Module 6: Liability and Enforcement
Module Overview

◆ Module Objective: Explain enforcement authorities and liability under CERCLA and discuss the general enforcement process

◆ Topics
  » Overview of the enforcement program
  » Definition of liability under CERCLA
  » Enforcement authorities under CERCLA
  » Basic enforcement process
  » Identification, notification, and negotiations with PRPs
  » Settlements and settlement tools
  » Oversight and cost recovery
Overview of CERCLA Enforcement

- Enforcement is a response action
- The Enforcement Principle: responsible party pays or performs the cleanup
- Statute provides authorities and tools
Liability Under CERCLA

Liability is defined in CERCLA § 107(a)

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

◆ Strict Liability
  » Strict = liable without “fault”
◆ Joint and several liability
  » Joint and several = liable for entire cost
◆ Civil liability
◆ Enforcement discretion
◆ Defenses against liability
CERCLA Enforcement Authorities

- Section 104(e) - Information requests
- Section 106 - Unilateral orders
- Section 107(a) - Recovery of response action costs and damages to natural resources
- Section 122 - Settlement tools
CERCLA Enforcement Process

1. Site Discovery
2. Identification of PRPs
3. Negotiations
   - Successful: PRP Response/ EPA Oversight
   - Unsuccessful:
     - Compliance: PRP Response/ EPA Oversight
     - No Compliance: Issue Administrative Order
     - Pursue Other Enforcement Options
Identification and Notification of and Negotiations with PRPs

- Identification of PRPs (PRP search)
  - CERCLA § 104(e) letters
- Notification of PRPs
  - General notice letter
- Negotiations with PRPs
  - Special notice letter
Settlements and Settlement Tools

- Two types of settlement agreements used when negotiations succeed
  - Administrative
    - Authorized by CERCLA
    - Initiated by EPA
    - Not required to go through court approval
  - Judicial
    - Filed by DOJ on behalf of EPA in court
- Settlement documents that finalize settlements
  - AOCs
  - CDs
(continued)
Settlements and Settlement Tools

- Settlement tools that EPA uses to facilitate PRP settlements
  - Mixed funding settlements
  - *De minimis* settlements
  - NBARs
- If settlements are not achieved, there are various enforcement options available to EPA:
  - UAOs
  - Litigation/judgments
Oversight

- EPA monitors all work at a PRP funded site, including:
  - On-site examination of the PRPs or their contractors
  - Review of all reports
  - Parallel sampling and analysis to ensure accuracy

- CERCLA § 104 requires PRPs to pay for EPA’s RI/FS oversight expenses as a part of the settlement
Superfund Alternative Sites

- Enforcement policy that allows EPA Regions to pursue settlements with PRPs without listing the site on the NPL
- Site must meet certain criteria to be designated a SA site
- EPA and state must agree on site and coordinate in the response
- Response selection and oversight is same as if site were on the NPL
- Settlements should achieve similar results to sites placed on the NPL
Cost Recovery

- May be used when negotiations with PRPs are unsuccessful
- EPA issues a demand letter to PRPs
- PRPs and EPA negotiate to achieve a settlement
- EPA refers judicial action to DOJ if PRP refuses or negotiations are unsuccessful
- Cost documentation is critical
In Review

- CERCLA provides criteria under which a party is liable for response costs
- PRPs are classified into four groups, defined under CERCLA
- PRPs are identified through a search process
- There are several types of settlements that EPA can use to negotiate with PRPs, either administratively or judicially
- If settlements are not achieved, other enforcement options exist including performing the response and seeking recovery of costs from PRPs