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## **Title 40 —Protection of Environment**

### **Chapter I —Environmental Protection Agency**

#### **Subchapter J —Superfund, Emergency Planning, and Community Right-to-Know Programs**

#### **Part 307** Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Claims Procedures

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# PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

**Authority:** 42 U.S.C. 9601 *et seq.*; sections 4 and 9, E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

**Source:** 58 FR 5475, Jan. 21, 1993, unless otherwise noted.

## Subpart A—General

### § 307.10 Purpose.

This part prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (herein referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

### § 307.11 Scope and applicability.

- (a) The following may be submitted only through the procedures established by this part: claims for responses to a release or substantial threat of release of a hazardous substance into the environment; claims for responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and claims for response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost. Under this part, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP) (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.
- (b) This part does not affect the terms and conditions contained in Preauthorization Decision Documents (PDDs) issued prior to the effective date of this part. However, a potential claimant may elect to comply with the provisions of this part, rather than the terms and conditions of a PDD issued prior to the effective date of this part, if he so chooses. Written notice of this election must be provided to EPA by the potential claimant prior to such provision taking effect, but not later than the time of the submittal of any claim to EPA. EPA will provide a written acknowledgement of the potential claimant's election and may revise the PDD as appropriate.

## § 307.12 Use of number and gender.

As used in this part, words in the singular also include the plural and vice versa, and words in the masculine gender also include the feminine, as the case may require.

## § 307.13 Computation of time.

In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

## § 307.14 Definitions.

Terms that are not defined in this section or restated herein, shall have the meaning set forth in section 101 of CERCLA or the 1990 NCP or any final revision thereto. As used in this part, the following words and terms shall have the meanings set forth below:

**Act or CERCLA** both mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

**Administrative hearing** means an administrative adjudication required by section 112(b)(2) of CERCLA in the event a claimant contests a determination of his claim made by the U.S. Environmental Protection Agency (EPA).

**Assistance agreement** means the legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or cooperative agreement (see 40 CFR part 35) and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

**Claim** means a demand in writing for a sum certain presented to the Fund in accordance with sections 111 and 112 of CERCLA.

**Claimant** means any person who presents a claim to the Fund for reimbursement under section 112(b)(1) of CERCLA.

**Contractor claim** means the disputed portion of a written demand or written assertion by any contractor who has contracted with a person (*i.e.*, the owner) for the conduct of a preauthorized response action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the owner and which is subsequently settled by the owner or is awarded by a third party in accordance with the disputes clause of the contract document.

**Eligible claim** means any claim that has satisfied the requirements set forth in § 307.21(b).

**Facility** as defined by section 101(9) of CERCLA, means any:

- (1) Building, structure, installation, equipment, pipe or pipeline (including any pipe into sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

- (2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

**Fund** means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

**Hazardous substance** as defined by section 101(14) of CERCLA, means:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);
- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;
- (3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6801 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
- (4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;
- (5) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401 *et seq.*); and
- (6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA (Administrator) has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under paragraphs (1) through (6) of this definition, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

**National Contingency Plan, or NCP** means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of CERCLA.

**Necessary costs** means "necessary response costs" as required by section 111(a)(2) of CERCLA for Fund reimbursement of a preauthorized response action. Necessary response costs are costs determined to be:

- (1) Required (based upon the site-specific circumstances);
- (2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);
- (3) Allocable (incurred specifically for the site at issue); and
- (4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). See OMB Circular A-122 (non-profit organizations); OMB Circular A-87 (States and political subdivisions); and 48 CFR part 31, subparts 31.1 and 31.2 (profit-making organizations).

**NPL** means the National Priorities List established pursuant to section 105 of CERCLA and 40 CFR 300.425, which consists of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

**Operable unit** means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site.

**Party** means EPA or a claimant.

**Perfected** means the point at which EPA determines that the written demand for a sum certain (*i.e.*, claim) has the documentation necessary to substantiate the appropriateness of the amounts claimed; *i.e.*, the claim is technically complete.

