United States Environmental Protection Agency

Office of Solid Waste and Emergency Response

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ORIGINATING OFFICE: OWPE/NEIC

☒ **FINAL**

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LEVEL OF DRAFT

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- ☒ B — Signed by Office Director
- ☐ C — Review & Comment

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Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number: 9834.6

2. Originator Information

Name of Contact Person	Mail Code	Office	Telephone Code
Donna Lee Gerst	WH-527	OWPE	475-7027

3. Title

Potentially Responsible Party Search Manual

4. Summary of Directive (include bnef statement of purpose)

The document explains the purpose of a potentially responsible party search, the reporting requirements of the search, and the mechanics of the tasks that are available to the researcher conducting the search. It also describes what is minimally acceptable for the purposes of SCAP and the CEAT audits.

5. Keywords

PRP search, basic PRP search, specialized tasks.

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Darlene M Williams	5/27/87
10. Name and Title of Approving Official	Date

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

AUG 27 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPON
OSWER Directive 9834.6

MEMORANDUM

SUBJECT: Potentially Responsible Party Search Manual

FROM: Gene A. Lucero, Director Gene A. Lucero
Office of Waste Programs Enforcement

TO: Waste Management Division Directors
Regions I-X

Attached is the final Potentially Responsible Party Search Manual. This guidance was developed by the Office of Waste Programs Enforcement in cooperation with NEIC and the Regions, with input from contractors involved in the PRP search process. It reflects changes in the process as a result of the passage of SARA, and details the methodology used in the search process.

Workshops have been scheduled for most Regions to educate staff, contractors and the states on the new guidance and procedures.

If you have any questions relating to this guidance, or the workshops, contact Donna Gerst (FTS-475-7027) of the Office of Waste Programs Enforcement.

Attachment

cc: Regional Counsels, Regions I-X
Henry Longest, OERR
Steve Leifer, OECM

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

SEP 17 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPON

MEMORANDUM

SUBJECT: New Directive for the OSWER Directives System

FROM: Sharon Foote
Program Analyst

TO: Regional Directives Coordinators

The purpose of this memorandum is to transmit One (1) OSWER Directives System document.

The new entry included in this report is:

9834.6 Potentially Responsible Party Search Manual

If there are any questions or suggestions, please call me at 382-4510.

Attachment

cc: Mary Escaville

POTENTIALLY RESPONSIBLE PARTY SEARCH MANUAL

FINAL REPORT

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Waste Programs Enforcement
Washington, D.C. 20460

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Telephone No.	:	202/382-4819

PREFACE

Please be advised that this manual was drafted in May 1987. This manual constitutes guidance only and should not be construed as creating substantive rights or affecting the rights or liabilities of any party.

ACKNOWLEDGEMENT

This manual was developed by the Office of Waste Programs Enforcement and the National Enforcement Investigation Center. Contributions were made by the following firms:

PRC Environmental Management, Inc.
TechLaw, Inc.
Versar, Inc.
Alliance Technologies Corporation
Jacobs Engineering Group, Inc.

PRP SEARCH MANUAL UPDATE FORM

If you would like to be included on the mailing update list, please fill out the information below and return it to:

PRP Search Manual Update
Office of Waste Programs Enforcement
EPA Headquarters WH-527
401 M Street, S.W.
Washington, D.C. 20460
Attention: Donna Gerst

- -

Please include me on the PRP Search Manual Update mailing list.

Name: _____

Company/Office: _____

Mail Code: _____

Address: _____

_____

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1.0 INTRODUCTION

The purpose of this manual is to provide guidance to EPA personnel and contractors in conducting **potentially responsible party** (PRP) searches. The manual was written to address the needs of three groups:

(1) EPA and state personnel and contractors assigned to conduct PRP searches;

(2) EPA and state project managers who are responsible for directing and reviewing contractor efforts; and

(3) EPA and state enforcement personnel using the manual as a reference in order to fully incorporate a PRP investigation into an enforcement strategy.

The manual is composed of two parts: background and methodology. The background section defines a PRP and discusses the role of PRP searches under CERCLA (42 USC 9601), while the methodology section provides detailed descriptions of different tasks performed in PRP searches. The tasks are arranged alphabetically within each subsection, not in the order they are generally performed during a search. The general order is discussed under "Methodology," on page 7. The appendices include sample PRP search reports as well as information sources, relevant policy and guidance documents, an activities checklist, and a glossary for easy reference. The sample reports can be used as guides for standard format, and they are examples of the type of information that should be included in PRP reports. Terms included in the glossary are presented in boldface type throughout this manual. The glossary and list of acronyms are in Appendix A.

2.0 BACKGROUND

2.1 DEFINITION OF PRP

EPA generally regards owners, operators, generators, and transporters as PRPs. More specifically, Section 107(a) of CERCLA indicates that a PRP may be:

(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 substances, and

(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 . . .

A "person" is defined in CERCLA Section 101(21) as "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."

An "owner or operator" as defined by CERCLA Section 101(20)(A) is:

(i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel,

(ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and

(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, or otherwise controlled activities at such facility immediately beforehand.

For further elaboration, refer to CERCLA Section 101(20)(B-C) and Section 107(a) located in Appendix F.

2.2 WHY A PRP SEARCH IS NEEDED

The identification of PRPs is an integral component in the resolution of a hazardous substance release. From the notification of a release through the remedial action, identification of and communication with the PRPs are essential in determining the strategy for a **cleanup**. Early identification supports EPA policy to secure **cleanup** by PRPs in lieu of **Superfund** use, where such cleanup can be accomplished in a timely and effective manner (see Timely Initiation of Responsible Party Searches, Issuance of Notice Letters, and Release of Information, Appendix G).

In instances where **Superfund** is used to finance a **cleanup**, the PRPs must be identified for cost recovery actions.

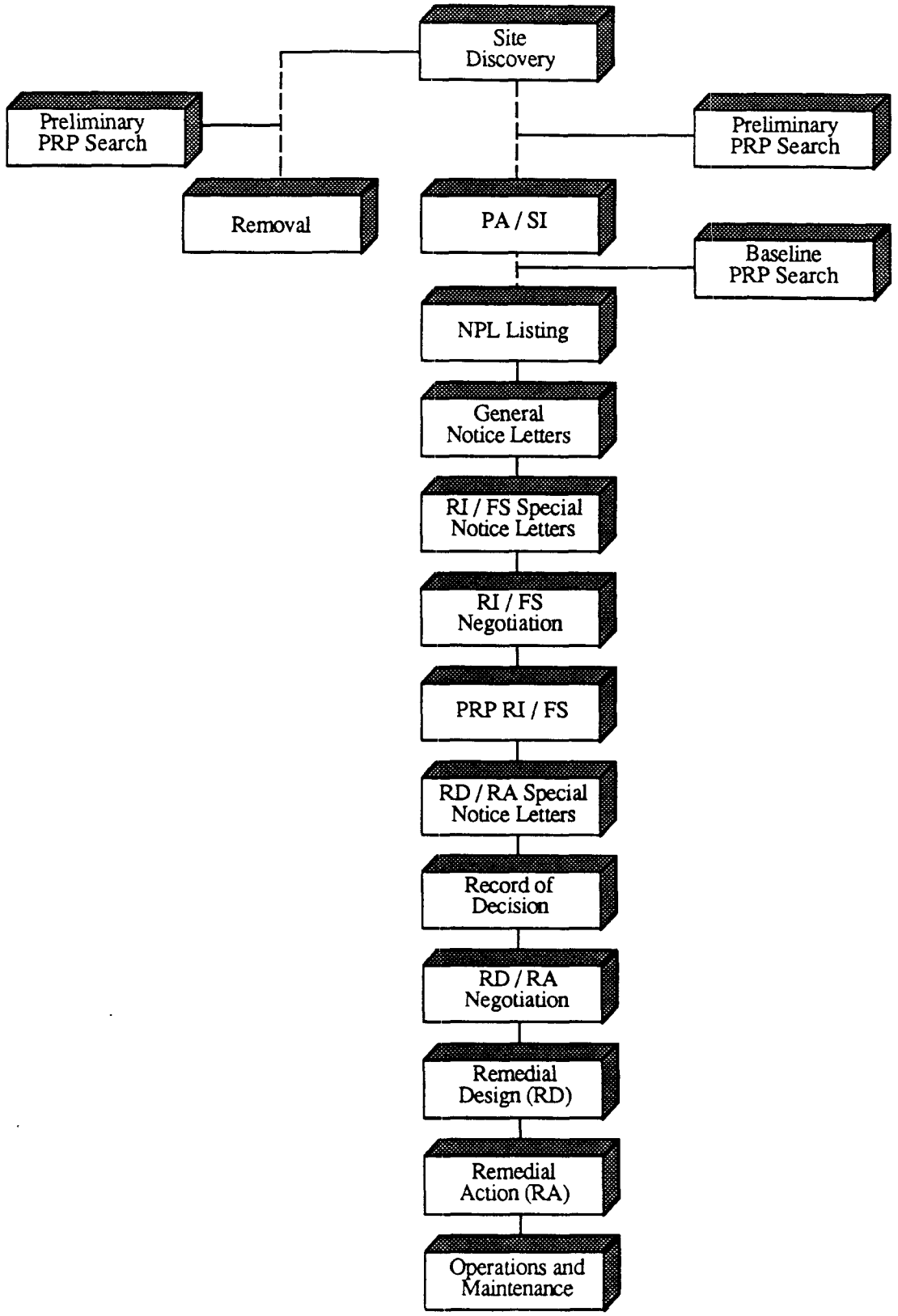
2.3 WHEN TO DO A PRP SEARCH

Current EPA policy and the Superfund Amendments and Reauthorization Act (SARA) encourage beginning a PRP search early in the Superfund cleanup process (Figure 1). The initiation of a PRP search should be concurrent with the initiation of the **National Priorities List** (NPL) listing process (during the **expanded site investigation**). In most cases, as PRPs are identified, EPA expects to issue general notice letters. In addition, in the majority of cases, special notice procedures will be initiated for the **remedial investigation/feasibility study** (RI/FS) and for remedial design/remedial action (RD/RA), and information exchange as set forth in the "Interim Guidance on Notice Letters, Negotiations, and Information Exchange" (see Appendix G). Figure 1 shows why the PRP search is an essential, early step in the enforcement process and the importance of early PRP identification. Completion should take place at the time of NPL proposed listing and well before any projected obligation for an RI/FS.

At the time of **site discovery**, a preliminary search is conducted to identify obvious PRPs. This step is essential, especially at removal sites where immediate action is indicated, to determine if PRPs are available to finance the cleanup. A PRP search at this stage is performed within a limited timeframe. Where response actions must precede completion of the PRP search, the search should be performed to support cost recovery or future response actions.

The extent of a PRP search depends on several factors including NPL or non-NPL status, site complexity (single landowner, landfill, abandoned drums, etc.), and the amount of funds expended at the site. A baseline PRP search is initiated at the time a site is submitted to EPA's Office of Emergency and Remedial Response for inclusion on the NPL. This baseline search includes the first 10 tasks described in Section 3.1 of this manual, but may also include more specialized tasks as deemed necessary by the **remedial project manager** and as dictated by the complexity of the site. As a site cleanup progresses, further tasks may be initiated to aid in identifying all PRPs at a site, as well as their financial status and other pertinent data. A site is submitted for inclusion on the NPL based on its **hazard ranking**

FIGURE 1
SUPERFUND SITE REMEDIATION PROCESS



system (HRS) score, which is determined during the **preliminary assessment/site investigation** (PA/SI) stage of the Superfund process (see Figure 1). An HRS of 28.5 or higher justifies NPL listing.

Throughout the PRP search, it is important that the investigator maintain ongoing communications with the EPA **primary contact**, regional counsel, and the **regional civil investigator**. Beginning in 1987, one civil investigator will be located in EPA headquarters and will be responsible for effective implementation of an overall national investigation strategy for conducting PRP searches. In addition, one civil investigator will be located in each region to ensure regional consistency and quality among PRP searches, develop a regional plan for conducting PRP searches, and aid the headquarters investigator in implementing the national strategy.

In summary, the PRP search, as a key component of the cleanup, should be initiated as early as possible in the site strategy development. The extent of the search depends on the stage of development, NPL or non-NPL status, and the complexity of the site.

2.4 COMPLETION OF A PRP SEARCH

The primary efforts of a PRP search are directed at identifying all PRPs at a site. This investigation may require a considerable expenditure of resources, and, while in most cases it should be substantially completed several months before the RI/FS starts, it may extend over the entire remedial process. For EPA reporting purposes, a definition of a completed PRP search has been developed based on the Superfund Comprehensive Accomplishments Plan (SCAP) definition. The information required to meet the SCAP target of a completed PRP search may be developed from the conduct of the ten basic tasks. In most multi-party cases, specialized tasks will also be utilized to provide adequate information for the baseline report. The PRP search effort should include, or yield, the following information at a minimum:

- o A review and compilation of agency and state records
- o A title search
- o Interviews with government officials

- o A history of operations at the site
- o Identification of owner/operators
- o Identification of generators and transporters
- o Any quantitative waste information developed for each identified PRP and a preliminary volumetric ranking
- o Financial status of identified parties
- o PRP status and history
- o PRP name and address update
- o Issuance of information request letters
- o Comprehensive report documenting findings

These components are essential to support an enforcement strategy at Superfund sites.

3.0 METHODOLOGY

This chapter describes 28 tasks that may be completed during a PRP search. Rarely, if ever, would all 28 tasks be used to obtain the information required for a PRP search. EPA anticipates that the researcher will select a combination of those tasks that effectively produce the necessary information. A clear understanding of the type and detail of information required for each search will allow the researcher to select the appropriate tasks. If a contractor is conducting the research, the contractor and EPA personnel should discuss the progress of the selected tasks during the search so that appropriate follow-up tasks can be completed.

Before any tasks are started during a specific PRP search, the researcher must clearly understand the objective of the search. This understanding will help the researcher obtain the necessary information in an orderly manner. If a contractor is conducting the research, early and continuous communication with EPA personnel involved with the site is required. The researcher must be aware of (1) the type of case, such as a landfill with many PRPs, or a manufacturing facility with a small number of PRPs; (2) the types of PRPs possibly involved with the site (owners, operators, generators, transporters); (3) EPA's specific needs to support case development, such as identifying only corporate PRPs; (4) information already available so as not to repeat previous efforts; and (5) EPA's anticipated action.

Ten of the 28 tasks presented in this manual are those generally performed in all PRP searches. These tasks are presented in alphabetical order in Section 3.1. Of these 10 basic tasks, 4 are used to collect information: government agency record collection and file reviews, title searches, interviews with public officials, and CERCLA 104(e)/RCRA 3007 letters. In most cases, these four tasks can be conducted simultaneously.

The remaining six tasks in Section 3.1 are records compilation, history of operations at the site, PRP status/PRP history, PRP name and address update, financial status, and report preparation. Records compilation is completed after the government files are located. This task organizes the files into a useful and easily accessible source of information. After obtaining information about the site, the researcher develops a site history and a list of PRPs. Once a list of PRPs is formulated, additional information is obtained on each PRP. This information includes current name, address, and financial status. After PRPs are identified, EPA can request site-specific information and documents from the PRPs using CERCLA 104(e) or RCRA 3007 letters. Once the information is collected, a report presenting the information is completed.

The other 18 tasks, presented in Section 3.2, are specialized tasks that may be useful in some searches, but not in others. These tasks are used to further characterize the relationship between PRPs and the site. This section of the manual can serve as a checklist of tasks the researcher can choose from as needed, depending on the situation. If the researcher knows at the beginning of the search that some of these tasks may be useful in identifying PRPs, those tasks may be completed concurrently with the 10 tasks listed in Section 3.1. In other situations, it may be useful to complete the initial 10 tasks, review the findings, and determine whether additional research is necessary. It should be noted that of the 18 specialized tasks, the PRP file review and private citizen/PRP interview tasks have traditionally been conducted most frequently.

The 18 specialized tasks are categorized into four subsections: (1) obtaining specialized information, (2) performing waste stream comparisons, (3) creating databases, and (4) performing other tasks.

The subsection on obtaining specialized information (Sections 3.2.1 to 3.2.8) includes eight tasks that may provide more information about a site and its PRPs. These eight tasks are listed alphabetically within the subsection.

The subsection on performing waste stream comparisons (Sections 3.2.9 to 3.2.11) includes three tasks. Two of the tasks, industrial survey and waste stream inventory, usually must be completed before the third task, process chemistry analysis, can be completed.

Three tasks are listed in the subsection on creating databases (Sections 3.2.12 to 3.2.14). These tasks allow large amounts of data, such as types and quantities of waste, or key document information, to be managed more efficiently. These tasks are also listed alphabetically.

Four tasks not directly related to PRP identification but often included in PRP searches are listed alphabetically in the subsection on performing other tasks (Sections 3.2.15 to 3.2.18). These tasks are compliance history, financial assessment, generator ranking, and property appraisal. Generator ranking, including type and amount of waste (Section 3.2.17) is particularly useful in satisfying the special notice provisions of CERCLA Section 122(e)(1).

Each task description listed in this chapter is divided into three parts: objective, procedures, and problems/resolutions. The objective states what the task should accomplish, while the procedures explain how a task is completed. For some tasks, the procedures are divided into two parts: initial information needs and process. Initial information needs lists background information that is required to begin the task. Process presents the steps to be taken to complete the task. Finally, problems/resolutions presents common problems and solutions to those problems. The information is presented in a concise, easy-to-read format that the researcher may use as a checklist to indicate which steps and tasks have been completed.

Nine appendices have been included to assist the PRP researcher. These appendices are listed below.

Appendix A, Glossary and Acronyms -- defines many of the terms used in the manual.

Appendix B, Activities Checklist -- presents each task listed in this chapter along with a level-of-effort estimate and selection criteria. This checklist serves as a menu of the possible activities that can be selected during a search.

Appendix C, EPA/NEIC Information Services -- explains the relevant information NEIC can provide to EPA Superfund personnel.

Appendix D, Key Information Source Index -- lists document sources and document types that are useful in obtaining information. Sources are provided for each task discussed in this chapter. Additional examples of documents are provided in Potentially Responsible Party Search Workshop Outline/Exhibits, National Enforcement Investigations Center, May 6, 1986.

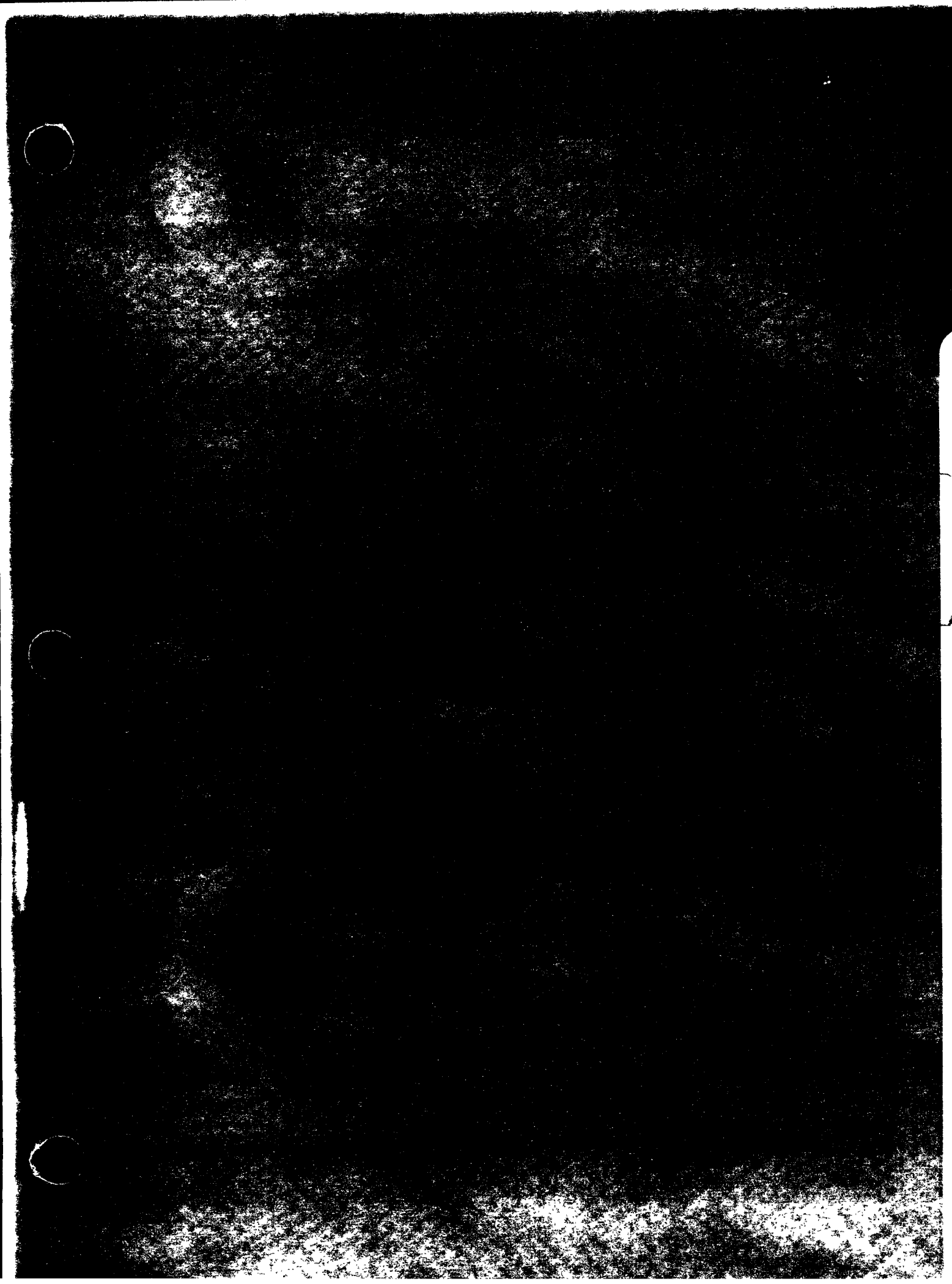
Appendix E, Information Collection Forms -- provides sample forms used to conduct interviews and industrial surveys. These forms must be altered to fit site-specific needs.

Appendix F, Comprehensive Environmental Response, Compensation, and Liability Act -- is a copy of CERCLA as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.

Appendix G, Guidance and Policy Memoranda -- contains copies of several memoranda issued by EPA, many of which are being revised under SARA. These memoranda provide guidance for various PRP search issues. New and revised guidances relating to PRP searches will be included as they become available.

Appendix H, List of Contacts -- provides names, addresses, and telephone numbers of federal and state agencies that may be contacted to obtain site-specific information.

Appendix I, Sample Reports -- provides several sample work products. None of the reports are presented in their entirety; only highlights are presented.



3.1.1 AGENCY RECORD COLLECTION AND FILE REVIEW

OBJECTIVE

The objective of this task is to locate and obtain copies of all governmental records pertinent to the site and relevant to the PRP search. Relevant records could include correspondence, hazardous waste manifests, technical data and reports, permits, complaints, investigations, site **owner** records, fire department chemical reports, litigation files, and bankruptcy files. These initial records provide important information the researcher uses to become familiar with the site, identify PRPs, and determine additional possible contacts. This task can be completed while conducting the title search (Section 3.1.10) and interviews (Section 3.1.5). Examples 1 and 2 in Appendix I, Sample Reports, discuss file reviews. Procedures for reviewing PRP files, not government files, are discussed in Section 3.2.4.

PROCEDURES

Initial Information Needs

- o Location of Records
- o Information Needs
- o Authorization to Contact Other Agencies

The first step in collecting and reviewing site records is to locate the appropriate records. If a contractor is conducting the search, discuss information needs with the EPA primary contact. Identify any areas for which the agency would like additional or unique information. In addition, obtain authorization to contact other agencies you might identify. Discuss sources of site records with the EPA primary contact focusing on:

- o Site background.
- o EPA records held by specific divisions or program offices:
  - Air
  - Water
  - RCRA
  - **CERCLA**

    Hazardous Site Control Division (remedial program)
    Emergency Response Division (removal program)
    CERCLA Enforcement Division
  - Regional Counsel
  - Other program offices

- State and local agencies that have records. See Appendix D for examples of information sources, such as local attorney's office and the local department of public works. See Appendix H for a list of state agencies.

- State and local government officials and private individuals to contact for interviews and record collection, such as previous site managers and compliance and permit personnel.

- Type of information required. Depending on the type of information required by EPA, both administrative and technical documents may need to be located and reviewed.

Using the information described above, compile a preliminary list of agencies, divisions, officials, and private individuals to contact for site records. Discussions should be held with the EPA primary contact to determine who will initially contact the other agencies and how to approach newly identified sources.

Process (Record Collection)

- Contact Agency with Documents
- Identify Document Type and Quantity
- Copy Documents
- Obtain Leads on Other Document Sources

With the above needs in mind, contact each known agency by phone and:

- Identify yourself and your organization, and clearly explain your role in the EPA investigation. Give the name and telephone number of the EPA primary contact.

- Explain the scope of the document request relevant to:

  - Site operational history

  - Identification of **owners, operators,** generators, and transporters

  - Other information needs consistent with EPA strategy

- Identify all records, correspondence, or other files and the approximate quantity (such as number of file drawers).

- Ask each agency to identify its divisions, such as:

  - Air

- Water
- RCRA
- CERCLA
- Engineering

o Ask each agency whether it can identify other agencies, including regional and district offices, that might have additional records on the site. See Appendix D for examples of additional information sources. These might include:

- Health department
- Environmental department/office
- Transportation department
- Police department
- Fire department
- Public works department
- State Attorney General
- Chamber of Commerce

o As appropriate, contact the EPA Regional Counsel to determine other kinds of information important to identifying PRPs and linking PRPs to the site. If a contractor is conducting the search, determine with the EPA primary contact if the contractor should contact the Regional Counsel directly or go through the EPA primary contact.

o Request a copy of a manufacturer's directory for the local area from a local source. This may aid in identifying PRPs (also see Section 3.1.7).

o Inquire as to whether records may be contaminated (see Problems/Resolutions).

o Arrange to obtain a copy of the records. If the agency is to copy the records, identify:

- Number of pages to be copied
- Cost of the photocopying

- Length of time needed to copy the records

o If the contractor will do the copying, identify:

  - Number of pages to be copied
  - Time required to review and copy the records
  - Agency policy on the use of in-house copiers
  - Agency policy on employing temporary help to assist with copying
  - Agency policy on removing documents from the office for commercial copying

o If the files are to be physically removed from an agency's files, EPA or its contractor should provide a receipt to that agency describing the records (type and approximate volume).

o Review the documents to determine which to copy. Examples of the types of records that are useful for PRP searches are given in Appendix D. Primarily, the researcher is looking for any document that:

  - Identifies PRPs
  - Is evidence that a PRP was involved with a site
  - Lists types and quantities of waste disposed of at the site
  - Explains the operations or methods of disposal at the site
  - Identifies other persons or agencies that may have knowledge of site activities

After determining which documents are relevant based on the criteria described above, copy those documents. EPA and its contractors should use standard chain-of-custody procedures when obtaining possession of another agency's files. This will prevent tampering or allegations of tampering with the documents.

Process (File Review)

- o Arrange Documents
- o Number Documents
- o Review and Record Information

After the documents have been obtained, they must be organized and reviewed. The process is straightforward but involves a number of steps.

- o Arrange the documents either by chronological order, source, document type (such as permits or analytical results), or by other appropriate methods.
- o Number the documents for reference purposes.
- o Review and record the contents of each document based on the criteria described *on the previous page as it pertains to:*
  - Relevancy
  - Site history
  - PRPs identified
  - Waste types and amounts
  - Contacts identified
  - Contradictions with other documents reviewed

PROBLEMS/RESOLUTIONS

- o The volume of records identified is very large.
  - If a contractor is conducting the search, the contractor travels to the agency, identifies relevant records, and makes copies of the relevant records.
- o The volume of relevant records identified is too large to be readily copied.
  - Copy records at the agency with the help of a rental copier or temporary help.
  - Send records to a local company for copying, with contractor staff supervision.
  - Microfilm documents and produce hard copies from the microfilm.

- The records are determined to be business confidential.
  - The contractor consults with EPA to determine whether it is necessary to review these records.
  - The contractor obtains confidential business information (CBI) clearance from EPA and accesses the records.
- Records are encountered that may be contaminated with toxic or hazardous materials.
  - The contractor consults EPA to determine the probable degree of contamination, whether the documents should be tested, and possible methods to obtain clean copies.
  - The contractor develops a safety plan approved by EPA before initiating work with contaminated records.
- The contractor is refused access to records or other sources of information.
  - Provide the party refusing access with the name and telephone number of the EPA primary contact, or contact EPA to obtain a letter of introduction or to make the initial contact.

3.1.2 CERCLA 104(e) LETTERS/RCRA 3007 LETTERS

OBJECTIVE

The objective of this task is to formally request information from persons about hazardous waste management practices at the site. Under Section 104(e)(2) of CERCLA as amended by SARA, "Any officer, employee, or representative [of the President] . . . may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at vessel or facility or transported to a vessel or facility;

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility;

"(C) Information relating to the ability of a person to pay for or to perform a cleanup."

RCRA Section 3007(a) provides that "For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request . . . furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes."

Information commonly requested includes that concerning operations, chemical usage, chemical storage, waste generation, waste disposal, and so on. Often documentation provided by the PRP may include hazardous waste manifests, site maps, purchase orders, weight tickets, technical data, technical reports, and permits. This documentation is screened for relevant, site-related information. It may also identify other parties, including PRPs, who may be contacted for additional information.

PROCEDURE

Initial Information Needs

- o Background Information

Process

- o Identify Names and Addresses
- o Determine Questions
- o Prepare Letters

Obtain basic site information, such as years of operation and waste types, to formulate questions for the CERCLA 104(e)/RCRA 3007 letters.

- o Identify parties who may have information about the site from the following sources:
  - PRPs
  - Customer lists
  - Industrial surveys
  - Other

- o Obtain current names and addresses. See Section 3.1.6 for procedures used to update names and addresses.
- o Define the information needed from the identified parties.
- o Contractors should coordinate with the EPA primary contact and Regional Counsel to formulate specific questions.
- o Prepare the 104(e)/3007 letters.
- o Assist EPA in preparing the mailing list.
- o Send letters by certified mail -- return receipt requested.
- o Immediately send the first round of letters to owners and operators. Then send letters to all identified generators and transporters.
- o Review and summarize responses to gain additional site-related information. Quantifying the information may require computer assistance (see Sections 3.2.12 through 3.2.14, Creating Databases).

PROBLEMS/RESOLUTIONS

- o Parties do not respond to letters.
  - Obtain updated names and addresses and resubmit the letter (this is also the procedure for returned letters).
  - Ensure that EPA has a receipt verifying that the letter was received.
  - After verifying that the letter was received, EPA should issue a warning letter.
  - EPA can issue an administrative order requiring compliance and can take civil action for appropriate relief.
  - EPA may use CERCLA **subpoena** authority (see Section 3.2.2).

- o Upon review of the responses, additional questions arise.
  - Send a second 104(e)/3007 letter to the PRPs. If a contractor is sending the letters, obtain EPA approval before preparing additional letters (EPA signs and issues these letters, not the contractor).
- o Responses are voluminous.
  - The contractor can assist EPA by developing computerized databases (see Section 3.2.12). Examples of software used for this purpose are **dBASE III** and **LOTUS 1-2-3.** The database can be used to characterize the status of the response by indicating information such as who received letters, who responded, and who provided complete responses.

3.1.3 FINANCIAL STATUS

OBJECTIVE

The objective of this task is to obtain some indication of a company's or individual's ability to pay for remedial action. The completeness of the financial information depends on the amount of public information available. Examples 1, 5, and 6 in Appendix I, Sample Reports, present financial status findings obtained during PRP searches.

PROCEDURE

Initial Information Needs

- Names of PRPs to Investigate
- Type and Detail of Information Needed
- Background Information

Before beginning any research on PRP financial status, the researcher should determine the agency's information needs and requirements, focusing on:

- Which identified PRPs to investigate regarding their financial status and their addresses if available.
- The type and detail of financial information required.
- Any background information already available on the PRP. For a company, this could include the date and state of incorporation; for an individual, this could include their date of birth and social security number.

Process

- Obtain Address Information for Identified PRPs
- Request an NEIC Search
- As Necessary, Conduct Financial Research Directly

After determining the nature and extent of the research required, the researcher should begin gathering financial information. The researcher should complete the steps listed below.

- Perform initial research on corporate status, which includes obtaining a headquarters or local address for the company.
- If research is being conducted by a contractor, provide EPA with a company name and address for each PRP and request that an NEIC search be initiated, with the results forwarded to the appropriate regional contact (for publicly held companies only). The regional contact can then forward the information to the contractor. NEIC has access to the following sources:

- The **Superfund** Financial Assessment System (SFFAS) (usually for publicly held companies); NEIC will prepare an SFFAS report for the parent company, if any.

- Dun & Bradstreet (privately and publicly held companies); Dun & Bradstreet, unlike SFFAS, can be accessed by the contractor as well as NEIC to obtain:

  Credit information
  Information on sales, current assets, and current liabilities
  Company history
  Names of subsidiaries
  Addresses of company plants and headquarters
  Names of company officers/directors
  Holdings and affiliations of company officers/directors

o Review the NEIC results and incorporate relevant information into the report.

o If parent companies or subsidiaries are identified, determine if corporate status research is required on these companies.

o Begin the research effort if NEIC is unsuccessful in providing corporate information or if the researcher is to determine the financial status directly. This effort may involve:

  - Performing full corporate status research (see Section 3.1.7)

  - Identifying all company locations within the U.S.

  - Interviewing knowledgeable individuals (see Section 3.2.5)

  - Checking local tax assessors' offices for:

    Business holdings (past and present)
    Real and personal property holdings (past and present)
    Assessed value of holdings
    Taxes paid on holdings

Listings of tax returns filed in other localities

- Checking local sources of information such as:

  Secretary of State
  Local courts
  Uniform Commercial Code offices
  Registry of Motor Vehicles
  Police department
  Better Business Bureau

- Referring to financial publications such as:

  Dun & Bradstreet
  Moody's Industrial Manual
  Standard and Poor's Corporation Descriptions

- Identifying, from the title documents, any **mortgages** and **liens** against each title-holding company or individual

- For individuals, checking bankruptcy, court divorce proceedings, and wills

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PROBLEMS/RESOLUTIONS

o The assessed value of property obtained from the local tax assessor may not reflect full market value. Also, the assessed value may be too high if the appraisal was completed before contamination occurred or was discovered.

  - Ask for the basis on which the assessed value was computed and the date of the last assessment. The assessed value reported to the researcher may be old (for example, property was last assessed in 1978 and never reassessed) or not the full market value (some jurisdictions do not levy property taxes on 100 percent of the property value). The researcher should note assessments that are not 100 percent of market value.

o Business, personal, and real property may not be owned free and clear.

- If **mortgages**, loans, and **liens** cannot be identified, indicate in the report that the assets may be encumbered by debt. Be sure to identify the sources of information that are available.

o Publicly available financial information is almost non-existent for privately held corporations, sole proprietorships, or limited partnerships.

  - Contractors should consult EPA for direction on how much effort to expend on small corporations or privately held companies.

  - Recommend the use of legal devices (warrants, **subpoenas**), if possible, to obtain private financial documents.

o Only a small amount of financial information can be uncovered by the researcher. (This occurs more often with private companies or individuals than with publicly held companies.)

  - Dun & Bradstreet's Report is a potential source of this information.

  - Local information sources may exist that the researcher is not aware of. Consider hiring a local private investigator who may be familiar with these sources.

3.1.4 HISTORY OF OPERATIONS AT THE SITE

OBJECTIVE

The objective of this task is to obtain information concerning activities at the site that may have resulted in hazardous and/or solid waste spills or disposal. The history of operations generally begins immediately preceding the first industrial use of the site and continues to the present. It includes information concerning waste generation and transportation to the site, waste disposal methods practiced at the site, and a history of environmental enforcement actions at the site. Examples 1 and 2 in Appendix I, Sample Reports, include histories of operations.

PROCEDURES

Initial Information Needs

- o Type of Information Required
- o Level of Detail Needed
- o Names of Interviewees

- o Before conducting any research, the researcher should determine the type of information and level of detail required. If a contractor is performing the work, the contractor and EPA should discuss and agree upon this level of effort. Specifically, the researcher should determine whether EPA requires:
  - Technical information
  - Only PRP-related information
  - A complete history including information not related to PRPs, such as security practices, disposal methods, insurance, and products produced
- o Also determine:
  - Which state and local officials may be knowledgeable of site activities
  - Whether to contact PRPs and former employees

Process

- o Prepare Questions
- o Contact Officials
- o Review Files
- o Conduct Title Search and Interviews

The following process should be performed in conjunction with appropriate EPA personnel (EPA primary contact, Regional Counsel).

- o While conducting the research, the researcher should consider the following questions:
  - What types of wastes were generated?
  - Where were the wastes generated?
  - When were the wastes generated?

- If wastes were generated at the site, what were the waste streams?
- How were the wastes disposed of?
- Where were the wastes disposed of?
- When were the wastes disposed of?
- How much of the wastes were disposed of at the site? When?
- What type of security did the site have? (Condition of fence, guards present, hours of operation, gate locked?)
- What procedures were followed when a transporter arrived? (Logged in by anyone? Could anyone enter at anytime?)
- What kind of "housekeeping" was practiced at the site?
- Did developers of the property knowingly move the wastes of concern?
- Did any contracts exist between **owners, operators**, transporters, and generators? If so, when did they exist? Were standard forms used? Are copies available?
- Was there a monetary exchange between the site **operator** and the generator? Between the site operator and transporter?
- How many employees worked at the site? At what times? What were their duties?
- What are the names and last known addresses of the employees?
- Are there any disgruntled employees?
- Are any other individuals (neighbors, former employees) knowledgeable of the site?
- Did the site **operator** own the site? (Confirm answer with title search results. See Section 3.1.10)
- Did the site owner have any liability insurance?

- Were any state or local agencies involved with overseeing site operations? If so, what are the names of the agencies and officials who performed this role?

- What is the relationship between federal, state, and local agencies with regard to this site? If a relationship exists, what is its nature? Cooperative?

o Contact knowledgeable officials (see Section 3.1.5) to obtain:

  - Information regarding site operations

  - Leads to additional knowledgeable individuals

o Review EPA, state, local, and site (if allowed) files for:

  - CERCLA 104(e) responses (see Section 3.1.2)

  - Leases on site property (see Section 3.1.10)

  - Inspection reports

  - Waste disposal permits

  - Correspondence involving the site operator

  - Manifests

  - Weight tickets

  - Dumping tickets

  - Lists of employees

  - Lists of customers and their addresses

  - Leads to other knowledgeable individuals

  - Responses to interrogatories in state or federal lawsuits

  - Lists of transporters and their addresses

- o Conduct a title search (see Section 3.1.10) to identify leases on the site property.
- o Interview PRPs, especially transporters and former employees (see Section 3.2.5) who:
  - May provide first-hand information regarding the site
  - May be able to identify generators when records are inadequate
  - May have leads to additional knowledgeable individuals
- o Incorporate the history of operations at the site into the site history section of the draft report (see Section 3.1.4).

PROBLEMS/RESOLUTIONS

- o The documents contain unclear or conflicting information about the site history.
  - Contact the authors of the documents to verify the information.
  - Contact other individuals who may be able to clarify the information.
  - State in the report that the information is unclear and describe how the investigator attempted to verify the information.

3.1.5 INTERVIEWS WITH GOVERNMENT OFFICIALS

OBJECTIVE

The objective of this task is to (1) develop additional information on site operations, site history, and PRPs, and (2) to identify government agencies or private parties that may possess relevant documents or information. This can be a very productive research avenue because government officials, especially state or local officials, often work directly with hazardous waste sites and have more intimate knowledge of the sites. The interviews may reveal valuable personal recollections not recorded in documents. Sample PRP search reports that included interviews are presented in Appendix I, Examples 1 and 2. Example 9 presents a method of including interview summaries in a report. These examples also show the types of information the researcher may collect during interviews.

PROCEDURES

Initial Information Needs

- Background Information
- Names of Government Officials

Before conducting interviews, the researcher will need to:

- Review EPA background information on the site.
- Obtain the names of state or local government agencies and officials involved with the site.
- Generate a list of site-specific questions. This list will need to be modified for different interviewees depending on their relationship with the site. The type of information to obtain is listed below and in Section 3.1.4. A sample interview form is provided in Appendix E.

Process

- Contact Government Officials
- Discuss the Purpose of the Interview
- Conduct the Interview

In conducting interviews, the contractor should follow the procedure outlined below.

- Contact all initially identified government officials by telephone (or by letter or in person, if necessary).
- If a contractor is conducting the interview, identify yourself as an EPA contractor conducting background research on the site.

- Ask the government official about:

  - The availability of relevant documents in the government official's files, and whether copies can be obtained

  - Activities on the site before, during, and after the site's suspected use for waste disposal

  - PRPs associated with the site

  - Site enforcement history

  - Administrative or legal actions involving the site and the PRPs and the location of relevant documents; administrative or legal actions include those such as:

    Lawsuits
    License or permit violations
    Cleanup orders

  - Relevant state or local regulatory requirements and the location of relevant documents including:

    Hauler licenses
    Landfill permits
    Business licenses
    Building permits
    Zoning ordinances

  - Newspaper articles concerning the site

  - Other possibly knowledgeable people, organizations, or local sources to contact such as:

    Other current or former government officials and agencies
    Current or former site employees
    Site neighbors
    Citizens and citizens groups
    Local environmentalists
    The public library

  - Interviewing the official (if necessary) and reviewing relevant files

PROBLEMS/RESOLUTIONS

- o Persons with knowledge of the site no longer work for the government.
  - Locate these persons and request interviews, just as with other private parties. If a contractor is conducting the research, EPA approval may be required prior to contacting these persons.
- o Government officials or agency attorneys are hesitant about giving interviews because of ongoing litigation.
  - Attempt to work out an acceptable arrangement with the government officials or attorneys, even if the scope of the interview is limited. Contact the EPA primary contact for advice or involvement.
- o The official has a large amount of information, and the interview is being conducted by telephone.
  - Ask the interviewee if the telephone conversation can be tape-recorded. Explain to the interviewee that this will speed up the interviewing process and will ensure that the answers are properly recorded. If the official agrees, the telephone conversation can be taped on a recorder containing a beep tone warning every 15 seconds. (State laws pertaining to recording telephone conversations should be reviewed.) Be aware that this method may cause some interviewees to be reluctant about answering questions.
- o The interviewer needs to improve his interviewing techniques.
  - References are available at public libraries that provide advice on conducting successful interviews. The references may be written for purposes other than obtaining historical information about a site, but the basic techniques can be used during a PRP search. Examples of such references are:

Donaghy, William C., 1984; The Interview: Skills and Applications. Scott, Foresman and Company, Glenview, Illinois.

Garrett, Annette, 1982; Interviewing, Its Principles and Methods. Family Service Association of America, New York.

Royal, Robert F. and Steven R. Schutt, 1976; The Gentle Art of Interviewing and Interrogation. Prentice-Hall, Inc., Englewood Cliff, New Jersey.

3.1.6 PRP NAME AND ADDRESS UPDATES

OBJECTIVE

The objective of this task is to obtain current PRP names and addresses, thus enabling EPA to send CERCLA 104(e) letters. Other information, including current corporate address, registered agent, mergers, name changes, and dissolutions, may be collected to ensure that all PRPs are contacted.

