considered.

Structure

The remedial investigation activities described in the attached work scope will be undertaken by the Department directly or by contract. However, during the course of the project, some changes may be required as each activity is completed and more is learned about the condition of the site. Such changes in the work plan must be approved by the Department and EPA. Only changes that are considered to be significant by the Department and EPA Project Officers will require an Amendment to this Cooperative Agreement. EPA and the Department each agree not to release any information gathered or decisions made as a result of the investigation activities carried out pursuant to this Agreement prior to consultation with the other party.

This program includes extensive review of existing data, followed by identification of missing data elements prior to actual data collection and evaluation. Following the submission of the site investigation report, a decision will be made by EPA in consultation with the State as to the severity of the problem and the need for further actions at this site. If problems are identified, the EPA will notify the State to proceed with specific feasibility studies designed to address said problems.

Authorization to Execute Cooperative Agreements and Contracts

The 67th Euphoria Legislature enacted Subchapter H into the Euphoria Water Code, authorizing the Euphoria Department of Water Resources (the Department), to enter into contracts and cooperative agreements with the federal government to carry out removal and remedial actions under Section 104(c) (3) and 104(d) (1) of CERCLA. Subchapter H also established the Disposal Facility Response Fund, currently at 5.6 million dollars, to provide for the State's required matching funding. In addition, Subchapter H also authorizes and requires the Department:

1. To assure future maintenance of the removal and remedial actions is provided for the expected life of those actions as determined by the federal government;
2. To assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

3. To assure payment by the State of:

- a. 10 percent of the costs of the remedial actions, including 100% of maintenance; or
- b. at least 50 percent of the costs as determined appropriate by the Federal government, taking into account the degree of responsibility of the State for any amount spent in response to a release at a disposal facility that was operated by the State or political subdivision.

Finally by letter of February 8, 1986 to Walter Lily, Regional Administrator, U.S. EPA Region XII, Governor Tree formally designated the Department as the lead agency authorized to enter into cooperative agreements and contracts under Section 104 of CERCLA. Copies of Subchapter H, the Department's appropriations relating to the Disposal Facility Response Fund, and Governor Tree's February 8, 1986 letter are enclosed as Attachment I.

Time and Personnel Schedules

The time schedule presented in this application begins following the execution of a contract between the Department and the selected contractor. It is estimated that it will take approximately 120 days from the date of award until a contract is negotiated with the selected contractor. In the interim, the Department will initiate certain chargeable management activities and work tasks necessary to comply with the Cooperative Agreement.

DETAILED BUDGET BREAKDOWN
COST BREAKDOWN - ALBATROSS CHEMICAL CO. SITE

RI/FS

PERSONNEL COSTS

Management Activities

<u>Position</u>	<u>Annual Salary</u>	<u>Work Years</u>	<u>Costs</u>
Hydrologist IV	\$ 30,744	.11	\$ 3,381.84
Hydrologist/Eng. III	32,844	.23	7,554.12
Hydrologist/Eng. III	32,844	.16	5,255.04
Hydrologist/Eng. III	32,844	.06	1,970.64
Hydrologist/Eng. III	32,844	.06	1,970.64
Hydrologist/Eng. I	26,088	.16	4,174.08
Admin. Tech IV	25,248	.10	2,524.80
Hydrologist II	28,800	.18	5,184.00
Admin. Tech I	14,052	.06	843.12
Total Personnel Cost			\$32,858.00
Fringe Benefits @ 25%			8,215.00
Indirect Costs @ 20%			6,572.00

TRAVEL COSTS

<u>Title</u>	<u>Origin/Destination</u>	<u>Trips</u>	<u>Costs</u>
Hydrologist/Eng. III	Euphoria/Confusion	5	\$ 725
Hydrologist IV	Euphoria/Confusion	2	330
Hydrologist/Eng. III	Euphoria/Confusion	8	2,750
Hydrologist/Eng. I	Euphoria/Confusion	6	2,550
Hydrologist II	Euphoria/Confusion	5	725
Admin. Tech IV	Euphoria/Confusion	5	825
Vehicle rental/fuel			2,000
Total Travel Costs			\$ 9,905

EQUIPMENT COSTS

<u>Equipment</u>	<u>Daily Usage Fee</u>	<u>No Days</u>	<u>Cost</u>
Air packs (2)	\$ 5 (2)	60	\$ 600
Containment Suits (2)	\$10 (2)	60	1,200
Air Sampling Kit (1)	\$20	60	1,200
Total Equipment Costs			\$3,000

SUPPLIES

Postage	\$ 500
Locks (6)	50
Disposal safety equipment (40 man-days)	3,000
Camera	200
Fire Extinguisher	50
Chemical Manuals (2)	100
Sampling Equipment:	
sample jars 25	
sample vials 50	
teflon liners 50	
bailers (6) 300	
sample tags 25	
packaging 150	
Total Supplies Costs	<u>600</u>
	\$4,500

OTHER COSTS

Publication/Document Fees	\$1,000
Reproduction	800
Long Distance Telephone	<u>1,200</u>
Total Other Costs	\$3,000

CONTRACTUAL COSTS

Facilities (offices, equipment, station) & Services (water, utilities, etc.)	\$22,600
Worker Safety Plan	6,250
Site Survey	4,600
Determine depth of soils contamination	6,500
Establish Surface Water Quality	5,000
Geotechnical Investigation	168,999
Report Findings	<u>20,000</u>
Total Contractual Costs	\$233,949

TOTAL COST INVESTIGATION 301,999

STATE ASSURANCES

The Euphoria Department of Water Resources is the designated State agency responsible for implementing the cooperative agreement. The Department provides the following assurances:

- (1) It will agree to the following conditions of letter of credit financing:
 - (a) Cash drawdowns will occur only when needed for disbursements.
 - (b) Timely reporting of cash disbursements advance and balances will be provided, as required by the EPA Letter of Credit Users Manual
 - (c) The same standards of timing and reporting will be imposed on secondary recipients, if applicable.
 - (d) When a drawdown under the letter of credit occurs, the recipient will show on the voucher (Form TFCS-5805) the cooperative agreement number, the appropriate EPA account number, and the drawdown amount applicable to each site/activity account. The eighth digit of the account number (see Item 39, page 1 of the Cooperative Agreement) is the code to the appropriate activity assignment:
 - L - Remedial Investigation/Feasibility Study
 - N - Remedial Design
 - R - Remedial Action
 - J - Pre-remedial Activities
 - S - Operation and Maintenance
 - E - Removal Actions
 - 3 - State Liaison
 - 7 - General Support and Management
 - (e) When funds for a specific activity have been exhausted but the work under the activity has not been completed, the State will not draw down from another activity or site account. At the request of the recipient, the EPA Award Official may cause funds from one activity to be transferred to another.
 - (f) Funds remaining in an account after completion of an activity may be either returned to EPA or adjusted to another activity or site, at EPA's discretion.
 - (g) When an activity is completed, the State will submit a Financial Status Report (Standard Form 269) within 90 days to the EPA Award Official.
 - (h) The State will also submit the Standard Form 269 within 90 days after the close of each budget period. If the budget period is longer than one year, the report will be submitted annually, based on the anniversary month of the award.

- (2) The Department agrees to \$[] as the fair share dollar amount for minority business enterprises and women's business enterprises (MBE/WBE). The fair share will be used to award MBE/WBE subagreements. The Department will submit to the EPA Award Official a completed Standard Form 334 within 30 days after the end of each Federal fiscal quarter until the last subagreement has been awarded.
- (3) The Department will conduct the activities in this cooperative agreement in a manner consistent with the existing National Contingency Plan (NCP), 40 CFR 300.
- (4) The Department agrees to list all nonexpendable personal property in the recipient's property records and agrees to follow federal property management standards contained in 40 CFR Part 30.531. Property inventory reports will be in accordance with 40 CFR 30.505. Disposition of property will be in accordance with 40 CFR 30.532.
- (5) In accordance with 40 CFR Parts 30 and 33, the Department will retain records generated under this Cooperative Agreement for three years from the date of submission of the final Financial Status Report or until any litigation, audit, claim or cost recovery actions begun during the project are resolved, whichever is longer. The Department will contact the EPA Project Officer in advance of the proposed disposition of any records from the files developed for this project. No files or documents concerning this Cooperative Agreement shall be disposed of without notifying EPA in advance. Upon notification, EPA may require that the document be retained by the State for an additional specified period. Alternatively, EPA may require that the documents be transferred to EPA for retention. State and State contractor files, and any additional documentation for cost recovery purposes, can be retained in microform, if the documents are suitable for microform copying and if the microform can be reproduced as an accurate hard copy version of the original. The State or its contractor will obtain EPA approval of the process before copying or disposal of the original documentation. Original documents must be retained for those types of documents that are not capable of being completely and accurately microformed (such as large documents, photographs or blue prints).