**Person** as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

**Political subdivision** means any general purpose unit of a local or State government.

**Pollutant or Contaminant** as defined by section 101(33) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of the Act, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

**Preauthorization** means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. The process of preauthorization consists of three steps:

- (1) EPA's receipt of the application for preauthorization;
- (2) EPA's review and analysis of the application; and
- (3) EPA's issuance of the Preauthorization Decision Document, which sets forth the terms and conditions for reimbursement.

**Preauthorized** response actions are response actions approved through the preauthorization process.

**Respond or Response** as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including removal and remedial action) including enforcement activities related thereto.

**Response claim** means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, including certain costs of actions referred to in section 122(b)(1) of CERCLA.

## § 307.15 Penalties.

- (a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.
- (b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

## Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

### § 307.20 Who may present claims.

- (a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.
- (b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.
- (c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release and provided that the other requirements of this part are met.
- (d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:
  - (1) The requirements of § 307.21 and § 307.22 are met; and
  - (2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and
  - (3) The claimant is not otherwise compensated for the loss; and
  - (4) The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

- (5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

### § 307.21 Nature of eligible claims.

- (a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with § 307.22. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.
- (b) Costs will be considered to be eligible under this section if:
  - (1) The response action is preauthorized by EPA pursuant to § 307.22;
  - (2) The costs are incurred for activities within the scope of EPA's preauthorization;
  - (3) The response action is conducted in a manner consistent with the NCP; and
  - (4) The costs incurred are necessary costs pursuant to § 307.11 of this part.
- (c) Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:
  - (1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;
  - (2) The contractor claim is meritorious;
  - (3) The contractor claim was not caused by the mismanagement of the claimant;
  - (4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;
  - (5) The claimed amount is reasonable and necessary;
  - (6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and
  - (7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.
- (d) An award by a third party on a contractor claim under paragraph (c) of this section should include:
  - (1) Findings of fact;
  - (2) Conclusions of law;
  - (3) Allocation of responsibility for each issue;
  - (4) Basis for the amount of award; and
  - (5) The rationale for the decision.

- (e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement transactions that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.
- (f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.
- (g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.
- (h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following:
  - (1) The contractor shall promptly, and before such conditions are disturbed, notify the claimant in writing of:
    - (i) Subsurface or latent physical conditions at the site differing materially from those listed in this contract, or
    - (ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
  - (2) Upon notification by the construction contractor, the claimant shall promptly investigate the conditions. If the claimant finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under its contract, whether or not changed as a result of such conditions, the claimant shall make an equitable adjustment and modify the contract in writing.
  - (3) No claim of the contractor under the differing site conditions clause shall be allowed unless the contractor has given the notice required in paragraph (h)(1) of this section. However, the claimant may extend the time prescribed in paragraph (h)(1) of this section.
  - (4) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (i) Where money in the Fund has been used to pay for any response costs under this section, no other claim may be paid out of the Fund for the same costs.

## § 307.22 Preauthorization of response actions.

- (a) No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA. In order to obtain preauthorization, any person intending to submit a claim to the Fund must fulfill the following requirements before commencing a response action:
  - (1) Notify the lead agency through the National Response Center (as described in 40 CFR 300.125), if there is acute threat of fire, explosion, or direct human contact with hazardous substances, pollutants, or contaminants or other emergency situation, to determine if there is sufficient time to submit an application for preauthorization;