PROCEDURES

Initial Information Needs

- Original List of PRPs
- Degree of Detail Needed in Updated List

Process

- Contact Secretary of State's Office
- Contact or Review Other Sources of Information
- Revise Correspondence Tracking System if Necessary

Before the researcher can update the name and address list, the following must be known:

- Original names and addresses.
- The level of detail needed in the updated list, such as corporate address as filed with the Secretary of State's office, registered agent address, or address from telephone directory.
- Contact the Secretary of State's office for each state involved.
  - Obtain the current corporate address, registered agent name and address, name changes, mergers, and dissolutions.
  - If possible, obtain information over the telephone; otherwise, obtain a written report from the Secretary of State's office (allow extra time for mail delivery).
- For companies not listed with the Secretary of State, conduct additional research using the following sources:
  - Local industrial directories
  - Local newspaper archives
  - Long distance information
- If the researcher is also tracking PRPs, revise the correspondence tracking system (see Section 3.2.12) as modified or corrected address information is received.

PROBLEMS/RESOLUTIONS

- o The Secretary of State's computerized system may not contain older information on company names. Weeks of state research time are often encountered.
  - Consider traveling to the state office to review the older files.
  - Consider reviewing early industrial directories to obtain information on name changes.
- o The Secretary of State's files are not always current.
  - To determine the reliability of the information, ask the Secretary of State's office about its methods of updating information.
  - To confirm addresses, consider using an alternate source of information such as a current telephone directory or industrial directory.

3.1.7 PRP STATUS/PRP HISTORY

OBJECTIVE

The objective of this task is to develop background information on companies or individuals identified as PRPs, thus enabling EPA to identify successor or parent company PRPs, correspond with PRPs, and conduct financial assessments of PRPs. Corporate information should include the date of incorporation, whether or not corporate PRPs currently exist, the fate of inactive companies, current mailing addresses (facility, headquarters, and registered agent), and parent or successor companies. Information obtained for individuals and unincorporated companies should include their current location, their association with other PRPs (company officer for another PRP), and their involvement with a site. Examples 1 and 5 in Appendix I, Sample Reports, each have sections on PRP status or PRP history.

PROCEDURES

Initial Information Needs

- o Addresses Needed
- o Information Needed

Before developing PRP information, the researcher should determine which identified PRPs are to be researched and the anticipated use of the research information. Specifically determine the types of information needed, such as:

- o Which mailing addresses are relevant:
  - Headquarters address
  - Facility address
  - Registered agent names and addresses
  - Officer names and addresses
- o The extent of PRP history needed by EPA including:
  - Simply determining whether a company currently exists
  - Developing a full PRP history including the fate of currently inactive companies
- o Whether company officer information is needed.
- o The type of information needed on private individuals who may be PRPs.

Process

- o Review Site Documents
- o Contact Information Sources
- o Organize Database, if Necessary

In developing information on companies and individuals identified as PRPs, the researcher should:

- o Review site documents for information such as PRP names, addresses, and the history on companies or individuals.
- o Contact information sources; obtain verbal information and copies of documents, if available. The Secretary of State's office is generally the key source of information. Other sources can be used if a company is not incorporated or if supplemental information is required. Examples of the most commonly used sources include:
  - The Secretary of State's office, specifically (for incorporated firms):
    - Corporation division
    - Uniform Commercial Code (UCC) division
  - The local public library and reference librarian for access to:
    - State, regional, or local industrial directories
    - City directories
    - Telephone directories
    - Local newspapers
    - Local or regional Who's Who
    - Moody's Industrial Manual
    - Standard and Poor's Corporation Descriptions
    - Index of Corporation Affiliations
  - The local Chamber of Commerce for:
    - Current directory of chamber members
    - Historical directory of members (rare)
  - The county or city clerk, business license office, county assessors' office
  - Local tax records
  - Historical societies

- DIALOG Information Retrieval Service (available at many public libraries), which includes data sources such as:

  Dun & Bradstreet's files
  Thomas' Register
  Disclosure
  Electronic Yellow Pages

o If many PRPs are involved, it may be more efficient to organize a database using software such as **dBASE III or LOTUS 1-2-3** (see Section 3.2.13). Depending on EPA's information needs, include:

  - Current PRP name
  - Former PRP name
  - History
  - Registered agent name and address
  - Corporate headquarters address
  - Facility address
  - Parent company address

PROBLEMS/RESOLUTIONS

o It is possible that a corporation will go out of business and another corporation will assume the former corporation's name.

  - Check incorporation and dissolution dates or dates of operation against site operation dates.
  - Check the Secretary of State's office to track the history of corporate mergers, takeovers, and name changes.

o Determining PRP status for numerous parties becomes overly time consuming.

  - Establish priorities (with EPA if a contractor is involved).
  - For simple PRP status (company existence, headquarters address, telephone number) anticipate limiting the effort to one-half hour or one full hour per PRP, including

research and reporting.

- For complicated history (including mergers, name changes, and purchase of assets), several hours of effort per PRP may be required. In this case, only provide information on those PRPs clearly linked to the site or other criteria as determined by the EPA primary contact.

- Review the Hazardous Waste Enforcement Policy (Federal Register, Vol. 50, No. 24, Tuesday, February 5, 1985). This interim policy describes the approach EPA "is now taking in evaluating private party settlement proposals for cleanup of hazardous waste sites or contribution to funding of response action under" CERCLA.

o The state in which a company is incorporated may not be known.

  - Contact the Secretary of State's office of the state in which the company is located.

  - Review all relevant background information.

o Obtaining information by telephone from local sources and for many PRPs is very time consuming.

  - Consider traveling to the site location to personally review local sources of information such as city directories, newspaper articles, and telephone directories.

3.1.8 RECORDS COMPILATION

OBJECTIVE

The objective of this task is to organize a set of documents according to a system that will allow the user to easily access and review information in the documents, as well as maintain accurate documentation of all findings. This system should allow easy retrieval of information and should provide an index that accesses the information desired. Example 7 in Appendix I, Sample Reports, is a PRP search report that involved both compilation of records and development of a transactional database.

PROCEDURES

Initial Information Needs

- Method of Organization

The records compilation may require simple or complex organization, depending on EPA's needs. Processes for both are discussed below. To choose the best method of organizing the documents and to complete this organization in a timely manner, the researcher must consider several factors, including:

- Types of information needed from the documents.
- Approximate number of documents and the time needed to organize them.

If a contractor is conducting the records compilation, these factors should be discussed with the EPA primary contact to determine the desired product and specific requirements.

Process (Simple Organization)

- Arrange Documents Manually
- Assign Index Numbers
- Develop an Index

If a simple organization is needed, such as organizing documents by PRP, the researcher should use the system outlined below. This system is used for both small and large quantities of documents.

- Arrange the documents manually based on case needs and projected document use. Documents may be organized by methods such as:
  - Chronological order
  - Subject matter
  - Like documents
- Assign the documents an index number, such as a **Bates stamp** number.

- Develop an index for the document set based on such factors as:
  - Index numbers and the title of each document
  - The author and date of each document

Process (Complex Organization)

- Group Like Documents
- Assign Index Numbers
- Develop an Index
- Program Database to Access Information

If complex organization is needed, such as extensive cross-referencing or key-word indexing, use the system outlined below. If a contractor is conducting the records compilation, the EPA primary contact and others who will use the information should be consulted before each step. Refer to Creating Databases, Sections 3.2.12 through 3.2.14, for a more detailed discussion.

- Group documents of similar content, such as scientific or legal documents.
- Assign an index number to each document.
- Develop an index using a database. Include the index number and decide what information to use in the database index. Examples of additional information from each document include:
  - Title
  - Date
  - Author
  - Addressee
- Develop a more complex database, if necessary, using:
  - Coded designation for particular subject matter
  - A database index to refer to the particular subject
  - Key word indexing (be sure that appropriate EPA personnel are involved in determining the key words)

- o Program the database to access information in various ways such as:
  - Chronological order
  - Authors
  - Key words (be sure that appropriate EPA personnel are involved in determining the key words)
  - Subject matter

PROBLEMS/RESOLUTIONS

- o New documents are added to the set after the work is completed.
  - For a small set of documents, the new ones can still be included in the appropriate order. For example, new documents inserted between documents 10 and 11 can be numbered 10.1, 10.2, and so on.
  - With a database index, new documents can be integrated into the system and the index. The computer can perform all necessary searches. The database index may require significant revisions if a large number of new documents are discovered after the key words are selected or the index is created.

3.1.9 *REPORT PREPARATION*

OBJECTIVE

The objective of this task is for the contractor to present PRP information requested by EPA in a comprehensive written summary that discusses the research performed, research results, and recommendations for additional research. The report must be fully documented, attributing all information presented to specific sources. Reports should summarize all important information collected during both the baseline PRP search and additional site-specific tasks (see Section 3.2). Reports prepared by the contractors are enforcement confidential; the contractors can submit these reports only to EPA. Appendix I includes nine examples from PRP reports that involve various tasks.

PROCEDURE

Initial Information Needs

- Establish Report Deadlines, Objectives, and Format
- Organize Research Results
- Identify Information Sources to Reference

Before preparing a report, the contractor should:

- Establish with EPA all reporting requirements. Report contents and format should be consistent with requirements of the CERCLA Enforcement Division to facilitate cost recovery actions. The reporting requirements should include at a minimum:
  - Report format
  - Content
  - Objectives
  - Deadlines for delivery
- Organize and review all research materials and information including:
  - Copies of all documents
  - Interview results
  - Title search results
  - Corporate information
  - Financial information
  - Researcher's complete and accurate notes
  - Audio tapes, if any (determine whether audio tapes should be transcribed to hard copy)

- Develop a thorough understanding of available research tools and information.
- Identify specific relevant sources to be referenced in report.

Process

- Provide Background Information
- Explain the Scope of Work
- Discuss Site History
- List Identified PRPs
- Present Conclusions and Recommendations
- List References

The comprehensive PRP report summarizes all the relevant information gathered during the research effort. To prepare a thorough and well organized report, the contractor must present information on a wide range of topics in a structured and integrated format. Specifically, the contractor should:

- Provide background information on the site including:
  - Location (site map)
  - Period and nature of operation
  - Physical features of the site
  - Reason for investigation
- Describe the specific tasks proposed in the Work Plan and the tasks actually performed.
- Identify the various sources contacted and their connection with the site, including:
  - EPA contacts
  - State and local officials
  - Private individuals
- Describe the information and records obtained as a result of the research.
- Describe the site property ownership, possibly using:
  - A property history narrative
  - Charts or maps
  - A title abstract
- Discuss the history of the property as a hazardous waste site, specifically addressing:

- Site operations
- Disposal methods
- Reference sources
- Gaps in information

o Present interview results.

o List all identified PRPs as a generator, transporter, **owner**, or **operator** (current and past). Give the documentary evidence supporting the inclusion of each PRP on the list. The evidence should be organized to provide efficient retrieval for a particular PRP. Although past owners are liable only if they were owners at the time of disposal (Section 107(a)(2) of CERCLA), this determination should be made by EPA, not the contractor. Provide the following for each PRP:

- A basis for inclusion (referenced)
- PRP status and PRP history
- Financial information

o Provide, if applicable, separate lists of PRPs and information request recipients. The report may identify parties that should be contacted, yet are not PRPs. These cases should clearly be identified.

o Present any quantitative or qualitative waste information developed for each identified PRP. Provide a preliminary volumetric ranking based on available information.

o Summarize all research and develop conclusions.

o Make specific recommendations for additional PRP research, where appropriate.

o Provide a list of referenced documents.

o Provide copies of all relevant documents to EPA in an indexed fashion. The researcher's notes do not need to be included in these documents.

o Mark on the cover of the report that it was prepared in anticipation of litigation. This allows EPA to protect the report during discovery, if necessary.

PROBLEMS/RESOLUTIONS

- o Research yields important information that should be delivered to EPA before delivery of a lengthy report.
  - Explore with EPA the possibility of delivering an interim report or briefing containing this vital information.
- o Research results in numerous data gaps.
  - Identify data gaps and recommend to EPA further activities that may be necessary to obtain additional information.
- o Research yields voluminous records or uncovers many promising leads.
  - Determine EPA's priorities such as (1) which records or leads to research and (2) EPA's need to receive the report before all avenues are researched (unresearched records or leads should be identified in the recommendations).

3.1.10 TITLE SEARCH

OBJECTIVE

The objective of this task is to identify past and present site **owners**. Although past owners are liable only if they were owners at the time of disposal (Section 107(a)(2) of CERCLA), this determination should be made by EPA, not the contractor. Other PRPs connected with the site may also be identified during a title search if their roles appear in recorded documents. Specific results of the title search include summaries of transactions involving the site property, identities of PRPs, and copies of title documents. From this information the present and past **owners** of the property, and often **lease** agreements with site **operators**, can be identified. Other information may include how the site property was used during various periods of time. A title search may also be conducted for parcels adjacent to the site. This may provide names of people who are familiar with past or present site activities; these people can then be contacted and interviewed. A title search for adjacent parcels may also provide information about other activities in the area that may have contributed to contamination at the site. Examples 1, 3, and 4 in Appendix I, Sample Reports, present title search findings. Example 3 is a report that included only a title search. The history of ownership is explained with numerous figures. Example 4 shows another method of depicting chain-of-title information.

PROCEDURES

Initial Information Needs
o Site Location
o Site Description
o EPA Requirements

Before beginning the actual title search, the researcher will need to obtain information on the site location, site description, and specific EPA requirements for the title search. For this task, the researcher may be the contractor or a title company subcontracted by the contractor. Specifically, the researcher should:

- o Locate the site on a map and obtain a legal description, if available.
- o Obtain additional indicators of the site location and description including:
  - County tax assessor's parcel number
  - Street address
  - Name of **owners**
- o A survey of the site may be required if the legal description or exact location of the site is unknown. This may also be necessary if the site consists of several parcels and the relationship between the parcel boundaries and the site boundaries is unclear.

- Determine EPA's specific requirements for the title search. The Regional Counsel should be consulted for this determination. Title search requirements should focus on:
  - The time period the title search is to cover
  - Whether certified copies of any of the title documents are required (see Problems/Resolutions section)
  - The summary format of title search results
- Determine the types of documents that EPA specifically needs copied.

Process

- Obtain Subcontractor
- Oversee Work
- Prepare Ownership History

To subcontract a professional title researcher to perform the title search, the EPA contractor should:

- Obtain the names of some title researchers in the county in which the site is located. These names can be obtained from the following sources:
  - County recorder's office in the county seat
  - Long Distance Yellow Pages information
  - Chamber of Commerce
  - Title company directories such as American Land Title Association
- Contact several title researchers. Larger title search companies with offices in metropolitan areas may have branch offices near the site or may be able to recommend local companies. If possible, contact title companies that have experience with CERCLA cases, such as testifying in or preparing for them. Companies that have experience in testifying in court or are willing to sign affidavits relating to their work are preferable.
- Explain the title search requirements including:

- The time period to be covered by the title search
- Copies (certified or not) of all recorded title documents needed
- A list of the names and dates of each title document and the parcel(s) each affects
- Maps displaying current and past tax parcel boundaries
- A clear summary of the ownership history
- The fact that no **title insurance** is needed for this work
- Schedule requirements

o Obtain approximate cost and delivery schedule estimates (verified in writing) from each title researcher.

o Select one title researcher. Selection should be based on qualifications. Qualification requirements may include such factors as:

- Number of title searches previously conducted
- Recommendations from references
- Current liability insurance

o Prepare and complete a contract. The contract should include the maximum dollar amount for the search (not to be exceeded unless notified).

o Maintain close and continuous contact with the title researcher.

o Review title search work products to determine whether:

- The correct property was researched
- Erroneous documents were provided
- Missing or unreadable documents exist

- Documents are incomplete
- The property descriptions in the documents relate to site property
- The chain-of-title is continuous (no gaps appear in the chain)

o Contact the title researcher to resolve any errors or questions.

o Prepare a reference list of all recorded documents, including their location (book number, page number). Recorded documents may include:

- **Deeds**
- **Leases**
- **Grants**
- **Mortgages/liens**
- **Easements**
- Agreements
- Legal property descriptions

o Prepare a clear summary of the site ownership history (if not completed by the title researcher). To complete this summary, the preparer should:

- Arrange documents chronologically.
- Determine the history of each parcel.
- Briefly describe each transaction and whether it affects all or a portion of the site. Items to be described, as appropriate, include:

  Type of transaction
  Date of transaction
  Date recorded
  Parties involved and their role
  Effect on the site
  Declaration of trust
  Schedule of beneficiaries
  Restrictive covenants
  Death certificates
  Easements

Terms of transaction (such as a 5-year recorded lease).

- Determine whether the transaction transferred all rights to the land. For example, the determination of whether the mineral rights were transferred with the surface rights, or whether the mineral rights were valid, is important for sites in mining areas.

- Explain specific terms, including:

  Quit claim deed
  Conditional sales contract
  Partial release of deed of trust and mortgage
  Warranty deed

- Include charts and maps where these are useful.

- Provide precise references to documents (EPA may need to access these documents at a later date).

o Obtain additional information about past and present owners if they are partnerships, corporations, or trusts.

  - If the property is owned by a partnership, obtain a copy of the Partnership Agreement or the Dissolution of Partnership.

  - If the owner is a corporation, obtain the Certificate of Incorporation.

  - If the property is owned in trust, obtain a copy of the **Declaration of Trust**, the **Trustee Certificate**, and **Schedule of Beneficiaries.**

o A title search is usually considered complete when the ownership history is clear and complete for each of the site parcels.

PROBLEMS/RESOLUTIONS

- o The researcher is unsure of the period of interest to be covered by the title search.
  - Assure that the title search includes the time period of known industrial activity at the site. The title company may be able to determine this at the outset of the search. The period of industrial activity may also be obtained from research of other agency files (see Section 3.1.1).
- o The amount of time and money required by the researcher to complete the title search is uncertain until the work is well underway.
  - Close contact between the title researcher, EPA contractor, and EPA is required to become aware of and address scheduling and budget changes.
- o It is difficult to decide whether certified copies of title documents are desirable.
  - During discovery, EPA may request admissions concerning property ownership. If parties do not admit their ownership, EPA can recover the costs of obtaining the certified copies necessary to prove ownership at that time from the recalcitrant parties. As certified copies are extremely expensive, close coordination with the EPA primary contact and Regional Counsel is required to determine whether certified copies are required.
- o Despite the usual attempt to obtain a professional title researcher to perform the title search, the contractor cannot find a researcher who is willing or able to do the work.
  - The contractor will perform the title search working closely with the EPA primary contact. The person conducting the search should be qualified and have prior experience in this area.

Tasks Performed to Further Characterize Site-Specific PRP Associations

Section	Tasks	Page
3.2.1-3.2.8	Obtaining Specialized Information	55
3.2.9-3.2.11	Performing Waste Stream Comparisons	75
3.2.12-3.2.14	Creating Databases	81
3.2.15-3.2.16	Performing Other Tasks	91

3.2 TASKS PERFORMED TO FURTHER CHARACTERIZE SITE-SPECIFIC PRP ASSOCIATION

Section 3.2 contains 18 specialized tasks. These tasks are categorized into four subsections: (1) obtaining specialized information, (2) performing waste stream comparisons, (3) creating databases, and (4) performing other tasks.

The subsection on obtaining specialized information includes eight tasks that may provide more information about a site and its PRPs. These eight tasks are listed alphabetically within the subsection.

The subsection on performing waste stream comparisons includes three tasks. Two of the tasks, industrial survey and waste stream inventory, usually must be completed before the third task, process chemistry analysis, can be completed.

Three tasks are listed in the subsection on creating databases. These tasks allow large amounts of data, such as types and quantities of waste, or key document information, to be managed more efficiently. These tasks are also listed alphabetically.

Four tasks not directly related to PRP identification but often included in PRP searches are listed alphabetically in the subsection on performing other tasks. These tasks are compliance history, financial assessment, generator ranking, and property appraisal.

3.2.1 AERIAL PHOTOGRAPHS

OBJECTIVE

The objective of this task is to locate and obtain copies of aerial photographs pertaining to a specific site. Aerial photographs can be beneficial in a PRP search because they often show the relationship between the site and its surroundings. Aerial photographs are generally larger in scale than topographic maps. Aerial photographs, taken over a period of time, can be useful in characterizing the chronological development of a site and its surroundings. These photographs are valuable in determining if lagoons, ponds, or other disposal areas were active during a PRP's tenure as **owner** or **operator**. Current aerial photos can provide information otherwise obtained from a site survey.

PROCEDURE

Process (Historical Photographs)

- o Gather Background Information
- o Obtain Historical Photographs
- o Evaluate Photographs

The following steps provide a method for obtaining historical information about the site.

- o Gather background information on the site, including:
  - Site location and size
  - Duration of site operation
  - The need to identify site features to a high level of detail (will determine enlargement needs)
- o Obtain the aerial photographs. Historical aerial photographs are available through several sources. If a contractor is conducting the research, arrangements must be made through EPA to access the last two sources listed on the following page.
  - Local commercial aerial surveyors or photographers
  - State agencies or departments
  - State or county surveyor's office
  - U.S. Geological Survey (USGS)
    National Cartographic Center
    507 National Center
    Reston, Virginia 22092
    703/860-6045

- U.S. EPA Environmental Monitoring Support Laboratory (EMSL)
  P.O. Box 15027
  Las Vegas, Nevada 89114
  702/798-2100

- EROS Data Center
  Sioux Falls, South Dakota 57198
  605/594-6151

o Evaluate the photographs. The researcher can conduct a simple analysis of the photographs to characterize obvious site features. A comparison of the historical photographs will give an indication of the site history, such as:

  - When industrial or disposal activities began at the site

  - When manmade structures were constructed (buildings, impoundments)

  - When land units were closed or covered

Process (Current Photographs)

- o Gather Background Information
- o Obtain Current Photograph
- o Evaluate Photograph

The following steps provide a method for obtaining current information about the site without conducting a site visit.

o Gather background information on the site, including:

  - Site location and size

  - Duration of site operation

  - The need to identify site features to a high level of detail (will determine scale and enlargement needs)

o Contact aerial photograph sources (listed above) to determine if a current aerial photograph is available.

  - Order and obtain available photographs.

  - If not available, determine whether an aerial photograph is required; if a contractor is conducting the search, consult EPA.

- o If a current photograph is required, but not already available, contact aerial photograph sources (listed above) to determine if they can photograph ("fly") the site.

- o Select a photograph source and obtain a current photograph. Proper contract procedures must be followed.

- o Evaluate the photograph. The researcher can conduct a simple analysis of the photograph to characterize obvious site features. Possible information that can be obtained includes:

    - Dimensions of the site
    - Topographic characteristics
    - Number and types of manmade structures
    - Presence of surface impoundments
    - Types of vegetation
    - Surface hydrology
    - Presence of waste disposal areas and possibly the types of wastes disposed of

- o If the information will be used to draw conclusions regarding the connection of PRPs to the site, the assistance of highly skilled and trained remote sensing specialists should be solicited. EPA's EMSL at Las Vegas can provide such assistance.

PROBLEMS/RESOLUTIONS

- o In a photograph, the exact boundaries of a site may not be distinguishable.

    - The contractor can use title documents and landscape features to draw appropriate property boundaries.

- o Aerial photographs are not readily available

    - Non-aerial historical photographs are also useful in obtaining information about the site.

3.2.2 CERCLA SUBPOENA AUTHORITY*

OBJECTIVE

The administrative **subpoena** provision of SARA, Section 122(e)(3)(B), gives EPA the power to require the attendance and testimony of witnesses and the production of documents as is "necessary and appropriate" for performing a **non-binding preliminary allocation of responsibility** (NBAR) "or for otherwise implementing" the settlement provisions of Section 122. While NBARs are specifically mentioned in CERCLA, there is no requirement that EPA first decide to prepare an NBAR before issuing an administrative subpoena or that the information gathered by an administrative subpoena be somehow only used for an NBAR. The language of Section 122 is broad and permits the use of administrative subpoenas not only for preparation of NBARs, but also for factors set forth in Section 122 (e)(3)(A) that may be considered when preparing an NBAR. These factors are a useful outline of the types of information that may be obtained with an administrative subpoena.

Administrative subpoenas may be used at any time prior to settlement, and even prior to an administrative or civil enforcement action, to gather any information that may aid in ultimately reaching a settlement.

An administrative subpoena is most productive in two situations; where preliminary information has already been gathered and the examiner wishes to question a particular person in detail, perhaps with the use of documents or exhibits, and where expedited enforcement is being considered.

A subpoena can be served in a number of ways depending on the circumstances of the investigation. Whenever possible, personal service is preferred, especially when it is likely that the subpoena may be ignored or challenged. When personal service is not practical, a subpoena can be served by registered or certified mail, return receipt requested. Regardless of how the subpoenas is serviced, the correct person must be served. Clearly, a subpoena to testify must be directed to and served upon the person whose testimony is sought. A subpoena to provide documents must be served upon the custodian of the records or documents sought or upon a person authorized to compile the information sought. The person serving the subpoena, including the person who actually mails the subpoena when that method of service is used, must complete an affidavit of service at the time of service.

An administrative subpoena should not be issued in lieu of enforcing an information request and should not be confused with a deposition or other means of discovery. Administrative subpoenas are to be used prior to filing a complaint, and generally can be used to obtain a wider range of information than is possible during discovery.

* Guidance for use of CERCLA subpoena authority under SARA Section 122 is being developed by the Office of Enforcement and Compliance Monitoring (OECM). This information will be made available as soon as possible for inclusion in this manual. For any questions prior to the issuance of additional information, contact Tom Fiore of OECM at FTS 382-3105.

3.2.3 *FIELD SURVEY*

OBJECTIVE

The main objective of a supplemental field survey is to gather additional evidence through field activities that may connect or associate PRPs with hazardous waste storage or disposal at the site. Field surveys are recommended when little other information is available. This task is a routine part of site investigations (SI) and remedial investigations (RI). The EPA primary contact for the PRP search should coordinate with EPA personnel responsible for the SI and RI to ensure that information is collected efficiently.

PROCEDURE

Initial Information Needs

- o SI or RI Status

This task is a routine part of site investigations (SI) and remedial investigations (RI). To eliminate redundancy, the EPA primary contact should determine if an SI or RI has been or will be conducted. If a contractor is conducting the survey, the coordination with other agency personnel should be conducted through the EPA primary contact, unless directed otherwise. Coordinating the PRP search with an SI or RI will affect the contractor's scope of work, level of effort, and schedule.

- o If an SI or RI has been conducted:
  - Obtain and review information already collected.
  - Determine if additional data is needed from a field survey; if so, conduct the survey as described in the Process section.
- o If an SI or RI is underway, planned, or anticipated:
  - Contact the EPA personnel responsible for the SI or RI to discuss:

    Data to be collected
    Schedule of data collection
    Modification of data collection plan to include PRP search needs
    PRP researcher's role in the SI or RI

- If the PRP researcher is to lead the field survey, follow the process described below with appropriate modifications to satisfy the SI or RI.

o If an SI or RI has not been conducted and is not anticipated, follow the process described below to conduct the field survey.

Process

- o Obtain Background Information
- o Determine Who to Contact
- o Determine Information Gaps
- o Plan Field Activities
- o Obtain Permission from Site Owner
- o Conduct General Field Inspections
- o Record Drum Label Information
- o Take Samples for Analysis

To safely and efficiently obtain useful information from a field study, adequate planning and preparation are required.

o Review site background data and information obtained through interviews to identify the logistical requirements of the field survey as well as the focus of the survey.

o Determine safety considerations; prepare a site safety plan, if appropriate. Field surveys should be conducted only by personnel enrolled in a medical monitoring program and certified in the appropriate use of safety equipment warranted by site conditions.

o Determine the individuals and businesses to contact during the survey.

o Determine information gaps and questions to ask based on previously reviewed information.

o Plan and schedule field activities.

o Obtain permission to enter the site from the site owner before conducting the survey. If a contractor is conducting the survey, EPA resources may be required to seek access.

o Document all findings accurately to ensure their usefulness.

o Conduct a general field inspection.

- Identify site layout, buildings, disposal and release areas, wash stations, and drop areas.

- Identify locations where records may be kept.

- Record abandoned vehicle license plate numbers, registrations, and Interstate Commerce Commission (ICC) numbers.

- Take photographs (describe each picture in a field notebook).

- Gauge the level of effort that may be required later, particularly if sampling is to be conducted or drum label information is to be obtained.

- Identify any previously unforeseen logistical problems.

o Review the documents (see Section 3.2.4).

o Conduct personal interviews with employees, neighbors, and **owners** and **operators** (see Section 3.2.5).

o Record drum label information.

- Record or photograph all visible drum label markings, hazard warnings, and drum lot and inventory numbers.

- Do not touch drums.

o If appropriate, take samples for analysis (procedures for site sampling are in Section 3.2.8).

PROBLEMS/RESOLUTIONS

o The researcher determines that abandoned operating records are located at the site.

- The contractor or EPA enforcement staff should obtain written permission from the **owner** or **operator** of the site or verbal permission from the EPA Regional Counsel to obtain these documents.

o Both removal action and field survey are planned for the **CERCLA** site.

- Contact the on-scene coordinator as early as possible to coordinate your field survey activities. You may want to conduct a preliminary survey prior to any remedial activities to ensure that valuable evidence is not destroyed.

3.2.4 PRP FILE REVIEW

OBJECTIVE

The main objectives of this task are to (1) locate and obtain all relevant PRP documents pertaining to the site and (2) gather information from these documents about a site's history of operations, including details on waste types and amounts and PRPs possibly involved with the site. Relevant documents may include those from citizens' groups, newspaper articles, customer lists, **bills of lading, gate logs,** ledgers, accounts receivable records, former customer lists, change of address lists, customer correspondence, invoices, and so on. Efforts to obtain private records can establish initial contacts with private individuals and corporate personnel, some of whom may be good prospects for personal interviews.

PROCEDURE

Initial Information Needs

- o Background Information
- o Possible Sources

Before attempting to obtain PRP files, the researcher should:

- o Review site information from agency files and staff.
- o List possible sources of private site files. These sources may be identified through agency file reviews or interviews with government officials. Another source is **CERCLA** 104(e)/RCRA 3007 letter responses (see Section 3.1.2).

Process (Site File Retrieval)

- o Obtain Authorization Prior to Contacting Source
- o Obtain Information on Other Sources
- o Arrange to Review Files

PRP file retrieval and review processes are listed below.

PRP File Retrieval

- o If a contractor is conducting the research, first obtain EPA authorization to contact private parties who may have relevant documents, and to review PRP records.
- o Contact parties with files by telephone or letter as directed by EPA.
- o Identify yourself and your organization; fully explain the purpose and scope of the EPA investigation.
- o Request information pertaining to:
  - History of site operations

- Potential **owners, operators,** generators, and transporters
- Needs consistent with EPA strategy

o Identify other knowledgeable individuals or sources of records.

o Arrange to review and copy the PRP records. Identify the following:

- A place to review records
- The volume of records
- Availability of photocopying equipment

o If original documents are taken from the PRP for copying purposes, follow proper chain-of-custody procedures

Process (Site File Review)

o Review Records

o Summarize Results

PRP File Review

o Review the records. Appendix D lists the types of documents that may be useful. Documents of interest include those that:

- Identify PRPs
- Provide evidence that a PRP was involved with a site
- List types and quantities of waste disposed of at the site
- Identify other persons or agencies that may have knowledge of site activities

o Document all sources reviewed.

o Obtain permission to photocopy relevant material.

o Summarize the results.

PROBLEMS/RESOLUTIONS

- The volume of documents may be large. This situation may present difficulties with respect to cost, time, and space constraints.
  - To decrease costs, review records prior to copying to eliminate duplicate or irrelevant documents.
  - To save time, copy records with a rental copier or use temporary help.
  - To save space, microfilm documents and produce hard copies from the microfilm only when necessary.
- Documents from the waste disposal site may be contaminated.
  - Before reviewing potentially contaminated documents, analyze a representative sample of the documents.
  - Develop a safety plan before initiating work with contaminated documents.
- Site owners or operators may refuse access to site records.
  - Contact the EPA Regional Counsel for guidance and assistance.

3.2.5 PRIVATE CITIZEN/PRP INTERVIEWS

OBJECTIVE

Interviewing private citizens and PRPs may be an effective means of gathering information on site operations, site history, PRPs, or other private parties who may possess relevant documents or information. Private citizens, especially persons living near sites, often have relevant information concerning events at the site. In addition, PRPs are often familiar with past site activities. Samples from PRP search reports that include interviews are presented in Appendix I, Examples 1 and 2. Example 9 presents another method of summarizing interviews in a report. These examples also show the types of information that can be collected during interviews.

PROCEDURES

Initial Information Needs

- o Background Information
- o Names of Private Citizens and PRPs to Interview

Before conducting interviews, the researcher will need to:

- o Review background site information from all agency sources.
- o Obtain names of private citizens and PRPs who may have useful information regarding the site.
- o If a contractor is conducting the research, the contractor will need EPA authorization prior to contacting and interviewing private citizens and PRPs.
- o Determine whether a private investigator should perform the interviews (for example, an interviewee may have past criminal associations or may be in hiding).

Process (Scheduling Interviews)

- o Prioritize Interviews
- o Contact Interviewees
- o Determine When and How Interviews Will Be Conducted

The process of interviewing private citizens and PRPs can be divided into two parts: scheduling interviews and performing interviews.

Scheduling Interviews

- o Order potential interviewees (if many) according to association, geographic location, potential amount of information, and so on.
- o Decide whether it is desirable to tape-record the planned interview.
  - If it is, obtain advance approval from EPA.

- Be certain that tape-recorded interviews are conducted in compliance with applicable laws.

o Contact the private citizens and PRPs. Be prepared for possible negative reactions, depending on the individual's relationship to the site.

o If a contractor is conducting the interview, identify yourself as an EPA contractor.

  - Indicate that private citizen or PRP statements will be provided by the contractor to EPA only.

  - Provide the name and telephone number of the EPA primary contact if the interviewee wants verification.

o Decide whether the interview should be conducted by telephone or in person. Base the decision on time, scheduling, travel, and interviewee preferences.

Process (Performing Interviews)

- o Prepare Questions
- o Conduct Interviews
- o Document and Record Interviews

Performing Interviews

o Prepare specific interview questions beforehand to ensure that all topics consistent with the EPA/contractor strategy are covered.

o Have an EPA attorney at the interview if the PRP's attorney is present.

o Have the interviewee answer general questions first, such as explaining recordkeeping procedures. Then ask specific questions on key areas of interest based on the background information. The general types of information to obtain are listed below and in Section 3.1.4. An example of an interview form is in Appendix E.

  - Activities at the site before, during, and after the site's suspected use for waste disposal

  - Site owner and operator history

  - Waste disposal practices

- Enforcement actions relating to the site
- PRPs associated with the site (owners, operators, generators, transporters)
- Administrative or legal actions involving the site (lawsuits, license or permit violations, **cleanup** orders)
- Available documents
- Other people or organizations knowledgeable of the site

o Conduct the interviews. Whenever possible, have two persons present at the interview.

o Determine interviewee's association with the site and the basis of his knowledge (first-hand information or eye witness vs. rumored information).

o Determine whether a transcript (if it was tape-recorded) or a written report of the interviews is needed.

- Select a transcribing service if transcripts are desired.
- Include the interview record in the report.

PROBLEMS/RESOLUTIONS

o Private citizens and PRPs may ask that their attorneys handle any interview requests or that their attorneys be present during the interview.

- Agree to this arrangement; however, if a contractor is conducting the interview, notify EPA of the situation.

o The interviewee has a large amount of information, and the interview is being conducted by telephone.

- Ask the interviewee if the telephone conversation can be tape-recorded. Explain to the interviewee that this will speed up the interviewing process and will ensure that the answers are

properly recorded. If the interviewee agrees, the telephone conversation can be taped on a recorder with a beep tone warning every 15 seconds. (State laws pertaining to telephone conversation recording should be also reviewed.) Be aware that this method may cause some interviewees to be reluctant about answering questions.

Also, be aware that several problems may arise when obtaining transcripts of tape-recorded interviews. Transcripts are expensive (it can require 10 minutes to transcribe one minute of an interview). An interviewer must proofread the transcription and check it against the recording to ensure accuracy.

o The interviewer needs to improve his interviewing techniques.

- References are available at public libraries that provide advice on conducting successful interviews. The references may be written for applications other than obtaining historical information about a site, but the basic techniques can be used during a PRP search. Examples of such references are:

  Donaghy, William C., 1984; The Interview: Skills and Applications. Scott, Foresman and Company, Glenview, Illinois.

  Garrett, Annette, 1982; Interviewing, Its Principles and Methods. Family Service Association of America, New York.

  Royal, Robert F. and Steven R. Schutt, 1976; The Gentle Art of Interviewing and Interrogation. Prentice-Hall, Inc., Englewood Cliff, New Jersey.

- o It is difficult to establish the accuracy and reliability of personal interviews.
  - Attempt to obtain information from more than one source.
  - Carefully characterize the backgrounds of the persons interviewed.
- o An interviewee requests anonymity.
  - Comply with this request; check other sources to confirm information provided during the interview.
- o An interviewee is uncooperative.
  - Consider hiring a private investigator who is skilled in interview techniques to conduct the interview.

3.2.6 PRIVATE INVESTIGATIONS

OBJECTIVE

Private investigators (PI) are generally hired to locate PRPs or to obtain financial information about PRPs. PIs are used in situations that are potentially dangerous or when it is more efficient or economical for a PI to conduct the research than the primary researcher. The use of PIs may be more efficient or economical because they are located in and are familiar with the local community. After locating a PRP, EPA or the contractor, not the PI, should contact the PRP. PI reports should provide the research findings (addresses, assets) and the basis for the information provided.

PROCEDURES

Initial Information Needs

- o Determination That a PI is Needed
- o Background Information

- o Determine whether a PI is needed. A PI may be needed if the researcher:
  - Cannot locate a principal PRP or witness
  - Believes that a PRP is concealing assets
  - Has identified a potentially dangerous situation (armed PRPs, organized crime)
- o Obtain background information from previously researched avenues.

Process

- o Determine Conditions of Hiring a PI
- o Identify Possible PIs
- o Select PIs

- o If a PI is needed, the contractor should contact EPA to:
  - Determine activities the PI will be asked to perform.
  - Confirm necessary information to be released to the PI.
  - Obtain instructions for the PI, including:
    - Whom the PI can contact
    - Information that can be released to those contacted
- o Identify PIs near the suspected location of the PRP. Obtain suggestions from:
  - State environmental enforcement authorities

- Local police or sheriff

o Select a PI. This selection is based on information obtained by:

  - Checking with the Better Business Bureau, Chamber of Commerce, and other informed services

  - Contacting potential PIs directly and determining:

    How long they have been in business
    Whether they are former police officers
    Whether they have experience with environmental cases
    Whether they have experience working for government agencies
    Whether they are insured or bonded
    Whether any suits have been filed against them for breach of privacy or other such actions
    Association memberships
    References

  - Contacting references

o If a contractor is the researcher, clear the selection with EPA.

o Contact the PI.

  - Stress need for confidentiality and lawful methods for gathering information.

  - Define research parameters and methodologies, as necessary.

  - *Establish reporting methods* (deliverables should include results, all accessed information sources, procedures, and hours spent on the project).

o Develop and have the PI sign a confidentiality agreement with EPA.

PROBLEMS/RESOLUTIONS

- Since the PRP researcher is unlikely to have prior experience with the particular PI, it is often difficult to assure the quality of the investigative work.
  - Check references closely.
  - Be specific about the limits of information being sought.
  - Require frequent written status reports.
- The PI or contractor obtains information indicating that the PRP has been involved in criminal actions within the last six months.
  - Inform the EPA primary contact of the situation. Arrangements should be made to contact the EPA Criminal Investigations Unit or the FBI.

3.2.7 SITE ENFORCEMENT TRACKING SYSTEMS

OBJECTIVE

The objective of this task is to obtain information about certain PRPs through the Site Enforcement Tracking Systems (SETS). SETS is a database maintained by EPA's Office of Waste Programs Enforcement (OWPE) that indicates whether a party has been sent a **notice letter**. OWPE updates SETS with information it obtains from the regions. When the regions issue **notice letters**, copies are submitted to EPA headquarters. OWPE uses these letters to update SETS.

PROCEDURE

Initial Information Needs

- Names of PRPs

Before SETS can be accessed, the researcher must identify the complete names of the identified PRPs.

Process

- Obtain Access to SETS
- Submit List of PRPs
- Obtain PRP Information

If a PRP has been sent a **notice letter**, information about the PRP may be obtained by completing the following steps:

- Obtain access to SETS through NEIC or OWPE. (EPA anticipates that the regions will have access to SETS beginning sometime in fiscal year 1987.)
- Relay a list of PRPs to SETS to determine whether any have been sent letters.
- Obtain information on PRPs who have been sent **notice letters**. Information may include:
  - Address
  - Site information
  - Site contacts (EPA headquarters, EPA regional office, Department of Justice (DOJ), U.S. Attorney, and state personnel)
- Contact the EPA regional office contact, if identified, to obtain additional information about the PRPs.

PROBLEMS/RESOLUTIONS

No problems have been identified in performing this task.

3.2.8 SITE SAMPLING

OBJECTIVE

The objective of site sampling is to connect a specific, identified waste type with a PRP through chemical analysis of samples collected at the site. This task is a routine part of site investigations (SI) and remedial investigations (RI). The EPA primary contact for the PRP search should coordinate with EPA personnel responsible for the SI and RI to ensure that samples are collected efficiently. The EPA primary contact should also make sure a "site access" agreement between the site owner and EPA exists prior to doing any work on the site.

PROCEDURE

Initial Information Needs

- o SI or RI Status
- o Site Access Agreement

This task is a routine part of SIs and RIs. To eliminate redundancy, the EPA primary contact should determine if an SI or RI has been or will be conducted. If a contractor is conducting the sampling, the coordination with other agency personnel should be conducted through the EPA primary contact, unless directed otherwise. Coordinating the PRP search with an SI or RI will affect the contractor's scope of work, level of effort, and schedule.

- o If an SI or RI has been conducted:
  - Obtain and review the information already collected.
  - Determine if additional data is needed from site sampling; if so, conduct the sampling as described in the Process section.
- o If an SI or RI is underway, planned, or anticipated:
  - Contact the EPA personnel responsible for the SI or RI to discuss:

    Data to be collected
    Sampling schedule
    Modification of sampling plan to include PRP search needs
    PRP researcher's role in the SI or RI

Process

- o Obtain Background Information
- o Develop a Sampling Plan
- o Develop a Quality Assurance Project Plan
- o Conduct Sampling

  - If the PRP researcher is to lead the site sampling, follow the process described below with appropriate modifications to satisfy the SI or RI.

- o If an SI or RI has not been conducted and is not anticipated, follow the process described below to conduct the sampling.

- o Prior to doing any work on the site, the investigator must obtain "site access" agreement from the site owner.

- o The file review should provide necessary information for planning the sampling activities. The information includes:

  - Types of wastes known or suspected at the site
  - Media involved (soil, drums, ground water)
  - Compounds and concentration levels
  - Safety considerations

- o Review applicable sampling procedures detailed in "SW-846 Physical/Chemical Methods," Office of Solid Waste.

- o Develop a sampling plan that includes a safety plan.

- o Prepare an EPA-approved Quality Assurance Project Plan (details in "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," Office of Emergency and Remedial Response).

- o Coordinate sampling with the on-scene coordinator (OSC) if remedial work is being undertaken or if a removal action is planned or underway. Sampling performed under OSC's direction, if complete and accurate, may preclude the need for sampling by the PRP researcher.

- o Coordinate activities with the assigned analytical laboratory to ensure that sample integrity is not compromised.

- Follow the RCRA Inspection Manual for specific approaches to sampling drums, tanks, waste piles, impoundments, and other disposal areas.

- Employ strict **chain-of-custody** procedures to ensure the validity of sample results (details in "National Enforcement Investigations Center Policies and Procedures Manual," U.S. EPA, 1981).

PROBLEMS/RESOLUTIONS

- Identification of PRPs from site sampling results is not complete.

  - Characterizing the waste at the site is only half the effort required to establish evidentiary data that may implicate a PRP. The remaining effort entails associating the specific waste to drum markings, operating log entries, and other generator, transporter, **owner**, or **operator** information.

- The **owner** or **operator** of the site may refuse the contractor access to site.