The Department also will notify EPA of any request to dispose of documents received from a State contractor. EPA will impose the same requirements for retention or disposal on State contractor records as on States.

- (6) The Department will maintain an accounting system that will document all Superfund costs, including costs of subagreements, incurred on a project and will identify these costs by the EPA Cooperative Agreement Identification Number. Costs entered into the system will be classified by the standard object class categories used in the Cooperative Agreement. Costs will also be documented site-specifically.

The Department will develop and implement procedures to control the receipt, obligation, and disbursement of funds, and will provide for

system audits and internal reporting of financial status on a regular basis. If the Department is charging indirect costs, the methodology used and the rate will be negotiated, approved by the cognizant Federal agency, and periodically audited.

The Department will support all entries in its accounting system by maintaining appropriate source documentation and records. Supporting documentation will include complete records that explain each transaction.

[SAMPLE CERTIFICATION LETTER]

OFFICE OF THE GOVERNOR
STATE CAPITAL
HELP, EUPHORIA 00013

February 8, 1986

Maureen Tree
GOVERNOR

Ms. Jolene Champion, Regional Administrator
U.S. Environmental Protection Agency
999 West 57th Street
Lanview, Euphoria 00014

Dear Ms. Champion:

In response to your letter concerning the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), I want to take this opportunity to formally designate the Euphoria Department of Water Resources as the lead agency authorized to enter into cooperative agreements and contracts under Section 104 of CERCLA. Historically, the Euphoria Department of Water Resources has been the state agency responsible for monitoring and regulating hazardous waste sites. I have every confidence that this agency and the Environmental Protection Agency can continue to maintain the cooperative working relationship that has been established. Additionally, the Department can facilitate any appropriate communications with other state agencies relative to the Act.

Again, I appreciate the opportunity to formally designate the Euphoria Department of Water resources as Euphoria's lead agency in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

If I can be of any further assistance, please let me know.

Sincerely,

Maureen Tree
Governor of Euphoria

cc: Ms. Harriet Martin
Department Executive Director
of Water Resources

[SAMPLE INTERGOVERNMENTAL REVIEW LETTER]

Department of Water Resources
Environmental Services Division
Ecology Bldg., Room 2002
Help, Euphoria 00013

Ms. Jolene Champion, Regional Administrator
U.S. Environmental Protection Agency
999 West 57th Street
Lanview, Euphoria 00014

Dear Ms. Champion:

Under 40 CFR Part 29, the State of Euphoria has adopted an intergovernmental review process which designates Ms. Amy Whitbauer (title) in the Department of Environmental Quality Control (DEQC) as the single point of contact to whom all applications for EPA financial assistance under CERCLA must be submitted. This letter is to certify that a copy of this Cooperative Agreement application was sent to Ms. Whitbauer in DEQC, who sent it out to all appropriate State and local agencies for their review. We have received no comments from any agency on the application.

Sincerely,

Heidi Kleen
Director

cc: Amy Whitbauer, DEQC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
PROCUREMENT SYSTEM CERTIFICATION

Form Approved
OMB No 2000-0453
Approval expires 10-31-87

APPLICANT'S NAME Dept. of Water Resources Environmental Services Division	ASSISTANCE APPLICATION NUMBER
---	-------------------------------

APPLICANT'S ADDRESS Ecology Bldg. Room 2002 Help, Euphoria 00013
--

SECTION I - INSTRUCTIONS

The applicant must complete and submit a copy of this form with each application for EPA Assistance. If the applicant has certified its procurement system to EPA within the past 2 years and the system has not been substantially revised, complete Part A in Section II, then sign and date the form. If the system has not been certified within the past 2 years, complete Part B, then sign and date the form.

SECTION II - CERTIFICATION

A. I affirm that the applicant has within the past 2 years certified to EPA that its procurement system complies with 40 CFR Part 33 and that the system meets the requirements in 40 CFR Part 33. The date of the applicant's latest certification is:	MONTH/YEAR
---	------------

B. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: *(Check one of the following:)*

1. **CERTIFY** that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 before undertaking any procurement action with EPA assistance

Please furnish citations to applicable procurement ordinances and regulations

EU Statutes 222, Part F

EU Regulatory Code 33, Parts A and C

2. **DO NOT CERTIFY THE APPLICANT'S PROCUREMENT SYSTEM.** The applicant agrees to follow the requirements of 40 CFR Part 33, including the procedures in Appendix A, and allow EPA preaward review of proposed procurement actions that will use EPA assistance.

TYPED NAME AND TITLE Heidi M. Kleen, Director	SIGNATURE	DATE
--	-----------	------

EXHIBIT 3
MODEL COOPERATIVE AGREEMENT AWARD

U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT XXXXXXXXXX PART I - ASSISTANCE NOTIFICATION INFORMATION				1. ASSISTANCE ID NO. V1103161A	2. LOG NUMBER XYX-1111ZZ		
				3. DATE OF AWARD 9/1/86	4. MAILING DATE 9/4/86		
AGREEMENT TYPE			6. PAYMENT METHOD				
<input checked="" type="checkbox"/> Grant Agreement <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Assistance Amendment			<input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Letter of Credit <u>68-XX-1111</u>				
			Send Payment Request To:		7. TYPE OF ACTION		
			N/A		Award		
RECIPIENT ORGANIZATION	8. RECIPIENT			9. PAYEE			
	Department of Water Resources Environmental Services Division Ecology Building, Room 2002 Help, Euphoria 00013			Same			
	EIN NO. 376002957	CONGRESSIONAL DISTRICT 2		10. RECIPIENT TYPE State			
EPA CONTACT	11. PROJECT MANAGER AND TELEPHONE NO.			12. CONSULTANT (WWT Construction Grants Only)			
	L.G. Smith ESD, DWR 613-555-1003			N/A			
	13. ISSUING OFFICE (City/State) Region XII, Lanview, EU			14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. B.T. Doe EPA Waste Management Division 613-555-6134			
15. EPA CONGRESSIONAL LIAISON & TEL. NO. J. Jones 202-382-4444		15. STATE APPL ID (Clearinghouse) EnterState ID#	17. FIELD OF SCIENCE N/A	18. PROJECT STEP (WWT CG Only) N/A			
19. STATUTORY AUTHORITY PL 96-510, Section 104		20. REGULATORY AUTHORITY 40 CFR Part 300		21. STEP 2 + 3 & STEP 3 (WWT Construction Only)			
				a. Treatment Level b. Project Type c. Treatment Process d. Sludge Design			
22. PROJECT TITLE AND DESCRIPTION RI/FS for Albatross Chemical Hazardous Waste Site							
23. PROJECT LOCATION (Areas Impacted by Project)							
City/Place Toxland		County Sand		State EU	Congressional District 5		
24. ASSISTANCE PROGRAM (CFDA Program No. & Title) Haz. Subst. Resp. Tr. Fund 66-802		25. PROJECT PERIOD 9/1/86-9/1/88		26. BUDGET PERIOD 9/1/86-9/1/88			
27. COMMUNITY POPULATION (WWT CG Only)		28. TOTAL BUDGET PERIOD COST 301,999		29. TOTAL PROJECT PERIOD COST 301,999			
FUNDS		FORMER AWARD		THIS ACTION			
30. EPA Amount This Action				301,999			
31. EPA In-Kind Amount							
32. Unexpended Prior Year Balance							
33. Other Federal Funds							
34. Recipient Contribution							
35. State Contribution							
36. Local Contribution							
Other Contribution							
Allowable Project Cost				301,999			
38. FISCAL	Program Element	FY	Appropriation	Doc. Control No.	Account Number	Object Class	Obligation/Deoblig. Amount
	TFAY9A	86	68-XX-1111	Z84444	7TFA07L848	33.33	301,999