- (2) Submit an application for preauthorization (EPA Form 2075-3, found at appendix A of this part) to the Administrator or his designee; and
  - (3) Obtain the approval of the Administrator or his designee before initiating the response action.
- (b) All applications for preauthorization must include, where available;
- (1) A description of the location and nature of the release or threatened release of a hazardous substance or pollutant or contaminant (e.g., type and location of vessel or facility, population at risk, routes of exposure);
  - (2) A description of the nature and quantity of the hazardous substance or pollutant or contaminant which has been or may be released, including whether the substance is on the list of hazardous substances set forth pursuant to section 102 of CERCLA;
  - (3) The identity of any potentially responsible parties known to the applicant (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;
  - (4) Evidence of the applicant's eligibility to file a claim pursuant to § 307.20;
  - (5) An explanation of why the proposed response action is necessary, and how the proposed action is consistent with 40 CFR 300.700(d)(4)(ii);
  - (6) A description of the applicant's capability (including financial and technical capability) to implement the proposed response action;
  - (7) Proposed schedule of activities;
  - (8) Projected costs of response activities, with the basis for those projections (projections shall be based on actual anticipated costs without a contingency for unanticipated conditions);
  - (9) Proposed schedule for the submission of claims;
  - (10) The proposed contracting procedures;
  - (11) Proposed procedures for project management, EPA oversight, and reporting of progress of the project; and
  - (12) The assurances of timely initiation and completion.
- (c) Applications for preauthorization to undertake a removal action shall, in addition to the requirements in paragraph (b) of this section, include:
- (1) A summary or copy of the preliminary assessment; and
  - (2) A description of the proposed removal action for which the claim will be made, which environmental requirements are applicable or relevant and appropriate, and how the removal will comply with such requirements.
- (d) Applications for preauthorization to undertake a remedial investigation and feasibility study shall, in addition to the requirements in paragraph (b) of this section, include:
- (1) The scope of the proposed study;
  - (2) A proposed site sampling plan and quality assurance procedures;
  - (3) The plan for the development of alternatives;

- (4) Approaches to consideration of alternatives to land disposal;
  - (5) Plans for initial screening of alternatives;
  - (6) Proposed procedures for the detailed analysis of alternatives; and
  - (7) Proposed considerations in selection of the remedy.
- (e) Applications for preauthorization to undertake a remedial alternative other than that selected by EPA, or where EPA has not selected a remedy, shall, in addition to the requirements in paragraph (b) of this section, include a discussion of how the proposed remedy:
- (1) Differs from the one selected by EPA, if applicable;
  - (2) Achieves protection of public health and welfare and the environment and complies with legally applicable or otherwise relevant and appropriate Federal, State, and local requirements pursuant to 40 CFR 300.400(g) or waivers to those requirements in 40 CFR 300.430(f)(1)(ii)(C). The application shall also include a discussion of pertinent Federal and State guidance, advisories, and criteria;
  - (3) Will be cost-effective as set out in section 121(a) of CERCLA and 40 CFR 300.430(f)(1)(ii)(D);
  - (4) Mitigates and minimizes future risks;
  - (5) Improves the reliability of the remedy;
  - (6) Utilizes new or innovative technology, if appropriate;
  - (7) Employs treatment that reduces the volume, toxicity or mobility of the hazardous substances;
  - (8) Impacts projected costs; and
  - (9) Takes into account appendix D of 40 CFR part 300.
- (f) Applications for preauthorization to undertake a remedial action, including those described in paragraph (e) of this section, shall in addition to the requirements in paragraph (b) of this section, include:
- (1) A description of the proposed remedial action for which the claim will be made;
  - (2) A proposed site sampling plan and quality assurance procedures;
  - (3) Documentation of reasonable effort to obtain the cooperation of the State or Indian Tribe;
  - (4) A bond or other financial assurance to cover the costs of necessary long-term operation and maintenance of the response action or written assurance from the State to provide such long-term operation and maintenance;
  - (5) Proposed procedures using sealed bidding to select the construction contractor, or an explanation of why the applicant intends to use any other method; and
  - (6) Documentation showing that the response will be carried out in accordance with applicable or relevant and appropriate environmental requirements. Documentation should include the potential impacts on any environmentally sensitive areas.
- (g) Claims of business confidentiality may be asserted for information submitted to EPA under this subpart. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this subpart, and part 2, subpart B, of this chapter.