  - Notify the EPA primary contact and request assistance in obtaining site access.

3.2.9 INDUSTRIAL SURVEY

OBJECTIVE

The objective of an industrial survey is to determine parties who may have contributed to the site contamination. This is accomplished through surveying local businesses and reviewing various industrial manuals and directories. This task is particularly useful when little information is available on the site from documents, interviews, and other usual sources, or when the site is in an area where neighboring facilities may have contributed to the contamination. Example 1 in Appendix I, Sample Reports, identifies unconfirmed PRPs based on an industrial survey.

PROCEDURES

Process

- o Review and Contact Local Information Sources
- o Interview Persons with Knowledge of the Site
- o Obtain Detailed Information on Local Industries

The following steps outline the process for conducting an industrial survey. A sample form that may assist in conducting these surveys is provided in Appendix E.

- o Review local business directories and consult local offices to obtain information on industries in the area.
  - Chamber of Commerce
  - Planning department
  - Office of Solid Waste
  - Better Business Bureau
  - Business or industrial directories
  - Tax or property assessment office
  - Telephone directories/yellow pages
  - Area visit/windshield survey
- o Interview ex-employees, neighbors, citizens' groups, and officials with site knowledge (see Section 3.2.5).
- o Determine the type of business each company is engaged in and its industrial classification. Sources of information include:
  - Moody's Industrial Manual
  - Standard & Poor's Corporation Descriptions

- Thomas' Register
- Local industrial directories
- Interviews (see Section 3.2.5)

o Compile an inventory of potential industries that may have contributed to the contamination at the site.

o Complete the industrial survey list by obtaining (at a minimum) each industry's name, address, facility contact, and its Standard Industrial Classification (SIC) code, which classifies the major activity of the industry.

PROBLEMS/RESOLUTIONS

o If the CERCLA site is located in a large metropolitan area, then hundreds of potential industries could be PRPs.

- It may be necessary to establish geographical limits for the survey.

o Current directories may not be applicable for an old disposal site.

- Consult libraries to obtain telephone books and directories for the applicable time period.

3.2.10 PROCESS CHEMISTRY ANALYSIS

OBJECTIVE

The objective of a process chemistry analysis is to determine the types of wastes likely to be generated by area industries that may have used the site for disposal. This task is particularly useful when little documentation exists to indicate who disposed of wastes at the site. This task is usually only conducted when the site had a history of receiving wastes from off-site generators. A good understanding of industrial technology is useful in the process chemistry analysis. Local industries are grouped according to the products and manufacturing processes from which characteristic waste streams are normally generated. These wastes are subsequently compared to contaminants found at the site. Once the investigator establishes a link between an industry and wastes disposed of at the site, then additional data gathering efforts can be initiated to further define an identified company's specific waste handling activities.

PROCEDURES

Process

- o Identify Local Industries
- o Determine Waste Types
- o Compare Industrial Wastes and Disposed Wastes

- o Consult the industrial survey list prepared for the site, if available (see Section 3.2.9).
- o Categorize each of the firms according to their SIC codes. Identify products and manufacturing processes for each category. Company-specific information can also be included if it is available from sources such as an industrial survey or CERCLA 104(c) letters.
- o Determine the types of waste generated by each industry. Available data sources include:
  - EPA -- effluent limitations guidelines, available through the Office of Water and Waste Management, list pollutant parameters for various industry categories and sometimes identify other waste streams not falling under the wastewater control system; other sources include RCRA studies and listing or delisting information.
  - Raw material manufacturers and suppliers -- these companies can provide extensive information on the types of raw materials used by many types of industries.

- Trade associations -- trade associations might provide information on products, processes, and wastes that are used or generated by a specific industry.

- Literature studies -- other federal and state studies, the Kirk-Othmer Encyclopedia of Chemical Technology, and trade publications can provide detailed information on many aspects of a particular industry.

o Maintain a parallel list of identified contaminants found at the site (see Section 3.2.11).

o Compare types of wastes generated by the various industries with the list of contaminants found at the site and establish causal relationships.

PROBLEMS/RESOLUTIONS

o Not all contaminants found at the site have been linked to an area industry.

- Transporters may cover areas beyond the geographical limits established by the study. Contact local solid waste regulatory offices to determine which haulers work in the area and whether they service any outlying industries.

o Some contaminants, such as solvents, are used by many industries; thus, many potential generators may be assigned to one waste type.

- All industries must be regarded as potential sources until further information can be acquired that will specifically exclude them from consideration. Consider conducting additional research through such activities as interviews (see Section 3.2.5).

o Information obtained from SIC codes is not company-specific.

- Additional research can be conducted to obtain information about the waste streams generated by specific companies.

3.2.11 WASTE STREAM INVENTORY

OBJECTIVE

The main objective of this task is to compile an accurate inventory of wastes that were stored or disposed of at a site by reviewing all waste stream records, operating logbooks, and analytical reports. This task is required if the researcher needs to determine the types and quantities of waste contributed by each PRP. Knowing the types of wastes disposed of at the site is necessary to identify a relationship between the site and PRPs. When a complete inventory of wastes is developed, it can be used in conjunction with process descriptions and industry surveys (see Section 3.2.9) to identify parties that may have been involved in disposal activities at the site.

PROCEDURE

Initial Information Needs

- o Location
- o Contamination

Before initiating a waste stream inventory, the researcher must know:

- o The locations of detected contamination.
- o The types of contamination detected.

Process

- o Identify All Available Documents
- o Inventory Wastes

The inventory process includes the following steps:

- o Identify all available documents (daily operating logbooks, inspection reports, ledgers, disbursements, invoices, consignments, and laboratory analysis records).
- o Identify the document originator or author, document location, and range of years or key dates covered by the records.
- o Identify applicable information in the documents (wastes involved, disposal prices, volume of waste disposed, contaminant concentrations, and contractual arrangements).
- o Establish a database when information is voluminous or is from several different sources. Information can be entered on a personal computer spreadsheet that allows data to be sorted in various ways (see Sections 3.2.13 and 3.2.14).
- o Identify PRPs by comparing the waste stream inventory with process descriptions and industrial surveys (see Section 3.2.9).

PROBLEMS/RESOLUTIONS

o Evidence about a specified party is found on a soiled or torn page of a document. The condition of the document or evidence can compromise its validity.

  - Illegible handwritten notes, incomplete records, and torn or soiled document pages will diminish the reliability of the findings. Be careful to support all findings with credible or clear data before listing companies or individuals as PRPs.

Creating Databases

Section	Tasks	Page
[illegible]	Correspondence [illegible] Databases	[illegible]
[illegible]	Inventory Databases	[illegible]
[illegible]	Transactional Databases	86

3.2.12 CORRESPONDENCE TRACKING DATABASES

OBJECTIVE

The objective of this task is to track the mailing of and responses to notice letters and information requests sent to PRPs. This task often requires using a computerized database because of the large number of PRPs contacted. Computer printouts can be used to summarize the PRP responses. See Section 3.1.6 for procedures on maintaining a PRP address list.

PROCEDURES

Initial Information Needs

- o Information to Track
- o PRP Names and Addresses

Before beginning the tracking procedure, the researcher should obtain:

- o The type of information to be tracked, such as who was sent a letter or request, whether they receive it, and whether they responded.
- o Names and addresses of contacts within each PRP's company or the name and address of the company's registered agent.

Process

- o Design Database
- o Update Name and Address List

- o Design a database system which will incorporate the required information.
- o Determine the universe of PRPs.
- o Determine how the documents and other information will be received and entered into the database system.
- o Determine the types of printouts and summary reports to be extracted from the database.
- o Update the name and address list as new information becomes available (see Section 3.1.6).

PROBLMES/RESOLUTIONS

- o It is difficult to track necessary information.
  - Do not "clutter" the database printouts with any information not required.

- o Inaccurate data were entered.
  - As with all database work, use a rigorous quality assurance program by creating printouts that will display all of the latest edits and entries for quality control review.

3.2.13 INVENTORY DATABASES

OBJECTIVE

The objective of this task is to develop a computer-based information management system for organizing and controlling case document files and for summarizing case-specific information contained in the documents. The system should provide three litigation support services: (1) an efficient way of locating and retrieving documents by keyword, subject, author, or date; (2) a document control system to assure that documents are not lost or misplaced; and (3) a means for assuring an orderly and timely response to discovery orders and to voluntary document exchanges.

PROCEDURE

Process

- o Obtain Documents
- o Create Document Coding Forms
- o Develop Key Words
- o Create Inventory Database

- o Locate all relevant documents.
- o Determine how the data are to be used and what information needs to be extracted. The ultimate needs of all users must be reflected in the system, and the system must be able to handle the ultimate size of the database.
- o If a contractor is conducting the search, meet with the EPA primary contact and others who will be using the system regarding:
  - Type of software available
  - Type of hardware available
  - Type of programming
  - Product (contractor-generated reports or system for EPA's use)
- o Screen documents for relevance (contractors should work with EPA to determine the criteria).
- o Identify duplicate documents. Eliminate the documents or enter them into the system as duplicates.
- o Number the documents (use a **Bates stamp** or microfilm frame number).
- o Create document coding forms.

- Possible field definitions include:

  Document location
  Document number
  Document type
  Originator
  Author(s)
  Origination date
  Title
  Subject(s) or key words
  Addressee
  Number of pages
  Document condition
  Method obtained
  Document source (EPA, state, PRP)
  Recipients
  Attachments
  Miscellaneous

o Develop key words to reflect case issues, relevant technical or scientific information, or discovery issues.

o Create the inventory database using software such as **dBASE III** or **LOTUS** 1-2-3, or mainframe hardware and software systems if necessary. (Two systems already developed and in use are (1) the Superfund Litigation System (SLS) in Region 2 and (2) the PRPBASE System in Region 5.)

  - Develop a coding manual
  - Train coding personnel
  - Extract data
  - Code the information for generators, document types, and so on
  - Conduct quality check
  - Enter data
  - Conduct edit runs
  - Prepare pilot printouts
  - Prepare draft and final reports
  - Conduct various sorting and database manipulations

PROBLEMS/RESOLUTIONS

- The inventory database was begun before all documents were available and without input from all who will use the database. Subsequent changes in the established fields and procedures were required.
  - Obtain as many documents as possible before beginning, and obtain input from any persons who may use the database.

3.2.14 TRANSACTIONAL DATABASES

OBJECTIVE

The objective of this task is to develop a transactional database for storing information contained in transactional documents. The nature of the waste disposal industry often requires that several transactions be made before final disposal of a hazardous waste. Transactions often involve generators conveying hazardous waste to haulers, and haulers conveying hazardous waste to disposers. Records of these transactions, such as bills of lading or purchase orders, may contain information regarding the type, volume, and disposal method of the waste. Summaries of the database information can display, where available from the documentation, evidentiary information on the types of wastes disposed of, the generators and haulers of the hazardous materials, the total volume of each waste type, the quantity of each waste type by generator or hauler, and the ranking of each generator or hauler according to total quantity of hazardous waste disposed of. Example 7 in Appendix I, Sample Reports, is a report explaining the preparation and results of a transactional database.

PROCEDURES

Initial Information Needs

- All Relevant Documents
- Database Requirements

- Locate all relevant documents.
- Determine how the database is to be used and what information needs to be extracted from the transactional records. The needs of all users must be reflected in the system.
- If a contractor is conducting the search, meet with the EPA primary contact and others who will be using the system regarding:
  - Type of software available
  - Type of hardware available
  - Level of programming
  - Product (contractor-generated reports or system for EPA's use)
  - Data quality criteria and quality control procedures

Process

- o Number Documents
- o Create Document Coding Forms
- o Select Key Words
- o Organize Documents
- o Create Transactional Database

- o Screen documents for relevance.
- o Identify duplicate documents. Either eliminate duplicate documents or enter them into the system as duplicates.
- o Number documents using a **Bates stamp,** microfilm frame number, or other system.
- o Create document coding forms.
- o Define the data fields. Possible field definitions include:
  - Document number
  - Generator
  - Hauler
  - Waste type
  - Waste quantity
  - Date
  - Site
  - Attachments
  - Miscellaneous
- o Select key words to reflect case issues, relevant technical or scientific information, or discovery issues.
- o Sort documents into folders according to generator.
- o Sort files chronologically within a folder to identify all documents that pertain to one waste shipment.
- o Place non-waste documents in the back of folders (these will not be included in the database).
- o Create transactional packets (each shipment constitutes a packet; a packet may consist of several waste types).
- o Create a transactional record for each waste in a packet.

- Develop criteria for evidence of shipment (invoices and other supporting documents with waste manifests). Contractors should confirm with the EPA primary contact the approaches to be used in dealing with discrepancies and gaps in the documents.

- Create the transactional database using software such as **dBASE III** or **LOTUS 1-2-3**, or mainframe hardware and software systems if necessary. (Two systems already developed and in use are (1) the Superfund Litigation System (SLS) in Region 2 and (2) the PRPBASE System in Region 5.)

  - Develop coding manual
  - Train coding personnel
  - Extract data
  - Complete document coding forms
  - Conduct quality check
  - Enter data
  - Conduct edit runs
  - Prepare pilot printouts
  - Prepare draft and final reports
  - Conduct various sorting and database manipulations
  - Prepare user manuals and technical documentations
  - State assumptions

PROBLEMS/RESOLUTIONS

- Several factors increase the time and cost of developing a database. These factors include designing the database before all documents are available, not getting input from all users, adding fields, and changing procedures after the system is in place.

  - These problems should be minimized through careful planning during the initial design of the database.

- Inaccurate data are entered.
  - Institute a rigorous quality control (QC) program using printouts of the latest edits and entries for QC review. It is more efficient, from both a scheduling and budgeting aspect, to institute the QC procedures at the beginning of a project than to correct inaccurate data and rerun programs at a later date.
- Illegible documents or entries may be encountered; waste units may not be included with the quantities.
  - Obtain other documents for the same shipment that provide this information.
  - Request this specific information from the PRP.

3.2.15 COMPLIANCE HISTORY

OBJECTIVE

This task involves reviewing records and information to identify violations of hazardous waste and other environmental laws and regulations. A profile can then be prepared of the PRP's compliance history. This research also may yield the names of individuals in state agencies and Attorney Generals' offices who can provide facts supporting a party's identification as a PRP.

PROCEDURE

Initial Information Needs

- o Scope of Research

Process

- o Obtain Background Information
- o Develop Compliance History

- o Identify the particular sites or PRPs to research and the scope of the research to be conducted.

The following steps are required to develop a compliance history:

- o Obtain records and information from public and private sources (see Sections 3.1.1, 3.1.5, and 3.2.4). Private sources may have records not available through other sources, such as the operator's meeting minutes, operator's logbooks, and internal memoranda.

- o Review and analyze the information concerning the PRP's method of operation and compliance with applicable federal, state, and local laws and regulations. Useful records may include:

  - Inspection reports (such as RCRA, TSCA, NPDES, CAA, CWA, FIFRA, SDWA, and OSHA compliance inspections)
  - Violation notices
  - Legal actions for violation of laws and regulations
  - Correspondence with regulatory agencies

- o Develop information through alternative methods such as interviewing former employees and interviewing residents living nearby (see Section 3.2.5).

- Develop a profile of the **operator's** compliance with relevant environmental requirements (regulations and permits).

- Determine, if possible, whether the compliance history affects the **operator's** identification as a PRP.

PROBLEMS/RESOLUTIONS

- A lengthy violation history found in documents might have little to do with relevant **CERCLA** site activity. For example, notices of violations for blowing litter are not relevant to ground-water contamination at the site.

  - Go through all documents to analyze the information.

  - Briefly summarize non-CERCLA violations such as blowing litter.

3.2.16 FINANCIAL ASSESSMENT

OBJECTIVE

The objective of a financial assessment is to obtain the necessary financial and economic information and analyses to facilitate enforcement actions. Results from financial assessments can be used to project the capability of a PRP to address an environmental problem, or a violator's ability to pay a penalty. Knowing such information, EPA can better formulate an appropriate negotiation and litigation strategy. A financial assessment should be conducted with an understanding of the EPA **Superfund** Settlement Policy and EPA Civil Penalty Policy. Typically, financial assessments are conducted to determine the ability of PRPs to respond to cleanup requests and to pay penalties. Both the EPA Superfund Settlement Policy and EPA Civil Penalty Policy contain provisions regarding the ability to pay as an enforcement criteria. The financial assessment goes beyond the financial status (see Section 3.1.3) by including an analysis of the information collected.

PROCEDURE

Process

- o Gather Financial Information
- o Research PRP's Business
- o Formulate a Baseline
- o Assess PRP's Financial Condition

The thrust of a financial assessment is to understand the financial position of a company and to project its changes under different scenarios. Financial information may be very difficult to obtain if the company is not publicly held. The key steps in conducting a financial assessment are listed below.

- o Gather the firm's financial information.
  - Three years of annual or, preferably, quarterly reports will form a strong basis for evaluating and projecting a PRP's financial position. Types of information are:
    - Balance sheets
    - Income statements
    - Statements on uses and sources of funds
  - Sources of information include:
    - Securities and Exchange Commission (publicly held companies are required to submit annual reports)
    - PRP (in consultation with EPA)
    - Dun & Bradstreet business surveys
    - State corporation or business licenses and tax assessment divisions
    - Clients and suppliers of the firm
    - RCRA files, if they exist

- Understand the business of the PRP in terms of:
  - Management
  - Ownership
  - Marketplace strategy
  - Industry outlook
- Formulate the baseline for the assessment (the PRP's financial performance without the environmental liability).
  - Develop a **pro forma balance sheet**, income statement, and uses and sources of funds for the appropriate period of time.
  - Clearly define and report all assumptions.
  - Produce key financial ratios for the coming years, such as:

    Liquidity
    Asset management
    Fund management
    Debt management
    Profitability
    Market value
- Assess the impact of EPA enforcement actions.
  - Charge the necessary environmental expenditure to the current assets account.
  - Interpret the effects of these charges on the PRP's financial condition.
- Assess the PRP's financial condition relative to firms in a similar business. Compare key ratios to ones found in national surveys under the same Standard Industrial Classification (SIC) code.

PROBLEMS/RESOLUTIONS

o A PRP may enter bankruptcy proceedings if forced to pay a penalty or compliance cost.

- Conduct a bankruptcy analysis.

  Determine the PRP's liquidation value.
  Determine the likelihood of EPA asserting its claim in a bankruptcy court.
  Appraise the PRP's assets and examine the seniority of the outstanding liabilities.

3.2.17 GENERATOR RANKING

OBJECTIVE

The objective of this task is to rank generators by the type and amount of wastes disposed of at a site. This is an important element of EPA's CERCLA Settlement Policy, which provides that the quantity and type of wastes contributed to the site by various PRPs can be considered in evaluating settlement offers. Moreover, EPA has committed to releasing information about the volume and nature of wastes to PRPs to facilitate settlement discussions. However, the accuracy of this ranking system depends on the completeness of the records available. EPA can release information on the volume and nature of wastes only to the extent identified as being sent to the site. Example 8 in Appendix I, Sample Reports, includes three tables created during the generator ranking task.

PROCEDURES

Initial Information Needs

- Types and Quantities of Waste
- Transactional Database

- Obtain sufficient information on the types and quantities of waste disposed of at the site.
- Search for all available documents concerning types and quantities of waste disposed of by generator.
- Establish a transactional database (see Section 3.2.14).

Process

- Select Comparison Units
- Rank Generators

- Select appropriate comparison units.
  - Choose the most appropriate unit of waste depending on the type of waste (volume versus weight) and the type of information available (weight versus dollars).
- Determine whether weighting factors are applicable and available. Examples of situations where a weighting factor may be appropriate include:
  - When a small quantity of one waste may be significantly more toxic than a large quantity of another waste.
  - When a small quantity may be highly mobile or persistent, thus resulting in greater exposure.

- When a small quantity may be more expensive to clean up, dispose of, or treat than a larger waste quantity.

o Rank generators based on quantities of waste and weighting factors when appropriate.

PROBLEMS/RESOLUTIONS

o Ranking is started (establishing fields and procedures) before (1) entering all information in the database, (2) obtaining all comments and input from users, or (3) considering all possible uses of information.

- Solicit input from all persons who may use the information.

- Consider all possible uses.

o Many types of waste, including both hazardous and non-hazardous, are listed in the waste inventory.

- Consult the EPA primary contact to determine if the ranking should be based on all wastes, only hazardous wastes, or some combination identified by the primary contact.

3.2.18 PROPERTY APPRAISAL

OBJECTIVE

EPA may need to assess the monetary value of certain contaminated real property to support remedial actions evaluated or undertaken in accordance with the National Contingency Plan. Contemplated remedial actions might include Fund-sponsored **cleanup**, possibly including purchasing land and relocating residents. Appraisals of the property "as is" (before remedial action) and "as modified" (after remedial action) are often required. Property appraisals can also be included during a PRP search if the researcher is trying to determine the assets of an identified PRP. Because professional real estate appraisals may be expensive, each appraisal should be specifically authorized by the EPA primary contact when a contractor is conducting the search. Alternatively, less costly estimates of the "as is" property value can sometimes be developed by those other than professional real estate appraisers, as indicated in Section 3.1.3, Financial Status.

PROCEDURES

Initial Information Needs

- o Authorization to Retain Appraiser
- o Names of Government Personnel Involved With Case

Before proceeding with the property appraisal, the researcher needs to obtain the following:

- o Specific authorization to retain a real estate appraiser to provide a property assessment.
- o Names of all EPA and DOJ personnel who may be using the information obtained from the property appraisal. Because appraisal assumptions affect the usefulness of the value estimates, it is important for the researcher to be aware of all assumptions involved.

Process

- o Develop Assumptions
- o Retain Appraiser
- o Review Preliminary Draft

Each of the following steps should be completed to provide a usable value estimate.

- o Develop, with input from EPA and DOJ staff, a complete set of assumptions to be applied when performing the appraisal. The assumptions address issues including, but not limited to:
  - Date on which the property's value is to be estimated

- "As is" and "as modified" property valuation

    Clear and complete descriptions of the property *modifications*
    Consideration of "highest and best use" of modified property (that is, its most productive appropriate use)

- Existence or absence of **fee simple title** that is free and clear of all debts, **liens**, and encumbrances

- Existence or absence of contamination

o Select and retain a real estate appraiser.

- Obtain recommendations for a real estate appraiser from:

    Chamber of Commerce
    Member listings of appraiser associations such as American Institute of Real Estate Appraisers
    Long distance yellow pages information

- Contact several real estate appraisers.

    Describe the planned research
    Generally describe assumptions
    Obtain written cost estimates
    Obtain appraiser's qualifications and credentials
    Screen for conflicts of interest

- Select a real estate appraiser (contractors should clear the choice with EPA).

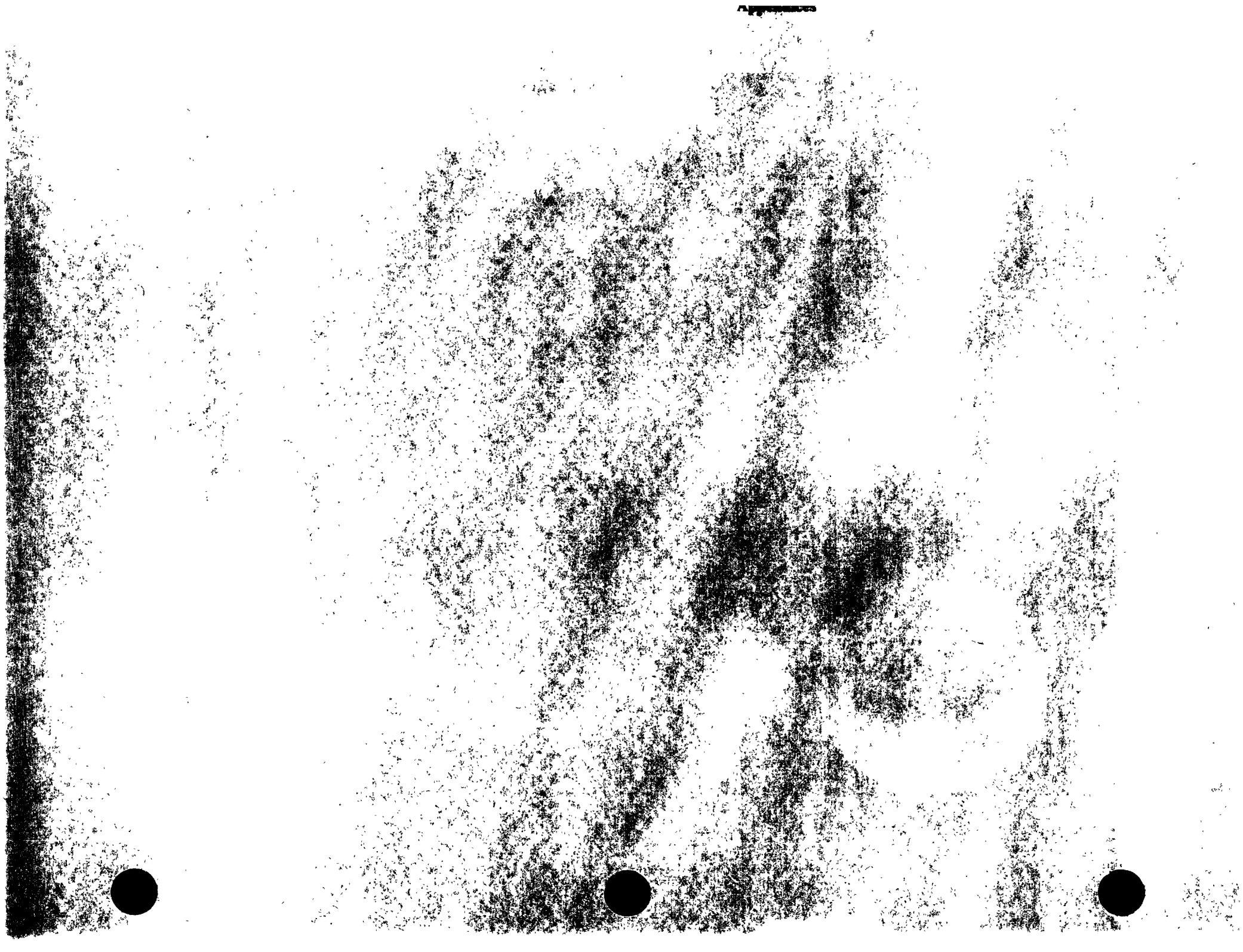
- Prepare a contract that includes a written list of assumptions.

- Set a not-to-exceed ceiling on costs unless first notified.

- Contractors should maintain close and continuous contact with EPA and the real estate appraiser.
- Review the preliminary draft of the appraisal to determine conformance with assumptions.
- Transmit comments (contractor and EPA) to the appraiser prior to completion of the final appraisal.

PROBLEMS/RESOLUTIONS

- A property appraisal may not be completed in time for inclusion in PRP search report.
  - Clearly explain scheduling requirements to the appraiser prior to signing a contract. If the time frame cannot be met, select another appraiser.
- The extent of "comparables" (such as nearby, comparable property recently subjected to value assessment) is often learned after research is underway.
  - Maintain close contact among all parties involved (EPA, appraiser, contractor) to define the comparable search area and to be aware of scheduling and budgetary impacts.
- Site access is necessary to complete the property appraisal.
  - Contact the EPA primary contact to determine if site access is really necessary. The Regional Counsel should be consulted before a determination is made. If access is required, EPA should contact the site owner and request written consent.



Appendix A
Glossary and Acronyms

APPENDIX A

GLOSSARY

Administrative Order on Consent — An administrative order issued pursuant to authorities provided under CERCLA or RCRA for response actions. This is an administrative order which is consented to by the recipient in writing.

Bates Stamp — A hand-held numbering machine that will stamp consecutive numbers. Useful when assigning reference or index numbers to a set of documents.

Bill of Lading — A receipt issued by a carrier to a shipper listing the goods received from the shipper for shipment.

CERCLA — The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), passed in 1980 and commonly known as "Superfund." CERCLA gives the federal government the power to respond to releases, or threatened releases, of any hazardous substance into the environment as well as to a release of a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare. CERCLA established a Hazardous Response Superfund (formerly the Hazardous Substance Trust Fund), available to finance responses taken by the federal government.

Chain-of-Custody — Evidence of analytical data is related to samples taken at particular locations and times. In offering real evidence, the offeror accounts for the custody of the evidence from the time it is gathered until the time that it is offered in evidence. If this custody "chain" is broken, the admissibility of the evidence can be challenged.

Civil Investigator	The Headquarter civil investigator is responsible for planning the national strategy. The regional civil investigators are responsible for planning regional strategy that obtains the national goals and follows the national strategy.
Cleanup	The elimination, reduction, or containment of pollutants associated with a site in accordance with the National Contingency Plan.
Conditional Sales Contract	A contract between buyer and seller, where the seller reserves title to the property until the buyer fully pays for the property.
dBASE III	An electronic relational database system for the IBM and Mackintosh class of microcomputers sold by Ashton Tate, Inc. dBASE III stores a collection of related information or data in a record. A record is similar to an index card. A group of records (index cards) makes up a database file. Data from these files can be deleted or edited, or new information can be added. Data from the files can be sorted, manipulated mathematically, and summarized in printed reports. dBASE III offers similar capabilities as **LOTUS 1-2-3**; however, dBASE III has a more powerful programming language that was designed for databases.
Death Certificate	An official document evidencing that a person died.
Declaration of Trust	A statement by the person named as owner of land on legal records that he holds the land in trust for the use of another person.

Deed	A legal document which transfers a property. Identifies property owner and partial date of ownership, and describes the property owned.
Easement	A right afforded a person or entity to make limited use of another's real property. Another term for easement is "right of way." Easements may identify additional parties that had access to a site.
Expanded Site Investigation	Investigation of a site that requires field work including sampling. This field work will provide data in preparation for Superfund activities at the site.
Fee Simple Title	Title to an estate of which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death. Such estate is unlimited as to duration, disposition, and descendability.
Gate Logs	Logs maintained by a site operator at the entrance to a site. Information on the logs may have been entered by a site employee or by truck drivers as they entered the site. Information may include hauling company names, truck driver names, delivery dates, waste type, and waste quantities.
Grant	A grant transfers land to someone other than the person making the grant. A grant may identify the site's owner as of a certain date.
Hazard Ranking System	The method regulatory authorities use to set priorities for response actions under CERCLA. The Hazard Ranking System (HRS) ranks a site by means of a mathematical rating scheme that combines

probability and magnitude (the potential of a release to cause hazardous situations and the severity or magnitude of these potential impacts). Using the numerical scores from this scheme, EPA and the states list sites by priority and allocate resources for site investigation, enforcement, and cleanup. The HRS is most commonly referred to as the Mitre model after its developer, the Mitre Corporation. Sites receiving high HRS scores -- currently greater than 28.5 -- appear on the National Priorities List. (See Preliminary Assessment/Site Investigation.)

Hazardous Superfund Response

The Fund, formerly the Hazardous Substance Response Trust Fund, largely financed by an environmental tax on industry (i.e., chemicals, petrochemicals, oil) that provides operating money for government financed actions under CERCLA. The Fund is a revolving fund in the sense that it enables the government to take action and then seek reimbursement later, or to clean up sites for which responsible parties with sufficient cleanup funds cannot be found. Money recovered by CERCLA Section 107 is returned to the Fund rather than the U.S. Treasury.

Land Trust

A method of holding real estate. When a land trust is used, the legal title to the land is listed as the trustee on all the legal records. However, by use of a trust agreement, the beneficiary of the trust usually maintains management and control of the real property.

Lease

A contract by which a landlord rents lands, buildings, and so on to a tenant for a specified time. A lease may provide information on site

operations and operators for various periods of time in the site's history.

Lien

A legal claim on another's property as security for the payment of a just debt. A lien may identify the site's owner and may give an indication of the owner's financial status.

Lotus 1-2-3

An electronic spreadsheet for the IBM class of microcomputers sold by Lotus Development Corporation. Lotus 1-2-3 stores information electronically in columns and rows. The information in the columns and rows can be manipulated. Text can be sorted and numerical data added, subtracted, and multiplied within seconds. Data can be printed in tables or graphs. Lotus 1-2-3 offers similar capabilities as **dBASE III**; however, Lotus 1-2-3's principal application is accounting models and its programming language is not designed for large and complex transactional databases.

Mortgage

A security interest in land created by a written instrument. Mortgages are usually created to secure payment of a debt. A mortgage may identify the site's owner and may give an indication of the owner's financial status.

National Contingency Plan

A plan that provides for efficient, coordinated, and effective response to discharges of oils and releases of hazardous substances of the Comprehensive Environmental Response Compensation and Liability Act and the Clean Water Act.

National Priorities List

The National Priorities List (NPL) establishes priorities for remedial response actions throughout

the country through government enforcement action or cleanup (see Hazard Ranking System).

Notice Letter

EPA's formal notice to PRPs that CERCLA-related action is to be undertaken at a site for which those PRPs are considered responsible. Notice letters are generally sent at least 60 days prior to scheduled obligation of funds for a remedial investigation/ feasibility study at a designated site. The intent is to give PRPs sufficient time to organize and to contact the government.

On-Scene Coordinator

An individual, designated within an EPA region, who coordinates and directs Federal responses under Subpart E and removals under Subpart F of the NCP. The on-scene coordinator (OSC) is responsible for developing contingency plans for federal response in the OSC's area. In some regions, the OSC has additional responsibilities which include those defined under Remedial Project Manager. (See Remedial Project Manager.)

Owner or Operator

". . . (i) In the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand" (CERCLA; Title 1, Section 101(20)(a)). Potentially responsible parties can include both present and former owners and operators.

Partial Release of Deed of Trust and Mortgage

A release of specified parcels of land from mortgage or trust. A partial release is used when not all land originally subject to mortgage or in trust is released from mortgage or trust.

Person

An individual, trust, firm, joint venture, corporation (including a government corporation), partnership, consortium, commercial entity, association, U.S. government, state, municipality, commission, political subdivision of a state, or any interstate body.

Potentially Responsible Parties

Those identified by EPA as potentially liable under CERCLA for cleanup costs. PRPs may include generators and other persons who arranged for disposal or treatment, present or former owners or operators of certain facilities where hazardous substances have been located or disposed of, as well as those who accepted hazardous substances and transported them to certain facilities.

Preliminary Assessment/ Site Investigation

The preliminary assessment (PA) is the first step taken after EPA or a state discovers a site. It involves reviewing existing information and assessing current site conditions to determine if a potential threat to the public or the environment exists. A PA usually involves a site visit. The need for a site inspection (SI) is based on the results of the PA.

The purpose of a SI is to gather additional data sufficient to rank the site using the Hazard ranking System (HRS), and to aid in making judgements on what further actions are required at the site. Historically, an SI involves a visual inspection of a site and usually includes limited sample collections.

A current initiative is underway to expand the scope of an SI to provide better support to the development of the remedial investigation (RI) work plan and scope. This expanded SI (ESI) would also provide better support for the HRS, NPL, and related program needs.

Primary Contact

The person at EPA who has primary responsibility for a work assignment. Each work assignment issued to a contractor has an EPA primary contact. The contractor is responsible to this contact for the work assignment. All changes in the scope of work and tasks to be conducted must be cleared with the primary contact. Direction from other EPA personnel to the contractor must also be cleared with the primary contact.

Proposed NPL Sites

Proposed NPL sites are sites which have Hazard Ranking System scores above 28.5 and are undergoing public comment, but have not yet been added finally to the National Priorities List.

Pro Forma Balance Sheet

A balance sheet based on assumed or anticipated facts (usually short form).

Quit Claim Deed

A deed of conveyance, operating by way of release, that is intended to pass any title, interest, or claim that the grantor may have on the premises, but not professing that such title is valid, and not containing any warranty or covenants for title.

Record of Decision

Published by the government after completion of a remedial investigation/feasibility study, the Record of Decision (ROD) identifies the remedial alternative chosen for implementation at a Superfund site.

Remedial Action

Remedy or remedial action or measure. Actions consistent with permanent remedy taken instead of, or in addition to, removal action to prevent or minimize the release or threatened release of hazardous substances so that they do not migrate to cause a substantial danger to present or future public health, welfare, or the environment. Includes a variety of on-site measures (storage, perimeter protection, recycling or reuse, dredging, excavation, etc.), off-site disposition, required monitoring, and the costs of permanent relocation of affected populations when deemed necessary by the President.

Remedial Investigation/ Feasibility Study (RI/FS)

An extensive technical investigation conducted by the government or by PRPs to investigate the scope of contamination (RI) and to determine the remedial response, consistent with the NCP, to be implemented at a Superfund site (FS). An RI/FS may include a variety of activities such as monitoring, sampling, and analysis.

Remedial Project Manager

An individual, designated within an EPA region, who coordinates, monitors, or directs remedial or other response activities under Subpart F of the NCP. The counterpart of the On-Scene Coordinator for removal actions (see On-Scene Coordinator).

Remedy

See Remedial Action.

Removal

Actions taken involving cleanup or removal of released substances from the environment; actions in response to the threat of release; actions that may be necessary to monitor, assess, and evaluate the release or threat; disposal of removed material; or other actions needed to prevent, minimize, or mitigate damage to public health or welfare or to

	the environment. Removal also includes, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under Section 104(b) of CERCLA, and any emergency assistance provided under the Disaster Relief Act.
Restrictive Covenants	A provision in a deed limiting certain uses of the property.
Schedule of Beneficiaries	A list of beneficiaries of a trust.
Site Discovery	The point at which the EPA becomes aware of a site.
Subpoena	A command to appear at a certain time and place to give testimony on a certain matter or produce documents.
Superfund	See CERCLA.
Superfund Amendments and Reauthorization Act (SARA)	The Superfund Amendments and Reauthorization Act (SARA) was signed into law on October 17, 1986. SARA leaves the basic framework of Superfund but makes several policy and management changes that reflect EPA's experience in administering the original law. SARA emphasizes the importance of developing permanent solutions at hazardous waste sites and imposes requirements for setting cleanup standards. SARA establishes goals and mandatory schedules that EPA must follow for various phases of remedial response. SARA also sets out procedures for negotiating settlements with potentially responsible parteis for conducting

	remedial response actions. The new law increases Superfund to $8.5 billion over the next five years and broadens the fund's tax base.
Title Insurance	Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.
Trustee Certificate	A written acknowledgment that certain land is in trust and that a certain person is trustee.
Warranty Deed	A deed in which the grantor guarantees to the grantee that the granter has title to the land free of any other possible claims. This document will identify the owner of a site at a particular point in time.
Windshield Survey	Survey conducted to obtain names and addresses of industries located near a site. The researcher walks or drives the area surrounding the site, noting which industries could be PRPs. Normally a subtask of the industrial survey task. See Section 3.2.9, Industrial Survey.

ACRONYMS

AOC	-	Administrative Order on Consent
CAA	-	Clean Air Act
CBI	-	Confidential Business Information
CERCLA	-	Comprehensive Environment Response, Compensation, and Liability Act
CWA	-	Clean Water Act
DCF	-	Document Coding Forms
DOJ	-	Department of Justice
EMSL	-	Environmental Monitoring Systems Laboratory
ERA	-	Expedite Response Action
ERCS	-	Emergency Response Cleanup Services
ERT	-	Emergency Response Team
ESI	-	Expanded Site Investigation
FIFRA	-	Federal Insecticide, Fungicide, and Rodenticide Act
FIT	-	Field Investigation Team
FOIA	-	Freedom of Information Act
FS	-	Feasibility Study
HRS	-	Hazard Ranking System
LTRA	-	Long Term Remedial Action
NBAR	-	Non-Binding Preliminary Allocation of Responsibility
NCP	-	National Contingency Plan
NEIC	-	National Enforcement Investigation Center
NPDES	-	National Pollutant Discharge Elimination System
NPL	-	National Priorities List
O&M	-	Operation and Maintenance
OECM	-	Office of Enforcement and Compliance Monitoring
OSC	-	On-Scene Coordinator
OSHA	-	Occupational Safety and Health Administration
OWPE	-	Office of Waste Programs Enforcement
PA	-	Preliminary Assessment
PCB	-	Polychlorinated Biphenyls
PI	-	Private Investigator
PRP	-	Potentially Responsible Party
QA	-	Quality Assurance

ACRONYMS (Continued)

QC	-	Quality Control
RA	-	Remedial Action
RCRA	-	Resource Conservation and Recovery Act
RD	-	Remedial Design
REM	-	Remedial Planning
RI	-	Remedial Investigation
ROD	-	Record of Decision
SARA	-	Superfund Amendments and Reauthorization Act
SDWA	-	Safe Drinking Water Act
SEC	-	Securities and Exchange Commission
SETS	-	Site Enforcement Tracking System
SFFAS	-	Superfund Financial Assessment System
SI	-	Site Investigation
SIC	-	Standard Industrial Classification
SW	-	Solid Waste
TES	-	Technical Enforcement Support
TSCA	-	Toxic Substances Control Act
UCC	-	Uniform Commercial Code

Appendix B
Activities Checklist

POTENTIALLY RESPONSIBLE PARTY SEARCH CHECKLIST

Task	LABOR HRS Range	TASK SELECTION CRITERIA/CONDITIONS

Note: Tasks 3.1.1 through 3.1.10 are presented here in the order they are generally performed as opposed to alphabetically as they are in the text. The tasks are presented in this order to assist the researcher in preparing the scope of work.

3.1.1 [] Agency Record Collection and File Review

Gather, organize information.	180-300	Review documents to extract PRP information and leads. This task is used in most PRP searches.

1.[]Federal Document locations: _____
Number of pages: _____

2.[]State Document locations: _____
Number of pages: _____

3.[]Local Document locations: _____
Number of pages: _____

4.[]Other Document locations: _____
Number of pages: _____

Describe anything unique about the records (condition of the records, business confidential, must travel to review, possible to mail records to contractor, possible contamination): _____

3.1.10 [] Title Search (Hours in parentheses reflect subcontracted title research by title company. These hours are a portion of the total hours listed).

a.[]	Simple Title Search	30-100 (5-50)	Site involves less than five parcels and less than 30 years of relevant history.
b.[]	Complex Title Search	110-225 (50-100)	Site involves more than five parcels or more than 30 years of relevant history.
c.[]	Unknown Title Search	45-350 (10-150)	Contractor will develop a site property description, estimate title search cost, and discuss with EPA prior to initiating the title search. May result in either a simple or complex title search.
d.[]	Regular copies of recorded instruments (deeds, leases, mortgages)	Included above	Necessary to support site history and PRP list. If litigation is expected, certified copies (see next task) are usually required for admissibility.

POTENTIALLY RESPONSIBLE PARTY SEARCH CHECKLIST

Task		LABOR HRS Range	TASK SELECTION CRITERIA/CONDITIONS
e.[]	Certified copies (deeds, leases, mortgages)	Contractor Included above	Obtain certified copies if litigation is expected and case attorney requires certified copies for court admissibility. (Usually costs about $0.50 - 1.50/page.)
f.[]	Chain of Title	20-40	A chronological list of title instruments for quick reference to title transactions over time.
g.[]	Property History Narrative	30-150	Requested for complex sites when a detailed narrative description of property history would assist case development.
3.1.5 []	Interviews with Government Officials	1-20/ interview	Interviews required of persons known or suspected to possess unique information about the site. Interviews generally conducted by phone unless travel is specifically requested. This task is used in most PRP searches.
3.1.8 []	Records Compilation	90-500	Records are located and manually organized to permit easy access and use. A file system and index are usually established. Depending on the number of documents, the data may be computerized. (See 3.2.13 and 3.2.14 for database record compilation tasks.)
3.1.4 []	History of Operations at Site	30-150	A narrative description of site operations through a specified period of interest is presented in a report. This history focuses on activities and parties involved with hazardous wastes. May be particularly useful if many operators or various types of operations were involved at the site.
3.1.7 []	PRP Status/ PRP History	0.5-5/ PRP	PRPs for which a current address is not available are researched to determine their fate. Names, addresses, and registered agents are provided for the PRPs and any successor companies.
3.1.6 []	PRP Name and Address Update	0.5-5/PRP	Current name and address information is obtained for identified PRPs. Includes name, address, registered agent, mergers, and name changes.
3.1.3 []	Financial Status		
a.[]	Develop financial information for public companies.	2-100/ PRP	NEIC can conduct financial status task on publicly held companies. The contractor can research these companies if, after NEIC report is received by EPA, it is determined by EPA that additional information is needed. The contractor can attempt to develop information regarding the financial assets of all other PRPs.
1.[]	Known PRP (attach list of names and addresses).		