TABLE A - OBJECT CLASS CATEGORY (Non-construction)	TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL	32,858
2. FRINGE BENEFITS	8,215
3. TRAVEL	9,905
4. EQUIPMENT	3,000
5. SUPPLIES	4,500
6. CONTRACTUAL	233,949
7. CONSTRUCTION	0
8. OTHER	3,000
9. TOTAL DIRECT CHARGES	295,427
10. INDIRECT COSTS: RATE <u>20</u> % BASE <u>32,858</u>	6,572
11. TOTAL (Share: Recipient <u>0</u> % Federal <u>100</u> %)	301,999
12. TOTAL APPROVED ASSISTANCE AMOUNT	\$

TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)	
1. Remedial Planning	301,999
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
12. TOTAL (Share: Recipient _____ % Federal <u>100</u> %)	301,999
13. TOTAL APPROVED ASSISTANCE AMOUNT	\$

TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)	
1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURES, RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS: INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Share: Recipient _____ % Federal _____ %)	
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

The following special conditions are added:

1. The recipient agrees to maintain an accounting system that will keep an accurate, current, and complete accounting of all financial transactions under this Cooperative Agreement by site, by activity, and by object class. Records together with supporting documents showing the source and application of all project funds will be maintained. (40 CFR 30.510)
2. The EPA Project Officer will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The State Project Officer agrees to ensure that schedules and reporting requirements are met. All State proposed modifications to schedules or activities will be reported immediately to the EPA Project Officer for approval.
3. The State agrees to submit progress reports to the EPA Project Officer within 30 days of the end of the Federal fiscal quarter. These reports shall include itemizations of expenditures by object class and by each activity in the SOW (expenditures to date and expenditures since the previous report); estimates (percentages) of work completed for each activity in the SOW, including a description of the basis for the estimates; and estimated variances (cost and time) expected at project completion.

b. SPECIAL CONDITIONS (Continued)

PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the State of Euphoria

for 100 % of all approved costs incurred up to and not exceeding \$301,999

for the support of approved budget period effort described in application (including all application modifications) Albatross Chemical Site 2/10/86 included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS EPA, Region XII Grants Management Branch Lanview, EU 00014	ORGANIZATION/ADDRESS EPA, Region XII Regional Administrator Lanview, EU 00014

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	Jolene Champion, Regional Administrator	9/1/86

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION		
SIGNATURE	TYPED NAME AND TITLE	DATE

MBE/WBE* UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FEDERAL FINANCIAL ASSISTANCE

PART 1. (NEGATIVE REPORTS MAY BE REQUIRED)

1A. FEDERAL FISCAL YEAR <u>1986</u>		1B. REPORTING QUARTER (Check appropriate box) <input checked="" type="checkbox"/> 1st (Oct.-Dec.), <input type="checkbox"/> 2nd (Jan.-Mar.), <input type="checkbox"/> 3rd (Apr.-Jun.), <input type="checkbox"/> 4th (Jul.-Sep.)	
2. FEDERAL FINANCIAL ASSISTANCE AGENCY (Department/Agency, Bureau/Administrating Office, Address) U.S. EPA, Region XII 999 West 57th St. Lanview, Euphoria 00014		3. REPORTING RECIPIENT (Name and Address) Department of Water Resources Environmental Services Division Ecology Building, Room 2002 Help, Euphoria 00013	
2A. REPORTING CONTACT B.T. Doe	PHONE: 613-555-6134	3A. REPORTING CONTACT Heidi M. Kleen	PHONE: 614-554-1234
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER V1103161A		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM Haz. Subst. Resp. Tr. Fund 66.802	
4C. TYPE OF FEDERAL ASSISTANCE AGREEMENT <input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT <input type="checkbox"/> OTHER FEDERAL FINANCIAL ASSISTANCE			
5A. PERIOD WHEN PROCUREMENT UNDER THIS AWARD WILL OCCUR START DATE: <u>10/15/86</u>		END DATE: <u>12/31/86</u>	
5B. AMOUNT OF TOTAL PROJECT DOLLARS PLANNED FOR PROCUREMENT THIS FISCAL YEAR \$ <u>301,999</u>		5C. RECIPIENT'S MBE/WBE GOALS (Percent of total procurement dollars (5b) for each) MBE <u>15 percent</u> % WBE <u>10 percent</u> %	
5D. MBE/WBE PROCUREMENT ACCOMPLISHED THIS QUARTER MBE \$ WBE \$ <u>10,100</u>		5E. NEGATIVE REPORT (Check) <input type="checkbox"/> SEE INSTRUCTIONS	
6. COMMENTS.			

7. NAME OF AUTHORIZED REPRESENTATIVE Heidi M. Kleen	TITLE Director, DWR
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

* WBE reporting is optional at the direction of Federal financial assistance agency.

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 2
Prescribed by DEPARTMENT OF COMMERCE

MBE/WBE PROCUREMENTS OVER \$10,000 MADE DURING REPORTING QUARTER

PART II.

Procurement Made By	Business Enterprise	\$ Value of Procurement	Date of Award (MM/DD/YY)	Type of Product or Service (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor
X	X	\$10,100	10/15/86	9b	Matteson and Rae, Associates 1234 Water Street, S.W. Help, EU 00013

- 1 Type of product or service code:
- 1 - Agriculture
 - 2 - Mining
 - 3 - Construction
 - 4 - Manufacturing
 - 5 - Transportation
 - 6 - Wholesale Trade
 - 7 - Retail Trade
 - 8 - Finance, Insurance, Real Estate
 - 9 - Services
 - a - Business Services
 - b - Professional Services
 - c - Repair Services
 - d - Personal Services
 - 10 - Other

EXHIBIT 4
MODEL COOPERATIVE AGREEMENT AMENDMENT

U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT AMENDMENT PART I - ASSISTANCE NOTIFICATION INFORMATION				1. ASSISTANCE ID NO. V1103161A	2. LOG NUMBER ONE-V-614
				3. DATE OF AWARD 8/31/87	4. MAILING DATE 9/3/87
AGREEMENT TYPE <input checked="" type="checkbox"/> Grant Agreement <input type="checkbox"/> Assistance Amendment		6. PAYMENT METHOD <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Letter of Credit			
		Send Payment Request To: Finance Section, Region XII		7. TYPE OF ACTION Augmentation - Increase	
RECIPIENT ORGANIZATION	8. RECIPIENT Department of Water Resources Environmental Services Division Ecology Bldg, Room 2002 Help, Euphoria 00013			9. PAYEE Same	
	EIN NO. 376002957	CONGRESSIONAL DISTRICT 2		10. RECIPIENT TYPE State	
	11. PROJECT MANAGER AND TELEPHONE NO. L.G. Smith ESD, DWR 613-555-1003			12. CONSULTANT (WWT Construction Grants Only) N/A	
EPA CONTACT	13. ISSUING OFFICE (City/State) Region XII			14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. B.T. Doe EPA Waste Management Division 613-555-6134	
	15. EPA CONGRESSIONAL LIAISON & TEL. NO. J. Jones 202-382-4444		16. STATE APPL ID (Clearinghouse) Enter State ID#	17. FIELD OF SCIENCE 99	18. PROJECT STEP (WWT CG Only) N/A
19. STATUTORY AUTHORITY P.L. 96-510, Section 104		20. REGULATORY AUTHORITY 40 CFR Part 300		21. STEP 2 + 3 & STEP 3 (WWT Construction Only)	
				a. Treatment Level	
				b. Project Type	
				c. Treatment Process	
				d. Sludge Design	
22. PROJECT TITLE AND DESCRIPTION RD for Albatross Chemical Hazardous Waste Site					
23. PROJECT LOCATION (Areas Impacted by Project)					
City/Place Toxland		County Sand		State EU	Congressional District 5
24. ASSISTANCE PROGRAM (CFDA Program No. & Title) Haz. Subst. Resp. Trust Fund 66.802			25. PROJECT PERIOD 9/1/87 - 9/1/89		26. BUDGET PERIOD 9/1/87 - 9/1/89
27. COMMUNITY POPULATION (WWT CG Only) N/A		28. TOTAL BUDGET PERIOD COST 608,570		29. TOTAL PROJECT PERIOD COST 608,570	
FUNDS		FORMER AWARD		THIS ACTION	
30. EPA Amount This Action		301,999		306,571	
31. EPA In-Kind Amount					
32. Unexpended Prior Year Balance					
33. Other Federal Funds					
34. Recipient Contribution					
35. State Contribution					
36. Local Contribution					
Other Contribution					
Allowable Project Cost		301,999		306,571	
39. FISCAL					
Program Element TFAY9A	FY 87	Appropriation 68-XX-1111	Doc. Control No. Z8459	Account Number 7TFA07N849	Object Class 33.34
					Obligation/Deoblig. Amount \$306,571