- (1) Any claim of business confidentiality must accompany the information when it is submitted to EPA. Claims must be asserted as prescribed on the forms. Items claimed confidential on the forms and attachments to the forms must be clearly marked by circling or bracketing them.
  - (2) The applicant or response claimant must provide EPA with two copies of its submittal if any information is claimed confidential.
    - (i) One copy of the submittal must be complete, with items claimed confidential clearly marked in accordance with paragraph (g)(1) of this section.
    - (ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA may make this second copy available to the public.
    - (iii) If the applicant does not provide a redacted copy, the application for preauthorization is incomplete. If the claimant does not provide a redacted copy, the claim against the Fund will not be perfected by EPA. EPA will not process such submittals until it receives the redacted copy.
  - (3) If a submitter of a response claim or an application for preauthorization does not assert a claim of business confidentiality for information at the time the information is submitted to EPA, the Agency may make the information public without further notice to the submitter.
- (h) In addition to the foregoing, an application for preauthorization filed by a potentially responsible party for partial reimbursement of response costs shall include:
- (1) A copy of the settlement agreement, or the most recent draft of any pending agreement, reached between such parties and the Federal Government; and
  - (2) If the application is to undertake a remedial investigation and feasibility study, an affirmation that the applicant will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue and an agreement to reimburse the Fund for any costs incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study.
- (i) If it is subsequently determined that the preauthorized response actions require modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be approved by EPA before different, or additional, actions can be undertaken, if such actions are to be eligible for compensation from the Fund.
- (j) Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgment, Consent Decree, administrative order (whether unilateral or on consent), or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund.

### § 307.23 EPA's review of preauthorization applications.

- (a) EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memorialized in a PDD.
- (b) Each application for preauthorization must include information sufficient for EPA to determine whether the response will be consistent with 40 CFR 300.700(d). EPA will evaluate applications based on the following non-exclusive list of criteria, as appropriate:
  - (1) Whether the release is within the scope of CERCLA;

- (2) The seriousness of the problem or importance of the response activity when compared with competing demands on the Fund;
  - (3) Whether there is sufficient time to process the request for preauthorization (e.g., if a removal action is proposed);
  - (4) Whether the party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;
  - (5) Whether the State, a political subdivision, or an Indian Tribe is willing to undertake the response action through a contract or a cooperative agreement;
  - (6) The cost and effectiveness of the proposed response actions when compared with other alternatives;
  - (7) Whether proposed response can be carried out in accordance with the NCP and other environmental requirements;
  - (8) The applicant's eligibility to file a claim; his capabilities, experience, and technical expertise; and his knowledge and familiarity with the NCP and relevant guidance;
  - (9) Whether the party is proposing to conduct a cleanup through an administrative order or a Consent Decree with the Government regarding the site for which the request is made (if the applicant is a potentially responsible party);
  - (10) Whether the applicant, if he is a potentially responsible party seeking to undertake a remedial investigation and feasibility study, has affirmed that he will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contract with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;
  - (11) Whether the proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;
  - (12) Whether the applicant has met the necessary assurances, financial responsibilities, and other requirements;
  - (13) Provisions for long-term operation and maintenance of the site, if appropriate;
  - (14) Whether the applicant has consulted with the State or Indian Tribe on the proposed response action;
  - (15) The applicant's proposed procedures for oversight and the reporting of project issues and progress;
  - (16) Cooperation of the applicant at any earlier stage of response activity; and
  - (17) Whether the proposed schedule for filing a claim(s) is based upon the completion of the project, an operable unit, or a discrete phase of the response work.
- (c) The Administrator may grant preauthorization for all or part of a proposed response action, but not less than a stage of an operable unit or of a response action.
- (1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any response action.

- (2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.
  - (3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.
  - (4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.
  - (5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.
- (d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after correcting the deficiencies, or by proposing an alternative approach.
- (e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and conditions contained in the PDD. The applicant, as a condition of preauthorization, shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.
- (f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.
- (g) EPA will not grant preauthorization for any response actions where:
- (1) The proposed action is not a response action authorized under CERCLA;
  - (2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;
  - (3) The proposed response is a remedial action and the site is not on the NPL; or
  - (4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.
- (h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the PDD.

## Subpart C—Procedures for Filing and Processing Response Claims

### § 307.30 Requesting payment from the potentially responsible party.

- (a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:
  - (1) The name of the claimant (commercial entity or individual);
  - (2) The name, title, and address of any authorized representative;
  - (3) The location of the release and cleanup;
  - (4) The date of the release, if known;
  - (5) The owner of the property, if other than the claimant;
  - (6) A description of the response action taken; and
  - (7) The amount of the request (in dollars);
  - (8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units or for a stage of a response action.
- (b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.
- (c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(c), which require EPA's prior approval of such releases from liability.
- (d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.
- (e) If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such potentially responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