Task			LABOR HRS Range	TASK SELECTION CRITERIA/CONDITIONS
	2.[]	Contractor-identified PRPs.		
	b.[]	Develop financial information for private companies or individuals. [] Use Private Investigator	2-100/ PRP	This task can provide PRP information such as a description of corporate financial status, officers, tax history, and current business practices. For privately held companies and private individuals, a private investigator may be required.
	c.[]	Financial record audit	100-150/ PRP	Conducted if PRP internal financial records are accessible. A certified public accountant is required to audit these records.
3.1.2	[]	CERCLA 104(e)/ RCRA 3007(c) Letters	1-10/ letter	This task includes formulating potential questions for PRPs based on gaps observed in available information, preparing letters with PRP names and addresses, and reviewing responses for information relevant to PRPs.
3.1.9	[]	Report Preparation	50-300	PRP reports must include sections on the site background, project approach, contacts and sources, site history, PRPs, and conclusions and recommendations (and other information specified by EPA).
3.2.1	[]	Aerial Photographs	10-100	Aerial photographs can provided detailed site information without accessing the site. Photographs can also be used to compare site characteristics over a period of time.
3.2.2	[]	CERCLA Subpoena Authority	New task	This task has not been fully developed to date.
3.2.3	[]	Field Survey	40-200	This task is used to gather additional evidence through field activities such as general field inspection, document reviews, personal interviews, and drum label recording. Usually conducted only when there is no other information available about a site.
3.2.4	[]	PRP Files Review	180-300	PRP documents, such as operator records, are reviewed to extract PRP information and leads. This task should be completed after a review of agency files.

Describe anything unique about the records (such as condition of the records, business confidential, possible to mail records to contractor, possible contamination):

POTENTIALLY RESPONSIBLE PARTY SEARCH CHECKLIST

Task		LABOR HRS Range	TASK SELECTION CRITERIA/CONDITIONS
3.2.5 []	Private Citizen/PRP Interview	1-20/ interview	Interviews with persons known or suspected to possess unique information about the site. Shall be conducted by telephone unless travel is specifically requested. Detailed interviews, when needed, can be documented by a transcript.
3.2.6 []	Private Investigations	10-100	Private investigators can be useful in locating individuals, developing information regarding closely held financial assets, and interviewing parties with knowledge of the site activities. Private investigators should be employed if a potential for danger exists.
3.2.7 []	SETS	0.5-5/ PRP	This database may indicate that a PRP has previously been sent a notice letter and can provide basic information about a PRP. This task should be completed when no other information is available.
3.2.8 []	Site Sampling	20-400	Chemical analysis of samples collected at the site are used to link a specific identified waste type with a PRP. Conducted only when analytical results or other evidence about a PRP are not available.
3.2.9 []	Industrial Survey	40-100	This task identifies PRPs through a survey of local businesses and a review of various industrial manuals and directories. This is an indirect method of identifying PRPs and may be difficult to prove if no other information is available. May serve as a starting point of more detailed research into disposal practices of local industries.
3.2.10 []	Waste Stream Inventory	40-400	Compile an accurate inventory of wastes that were disposed of at the site by reviewing operating logbooks, analytical reports, and waste stream records.
3.2.11 []	Process Chemistry Analysis	1-5/PRP	The process chemistry analysis task is generally performed after an industrial survey and a waste stream inventory. This task attempts to link industries with wastes at a site.
3.2.12 []	Correspondence Tracking Databases	200-500	A database is created to keep track of PRPs sent letters (Notice or Information), whether they responded, and other information as specified by EPA. Computerized databases should be considered for cases with a large number of PRPs.

Task		LABOR HRS Range	TASK SELECTION CRITERIA/CONDITIONS
3.2.13 []	Inventory Databases		A computer-based information management system is developed to organize and permit quick retrieval of documents by key word, author, date, subject, or other predetermined strategy. Useful for searches with a large number of documents or if documents must be easily accessed.
1.[]	With key words	500-1500	
2.[]	Without key words	250-1000	
3.2.14 []	Transactional Databases	400-1500	Used when a relatively large number of site transactions are available (500 or more) or when it is necessary to rank a large number of PRPs based on quantified site usage information. (See also 3.2.17 Generator Ranking.)
3.2.15 []	Compliance History	30-150	This task provides a narrative description of site compliance status for a specified period of interest focusing on activities and parties involved with hazardous wastes.
3.2.16 []	Financial Assessment	70-110/ PRP	This task provides a more detailed analysis of a PRP's financial situation than the financial status.
3.2.17 []	Generator Ranking	20-100	This is usually a work product (printout) from a transactional database project (see Section 3.2.14). The ranking orders generators by waste volume or other comparable units.
3.2.18 []	Property Appraisal	50-200/ site	Appraisal of site property owned by a PRP which may have value. Appraisal may focus on contaminated state or post-remedial state.

Appendix C
EPA/NEIC Information Services

EPA/NEIC INFORMATION SERVICES

The National Enforcement Investigations Center (NEIC) provides information to EPA Superfund personnel to enable assessment of a Potentially Responsible Party's (PRP) financial status. NEIC staff maintain and operate the Superfund Financial Assessment System (SFFAS) model for publicly held companies and can provide Dun and Bradstreet reports for those companies (usually privately held) for which an assessment cannot be done.

The SFFAS is an automated financial model intended to be used as a tool to assist enforcement personnel in negotiating with PRPs. It was designed to (1) calculate the amount of remedial action costs a company can afford to pay and (2) provide a concise financial evaluation of the company. The model has two components. First, it calculates the PRP's "ability to pay" by measuring the cash flows from the company's operations and the variability in these cash flows to determine the company's ability to maintain its current business and pay the remedial action costs. A table is generated that indicates the probability that a given amount of cash will be available to fund a remedial action. Second, it uses three standard financial ratios to assess whether additional borrowing by the firm may be feasible. These ratios are also used to alert Superfund enforcement personnel to possible defenses the company may use to argue that it is unable to pay remedial action costs. The SFFAS model requires a minimum of three, and preferably five, years of annual data on net income and depreciation. In addition, data on financial condition for the most recent year are required, including current liabilities, long-term liabilities, net worth, interest expense, and income tax rate. The SFFAS model was intended to be used as a tool to assist enforcement personnel in negotiating with PRPs.

Because the SFFAS model requires specific financial data and this data is usually not available for privately held companies, NEIC can provide Dun and Bradstreet reports for these companies. The Dun and Bradstreet report typically provides brief financial data, such as annual sales, net worth, and net profit/loss, depending on what the owner or chief executive provides to Dun and Bradstreet. However, the Dun and Bradstreet report may also include other important information, such as:

- Business done by the company
- Corporate history

- o Subsidiaries and affiliates
- o Plant locations
- o Principals (president, vice-president, etc.)
- o Bankruptcy filings

Finally, NEIC maintains an automated file that contains a listing of all PRPs for which Superfund financial assessments have been conducted. Information from this file can be retrieved by individual PRP name and by site name. This is useful in determining PRP liabilities at other Superfund sites.

To request information, EPA Superfund enforcement personnel should call the NEIC Information Services Section at FTS 776-3219. Since financial assessments are considered attorney work product, it is necessary to give the case attorney's name when requesting information. These services are available solely to EPA Superfund enforcement personnel in support of the Superfund enforcement program, and any requests for financial data must be made through the Regional Superfund offices. Turn-around time can vary, depending upon the number of PRPs for which financial assessments are needed. For example, it can take several weeks to gather the financial data and provide assessments for a site where several hundred PRPs have been identified, but only a day or two for a site where 10 or less have been identified. Examples of an SFFAS and a Dun and Bradstreet report follow.

NEIC has access to a variety of automated information systems. For information about these systems, call the Information Services Section at the above number.

BE SURE NAME, BUSINESS AND ADDRESS MATCH YOUR FILE.

ANSWERING INQUIRY

SUBSCRIBER: [redacted]

CONSOLIDATED REPORT

DUNS: 08-737-2512
B-D CHEMICAL CO INC

699 DENARGO MARKET
AND BRANCH(ES) OR DIVISION(S)
DENVER CO 80216
TEL: 303 296-3800

DATE PRINTED
MAY 23 1986

MFG CUSTOM CHEMICALS

SIC NOS.
28 69 51 61

SUMMARY

RATING	DD3
STARTED	1976
PAYMENTS	SEE BELOW
SALES	$650-750,000 (PROJ)
WORTH	F $40,675
EMPLOYS	10(10 HERE)
HISTORY	CLEAR
FINANCING	SECURED
CONDITION	FAIR
TREND	UP

CHIEF EXECUTIVE: BRUCE WAYNE NELSON, PRES

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
04/86	Ppt	100	-0-	-0-		6-12 Mos
	(002)	2500	-0-	-0-		1 Mo
02/86	Ppt	100	50	-0-	N30	1 Mo
01/86	Ppt	1000	1000	-0-	N30	2-3 Mos
	Ppt	750	-0-	-0-		6-12 Mos
	Ppt	50	-0-	-0-		6-12 Mos
12/85	Slow 30-60	500	-0-	-0-		6-12 Mos
11/85	Slow 30	250	-0-	-0-		
09/85	(009)	250	-0-	-0-		6-12 Mos
07/85	Slow 20	1000	-0-	-0-		2-3 Mos

Payment experiences reflect how bills are met in relation to the terms granted In some instances payment beyond terms can be the result of disputes over merchandise skipped invoices etc.

UPDATE

03/11/86 In a communication received Feb 21 1986 and signed by Bruce Nelson Pres Feb 15 1986, it was indicated:
Sales are now $661,590 yearly.
Profits for the past six months were up.

03/11/86 The present net worth is $90,000.

FINANCE

* A FINANCIAL SPREAD SHEET OF COMPARATIVES, RATIOS, AND INDUSTRY AVERAGES MAY BE AVAILABLE. ORDER A DUNS FINANCIAL PROFILE VIA YOUR DUNSPRINT TERMINAL OR LOCAL D&B OFFICE *

09/23/85

	Fiscal Mar 31 1985
Curr Assets	121,836
Curr Liabs	61,693
Current Ratio	1.97
	60,143
Other Assets	11,680
Worth	40,675
Sales	594,708
	21,544

Fiscal statement dated MAR 31 1985:

Cash	$ 11,696	Accts Pay	$ 55,835
Accts Rec	62,708	Contracts Payable	3,000
Inventory	47,432	Taxes	2,858
Curr Assets	121,836	Curr Liabs	61,693
Fixt & Equip	9,217	Notes Payable	28,685
Other Assets	2,463	CAPITAL STOCK	11,409
		RETAINED EARNINGS	31,729
Total Assets	133,516	Total	133,516

From FEB 01 1984 to MAR 31 1985 annual sales $594,708; cost of goods sol $357,752. Gross profit $236,956; operating expenses $215,412. Net incor $21,544. Monthly rent $1,600.

Fire insurance on mose & fixt & bldg $1,000,000.

Prepared from statement(s) by Accountant: Carol C Campbell. Prepared from book

(CONTINUED)

THIS REPORT FURNISHED PURSUANT TO CONTRACT FOR THE EXCLUSIVE USE OF THE SUBSCRIBER AS ONE FACTOR TO CONSIDER IN CONNECTION WITH CREDI INSURANCE MARKETING OR OTHER BUSINESS DECISIONS CONTAINS INFORMATION COMPILED FROM SOURCES WHICH DUN & BRADSTREET INC. DOES NOT CONTROL AN WHOSE INFORMATION UNLESS OTHERWISE INDICATED IN THE REPORT HAS NOT BEEN VERIFIED IN FURNISHING THIS REPORT DUN & BRADSTREET INC IN NO W ASSUMES ANY PART OF THE USER'S BUSINESS RISK DOES NOT GUARANTEE THE ACCURACY COMPLETENESS OR TIMELINESS OF THE INFORMATION PROVIDED A SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY WHATEVER RESULTING FROM CONTINGENCIES BEYOND ITS CONTROL OR FROM NEGLIGENCE.

FINANCE
(Cont'd) without audit.

--0--

Item worth shown in summary section was computed after deduction of intangibles, organization expenses, deposits, totaling $2,463. Fixed assets shown net less $11,361 depreciation. Submitted Sep 23 1985 by Bruce Wayne Nelson, president

Other assets consist of prepaid expenses, deposits, and organization costs. Notes payable are due officer; Bank secured by equipment and due in 1986 and 1987; and due other.

On SEP 23 1985 Bruce Wayne Nelson, president, submitted the above figures He submitted the following partial estimates dated SEP 23 1985:

Projected annual sales are $ 650-750,000.

Bruce Wayne Nelson stated that sales for the 5 months ended Aug 1985 were up 5-10% compared to the same period last year. Profit for the period was up 10-20%. Operations for the period were conducted at a profit.

Business is profitable, trend is up, and condition is fair.

PUBLIC FILINGS
UCC FILINGS

05/13/86 Financing Statement #868611 filed 02-05-86 with Secretary, State of CO. Debtor: B-D Chemical Co Inc, Denver, CO. Secured Party: Central Bank Of Denver, Denver, CO. Collateral: all inventory and products.

02/24/86 Financing Statement #845705 filed 11-07-85 with Secretary, State of CO. Debtor B-D Chemical Co Inc, Denver, CO. Secured Party: Central Bank of Denver, Denver, CO Collateral: specified industrial equipment/machinery.

The public record items reported above under "PUBLIC FILINGS" and "UCC FILINGS" may have been paid, terminated, vacated or released prior to the date this report was printed.

HISTORY
09/23/85

BRUCE WAYNE NELSON, PRES
DIRECTOR(S): THE OFFICER(S)

Incorporated Colorado Mar 1983. Authorized capital consists of 50,000 shares common stock, no par value.

Business started 1976 by Bruce Wayne Nelson individually. 100% of capital stock is owned by Bruce Wayne Nelson.

BRUCE WAYNE NELSON born 1956. 1976 and continues active with subject

OPERATION
09/23/85

Manufactures custom chemicals.

Terms are net 30 days. Has 150 accounts. Sells to major oil companies. Territory :United States.

Nonseasonal.

EMPLOYEES: 10 including officers. 10 employed here.

FACILITIES: Rents 7,500 sq. ft. in one story brick and cinder block building in good condition. Premises neat.

LOCATION: Industrial section on side street.

BRANCHES: Operates a branch storage warehouse of 1,500 square feet at 80 Denargo Market, Denver, CO.

05-23(9A0 /22) 00000 067 082 H

THIS REPORT FURNISHED PURSUANT TO CONTRACT FOR THE EXCLUSIVE USE OF THE SUBSCRIBER AS ONE FACTOR TO CONSIDER IN CONNECTION WITH CRE INSURANCE MARKETING OR OTHER BUSINESS DECISIONS CONTAINS INFORMATION COMPILED FROM SOURCES WHICH DUN & BRADSTREET INC DOES NOT CONTROL A WHOSE INFORMATION UNLESS OTHERWISE INDICATED IN THE REPORT HAS NOT BEEN VERIFIED IN FURNISHING THIS REPORT DUN & BRADSTREET INC IN NO WA ASSUMES ANY PART OF THE USER'S BUSINESS RISK, DOES NOT GUARANTEE THE ACCURACY COMPLETENESS, OR TIMELINESS OF THE INFORMATION PROVIDED AN SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY WHATEVER RESULTING FROM CONTINGENCIES BEYOND ITS CONTROL OR FROM NEGLIGENCE.

AFFORDABLE REMEDIAL ACTION COSTS

5/1/82
CASE: TEST CASE #1
PARTY: PFIZER, INCORPORATED
LOCATION: NEW YORK, NEW YORK
REGION: 2
DATE FILED: 4/1/82

PROBABILITY OF ADEQUATE CASH FLOW	ANNUAL COSTS AFFORDABLE (BEFORE-TAX)	ONE-TIME CHARGE AFFORDABLE (BEFORE-TAX)
50%	308.30	1106.78
60%	296.16	1063.21
70%	283.15	1016.52
80%	267.90	961.75
90%	246.79	885.96
95%	229.37	823.43
99%	196.65	705.96

THIS MEANS THAT THERE IS A 99 PERCENT CHANCE THAT
PFIZER, INCORPORATED WILL BE ABLE TO AFFORD 196.65 DOLLARS
ANNUALLY OR A ONE-TIME CHARGE OF 705.96 DOLLARS
(ASSUMING THE FIRM WILL BE ABLE TO BORROW AGAINST FUTURE EXPECTED EARNINGS). REMEMBER THIS CALCULATION ALLOWS FOR SUFFICIENT FUNDS TO MAINTAIN THEIR CURRENT PLANT AND EQUIPMENT BUT WILL NOT ALLOW THE FIRM TO MAKE ANY SIZABLE NEW INVESTMENTS.

FINANCIAL RATIOS

THE PROGRAM WILL NOW CALCULATE SOME COMMON FINANCIAL RATIOS
TO DETERMINE THE ABILITY OF THE FIRM TO FINANCE ANY LARGE
INITIAL EXPENDITURES WHICH MAY BE REQUIRED.

THE RATIO OF CASH FLOW TO TOTAL LIABILITIES FOR PFIZER, INCORPORATED IS
0.205

THIS RATIO IS ABOVE THE CRITICAL LEVEL INDICATING THAT
THE FIRM IS UNLIKELY TO GO BANKRUPT IN THE NEAR FUTURE.

THE RATIO OF TOTAL LIABILITIES TO NET WORTH FOR PFIZER, INCORPORATED IS
1.057

THIS RATIO IS BELOW THE CRITICAL LEVEL INDICATING THAT THE
FIRM SHOULD BE ABLE TO MEET ITS FUTURE OBLIGATIONS.

THE INTEREST COVERAGE RATIO FOR PFIZER, INCORPORATED IS 4.358

THIS RATIO IS ABOVE THE CRITICAL LEVEL INDICATING THAT THE FIRM
HAS ADEQUATE INCOME TO MEET ITS SHORT-TERM OBLIGATIONS.

Appendix D
Key Information Source Index

KEY INFORMATION SOURCE INDEX*

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* This list includes the sources that, in most situations, have information on PRPs and sites. Additional sources may be available for a specific PRP or site.

** Research tasks that rely on previously collected information.

INFORMATION SOURCES

(1) State Agency Sources
Department of Natural Resources
Health Department
Environmental Boards
Attorney General's Office
Water Resources Board
Soil Conservation Board
Bureau of Mines

Sample Documents:

licenses and permits	memos
correspondence	studies
inspection reports	sampling data

(2) Local City/County Agency Sources
Attorney's Office
Health Department
Department of Public Works
Water Pollution Control, Wastewater Management Departments
Planning, Land Use, Engineering Departments
Township Zoning Board
Fire Department
Police Department

Sample Documents:

operation maps	list of hazardous materials
disposal guidelines	inspection and violation reports
correspondence	plat maps and aerial photos
accident report	permits and licenses
applications	site history memos

(3) Title Information Sources
City or County Clerk or Recorder's Office
Commerce Department
Tax Assessor's Office

Sample Documents:

deeds	mortgages and liens
leases	easements
grants	agreements
addresses	legal property descriptions

(4) PRP Status Information Sources

Secretary of State's Corporation and Archives Offices (SOS)
Local Telephone Directory Assistance
Post Office
Libraries
State Archives

Sample Documents:

- articles of incorporation
- mergers
- registered agents
- certificates to do business
- articles of dissolution
- name changes
- annual reports
- city directories
- Security and Exchange Commission reports
- Dun and Bradstreet reports
- Moody's Manual of Investments
- Standard and Poor's Corporation Descriptions
- The Thomas Register of Manufacturers
- Notification of Hazardous Waste Activities
- DIALOG

(5) Financial Information Sources

Commissioner's Office
Probate Court
Uniform Commercial Code Division (UCC)
Security Exchange Commission (SEC)
Tax Assessor's Office
Libraries
Bankruptcy Court

Sample Documents:

- wills
- estate records
- quarterly reports
- tax assessments
- financial statements
- references to trusts
- financial reports
- corporate business publications

(6) Site Records

a.

memos	checks	insurance policies
offers	contracts	computer printouts
discs	agendas	weight receipts
deeds	leases	correspondence
receipts	toll receipts	data compilations
agreements	licenses	proposals
permits	bids	minutes of meetings
memoranda	notes	books of original entry
bulletins	announcements	calendar or diary entries
charts	maps	reports of scoientific study
drawings	manuals	reports of investigation
schedules	price lists	magnetic voice or video
telegrams	teletypes	magnetic tapes
tapes	summaries	accounts receivable
punch cards	recordings	

b.

invoices	waste manifests	operating logs
gate slips	bills of lading	ledgers

(7) Federal Agency Source

a. National Enforcement Investigations Center
b. Department of Interior, U.S. Geological Survey
c. Bureau of Mines
d. Bureau of Reclamation
e. Department of Agriculture, Soil Conservation Service
f. Department of Labor
g. Nuclear Regulatory Commission
h. Library of Congress
i. National Archives
j. EPA - Headquarters and Regional Offices*

Sample Documents:
- Superfund Financial Assessment
- SETS
- Standard Industrial Classification code
- maps/aerial photographs

* EPA headquarters and regional offices have a structured organization. For example, divisions may be divided into branches, branches into sections, and sections into units. The researcher should have a clear understanding of the region's organization and each group's responsibilities. Different groups will have different types of documents depending on the group's involvement with the site. During the PRP search, all pertinent groups should be contacted to obtain documents. If a contractor is conducting the search, it may be appropriate to have the primary contact act as the liaison between the contractor and other EPA groups.

(8) Miscellaneous Non-Government Sources

Libraries - Public, University
Historical Societies
Local Museums
Newspapers, Network News Stations
Local Chamber of Commerce
Better Business Bureau
Local Telephone Directories
Computer Information Services - DIALOG
Community Action Groups

Sample Documents:
- local industrial directories
- newspaper articles
- trade journals

(9) Process Chemistry Sources

EPA Office of Water and Waste Management
Trade Associations
Kirk-Othmer Encyclopedia of Chemical Technology

Sample Documents:
- effluent limitation guidelines
- trade publications
- product processing information

Appendix E
Information Collection Forms

DISCUSSION TOPICS FORM
FOR PRIVATE CITIZEN/PRP INTERVIEWS

NOTE: The purpose of this form is to assist the researcher in preparing a site-specific interview outline. The topics listed below can be eliminated, edited, or expanded, depending on the PRP search, scope of work, site conditions, interviewee, background information, and data gaps.

LOCAL RESIDENT

- o Address/telephone number
- o Years at this address
- o Relationship to site
- o Sources of information (personal observations, second-hand information, other)
- o Observations of site activities; provide as much detail as possible, such as date, time of day, persons involved, names on trucks . . . (may need to subdivide this into different types of activities, such as disposal, truck entry procedures, fires, spills).
- o Names/telephone numbers of other local residents
- o Site-specific questions:

SITE OWNER/OPERATOR (LANDFILL)

- o Address/telephone number
- o Title
- o Personal history/association with site (years involved with site, roles, and responsibilities)
- o Years of landfill operation

- History of landfill
- Types of waste accepted
- Methods of disposal during entire period of operation
- Recordkeeping procedures
- Availability of records
- Names, addresses, and telephone numbers of generators using the site
- For each generator, describe type of waste, quantities, frequency, haulers
- Names, addresses, and telephone numbers of haulers using the site
- For each hauler, describe types of waste, quantities, frequency, generators
- Names, addresses, and telephone numbers of other owners or operators
- For each owner or operator describe years involved, roles, and responsibilities
- Names, addresses, telephone numbers of site employees
- For each employee, obtain general information, such as responsibility and years of employment.
- Spontaneous events (fires, spills)
- Contract/relationship between owner and operator; between owner/operator and generator; between owner/operator and hauler
- Site-specific questions

SITE OWNER/OPERATOR (MANUFACTURING FACILITY)

- Address and telephone number
- Title
- Personal history/association with site (years employed at site, roles, and responsibilities)
- History of site
- Previous manufacturing facilities at site
- Types of waste generated at site
- Methods of disposal during entire period of operation
- Wastes accepted from off-site sources (If yes, obtain detailed information about these wastes -- generator, hauler, waste types, quantities, methods of disposal, dates of receipt.)
- Recordkeeping procedures (log books, operating records)
- Availability of records
- Names, addresses, and telephone numbers of other owners or operators
- Names, addresses, telephone numbers of site employees (If it is a small facility, you may want names of all employees; if it is a large facility, you may want names of key personnel.)
- For each employee named, obtain general information such as responsibility and years of employment
- Spontaneous events (fires, spills)
- Site-specific questions

GENERATOR EMPLOYEE (WASTE HAULED AND DISPOSED OF AT SITE)

- o Address and telephone number
- o Title
- o Employment history with generator
- o Sources of information (personal observation, second-hand information, other)
- o Wastes (type, quantity, and frequency) disposed of at the site
- o Names, addresses, and telephone numbers of haulers (Did the generator haul its own waste?)
- o Generator's role in determining disposal site
- o Generator's role in determining disposal method
- o Explain site's disposal method (Explain how generator obtained this information -- site visit, second-hand knowledge from site operator or haulers, truck drivers, other.)
- o Explain site's history
- o Spontaneous events at the site (fires, spills)
- o Recordkeeping procedures
- o Availability of records
- o Names, addresses, and telephone numbers of other persons employed by this generator
- o Names, addresses, and telephone numbers of other generators or haulers, and their employees that disposed of wastes at the site
- o Any additional information on other generators or haulers

- Site-specific questions

HAULER EMPLOYEE

- Address and telephone number
- Title
- Employment history with hauler
- Sources of information about hauling procedures and site (Observation, as observed by a truck driver, second-hand knowledge as relayed by site operator, other)
- Wastes (type, quantity, and frequency) disposed of at the site
- Names, addresses, and telephone numbers of generators
- Explain site's disposal methods
- Explain site's history
- Spontaneous events at the site (fires, spills)
- Recordkeeping procedures
- Availability of records
- Names, addresses, and telephone numbers of other persons employed by this hauler
- Names, addresses, and telephone numbers of other haulers or generators, and their employees that disposed of wastes at the site
- Any additional information on other generators or haulers
- Site-specific questions

DISCUSSION TOPICS FOR GOVERNMENT OFFICIALS

NOTE: The purpose of this form is to assist the researcher in preparing a site-specific interview outline. The topics listed below can be eliminated, edited, or expanded, depending on the PRP search, scope of work, site condition, interviewee, background information, and data gaps.

GOVERNMENT OFFICIAL

- o Title, department/office/agency
- o Address, telephone number
- o Relationship of this department to others and its roles
- o Official's involvement with site (such as inspected site frequently for many years, newly assigned and has only reviewed records, other)
- o Department's relationship with site
- o Site history (This may be divided into subsections depending on the specific site, such as site operations, permitting history, compliance history, ownership history, others.)
- o Disposal methods
- o Types and quantities of wastes generated at the site
- o Years of waste generation
- o Wastes received from off-site generators (types, quantities, frequency, years)
- o Generators' names and addresses
- o Haulers' names and addresses
- o Other PRPs

- Site security
- Site enforcement history
- Administrative or legal actions involving the site
- Relevant regulatory requirements
- Others who have knowledge of the site (departments, officials, private citizens, others)
- Availability of documents

INDUSTRIAL SURVEY INFORMATION FORM

NOTE: The purpose of this form is to assist the researcher in preparing a site-specific industrial survey information form. Depending on the scope of work, site condition, background information, and data gaps, a more site-specific form will have to be prepared to ensure that the proper information is collected. In some cases, sample answers are provided in parentheses. Generally, these samples are not as detailed as would be required during an actual survey.

INSTRUCTIONS: For each party identified as possibly contributing to the contamination at the site, collect the following information:

- Facility name
- Address, telephone number
- Facility contact
- Physical relationship to site (within 1/2- to 1-mile radius, adjacent property to the south, upstream discharge point)
- Physical relationship source (windshield survey, industrial directory, tax assessment office map)
- Type of business (active sanitary landfill, gasoline station, hospital, manufacturing facility)
- Type-of-business source (local industrial directory, observation, yellow pages)
- Years of operation
- Standard industrial classification (SIC) code
- Types of waste generated
- Types-of-waste-generated source

- Is the information on the types of waste generated (1) facility-specific information based on review of facility-specific documents or (2) assumptions based on a general knowledge of the industry?

Appendix F
Comprehensive Environmental Response, Compensation, and Liability Act

(As amended by the Superfund Amendments and Reauthorization Act of 1986)

99th Congress
2d Session

COMMITTEE PRINT

S. PRT.
99-217

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (SUPERFUND) (P.L. 96-510)

AS AMENDED BY

THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (P.L. 99-499)

DECEMBER 1986

Printed for the use of the Senate Committee
on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

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NOTE

Amendments made by the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499) are shown as follows:

Language to be omitted is enclosed in black brackets; new language is printed in italic; and language where there is no change is printed in roman.

Public Law 96-510
96th Congress

An Act

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title[, the term]—

(1) *The term* "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight[;].

(2) *The term* "Administrator" means the Administrator of the United States Environmental Protection Agency[;].

(3) *The term* "barrel" means forty-two United States gallons at sixty degrees Fahrenheit[;].

(4) *The term* "claim" means a demand in writing for a sum certain[;].

(5) *The term* "claimant" means any person who presents a claim for compensation under this Act[;].

(6) *The term* "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act[;].

(7) *The term* "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals[;].

(8) *The term* "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States[;].

(9) *The term* "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) 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[;].

(10) *The term* "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 of section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, terti-

ary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954[;].

[(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act;]

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

(12) *The term* "ground water" means water in a saturated zone or stratum beneath the surface of land or water[;].

(13) *The term* "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act[;].

(14) *The term* "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. 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 subparagraphs (A) through (F) of this paragraph, 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)[;].

(15) *The term* "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas[;].

(16) *The term* "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and

other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, [or] any foreign government[.], *any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.*

(17) *The term* "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel[;].

(18) *The term* "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States[;].

(19) *The term* "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party[;].

(20)(A) *The term* "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and [(iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;] *(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.*

(B) [in] *In* the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control[;].

(C) [in] *In* the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to

any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control[;].

(D) The term "owner or operator" does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.

(21) *The term* "person" 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[;].

(22) *The term* "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment *(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant),* but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer[;].

(23) *The terms* "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for,

action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974[;].

(24) *The terms* "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances [or] *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or [welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;] *welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.*

(25) *The terms* "respond" or "response" means remove, removal, remedy, and remedial action, *all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto*[;].

(26) *The terms* "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract

carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance[;].

(27) *The terms* "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction[;].

(28) *The term* "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water[;].

(29) *The terms* "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act[;].

(30) *The terms* "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

(31) *The term* "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act[; and].

(32) *The terms* "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(33) The term "pollutant or contaminant" shall include, but not be 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; except that the term "pollutant or contaminant" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(34) The term "alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

(35)(A) The term "contractual relationship", for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).

(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance.

(36) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37)(A) The term "service station dealer" means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 114(c), the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term "incineration vessel" means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. *For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.*

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a

quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release

in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release *or who submits in such a notification any information which he knows to be false and misleading* shall, upon conviction, be fined [not more than $10,000 or imprisoned for not more than one year, or both] *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.* Notification received pursuant to this [paragraph] *subsection* or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator

of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined [not more than $20,000, or imprisoned for not more than one year, or both] *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.*

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The

Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment[, unless the President determines that such removal and remedial action will be done properly by the

owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party]. *When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.*

[(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be 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 hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).]

(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b)*(1) INFORMATION; STUDIES AND INVESTIGATIONS.*—Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(2) COORDINATION OF INVESTIGATIONS.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken* obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after [$1,000,000] *$2,000,000* has been obligated for response actions or [six months] *12 months* has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as de-

termined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or [(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.] *(ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.*

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).

(5) STATE CREDITS.—

(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, nec-

essary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this Act.

(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.

(9) SITING.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.

[(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs

thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(d)(1) COOPERATIVE AGREEMENTS.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any

duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e) INFORMATION GATHERING AND ACCESS.—

(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

(4) INSPECTION AND SAMPLES.—

(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) COMPLIANCE ORDERS.—

(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) COMPLIANCE.—The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A).

Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

[(2)(A)] *(7) CONFIDENTIALITY OF INFORMATION.—(A)* Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii)

submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation. .

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this Act may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and

safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i)*(1)* There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, [and] the Administrator of the Social Security Administration, *the Secretary of Transportation and appropriate State and local health officials,* effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1)] *(A)* in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2)] *(B)* establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3)] *(C)* in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4)] *(D)* in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, *where appropriate,* epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5)] *(E)* either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(j) ACQUISITION OF PROPERTY.—

(1) AUTHORITY.—The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the President to acquire any interest in real property under this Act.

(2) STATE ASSURANCE.—The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.

(2)(A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry ("ATSDR") and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological pro-

files of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program,

the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund

Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 111(c)(4), the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-

term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a signif-

icant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours

into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a) REVISION AND REPUBLICATION.*—Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities

under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, *the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,* State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, [at least four hundred of] the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority [facilities at least] *facilities* one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. *A State shall be allowed to designate its highest priority facility only once.* Other priority facilities or incidents may be listed singly or grouped for response priority purposes; [and]

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor[.] *and including consideration of minority firms in accordance with subsection (f); and*

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan.

The President may, from time to time, revise and republish the national contingency plan.

(b) REVISION OF PLAN.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) HAZARD RANKING SYSTEM.—

(1) REVISION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after enactment of the Superfund Amendments and Reauthorization Act of 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) REEVALUATION NOT REQUIRED.—The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) NEW INFORMATION.—Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this Act.

(d) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) MINORITY CONTRACTORS.—In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

(g) SPECIAL STUDY WASTES.—

(1) APPLICATION.—This subsection applies to facilities—

(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL.—Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure

to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) SAVINGS PROVISIONS.—Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this Act shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b)*(1)* Any person [who willfully] *who, without sufficient cause, willfully* violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$25,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropri-

ate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel [(otherwise subject to the jurisdiction of the United States)] 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 substances, and

(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, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; [and]

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release[.]; *and*

(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the conse-

quences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, *other than an incineration vessel,* which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, *other than an incineration vessel,* $300 per gross ton, or $500,000, whichever is greater:

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for *any incineration vessel or* any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the

United States pursuant to this subsection shall be deposited in the Fund.

[(d) No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.]

(d) RENDERING CARE OR ADVICE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) SAVINGS PROVISION.—This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f)*(1) NATURAL RESOURCES LIABILITY.*—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government

and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State *and to any Indian tribe for natural resources belonging to, manager by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however,* That no liability to the United States or State *or Indian tribe* shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, *so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.* The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. [Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, *or the Indian tribe* [1] but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.] *Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource.* There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act and such section 311 for those resources under their trusteeship and may, upon request of and

[1] The phrase "or the Indian tribe" was inserted here by section 207(c)(1)(D) of Public Law 99-499.

reimbursement from a State and at the Federal officials discretion, assess damages for those natural resources under the State's trusteeship.

(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

[(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.] *(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 120 of this Act.*

(h) The owner or operator of a vessel shall be liable in accordance with this section, *under Maritime tort law,* and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) *or the absence of any physical damage to the proprietary interest of the claimant.*

(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to

assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, in-

cluding limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(l) FEDERAL LIEN.—

(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this Act.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms "purchaser"

and "security interest" shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater *to cover the liability prescribed under paragraph (1) of section 107(a) of this Act*). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional

evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.*

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements [over a period of not less than three and no more than six years] *as quickly as can reasonably be achieved but in no event more than 4 years* after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 107 of this Act.]

(c) DIRECT ACTION.—

(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) LIMITATION OF GUARANTOR LIABILITY.—

(1) TOTAL LIABILITY.—The total liability of any guarantor in a direct action suit brought under this section shall be limited

to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.

[PENALTY

[SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation.]

CIVIL PENALTIES AND AWARDS

SEC. 109. (a) CLASS I ADMINISTRATIVE PENALTY.—

(1) VIOLATIONS.—A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

(A) A violation of the requirements of section 103 (a) or (b) (relating to notice).

(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

(2) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) REVIEW.—Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) SUBPOENAS.—The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

(1) A violation of the notice requirements of section 103 (a) or (b).

(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in

accordance with section 554 of title 5 of the United States Code. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(c) JUDICIAL ASSESSMENT.—The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

(1) A violation of the notice requirements of section 103 (a) or (b).

(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 104(e) (relating to information gathering and access authorities), see section 104(e).

(d) AWARDS.—The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation of section 103 and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

(e) PROCUREMENT PROCEDURES.—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not

furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

(f) SAVINGS CLAUSE.—Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this Act.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) *IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).* The President shall use the money in the Fund for the following purposes:

(1) [payment] *Payment* of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act[;].

(2) [payment] *Payment* of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official[;].

(3) [payment] *Payment* of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title[;]. [and]

(4) [payment] *Payment* of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b)*(1) IN GENERAL.*—Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, *or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.*

(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

(B) DEFINITION.—As used in this paragraph, the term "natural resource claim" means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the cost of natural resource damage assessment.

(c) Uses of the Fund under subsection (a) of this section include—

(1) [the] *The* costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance[;].

(2) [the] *The* costs of Federal or State *or Indian tribe* efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance[;].

(3) [subject] *Subject* to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances[;].

(4) [the costs of epidemiologic studies,] *Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i) including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases[;].

(5) [subject] *Subject* to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan[; and].

(6) [subject] *Subject* to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the

5-fiscal-year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

(d)(1) No money in the Fund may be used under subsection (c) (1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. *No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed ro response to threats to public health from releases or threatened releases of hazardous substances.*

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; *except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.*

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in

the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State *or Indian tribe* operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

[(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

[(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.]

(h) **Reserved.**

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State *and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,* having sustained damage to natural resources within its borders, belonging to, managed by or appertain-

ing to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

[(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.]

(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act) carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) 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

(4) recovery is authorized by a treaty or an executive agreement between the United States and 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.

(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

(A) For the fiscal year 1987, $3,000,000.
(B) For the fiscal year 1988, $10,000,000.
(C) For the fiscal year 1989, $20,000,000.
(D) For the fiscal year 1990, $30,000,000.
(E) For the fiscal year 1991, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).

(o) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the enactment of this subsection, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.

(p) GENERAL REVENUE SHARE OF SUPERFUND.—

(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

(A) For fiscal year 1987, $212,500,000.
(B) For fiscal year 1988, $212,500,000.
(C) For fiscal year 1989, $212,500,000.
(D) For fiscal year 1990, $212,500,000.
(E) For fiscal year 1991, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of the Internal Revenue Code of 1986 for the prior fiscal year.

CLAIMS PROCEDURE

SEC. 112. [(a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.]

(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claims may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

[(b)(1)] *(b)(1) PRESCRIBING FORMS AND PROCEDURES.*—The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined [up to $5,000 or imprisoned for not more than one year, or both.] *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.*

[(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

[(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

[(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

[(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

[(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

[(4)(A) Within ninety days of the enactment of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

[(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

[(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities pursuant to section 104(b) of this title. The President shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

[(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

[(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

[(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsec-

tion (b)(2)(A) of this section be admissible as evidence in any such proceeding.

[(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

[(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.]

(2) PAYMENT OR REQUEST FOR HEARING.—The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) BURDEN OF PROOF.—In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) DECISIONS.—All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) FINALITY AND APPEAL.—All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) PAYMENT.—Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all

rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

[(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

(d) STATUTE OF LIMITATIONS.—

(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

(2) CLAIMS FOR RECOVERY OF DAMAGES.—No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which final regulations are promulgated under section 301(c).

(3) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally stopped from raising such question in connection with any other claim not covered

or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c) (1) or (2), no other claim may be paid out of the Fund for the same costs.

LITIGATION, JURISDICTION, AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in [subsection] *subsections* (a) *and (h)* of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) CONTRIBUTION.—

(1) CONTRIBUTION.—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribu-

tion regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List ("NPL"), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

(5) ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

(6) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) TIMING OF REVIEW.—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the

United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution.

(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

(5) An action under section 106 in which the United States has moved to compel a remedial action.

(i) INTERVENTION.—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) JUDICIAL REVIEW.—

(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base

the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) PARTICIPATION PROCEDURES.—

(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2) (relating to public participation).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.]

(c) RECYCLED OIL.—

(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) PRESUMPTION.—Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) DEFINITION.—For purposes of this subsection, the terms "used oil" and "recycled oil" have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act and regulations promulgated pursuant to that Act.

(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

SEC. 116. SCHEDULES.

(a) ASSESSMENT AND LISTING OF FACILITIES.—It shall be a goal of this Act that, to the maximum extent practicable—

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) EVALUATION.—Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established

in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) EXPLANATIONS.—If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) COMMENCEMENT OF RI/FS.—The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after such date of enactment, an additional 200 by the date 5 years after such date of enactment, and a total of 650 by the date 5 years after such date of enactment.

(e) COMMENCEMENT OF REMEDIAL ACTION.—The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, at a rate not fewer than:

(1) 175 facilities during the first 36-month period after enactment of this subsection; and

(2) 200 additional facilities during the following 24 months after such 36-month period.

SEC. 117. PUBLIC PARTICIPATION.

(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

(1) if any remedial action is taken,

(2) if any enforcement action under section 106 is taken, or

(3) if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

(e) GRANTS FOR TECHNICAL ASSISTANCE.—

(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

SEC. 118. HIGH PRIORITY FOR DRINKING WATER SUPPLIES.

For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a

high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) SAVINGS PROVISIONS.—

(1) LIABILITY OF OTHER PERSONS.—The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

(c) INDEMNIFICATION.—

(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was

caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) APPLICABILITY.—This subsection shall apply only with respect to a response action carried out under written agreement with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

(D) any potentially responsible party carrying out any agreement under section 122 (relating to settlements) or section 106 (relating to abatement).

(3) SOURCE OF FUNDING.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund Amendments and Reauthorization Act of 1986. For purposes of section 111, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 104. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

(4) REQUIREMENTS.—An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

(5) LIMITATIONS.—

(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

(ii) CONDITIONS.—The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

(6) COST RECOVERY.—For purposes of section 107, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

(7) REGULATIONS.—The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

(8) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

(d) EXCEPTION.—The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

(e) DEFINITIONS.—For purposes of this section—

(1) RESPONSE ACTION CONTRACT.—The term "response action contract" means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

(D) any potentially responsible party carrying out an agreement under section 106 or 122;

to provide any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) RESPONSE ACTION CONTRACTOR.—The term "response action contractor" means—

(A) any—

(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

(3) INSURANCE.—The term "insurance" means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

(f) COMPETITION.—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall

be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this Act. Such procedures shall be followed by response action contractors and subcontractors.

SEC. 120. FEDERAL FACILITIES.

(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazard-

ous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

(e) REQUIRED ACTION BY DEPARTMENT.—

(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency,

or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(A) to the extent such information is available on the basis of a complete search of agency files—

(i) a notice of the type and quantity of such hazardous substances,

(ii) notice of the time at which such storage, release, or disposal took place, and

(iii) a description of the remedial action taken, if any, and

(B) a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any

requirement of the Solid Waste Disposal Act (including corrective action requirements).

(j) NATIONAL SECURITY.—

(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.

SEC. 121. CLEANUP STANDARDS.

(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants

is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) DEGREE OF CLEANUP.—(1) Remedial actions selected under this section or otherwise required or agreed to by the President

under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, or the Solid Waste Disposal Act; or

(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section, 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be

transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(e) PERMITS AND ENFORCEMENT.—(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagree-

ments concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

(f) STATE INVOLVEMENT.—(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

(B) Allocation of responsibility for hazard ranking system scoring.