PART II-APPROVED BUDGET

ASSISTANCE IDENTIFICATION NO. _____

TABLE A - OBJECT CLASS CATEGORY (Non-construction)	TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL	46,932
2. FRINGE BENEFITS	11,734
3. TRAVEL	11,169
4. EQUIPMENT	3,084
5. SUPPLIES	4,685
6. CONTRACTUAL	517,856
7. CONSTRUCTION	-0-
8. OTHER	3,538
9. TOTAL DIRECT CHARGES	599,183
10. INDIRECT COSTS RATE 20% % BASE 46,932	9,387
11. TOTAL (Share: Recipient 0 % Federal 100 %)	608,570

12. TOTAL APPROVED ASSISTANCE AMOUNT \$

TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)	
1. Remedial Planning (RI/FS)	301,999
2. Remedial Design (RD)	306,571
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	

12. TOTAL (Share: Recipient _____ % Federal 100 %)

13. TOTAL APPROVED ASSISTANCE AMOUNT \$

TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)	
1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURES, RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS. INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Share: Recipient _____ % Federal _____ %)	

20. TOTAL APPROVED ASSISTANCE AMOUNT \$

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

1. All special conditions and State assurances in the original Cooperative Agreement remain in effect.
2. The State will submit its remedial design to EPA for review at the following points: the preliminary design (30 percent complete), the intermediate design (60 percent complete), and the final design (100 percent complete).

b. SPECIAL CONDITIONS (Continued)

PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers

~~an amendment~~ amendment to the State of Euphoria, Department of Water Resources

for 100 % of all approved costs incurred up to and not exceeding \$ 608,570

for the support of approved budget period effort described in application (including all application modifications)

Albatross Chemical Site 2/10/86 included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS EPA, Region XII Grants Management Branch Lanview, EU 00014	ORGANIZATION/ADDRESS EPA, Region XII Regional Administrator Lanview, EU 00014

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	Jolene Champion, Regional Administrator	9/1/87

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE

EXHIBIT 5
MODEL MULTI-SITE COOPERATIVE AGREEMENT

(Reserved)

CHAPTER 3: SPECIAL MANAGEMENT CONCERNS FOR COOPERATIVE AGREEMENTS

Cooperative Agreements developed under CERCLA are subject to several legal and administrative requirements. Some of these are known as "general assistance requirements," because they apply to all financial assistance agreements from EPA. Recipients receiving financial assistance from EPA are subject to certain requirements in 40 CFR 30 (EPA's "General Regulation for Assistance Programs") and 40 CFR 33 ("Procurement Under Assistance Agreements").

It is the responsibility of AAU staff to determine whether or not recipients are able to meet all of these general assistance requirements. This can be learned during preapplication assistance and/or during administrative review of the Cooperative Agreement application. If these investigations reveal that a State is unfamiliar with, or will have difficulty complying with a particular requirement, EPA and the State should work together to correct the deficiency before the award is made. As part of this effort, the AAU may opt to include this provision as a special condition in the Cooperative Agreement award document. This action will emphasize the importance of the requirement to the recipient, and will "flag" that provision as a potential future compliance problem. The checklist in Chapter 4 will help to guide AAU staff in this review and evaluation effort.

The Superfund program also has its own set of requirements that apply to Cooperative Agreement applicants. Some of these may be included as special conditions in the award document, depending on site-specific conditions.

3.1 GENERAL ASSISTANCE REQUIREMENTS

One set of EPA regulations for recipients of financial assistance is found in 40 CFR Part 30 (General Regulation for Assistance Programs). The main areas covered by this Part are procedures for applying for assistance, requirements for cost sharing, determination of allowable costs, recordkeeping, reporting, quality assurance, financial management and use of funds, property acquisition and management, changes to the assistance agreement, project audits and close-out, noncompliance measures, exceptions to the requirements, and dispute resolution. These are described in the following sections.

3.1.1 Applying for Assistance

To be eligible for assistance, the applicant must meet criteria related to financial and organizational resources, past performance record, accounting and auditing procedures, procurement standards, property management systems, and compliance with various other statutory requirements. (40 CFR 30.301) EPA also requires a standard application, as described and illustrated in Chapter 2, and CERCLA assistance recipients must, in addition, submit a schedule for development of a quality assurance plan within 30 days of award. (40 CFR 30.302) When the application is approved, EPA will prepare and sign an assistance agreement and send it to the State for signature. It must be signed and returned within three weeks unless an extension is requested. If the application is disapproved or deferred, EPA will provide written notice. Disapproval can be appealed. (40 CFR 30.305)

3.1.2 Cost Sharing, Payments, and Determining Allowable Costs

Cost share requirements can be satisfied with cash or in-kind contributions, but not with Federal funds or with property or services received under another assistance agreement unless specifically authorized by statute. Contributions must be specified in the assistance agreement, be verifiable, be used exclusively for one project, and be properly allocable to and allowable under the project. (40 CFR 30.307)

Costs may not be incurred before the assistance agreement is signed by both parties. (40 CFR 30.308)

In the Superfund program, payment is made by letter of credit which is discussed in Section 3.3.2. Allowable costs are determined according to OMB Circular A-87. (40 CFR 30.410)

3.1.3 Recordkeeping and Reporting

Project records must include amount of funds received and expended, direct and indirect project costs, property purchased, time and attendance records and other supporting data, and documentation of compliance with statutes and regulations that apply to the project. These records are to be kept by site and activity, according to object class. Contractors must maintain similar records pertinent to the project. (40 CFR 30.500) All these records must be kept for three years after the submission of the final Financial Status Report, or longer if questions remain (audit, litigation, etc.). Records on real property and nonexpendable personal property are to be kept for three years after final disposition of the property. (40 CFR 30.501) EPA, the Office of Inspector General, the Comptroller General, and the Department of Labor must be allowed access to these records. (40 CFR 30.502)

The assistance agreement also requires interim and final progress reports. Financial Status Reports (SF 269) must be submitted to an EPA Award Official within 90 days after the end of each budget period, within 90 days after the completion of an activity, and within 90 days after the end of the overall Cooperative Agreement (see 3.2.2, Letter-of-credit requirements), as well as upon completion of each project.

3.1.4 Quality Assurance Project Plan

Quality assurance practices consist of policies, procedures, specifications, standards, and documentation that will produce data adequate to meet project objectives and limit loss of data caused by uncontrolled conditions or malfunctions. A quality assurance project plan must be submitted with the application (this may consist of a schedule for plan development) if the proposal involves environmental measurements or data generation. This QA program must be acceptable to the Award Officials. Plan components include:

- Project title, principal investigators, description, organization, and responsibilities;

- Quality assurance objectives and criteria for determining precision, accuracy, completeness, representativeness, and compatibility of data;
- Sampling and sample custody procedures;
- Analytical and calibration procedures and frequency, plus traceability of standards;
- Data reduction, validation, and reporting;
- Internal quality control checks and performance and system audits;
- Preventive maintenance;
- Procedures for assessing data precision, accuracy, representativeness, and comparability;
- Corrective action for out-of-control situations; and
- Quality assurance reporting procedures. (40 CFR 30.503)

Quality assurance requirements listed here include some Superfund-specific items from the National Contingency Plan.