### § 307.31 Filing procedures.

- (a) A response claim must be submitted on EPA Form 2075-4 and must include:
  - (1) Documentation showing that the claimed response activities were preauthorized by EPA;
  - (2) Documentation showing that the response activity was accomplished in a manner consistent with the PDD, noting any deviation from preauthorized activities;
  - (3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

- (4) Substantiation that all claimed costs are necessary costs.
- (b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.
- (c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

### § 307.32 Verification, award, and administrative hearings.

- (a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.
- (b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.
- (c) For purposes of this part, a response claim is deemed perfected when EPA determines that the claim complies fully with the specified filing requirements; *i.e.*, the claim is technically complete. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.
- (d) EPA may adjust claims and in making a determination whether costs are allowable, EPA will be guided by the Federal cost principles (non-profit organizations—OMB Circular A-122; States and political subdivisions—OMB Circular A-87; profit-making organizations—48 CFR part 31, subparts 31.1 and 31.2).
- (e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontracts, settlement of protests, claims disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.
- (f) Awards will be made:
  - (1) Only for necessary costs of completing the response action or stage of an operable unit or of a response action;
  - (2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23;
  - (3) Only to the extent that the cleanup was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h); and
  - (4) Only to the extent that the cleanup was performed in compliance with the terms and conditions of the PDD.
- (g) No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance.

- (h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.
- (i) For claims submitted in connection with a settlement reached under section 122(b)(1) of CERCLA only, interest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.
  - (1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.
  - (2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (i)(1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received.
  - (3) Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision.
  - (4) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by Subchapter A of Chapter 98 of the Internal Revenue Code of 1954.
- (j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.
- (k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42.
- (l) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization did not disclose that the claimant may be a person described as follows:
  - (1) The owner and operator of a vessel or a facility;
  - (2) Any person, who at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
  - (3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or
  - (4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.



- (m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days, unless a different period of time is specified by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.
- (n) Once the claim is perfected, EPA will proceed to:
  - (1) Make an award on the claim; or
  - (2) Decline to make an award.
- (o) If the claimant is dissatisfied either with EPA's denial of a claim or with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.
- (p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to § 307.40.

### § 307.33 Records retention.

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

## Subpart D—Payments and Subrogation

### § 307.40 Payment of approved claims.

- (a) Payment of claims will be made, as applicable, within:
  - (1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;
  - (2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or
  - (3) 20 days of the final judicial decision of any appeal taken.
- (b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

### **§ 307.41 Subrogation of claimants' rights to the Fund.**

- (a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.
- (b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts. The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the PDD shall expressly require their contractors to provide this cost recovery assistance.

### **§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA section 122.**

- (a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.
- (b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the Consent Decree or order regarding the site cleanup entered into by EPA and the claimant.

## **Appendix A to Part 307—Application for Preauthorization of a CERCLA Response Action**



United States Environmental Protection Agency  
Washington, DC 20460

Form Approved. OMB No. 2050-0106  
Expiration Date 12-31-94

## Application for Preauthorization of a CERCLA Response Action

**General Instructions:** Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

### I. Introductory Material

A. Name, Title and Address of Applicant(s):

B. Name of Site:

C. Eligibility:

- ☐ Individual ☐ PRP  
☐ Firm ☐ Other  
☐ Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

### II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known):

B. Location of the release:

C. Is the release or threat of release at an NPL site? ☐ Yes ☐ No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? ☐ Yes If yes, provide the date and the manner of the notice:

☐ No If no, explain why not:

### III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? ☐ Yes ☐ No

If yes, provide date of notice letter:

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? ☐ Yes ☐ No

If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? ☐ Yes ☐ No

If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? ☐ Yes ☐ No

If yes, attach a list of known PRPs and describe the results of any contacts with them.

If no, describe efforts to identify PRPs.

### IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

C. Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:

1. Worker training, health and safety, and the safety of the public.
2. Community relations plan.
3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

#### V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

#### VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? ☐ Yes ☐ No If no, explain.

#### VII. Relates to Long-Term Operations and Maintenance (O&M) (If applicable)

- ☐ I will provide a bond or other financial assurance for O&M. ☐ The State has agreed to provide for O&M.