(C) State concurrence in deleting sites from the National Priorities List.

(D) State participation in the long-term planning process for all remedial sites within the State.

(E) A reasonable opportunity for States to review and comment on each of the following:

(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

(ii) The planned remedial action identified in the remedial investigation and feasibility study.

(iii) The engineering design following selection of the final remedial action.

(iv) Other technical data and reports relating to implementation of the remedy.

(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in

the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

(2)(A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 106 before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

> *(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.*
>
> *(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.*

(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

SEC. 122. SETTLEMENTS.

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

(1) MIXED FUNDING.—An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

(2) REVIEWABILITY.—The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

(3) RETENTION OF FUNDS.—If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) FUTURE OBLIGATION OF FUND.—In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of

the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) EFFECT OF AGREEMENT.—

(1) LIABILITY.—Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

(d) ENFORCEMENT.—

(1) CLEANUP AGREEMENTS.—

(A) CONSENT DECREE.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment

by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

(2) PUBLIC PARTICIPATION.—

(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

(e) SPECIAL NOTICE PROCEDURES.—

(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

(2) NEGOTIATION.—

(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

(A) IN GENERAL.—The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after comple-

tion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

(B) COLLECTION OF INFORMATION.—To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(C) EFFECT.—The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

(D) COSTS.—The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

(E) DECISION TO REJECT OFFER.—Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

(4) FAILURE TO PROPOSE.—If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b).

(5) SIGNIFICANT THREATS.—Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or

the environment within the negotiation period established by this subsection.

(6) INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

(f) COVENANT NOT TO SUE.—

(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(D) The response action has been approved by the President.

(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under

this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 106 or 107 with respect to such release or threatened release at a future time.

(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(5) SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(6) ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph

(A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

(g) DE MINIMIS SETTLEMENTS.—

(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be

issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

(h) COST RECOVERY SETTLEMENT AUTHORITY.—

(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

(2) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

(3) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(4) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(i) SETTLEMENT PROCEDURES.—

(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at

through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

(j) NATURAL RESOURCES.—

(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(k) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to releases from a vessel.

(l) CIVIL PENALTIES.—A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 120 (relating to Federal facilities) or which is a party to an agreement under section 120 and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 109.

(m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW.—In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this Act shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) REIMBURSEMENT.—

(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

SEC. 124. METHANE RECOVERY.

(a) IN GENERAL.—In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

(1) The owner or operator of such equipment shall not be considered an "owner or operator", as defined in section 101(20), with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

(b) EXCEPTIONS.—Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107

with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.

SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.

SEC. 126. INDIAN TRIBES.

(a) TREATMENT GENERALLY.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

(b) COMMUNITY RELOCATION.—Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land

of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) STUDY.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) LIMITATION.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes on Petroleum and Certain Chemicals

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax [of 0.79 cent a barrel] *at the rate specified in subsection (c)* on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax [of 0.79 cent a barrel] *at the rate specified in subsection (c)* is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) RATE OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel.

[*"(c)*] *"(d)* PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

[*"(d)* TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

"(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

"(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).]

"(e) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—If on December 31, 1989, or December 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $6,650,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) TERMINATION IF $6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) $6,650,000,000 will be so credited to the Fund.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"(c) CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611.

[*"(c)*] *"(d)* DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75

"In the case of:	The tax is the following amount per ton
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"For periods before 1992 the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'.

"(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(3) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

"(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be

treated as a taxable chemical only if it is used otherwise than as a fuel *or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel*[2] (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a [qualified substance,] *qualified fertilizer substance*[3] no tax shall be imposed under section 4661(a).

[**"(B) QUALIFIED SUBSTANCE.**—For purposes of this section, the term 'qualified substance' means any substance—

[**"(i)** used in a qualified use by the manufacturer, producer, or importer,

[**"(ii)** sold for use by the purchaser in a qualified use, or

[**"(iii)** sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

[**"(C) QUALIFIED USE.**—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.]

[4] *"(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term 'qualified fertilizer substance' means any substance—*

"(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fertilizer use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

[4] *"(C) QUALIFIED FERTILIZER USE.—The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.*

[4] *"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.**

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

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[2] This amendment was made by section 1019(a)(3) of Public Law 98-369, the Deficit Reduction Act of 1984.

[3] This amendment was made by section 1019(b)(2)(A) of Public Law 98-369, the Deficit Reduction Act of 1984.

[4] Added by section 1019(b)(1) of Public Law 98-369, the Deficit Reduction Act.

"(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term 'qualified fuel substance' means any substance—

"(i) used in a qualified fuel use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fuel use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

"(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term 'qualified fuel use' means—

"(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

"(ii) any use as such a fuel.

"(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

"(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

"(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

"(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

"(ii) any solution or mixture containing any chemical described in clause (i).

"(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.[5]

"(7) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term "xylene' does not include any separated isomer of xylene.

"(8) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

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[5] Paragraphs (5) and (6) were added by section 1019(a)(1) of Public Law 98-369, the Deficit Reduction Act of 1984.

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period tht required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SPECIAL RULE FOR GROUNDWATER TREATMENT.—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEE.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(10) HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) REMOVAL, ETC., TREATED AS USE.—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) ORGANIC TAXABLE CHEMICAL.—For purposes of this paragraph, the term 'organic taxable chemical' means any taxable chemical which is an organic substance.

["(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—**[**If**]** [6] *Except as provided in subsection (b), if* [6] any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.**]**

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer

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[6] This amendment was made by section 1019(c) of Public Law 98-369, the Deficit Reduction Act of 1984.

of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1).

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance [the sale of which by such person would be taxable under such section,] *which is a taxable chemical,*

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax [imposed by such section on the other substance manufactured or produced.] *imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but not for subsection (b) or (e) of this section).*

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

[("(B) any person uses such substance, or sells such substance for use, as a qualified substance,] [7]

"(B) any person uses such substance as a qualified fertilizer,[7]

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the

[7] This amendment was made by section 1019(b)(2)(B) of Public Law 98-369, the Deficit Reduction Act of 1984.

same manner as if it were an overpayment of tax imposed by this section.

[8]*"(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—*

"(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

"(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall appy for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii)(I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

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[8] Paragraph (3) is an amendment made by section 1019(a)(2) of Public Law 98-369, the Deficit Reduction Act of 1984.

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[*"(e)*] *"(f)* DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

"CHAPTER 38. Environmental taxes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1981.

[Subtitle B [9]—Establishment of Hazardous Substance Response Trust Fund

[SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

[(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the [*"Hazardous Substance Response Trust Fund"*] *"Hazardous Substances Superfund"* [10] (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

[(b) TRANSFERS TO RESPONSE TRUST FUND.—

[(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

[(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

[(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

[(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

[(D) penalties assessed under title I of this Act, and

[(E) punitive damages under section 107(c)(8) of this Act.

[(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

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[9] Section 517(c) of Public Law 99-499 repeals this subtitle.

[10] This amendment was made by section 204 of Public Law 99-499.

[(A) 1981, $44,000,000,
[(B) 1982, $44,000,000,
[(C) 1983, $44,000,000,
[(D) 1984, $44,000,000, and
[(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

[(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

[(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

[(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

[(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b) (1)(A) and (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

[*(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 shall be available for expenditure only as provided in section 111 of this Act.*[11]

[SEC. 222. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

[(a) GENERAL RULE.—Any claim filed against the Response Trust Fund may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount with respect to any such claim out of any source other than the Response Trust Fund.

[(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Response Trust Fund is unable (by reason of subsection (a) or the limitation of section 221(c)(2)) to pay all of the claims pay-

[11] Section 204(b) of Public Law 99-499.

able out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

[SEC. 223. ADMINISTRATIVE PROVISIONS.

[(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Response Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

[(b) MANAGEMENT OF TRUST FUND.—

[(1) REPORT.—The Secretary shall be the trustee of the Response Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

[(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of such Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of such Trust Fund.

[(c) AUTHORITY TO BORROW.—

[(1) IN GENERAL.—There are authorized to be appropriated to the Response Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

[(2) LIMITATIONS ON ADVANCES TO RESPONSE TRUST FUND.—

[(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Response Trust Fund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts which will be appropriated or transferred to such Trust Fund under paragraph (1)(A) of section 221(b) of this Act for the following 12 months, and

[(B) ADVANCES FOR PAYMENT OF RESPONSE COSTS.—No amount may be advanced after March 31, 1983, to the Response Trust Fund for the purpose of paying response costs described in section 111(a) (1), (2), or (4), unless such costs are incurred incident to any spill the effects of which the Secretary determines to be catastrophic.

[(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Response Trust Fund which is outstanding at any one time for the purpose of paying costs other than costs described in section 111(a) (1), (2), or

(4) shall not exceed one-third of the amount of the estimate made under subparagraph (A).

[(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.

[(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.]

Subtitle C—Post-Closure Tax and Trust Fund

SEC. 231. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 38, as added by section 211, is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax on Hazardous Wastes

"Sec. 4681. Imposition of tax.
"Sec. 4682. Definitions and special rules.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

"SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste—

"(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

"(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

"(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term 'qualified hazardous waste disposal facility' means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

"(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

"(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not

remain at the qualified hazardous waste disposal facility after the facility is closed.

"(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"Subchapter C—Tax on Hazardous Wastes.".

SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a)(1) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health,

welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and

shall submit an interim report on his study within one year of the date of enactment of this Act.

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act. *Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.*

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) INSURABILITY STUDY.—

(1) STUDY BY COMPTROLLER GENERAL.—The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this Act.

(B) Persons who own or operate facilities: liability for costs and damages under this Act.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) CONSULTATION.—In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) ITEMS EVALUATED.—The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this Act on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of

such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding the enactment of this subsection.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) SUBMISSION.—The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after the enactment of this subsection.

(h) REPORT AND OVERSIGHT REQUIREMENTS.—

(1) ANNUAL REPORT BY EPA.—On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year. In addition such report shall specifically include each of the following:

(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

(B) The status and estimated date of completion of each such study.

(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

(E) Progress made in reducing the number of facilities subject to review under section 121(c).

(F) A report on the status of all remedial and enforcement actions undertaken during the prior fiscal year, including a comparison to remedial and enforcement actions undertaken in prior fiscal years.

(G) An estimate of the amount of resources, including the number of work years or personnel, which would be necessary for each department, agency, or instrumentality which is carrying out any activities of this Act to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

(2) REVIEW BY INSPECTOR GENERAL.—Consistent with the authorities of the Inspector General Act of 1978 the Inspector General of the Environmental Protection Agency shall review any report submitted under paragraph (1) related to EPA's activities for reasonableness and accuracy and submit to Congress, as a part of such report a report on the results of such review.

(3) CONGRESSIONAL OVERSIGHT.—After receiving the reports under paragraphs (1) and (2) of this subsection in any calendar year, the appropriate authorizing committees of Congress shall

conduct oversight hearings to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

[EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.] [12]

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act

[12] Repealed by section 501(b) of P.L. 99-499.

shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

SEC. 306. (a) Each hazardous substance which is listed or designated as provided in section 101(14) of this Act shall, [within ninety days after the date of enactment of this Act] *within 30 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986,* or at the time of such listing or designation, whichever is later, be listed *and regulated* as a hazardous material under the Hazardous Materials Transportation Act.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing *and regulation*: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation.".

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby. *If an administrative settlement under section 122 has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.*

SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

(b) DEFINITIONS.—As used in this section—

(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

(2) APPLICABLE LIMITATIONS PERIOD.—The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

(3) COMMENCEMENT DATE.—The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to

by the hazardous substance or pollutant or contaminant concerned.

(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

SEC. 310. CITIZENS SUITS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section and in section 113(h) (relating to timing of judicial review), any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 311 (relating to research, development, and demonstration).

(b) VENUE.—

(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

(d) RULES APPLICABLE TO SUBSECTION (a)(1) ACTIONS.—

(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) DILIGENT PROSECUTION.—No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this Act, or under the Solid Waste Disposal Act to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

(e) RULES APPLICABLE TO SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) INTERVENTION.—In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 113.

(h) OTHER RIGHTS.—This Act does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 113(h) or as otherwise provided in section 309 (relating to actions under State law).

(i) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.

SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

(B) Training, which may include each of the following:

(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and

demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the "Advisory Council") which shall consist of representatives of the following:

(A) The relevant Federal agencies.
(B) The chemical industry.
(C) The toxic waste management industry.
(D) Institutions of higher education.
(E) State and local health and environmental agencies.
(F) The general public.

(6) PLANNING.—Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the "program") which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(2) ADMINISTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

(3) CONTRACTS AND GRANTS.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

(4) USE OF SITES.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out

research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

(5) DEMONSTRATION ASSISTANCE.—

(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

(iii) The development of detailed plans for innovative technology demonstration projects.

(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

(C) APPLICATIONS.—Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the

project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

(E) SITE SELECTION.—The Administrator shall propose 10 sites at which a response may be undertaken under section 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to

withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

(9) TRAINING.—The Administrator is authorized and directed to carry out, through the Office of Technology demonstration, a program of training and an evaluation of training needs for each of the following:

(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

(10) DEFINITION.—For purposes of this subsection, the term "alternative or innovative treatment technologies" means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

(c) HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection

for any fiscal year shall be available to carry out technology transfer activities.

(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).

SEC. 312. LOVE CANAL PROPERTY ACQUISITION.

(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by

any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c)). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

(f) FUNDING.—For purposes of section 111 [and 221(c) of this Act], the expenditures authorized by this section shall be treated as a cost specified in section 111(c).

(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

(h) DEFINITIONS.—For purposes of this section:

(1) EMERGENCY DECLARATION AREA.—The terms "Emergency Declaration Area" and "Love Canal Emergency Declaration Area" mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

(2) PRIVATE PROPERTY.—As used in subsection (a), the term "private property" means all property which is not owned by a department, agency, or instrumentality of—

(A) the United States, or

(B) the State of New York (or any public agency or authority thereof).

TITLE IV—POLLUTION INSURANCE

SEC. 401. DEFINITIONS.

As used in this title—

(1) INSURANCE.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) POLLUTION LIABILITY.—The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) RISK RETENTION GROUP.—The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) PURCHASING GROUP.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

SEC. 402. STATE LAWS; SCOPE OF TITLE.

(a) STATE LAWS.—Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

(b) SCOPE OF TITLE.—The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

SEC. 403. RISK RETENTION GROUPS.

(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) EXCEPTIONS.—

(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 404. PURCHASING GROUPS.

(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group:

(A) Pollution liability insurance and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing

group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 405. APPLICABILITY OF SECURITIES LAWS.

(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

PROVISIONS OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (P.L. 99-499) WHICH DO NOT AMEND PUBLIC LAW 96-510 (CERCLA)

SEC. 118. MISCELLANEOUS PROVISIONS.

* * * * * * *

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUATERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309 (a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than July 1, 1987.

(e) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983, and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(3) The facility at which the release or threatened release has occurred is identified as the McColl Site in Fullerton, California.

The terms used in this section shall have the same meaning as when used in title I of CERCLA.

(f) STUDY OF LEAD POISONING IN CHILDREN.—(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1987, submit to the Congress, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources

of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substance Superfund established under subchapter A of chapter 98 of Internal Revenue Code of 1954.

(g) FEDERALLY LICENSED DAM.—For purposes of CERCLA in the case of the Milltown Dam in the State of Montana licensed under part 1 of the Federal Power Act and designated as FERC license number 2543-004, if a hazardous substance, pollutant, or contaminant—

(1) has been released into the environment upstream of the dam, and

(2) has subsequently come to be located in the reservoir created by such dam

notwithstanding section 101(20) of such Act, the term "owner or operator" does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107 of such Act.

(h) COMMUNITY RELOCATION AT TIMES BEACH SITE.—For purposes of any Missouri dioxon site at which a temporary or permanent relocation decision has been made, or is under active consideration, by the Administrator as of the enactment of this Act, the terms "remove" and "removal" as used in CERCLA shall be deemed to include the costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare. In the case of a business located in an area of evacuation or relocation at such facility, such terms may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and 30 days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, such terms may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974; except that the costs of such assistance shall be paid from the Trust Fund established under amendments made to the Internal Revenue Code of 1954 by this Act. Section 104(c)(1) of CERCLA shall not apply to obligations from the Fund for permanent relocation under this paragraph.

(i) LIMITED WAIVERS IN STATE OF ILLINOIS.—

(1) MOBILE INCINERATORS.—In the case of remedial actions specifically involving mobile incinerator units in the State of Illinois, if such remedial actions are undertaken by the State under the authority of a State Superfund law or equivalent authority, the State may, with the approval of the Administrator, waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

(A) NO TRANSFER.—The incinerator does not involve the transfer of a hazardous substance or pollutant or contami-

nant from the facility at which the release or threatened release occurs to an offsite facility.

(B) REMEDIAL ACTION.—The remedial action provides each of the following:

(i) Changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

(ii) Protection against accidental emissions during operation.

(iii) Protection of public health considering the multimedia impacts of the treatment process.

(C) PUBLIC PARTICIPATION.—The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under CERCLA and under the Solid Waste Disposal Act.

(2) EFFECT OF WAIVER.—The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which—

(A) is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action; and

(B) would otherwise be contained in the permit.

Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State.

(3) EXPIRATION OF AUTHORITY.—The authority of this subsection shall terminate at the end of 3 years, unless the State demonstrates, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.

(j) STUDY OF JOINT USE OF TRUCKS.—

(1) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(A) whether such joint use of vehicles should be prohibited, and

(B) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(2) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under paragraph (1) not later than 180 days after the date of the enactment of this Act.

(k) RADON ASSESSMENT AND MITIGATION.—

(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act, the Administrator shall submit to the Congress a report which shall, to the extent possible—

(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

(B) assess the levels of radon gas that are present in such structures;

(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

(E) include guidance and public information materials based on the findings or research of mitigating radon.

(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

(B) ANNUAL REPORTS.—The Administrator shall submit annual reports not later than February 1 of each year (beginning February 1, 1987) on the status of the demonstration program carried out under this subsection and on any such demonstration program initiated prior to enactment.

(C) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(l) GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting re-

search to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(m) RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES.—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

(n) SPILL CONTROL TECHNOLOGY.—

(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection, the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

(A) documents and archives spill control technology;

(B) investigates and analyzes significant hazardous spill incidents;

(C) develops and provides generic emergency action plans;

(D) documents and archives spill test results;

(E) develops emergency action plans to respond to spills;

(F) conducts training of spill response personnel; and

(G) establishes safety standards for personnel engaged in spill response activities.

(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.

(o) PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(3) OPERATION OF CENTER.—

(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section [201(i) of Public Law 96-517 Citation Not Correct] which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Adminis-

trator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(p) SILVER CREEK TAILINGS.—Effective with the date of enactment of this Act, the facility listed in Group 7 in EPA National Priorities List Update #4 (50 Federal Register 37956, September 18, 1985), the site in Park City, Utah, which is located on tailings from noncoal mining operations, shall be deemed removed from the list of sites recommended for inclusion on the National Priorities List, unless the President determines upon site specific data not used in the proposed listing of such facility, that the facility meets requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SEC. 120. FEDERAL FACILITIES.

* * * * * * *

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

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(b) EFFECTIVE DATE.—With respect to section 121 of CERCLA, as added by this section—

(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the "ROD") was signed, or the consent decree was lodged, before date of enactment.

(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act and reopened after enactment of this Act to modify or supplement the selection of

remedy shall be subject to the requirements of section 121 of CERCLA.

SEC. 124. METHANE RECOVERY.

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(b) REGULATION UNDER THE SOLID WASTE DISPOSAL ACT.—Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act, the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

SEC. 126. WORKER PROTECTION STANDARDS.

(a) PROMULGATION.—Within one year after the date of the enactment of this section, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

(b) PROPOSED STANDARDS.—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and

degree of toxic exposure likely as a result of such hazardous waste operations.

(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) FINAL REGULATIONS.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

(d) SPECIFIC TRAINING STANDARDS.—

(1) OFFSITE INSTRUCTION; FIELD EXPERIENCE.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) TRAINING OF SUPERVISORS.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers, onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 providing for standards for the health and safety protection of employees engaged in hazardous waste operations.

(g) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

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(d) SAVINGS CLAUSE.—Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding the following new subsection at the end thereof:

"(h) SAVINGS CLAUSE.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act.".

SEC. 203. STATE PROCEDURAL REFORM.

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(c) FINANCIAL RESPONSIBILITY.—

(1) REQUIREMENTS.—Section 9003(c) of the Solid Waste Disposal Act is amended by striking "and" at the end of paragraph (4), striking the period at the end of paragraph (5) and substituting "; and" and by adding the following new paragraph at the end thereof:

"(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank".

(2) CONFORMING AMENDMENT.—Section 9003(d) of such Act is amended by striking out paragraph (1) and renumbering paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(3) OTHER METHODS.—Section 9003(d)(1) of such Act (as redesignated by paragraph (2) of this subsection) is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(4) Section 9003(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than

$1,000,000 for each occurrence with an appropriate aggregate requirement.

"(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

"(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

"(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

"(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

"(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

"(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

"(v) Such other factors as the Administrator deems pertinent.

"(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

"(i) steps are being taken to form a risk retention group for such class of tanks; or

"(ii) such State is taking steps to establish a fund pursuant to section 9004(c)(1) of this Act to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).".

(d) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

"(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

"(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

"(2) AFTER REGULATIONS.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

"(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expendi-

tures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

"(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 9006 or with the order of a State under this subsection to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) RECOVERY.—In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

"(C) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(D) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—

"(A) GENERAL.—A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

"(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

"(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

"(B) COST SHARE.—Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without partici-

pating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

"(10) DEFINITION OF EXPOSURE ASSESSMENT.—As used in this subsection, the term 'exposure assessment' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

"(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.".

(e) FINANCIAL RESPONSIBILITY IN STATE PROGRAMS.—

(1) Section 9004(c)(1) of the Solid Waste Disposal Act is amended by striking out "financed by fees on tank owners and operators and".

(2) Section 9004(c)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," in the first sentence and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.". Such section is further amended by adding after the word "terms" in the second sentence the following: "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 9003(d)(5),".

(f) AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS.—

(1) Section 9005(a) of the Solid Waste Disposal Act is amended by inserting the words "taking any corrective action" after the word "study", inserting the words "acting pursuant to subsection (h)(7) of section 9003 or" after the words "or representative of a State", striking the word "and" before the words "permit such officer", and inserting the words "and permit such officer to have access for corrective action" after the words "relating to such tanks" in the first sentence thereof. Such section is further amended by inserting the words "taking corrective action," after the word "study," in the second sentence thereof.

(2) Section 9005(a) of the Solid Waste Disposal Act is amended by striking the word "and" at the end of paragraph (2), inserting the word "and" after paragraph (3) and adding the following new paragraph—

"(4) to take corrective action.

(3) Section 9005 of the Solid Waste Disposal Act is amended by changing the heading thereof to read as follows—

"INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION".

(g) COORDINATION WITH OTHER LAWS.—Section 9008 of the Solid Waste Disposal Act is amended to read as follows:

"STATE AUTHORITY

"SEC. 9008. Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

(h) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of

marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events.

(i) CRIMINAL PENALTIES RELATING TO USED OIL.—Subtitle C of the Solid Waste Disposal Act is amended as follows:

(1) In paragraphs (4) and (5) of section 3008(d) after "hazardous waste" insert "or any used oil not identified or listed as a hazardous waste under this subtitle".

(2) Delete "accompanied by a manifest; or" in paragraph (5) and insert "accompanied by a manifest;".

(3) Insert "; or" after paragraph (6).

(4) Add the following new paragraph after paragraph (6):

"(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under subtitle C of the Solid Waste Disposal Act—

"(A) in knowing violation of any material condition or requirement of a permit under this subtitle C; or

"(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this Act;

(5) In section 3008(e):

(A) Insert "or used oil not identified or listed as a hazardous waste under this subtitle" immediately after "this subtitle".

(B) Strike "or" immediately before "(6)".

(C) Insert ", or (7)" immediately after "(6)".

(j) STATE PROGRAMS FOR USED OIL.—Section 3006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) STATE PROGRAMS FOR USED OIL.—In the case of used oil which is not listed or identified under this subtitle as a hazardous waste but which is regulated under section 3014, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subtitle.

SEC. 209. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate

the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.

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SEC. 211. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§ 2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.).

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

"(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel owned or operated by the Department of Defense.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include research, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

"(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information

through the office of technology demonstration of the Environmental Protection Agency.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, the term "unregulated hazardous substance" means a hazardous substance—

"(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from a facility under the jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in

which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.

"§ 2707. Definitions

"In this chapter:

"(1) The terms 'environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

"(2) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

"(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration ..... 2701".

"(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

"(c) In this section, the term 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).".

"(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

"(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 213. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SEC. 300. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Emergency Planning and Community Right-To-Know Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 300. Short title; table of contents.

Subtitle A—Emergency Planning and Notification

Sec. 301. Establishment of State commissions, planning districts, and local committees.
Sec. 302. Substances and facilities covered and notification.
Sec. 303. Comprehensive emergency response plans.
Sec. 304. Emergency notification.
Sec. 305. Emergency training and review of emergency systems.

Subtitle B—Reporting Requirements

Sec. 311. Material safety data sheets.
Sec. 312. Emergency and hazardous chemical inventory forms.
Sec. 313. Toxic chemical release forms.

Subtitle C—General Provisions

Sec. 321. Relationship to other law.
Sec. 322. Trade secrets.

Sec. 323. Provision of information to health professionals, doctors, and nurses.
Sec. 324. Public availability of plans, data sheets, forms, and followup notices.
Sec. 325. Enforcement.
Sec. 326. Civil Actions.
Sec. 327. Exemption.
Sec. 328. Regulations.
Sec. 329. Definitions.
Sec. 330. Authorization of appropriations.

Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS.—Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency planning district.

(c) ESTABLISHMENT OF LOCAL EMERGENCY PLANNING COMMITTEES.—Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environ-

mental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) REVISIONS.—A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) SUBSTANCES COVERED.—

(1) IN GENERAL.—A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) LIST OF EXTREMELY HAZARDOUS SUBSTANCES.—Within 30 days after the date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) THRESHOLDS.—(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) REVISIONS.—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the

term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) FACILITIES COVERED.—(1) *Except as provided in section 304,* a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) EMERGENCY PLANNING NOTIFICATION.—Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subtitle.

(d) NOTIFICATION OF ADMINISTRATOR.—The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) RESOURCES.—Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) PLAN PROVISIONS.—Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) PROVIDING OF INFORMATION.—For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.—After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The

commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) GUIDANCE DOCUMENTS.—The national response team, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.—The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

SEC. 304. EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.—

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of a substance which is not on the list referred to

in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES.—This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) NOTIFICATION.—

(1) RECIPIENTS OF NOTICE.—Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 301(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS.—Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 302(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropri-

ate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) FOLLOWUP EMERGENCY NOTICE.—As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) TRANSPORTATION EXEMPTION NOT APPLICABLE.—The exemption provided in section 327 (relating to transportation) does not apply to this section.

SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) REVIEW OF EMERGENCY SYSTEMS.—

(1) REVIEW.—The Administrator shall initiate, not later than 30 days after the date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing

releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) REPORT.—The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) RECOMMENDATIONS.—The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC REQUIREMENT.—

(1) SUBMISSION OF MSDS OR LIST.—The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations

promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.—(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) TREATMENT OF MIXTURES.—An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) AVAILABILITY OF MSDS ON REQUEST.—

(1) TO LOCAL EMERGENCY PLANNING COMMITTEE.—If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) TO PUBLIC.—A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) INITIAL SUBMISSION AND UPDATING.—(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) HAZARDOUS CHEMICAL DEFINED.—For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) BASIC REQUIREMENT.—(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this title referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year.

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) HAZARDOUS CHEMICALS COVERED.—A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) CONTENTS OF FORM.—

(1) TIER I INFORMATION.—

(A) AGGREGATE INFORMATION BY CATEGORY.—An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) REQUIRED INFORMATION.—The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) MODIFICATIONS.—For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION.—An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) AVAILABILITY OF TIER II INFORMATION.—

(1) AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.—Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.—A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) AVAILABILITY TO PUBLIC.—

(A) IN GENERAL.—Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) AUTOMATIC PROVISION OF INFORMATION TO PUBLIC.—Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to

paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.—In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) RESPONSE IN 45 DAYS.—A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) FIRE DEPARTMENT ACCESS.—Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) FORMAT OF FORMS.—The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) BASIC REQUIREMENT.—The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually

thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) COVERED OWNERS AND OPERATORS OF FACILITIES.—

(1) IN GENERAL.—(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.—The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) TOXIC CHEMICALS COVERED.—The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) REVISIONS BY ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) ADDITIONS.—A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) DELETIONS.—A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) EFFECTIVE DATE.—Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year.

(e) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2).

(B) Publish an explanation of why the petition is denied.

(2) GOVERNOR PETITIONS.—A State Governor may petition the Administrator to add or delete a chemical from the list de-

scribed in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) THRESHOLD FOR REPORTING.—

(1) TOXIC CHEMICAL THRESHOLD AMOUNT.—The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) REVISIONS.—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) FORM.—

(1) INFORMATION REQUIRED.—Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) USE OF AVAILABLE DATA.—In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) USE OF RELEASE FORM.—The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) MODIFICATIONS IN REPORTING FREQUENCY.—

(1) IN GENERAL.—The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) REQUIREMENTS.—A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

(3) DETERMINATIONS.—The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW.—Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) NOTIFICATION TO CONGRESS.—The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) JUDICIAL REVIEW.—In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) APPLICABILITY.—A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) EFFECTIVE DATE.—Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 and before January 1 shall take effect beginning with the calendar year following such next calendar year.

(j) EPA MANAGEMENT OF DATA.—The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) REPORT.—Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate offi-

cials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) MASS BALANCE STUDY.—

(1) IN GENERAL.—The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) PURPOSES.—The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) INFORMATION COLLECTION.—(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section

if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) MASS BALANCE DEFINITION.—For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) IN GENERAL.—Nothing in this title shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) EFFECT ON MSDS REQUIREMENTS.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(2) If any State or local law—

(A) is enacted after August 1, 1985, and

(B) requires such a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator,

such requirements shall be identical to the requirements under section 311(a).

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—

(1) GENERAL AUTHORITY.—(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 303(d)(2), 303(d)(3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) REQUIREMENTS.—(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) LIMITATION.—The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) TRADE SECRET FACTORS.—No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) TRADE SECRET REGULATIONS.—As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC* v. *Thorne G. Auchter.*

(d) PETITION FOR REVIEW.—

(1) IN GENERAL.—Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW.—Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the

trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(f) PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABILITY TO PUBLIC.—Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(g) INFORMATION PROVIDED TO STATE.—Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) INFORMATION ON ADVERSE EFFECTS.—(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(i) INFORMATION PROVIDED TO CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

SEC. 323. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested informa-

tion to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—An owner or operator of a facility subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this

subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) REGULATIONS.—As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).

SEC. 324. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICES.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, list described in section 311(a)(2), inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) to be contained in an inventory form as tier II information.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

SEC. 325. ENFORCEMENT.

(a) CIVIL PENALTIES FOR EMERGENCY PLANNING.—The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2)) to comply with section 302(c) and section 303(d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.—

(1) CLASS I ADMINISTRATIVE PENALTY.—(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to

pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) JUDICIAL ASSESSMENT.—The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) CRIMINAL PENALTIES.—Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.—(1) Any person (other than a governmental entity) who violates any requirement of section 312 or 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323(b), and any person who fails to furnish to the Administrator information required under section 322(a)(2) or requested by the Administrator under section 322(d) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.—

(1) CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.—If the Administrator determines—

(A)(i) under section 322(d)(4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322(d)(3)(A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) CRIMINAL PENALTY FOR DISCLOSURE OF TRADE SECRET INFORMATION.—Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 322 shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 323.—Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under

this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 326. CIVIL ACTIONS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—

(1) CITIZEN SUITS.—Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1).

(iv) Complete and submit a toxic chemical release form under section 313(a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g).

(iv) Establish a computer database in accordance with section 313(j).

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.—

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Make available information requested under section 311(c).

(iv) Prepare and submit an inventory form under section 312(a) containing tier I information.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or for failure to submit tier II information under section 312(e)(1).

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

(b) VENUE.—

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) NOTICE.—

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) LIMITATION.—No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—

(1) BY THE UNITED STATES.—In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

SEC. 327. EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.

SEC. 328. REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.

SEC. 329. DEFINITIONS.

For purposes of this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ENVIRONMENT.—The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) EXTREMELY HAZARDOUS SUBSTANCE.—The term "extremely hazardous substance" means a substance on the list described in section 302(a)(2).

(4) FACILITY.—The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" has the meaning given such term by section 311(e).

(6) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) PERSON.—The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) RELEASE.—The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) TOXIC CHEMICAL.—The term "toxic chemical" means a substance on the list described in section 313(c).

SEC. 330. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

SEC. 401. SHORT TITLE.

This title may be cited as the "Radon Gas and Indoor Air Quality Research Act of 1986".

SEC. 402. FINDINGS.

The Congress finds that:

(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health

problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) REPORT.—Not later than 2 years after the enactment of this Act, the Administrator shall submit to Congress a report respecting

his activities under this section and making such recommendations as appropriate.

SEC. 404. CONSTRUCTION OF TITLE.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

SEC. 405. AUTHORIZATIONS.

There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1986

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1986".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—If on December 31, 1989, or December 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $6,650,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under

section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) TERMINATION IF $6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) $6,650,000,000 will be so credited to the Fund.".

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

(c) ALLOWANCE OF CREDIT FOR CRUDE OIL RETURNED TO PIPELINE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 513. CHANGES RELATING TO TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX ON XYLENE.—The table contained in subsection (b) of section 4661 of the Internal Revenue Code of 1986

(relating to tax on certain chemicals) is amended by adding at the end thereof the following new sentence:
"For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii)(I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(c) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(d) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SPECIAL RULE FOR GROUNDWATER TREATMENT.—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(f) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1).".

(g) SPECIAL RULES RELATING TO HYDROCARBON STREAMS CONTAINING ORGANIC TAXABLE CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (9) the following new paragraph:

"(10) HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) REMOVAL, ETC., TREATED AS USE.—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) ORGANIC TAXABLE CHEMICAL.—For purposes of this paragraph, the term 'organic taxable chemical' means any taxable chemical which is an organic substance."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1987.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding "has not collected".

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the

amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1986 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed

before the date 1 year after the date of the enactment of this Act.

SEC. 515. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Tax on Certain Imported Substances

"Sec. 4671. Imposition of tax.
"Sec. 4672. Definitions and special rules.

"SEC. 4671. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) AUTHORITY TO PRESCRIBE RATE IN LIEU OF PARAGRAPH (2) RATE.—The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TAX-FREE SALES, ETC. FOR SUBSTANCES USED AS CERTAIN FUELS OR IN THE PRODUCTION OF FERTILIZER OR ANIMAL FEED.—Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

"(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

"(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

"(e) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4672. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight of the materials used to produce such substance (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene	Methylene chloride
Styrene	Polypropylene
Ammonium nitrate	Propylene glycol
Nickel oxide	Formaldehyde
Isopropyl alcohol	Acetone
Ethylene glycol	Acrylonitrile
Vinyl chloride	Methanol
Polyethylene resins, total	Propylene oxide
Polybutadiene	Polypropylene resins
Styrene-butadiene, latex	Ethylene oxide
Styrene-butadiene, snpf	Ethylene dichloride
Synthetic rubber, not containing fillers	Cyclohexane
Urea	Isophthalic acid
Ferronickel	Maleic anhydride
Ferrochromium nov 3 pct	Phthalic anhydride
Ferrochrome ov 3 pct. carbon	Ethyl methyl ketone
Unwrought nickel	Chloroform
Nickel waste and scrap	Carbon tetrachloride
Wrought nickel rods and wire	Chromic acid
Nickel powders	Hydrogen peroxide
Phenolic resins	Polystyrene homopolymer resins
Polyvinylchloride resins	Melamine
Polystyrene resins and copolymers	Acrylic and methacrylic acid resins
Ethyl alcohol for nonbeverage use	Vinyl resins
Ethylbenzene	Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—

"(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance

would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"SUBCHAPTER C. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

(d) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 516. ENVIRONMENTAL TAX.

(a) IN GENERAL.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to income taxes) is amended by adding at the end thereof the following new part:

"PART VII—ENVIRONMENTAL TAX

"Sec. 59A. Environmental tax.

"SEC. 59A. ENVIRONMENTAL TAX.

"(a) IMPOSITION OF TAX.—In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

"(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

"(2) $2,000,000.

"(b) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of this section, the term 'modified alternative minimum taxable income' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

"(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

"(2) the deduction allowed under section 164(a)(5).

"(c) SPECIAL RULES.—

"(1) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

"(2) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the tax imposed by this section.

"(d) APPLICATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

"(2) EARLIER TERMINATION.—The tax imposed by this section shall not apply to taxable years—

"(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

"(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e)."

(b) TECHNICAL AMENDMENTS.—

(1) NO CREDITS ALLOWED AGAINST TAX.—

(A) Paragraph (2) of section 26(b) of such Code, as amended by the Tax Reform Act of 1986, is amended by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) section 59A (relating to environmental tax),".

(B) Paragraph (3) of section 936(a) of such Code, as so amended, is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 59A (relating to environmental tax),".

(2) TAX TO BE DEDUCTIBLE FOR INCOME TAX PURPOSES.—

(A) Subsection (a) of section 164 of such Code (relating to deduction for taxes), as so amended, is amended by inserting after paragraph (4) the following new paragraph:

"(5) The environmental tax imposed by section 59A."

(B) Subsection (a) of section 275 of such Code is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to the tax imposed by section 59A."

(3) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 1561 of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations), as amended by the Tax Reform Act of 1986, is amended—

(A) by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by inserting after paragraph (3) the following new paragraph:

"(4) one $2,000,000 amount for purposes of computing the tax imposed by section 59A.", and

(B) by striking out "(and the amount specified in paragraph (3))" and inserting in lieu thereof ", the amount specified in paragraph (3), and the amount specified in paragraph (4)".

(4) AMENDMENTS TO ESTIMATED TAX PROVISIONS.—

(A) TAX LIABILITY MUST BE ESTIMATED.—

(i) Paragraph (1) of section 6154(c) of such Code, as so amended, is amended by striking out "and" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "and", and by adding at the end thereof the following new subparagraph:

"(C) the environmental tax imposed by section 59A, over".

(ii) Subsection (a) of section 6154 of such Code is amended by striking out "section 11" and inserting "section 11, 59A,".

(C) CONFORMING AMENDMENT TO OVERPAYMENT OF ESTIMATED TAX.—Subparagraph (A) of section 6425(c)(1) of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out "plus" at the end of clause (i), by striking out "over" at the end of clause (ii) and inserting in lieu thereof "plus", and by adding at the end thereof the following new clause:

"(iii) the tax imposed by section 59A, over".

(D) CONFORMING AMENDMENT TO PENALTY FOR FAILURE TO PAY ESTIMATED TAX.—Paragraph (1) of section 6655(f) of such Code (defining tax), as so amended, is amended by striking out "plus" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "plus", and by adding at the end thereof the following new subparagraph:

"(C) the tax imposed by section 59A, over".

(5) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VII. Environmental tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of—

"(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

"(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

"(iii) section 111(m) of CERCLA (as so in effect), or

"(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

"(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an

amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1987, $250,000,000,
(2) 1988, $250,000,000,
(3) 1989, $250,000,000,
(4) 1990, $250,000,000, and
(5) 1991, $250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance

Response Trust Fund), as amended by section 204 of this Act, is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) GENERAL RULE.—

(1) GASOLINE.—

(A) GASOLINE TAX BEFORE AMENDMENT BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax at the rate specified in subsection (b).

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

(ii) TERMINATION.—Section 4081 of such Code, as so in effect, is amended by adding at the end thereof the following new subsection:

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (b)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as so in effect, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (b)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(B) GASOLINE TAX AS AMENDED BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Subsections (a) and (b) of section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as amended by the Tax Reform Act of 1986, are each amended by striking out "of 9 cents a gallon" and inserting in lieu thereof "at the rate specified in subsection (d)".

(ii) INCREASE IN TAX.—Section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(e) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (d)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term "net revenues" means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (d)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE, ETC., USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes im-

posed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 9506(b) of such Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.1 CENT TAX.—Subsection (h) of section 6421 of such Code (relating to effective date), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code, as so in effect, is

amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081 AT THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections".

(B)(i) Section 6427 of such Code, as so in effect, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(ii) Subparagraph (A) of section 1703(e)(1) of the Tax Reform Act of 1986 is amended—

(I) by striking out "and (o)" and inserting in lieu thereof "(o), and (p)", and

(II) by striking out "and (n)" and inserting in lieu thereof "(n), and (o)".

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "at the rate" and inserting in lieu thereof "at the Highway Trust Fund financing rate".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) OFF-HIGHWAY BUSINESS USE.—

"(i) IN GENERAL.—Except as provided in clause (ii), rules similar to the rules of paragraph (1) shall apply with respect to the taxes imposed by subsection (d).

"(ii) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(B) QUALIFIED METHANOL AND ETHANOL FUEL.—In the case of qualified methanol or ethanol fuel, subsection (d) shall be applied by substituting '0.05 cents' for '0.1 cents' in paragraph (1) thereof."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4)(A) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081 (at the Highway Trust Fund financing rate)".

(B) Subparagraph (C) of section 1703(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

"(i) by inserting 'or section 4081 (at the Highway Trust Fund financing rate)' before 'section 4121' in the 1st sentence, and

"(ii) by striking out '4071, or 4081 (at the Highway Trust Fund financing rate)' in the last sentence and inserting in lieu thereof 'or 4071'."

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9507 the following new section:

"SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels),

"(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

"(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

"(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9507 the following new item:

"Sec. 9508. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987."

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Appendix G
Guidance and Policy Memoranda

APPENDIX G
GUIDANCE AND POLICY MEMORANDA

MEMORANDUM	PAGE
Releasing Identities of Potentially Responsible Parties in Response to FOIA Requests. Gene A. Lucero and Kirk F. Sniff. January 26, 1984.	G-1
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Policy on Enforcing Information Requests in Hazardous Waste Cases. Courtney M. Price. September 10, 1984.	G-31
Procedures for Issuing Notice Letters. Gene A. Lucero. October 12, 1984.	G-41
Interim CERCLA Settlement Policy. Lee M. Thomas, Courtney M. Price, and F. Henry Habicht, II. December 5, 1984.	G-55
Hazardous Waste Enforcement Policy. Environmental Protection Agency. February 5, 1985.	G-75
PRP Participation in RI/FS. Gene A. Lucero. March 27, 1985.	G-87
Timely Initiation of Responsible Party Searches, Issuance of Notice Letters, and Release of Information. Gene A. Lucero. October 9, 1985.	G-89
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Potentially Responsible Party Searches. Gene A. Lucero and Thomas P. Gallagher. March 27, 1986.	G-97
Interim Guidance: Streamlining the CERCLA Settlement Decision Process. J. Winston Porter. February 12, 1987.	G-99

NOTE: Two additional references which may provide guidance, but are not included here are:

- Freedom of Information Act (FOIA)
- RCRA Confidential Business Information Security Manual, Draft, March 1984

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

JAN 26 1984

MEMORANDUM

SUBJECT: Releasing Identities of Potentially Responsible Parties in Response to FOIA Requests

FROM: Gene A. Lucero, Director Gene A. Lucero
Office of Waste Programs Enforcement

Kirk F. Sniff
Associate Enforcement Counsel for Waste
Office of Enforcement and Compliance Monitoring

TO: Directors, Waste Management Division, Regions I, V
Director, Office of Emergency & Remedial Response, Region II
Director, Hazardous Waste Management Division, Region III
Directors, Air & Waste Management Division,
Regions IV, VI, VII, VIII
Director, Toxics & Waste Management Division, Region IX
Director, Air & Waste Division, Region X
Regional Counsels - Regions I - X

PURPOSE

This memorandum states the policy of EPA for responding to requests under the Freedom of Information Act (FOIA) for the names of potentially responsible parties (PRPs) at CERCLA sites.