3.1.5 Financial Management and Use of Funds

A financial management system must provide accurate, current and complete accounting, including source and use of funds, obligations, unobligated balances, assets, liabilities, outlays, and income. The system must track expenses by site and activity according to object class as well as provide control, accountability, and assurance that funds, property, and other assets are used only for their authorized purpose. The ability to compare actual and budgeted costs by object class is required, as are procedures to ensure prompt disbursement of Federal funds and procedures for determining allowable, allocable, and reasonable costs. An audit must be conducted every other year, and a method to resolve audit findings and recommendations must be in place. (40 CFR 30.510)

State agencies may retain interest earned on an EPA advance. (40 CFR 30.526)
Any program income should be used to fund additional eligible project activities, but not the non-Federal share. (40 CFR 30.525)

3.1.6 Property Acquisition and Management

Personal Property

Purchase of personal property (e.g., equipment and supplies) is allowed if authorized in the assistance agreement. Award Official approval is required

for each item that costs \$10,000 or more. Purchased property must be used on the site for which it was acquired as long as needed whether or not EPA funding continues. EPA's interest must be adequately reflected and protected in compliance with the Uniform Commercial Code. EPA has the right to transfer title to the Federal Government or a third party upon project completion if the property costs \$1,000 or more and is identified in the assistance agreement. (40 CFR 30.530)

Property management standards for personal property include:

- Recordkeeping (description, source, owner, date acquired and cost, Federal share, location, use, and disposition);
- An inventory at least every two years, including reconciliation with property records and verification of current use and need for the property;
- A loss, damage, and theft control system;
- Adequate maintenance procedures;
- Sales procedures to ensure the highest possible return; and
- Identification of Federally owned property. (40 CFR 30.531)

Personal property costing \$1,000 or less may be kept or sold upon project completion. If nonexpendable property cost more than \$1,000, EPA is entitled to compensation proportionate to its share of the current market value. Expendable personal property may not be used on other Federal projects. If it is sold, EPA must receive a share of the proceeds in proportion to its share of the purchase cost. (40 CFR 30.532)

Real Property Acquisition

EPA funds may be used to purchase real property if approved by the award official. It may be used only for the purpose for which it was purchased. EPA's approval is required to use the property for other Federally supported projects or programs. Otherwise, the property may be disposed of according to EPA instructions, with compensation in proportion to Federal and non-Federal shares of the purchase price. (40 CFR 30.535)

At some NPL sites, EPA may determine that there is a need to acquire an interest in the property. If EPA makes this determination, it is the Agency's policy that the State should acquire the interest before the Fund-financed action can proceed. AAUs should ensure that the program and State staff are aware of EPA's regulations on real property acquisition and disposition. Other special Superfund property requirements are found in Appendix T of State Participation in the Superfund Program (the "Purple Book").

Equipment Purchase with CERCLA Funds

CERCLA's requirements related to equipment purchase and use differ somewhat from those contained in 40 CFR 30. Therefore, the AAU and program staff need to work together to ensure that all requirements are met. Under a Cooperative Agreement, a State purchasing equipment with CERCLA funds must agree to allocate equipment costs in proportion to the equipment's use on the project being funded. The State must also agree to submit documentation on any non-CERCLA equipment use and to reimburse EPA for any non-CERCLA work. When the work is completed, the State must comply with EPA instructions on disposition of the equipment. Disposition could include returning the equipment to EPA or reimbursing EPA for the Agency's share for the equipment's residual value. For MSCAs, the State must agree to allocate equipment costs among the projects in proportion to the equipment's use on each. If the State intends to use the equipment for projects outside the scope of this Agreement, the State must agree to submit a formula for allocating costs for equipment use, to obtain prior approval from the EPA Award Official, and to carefully document all use. When the equipment is no longer being used for the CERCLA activities listed above, the State must agree to submit documentation on any non-CERCLA equipment usage and to reimburse EPA for any non-CERCLA work.

Other Issues

Use of Federally owned property must be negotiated with the award official. A lease agreement will be required, as well as an annual inventory. EPA will advise on return of the property when the project is complete. (40 CFR 30.536)

Contractors must comply with EPA property policies if personal property is acquired with EPA funds and the subagreement specifies that ownership rests in the State or EPA. (40 CFR 30.537)

3.1.7 Changing the Assistance Agreement

The assistance agreement can be changed by formal amendment or informally (e.g., by letter). Minor changes in the project consistent with its objective and within the scope of work do not require a formal amendment. However, such changes do not obligate EPA to pay for any costs in excess of the assistance agreement unless approved in advance. (40 CFR 30.710) A formal amendment is required to transfer the award to another recipient, change the project objectives, assistance amount, or scope, or to rebudget between construction and non-construction activities, direct and indirect costs, or training and other cost categories. (40 CFR 30.700)

3.1.8 Project Audits and Closeout

Audits may be performed before award, during a project, and at the conclusion of the project. States must comply with the audit requirements of OMB Circular A-128, which requires an audit every year in most cases. (40 CFR 30.540)

If the Award Official determines at project closeout that the State owes money to the Federal Government, the amount must be reimbursed. (40 CFR 30.802) Project records must be maintained as described in 3.1.3.

3.1.9 Noncompliance Measures

Noncompliance with the assistance agreement can lead to issuance of a stop-work order; withholding of payment; suspension, annulment or termination of the agreement; debarment or suspension as an eligible recipient; or other administrative or judicial action. (40 CFR 30.900)

3.1.10 Exceptions from the Regulations

EPA will consider requests for exceptions on a case-by-case basis. A written request for an exception must include name, assistance identification number, date and amount of award, section of the regulation for which an exception is requested, justification, and a statement of whether such a deviation has been requested in the past and why. (40 CFR 30.1003) The Director of the Grants Administration Division approves or disapproves the request.

3.1.11 Dispute Resolution

Disagreements should be resolved at the lowest level possible. If the dispute cannot be resolved, the recipient/applicant may request a review under Subpart L procedures. The EPA dispute decision official's decision is final unless appealed in writing within 30 days. (This is the individual designated by the award official to resolve disputes concerning the assistance agreement.)

3.2 PROCUREMENT REGULATIONS

Recipients are required to meet procurement provisions in 40 CFR 33. These pertain to items such as: free and open competition; small, minority, and women's businesses; documentation; and contractor qualifications. Some of the provisions in Part 33 are noted below. Volume II of State Participation in the Superfund Program discusses Superfund-specific requirements.

3.2.1 Responsibility for Recipients

States must ensure that contractors perform in accordance with all applicable contract requirements. This means that the State must have the legal authority to enforce the provisions in the contract and that it must have sufficient staff to periodically monitor the contractor's progress. (40 CFR 33.210). In enforcing the subagreement provisions, the State may request technical and legal assistance from EPA; but the State is solely responsible for enforcing the subagreement provisions.

3.2.2 Contractor Qualifications

States may only award subagreements to responsible contractors, as defined by 40 CFR 33.220. This subsection specifies that a responsible contractor has:

- Financial resources and technical qualifications sufficient to effectively implement the project;
- Resources to meet the completion schedule;
- A satisfactory performance record for completion of subagreements;
- Accounting and auditing procedures adequate to control property, funds, and assets; and
- Demonstrated willingness to comply with requirements under 40 CFR 30.

In addition, no contracts may be awarded to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32. States must ensure that their contractors comply with the appropriate provisions in Part 33 when the contractor awards a subagreement.

3.2.3 Code of Conduct

States are required to have a written code of conduct for State officials in dealing with contractors. This code should stipulate that no State employee may solicit or accept any gratuities, gifts, favors, loans, or anything of monetary value from anyone who has obtained, is obtaining, or may seek to obtain subagreements from the State. The code of conduct should also protect against conflicts in which a State employee has a share in, or could benefit from, any subagreement under State administration. (40 CFR 33.270)

3.2.4 Methods for Procuring Assistance

40 CFR Part 33 requires States to use only four methods for procuring assistance: formal advertising; competitive negotiation; small purchase; and noncompetitive negotiation. Each of these must be conducted in a manner that meets EPA specifications. They are described in greater detail below.

- Formal Advertising. For this approach, the following must be met:
 - The State must draft a complete, adequate, and realistic specification or purchase description of what is required.

- There must be at least two responsible bidders who are willing and able to compete effectively for the State's business.
- It must result in the award of a fixed-price subagreement.
- Selection of the successful bidder must be made principally on the basis of price.

This approach is used primarily in procuring construction services, for remedial actions.