Attach documentation to support your assertion.

#### VIII. Relates to Projected Costs

- A. Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
TOTAL	\$ _____

- B. Provide a proposed schedule for the submission of claims.

#### IX. Relates to Project Management

- A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.
- B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.
- C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.
- D. Describe your proposed procurement procedures.

#### Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant

Date

#### CERCLA Penalty for Presenting Fraudulent Claim

40 CFR 307.42(b) (enhanced display) Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

#### Civil Penalty for Presenting Fraudulent Claim

## INSTRUCTIONS TO APPLY FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 186 and 330 hours – averaging 258 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs  
Office of Management and Budget  
728 Jackson Place, N.W.  
Washington, D.C. 20503  
Attention: Desk Officer for EPA

The applicant bears the burden for demonstrating that source Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to: U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460  
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

- I. A. Provide the name, title and address of the person(s) submitting this application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.
- B. Self-explanatory.
- C. Check all that apply.
- D. "Agent" refers to any duly authorized agent, executor, administrator, or other legal representative of the applicant. If this preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20).
- II. A-C. Self-explanatory.
- D. This description must include the following information: the type of vessel and facility; the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102); and a description of the surrounding population and/or environmental risk.
- E. Self-explanatory.
- III. A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).
- B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:
  - 1) the owner or operator of a vessel or facility,
  - 2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
  - 3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance, or
  - 4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.
- C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.
- D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.
- IV. A. Self-explanatory.
- B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.
- C. Worker/community health and safety plan. The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.
- Community Relations Plan. The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.
- APARs. See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv).
- V. Include a discussion of financial and technical/scientific capabilities.
- VI. If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.
- VII. Self-explanatory.

VIII. A. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable. The Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR sections 31.1, 31.2 (profit-making organizations).

B. A proposed schedule for the submission of claims should be provided. Applicants are encouraged to propose reimbursement based upon cash-flow considerations. The goal of an applicant should be to balance the need to maintain adequate cash flow against the completion of the response work against the number and frequency of claims.



## Appendix B to Part 307—Claim for CERCLA Response Action





United States Environmental Protection Agency  
Washington, DC 20460

**Claim for CERCLA Response Action**

Form Approved. OMB No. 2050-0106  
Expiration Date 12-31-94

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

**I. Introductory Material**

A. Name, Title and Address of Claimant(s):

B. Name of Site:

C. Preauthorization Decision Document (PDD):

Number \_\_\_\_\_

Date \_\_\_\_\_

(attach copy)

D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:

**II. Relates to Potentially Responsible Parties (PRPs)**

A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.

B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)?

☐ Yes☐ No

Attach names, addresses and dates of presentation. Describe any responses.

C. If a partial settlement was reached with PRPs after presentation of the claim as described in II B., did EPA approve any release?

☐ Yes☐ No

If no, explain

D. Is there any action pending in court regarding this site or response actions?

☐ Yes☐ No

If yes, explain.

**III. Relates to Claims for a Preauthorized Phase**A. Is this a claim for a preauthorized phase? ☐ Yes ☐ No

If no, provide the completion date of the subject response action and skip B, C, D and E.

B. How many claims are authorized in the PDD?

C. For which preauthorized phase are you filing a claim at this time?

D. Is completion of the next preauthorized phase on schedule?

☐ Yes☐ No

If no, explain.

E. Estimated date for submitting claim for the next preauthorized phase.

**IV. Relates to Response Action**A. Was the response/preauthorized phase completed in accordance with the PDD? ☐ Yes ☐ No If yes, skip B

B. Was a modification to the preauthorization request submitted to and approved by EPA?

☐ Yes

-- Supply number and date \_\_\_\_\_

☐ No

-- Explain how and why response differs from PDD.

C. Was the response completed in accordance with the Statement of Work and the Work Plan? ☐ Yes ☐ No If yes, skip D

D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.

E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD).  
Provide documentation of such adherence in an appendix.

F. Provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.

**V. Relates to Amount of Response Claim****A Provide the following summary information****Re Current Claim Submission**

Type of Response Activity(ies) Represented by Claim \_\_\_\_\_  
 Total Eligible Response Costs Represented by Claim \$ \_\_\_\_\_  
 Percentage of Claimed Costs to Total Response Costs \_\_\_\_\_ %  
 Dollar Amount of Reimbursement Claimed \$ \_\_\_\_\_

**Re Any Past Claim Awards Under the Subject PDD**

Number of Previous Claims \_\_\_\_\_  
 Total Sum of Previous Awards \$ \_\_\_\_\_

**Re PDD**

Reimbursement Cap Set For All Claim Submissions \$ \_\_\_\_\_

**B Provide the following breakdown of the eligible response costs asserted in this claim submission**

Labor \$ \_\_\_\_\_  
 Travel \$ \_\_\_\_\_  
 Equipment \$ \_\_\_\_\_  
 Materials and Supplies \$ \_\_\_\_\_  
 Contractual Services \$ \_\_\_\_\_  
 Other Direct Costs \$ \_\_\_\_\_  
 Indirect Costs \$ \_\_\_\_\_

**TOTAL RESPONSE COSTS** \$ \_\_\_\_\_

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

**C Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.****Certification**

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant \_\_\_\_\_

Date \_\_\_\_\_

**CERCLA Penalty for Presenting Fraudulent Claim**

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years or not more than 5 years in the case of a second or subsequent conviction, or both. (42 USC 9612 (b)(1))

**Civil Penalty for Presenting Fraudulent Claim**

The claimant is liable to the United States for a civil penalty of \$2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

**Criminal Penalty for Presenting Fraudulent Claim or Making False Statements**

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749, 18 USC 287, 1001)

### INSTRUCTIONS FOR SUBMITTING A CLAIM FOR A CERCLA RESPONSE ACTION

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307.

The public reporting burden for the completion of this form is estimated to vary between 25 and 59 hours -- averaging 42 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs  
Office of Management and Budget  
726 Jackson Place, N.W.  
Washington, D.C. 20503  
Attention: Desk Officer for EPA

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently, all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality.

When completed, this form should be sent to: U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460  
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

- I. A. Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.
- B. Provide the site name as it appears on the PDD.
- C. Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix. If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided.
- D. "Agent" refers to any duly authorized agent, executor, administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.
- II. A. Self-explanatory.
- B. Pursuant to 40 CFR Section 307.33(e), if 1) the first claim was denied by the responsible party or not responded to within 60 days, and 2) EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered a denial of every subsequent claim. The claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's agreement when the claimant is notified in writing regarding the award or denial of the claim.
- C-D. Self-explanatory.
- III-IV. Self-explanatory.
- V. A. Self-explanatory.
- B. This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.
- C. Contractual services will vary depending on the response action performed and the operative unit represented by the claim submission. Typical categories of response activity include:
  - Security
  - Groundwater sampling
  - Construction
  - Administrative Expenses
  - Materials
  - Operation & Maintenance

## **Appendix C to Part 307—Notice of Limitations on the Payment of Claims for Response Actions, Which Is To Be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL**

### *Limitations on the Payment of Claims for Response Actions*

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or “preauthorization,” from EPA.

## **Appendix D to Part 307—Notice of Limitations on the Payment of Claims for Response Actions Which Is To Be Placed in Public Dockets**

### **Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Sections 111(a)(2) and 122(b)(1) of CERCLA**

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 et seq.) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes can receive funding for response activities through other authorities of section 111(a) or section 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan (NCP), 40 CFR part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or “preauthorization,” from EPA. This means that before response work is initiated, the party must:

- (1) Notify EPA of its intent to file a claim;
- (2) Demonstrate that the release merits priority consideration;
- (3) Propose activities to remedy the release that can be carried out consistent with the NCP; and
- (4) Demonstrate the capabilities necessary to carry out such activities in a safe and effective manner.

In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a Consent Decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at 58 FR 5460, Jan. 21, 1993, 40 CFR part 307. Additional information can be obtained by contacting Phyllis Anderson, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 603-8971, or the RCRA/CERCLA Hotline, (800) 424-9346 (or (703) 920-9810 in the Washington, DC metropolitan area).

*[58 FR 5475, Jan. 21, 1993, as amended at 65 FR 47325, Aug. 2, 2000]*