II. BACKGROUND

On March 30, 1983, EPA issued guidance on releasing the identities of potentially responsible parties under CERCLA. ~~This guidance~~ provided ~~for case~~-by-case review and discretionary disclosure of the identities of PRPs in certain limited circumstances. In general, before the March 30 guidance, EPA did not release the names of PRPs in response to FOIA requests.

On June 28, 1983, the Federal District Court for the District of Columbia decided in Cohen v. EPA that EPA had not met its burden of establishing that disclosing the identities of PRPs would harm the Agency's enforcement efforts. The case involved EPA's decision to withhold the identities of potentially responsible parties as provided by FOIA exemptions under 5 U.S.C. §§552(b)7(A), 7(C), and 5.

The court granted the plaintiff's motion for summary judgment on finding that:

1. For Exemption 7(A) -- notice letters are investigatory records compiled for law enforcement purposes, but EPA did not establish if disclosure of the notice letters would harm the investigation;

2. For Exemption 7(C) -- the identities of the PRPs who received notice letters does not fall into the category of a protected privacy interest; and

3. For Exemption 5 -- notice letters are not predecisional documents.

III. POLICY

As a result of the Cohen decision and the Administrator's policy of conducting business in a more open atmosphere, and in light of the resource demands involved in case-by-case review of the names of notice letter recipients, the March 30, 1983, guidance has been reevaluated. The new guidance is set forth below.

1. In response to a FOIA request, EPA will release the names of PRPs who have received notice letters about a CERCLA site.

2. An exception to the policy of disclosing the names of PRPs who received notice letters may be made only when EPA determines that disclosure of a particular name will cause such interference with an ongoing enforcement proceeding that discretionary disclosure is clearly unwarranted. If EPA decides to withhold the name of a PRP who received a notice letter, EPA must support the conclusion that disclosure will cause substantial harm to the law enforcement proceeding in writing with concurrence by the Regional Counsel. The written documentation may not consist of general statements; it must include the particular facts relating to the specific PRP and site that led to the conclusion to withhold.

3. The names of parties who have not yet received notice letters may be predecisional and therefore exempt from disclosure under Exemption 5 of the FOIA. These names also may be exempt as investigatory records under Exemption 7(A). However, in its discretion EPA may release this material.

4. Although EPA usually will release the names of PRPs only in response to FOIA requests, the Agency may elect to release the information on its own initiative in appropriate circumstances.

5. Disclosure of the names of PRPs and the names of sites does not constitute a waiver of EPA's right to withhold other information developed for an enforcement action that EPA determines is exempt from disclosure. Even if information is exempt from disclosure under Exemption 2, 5, or 7 of FOIA, EPA has discretion

to release the information; however, EPA may exercise its discretion to release the information only after the appropriate Regional Counsel reviews the information to ensure that disclosure will not interfere with an enforcement action.

IV. PROCEDURES TO IMPLEMENT POLICY

EPA Headquarters or a Regional Office should follow the procedure below to respond to a FOIA request for the names of PRPs or other information about a CERCLA site.

1. Quality assure the list of PRPs regularly and particularly before sending notice letters to PRPs for a site. Perform an in depth quality assurance of PRP lists every 6 months. Headquarters will hold Regional Offices accountable for inadequate quality assurance of PRP information.

2. Immediately notify Headquarters whenever a Regional Office decides, in accordance with the guidance in Item III.2 above, that disclosing the name of a PRP will cause substantial harm to an enforcement effort. Regional Offices also should notify Headquarters if withholding a name is no longer required.

3. If additional information is requested about a PRP or a site, consult with the Regional Counsel for a decision on whether disclosure will interfere with enforcement at the site.

4. Submit the list of names, or names and information, to the requester with a brief explanation of how EPA defines PRP for purposes of sending notice letters.

5. Include with the list of names the following disclaimer:

> This list represents EPA's preliminary findings on the identities of potentially responsible parties. EPA makes no assertions that parties on this list are liable for any hazard or contamination at any CERCLA site.

6. Use the term "potentially responsible party" in responses to FOIA requests if none of the parties named in a notice letter has been found liable by a court.

V. FIRST RESPONSE TO FOIA REQUESTS

Ten working days after the date of this policy, Headquarters will respond to the current backlog of requests for all PRP names with the quality assured list.

Any Regional Office that intends to withhold any PRP names, as provided by Item III.2 above, must have completed the required documentation and notified Headquarters before the FOIA response date. If you have any questions about this policy, contact Susan Cary Watkins (FTS 382-2032).

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

MAR 20 1984

MEMORANDUM

SUBJECT: Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA

FROM: Lee M. Thomas, Assistant Administrator
Office of Solid Waste and Emergency Response

Courtney M. Price, Assistant Administrator
Office of Enforcement and Compliance Monitoring

TO: Regional Administrators, Regions I-X

I. Introduction

This memorandum sets forth the policy and procedures governing participation of potentially responsible parties (PRPs) in development of remedial investigations (RI) and feasibility studies (FS) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). [1] It discusses:

- o the circumstances in which RI/FS may be conducted by potentially responsible parties,
- o the procedures for notifying potentially responsible parties when the Agency has identified target sites for the development of RI/FS, and
- o the principles governing PRP participation in Agency-financed RI/FS.

1. The Agency is currently developing a comprehensive policy concerning EPA participation in state-lead enforcement under CERCLA. The applicability of the RI/FS policy to state-lead enforcement actions will be fully discussed in this forthcoming memorandum.

II. Previous Approaches to PRP Participation in RI/FS

Under earlier policy, the Agency negotiated with potentially responsible parties (PRPs) for individual phases of site response (i.e., RI/FS, design, construction). PRPs could negotiate to conduct the RI/FS without discussing the remedial design and construction. Fund-financed RI/FS were generally not performed until the Agency concluded that negotiations with private parties were unsuccessful. Negotiations concerning later phases of remedial action would occur after the RI/FS was completed.

This approach was designed to secure cleanup by PRPs instead of Superfund financed cleanup, if privately financed cleanup could be accomplished in a timely manner. This policy was initially expressed by EPA in the "Guidelines for Using the Imminent Hazard, Enforcement and Emergency Response Authorities of Superfund and Other Statutes" issued pursuant to §106(c) of CERCLA at 47 Fed. Reg. 20664 (May 13, 1982).

The Agency identified several drawbacks to the approach of negotiating for individual phases of the cleanup:

First, the negotiations for the RI/FS were often unsatisfactory because of frequent disagreements on the nature and scope of the RI/FS. In particular, protracted negotiations occurred over the details of investigating the hazard, both on and off-site. Disagreements also arose over sampling locations and frequency, well placement, analytical methods, quality control, and level of detection. Substantial delays occurred even when agreement was eventually reached.

Second, some RI/FS conducted by potentially responsible parties were inadequate and of little use to EPA in determining the extent of the remedy for a site. Because the Agency had not published guidance on conducting RI/FS, the only way to avoid these problems was for the Agency to provide extensive oversight and review of the RI/FS under development. In certain instances, the PRPs revised the completed RI/FS after further discussions with the Agency, or the Agency redid the RI/FS using CERCLA funds. These inadequacies and revisions demanded resources from the Fund and delayed site response.

Third, the Agency's willingness to negotiate with potentially responsible parties for the RI/FS for any or all sites affected the pursuit of the Agency's priorities. Occasionally, resources were diverted from on-going litigation, or the initiation of action at sites where prompt response was desirable. Priorities for the use of the Agency's enforcement resources were established on a "de facto" basis by PRPs, based upon their willingness to negotiate at particular sites, rather than on the Agency's assessment of the sites which needed to be addressed in a timely fashion and offered the best prospects for privately-financed response.

Finally, multiple negotiations concerning each phase of site response inefficiently used limited Agency and Department of Justice resources and personnel.

In response to these concerns, the Agency established a policy that precluded potentially responsible parties from conducting the RI/FS, unless they were also willing to commit to conducting the remedial action.

The Agency has also identified drawbacks to this approach. Some potentially responsible parties have wanted an opportunity to prepare an RI/FS or participate in its development. They have been reluctant to accept the conclusions in the RI/FS and to assume responsibility for conducting cleanup, because their views were not reflected in the Agency-financed RI/FS. This policy also increased demands on the Fund, and ran contrary to the Agency's preference for timely and effective private-party response.

In light of these drawbacks, the Agency has established a new policy concerning the conduct of RI/FS by PRPs. The Agency will give potentially responsible parties an opportunity to conduct the RI/FS, consistent with Agency priorities and with new Agency procedures and guidance. The new approach will better enable the Agency to target its enforcement priorities, reduce the possibility of unsuccessful or protracted negotiations with PRPs, and enhance the quality of private-party RI/FS.

III. Situations where private parties may conduct RI/FS

The Agency will identify sites targeted for RI/FS development, and give potentially responsible parties an opportunity to conduct the RI/FS. The Remedial Accomplishments Plan (RAP) developed by the Agency identifies candidate sites for enforcement or Fund-financed response, and allocates the resources necessary to undertake these activities. The Remedial Accomplishments Plan lists all sites for which RI/FS will be developed.

Approximately 95 sites from the National Priorities List have been identified as targets for development of RI/FS in FY 1984, and about 115 will be identified for FY 1985. The Agency has allocated CERCLA funds for RI/FS for each of these sites. EPA will make available a list of the sites on the Remedial Accomplishments Plan, and the scheduled dates for obligation of funds for RI/FS development by the Agency at these sites. Potentially responsible parties will have an opportunity to conduct the RI/FS for these sites, provided that they respond before the scheduled date for obligation of funds.

The Agency will not engage in lengthy negotiations with PRPs over whether PRPs will conduct the RI/FS. In setting a reasonable negotiating period, the Agency will consider factors specific to the site, such as technical complexity and the number of parties involved. Once funds for an Agency-financed RI/FS have been obligated, PRPs will not be allowed to take over development of the RI/FS.

If potentially responsible parties are willing to perform the RI/FS, the Agency will identify the conditions under which they may do so. To assure that privately-funded RI/FS are done quickly and in a manner that meets the applicable requirements of this policy, potentially responsible parties will be expected to meet the following conditions:

1. Where several parties are involved at a site, they must be able to quickly organize themselves into a representative body to deal with the Agency as a single entity. To facilitate this process, the Agency will make the names of potentially responsible parties available on request. (See guidance from Gene A. Lucero and Kirk Sniff on Release of Names of Potentially Responsible Parties in Response to FOIA Requests published January 26, 1984). A single PRP, or an organized group of PRPs, may assume responsibility for actual development of the RI/FS.

2. PRPs must agree to follow the scope of work for the RI/FS developed by the Agency. The Agency will not engage in lengthy negotiations over this issue.

3. PRPs must demonstrate to the Agency that they are able to follow the technical procedures described in Remedial Investigation and Feasibility Study guidance manuals currently under development. -

If these conditions are met, the Agency will devote the resources necessary to assure the satisfactory development of the RI/FS by private parties. The conditions governing private-party conduct of the RI/FS should be formalized as Administrative Orders (either unilateral or on consent) or Consent Decrees wherever possible.[3] The Agency is developing a model "generic" consent order for privately-conducted RI/FS so that consistent and complete agreements can be expeditiously negotiated.

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2. The Feasibility Study guidance and the Remedial Investigation guidance are scheduled for completion in the summer of 1984.

3. EPA may issue orders under section 106 when it determines that there may be an imminent and substantial endangerment to public health or welfare or the environment. The Regions should review and if necessary update the information gathered to justify the listing of a site on the National Priorities List. This information will be valuable in developing the endangerment assessment needed to justify issuance of the order.

If, in the Agency's judgment, the potentially responsible parties do not meet these criteria (that is, they are not able to properly conduct the RI/FS), the Agency will not commit resources to review the private-party RI/FS. Instead, the Agency will perform the work itself and seek to recover the costs of the RI/FS. PRPs will be given the opportunity to discuss implementation of the selected remedy at a later date.

The Agency normally allocates the equivalent of about 1.1 work-years for start-up, management, and selection of remedy for each Fund-financed RI/FS developed by a government contractor. These resources will be redirected to oversee and review the privately-conducted RI/FS. It is the Agency's view that responsible parties are liable for costs of oversight of RI/FS development. A commitment to reimburse the Agency for oversight costs should be negotiated in advance.

The Agency will review the completed work product, assess the various alternatives under consideration, and choose the remedial alternative that best meets all applicable requirements of CERCLA. Development of private-party RI/FS will be subject to EPA community relations requirements. [4]

The Agency believes that this approach will enhance the prospects for private-party implementation of the remedy and also provide a mechanism to clean up additional sites in the future. As potentially responsible parties become more familiar with conducting RI/FS under the Remedial Investigation and Feasibility Study guidances, and Agency personnel develop more experience in overseeing and evaluating them, we anticipate that it will take less than a full Agency workyear to assure the completion of a technically sound RI/FS. As a result of this experience, EPA will be able to oversee additional privately-financed RI/FSs with a given level of resources and, consequently, initiate the response process by private parties at more NPL sites.

IV. Applicability of Policy

This policy is prospective. PRPs will be allowed to conduct RI/FS for targeted sites on the basis of these criteria when the Remedial Investigation and Feasibility Study technical manuals and any other necessary technical manuals are final. We anticipate that these documents will be completed in the summer of 1984.

This policy will also be applicable to sites where States have the lead in managing preparation of the RI/FS. Where possible, States should be involved in the determination of whether PRPs can properly conduct the RI/FS, and in review of the workplan. States may also assume some responsibility for oversight of PRP conduct of the RI/FS.

4. Requirements are set forth in Community Relations in Superfund: A Handbook (Interim Version,) September 1983.

This policy is applicable to sites that the Agency has identified as targets for RI/FS development in the Remedial Accomplishments Plan. The Agency will not provide resources to oversee and evaluate RI/FS for sites that have not been so designated. While potentially responsible parties are free to conduct their own RI/FS for other sites which have not been listed as priorities, the Agency does not have sufficient resources to provide assistance or review the RI/FS during their development.

This exclusion is designed to allow the Agency to manage its resources and assure that they are directed towards sites that represent the Agency's priorities. Thus, the Agency cannot review private-party RI/FS for non-targeted sites to provide assurances that the remedy selected by potentially responsible parties will be adequate to meet the requirements of CERCLA.

V. Interim Policy and other situations for private-party RI/FS

Until the RI and FS guidance documents are made final, potentially responsible parties may also develop RI/FS if they commit to follow workplans for RI/FS that have been prepared by the Agency contractors under the supervision of the Agency. The Agency will not negotiate the content of these workplans.

Implementation of this interim policy is at the discretion of the Regions. Regions may allow PRPs to conduct RI/FS under workplans developed by Agency contractors if the RI/FS can be conducted without undue disruption to schedules for remedial response, in light of existing commitments for activities to be undertaken under the Fund. Regions should complete any negotiations concerning this interim policy before the last month of the fiscal year, to assure that these negotiations will not interfere with use of Fund resources. Where the State is managing the development of the RI/FS, this interim policy may be applied at the discretion of the State.

The Agency will sanction private-party RI/FS for sites that are not identified on the Remedial Accomplishments Plan in two other situations.

First, private parties may perform the RI/FS if they also agree to design and implement the remedy selected by the Agency for the site. The Agency will allow private party development of the RI/FS because the resources that would have been dedicated to negotiations with potentially responsible parties for the remedial design and construction can instead be used to oversee and review the privately-conducted RI/FS. Thus, PRPs may conduct the RI/FS for any NPL site (even if the site is not listed in the Remedial Accomplishments Plan) if they commit to the complete clean up as well.

Second, the Agency will allow a private party RI/FS for dioxin sites that are active facilities, where the scope of the remedial investigation has been comprehensively defined by the Federal government. The explicit requirements developed by the Federal government--coupled with the public interest to move quickly on recently discovered dioxin sites--warrant this approach.

VI. Arrangements for Notice to PRPs

PRPs will be notified of the opportunity to perform the RI/FS in the following way:

First, the list of sites targetted for RI/FS development and a schedule for action at those sites will be made available. It will be accompanied by a statement that the Agency plans to conduct RI/FS for the sites. Any potentially responsible party that wants to undertake the RI/FS can voluntarily come forward and contact the Agency, before the scheduled date to obligate funds for RI/FS development.

Second, prior to the scheduled start of the RI/FS, the Agency will send notice letters to PRPs for sites listed on the Remedial Action Plan. Notice letters should be issued as soon as possible after the completion of the responsible party search. The letters should normally be issued at least 60 days before the scheduled date for obligation of funds for the RI/FS. PRPs (if multiple generators are involved) should therefore have sufficient time to organize themselves and initiate preliminary contacts and discussions with Agency personnel. This will also avoid delay in beginning a Fund-financed RI/FS should it become necessary.

The notice letters will inform the potentially responsible parties that:

1. Fund-financed RI/FS actions are planned;

2. The results of the studies will be used to select a remedy for the site;

3. PRPs can meet with Agency personnel to discuss their participation in the RI/FS;

4. PRPs may be liable for the costs of the RI/FS performed by the government;

5. PRPs will have an opportunity to meet with Agency personnel to discuss design and implementation of the remedy after completion of the RI/FS.

6. PRPs may conduct RI/FS if they comply with the conditions outlined in section III of this policy.

The Agency will develop revised Notice Letter guidance in the near future that will provide additional detail on these requirements.

VII. Regional Role in RI/FS Development by PRPs

Regional review of private-party RI/FS will be intensive when this policy is first implemented. Implementation will require the ongoing involvement of the EPA project officer in the private-party RI/FS development. The PRPs must develop a detailed statement of work and work plans describing the activities they will undertake at the site, based on the guidance and the scope of work developed by the Agency. The Regions must arrange to periodically review the work plans and work performed as part of the RI/FS. The Regions must assure that PRPs follow proper chain of custody procedures in testing and sampling, and that PRPs keep adequate records to enable the government to use these records as evidence in an enforcement case. In addition, employees of contractors or others who do the work must cooperate with and be made available to the government in the preparation and trial of any subsequent enforcement case.

The Agency will review the completed work product and choose a remedial alternative that meets all applicable requirements of CERCLA, and all implementing regulations, policies and guidance. In addition, the Agency retains the right to reject PRP RI/FS and sue PRPs for cost of developing its own Fund-financed RI/FS, if the RI/FS is inadequate. As noted earlier, the agreement to conduct a private-party RI/FS should be incorporated into an administrative order or consent decree. Section 107 of CERCLA authorizes the imposition of treble damages for failure to comply with an administrative order. The Agency will develop a model order providing additional detail regarding EPA involvement in private party RI/FS development.

VIII. Private-party Participation in Agency-Financed RI/FS

Where potentially responsible parties do not actually develop the RI/FS, the Agency will allow private-party involvement in Fund-financed RI/FS, if such participation can occur without undue delay, expense, or interference with Agency RI/FS development. Private parties may possess technical expertise or knowledge about a site which would be useful in developing a sound RI/FS. Involvement by PRPs in the development of a Fund-financed RI/FS may also expedite site cleanup by identifying and satisfactorily resolving differences between the Agency and private parties that might otherwise be the subject of litigation.

Potentially responsible parties may be allowed to:

1. Review the contractor's technical work plan;

2. Have access to the site (if legally feasible) to observe well installation and the collection of samples, and to split samples where appropriate;

3. Have access to raw data and to draft reports;

4. Have the option to comment on each major phase of the RI/FS during the conduct of the investigation.

The final decision whether to permit potentially responsible parties to participate in the Fund-financed RI/FS (as well as the scope of any participation) rests with the Regions. This decision should be based on the ability of PRPs to organize themselves so that they can participate as a single entity, and the ability of PRPs to participate without undue interference with or delay in completion of the RI/FS, and other factors that the Regions determine are relevant. The Region may terminate PRP participation in RI/FS development if unnecessary expenses or delays occur.

Certain aspects of this policy are not applicable immediately, and supplementary guidance will be published. If you have any questions or comments concerning this policy, or problems that need to be addressed in further guidance to implement this policy, please contact Gene A. Lucero (382-4814), or John Cross on his staff (FTS 382-4829).

cc: Regional Counsel
Regions I-X

Directors, Waste Management Division
Region I, V

Director, Office of Emergency and Remedial Response
Region II

Director, Hazardous Waste Management Division
Region III

Directors, Air and Waste Management Division
Regions IV, VI, VII, VIII, X

Director, Toxics and Waste Management Division
Region IX

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

CONFIDENTIAL

JUN 13 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Liability of Corporate Shareholders and Successor Corporations For Abandoned Sites Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrator for
Solid Waste and Emergency Response
Associate Enforcement Counsel for Waste
Regional Administrators
Regional Counsels

Introduction

The following enforcement memorandum, which was prepared in cooperation with the Office of General Counsel, identifies legal principles bearing on the extent to which corporate shareholders and successor corporations may be held liable for response costs that arise as a result of a release of a hazardous substance from an abandoned hazardous waste facility. In the discussion section pertaining to each part, the memorandum reviews the law on the subject from established traditional jurisprudence to current evolving standards. Although general rules of liability are delineated, these principles must be carefully applied to the unique fact pattern of any given case.

I. THE LIABILITY OF CORPORATE SHAREHOLDERS UNDER CERCLA

Background

Normally, it is the corporate entity that will be held accountable for cleanup costs under CERCLA. In certain

instances, however, EPA may want to extend liability to include corporate shareholders. This may arise, for example, where a corporation, which had owned or operated a waste disposal site at the time of the contamination, is no longer in business. The situation may also occur if a corporation is still in existence, but does not have sufficient assets to reimburse the fund for cleanup costs. There are two additional policy reasons for extending liability to corporate shareholders. First, this type of action would promote corporate responsibility for those shareholders who in fact control the corporate decision-making process; it would also deter other shareholders in similar situations from acting irresponsibly. Second, the establishment of shareholder liability would aid the negotiation process and motivate responsible parties toward settlement.

Traditional corporation law favors preserving the corporate entity, thereby insulating shareholders from corporate liability. Nevertheless, as will be discussed below, there are exceptions to this general principle that would allow a court to disregard corporate form and impose liability under CERCLA on individual shareholders.

Issue

What is the extent of liability for a corporate shareholder under CERCLA for response costs that arise as a result of a release of a hazardous substance from an abandoned hazardous waste facility?

Summary

The question of whether EPA can hold a shareholder of a corporation liable under CERCLA is a decision that must turn on the unique facts specific to given situation. Generally, however, in the interests of public convenience, fairness, and equity, EPA may disregard the corporate entity when the shareholder controlled or directed the activities of a corporate hazardous waste generator, transporter, or facility.

Discussion

Section 107(a)(2) of CERCLA provides that any owner or operator of a facility which releases a hazardous substance shall be liable for all necessary response costs resulting from such a release. Section 101(20)(A)(iii) of CERCLA clearly states that the term "owner or operator" as applied to abandoned facilities includes "any person who owned, operated, or otherwise

controlled activities at such facility immediately prior to such abandonment" (emphasis added).

In addition, Sections 107(a)(3) and 107(a)(4) of CERCLA impose liability for response costs on any person who arranged for the disposal or treatment of a hazardous substance (the generator), as well as any person who accepted a hazardous substance for transport to the disposal or treatment facility (the transporter).

The term "person" is defined in CERCLA Section 101(21) as, inter alia, an individual, firm, corporation, association, partnership, or commercial entity. A shareholder may exist as any of the forms mentioned in Section 101(21). Therefore, a shareholder may be considered a person under CERCLA and, consequently, held liable for response costs incurred as a result of a release of a hazardous substance from a CERCLA facility if the shareholder:

- Owned, operated, or otherwise controlled activities at such facility immediately prior to abandonment [CERCLA Section 107(a)(2); Section 101(20)(A)(iii)];
- Arranged for the disposal or treatment (or arranged with a transporter for the disposal or treatment) of the hazardous substance [CERCLA Section 107(a)(3)]; or
- Accepted the hazardous substance for transport to the disposal or treatment facility selected by such person [CERCLA Section 107(a)(4)].

Notwithstanding CERCLA's statutory language, courts normally seek to preserve the corporate form and thus maintain the principle of limited liability for its shareholders. 1/ In fact, fundamental "to the theory of corporation law is the concept that a corporation is a legal separate entity, a legal being having an existence separate and distinct from

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1/ See Pardo v. Wilson Line of Washington, Inc., 414 F.2d 1145, 1149 (D.C. Cir. 1969); Krivo Industrial Supply Co. v. National Distillers & Chem. Corp., 483 F.2d 1098, 1102 (5th Cir. 1973), modified per curiam, 490 F.2d 916 (5th Cir. 1974); Homan and Crimen, Inc. v. Harris, 626 F.2d 1201, 1208 (5th Cir. 1980).

that of its owners." 2/ This concept permits corporate shareholders "to limit their personal liability to the extent of their investment." 3/ Thus, although a shareholder may be considered a "person" under CERCLA (and therefore subject to the Act's liability provisions), the application of corporate law would tend to shield the shareholder from such liability.

Nevertheless, a court may find that the statutory language itself is sufficient to impose shareholder liability notwithstanding corporation law. 4/ Alternatively, to establish shareholder liability, a court may find that the general principles of corporation law apply but, nonetheless, set aside the limited liability principle through the application of the equitable doctrine of "piercing the corporate veil."

Simply stated, the doctrine of piercing the corporate veil refers to the process of disregarding the corporate

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2/ Krivo Industrial Supply Co. v. National Distillers & Chem. Corp., 483 F.2d 1098, 1102 (5th Cir. 1973), modified per curiam, 490 F.2d 916 (5th Cir. 1974).

3/ Id.

4/ See United States v. Northeastern Pharmaceutical and Chemical Company, Inc., et al., 80-5066-CV-S-4, memorandum op. (W.D. Mo., 1984). In Northeastern Pharmaceutical the district court noted that a literal reading of Section 101(20)(A) "provides that a person who owns interest in a facility and is actively participating in its management can be held liable for the disposal of hazardous waste." (Memorandum op. at 36.) The court went on to find that there was sufficient evidence to impose liability on one of the defendants pursuant to this statutory definition of "owner and operator," and the Section 107(a)(1) liability provision of the Act. The fact that the defendant was a major stockholder did not necessitate the application of corporate law, and thus the principle of limited liability: "To hold otherwise and allow [the defendant] to be shielded by the corporate veil 'would frustrate congressional purpose by exempting from the operation of the Act a large class of persons who are uniquely qualified to assume the burden imposed by [CERCLA].'" (Memorandum op. at 37, citation omitted.)

entity to hold either corporate shareholders or specific individuals liable for corporate activities. 5/

In order to determine whether to disregard corporate form and thereby pierce the corporate veil, courts generally have sought to establish two primary elements. 6/ First, that the corporation and the shareholder share such a unity of interest and ownership between them that the two no longer exist as distinct entities. 7/ Second, that a failure to disregard the corporate form would create an inequitable result. 8/

The first element may be established by demonstrating that the corporation was controlled by an "alter ego." This would not include "mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked

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5/ See Henn, LAW OF CORPORATIONS §§143, 146 (1961). This doctrine applies with equal force to parent-subsidiary relationships (i.e., where one corporation owns the controlling stock of another corporation).

6/ Generally, courts have sought to establish these elements in the context of various theories, such as the "identity," "instrumentality," "alter ego," and "agency" theories. Although these terms actually suggest different concepts, each employs similiar criteria for deciding whether to pierce the corporate veil.

7/ See United States v. Standard Beauty Supply Stores, Inc., 561 F.2d 774, 777 (9th Cir. 1977); FMC Fin. Corp. v. Murphree, 632 F.2d 413, 422 (5th Cir. 1980).

8/ See Automotriz Del Golfo de Cal. S.A. v. Resnick, 47 Cal. 2d 792, 796, 306 P.2d 1 (1957); DeWitt Truck Broker, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 689 (4th Cir. 1976). Some jurisdictions require a third element for piercing the corporate veil: that the corporate structure must have worked an injustice on, or was the proximate cause of injury to, the party seeking relief. See e.g., Berger v. Columbia Broadcasting System, Inc., 453 F.2d 991, 995 (5th Cir. 1972), cert. denied, 409 U.S. 848, 93 S.Ct. 54, 34 L.Ed.2d 89 (1972); Lowendahl v. Baltimore & O.R.R., 247 A.D. 144, 287 N.Y.S. 62, 76 (1936), aff'd 272 N.Y. 360, 6 N.E.2d 56 (Ct. App. 1936), but see, Brunswick Corp. v. Waxman, 599 F.2d 34, 35-36 (2d Cir. 1979).

so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own." 9/

In analyzing this first element, courts have generally considered the degree to which corporate "formalities have been followed [so as] to maintain a separate corporate identity." 10/ For example, the corporate veil has been pierced in instances where there had been a failure to maintain adequate corporate records, or where corporate finances had not been kept separate from personal accounts. 11/

The second element of the test is satisfied when the failure to disregard the corporate entity would result in fraud or injustice. 12/ This would occur, for example, in cases where there has been a failure to adequately capitalize for the debts normally assocated with the business undertaking, 13/ or where the corporate form has been employed to misrepresent or defraud a creditor. 14/

9/ Berger v. Columbia Broadcasting System, Inc., 453 F.2d 991, 995 (5th Cir. 1972), cert. denied, 409 U.S. 848, 93 S.Ct. 54, 34 L.Ed.2d 89 (1972).

10/ Labadie Coal Co. v. Black, 672 F.2d 92, 96 (D.C. Cir. 1982); See DeWitt Truck Broker, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 686 n. 14 (collecting cases) (4th Cir. 1976).

11/ Lakota Girl Scout C., Inc. v. Havey Fund-Rais. Man., Inc., 519 F.2d 634, 638 (8th Cir. 1975); Dudley v. Smith, 504 F.2d 979, 982 (5th Cir. 1974).

12/ Some courts require that there be actual fraud or injustice akin to fraud. See Chengelis v. Cenco Instruments Corp., 386 F. Supp 862 (W.D. Pa.) aff'd mem., 523 F.2d 1050 (3d Cir. 1975). Most jurisdictions do not require proof of actual fraud. See DeWitt Truck Brokers v. W. Ray Flemming Fruit Co., 540 F.2d 681, 684 (4th Cir. 1976).

13/ See Anderson v. Abbot, 321 U.S. 349, 362, 64 S.Ct. 531, 88 L.Ed. 793 (1944); Machinery Rental, Inc. v. Herpel (In re Multiponics, Inc.), 622 F.2d 709, 717 (5th Cir. 1980).

14/ See FMC Fin. Corp. v. Murphree, 632 F.2d 413, 423 (5th Cir. 1980).

In applying the dual analysis, courts act under considerations of equity; therefore, the question of whether the corporate veil will be lifted is largely one of fact, unique to a given set of circumstances. However, the substantive law applicable to a case may also have great importance. For example, in applying state corporation law, state courts have been generally reluctant to pierce the corporate veil. [15]/ Federal courts, however, in applying federal standards, have shown more willingness to disregard the corporate entity and hold individuals liable for corporate actions. [16]/

In many instances federal decisions do draw upon state law and state interpretations of common law for guidance. [17]/ However, federal courts that are involved with federal question litigation are not bound by state substantive law or rulings. [18]/ In such cases, either federal common law

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[15]/ See discussion in Note, Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law, 95 Harvard L.R. 853, 855 (1982).

[16]/ It is well settled that a corporate entity must be disregarded whenever it was formed or used to circumvent the provisions of a statute. See United States v. Lehigh Valley R.R., 220 U.S. 257, 259, 31 S.Ct. 387, 55 L.Ed. 458 (1911); Schenley Distillers Corp. v. United States, 326 U.S. 432, 437, 66 S.Ct. 247, 90 L.Ed. 181 (1945); Kavanaugh v. Ford Motor Co., 353 F.2d 710, 717 (7th Cir. 1965); Casanova Guns, Inc. v. Connally, 454 F.2d 1320, 1322 (7th Cir. 1972).

[17]/ See Seymour v. Hull & Moreland Eng'g, 605 F.2d 1105 (9th Cir. 1979); Rules of Decision Act, 28 U.S.C. §1652 (1976). Generally, federal courts will adopt state law when to do so is reasonable and not contrary to existing federal policy. United States v. Polizzi, 500 F.2d 856, 907 (1974). See also discussion in note 19, infra.

[18]/ UNITED STATES CONSTITUTION art. VI, cl. 2.

or specific statutory directives may determine whether or not to pierce the corporate veil. [19]/

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[19]/ See Anderson v. Abbot, 321 U.S. 349, 642 S.Ct. 531, 88 L.Ed. 793 (1944); Town of Brookline v. Gorsuch, 667 F.2d 215, 221 (1981). For a general discussion of federal common law and piercing the corporate veil see, note 15, supra. The decision as to whether to apply state law or a federal standard is dependent on many factors:

> "These factors include the extent to which: (1) a need exists for national uniformity; (2) a federal rule would disrupt commercial relationships predicated on state law; (3) application of state law would frustrate specific objectives of the federal program; (4) implementation of a particular rule would cause administrative hardships or would aid in administrative conveniences; (5) the regulations lend weight to the application of a uniform rule; (6) the action in question has a direct effect on financial obligations of the United States; and (7) substantial federal interest in the outcome of the litigation exists.
>
> Even with the use of these factors, however, whether state law will be adopted as the federal rule or a unique federal uniform rule of decision will be formulated remains unclear. The courts have failed to either mention the applicable law or to state the underlying rationale for their choice of which law to apply." Note, Piercing the Corporate Veil in Federal Courts: Is Circumvention of a Statute Enough?, 13 Pac. L.J. 1245, 1249 (1982) (citations omitted).

In discussions concerning CERCLA, the courts and Congress have addressed several of the above mentioned factors. CERCLA. For example, the need for national uniformity to carry out the federal superfund program has been clearly stated in United States v. Chem-Dyne, C-1-82-840, slip op. (S.D. Ohio, Oct. 11, 1983). In Chem-Dyne, the court stated that the purpose of CERCLA was to ensure the development of a uniform rule of law, and the court pointed out the dangers of a variable standard on hazardous waste disposal practices that are clearly interstate. (Slip op. at 11-13.) See also, Ohio v. Georgeoff, 562 F. Supp. 1300,

The general rule applied by federal courts to cases involving federal statutes is that "a corporate entity may be disregarded in the interests of public convenience, fairness and equity." 20/ In applying this rule, "federal courts will look closely at the purpose of the federal statute to determine whether that statute places importance on the corporate form." 21/ Furthermore, where a statute contains specific directives on when the corporate entity may be disregarded and individuals held liable for the acts or debts of a valid corporation, courts must defer to the congressional mandate. 22/

Thus, even under general principles of corporation law, courts may consider the language of statute in determining whether to impose liability on corporate shareholders. Therefore, a court may use the statutory language of CERCLA either as a rationale for piercing a corporate veil (when corporation law is applied) or as an independent statutory basis for imposing liability (notwithstanding the general principles of corporation law). 23/

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19 (continued)/

1312 (N.D. Ohio, 1983); 126 Cong. Rec. H. 11,787 (Dec. 3, 1983).

The Chem-Dyne court stated that "the improper disposal or release of hazardous substances is an enormous and complex problem of national magnitude involving uniquely federal interests." (Slip op. at 11.) The court further noted that "a driving force toward the development of CERCLA was the recognition that a response to this pervasive condition at the State level was generally inadequate: and that the United States has a unique federal financial interest in the trust fund that is funded by general and excise taxes." (Slip op. at 11, citing, 5 U.S. Code Cong. & Ad. News at 6,142.) See also, 126 Cong. Rec. at H. 11,801.

20/ Capital Telephone Company, Inc. v. F.C.C., 498 F.2d 734, 738 (D.C. Cir. 1974).

21/ Town of Brookline v. Gorsuch, 667 F.2d 215, 221 (1981).

22/ Anderson v. Abbot, 321 U.S. 349, 365, 64 S.Ct. 531, 88 L.Ed 793 (1944).

23/ See discussion, supra, note 4.

Conclusion

The Agency should rely upon the statutory language of the Act as the basis for imposing liability on any person who controlled or directed the activities of a hazardous waste facility immediately prior to abandonment, or on any person who is a generator or transporter, notwithstanding the fact that that individual is a shareholder. Additionally, and alternatively, the Agency may rely on the general principles of corporation law to pierce the corporate veil by applying the current federal standard of public convenience, fairness, and equity. However, when seeking to pierce the corporate veil, the Agency should be prepared to apply the traditional dual test previously discussed in order to provide additional support for extending liability to corporate shareholders.

II. THE LIABILITY OF SUCCESSOR CORPORATIONS UNDER CERCLA

Background

Section 107(a)(2) of CERCLA extends liability for response costs to "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." Situations may arise, however, where a corporation, which previously had owned or operated a hazardous waste facility, now transfers corporate ownership to another corporation. In such cases, it is important to determine whether the liability of the predecessor corporation's action regarding the disposal of hazardous waste is also transferred to the successor corporation. 24/

Issue

What is the extent of liability for successor corporations under CERCLA?

24/ The discussion that follows is equally applicable to successor corporations of generators and transporters associated with hazardous substances released from CERCLA facility.

Summary

When corporate ownership is transferred from one corporation to another, the successor corporation is liable for the acts of its predecessor if the new corporation acquired ownership by merger or consolidation. If, however, the acquisition was through the sale or transfer of assets, the successor corporation is not liable unless:

a) The purchasing corporation expressly or impliedly agrees to assume such obligations;

b) The transaction amounts to a "de facto" consolidation or merger;

c) The purchasing corporation is merely a continuation of the selling corporation; or

d) The transaction was fraudulently entered into in order to escape liability.

Notwithstanding the above criteria, a successor corporation may be held liable for the acts of the predecessor corporation if the new corporation continues substantially the same business operations as the selling corporation.

Discussion

The liability of a successor corporation, according to traditional corporation law, is dependent on the structure of the corporate acquistion. 25/ Corporate ownership may be transferred in one of three ways: 1) through the sale of stock to another corporation; 2) by a merger or consolidation with another corporation; or 3) by the sale of its assets to another corporation. 26/ Where a corporation is acquired through the purchase of all of its outstanding stock, the corporate entity remains intact and retains its liabilities, despite

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25/ See N.J. Transp. Dep't v. PSC Resources, Inc., 175 N.J. Super. 447, 419 A.2d 1151 (Super. Ct. Law Div. 1980).

26/ Note, Torts - Product Liability - Successor Corporation Strictly Liable for Defective Products Manufactured by the Predecessor Corporation, 27 Villanova L.R. 411, 412 (1980) (citations omitted) [hereinafter cited as Note, Torts - Product Liability].

the change of ownership." 27/ By the same token, a purchasing corporation retains liability for claims against the predecessor company if the transaction is in the form of a merger or consolidation. 28/ Where, however, the acquisition is in the form of a sale or other transferance of all of a corporation's assets to a successor corporation, the latter is not liable for the debts and liabilities of the predecessor corporation. 29/

There are four exceptions to this general rule of non-liability in asset acquisitions. A successor corporation is liable for the actions of its predecessor corporation if one of the following is shown:

1) The purchaser expressly or impliedly agrees to assume such obligations;

2) The transaction amounts to a "de facto" consolidation or merger;

3) The purchasing corporation is merely a continuation of the selling corporation; or

4) The transaction is entered into fraudulently in order to escape liability. 30/

The application of the traditional corporate law approach to successor liability has in many instances led to particularly

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27/ N.J. Transp. Dep't v. PSC Resources, Inc., 175 N.J. Super. 447, 419 A.2d 1157 (Super. Ct. Law Div. 1980).

28/ Id. A merger occurs when one of the combining corporations continues to exist; a consolidation exists when all of the combining corporations are dissolved and an entirely new corporation is formed.

29/ See N.J. Transp. Dep't v. PSC Resources, Inc., 175 N.J. Super. 447, 419 A.2d 1151 (Super. Ct. Law Div. 1980), citing, Jackson v. N.J. Manu. Ins. Co., 166 N.J. Super. 488, 454 (Super. Ct. App. Div. 1979), cert. denied, 81 N.J. 330 (1979).

30/ Id., Note, Torts - Product Liability, supra note, 26 at 413 n. 15-18.

harsh and unjust results, especially with respect to product liability cases. 31/ Therefore, in an effort to provide an adequate remedy and to protect injured consumers, courts have broadened the exemptions to the general rule by either modifying or recasting the "de facto" and "mere continuation" exemptions to include an element of public policy. 32/

More recently, however, the general rule has been abandoned altogether by several jurisdictions and, in essence, a new theory for establishing successor liability has evolved based upon the similarity of business operations. 33/ The new approach has been cast by one court in the following way:

> "[W]here...the successor corporation acquires all or substantially all of the assets of the predecessor corporation for cash and continues

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31/ See McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98 (Super. Ct. Law Div. 1970), aff'd per curiam, 118 N.J. Super. 480, 288 A.2d 585 (Super. Ct. App. Div. 1972); Kloberdanz v. Joy Mfg. Co., 288 F.Supp. 817 (D. Colo. 1968).

32/ See N.J. Transp. Dep't v. PSC Resources, Inc., 175 N.J. Super. 447, 419 A.2d 1151 (Super. Ct. Law Div. 1980); See also, Knapp v. North Am. Rockwell Corp., 506 F.2d 361 (3d Cir. 1974), cert. denied, 421 U.S. 965 (1975); Cyr v. B. Offen & Co., 501 F.2d 1145 (1st Cir. 1975); Turner v. Bituminous Gas Co., 397 Mich. 406, 244 N.W.2d 873 (1976).

33/ The theory has also been referred to as the "product-line" approach. In adopting this new approach to successor liability, some courts have abandoned the traditional rule of non-liability in asset acquisitions. See e.g., Ray v. Alad Corp., 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977). Other courts have considered the new approach as an exemption to the general rule. See e.g., Daweko v. Jorgensen Steel Co., 290 Pa. Super. Ct. 15, 434 A.2d 106 (1981); Note, Torts - Product Liability, supra note, 26 at 418 n. 38. And, a few jurisdictions have rejected the new approach. See Travis v. Harris Corp., 565 F.2d 443 (7th Cir. 1977); Tucker v. Paxson Mach. Co., 645 F.2d 620 (8th Cir. 1981).

> essentially the same manufacturing operation as the predecessor corporation the successor remains liable for the products liability claims of its predecessor." 34/

This theory of establishing successor liability differs from the "de facto" and "mere continuation" exemptions in that the new approach does not examine whether there is a continuity of corporate structure or ownership (e.g., whether the predecessor and successor corporation share a common director or officer). Instead, according to the new theory, liability will be imposed if the successor corporation continues essentially the same manufacturing or business operation as its predecessor corporation, even if no continuity of ownership exists between them. 35/

Until recently, this new approach for establishing successor liability was confined mostly to product-liability cases. However, a recent New Jersey decision extended its application to the area of environmental torts. The Superior Court of New Jersey, in N.J. Transportation Department v. PSC Resources, Inc. 36/, rejected the traditional corporate approach to successor liability where the defendant and its predecessor corporation had allegedly discharged hazardous wastes. The court reasoned that the underlying policy rationale for abandonment of the traditional approach in defective product cases is applicable to environmental torts. Therefore, the court held that a corporation which purchased assets of another corporation and engaged in the practice of discharging hazardous waste into a state-owned lake is strictly liable for present and previous discharges made by itself and the predecessor corporation because the successor continued the same waste disposal practice as its predecessor.

34/ Ramirez v. Amstead Indus., Inc., 171 N.J. Super. 261, 278, 408 A.2d 818 (Super. Ct. App. Div. 1979), aff'd, 86 N.J. 332, 431 A.2d 811 (1981).

35/ See Ray v. Alad Corp., 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977); some form of acquisition, however, is still required. See Meisal v. Modern Press, 97 Wash. 2d 403, 645 P.2d 693.