- Competitive Negotiation. Competitive negotiation may only be used if conditions are not appropriate for formal advertising. It has been used for procuring services in: engineering for RI/FS and designing; construction management; claims management; operations assistance; and bidability/constructability review.
- Small Purchase. These may be used only for procurement actions not exceeding \$10,000. Recipients must not divide a procurement into smaller amounts to avoid the dollar limitation for competitive procurement. Small purchase procurement can be used when acquiring equipment, services, and materials that are under \$10,000.
- Noncompetitive Negotiation. This can be used only if the other three procurement methods are inappropriate because:
 - Products or services are available only from a single source;
 - Public exigency/emergency; or
 - There is inadequate competition.

Award Official approval and public exigency or emergency are other circumstances justifying noncompetitive negotiation. A few additional restrictions apply to these procurement methods. A State may not use a method other than formal advertising to procure construction services during remedial action unless it has the approval of the EPA Award Official. EPA rarely approves noncompetitive negotiation for use in the Superfund remedial program.

3.2.5 Promoting Competition

EPA's regulation requires that State procurement procedures provide "maximum open and free competition." States are prohibited from using unduly restrictive procurement practices, such as those listed below (40 CFR 33.230):

- Noncompetitive practices between firms;
- Organizational conflicts of interest;
- Unnecessary experience and bonding requirements;
- State or local laws, ordinances, regulations, or procedures that give preference to local or in-state bidders;
- Placing unreasonable requirements on firms in order for them to qualify to do business; and
- Placing unduly restrictive specifications on firms, as described in 40 CFR 33.255.

3.2.6 Types of Subagreements

There are several types of subagreements possible under EPA assistance awards. The two used most frequently are:

- Fixed-Price Subagreements. The State and its contractor agree on a price for the services to be provided. The price is then fixed, no matter what the final costs of the project are. Total cost to the State is changed only if a change order is negotiated. A fixed-price contract is used when a project scope can be precisely defined, such as in the procurement of construction contractors when bidding documents include construction drawings.
- Cost-Plus-Fixed-Fee Subagreements. A cost ceiling, made up of direct and indirect costs, and a fixed contractor fee are established. These subagreements are used when it is difficult to accurately define the scope of the work to be performed.

Other types of subagreements are also available. There are two, however, that States are prohibited from using:

- Percentage-of-Construction-Cost Subagreements. The price of a project is established as a percentage of construction costs.
- Cost-Plus-Percentage-of-Cost Subagreement. A multiplier, which includes a profit, is applied to direct costs of a project to determine total costs.

3.2.7 Minority Business Enterprises, Women's Business Enterprises

States must consider minority business enterprises (MBE) and women's business enterprises (WBE) when awarding subagreements and must submit reports to EPA on their utilization of these firms. States must submit Standard Form 334 "MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance," within 30 days after the end of each Federal fiscal quarter following the first subagreement award. Each State must also negotiate with its Region a "fair share" agreement for awarding MBE and WBE subagreements. The State must either agree to a specific dollar amount as its fair share objective and incorporate that amount into the Cooperative Agreement, or it must negotiate a fair share objective with EPA prior to procuring supplies or services. This fair share dollar amount must be included on Standard Form 334.

In addition to this regulation, the Superfund Amendments and Reauthorization Act (SARA) amends CERCLA to require that EPA must report annually to Congress on MBE/WBE contracts for response activities. Therefore, States must report this information to the EPA Regions every year.

3.2.8 Submission of Information

The State must inform the appropriate Department of Labor office in the Region of construction agreements totalling over \$10,000 a year. (40 CFR 33.211) The following information must be submitted within 10 days of award of each construction subagreement: contractor data, amount of award, expected starting and completion dates, project number, name, and location. In addition, the State must submit a list of all bids and offers and name of each bidder and offeror to the appropriate divisional Inspector General.

3.2.9 Documentation

States must ensure that procurement records and files for purchases over \$10,000 include the basis for contractor selection, basis for award cost (including price analysis under 33.290) documentation of negotiation; written justification for selection of the procurement system, for use of any specification that does not promote maximum competition, and for the type of subagreement; and reasons for rejecting any or all bids. (40 CFR 33.250)

3.2.10 Specifications

State's procedures for establishing specifications must meet EPA requirements. (40 CFR 33.255) In particular, they must incorporate a clear and accurate description of the technical requirements for the item to be procured. The specifications may not contain features that unduly restrict competition unless necessary for a special test or demonstration or for interchangeability of parts or to promote innovative technologies. The specification should describe the item qualitatively, set forth minimum essential characteristics if necessary, and avoid use of detailed product specifications. The use of "brand name or equal" description is acceptable as long as the salient requirements that must be met are specified.

3.2.11 Bonding and Insurance

State procurements must meet EPA requirements for bonding and insurance. If construction subagreements are for \$100,000 or less, the State's requirements may be used. The award official may accept State requirements for larger subagreements if Federal interests are protected. For subagreements over \$100,000, the State must obtain a bid guarantee of 5 percent of the bid price, a performance bond of 100 percent of the subagreement price, and a payment bond of 100 percent of the subagreement price. Bonds must be obtained from companies holding certificates of authority as acceptable sureties (Treasury Circular 570 "Surety Companies Acceptable on Federal Bonds). Recipients and contractors must also meet flood hazard area requirements contained in 40 CFR Part 30. (40 CFR 33.265)

3.2.12 Federal Cost Principles

State procedures for determining allowable costs must meet specified EPA principles. (40 CFR 33.275) Allowable costs for State governments are determined under OMB circular A-87. Contractors and subcontractors are governed by Federal Procurement Regulations (Title 48, Chapter 31 and others).

3.2.13 Cost and Price Consideration

State procedures must allow for consideration of cost and price, as specified by EPA requirements. (40 CFR 33.290) A cost analysis is required for all negotiated change orders regardless of cost and all negotiated subagreements estimated to exceed \$10,000. A price analysis is required for formally advertised procurements estimated to exceed \$10,000 if there are fewer than three bidders. Contractors and subcontractors must submit cost or pricing data in support of proposals for negotiated procurements.

3.2.14 Profit

Only "fair and reasonable" profits may be paid to contractors awarded subagreements under EPA assistance agreements. The recipient is responsible for assuring this by negotiating profit as a separate element of price if there is no price competition. If two or more bids are received, profit included in a formally advertised, competitively bid, fixed-price subagreement shall be considered reasonable. (40 CFR 33.235)

3.2.15 Model Subagreement Clauses

40 CFR 33.1030 provides a series of model subagreement clauses that must be used by recipients when appropriate. Among them are topics such as "Differing Site Conditions," "Suspension of Work," and "Remedies."

3.3 OTHER ASSISTANCE PROVISIONS

3.3.1 Debarment and Suspension

Under 40 CFR Part 32, EPA will not participate in awards made to contractors that have been debarred or suspended by EPA. The State is responsible for making sure that all contractors hired under a Cooperative Agreement have not been debarred or suspended.

3.3.2 Letter-of-Credit Procedures

The type of financing used most frequently in remedial Cooperative Agreements is the issuance of a letter-of-credit from EPA to the State. Once the letter has been issued, the State may "draw down" the amount to cover project costs. The letter-of-credit drawdown procedures can be somewhat confusing to States that have never used them before. For this reason, it is suggested that a State entering into a Cooperative Agreement for the first time demonstrate that it has a thorough understanding of these financing procedures, and that it will use Superfund account numbers properly. This provision will probably not need to be addressed when a State submits an application for amending a Cooperative Agreement, unless the financing procedures have changed since the initial agreement was made.

States should include a letter-of-credit provision in all Cooperative Agreement applications to ensure that they use Superfund account numbers properly. Then, in expending funds from a site/activity account, the State must draw down as appropriate. The account codes shown below also are applicable when a State provides management assistance during a Federal-lead remedial response activity. For example, when a State provides management assistance during an RI/FS, the State should charge all activities to the "L" account. Likewise, the State should charge management assistance during remedial design to the "N" account, and so on for each activity during site response.

