Environmental Protection Agency

§ 35.6805 a site. A political subdivision may be a signatory to the SSC.

Contents of an SSC.

The SSC must include the following provisions:

(a) General authorities, which documents the relevant statutes and regulations (of each government entity that is a party to the contract) governing the contract.

(b) Purpose of the SSC, which describes the response activities to be conducted and the benefits to be derived.

(c) Negation of agency relationship between the signatories, which states that no signatory of the SSC can represent or act on the behalf of any other signatory in any matter associated with the SSC.

(d) A site description, pursuant to §35.6105(a)(2)(i).

(e) A site-specific Statement of Work, pursuant to §35.6105(a)(2)(ii) and a statement of whether the contract constitutes an initial SSC or an amendment to an existing contract.

(f) A statement of intention to follow EPA policy and guidance.

(g) A project schedule to be prepared during response activities.

(h) A statement designating a primary contact for each party to the contract, which designates representatives to act on behalf of each signatory in the implementation of the contract. This statement must document the authority of each project manager to approve modifications to the project so long as such changes are within the scope of the contract and do not significantly impact the SSC.

(i) The CERCLA assurances, as appropriate, described as follows:

(1) Operation and maintenance. The State must provide an assurance pursuant to §35.6105(b)(1). The State’s responsibility for operation and maintenance generally begins when EPA determines that the remedy is operational and functional or one year after construction completion, whichever is sooner (See, 40 CFR 300.435(f)).

(2) Twenty-year waste capacity. The State must provide an assurance pursuant to §35.6105(b)(3).

(3) Off-site storage, treatment, or disposal. If off-site storage, destruction, treatment, or disposal is required, the State must provide an assurance pursuant to §35.6105(b)(4); the political subdivision may not provide this assurance.

(4) Real property acquisition. When real property must be acquired, the State must provide an assurance pursuant to §35.6105(b)(5).

(5) Provision of State cost share. The State must provide assurances for cost sharing pursuant to §35.6105(b)(2). Even if the political subdivision is providing the actual cost share, the State must guarantee payment of the cost share in the event of default by the political subdivision.

(j) Cost share conditions, which include:

(1) An estimate of the response action cost (excluding EPA’s indirect costs) that requires cost share;

(2) The basis for arriving at this figure (See §35.6285(c) for credit provisions); and

(3) The payment schedule as negotiated by the signatories, and consistent with either a lump-sum or incremental-payment option. Upon completion of activities in the site-specific Statement of Work, EPA shall invoice the State for its final payment, with the exception of any change orders and claims handled during reconciliation of the SSC.

(k) Reconciliation provision, which states that the SSC remains in effect until the financial settlement of project costs and final reconciliation of response costs (including all change orders, claims, overmatch of cost share, reimbursements, etc.) ensures that both EPA and the State have satisfied the cost share requirement contained in section 104 of CERCLA, as amended. The recipient may direct EPA to return the overmatch or to use the excess cost share payment at one site to meet the cost share obligation at another site in accordance with §35.6285(d). Reimbursements for any overmatch will be made to the recipient identified in the SSC.

(l) Amendability of the SSC, which provides that:

(1) Formal amendments are required when alterations to CERCLA-funded activities are necessary or when alterations impact the State’s assurances
pursuant to the National Contingency Plan and CERCLA, as amended. Such amendments must include a Statement of Work for the amendment as described in paragraph (e) of this section; and

(2) Any change(s) in the SSC must be agreed to, in writing, by the signatories, except as provided elsewhere in the SSC, and must be reflected in all response agreements affected by the change(s).

(m) List of support agency Cooperative Agreements that are also in place for the site.

(n) Litigation, which describes EPA’s right to bring an action against any party under section 106 of CERCLA to compel cleanup, or for cost recovery under section 107 of CERCLA.

(o) Sanctions for failure to comply with SSC terms, which states that if the signatories fail to comply with the terms of the SSC, EPA may proceed under the provisions of section 104(d)(2) of CERCLA and may seek in the appropriate court of competent jurisdiction to enforce the SSC or to recover any funds advanced or any costs incurred due to a breach of the SSC. Other signatories to the SSC may seek remedies in the appropriate court of competent jurisdiction.

(p) Site access. The State or political subdivision or Indian Tribe is expected to use its own authority to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to the SSC.

(q) Final inspection of the remedy. The SSC must include a statement that following completion of the remedial action, the State and EPA shall jointly inspect the project to determine that the remedy is functioning properly and is performing as designed.

(r) Exclusion of third-party benefits, which states that the SSC is intended to benefit only the signatories of the SSC, and extends no benefit or right to any third party not a signatory to the SSC.

(s) Any other provision deemed necessary by all parties to facilitate the response activities covered by the SSC.

(t) State review. The State or Indian Tribe must review and comment on the response actions pursuant to the SSC. Unless otherwise stated in the SSC, all time frames for review must follow those prescribed in the NCP (40 CFR part 300).

(u) Responsible party activities, which states that if a Responsible Party takes over any activities at the site, the SSC will be modified or terminated, as appropriate.

(v) Out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country transfers of CERCLA waste, which states that, unless otherwise provided for by EPA or a political subdivision, the State or Indian Tribe must provide the notification requirements described in §35.6120.