36/ 175 N.J. Super. 447, 419 A.2d 1151 (Super. Ct. Law Div. 1980);

A similar "continuity of business operation" approach has been used in cases involving statutory violations. 37/ The Ninth Circuit, for example, held in a case involving the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] 38/, that "EPA's authority to extend liability to successor corporations stems from the purpose of the statute it administers, which is to regulate pesticides to protect the national environment." 39/ Furthermore, the court noted that "[t]he agency may pursue the objectives of the Act by imposing successor liability where it will facilitate enforcement of the Act." 40/ After establishing that there had been violations of FIFRA by the predecessor corporation, the court found that there was substantial continuity of business operation between the predecessor and successor corporations to warrant imposition of successor liability.

Although CERCLA is not primarily a regulatory statute, public policy considerations and the legislative history of the Act clearly indicate that federal law would be applicable to CERCLA situations involving successor liability. 41/ Therefore, it is reasonable to assume that courts would similarly adopt the federal "continuity of business operation approach" in cases involving CERCLA.

Conclusion

In establishing successor liability under CERCLA, the

37/ See Golden State Bottling Co. v. NLRB, 414 U.S. 168, 94 S.Ct. 414, 38 L.Ed2d 388 (1973); Slack v. Havens, 522 F.2d 1091 (9th Cir. 1975).

38/ 7 U.S.C. §136 et seq.

39/ Oner II, Inc. v. United States Environ. Protection Agency, 597 F.2d 184, 186 (9th Cir. 1979).

40/ Id.

41/ See discussion, supra, n. 19; One of Congress' primary concerns in enacting CERCLA was to alleviate the vast national health hazard created by inactive and abandoned disposal sites. See e.g., Remarks of Rep. Florio, 126 Cong. Rec. H. 9,154 (Sept. 19, 1980), 126 Cong. Rec. H. 11,773 (Dec. 3. 1980).

Agency should initially utilize the "continuity of business operation" approach of federal law. However, to provide additional support or an alternative basis for successor corporation liability, the Agency should be prepared to apply the traditional exemptions to the general rule of non-liability in asset acquisitions.

cc: A. James Barnes, General Counsel

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

SEP 10 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy on Enforcing Information Requests in Hazardous Waste Cases

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Regional Administrators, I-X
Regional Counsels, I-X
Lee M. Thomas, Assistant Administrator for
Solid Waste and Emergency Response

The attached policy has been developed to assist the Regions in enforcing information request letters issued pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 3007 of the Resource Conservation and Recovery Act (RCRA). The policy is intended to encourage agressive enforcement against parties that do not comply with such letters.

The policy delineates statutory authority to obtain information, briefly discusses other sources of information and sets forth options available to the Agency to enforce requests for information in civil cases dealing with hazardous waste and hazardous substances.

If you or your staff have any further questions regarding enforcement of CERCLA and RCRA information requests, please contact Fred Stiehl (FTS) 382-3050 or Jerry Schwartz at (FTS) 382-3104.

Attachment

POLICY ON ENFORCING INFORMATION REQUESTS IN HAZARDOUS WASTE CASES

INTRODUCTION

Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and section 3007 of the Resource Conservation and Recovery Act (RCRA) provide EPA with considerable authority to obtain information from parties involved with hazardous substances or hazardous wastes (collectively "hazardous materials").1/ Information request letters issued pursuant to these sections have proven quite useful, particularly because of the high rate of compliance associated with these letters. Occasionally, however, letter recipients refuse to respond to requests, or provide an inadequate response. This policy document delineates statutory authority to obtain information and sets forth options available to the Agency to enforce requests for information in civil cases dealing with hazardous materials.2/

This policy has been developed along with the guidance document on issuing notice/information request letters ("Notice Letter Guidance"), which will be issued shortly.

1/ These sections also provide authority to enter facilities to perform inspections, conduct studies, and obtain samples. Access authority is discussed in a policy document which will be issued separately.

2/ With regard to obtaining information in the context of parallel civil and criminal cases, consult Courtney M. Price's memorandum "Policy and Procedures on Parallel Proceedings at the Environmental Protection Agency," dated January 24, 1984.

STATUTORY AUTHORITY

Section 104(e)(1) of CERCLA provides:

> For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall upon request ... furnish information relating to such substances...." (Emphasis supplied)

Section 3007(a) of RCRA provides: 3/

> For purposes of ... enforcing the provisions of this title any person who generates, stores treats, transports, disposes of, or has handled hazardous wastes shall, upon request ... furnish information relating to such wastes...." (Emphasis supplied)

In most information request letters, both sections should be cited as authority for the request. Note that it is appropriate to cite RCRA §3007(a) as authority for requests relating to those wastes the regulation of which has been partially suspended by Congress pursuant to RCRA §3001(b)(3)(A) (e.g., "mining waste"). This suspension does not limit the wastes which may be considered "hazardous wastes" for purposes of several sections of the statute, including section 3007. 45 Fed. Reg. 33090, (May 19, 1980) and 40 CFR 261.1(b). Additionally, if the "mining waste" or other waste suspended under RCRA falls within the definition of

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3/ The Agency has also issued RCRA §3013 Orders which contain, inter alia, requests for information.

hazardous substance under categories A,B,D,E, or F of CERCLA §101(14), the waste is a hazardous substance for CERCLA purposes and is properly subject to a request under CERCLA §104. See U.S. v. Metate Asbestos Corp., et al., ___ F. Supp. ___, (Az., 1984) (Globe case) holding that asbestos tailings, which are mining wastes, are hazardous substances pursuant to CERCLA §101(14).

INADEQUATE OR NON-RESPONSE

A diligent, good faith effort by the information request letter recipient to directly respond to the Agency's questions and to provide information is adequate. The determination of whether a diligent, good faith effort has been made is necessarily a case by case decision. Most information requests require the recipient to indicate the types of files searched in response to the request. This information should help the Case Development Team (CDT) determine whether the recipient's file searching efforts were diligent and whether the recipient actually has submitted all available information.

In some cases, letter recipients may not have retained records pertaining to the time period in which the Agency is interested. This may frequently be the case in multi-party cases containing many "small" generators who dealt with a site that was in operation many years ago. In these cases, unless the Agency has evidence to the contrary, the CDT generally will accept the recipient's assertion that its records do not go back

that far. The CDT can help ensure the veracity of a recipient's claim that it does not have pertinent records by insisting on a signed affidavit to that effect from a duly authorized company official.

Of course, the easiest determinations regarding adequacy of response are those where the company simply refuses to comply. This includes cases where a recipient responds by stating it will not answer the questions, or simply does not respond by the deadline included in the letter. 4/

In one case, a letter recipient asserted that certain information requested by the Agency was properly withheld because it was "covered by the attorney-client privilege and the work product rule." In that case, the Agency issued a RCRA §3008 administrative order (AO) to enforce compliance with the information request. The Administrative Law Judge (ALJ) rejected the company's claim and ordered it to comply with the AO. The ALJ looked to the language and purpose of the statute and the relevance of the information requested in rejecting the privilege claims of the company. 5/ While there have been several cases supporting the Agency's information gathering authority under other statutes,

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4/ Information request letters are sent return receipt requested. The CDT should ensure the party actually received the letter before taking further action.

5/ See "Order Denying Motion and Requiring Compliance" in the Matter of Hughes Aircraft Company case. (Attachment A) Subsequent to this Order, the company submitted the requested information.

this is the only case addressing a privilege claim as a defense to an information request under RCRA or CERCLA.

ENFORCEMENT RESPONSE

A. First Step: Reminder Letter

Once the CDT has made a decision that a recipient has not responded or has responded inadequately to a request, a "reminder" letter should be issued. If a letter recipient, however, clearly indicates its refusal to respond to a request, a reminder letter would be inappropriate. The letter should recite pertinent past details (such as when the first letter was sent and a general description of the information sought), and indicate that the response is inadequate or that no response was received. It should also point out that the Agency is considering further enforcement action if it does not receive the requested information by a date within the next several weeks. See Attachment B ror a sample reminder letter.

Compliance with information request letters can also be increased by informing the responsible party coordinating committee (in multi-party cases) that the government will not settle nor exchange information with any party that has not complied with a request. This has proven effective in several multi-party cases.

Any telephone or other contacts with the recipient regarding the request should be well documented, including telephone calls requesting clarification to questions or agreements to extend the deadline for response. This information will be critical should the Agency decide to take further enforcement action.

B. Second Step: Evaluate Candidates for Further Action

As a general rule, the CDT should first consider for further enforcement action those recipients that clearly have not complied with the information request. These are recipients whom the CDT is sure received the information request and, if applicable, reminder letters, but have not responded at all or have responded by refusing to comply with the request. The CDT should next consider for further enforcement action those recipients that responded with a less than diligent effort at searching their files, or whose response was otherwise inadequate. Finally, the CDT should consider those recipients that responded late to the request.

C. Third Step: Evaluate Enforcement Options

The Agency's authority for enforcing an information request is contained in §3008(a) of RCRA, and §§104(e) and 113 of CERCLA.

Section 3008 provides in pertinent part:

> "... whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle, the Administrator may issue an order requiring compliance immediately or within a specified time period or the Administrator may commence a civil action..."

Section 3008 civil actions and AOs can seek both injunctive relief and penalties.

Section 113 of CERCLA grants federal district courts jurisdiction to hear an EPA motion for injunctive relief to compel compliance with an information request. Unlike §3008 of RCRA, however, §104(e)(1) of CERCLA does not provide for penalties. Section 113(b) provides in pertinent part:

> "...the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act...."

Thus, the options available to the Agency to pursue an inadequate response are: (1) issue a RCRA §3008 AO seeking injunctive relief and penalties, (2) file a civil action pursuant to RCRA §3008 and CERCLA §113 seeking injunctive relief and penalties, where appropriate and (3) issue a RCRA §3008 AO seeking penalties only. In determining which option to choose, the CDT should examine the same considerations as in other potential enforcement cases, such as the likelihood that the particular recipient will comply with an AO and the immediacy of the need for the information. In those cases where the information is needed immediately or likelihood of compliance is small, a civil action may be preferable. Each option is discussed in more detail below.

1. <u>RCRA §3008 AOs Seeking Injunctive Relief and Penalties</u>:

AOs issued to compel compliance with an information request are similar to other RCRA §3008 AOs. They should contain findings of fact and determinations, should assess penalties in accordance

with the Agency's RCRA Penalty Policy 6/ and should order the respondent to comply with the original information request. Care should be taken to ensure that the findings of fact demonstrate the relevance of the information requested, that the information is necessary to respond to a release or to enforce the appropriate provisions of the Acts, and that the recipient deals with hazardous waste. Note that under RCRA §3008(a) each day of noncompliance with an AO is a separate violation for purposes of assessing penalties.

2. Filing RCRA §3008 and CERCLA §113 Civil Actions: 7/

A referral to the Department of Justice (DOJ) for inadequate or non-response to an information request should include all relevant letters, documentation of telephone contacts, information sufficient to demonstrate that the recipient deals with hazardous materials, and that the information request is for one or both of the specified purposes of the statutes. Again, these referrals are similar to other referrals and all pertinent guidance should be followed. As indicated in previous guidance, a referral pursuant to §3008 can seek enforcement of an AO, penalties or remedies for the underlying §3008 violation.

6/ See the Final RCRA Civil Penalty Policy, May 8, 1984, page 31, number (4) for an example of a penalty calculation for noncompliance with a RCRA §3007 information request.

7/ The United States has filed a complaint for noncompliance with a RCRA §3007/ CERCLA §104 information request in U.S. v. George Liviola, Jr., et al., No. C84-1879Y, Northern District of Ohio. Copies are available from OECM-Waste.

3. Issuing AOs Assessing Penalties Only:

RCRA §3008 AOs issued to letter recipients who eventually submit the requested information, but submit it late or after the Agency had issued reminder letters only assess a penalty, since injunctive relief (for submission of the information) is no longer necessary. Regional enforcement personnel are encouraged to use penalty-only AOs for late submissions if adequate resources are available. These AOs will demonstrate to the regulated community that the Agency is serious about utilizing its information gathering authority and taking further action to enforce the use of that authority, where appropriate.

CONCLUSION

The information gathering authority available to the Agency will continue to be effective only if the Agency takes a strong stand in enforcing these requests. Whenever possible, the CDTs should take whatever action is necessary to ensure compliance with these letters.

Attachments

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

OCT 12 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Procedures for Issuing Notice Letters

FROM: Gene A. Lucero, Director Gene A. Lucero
Office of Waste Programs Enforcement

TO: Directors, Waste Management Divisions
Regions I-X
Directors, Environmental Services Divisions
Regions I-X
Regional Counsels, Regions I-X

This memorandum provides guidance on preparing and issuing notice letters. It reflects the Agency's policy on allowing potentially responsible parties to conduct remedial investigations and feasibility studies (RI/FS) and addresses Regional concerns regarding notice letters. The guidance consists of two major parts: a discussion of site specific considerations in drafting notice letters and a generic sample notice letter with explanatory discussion. The guidance is intended to assist the Regions in developing technically accurate notice letters that best effectuate the purpose of notification under the Comprehensive Environmental Response, Compensation, and Liability Act.

BACKGROUND

Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) authorizes the President to spend CERCLA Trust funds to clean up hazardous waste sites unless the President determines that proper cleanup will be undertaken by the responsible parties.

A first step in determining whether a potentially responsible party (PRP) is willing and financially capable of undertaking a proper response is the issuance of notice letters to identified PRPs. The letters inform PRPs of their potential liability for cleanup and, under certain conditions, provide them with an opportunity to undertake necessary action after negotiation with the Agency. This approach conforms with the Agency's policy to secure cleanup by responsible parties, in lieu of Superfund use, whenever such cleanup can be accomplished in a timely and effective manner.

While the Agency believes that notice letters are not required by CERCLA and are not a precondition to cost recovery, notice and the receipt of notice may help to minimize the possibility of a PRP raising insufficient notification as an issue in subsequent litigation.

The Office of Waste Programs Enforcement (OWPE) in the Office of Solid Waste and Emergency Response (OSWER), in consultation with the Office of Enforcement and Compliance Monitoring - Waste (OECM-Waste), was initially given the responsibility for drafting, reviewing, and issuing notice letters to potentially responsible parties. The authority to issue information requests under CERCLA was formally delegated to the Regional Administrators on April 16, 1984 as part of an overall CERCLA delegation of authority. Notice letter issuance was not formally addressed as part of this delegation. This memorandum specifically clarifies the authority to issue notice letters as lying with the Regional Administrators. Each Regional Administrator may further delegate the authority for issuance of notice letters to the appropriate Regional Division Director.

In May 1983, the Office of Waste Programs Enforcement issued draft notice letter guidance to the Regions that outlined procedures for issuing notice letters to PRPs concurrent with the conduct of a Fund-financed RI/FS. The guidance also indicated that PRPs would be notified that an Agency-financed RI/FS had begun or will soon begin and that the PRPs may take over the RI/FS if they are unequivocally willing to undertake the RI/FS and will commit to the implementation of the remedy approved by EPA based on the results of the RI/FS.

Since this draft guidance was issued, the Agency has established a new RI/FS policy. Under the new policy, the Agency will now give PRPs the opportunity to participate in the RI/FS process or conduct the RI/FS consistent with Agency procedures and guidance. This policy was developed to allow the Agency to target its enforcement priorities, reduce the possibility of unsuccessful or protracted negotiations with PRPs, and enhance the quality of a private-party RI/FS.

OSWER and OECM-Waste have issued a memorandum to the Regional Air and Waste Management Division Directors and Regional Counsels outlining the circumstances in which PRPs may conduct the RI/FS and procedures for notifying PRPs in such cases (see, "Participation of Potentially Responsible Parties in the Development of Remedial Investigations and Feasibility Studies under CERCLA," Lee Thomas, Courtney Price, March 20, 1984). This revised RI/FS policy requires the issuance of two sets of notice letters to PRPs: one for the RI/FS and the other at or near the completion of the RI/FS for the site remedy. Timing of notice letters is discussed in detail later in this guidance.

POTENTIALLY RESPONSIBLE PARTY DETERMINATION

The type of factual evidence needed to establish that a party is responsible for the problems at a particular site is discussed in a previously issued guidance document entitled, "Procedures for Identifying Responsible Parties at Uncontrolled Hazardous Waste Sites - Superfund", Prepared by the Office of Legal and Enforcement Counsel (February 1982).

The amount of such evidence depends on the circumstances of each case and should be determined by the Regional program office in consultation with the Regional Counsel. In the early stages of case development, any individual or company even remotely associated with a particular site may be sent initial information request letters. The responses to these letters may then provide additional evidence linking certain parties more closely to the site.

Ultimately, any party receiving a notice letter would be considered a potentially responsible party. The issuance of a notice letter, therefore, should be considered carefully because it not only designates the recipient as a PRP but opens the possibility of the PRP's name being released in response to a Freedom of Information Act (FOIA) request.

PURPOSE OF THE GUIDANCE

Initial notice letters issued by EPA were based on a variety of models and were general enough to be applicable to most potentially responsible parties simply by means of inserting the name of the addressee. While adequate for notification purposes, the content of those letters was not tailored to reflect the circumstances present at each site or the status of each PRP. Previous notice letters were perceived, therefore, to have two limitations: they did not adequately encourage a negotiated cleanup by the PRP nor did they provide PRPs with an adequate level of information on the Agency's planned or actual response actions at the site.

This guidance is designed to assist Regional program personnel in preparing sound and technically accurate notice letters, in accordance with the Agency RI/FS policy, that will encourage cleanup by potentially responsible parties. Headquarters Program and Enforcement Counsel personnel will not be involved in drafting or sending notice letters. Nonetheless, copies of all CERCLA notice letters issued (whether for RI/FS, removal actions, or remedial actions) must be forwarded to OWPE; addressed to the Director; at the same time they are sent to the potentially responsible parties. Vital information on all notice letters sent will be recorded and tracked by the Superfund Enforcement Tracking System.

PURPOSE OF THE NOTICE LETTER

Notice letters will inform the potentially responsible parties that Fund-financed actions are planned and/or have been completed. Notice letters will provide PRPs with the opportunity to undertake future actions, and will inform PRPs of both their potential obligation under Section 106 of CERCLA to implement any needed relief actions determined by EPA and their potential liablility under Section 107 of CERCLA for the cost of Fund-financed actions if they do not respond or fail to respond properly. PRPs will also be informed of their opportunity to discuss with Agency personnel the response measures to be performed.

Notice letters should generally include information requests. Under Section 3007(a) of the Resource Conservation and Recovery Act (RCRA), the Administrator has the authority to require any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste to provide certain information on the identity, volume, transporter, and time of the activity regarding the hazardous wastes at the site in question. Section 104(e) of CERCLA provides similar authority for all hazardous substances. The facts gleaned from the information sent in response to such

a request will assist the Regional Office in identifying additional responsible parties as well as in preparing for litigation or negotiating a voluntary cleanup. If this information has already been obtained through a previous information request letter, an information request in the notice letter may not be necessary.

The Department of Justice has asked that future RCRA and CERCLA referrals from the Agency contain information regarding the insurance coverage of PRPs. To that end, all information requests under RCRA §3007 and CERCLA §104 should include a request for information regarding the existence of insurance coverage for damages resulting from releases of hazardous substances and for copies of all such insurance policies, both currently in effect and in effect during the period of activity in question. This will enable the Department of Justice to evaluate the extent of coverage in hazardous waste cases and, where appropriate, to notify insurance carriers directly of potential liability under CERCLA for the costs of cleanup.

This guidance contains a generic sample notice letter with explanatory discussion. Since each site and each PRP will present different circumstances, this generic sample notice letter is designed to be flexible and can be easily modified. Each site and PRP may dictate a different mix of information in the letter actually sent to the PRP. Various site specific and PRP specific considerations, which are discussed below, along with the explanation accompanying the generic sample notice letter will assist the Regions in drafting notice letters which best effectuate the purposes described above.

CONSIDERATIONS IN DRAFTING NOTICE LETTERS

Numerous site specific and PRP specific considerations will affect the actual language of the notice letter. The following factors should, therefore, be kept in mind when drafting case specific letters:

- The type of action contemplated (RI/FS, removal or remedial)
- The tone desired
- The timing of the notice letter
- Litigation involving the site
- The type of release (actual, threatened, or both)
- The response desired

- Agency resources needed for follow-up to notice letter
- Possible release of identities of responsible parties
- The number of PRPs to whom notice letters must be sent

Some of these factors may be more important than others, and in a given situation, several may in fact not even be applicable. Each factor, however, should be assessed in light of the specifics of the case so that the best possible notice letter will result.

1) Type of Action

The type of action the Agency contemplates (immediate removal, initial remedial measure (IRM), RI/FS, or remedial action) will also affect the content of the notice letter. In immediate removal situations, efforts to obtain private party response may often begin with an oral notice from the on-scene-coordinator, followed by a written notice letter confirming the verbal request for response and notification. In some emergency situations where a CERCLA Administrative Order is issued to responsible parties, no notice letter is sent per se. The Order is sent under a cover letter which serves to notify the responsible parties of their liability for cleanup costs.

IRMs are somewhat less urgent, thereby generally eliminating the special need for oral notice prior to written notice. Notice letters will be issued, followed by Agency negotiations with the PRPs, aimed at securing private party cleanup within an established period of time.

For sites where an RI/FS is planned, PRPs will be notified of the opportunity to perform or participate in the RI/FS. The Agency will make available a list of sites scheduled for RI/FS development. This list will be published at least annually, on a fiscal year basis, and may be updated quarterly during the course of the year. Accompanying the list will be a statement that PRPs can contact Agency personnel to discuss their conduct of, or participation in, the RI/FS. The Agency will then send notice letters to PRPs for sites listed on the Superfund Comprehensive Accomplishments Plan. The notice letters will inform the potentially responsible parties that Fund-financed RI/FS actions are planned; that the results of the studies will be used to select a remedy for the site; that PRPs can meet with Agency personnel to discuss their participation in or conduct of the RI/FS; that PRPs may be liable for the costs of the RI/FS performed by the government; and that PRPs will have an opportunity to meet with Agency personnel to discuss design and implementation of the remedy after completion of the RI/FS.

Upon completion of an RI/FS at a site, the Agency will send notice letters to PRPs which should invite each PRP to prepare comments on the draft RI/FS, offer the PRP the opportunity to undertake the design and construction of the remedy selected by the Agency, and indicate deadlines for negotiations with the Agency. All notice letters, whether for removal, RI/FS, or remedial actions, should inform the PRP of both his/her potential obligation under Section 106 of CERCLA to implement any needed relief actions determined by EPA and potential liability under Section 107 of CERCLA for any Fund-financed activities performed at the site and describe the next response action which is expected to occur.

2) Tone

The tone a notice letter projects will indicate the Agency's position as clearly as any specific language the letter contains. The desired tone will be achieved by language that clearly outlines the PRP's potential statutory liability and yet is encouraging regarding prospective negotiations. The letter should encourage cooperative discussion between the PRP and the Agency. Ultimately, however, program personnel in consultation with the Regional Counsel must exercise their own discretion in setting the tone and emphasis that best effectuates the purposes of the notice letter.

The letter should not indicate that the Agency has made a final determination of liability. Such determinations are made only if and when the Agency pursues an enforcement action against a responsible party.

3) Timing of Notice Letter

In general, notice letters should be issued as soon as possible after completion of the responsible party search and prior to any Federally-financed response actions. The notice letter may be an initial contact, or a followup to an oral notice. If it is EPA's initial contact with the PRP, a more detailed explanation of CERCLA and its ramifications for the PRP would be appropriate.

In the case of immediate removal actions, written notification may not be feasible, and only oral notification may be possible. A notice letter should immediately be sent confirming the oral notice, reiterating the pertinent facts and any agreements that were reached, and expanding on the party's responsibilities under CERCLA. This type of notice letter would necessarily be structured somewhat differently than an "initial contact" notice letter. In addition, the PRP's response to an oral notification will affect the content of the notice letter. Other oral or written communication with the PRP, where appropriate, should be recognized in the notice letter as well.

For RI/FS actions, notice letters will be issued only after a site appears on the Superfund Comprehensive Accomplishments Plan (SCAP) and should normally be issued no later than sixty days before the scheduled date for obligation of funds for the RI/FS. Timing of the notice letter should take into account the number of PRPs and the complexity of the data associating PRPs with the site. Sufficient time should be allowed to enable the Regional Office to collect and analyze data received from PRPs in response to any information request that may be contained in the notice letter. In addition, PRPs should have sufficient time to organize into a steering committee to speak on behalf of as many PRPs as possible when discussions on the RI/FS begin. Timely completion of these activities will help avoid unnecessary delays in meeting Fund-financed RI/FS commitments set forth in the SCAP.

Once resources for an Agency-financed RI/FS have been obligated, the PRP will not be allowed to take over development of the RI/FS. Further, in the event a PRP is discovered after the Fund-financed RI/FS has been initiated or completed (e.g., due to newly discovered evidence), a notice letter should still be sent as soon as is practical. The letter should contain language urging the PRP to undertake the design and construction of a remedy following completion of the RI/FS and inform the PRP of his/her potential liability for activities already performed at the site as well as any future activities. The letter may take the form of a combination notice letter/demand letter.

Under certain circumstances, up to three notice letters may be appropriate. An initial notice letter could be sent prior to a Fund-financed immediate removal or IRM. A second notice letter will be sent when the Agency plans to undertake an RI/FS. A third notice letter will be issued when the Agency has completed or is nearing completion of the RI/FS and approximately thirty days in advance of the public comment period on the RI/FS. More than thirty days may be appropriate if there exist a large number of PRPs at a site.

4) Litigation Involving the Site

If potentially responsible parties are involved in RCRA, CERCLA, or other Federal litigation at the site, the Department of Justice (DOJ) must be informed of any notice letters which the Agency is planning to send. Notice letters in these situations will be issued by the Regional program office only after consultation with DOJ and Regional Counsel. In these situations, copies of notice letters issued and responses received must be forwarded to DOJ and to the Office of Enforcement and Compliance Monitoring - Waste (OECM-Waste) in addition to OWPE.

5) Type of Hazardous Substance Release

Discussion of the type of release or threatened release may involve terminology unfamiliar to the PRP. The notice letter should, however, at least identify whether the episode involves a release or a threatened release of hazardous substances and, if the information is available and supportable, the substances involved. Regional program personnel have wide latitude when drafting the notice letter to decide the appropriate depth of technical discussion.

6) Type of Response Desired

Notice letters should be issued in accordance with a plan developed by the case management team. This should allow Regional personnel to be adequately prepared for immediate questions and requests for documents that may arise as a result of the letters, as well as any negotiations that may subsequently occur. In most circumstances, the notice letter should specifically request a written response from the PRP.

In some cases, such as where a great number of PRPs exist, a somewhat different response may be requested from those PRPs which EPA believes contributed most significantly to the hazardous substances at the site. For example: the case management team may select a "tier" of PRPs. The notice letter sent to this tier of PRPs may include an invitation to initiate negotiations with EPA, while the notice letter sent to the remaining PRPs may only request a written response.

In limited cases, such as where a great number of PRPs are to respond within a short period of time (i.e., 24 - 48 hours), Agency personnel may be inundated with a number and variety of responses. Requesting initial oral responses (directed to a specified telephone number where specific questions will be asked), with written responses or informational meetings with a select group or all PRPs to follow, may be appropriate. Under all circumstances, contact with the Agency in any form should be encouraged.

7) Resources Needed for Follow-Through Activity

In issuing notice letters it is important to consider carefully the resources necessary to follow through with the next phase of activity. In particular, the Region issuing the notice letter should be prepared to make timely and appropriate responses to questions from PRPs and to conduct negotiations. It may be helpful to assemble: a fact sheet, a list or package of references regarding the site, and/or applicable guidance describing what the Agency considers to be necessary prerequisites to PRP performance of any removal, RI/FS, or remedial action. This may not always be possible during the early phases of site management planning due to the lack of detailed information both on the site and on remedial alternatives. The notice letters should, therefore, only be issued after discussion with Regional Counsel regarding meeting times and the enforcement strategy for the site.

8) Release of Identities of Potentially Responsible Parties to Facilitate Superfund Negotiations

The names and addresses of potentially responsible parties should be released prior to Superfund negotiations to encourage the PRPs to organize among themselves in order to reach a settlement with EPA and in accordance with the following guidelines:

- The release of the names of potentially responsible parties prior to negotiations should occur routinely to all potentially responsible parties receiving notice letters and a list of PRP names and addresses should be attached to the notice letter. This information will encourage prenegotiation organization among PRPs and may facilitate meeting negotiation deadlines.

- A cover letter attaching the list of PRP names and addresses should include the following disclaimer:

  > This list represents EPA's preliminary findings on the identities of potentially responsible parties. Inclusion on this list does not constitute a final determination concerning the liability of any party for the hazard or contamination at the site in question.

- PRP names may also be released in response to Freedom of Information Act (FOIA) requests. Relevant guidance is included in the January 26, 1984 memorandum from Gene A. Lucero and Kirk F. Sniff, titled; "Releasing Identities of Potentially Responsible Parties in Response to FOIA Requests".

9) The Number of Parties to Whom Notice Letters Must be Sent

Notice letters should be sent to every PRP at a site. The Regions may, as a matter of program discretion, issue notice letters which request a different response from various PRPs, as described previously in this guidance. The immediacy of the hazard at the site may limit the number of PRPs that will initially receive notice letters. This approach will facilitate negotiations with potentially responsible parties so that response actions can begin promptly. The Regions should later issue notice letters to the remaining PRPs, after the immediate hazard at a site has been abated.

CONSIDERATIONS ON THE USE OF THE GENERIC SAMPLE NOTICE LETTER

The generic sample notice letter which follows this discussion (page 13) is a combined notice letter/information request letter and is an example only. The generic letter should be modified according to the considerations outlined above and should reflect the specific circumstances of the case. While several or possibly even hundreds of letters per site may necessarily be somewhat similar, each letter should, whenever possible, be considered individually and tailored to include PRP specific and site specific factors.

FORMAT OF GENERIC SAMPLE NOTICE LETTER

The generic sample notice letter and following analysis are for a site in which the Agency is planning an RI/FS. Notice letters for immediate removals, IRMs, and design and implementation of site remedies may also be drafted by modifying this generic sample notice letter.

For identification purposes, the sample letter is divided into twenty paragraphs, labeled Paragraph A through Paragraph T. Different language alternatives are offered within the text of the generic sample notice letter. A two bracket system (outer and inner brackets) has been used. An outer set of brackets will contain instructions (in capital letters). The language alternatives will be contained in inner brackets. For example:

The [CHOOSE ONE:

1. [release]

2. [threat of release]]...

For consistency, if the bracketed material only contains instructions and no alternatives both inner and outer brackets will be used. For example:

The [[name of site]] site...

A paragraph by paragraph analysis accompanies the generic sample notice letter to help in tailoring the generic letter to the circumstances of a particular site.

USE OF THIS GUIDANCE

The policy and procedures set forth here, and internal office procedures adopted in conjunction with this document, are intended for the guidance of staff personnel, attorneys, and other employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take any action at variance with the policies or procedures contained in this memorandum or which are not in compliance with internal office procedures that may be adopted pursuant to those materials.

GENERIC SAMPLE NOTICE LETTER FOR THE CONDUCT OF AN RI/FS *

Paragraph A

Certified Mail:
Return Receipt Requested

Paragraph B

Name of PRP
Mailing Address of PRP

Paragraph C

Re: Name of Site
Address of location of site

Paragraph D

Dear [[name of PRP if individual is known, "Sir or Madame" if otherwise]]:

Paragraph E

The United States Environmental Protection Agency (EPA) is considering spending public funds to investigate and take corrective action for the control of [CHOOSE ONE OR BOTH, AS APPROPRIATE:

1. [releases]
2. [threatened releases]]

of hazardous substances at the above referenced site. Unless EPA determines that a responsible party will properly perform such actions, EPA intends to do so pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq (CERCLA).

Under Sections 106(a) and 107(a) of CERCLA and other laws, responsible parties may be obligated to implement any needed relief actions determined by EPA and may also be liable for all costs incurred by the government in responding to any release or threatened release at the site. Such costs can include, but are not be limited to, expenditures for investigation, planning, cleanup of the site and enforcement. By this letter EPA notifies you of your potential liability with regard to this matter and encourages you to voluntarily undertake cleanup activities which will be overseen by EPA.

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* Note that a specific explanation regarding each paragraph begins on page 20.

Paragraph F

Responsible parties under CERCLA include current and past owners and operators, as well as persons who generated the hazardous substances or were involved in the transport, treatment, or disposal of them. Based on [[identify here any evidence obtained by EPA that documents the PRP's connection with the site such as site records, manifests, state records, corporate records, etc.]], EPA has information indicating that you may be a responsible party. More specifically, the Agency has reason to believe that [CHOOSE THE APPROPRIATE BRACKET:

1. [you]
2. [your company]
3. [name the company]]

[CHOOSE THE APPROPRIATE BRACKETED CLAUSE:

1. [were the owner/operator of the facility]
2. [were a former owner/operator of the facility at the time of disposal of hazardous sustances at the facility]
3. [did, by contract, agreement, or otherwise; arrange for the disposal, treatment, or transportation for disposal or treatment of hazardous substances at the facility]
4. [accepted hazardous substances for transport to disposal or treatment facilities selected by you]]

during the period [[specify dates that the PRP engaged in the activity]].

Paragraph G

EPA has determined that [CHOOSE APPROPRIATE BRACKETED CLAUSE:

1. [a release of hazardous substances (as defined by section 101(14) of CERCLA) has occurred at]

2. [there is a substantial threat of release of hazardous substances (as defined by section 101(14) of CERCLA) from]]

the above referenced facility. At the present time, [[identify substance(s) at the site that was(were) handled by the PRP or the name of substance(s) found at the site if the PRP is(was) an owner or operator]] is [CHOOSE ONE OR BOTH, AS APPROPRIATE:

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

DEC - 5 1984

MEMORANDUM

SUBJECT: Interim CERCLA Settlement Policy

FROM: Lee M. Thomas, Assistant Administrator
Office of Solid Waste and Emergency Response

Courtney M. Price, Assistant Administrator
Office of Enforcement and Compliance Monitoring

F. Henry Habicht, II, Assistant Attorney General
Land and Natural Resources Division
Department of Justice

TO: Regional Administrators, Regions I-X

This memorandum sets forth the general principles governing private party settlements under CERCLA, and specific procedures for the Regions and Headquarters to use in assessing private party settlement proposals. It addresses the following topics:

1. general principles for EPA review of private-party cleanup proposals;

2. management guidelines for negotiation;

3. factors governing release of information to potentially responsible parties;

4. criteria for evaluating settlement offers;

5. partial cleanup proposals;

6. contribution among responsible parties;

7. releases and covenants not to sue;

8. targets for litigation;

9. timing for negotiations;

10. management and review of settlement negotiations.

APPLICABILITY

This memorandum incorporates the draft Hazardous Waste Case Settlement Policy, published in draft in December of 1983. It is applicable not only to multiple party cases but to all civil hazardous waste enforcement cases under Superfund. It is generally applicable to imminent hazard enforcement actions under section 7003 of RCRA.

This policy establishes criteria for evaluating private party settlement proposals to conduct or contribute to the funding of response actions, including removal and remedial actions. It also addresses settlement proposals to contribute to funding after a response action has been completed. It does not address private-party proposals to conduct remedial investigations and feasibility studies. These proposals are to be evaluated under criteria established in the policy guidance from Lee M. Thomas, Assistant Administrator, Office of Solid Waste and Emergency Response, and Courtney Price, Assistant Administrator, Office of Enforcement and Compliance Monitoring entitled " Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA". (March 20, 1984)

I. General Principles

The Government's goal in implementing CERCLA is to achieve effective and expedited cleanup at as many uncontrolled hazardous waste facilities as possible. To achieve this goal, the Agency is committed to a strong and vigorous enforcement program. The Agency has made major advances in securing cleanup at some of the nation's worst hazardous waste sites because of its demonstrate willingness to use the Fund and to pursue administrative and judicial enforcement actions. In addition, the Agency has obtained key decisions, on such issues as joint and several liability, which have further advanced its enforcement efforts.

The Agency recognizes, however, that Fund-financed cleanups, administrative action and litigation will not be sufficient to accomplish CERCLA's goals, and that voluntary cleanups are essential to a successful program for cleanup of the nation's hazardous waste sites. The Agency is therefore re-evaluating its settlement policy, in light of three years experience with negotiation and litigation of hazardous waste cases, to remove or minimize if possible the impediments to voluntary cleanup.

As a result of this reassessment, the Agency has identified the following general principles that govern its Superfund enforcement program:

- The goal of the Agency in negotiating private party cleanup and in settlement of hazardous waste cases has been and will continue to be to obtain complete cleanup by the responsible parties, or collect 100% of the costs of the cleanup action.

- Negotiated private party actions are essential to an effective program for cleanup of the nation's hazardous waste sites. An effective program depends on a balanced approach relying on a mix of Fund-financed cleanup, voluntary agreements reached through negotiations, and litigation. Fund-financed cleanup and litigation under CERCLA will not in themselves be sufficient to assure the success of this cleanup effort. In addition, expeditious cleanup reached through negotiated settlements is preferable to protracted litigation.

- A strong enforcement program is essential to encourage voluntary action by PRPs. Section 106 actions are particularly valuable mechanisms for compelling cleanups. The effectiveness of negotiation is integrally related to the effectiveness of enforcement and Fund-financed cleanup. The demonstrated willingness of the Agency to use the Fund to clean up sites and to take enforcement action is our most important tool for achieving negotiated settlements.

- The liability of potentially responsible parties is strict, joint and several, unless they can clearly demonstrate that the harm at the site is divisible. The recognition on the part of responsible parties that they may be jointly and severally liable is a valuable impetus for these parties to reach the agreements that are necessary for successful negotiations. Without such an impetus, negotiations run a risk of delay because of disagreements over the particulars of each responsible party's contribution to the problems at the site.

- The Agency recognizes that the factual strengths and weaknesses of a particular case are relevant in evaluating settlement proposals. The Agency also recognizes that courts may consider differences among defendants in allocating payments among parties held jointly and severally liable under CERCLA. While these are primarily the concerns of PRPs, the Agency will also consider a PRP's contribution to problems at the site, including contribution of waste, in assessing proposals for settlement and in identifying targets for litigation.

- Section 106 of CERCLA provides courts with jurisdiction to grant such relief as the public interest and the equities of the case may require. In assessing proposals for settlement and identifying targets for litigation, the Agency will consider aggravating and mitigating factors and appropriate equitable factors.

- In many circumstances, cleanups can be started more quickly when private parties do the work themselves, rather than provide money to the Fund. It is therefore preferable for private parties to conduct cleanups themselves, rather than simply provide funds for the States or Federal Government to conduct the cleanup.

- The Agency will create a climate that is receptive to private party cleanup proposals. To facilitate negotiations, the Agency will make certain information available to private parties. PRPs will normally have an opportunity to be involved in the studies used to determine the appropriate extent of remedy. The Agency will consider settlement proposals for cleanup of less than 100% of cleanup activities or cleanup costs. Finally, upon settling with cooperative parties, the government will vigorously seek all remaining relief, including costs, penalties and treble damages where appropriate, from parties whose recalcitrance made a complete settlement impossible.

- The Agency anticipates that both the Fund and private resources may be used at the same site in some circumstances. When the Agency settles for less than 100% of cleanup costs, it can use the Fund to assure that site cleanup will proceed expeditiously, and then sue to recover these costs from non-settling responsible parties. Where the Federal government accepts less than 100% of cleanup costs and no financially viable responsible parties remain, Superfund monies may be used to make up the difference.

- The Agency recognizes the value of some measure of finality in determinations of liability and in settlements generally. PRPs frequently want some certainty in return for assuming the costs of cleanup, and we recognize that this will be a valuable incentive for private party cleanup. PRPs frequently seek a final determination of liability through contribution protection, releases or covenants not to sue. The Agency will consider releases from liability in appropriate situations, and will also consider contribution protection in limited circumstances. The Agency will also take aggressive enforcement action against those parties whose recalcitrance prevents settlements. In bringing cost recovery actions, the Agency will also attempt to raise any remaining claims under CERCLA section 106, to the extent practicable.

The remainder of this memorandum sets forth specific policies for implementing these general principles.

Section II sets forth the management guidelines for negotiati with less than all responsible parties for partial settlements. This section reflects the Agency's willingness to be flexible by considering offers for cleanup of less than 100% of cleanup activities or costs.

Section III sets forth guidelines on the release of information. The Agency recognizes that adequate information facilitates more successful negotiations. Thus, the Agency will combine a vigorous program for obtaining the data and information necessary to facilitate settlements with a program for releasing information to facilitate communications among responsible parties.

Sections IV and V discuss the criteria for evaluating partial settlements. As noted above, in certain circumstances the Agency will entertain settlement offers from PRPs which extend only to part of the site or part of the costs of cleanup at a site. Section IV of this memo sets forth criteria to be used in evaluating such offers. These criteria apply to all cases. Section V sets forth the Agency's policy concerning offers to perform or pay for discrete phases of an approved cleanup.

Sections VI and VII relate to contribution protection and releases from liability. Where appropriate, the Agency may consider contribution protection and limited releases from liability to help provide some finality to settlements.

Section VIII sets forth criteria for selecting enforcement cases and identifying targets for litigation. As discussed above, effective enforcement depends on careful case selection and the careful selection of targets for litigation. The Agency will apply criteria for selection of cases to focus sufficient resources on cases that provide the broadest possible enforcement impact. In addition, targets for litigation will be identified in light of the willingness of parties to perform voluntary cleanup, as well as conventional litigation management concerns.

Section IX sets forth the requirements governing the timing of negotiations and section X the provisions for Headquarters review. These sections address the need to provide the Regions with increased flexibility in negotiations and to change Headquart review in order to expedite site cleanup.

II. Management Guidelines for Negotiation

As a guideline, the Agency will negotiate only if the initial offer from PRPs constitutes a substantial proportion of the costs of cleanup at the site, or a substantial portion of the needed remedial action. Entering into discussions for less than a substantial proportion of cleanup costs or remedial actior needed at the site, would not be an effective use of government resources. No specific numerical threshold for initiating negotiations has been established.

In deciding whether to start negotiations, the Regions should weigh the potential resource demands for conducting negotiations against the likelihood of getting 100% of costs or a complete remedy.

Where the Region proposes to negotiate for a partial settlement involving less than the total costs of cleanup, or a complete remedy, the Region should prepare as part of its Case Negotiations Strategy a draft evaluation of the case using the settlement criteria identified in section IV. The draft should discuss how each of the factors in section IV applies to the site in question, and explain why negotiations for less than all of the cleanup costs, or a partial remedy, are appropriate. A copy of the draft should be forwarded to Headquarters. The Headquarters review will be used to identify major issues of national significance or issues that may involve significant legal precedents.

In certain other categories of cases, it may be appropriate for the Regions to enter into negotiations with PRPs, even though the offers from PRPs do not represent a substantial portion of the costs of cleanup. These categories of cases include:

- administrative settlements of cost recovery actions where total cleanup costs were less than $200,000;
- claims in bankruptcy;
- administrative settlements with de minimis contributors of wastes.

Actions subject to this exception are administrative settlements of cost recovery cases where all the work at the site has been completed and all costs have been incurred. The figure of $200,000 refers to all of the costs of cleanup. The Agency is preparing more detailed guidance on the appropriate form of such settlement agreements, and the types of conditions that must be included.

Negotiation of claims in bankruptcy may involve both present owners, where the United States may have an administrative costs claim, and other parties such as past owners or generators, where the United States may be an unsecured potential creditor. The Regions should avoid becoming involved in bankruptcy proceedings if there is little likelihood of recovery, and should recognize the risks involved in negotiating without creditor status. It may be appropriate to request DOJ filing of a proof of claim. Further guidance is provided in the Memorandum from Courtney Price entitled "Information Regarding CERCLA Enforcement Against Bankrupt Parties," dated May 24, 1984.

In negotiating with de minimis parties, the Regions should limit their efforts to low volume, low toxicity disposers who would not normally make a significant contribution to the costs of cleanup in any case.