Appropriate wording for this special condition is shown below:

"In accepting this Cooperative Agreement, the recipient agrees to the following conditions for the letter-of-credit method of financing:

- Cash drawdowns will occur only when needed for disbursements.
- Timely reporting of site disbursements and balances will be provided, as required by the EPA Letter-of-Credit Recipient's Users Manual.
- The same standard of timing and reporting will be imposed on secondary recipients, if any.
- When a drawdown under the letter-of-credit occurs, the recipient will show on the voucher (Form TFCS-5805) the Cooperative Agreement number, the appropriate EPA

account number, and the drawdown amount applicable to each site/activity account. The eighth digit of the account number is the code for the appropriate activity assignment:

J - Pre-Remedial Activities
L - Remedial Investigation/Feasibility Study
N - Remedial Design
R - Remedial Action
S - Operation and Maintenance
E - Removal Actions
3 - State Liaison
7 - General Support and Management

(Note: The definition of these codes is provided in Appendix A.)

- When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not draw down from another activity or site account without written permission from the EPA Award Official.
- Funds remaining in an account after completion of an activity may be either returned to EPA or adjusted to another activity or site, at EPA's discretion.
- Financial Status Reports (SF-269s) are to be submitted to an EPA Award Official, and report information on a site- and activity-specific basis as follows:
 - Within 90 days after the close of each budget period. If the budget period is longer than one year the report must be submitted annually, based on the anniversary date of the award;
 - Within 90 days after the completion of an activity, as listed in d) above;
 - Within 90 days after the end of the overall Cooperative Agreement.

Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter-of-credit to be revoked and the financing method changed to a reimbursable basis."

3.4 POST AWARD COOPERATIVE AGREEMENT MANAGEMENT

3.4.1 Post Award Management

(Reserved)

3.4.2 Audit/Audit Resolution

(Reserved)

CHAPTER 4: PREAPPLICATION ASSISTANCE AND ADMINISTRATIVE REVIEW CHECKLIST

Chapter 4 contains a checklist that Regional AAU staff may use to (1) assess States' capabilities to meet general assistance requirements; and (2) identify Cooperative Agreement special conditions that will help to ensure the fiscal integrity of the proposed project.

Part I of the checklist covers the preapplication assistance phase. It includes a series of questions to help AAU staff identify potential issues regarding general assistance requirements. The questions focus on both: (1) review of any outline for a Cooperative Agreement application submitted by States; and (2) discussions with State staff. If any issues are discovered, they can be tracked during the review of the Cooperative Agreement application. The preapplication phase of the checklist can provide more generic assessment of States' capabilities. Once this section is completed, and AAU staff are satisfied that the State can meet certain requirements, they no longer need to be concerned with these items during the application review.

Part II of the checklist allows AAU staff to conduct an administrative review of the Cooperative Agreement application. It contains a detailed list of possible provisions to include in a Cooperative Agreement. The reviewer can indicate whether a provision is already in the application, should be put in the application, or should be made a special condition in the award document. This portion of the checklist should be filled out prior to meeting with the State to discuss the adequacy of the application. When completely filled out, Part II of the checklist provides a complete record of:

- State assurances made in the application;
- AAU staff position on what additional assurances* should be added to the application;
- AAU staff recommendation on any special conditions that should be added to the award document.
- Agreements reached by EPA and the State on any other revisions to the award document; and
- Any follow-up actions needed (such as items that should be clearly monitored).

Once completed, the checklist should be signed by the AAU staff and included as part of the official file.

* Assurances are what the State provides in its Cooperative Agreement application. Special Conditions are added by EPA in the Award document.

SUPERFUND COOPERATIVE AGREEMENTS:
ADMINISTRATIVE MANAGEMENT CHECKLIST

PART I: PREAPPLICATION ASSISTANCE

Applicant: _____ Date: _____

Program: _____ Name of Project: _____

Type of Project: _____

Has recipient entered into a SMOA with EPA? Yes _____ No _____

If yes, list any SMOA provisions that should be reflected in the Cooperative Agreement:

1. _____
2. _____
3. _____
4. _____
5. _____

Does the SMOA identify roles and responsibilities for both State and EPA Regional Program Office and Assistance Administration staff? Yes _____ No _____

If so, what are they? _____

Is the proposed project listed in the SCAP? Yes _____ No _____

Review of Outline on Draft Cooperative Agreement Submitted by State:

	Yes	No
• Are lead and support agencies identified?	_____	_____
• Are responsibilities of each for document review and decisionmaking clear?	_____	_____
• Does it include appropriate general oversight requirements?	_____	_____
• Is the process and timing for priority setting for responses described?	_____	_____

Review of Outline on Draft Cooperative Agreement (cont.)

	Yes	No
• Are responsibilities and participation of both State and Federal Program Office and Assistance Administration unit (AAU) staff described?	_____	_____
• Has the State self-certified its procurement system?	_____	_____
• Is the certification form Part A completed?	_____	_____
• If not, does the State demonstrate its compliance with EPA procurement requirements (40 CFR 33)?	_____	_____
• Are there any procurement issues requiring further review?	_____	_____
If so, what are they?		

• Has the State prepared a draft budget?	_____	_____
If yes:		
- Are Federal and State costs for each activity identified?	_____	_____
- Are costs shown by object class?	_____	_____
- Is the draft budget consistent with the draft statement of work?	_____	_____
- Is State cost-share amount correct?	_____	_____
- Do all costs appear allowable (eligible, reasonable, necessary, and allocable) and consistent with OMB Circular A-87?	_____	_____
- Has the indirect cost rate been approved by the recipient's cognizant agency?	_____	_____
If no:		
- Does the State have the information it needs to prepare an adequate budget?	_____	_____

Review of Outline on Draft Cooperative Agreement (cont.)

- | | Yes | No |
|--|-------|-------|
| • Project Narrative Statement: does it have enough detail on the proposed activities to allow AAU staff to monitor progress (i.e., enough milestones)? | _____ | _____ |

If no, what type of information must be included in the Cooperative Agreement application?

- | | | |
|---|-------|-------|
| • Statement of Work: Does it have enough information to allow AAU staff to monitor effectively? | _____ | _____ |
|---|-------|-------|

If no, what type of information must be included in the cooperative agreement application?

Discussions with State Assistance Administration Staff

Name and Title of State staff contacted: _____

Agency/Address _____

Phone Number _____

- | | | |
|--------------------------------|-------|-------|
| • Is the State self-certified? | _____ | _____ |
|--------------------------------|-------|-------|

• If yes:

- Based on discussions with State staff, does it appear that their procurement regulations comply with 40 CFR 33?

- If no, what provisions should be examined further? _____

- | | | |
|---|-------|-------|
| • Is the State aware of all 40 CFR 30 and 40 CFR 33 requirements (see Chapter 3 of "Managing a Superfund Cooperative Agreement")? | _____ | _____ |
|---|-------|-------|

Discussions with State Assistance Administration Staff (cont.)

Yes No

List any areas where the state lacks understanding or may have difficulty complying:

- Has the State prepared a letter certifying the legal administrative authority of the applicant agency for this or a previous application?
- Does the State have an intergovernmental review process, as per 40 CFR 29?

Based on review of application outline and/or conversations with State staff, what issues warrant further examination when the application is submitted?

What issues need not be considered further? _____

Name of AAU Reviewer: _____

SUPERFUND COOPERATIVE AGREEMENTS:
ADMINISTRATIVE MANAGEMENT CHECKLIST
Part II: APPLICATION REVIEW

Date: _____

Applicant: _____ Program: _____

Assistance Agreement Number: _____

[CHECK ONE] New _____ Continuation _____
Draft _____ Final _____

Date Received by AAU: _____

Date Sent to Program: _____

Type of Project: _____

Was preapplication assistance provided? Yes ___ No ___

Did results of that review indicate any areas that may require special attention? Yes ___ No ___

List: _____

PART I: COMPLETENESS OF APPLICATION

	Yes	No
• All pages of application form filled out?	_____	_____
• Narrative statement included with scope of work?	_____	_____
• Intergovernmental review?	_____	_____
• Certification letter signed by Gov. or designee?	_____	_____
• Authorized representative identified?	_____	_____

PART II: BUDGET INFORMATION

Was a draft budget reviewed during preapplication assistance?
If yes, review primarily for changes & response to issues raised.

	Yes	No
Sections A and B: Broken out by site and activity?	_____	_____
Section B: Activities divided into object class categories?	_____	_____
All numbers consistent with Statement of Work?	_____	_____
If not, identify inconsistent areas: _____		

	Yes	No
State cost-share required?	_____	_____
What percentage? _____		
Cost share calculated accurately?	_____	_____
Use of State credits identified?	_____	_____
Are all costs allowable?	_____	_____
Identify any problem areas _____		

What is the indirect cost rate? _____		
Are all identified enforcement costs allowable?	_____	_____
List any problem areas: _____		

SUMMARY OF BUDGET INFORMATION

Total Project Costs \$ _____

Unallowable Costs Identified: \$ _____

EPA Funds Requested: \$ _____

Non-Federal Funds Budgeted: \$ _____

Special Conditions Required for Budget Information:

PART III: PROJECT NARRATIVE

Was a draft project narrative reviewed during the preapplication phase?
(If yes, review primarily for changes and response to issues raised.)

	Yes	No
Does Site Description Include:		
• Background/history?	_____	_____
• Current status	_____	_____
• Purpose/objectives	_____	_____
• How project will be implemented?	_____	_____

Does Statement of Work Include:		
• A week-by-week implementation schedule?	_____	_____
• A description of project scope?	_____	_____
• Detailed budget breakdowns for each object class category?	_____	_____

PART IV: COOPERATIVE AGREEMENT PROVISIONS--REVIEW CHECKLIST (AAU Review)

Already in Appli- cation	Should be Added to Appli- cation	Should be a Special Condition
-----------------------------------	--	--

General Assistance Provisions (40 CFR 30):

- Cost Sharing: _____

Review Notes: _____

- Recordkeeping for State & Contractors: _____

Review Notes: _____

- Access to Records: _____

Review Notes: _____

- Progress Reports: _____

Review Notes: _____

	Already in Appli- cation	Should be Added to Appli- cation	Should be a Special Condition
<ul style="list-style-type: none"> • <u>Financial Status Reports:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Quality Assurance Project Plan:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Financial Management System:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Property Acquisition (Real/Personal):</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Property Management (Real/Personal):</u> Review Notes: _____ _____ _____ 	_____	_____	_____

Already in Appli- cation	Should be Added to Appli- cation	Should be a Special Condition
-----------------------------------	--	--

- Audits:
Review Notes: _____

Procurement Provisions (40 CFR 33):

- State responsibility for contractors:
Review Notes: _____

- Contractor Qualifications:
Review Notes: _____

- Code of Conduct:
Review Notes: _____

- Methods for Procuring Assistance:
Review Notes: _____

	Already in Appli- cation	Should be Added to Appli- cation	Should be a Special Condition
<ul style="list-style-type: none"> • <u>Promoting Competition:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Acceptable Types of Subagreements:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Minority Business Enterprises, Women's Business Enterprises:</u> <ul style="list-style-type: none"> - Fair Share Objective: _____ - Commitment to submit SF 334 on a quarterly basis: _____ Review Notes: _____ _____ _____ 	_____	_____	_____

	Already in Appli- cation	Should be Added to Appli- cation	Should be a Special Condition
<ul style="list-style-type: none"> • <u>Submission of Information to EPA (if not certified):</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Documentation of procurement records:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>State procedures for establishing specifications:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Bonding and Insurance:</u> Review Notes: _____ _____ _____ 	_____	_____	_____
<ul style="list-style-type: none"> • <u>Federal Cost Principles:</u> Review Notes: _____ _____ _____ 	_____	_____	_____

	Already in Appli- cation	Should be added to Appli- cation	Should be a Special Condition
<ul style="list-style-type: none"> • <u>Cost and Price Considerations:</u> 	_____	_____	_____
Review Notes: _____ _____ _____			
<ul style="list-style-type: none"> • <u>Cost Sharing Assurances:</u> 	_____	_____	_____
Review Notes: _____ _____ _____			
<u>Other Provisions</u>			
<ul style="list-style-type: none"> • <u>Letter of Credit:</u> 			
<ul style="list-style-type: none"> - Demonstrated understanding of draw-down procedures: 	_____	_____	_____
Review Notes: _____ _____ _____			
<ul style="list-style-type: none"> • <u>Debarment and Suspension:</u> 	_____	_____	_____
Review Notes: _____ _____ _____			

Summary of Issues

What items should be added to the award document as "special conditions?"

What State staff were contacted to discuss these items?

Name: _____

Agency: _____

Title: _____

Telephone Number: _____

Date Contacted: _____

Did the State staff protest adding any of these items as special conditions?

Yes _____ No _____

If yes, which ones? _____

What was the outcome of these discussions?

Follow-Up Actions

List any items or potential issues that need to be closely monitored throughout project implementation. _____

Name of AAU Reviewer

Date

APPENDIX A: SUPERFUND ACTIVITY CODE LIST
FOR COOPERATIVE AGREEMENTS

J - PRE-REMEDIAL ACTIVITIES

To be used for all remedial site efforts from inception through ranking for the NPL. This includes initial review of site documents, discovery and notification, initial site review, preliminary assessments, site inspections, and NPL ranking activities. Usually charged to accounts with "ZZ" in the identifier position.

L - REMEDIAL INVESTIGATION/FEASIBILITY STUDY

Further investigate extent of problems and provide data to define and assess the merits of alternative remedial actions. Field data obtained are used to support design and enforcement. Evaluate and analyze remedial alternatives and recommend a cost-effective approach. Includes forward planning. Also used for management assistance support during a Federal-lead RI/FS.

N - REMEDIAL DESIGN

Includes all costs associated with design efforts, including the development of final plans, specifications, and documents necessary to implement the selected remedial action. Also used for management assistance support during a Federal-lead RD.

R - REMEDIAL ACTION

Includes operable units where minimum engineering design services are not required to prepare bid packages. Also includes major, long-term remedial actions, involving implementation, following design, of remedial measures and construction management services during remedial action. Also used for management assistance support during a Federal-lead RA.

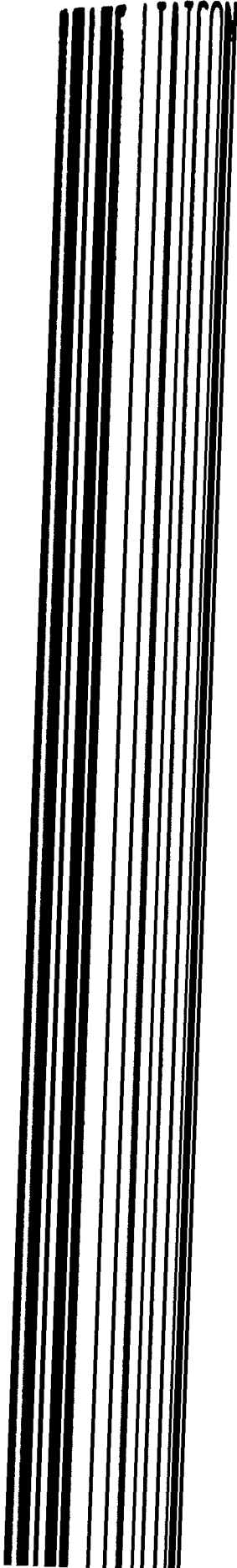
S - OPERATION AND MAINTENANCE

It is not EPA's policy to fund operation and maintenance of a completed remedy. EPA will, however, fund that part of remedial action, for a period not to exceed one year, to ensure that the installed remedy is operational and functional. EPA will fund up to 10 years of operation of such treatment or measures involved with the restoration of contaminated ground or surface water or until levels that assure protection of human health and the environment are achieved, whichever occurs first. Both of these situations are considered part of remedial action, and, therefore, must be funded under the "R" code.

E - REMOVAL ACTIONS

Includes all costs associated with the cleanup or removal of hazardous substances from the environment; such actions as may be necessary taken in the event or the threat of release of hazardous substances into the

environment. This includes but is not limited to security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation, etc. Other costs include site-specific removal management; documentation; and coordination with State/local/other Federal agencies.



environment. This includes but is not limited to security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation, etc. Other costs include site-specific removal management; documentation; and coordination with State/local/other Federal agencies.

3 - STATE LIAISON

This activity includes assistance provided to State governments that have entered into an enforcement cooperative agreement with EPA to fund support, management and oversight costs, pre-enforcement and litigation at sites designated as State enforcement lead or to assist States in gaining expertise by co-managing or overseeing sites with Federal government lead.

7 - GENERAL SUPPORT AND MANAGEMENT

Includes all support and management costs that benefit the overall Superfund program's management including all approved costs associated with the Core Program.