In considering settlement offers from de minimis contributors, the Region should normally focus on achieving cash settlements. Regions should generally not enter into negotiations for full administrative or judicial settlements with releases, contribution protection, or other protective clauses. Substantial resources should not be invested in negotiations with de minimis contributors, in light of the limited costs that may be recovered, the time needed to prepare the necessary legal documents, the need for Headquarters review, potential res judicata effects, and other effects that de minimis settlements may have on the nature of the case remaining to the Government.

Partial settlements may also be considered in situations where the unwillingness of a relatively small group of parties to settle prevents the development of a proposal for a substantial portion of costs or the remedy. Proposals for settlement in these circumstances should be assessed under the criteria set forth in section IV.

Earlier versions of this policy included a threshold for negotiations, which provided that negotiations should not be commenced unless an offer was made to settle for at least 80% of the costs of cleanup, or of the remedial action. This threshold has been eliminated from the final version of this policy. It must be emphasized that elimination of this threshold does not mean that the Agency is therefore more willing to accept offers for partial settlement. The objective of the Agency is still to obtain complete cleanup by PRPs, or 100% of the costs of cleanup

III. Release of Information

The Agency will release information concerning the site to PRPs to facilitate discussions for settlement among PRPs. This information will include:

- identity of notice letter recipients;
- volume and nature of wastes to the extent identified as sent to the site;
- ranking by volume of material sent to the site, if available

In determining the type of information to be released, the Region should consider the possible impacts on any potential litigation. The Regions should take steps to assure protection of confidential and deliberative materials. The Agency will generally not release actual evidentiary material. The Region should state on each released summary that it is preliminary, that it was furnished in the course of compromise negotiations (Fed. Rules of Evidence 408), and that it is not binding on the Federal Government.

This information release should be preceded by and combined with a vigorous program for collecting information from responsible parties. It remains standard practice for the Agency to use the information gathering authorities of RCRA and CERCLA with respect to all PRPs at a site. This information release should generally be conditioned on a reciprocal release of information by PRPs. The information request need not be simultaneous, but EPA should receive the information within a reasonable time.

IV. Settlement Criteria

The objective of negotiations is to collect 100% of cleanup costs or complete cleanup from responsible parties. The Agency recognizes that, in narrowly limited circumstances, exceptions to this goal may be appropriate, and has established criteria for determining where such exceptions are allowed. Although the Agency will consider offers of less than 100% in accordance with this policy, it will do so in light of the Agency's position, reinforced by recent court decisions, that PRP liability is strict, joint and several unless it can be shown by the PRPs that injury at a site is clearly divisible.

Based on a full evaluation of the facts and a comprehensive analysis of all of the listed criteria, the Agency may consider accepting offers of less than 100 percent. Rapid and effective settlement depends on a thorough evaluation, and an aggressive information collection program is necessary to prepare effective evaluations. Proposals for less than total settlement should be assessed using the criteria identified below.

1. Volume of wastes contributed to site by each PRP

Information concerning the volume of wastes contributed to the site by PRPs should be collected, if available, and evaluated in each case. The volume of wastes is not the only criterion to be considered, nor may it be the most important. A small quantity of waste may cost proportionately more to contain or remove than a larger quantity of a different waste. However, the volume of waste may contribute significantly and directly to the distribution of contamination on the surface and subsurface (including groundwater), and to the complexity of removal of the contamination. In addition, if the properties of all wastes at the site are relatively equal, the volume of wastes contributed by the PRPs provides a convenient, easily applied criterion for measuring whether a PRP's settlement offer may be reasonable.

This does not mean, however, that PRPs will be required to pay only their proportionate share based on volume of contribution of wastes to the site. At many sites, there will be wastes for which PRPs cannot be identified. If identified, PRPs may be unable to provide funds for cleanup. Private party funding for cleanup of those wastes would, therefore, not be available if volumetric contribution were the only criteria.

Therefore, to achieve the Agency's goal of obtaining 100 percent of cleanup or the cost of cleanup, it will be necessary in many cases to require a settlement contribution greater than the percentage of wastes contributed by each PRP to the site. These costs can be obtained through the application of the theory of joint and several liability where the harm is indivisible, and through application of these criteria in evaluating settlement proposals.

2. Nature of the wastes contributed

The human, animal and environmental toxicity of the hazardous substances contributed by the PRPs, its mobility, persistence and other properties are important factors to consider. As noted above, a small amount of wastes, or a highly mobile waste, may cost more to clean up, dispose, or treat than less toxic or relatively immobile wastes. In addition, any disproportionate adverse effects on the environment by the presence of wastes contributed by those PRPs should be considered.

If a waste contributed by one or more of the parties offering a settlement disproportionately increases the costs of cleanup at the site, it may be appropriate for parties contributing such waste to bear a larger percentage of cleanup costs than would be the case by using solely a volumetric basis.

3. Strength of evidence tracing the wastes at the site to the settling parties

The quality and quantity of the Government's evidence connecting PRPs to the wastes at the site obviously affects the settlement value of the Government's case. The Government must show, by a preponderance of the evidence, that the PRPs are connected with the wastes in one or more of the ways provided in Section 107 of CERCLA. Therefore, if the Government's evidence against a particular PRP is weak, we should weigh that weakness in evaluating a settlement offer from that PRP.

On the other hand, where indivisible harm is shown to exist, under the theory of joint and several liability the Government is in a position to collect 100 % of the cost of cleanup from all parties who have contributed to a site. Therefore, where the quality and quantity of the Government's evidence appears to be strong for establishing the PRP's liability, the Government should rely on the strength of its evidence and not decrease the settlement value of its case. Discharging such PRPs from liability in a partial settlement without obtaining a substantial contribution may leave the Government with non-settling parties whose involvement at the site may be more tenuous.

In any evaluation of a settlement offer, the Agency should weigh the amount of information exchange that has occurred before the settlement offer. The more the Government knows about the evidence it has to connect the settling parties to the site, the better this evaluation will be. The information collection provisions of RCRA and/or CERCLA should be used to develop evidence prior to preparation of the evaluation.

4. Ability of the settling parties to pay

Ability to pay is not a defense to an action by the Government. Nevertheless, the evaluation of a settlement proposal should discuss the financial condition of that party, and the practical results of pursuing a party for more than the Government can hope to actually recover. In cost recovery actions it will be difficult to negotiate a settlement for more than a party's assets. The Region should also consider allowing the party to reimburse the Fund in reasonable installments over a period of time, if the party is unable to pay in a lump sum, and installment payments would benefit the Government. A structured settlement providing for payments over time should be at a payment level that takes into account the party's cash flow. An excessive amount could force a party into bankruptcy, which will of course make collection very difficult. See the memorandum dated August 26, 1983, entitled "Cost Recovery Actions under Section 107 of CERCLA" for additional guidance on this subject.

5. Litigative risks in proceeding to trial

Litigative risks which might be encountered at trial and which should weigh in consideration of any settlement offer include traditional factors such as:

a. Admissibility of the Government's evidence

If necessary Government evidence is unlikely to be admitted in a trial because of procedural or substantive problems in the acquisition or creation of the evidence, this infirmity should be considered as reducing the Government's chance of success and, therefore, reducing the amount the Government should expect to receive in a settlement.

b. Adequacy of the Government's evidence

Certain aspects of this point have already been discussed above. However, it deserves mention again because the the Government's case depends on substantial quantities of sampling, analytical and other technical data and expert testimony. If the evidence in support of the Government's case is incomplete or based upon controversial science, or if the Government's evidence is otherwise unlikely to withstand the scrutiny of a trial, the amount that the Government might expect to receive in a settlement will be reduced.

c. Availability of defenses

In the unlikely event that one or more of the settling parties appears to have a defense to the Government's action under section 107(b) of CERCLA, the Government should expect to receive less in a settlement from that PRP. Availability of one or more defenses to one PRP which are not common to all PRPs in the case should not, however, lower the expectation of what an entire offering group should pay.

6. Public interest considerations

The purpose of site cleanup is to protect public health and the environment. Therefore, in analyzing a settlement proposal the timing of the cleanup and the ability of the Government to clean up the site should be considered. For example, if the State cannot fund its portion of a Fund-financed cleanup, a private-party cleanup proposal may be given more favorable consideration than one received in a case where the State can fund its portion of cleanup costs, if necessary.

Public interest considerations also include the availability of Federal funds for necessary cleanup, and whether privately financed action can begin more quickly than Federally-financed activity. Public interest concerns may be used to justify a settlement of less than 100% only when there is a demonstrated need for a quick remedy to protect public health or the environment.

7. Precedential value

In some cases, the factual situation may be conducive to establishing a favorable precedent for future Government actions. For example, strong case law can be developed in cases of first impression. In addition, settlements in such cases tend to become precedents in themselves, and are examined extensively by PRPs in other cases. Settlement of such cases should always be on terms most favorable to the Government. Where PRPs will not settle on such terms, and the quality and quantity of evidence is strong, it may be in the overall interest of the Government to try the case.

8. Value of obtaining a present sum certain

If money can be obtained now and turned over to the Fund, where it can earn interest until the time it is spent to clean up a site, the net present value of obtaining the sum offered in settlement now can be computed against the possibility of obtaining a larger sum in the future. This calculation may show that the net present value of the sum offered in settlement is, in reality, higher than the amount the Government can expect to obtain at trial. EPA has developed an economic model to assess these and other related economic factors. More information on this model can be obtained from the Director, Office of Waste Programs Enforc

9. Inequities and aggravating factors

All analyses of settlement proposals should flag for the decision makers any apparent inequities to the settling parties inherent in the Government's case, any apparent inequities to others if the settlement proposal is accepted, and any aggravating factors. However, it must be understood that the statute operates on the underlying principle of strict liability, and that equitable matters are not defenses.

10. Nature of the case that remains after settlement

All settlement evaluations should address the nature of the case that remains if the settlement is accepted. For example, if there are no financially viable parties left to proceed against for the balance of the cleanup after the settlement, the settlement offer should constitute everything the Government expects to obtain at that site. The questions are: What does the Government gain by settling this portion of the case? Does the settlement or its terms harm the remaining portion of the case? Will the Government have to expend the same amount of resources to try the remaining portion of the case? If so, why should the settlement offer be accepted?

This analysis is extremely important and should come at the conclusion of the evaluation.

V. Partial Cleanups

On occasion, PRPs may offer to perform or pay for one phase of a site cleanup (such as a surface removal action) but not commit to any other phase of the cleanup (such as ground water treatment). In some circumstances, it may be appropriate to enter into settlements for such partial cleanups, rather than to resolve all issues in one settlement. For example, in some cases it is necessary to conduct initial phases of site cleanup in order to gather sufficient data to evaluate the need for and type of work to be done on subsequent phases. In such cases, offers from PRPs to conduct or pay for less than all phases of site cleanup should be evaluated in the same manner and by the same criteria as set forth above. Settlements must be limited to the phase or phases of work actually to be performed at the site. This provision does not cover preparation of an RI/FS, which is covered by a separate guidance document: Lee Thomas and Courtney Price's "Participation of Potentially Responsible Parties in RI/FS Development" (March 20, 1984).

VI. Contribution Protection

Contribution among responsible parties is based on the principle that a jointly and severally liable party who has paid all or a portion of a judgment or settlement may be entitled to reimbursement from other jointly or severally liable parties. When the Agency reaches a partial settlement with some parties, it will frequently pursue an enforcement action against non-settling responsible parties to recover the remaining costs of cleanup. If such an action is undertaken, there is a possibility that those non-settlors would in turn sue settling parties. If this action by nonsettling parties is successful, then the settling parties would end up paying a larger share of cleanup costs than was determined in the Agency's settlement. This is obviously a disincentive to settlement.

Contribution protection in a consent decree can prevent this outcome. In a contribution protection clause, the United States would agree to reduce its judgment against the non-settling parties, to the extent necessary to extinguish the settling party's liability to the nonsettling third party.

The Agency recognizes the value of contribution protection in limited situations in order to provide some measure of finality to settlements. Fundamentally, we believe that settling parties are protected from contribution actions as a matter of law, based on the Uniform Contribution Among Tortfeasors Act. That Act provides that, where settlements are entered into in "good faith", the settlors are discharged from "all liability for contribution to any other joint tortfeasors." To the extent that this law is adopted as the Federal rule of decision, there will be no need for specific clauses in consent agreements to provide contribution protection.

There has not yet been any ruling on the issue. Thus, the Agency may still be asked to provide contribution protection in the form of offsets and reductions in judgment. In determining whether explicit contribution protection clauses are appropriate, the Region should consider the following factors:

- Explicit contribution protection clauses are generally not appropriate unless liability can be clearly allocated, so that the risk of reapportionment by a judge in any future action would be minimal.

- Inclusion should depend on case-by-case consideration of the law which is likely to be applied.

- The Agency will be more willing to consider contribution protection in settlements that provide substantially all the costs of cleanup.

If a proposed settlement includes a contribution protection clause, the Region should prepare a detailed justification indicating why this clause is essential to attaining an adequate settlement. The justification should include an assessment of the prospects of litigation regarding the clause. Any proposed settlement that contains a contribution protection clause with a potential ambiguity will be returned for further negotiation.

Any subsequent claims by settling parties against non-settlors must be subordinated to Agency claims against these non-settling parties. In no event will the Agency agree to defend on behalf of a settlor, or to provide direct indemnification. The Government will not enter into any form of contribution protection agreement that could require the Government to pay money to anyone.

If litigation is commenced by non-settlors against settlors, and the Agency became involved in such litigation, the Government would argue to the court that in adjusting equities among responsible parties, positive consideration should be given to those who came forward voluntarily and were a part of a group of settling PRPs.

VII. Releases from Liability

Potentially responsible parties who offer to wholly or partially clean up a site or pay the costs of cleanup normally wish to negotiate a release from liability or a covenant not to sue as a part of the consideration for that cleanup or payment. Such releases are appropriate in some circumstances. The need for finality in settlements must be balanced against the need to insure that PRPs remain responsible for recurring endangerments and unknown conditions.

The Agency recognizes the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites. It is possible that remedial measures will prove inadequate and lead to imminent and substantial endangerments, because of unknown conditions or because of failures in design, construction or effectiveness of the remedy.

Although the Agency approves all remedial actions for sites on the National Priorities List, releases from liability will not automatically be granted merely because the Agency has approved the remedy. The willingness of the Agency to give expansive releases from liability is directly related to the confidence the Agency has that the remedy will ultimately prove effective and reliable. In general, the Regions will have the flexibility to negotiate releases that are relatively expansive or relatively stringent, depending on the degree of confidence that the Agency has in the remedy.

Releases or covenants must also include certain reopeners which preserve the right of the Government to seek additional cleanup action and recover additional costs from responsible parties in a number of circumstances. They are also subject to a variety of other limitations. These reopener clauses and limitations are described below.

In addition, the Agency can address future problems at a site by enforcement of the decree or order, rather than by action under a particular reopener clause. Settlements will normally specify a particular type of remedial action to be undertaken. That remedial action will normally be selected to achieve a certain specified level of protection of public health and the environment. When settlements are incorporated into consent decrees or orders, the decrees or orders should wherever possible include performance standards that set out these specified levels of protection. Thus, the Agency will retain its ability to assure cleanup by taking action to enforce these decrees or orders when remedies fail to meet the specified standards.

It is not possible to specify a precise hierarchy of preferred remedies. The degree of confidence in a particular remedy must be determined on an individual basis, taking site-specific conditions into account. In general, however, the more effective and reliable the remedy, the more likely it is that the Agency can negotiate a more expansive release. For example, if a consent decree or order commits a private party to meeting and/or continuing to attain health based performance standards, there can be great certainty on the part of the Agency that an adequate level of public health protection will be met and maintained, as long as the terms of the agreement are met. In this type of case, it may be appropriate to negotiate a more expansive release than, for example, cases involving remedies that are solely technology-based.

Expansive releases may be more appropriate where the private party remedy is a demonstrated effective alternative to land disposal, such as incineration. Such releases are possible whether the hazardous material is transported offsite for treatment, or the treatment takes place on site. In either instance, the use of treatment can result in greater certainty that future problems will not occur.

Other remedies may be less appropriate for expansive releases, particularly if the consent order or agreement does not include performance standards. It may be appropriate in such circumstances to negotiate releases that become effective several years after completion of the remedial action, so that the effectiveness and reliability of the technology can be clearly demonstrated. The Agency anticipates that responsible parties may be able to achieve a greater degree of certainty in settlements when the state of scientific understanding concerning these technical issues has advanced.

Regardless of the relative expansiveness or stringency of the release in other respects, at a minimum settlement documents must include reopeners allowing the Government to modify terms and conditions of the agreement for the following types of circumstances:

- where previously unknown or undetected conditions that arise or are discovered at the site after the time of the agreement may present an imminent and substantial endangerment to public health, welfare or the environment;

- where the Agency receives additional information, which was not available at the time of the agreement, concerning the scientific determinations on which the settlement was premised (for example, health effects associated with levels of exposure, toxicity of hazardous substances, and the appropriateness of the remedial technologies for conditions at the site) and this additional information indicates that site conditions may present an imminent and substantial endangerment to the public health or welfare or the environment.

In addition, release clauses must not preclude the Government from recovering costs incurred in responding to the types of imminent and substantial endangerments identified above.

In extraordinary circumstances, it may be clear after application of the settlement criteria set out in section IV that it is in the public interest to agree to a more limited or more expansive release not subject to the conditions outlined above. Concurrence of the Assistant Administrators for OSWER and OECM (and the Assistant Attorney General when the release is given on behalf of the United States) must be obtained before the Government's negotiating team is authorized to negotiate regarding such a release or covenant.

The extent of releases should be the same, whether the private parties conduct the cleanup themselves or pay for Federal Government cleanup. When responsible parties pay for Federal Government cleanup, the release will ordinarily not become effective until cleanup is completed and the actual costs of the cleanup are ascertained. Responsible parties will thereby bear the risk of uncertainties arising during execution of the cleanup. In limited circumstances, the release may become effective upon payment for Federal Government cleanup, if the payment includes a carefully calculated premium or other financial instrument that adequately insures the Federal government against these uncertainties. Finally, the Agency may be more willing to settle for less than the total costs of cleanup when it is not precluded by a release clause from eventually recovering any additional costs that might ultimately be incurred at a site.

Release clauses are also subject to the following limitations:

- A release or covenant may be given only to the PRP providing the consideration for the release.
- The release or covenant must not cover any claims other than those involved in the case.
- The release must not address any criminal matter.
- Releases for partial cleanups that do not extend to the entire site must be limited to the work actually completed.
- Federal claims for natural resource damages should not be released without the approval of Federal trustees.
- Responsible parties must release any related claims against the United States, including the Hazardous Substances Response Fund.
- Where the cleanup is to be performed by the PRPs, the release or covenant should normally become effective only upon the completion of the cleanup (or phase of cleanup) in a manner satisfactory to EPA.
- Release clauses should be drafted as covenants not to sue, rather than releases from liability, where this form may be necessary to protect the legal rights of the Federal Government.

A release or covenant not to sue terminates or seriously impairs the Government's rights of action against PRPs. Therefore, the document should be carefully worded so that the intent of the parties and extent of the matters covered by the release or covenant are clearly stated. Any proposed settlement containing a release with a possible ambiguity will be returned for further negotiation.

VIII. Targets for Litigation

The Regions should identify particular cases for referral in light of the following factors:

- substantial environmental problems exist;
- the Agency's case has legal merit;
- the amount of money or cleanup involved is significant;
- good legal precedent is possible cases should be rejected where the potential for adverse precedent is substantial;
- the evidence is strong, well developed, or capable of development;
- statute of limitations problems exist;
- responsible parties are financially viable.

The goal of the Agency is to bring enforcement action wherever needed to assure private party cleanup or to recover costs. The following types of cases are the highest priorities for referrals:

- 107 actions in which all costs have been incurred;
- combined 106/107 actions in which a significant phase has been completed, additional injunctive relief is needed and identified, and the Fund will not be used;
- 106 actions which will not be the subject of Fund-financed cleanup.

Referrals for injunctive relief may also be appropriate in cases when it is possible that Fund-financed cleanup will be undertaken. Such referrals may be needed where there are potential statute of limitation concerns, or where the site has been identified as enforcement-lead, and prospects for successful litigation are good.

Regional offices should periodically reevaluate current targets for referral to determine if they meet the guidelines identified above.

As indicated before, under the theory of joint and several liability the Government is not required to bring enforcement action against all of the potentially responsible parties involved at a site. The primary concern of the Government in identifying targets for litigation is to bring a meritorious case against responsible parties who have the ability to undertake or pay for response action. The Government will determine the targets of litigation in order to reach the largest manageable number of parties, based on toxicity and volume, and financial viability. Owners and operators will generally be the target of litigation, unless bankrupt or otherwise judgment proof. In appropriate cases, the Government will consider prosecuting claims in bankruptcy. The Government may also select targets for litigation for limited purposes, such as site access.

Parties who are targeted for litigation are of course not precluded from involving parties who have not been targeted in developing settlement offers for consideration by the Government.

In determining the appropriate targets for litigation, the Government will consider the willingness of parties to settle, as demonstrated in the negotiation stage. In identifying a manageable number of parties for litigation, the Agency will consider the recalcitrance or willingness to settle of the parties who were involved in the negotiations. The Agency will also consider other aggravating and mitigating factors concerning responsible party actions in identifying targets for litigation.

In addition, it may be appropriate, when the Agency is conducting phased cleanup and has reached a settlement for one phase, to first sue only non-settling companies for the next phase, assuming that such financially viable parties are available. This approach would not preclude suit against settling parties, but non-settlors would be sued initially.

The Agency recognizes that Federal agencies may be responsible for cleanup costs at hazardous waste sites. Accordingly, Federal facilities will be issued notice letters and administrative orders where appropriate. Instead of litigation, the Agency will use the procedures established by Executive Orders 12088 and 12146 and all applicable Memoranda of Understanding to resolve issues concerning such agency's liability. The Agency will take all steps necessary to encourage successful negotiations.

IX. Timing of Negotiations

Under our revised policy on responsible party participation in RI/FS, PRPs have increased opportunities for involvement in the development of the remedial investigations and feasibility studies which the Agency uses to identify the appropriate remedy. In light of the fact that PRPs will have received notice letters and the information identified in section III of this policy, prelitigation negotiations can be conducted in an expeditious fashion.

The Negotiations Decision Document (NDD), which follows completion of the RI/FS, makes the preliminary identification of the appropriate remedy for the site. Prelitigation negotiations between the Government and the PRPs should normally not extend for more than 60 days after approval of the NDD. If significant progress is not made within a reasonable amount of time, the Agency will not hesitate to abandon negotiations and proceed immediately with administrative action or litigation. It should be noted that these steps do not preclude further negotiations.

Extensions can be considered in complex cases where there is no threat of seriously delaying cleanup action. Any extension of this period must be predicated on having a good faith offer from the PRPs which, if successfully negotiated, will save the Governme substantial time and resources in attaining the cleanup objectives

X. Management and Review of Settlement Negotiations

All settlement documents must receive concurrence from OWPE and OECM-Waste, and be approved by the Assistant Administrator of OECM in accordance with delegations. The management guidelines discussed in Section II allows the Regions to commence negotiatio if responsible parties make an initial offer for a substantial proportion of the cleanup costs. Before commencing negotiations for partial settlements, the Regions should prepare a preliminary draft evaluation of the case using the settlement criteria in section IV of this policy. A copy of this evaluation should be forwarded to Headquarters.

A final detailed evaluation of settlements is required when the Regions request Headquarters approval of these settlements. This written evaluation should be submitted to OECM-Waste and OWPE by the legal and technical personnel on the case. These will normally be the Regional attorney and technical representative.

The evaluation memorandum should indicate whether the settlement is for 100% of the work or cleanup costs. If this figure is less than 100%, the memorandum should include a discussion of the advantages and disadvantages of the proposed settlement as measured by the criteria in section IV. The Agency expects full evaluations of each of the criteria specified in the policy and will return inadequate evaluations.

The Regions are authorized to conclude settlements in certain types of hazardous waste cases on their own, without prior review by Headquarters or DOJ. Cases selected for this treatment would normally have lower priority for litigation. Categories of cases not subject to Headquarters review include negotiation for cost recovery cases under $200,000, and negotiation of claims filed in bankruptcy. In cost recovery cases, the Regions should pay particular attention to weighing the resources necessary to conduct negotiations and litigation against the amounts that may be recovered, and the prospects for recovery.

Authority to appear and try cases before the Bankruptcy Court would not be delegated to the Regions, but would be retained by the Department of Justice. The Department will file cases where an acceptable negotiated settlement cannot be reached. Copies of settlement documents for such agreements should be provided to OWPE and OECM.

Specific details concerning these authorizations will be addressed in delegations that will be forwarded to the Regions under separate cover. Headquarters is conducting an evaluation of the effectiveness of existing delegations, and is assessing the possibility of additional delegations.

Note on Purpose and Uses of this Memorandum

The policies and procedures set forth here, and internal Government procedures adopted to implement these policies, are intended as guidance to Agency and other Government employees. They do not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The Government may take action that is at variance with the policies and procedures in this memorandum.

If you have any questions or comments on this policy, or problems that need to be addressed in further guidance to implement this policy, please contact Gene A. Lucero, Director of the Office of Waste Programs Enforcement, (FTS 382-4814), or Richard Mays, Senior Enforcement Counsel, (FTS 382-4137).

ENVIRONMENTAL PROTECTION AGENCY

[SW-FRL 2770-4]

Hazardous Waste Enforcement Policy

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing today its interim CERCLA settlement policy in order to solicit public comment on it. The policy governs private party cleanup and contribution proposals under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"). The Agency is also publishing as an attachment a more detailed discussion of issues raised by this policy.

DATE: Comments must be provided on or before April 8, 1985.

FOR FURTHER INFORMATION CONTACT: Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH-527, 401 M St. SW., Washington D.C. 20460, (202) 382-4829.

SUPPLEMENTARY INFORMATION: This interim policy describes the approach the Environmental Protection Agency is now taking in evaluating private party settlement proposals for cleanup of hazardous waste sites or contribution to funding of response action under the Comprehensive Environmental Response, Compensation, and Liability Act (" CERCLA" or "Superfund"). It reflects our recent reevaluation of Agency settlement policies. The policy is also generally applicable to imminent hazard enforcement actions under section 7003 of RCRA.

The Agency's hazardous waste settlement policies have resulted in numerous comprehensive private party cleanups, and in stronger settlements with private parties. Some potentially responsible parties (PRPs), however, have argued that Agency settlement policies have fostered litigation, and discouraged voluntary private party cleanup actions. They have suggested a number of changes, such as expanded releases from liability for PRPs and routine provision to PRPs of protection against possible contribution actions by non-settling parties. These suggestions have been made with the expectation that such changes would substantially encourage voluntary response.

The Agency's interim policy on CERCLA case settlement has therefore been amended to:

—Include additional incentives for private party cleanup;

—Articulate policy decisions previously made on a case by case basis in evaluating particular settlement offers;

—Address additional policy concerns, including releases from liability and contribution protection; and,

—Include a statement of the general principles governing EPA's CERCLA enforcement program.

This policy sets forth the general principles governing private party settlement under CERCLA, and specific procedures for Regions and Headquarters to use in assessing private party settlement proposals. It addresses negotiations concerning conduct of or contribution to the remedy determined by the Agency as a result of the remedial investigations and feasibility studies. The following topics are covered:

1. General principles for EPA review of private-party cleanup proposals;
2. Management guidelines for negotiation;
3. Factors governing release of information to potentially responsible parties;
4. Criteria for assessing settlement offers;
5. Partial cleanup proposals;
6. Contribution among responsible parties;
7. Releases and covenants not to sue;
8. Targets for litigation;
9. Timing for negotiations;
10. Management and review of settlement negotiations.

The policy does not explicitly address PRP participation in the Agency's selection of remedies for private party cleanups. That topic was addressed in a memorandum from Lee Thomas and Courtney Price, entitled "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA" (March 20, 1984).

The policies and procedures set forth in the interim policy are guidance to Agency and other government employees. The policy sets forth enforcement priorities and procedures, and internal procedures which are not appropriate or necessary subjects for rulemaking. Thus, the policy does not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The government may, therefore, take action that is at variance with policies and procedures contained in this document.

The Agency is publishing and soliciting comment on this interim policy for a number of reasons. The Agency recognizes that the public is very concerned with hazardous waste enforcement. We believe that this policy will substantially benefit the public by encouraging responsible parties to undertake appropriate and long term remedies through settlements. We also believe that the policy will yield better results if the public and potentially responsible parties understand the policy and our reasons for adopting it.

This policy was originally drafted in December, 1983, has been the subject of extensive review and evaluation by the Agency and the Department of Justice. It is therefore being published as interim policy. We will reevaluate this policy in light of our working experience with implementing it, and the public comments that we receive.

The Agency statement of policy follows. A more detailed discussion of issues for public comment is included in the Appendix.

Dated: January 25, 1985.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Dated: January 28, 1985.

Courtney M. Price,

Assistant Administrator, Office of Enforcement and Compliance Monitoring.

Memorandum

December 5, 1984.

Subject: Interim CERCLA Settlement Policy

From: Lee M. Thomas, Assistant Administrator Office of Solid Waste and Emergency Response, Courtney M. Price, Assistant Administrator Office of Enforcement and Compliance Monitoring F. Henry Habicht, II, Assistant Attorney General Land and Natural Resources Division, Department of Justice

To: Regional Administrators, Regions I-X

This memorandum sets forth the general principles governing private party settlements under CERCLA, and specific procedures for the Regions and Headquarters to use in assessing private party settlement proposals. It addresses the following topics:

1. general principles for EPA review of private-party cleanup proposals;
2. management guidelines for negotiation;
3. factors governing release of information to potentially responsible parties;
4. criteria for evaluating settlement offers;
5. partial cleanup proposals;
6. contribution among responsible parties;

7. release and convenants not to sue;
8. targets for litigation:
9. timing for negotiations:
10. management and review of settlement negotiations.

Applicability

This memorandum incorporates the draft, Hazardous Waste Case Settlement Policy, published in draft in December of 1983. It is applicable not only to multiple party cases but to all civil hazardous waste enforcement cases under Superfund. It is generally applicable to imminent hazard enforcement actions under section 7003 of RCRA.

This policy establishes criteria for evaluating private party settlement proposals to conduct or contribute to the funding of response actions, including removal and remedial actions. It also addresses settlement proposals to contribute to funding after a response action has been completed. It does not address private-party proposals to conduct remedial investigations and feasibility studies. These proposals are to be evaluated under criteria established in the policy guidance from Lee M. Thomas, Assistant Administrator, Office of Solid Waste and Emergency Response, and Courtney Price, Assistant Administrator, Office of Enforcement and Compliance Monitoring entitled "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA". (March 20, 1984)

I. General Principles

The Government's goal in implementing CERCLA is to achieve effective and expedited cleanup at as many uncontrolled hazardous waste facilities as possible. To achieve this goal, the Agency is committed to a strong and vigorous enforcement program. The Agency has made major advances in securing cleanup at some of the nation's worst hazardous waste sites because of its demonstrated willingness to use the Fund and to pursue administrative and judicial enforcement actions. In addition, the Agency has obtained key decisions, on such issues as joint and several liability, which have further advanced its enforcement efforts.

The Agency recognizes, however, that Fund-financed cleanups, administrative acton and litigation will not be sufficient to accomplish CERCLA's goals, and that voluntary cleanups are essential to a successful program for cleanup of the nation's hazardous waste sites. The Agency is therefore re-evaluating its settlement policy, in light of three years experience with negotiation and litigation of hazardous waste cases, to remove or minimize if possible the impediments to voluntary cleanup.

As a result of this reassessment, the Agency has identified the following general principles that govern its Superfund enforcement program:

- The goal of the Agency in negotiating private party cleanup and in settlement of hazardous waste cases has been and will continue to be to obtain complete cleanup by the responsible parties, or collect 100% of the costs of the cleanup action.
- Negotiated private party actions are essential to an effective program for cleanup of the nation's hazardous waste sites. An effective program depends on a balanced approach relying on a mix of Fund-financed cleanup, voluntary agreements reached through negotiations, and litigation. Fund-financed cleanup and litigation under CERCLA will not in themselves be sufficient to assure the success of this cleanup effort. In addition, expeditious cleanup reached through negotiated settlements is preferable to protracted litigation.
- A strong enforcement program is essential to encourage voluntary action by PRPs. Section 106 actions are particularly valuable mechanisms for compelling cleanups. The effectiveness of negotiation is integrally related to the effectiveness of enforcement and Fund-financed cleanup. The demonstrated willingness of the Agency to use the Fund to clean up sites and to take enforcement action is our most important tool for achieving negotiated settlements.
- The liability of potentially responsible parties is strict, joint and several, unless they can clearly demonstrate that the harm at the site is divisible. The recognition on the part of responsible parties that they may be jointly and severally liable is a valuable impetus for these parties to reach the agreements that are necessary for successful negotiations. Without such an impetus, negotiations run a risk of delay because of disagreements over the particulars of each responsible party's contribution to the problems at the site.
- The Agency recognizes that the factual strengths and weaknesses of a particular case are relevant in evaluating settlement proposals. The Agency also recognizes that courts may consider differences among defendants in allocating payments among parties held jointly and severally liable under CERCLA. While these are primarily the concerns of PRPs, the Agency will also consider a PRP's contribution to problems at the site, including contribution of waste, in assessing proposals for settlement and in identifying targets for litigation.
- Section 106 of CERCLA provides courts with jurisdiction to grant such relief as the public interest and the equities of the case may require. In assessing proposals for settlement and identifying targets for litigation, the Agency will consider aggravating and mitigating factors and appropriate equitable factors.
- In many circumstances, cleanups can be started more quickly when private parties do the work themselves, rather than provide money to the Fund. It is therefore, preferable for private parties to conduct cleanups themselves, rather than simply provide funds for the States or Federal Government to conduct the cleanup.
- The Agency will create a climate that is receptive to private party cleanup proposals. To facilitate negotiations, the Agency will make certain information available to private parties. PRPs will normally have an opportunity to be involved in the studies used to determine the appropriate extent of remedy. The Agency will consider settlement proposals for cleanup of le[ss] than 100% of cleanup activities or cleanup costs. Finally, upon settling wi[th] cooperative parties, the government will vigorously seek all remaining relief, inlcuding costs, penalties and treble damages where appropriate, from parties whose recalcitrance made a complete settlement impossible.
- The Agency anticipates that both the Fund and private resources may be used at the same site in some circumstances. When the Agency settles for less than 100% of cleanup costs, it can use the Fund to assure that site cleanup will proceed expeditiously, and then use to recover these costs from non-settling responsible parties. Where the Federal government accepts less than 100% of cleanup costs and no financially viable responsible parties remain, Superfund monies may be used to make up the difference.
- The Agency recognizes the value of some measure of finality in determinations of liability and in settlements generally. PRPs frequently want some certainty in return for assuming the costs of cleanup, and we recognize that this will be a valuable incentive for private party cleanup. PRPs frequently seek a final determination of liability through contribution protecti[on] releases or covenants not to sue. The Agency will consider releases from liability in appropriate situations, and

will also consider contribution protection in limited circumstances. The Agency will also take aggressive enforcement action against those parties whose recalcitrance prevents settlements. In bringing cost recovery actions, the Agency will also attempt to raise any remaining claims under CERCLA section 106, to the extent practicable.

The remainder of this memorandum sets forth specific policies for implementing these general principles.

Section II sets forth the management guidelines for negotiating with less than all responsible parties for partial settlements. This section reflects the Agency's willingness to be flexible by considering offers for cleanup of less than 100% of cleanup activities or costs.

Section III sets forth guidelines on the release of information. The Agency recognizes that adequate information facilities more successful negotiations. Thus, the Agency will combine a vigorous program for obtaining the data and information necessary to facilitate settlements with a program for releasing information to facilitate communications among responsible parties.

Sections IV and V to discuss the criteria for evaluating partial settlements. As noted above, in certain circumstances the Agency will entertain settlement offers from PRPs which extend only to part of the site or part of the costs of cleanup at a site. Section IV of this memo sets forth criteria to be used in evaluating such offers. These criteria apply to all cases. Section V sets forth the Agency's policy concerning offers to perform or pay for discrete phases of an approved cleanup.

Sections VI and VII relate to contribution protection and releases from liability. Where appropriate, the Agency may consider contribution protection and limited releases from liability to help provide some finality to settlements.

Section VIII sets forth criteria for selecting enforcement cases and identifying targets for litigation. As discussed above, effective enforcemnt depends on careful case selection and the careful selection of targets for litigation. The Agency will apply criteria for selection of cases to focus sufficient resources on cases that provide the broadest possible enforcemnt impact. In addition, targets for litigation will be identified in light of the willingness of parties to perform voluntary cleanup, as well as conventional litigation management concerns.

Section IX sets forth the requirements governing the timing of negotiations and section X the provision for Headquarters review. These sections address the need to provide the Regions with increased flexibilty in negotiations and to change Headquarters review in order to expedite site cleanup.

II. Management Guidelines for Negotiation

As a guideline, the Agency will negotiate only if the initial offer from PRPs constitutes a substantial proportion of the costs of cleanup at the site, or a substantial portion of the needed remedial action. Entering into discussion for less than a substantial proportion of cleanup costs or remedial action needed at the site, would not be an effective use of government resources. No specific numerical threshold for initiating negotiations has been established.

In deciding whether to start negotiations, the Regions should weight the potential resource demands for conducting negotiations against the likelihood of getting 100% of costs or a complete remedy.

Where the Region proposes to negotiate for a partial settlement involving less than the total costs of a cleanup, or a complete remedy, the Region should prepare as part of its Case Negotiations Strategy a dreaft evaluation of the case using the settlement criteria identified in section IV. The draft should discuss how each of the factors in section IV applies to the site in question, and explain why negotiations for less than all of the cleanup costs, or a partial remedy, are appropriate. A copy of the draft should be forwarded to Headquarters. The Headquarters review will be used to identify major issues of national significance or issues that may involve significant legal precedents.

In certain other categories of cases, it may be appropriate for the Regions to enter into negotiations with PRPs, even though the offers from PRPs do not represent a substantial portion of the costs of cleanup. These categories of cases include:

- administrative settlements of cost recovery actions where total cleanup costs were less than $200,000;
- claims in bankruptcy;
- administrative settlements with *de minimis* contributors of wastes.

Actions subject to this exceptions are administrative settlements of cost recovery cases where all the work at the site has been completed and all costs have been incurred. The figure of $200,000 refers to all of the costs of cleanup. The Agency is preparing more detailed guidance on the appropriate form of such settlement agreements, and the types of conditions that must be included.

Negotiation of claims in bankruptcy may involve both present owners, where the United States may have an administrative costs claim, and other parties such as past owners or generators, where the United States may be an unsecured potential creditor. The Regions should avoid becoming involved in bankruptcy proceedings if there is little likelihood of recovery, and should recognize the risks involved in negotiating without creditor status. It may be appropriate to request DOJ filing of a proof of claim. Further guidance is provided in the Memorandum from Courtney Price entitled "Information Regarding CERCLA Enforcement Against Bankrupt Parties," dated May 24, 1984.

In negotiating with *de minimis* parties, the Regions should limit their efforts to low volume, low toxicity disposers who would not normally make a significant contribution to the costs of cleanup in any case.

In considering settlement offer from *de minimis* contributors, the Region should normally focus on achieving cash settlements. Regions should generally not enter into negotiations for full administrative or judicial settlements with releases, contribution protection, or other protective clauses. Substantial resources should not be invested in negotiations with *de minimis* contributors, in light of the limited costs that may be recovered, the time needed to prepare the necessary legal documents, the need for Headquarters review, potential *res judicata* effects, and other effects that *de minimis* settlements may have on the nature of the case remaining to the Government.

Partial settlements may also be considered in situations where the unwillingness of a relatively small group of parties to settle prevents the development of a proposal for a substantial portion of costs or the remedy. Proposals for settlement in these circumstances should be assessed under the criteria set forth in section IV.

Earlier versions of this policy included a threshold for negotiations, which provided that negotiations should not be commenced unless an offer was made to settle for at least 80% of the costs of cleanup, or of the remedial action. This threshold has been eliminated from the final version of this policy. It must be emphasized that elimination of this threshold does not mean that the Agency is therefore more willing to accept offers for partial settlement. The objective of the Agency is still to obtain complete cleanup by PRPs, or 100% of the costs of cleanup.

III. Release of Information

The Agency will release information concerning the site to PRPs to facilitate discussions for settlement among PRPs. This information will include:

—Identity of notice letter recipients;
—Volume and nature of wastes to the extent identified as sent to the site;
—Ranking by volume of material sent to the site, if available.

In determining the type of information to be released, the Region should consider the possible impacts on any potential litigation. The Regions should take steps to assure protection of confidential and deliverative materials. The Agency will generally not release actual evidentiary material. The Region should state on each released summary that it is preliminary, that it was furnished in the course of compromise negotiations (Fed. Rules of Evidence 408), and that it is not binding on the Federal Government.

This information release should be preceded by and combined with a vigorous program for collecting information from responsible parties. It remains standard practice for the Agency to use the information gathering authorities of RCRA and CERCLA with respect to all PRPs at a site. This information release should generally be conditioned on a reciprocal release of information by PRPs. The information request need not be simultaneous, but EPA should receive the information within a reasonable time.

IV. Settlement Criteria

The objective of negotiations is to collect 100% of cleanup costs or complete cleanup from responsible parties. The Agency recognizes that, in narrowly limited circumstances, exceptions to this goal may be appropriate, and has established criteria for determining where such exceptions are allowed. Although the Agency will consider offers of less than 100% in accordance with this policy, it will do so in light of the Agency's position, reinforced by recent court decisions, that PRP liability is strict, joint and several unless it can be shown by the PRPs that injury at a site is clearly divisible.

Based on a full evalution of the facts and a comprehensive analysis of all of the listed criteria, the Agency may consider accepting offers of less than 100 percent. Rapid and effective settlement depends on a thorough evaluation, and an aggressive information collection program is necessary to prepare effective evaluations. Proposals for less than total settlement should be assessed using the criteria identified below

1 Volume of Wastes Contributed to Site by Each PRP

Information concerning the volume of wastes contributed to the site by PRPs should be collected, if available, and evaluated in each case. The volume of wastes is not the only criterion to be considered, nor may it be the most important. A small quantity of waste may cost proportionately more to contain or remove than a larger quantity of a different waste. However, the volume of waste may contribute significantly and directly to the distribution of contamination on the surface and subsurface (including groundwater), and to the complexity of removal of the contamination. In addition, if the properties of all wastes at the site are relatively equal, the volume of wastes contributed by the PRPs provides a convenient, easily applied criterion for measuring whether a PRP's settlement offer may be reasonable.

This does not mean, however, that PRPs will be required to pay only their proportionate share based on volume of contribution of wastes to the site. At many sites, there will be wastes for which PRPs cannot be identified. If identified, PRPs may be unable to provide funds for cleanup. Private party funding for cleanup of those wastes would, therefore, not be available if volumetric contribution were the only criteria.

Therefore, to achieve the the Agency's goal of obtaining 100 percent of cleanup or the cost of cleanup, it will be necessary in many cases to require a settlement contribution greater than the percentage of wastes contributed by each PRP to the site. These costs can be obtained through the application of the theory of joint and several liability where the harm is indivisible, and through application of these criteria in evaluating settlement proposals.

2. Nature of the Wastes Contributed

The human, animal and environmental toxicity of the hazardous substances contributed by the PRPs, its mobility, persistence and other properties are important factors to consider. As noted above, a small amount of wastes, or a highly mobile waste, may cost more to clean up, dispose, or treat than less toxic or relatively immobile wastes. In addition, any disproportionate adverse effects on the environment by the presence of wastes contributed by those PRPs should be considered.

If a waste contributed by one or more of the parties offering a settlement disproportionately increases the costs of cleanup at the site, it may be appropriate for parties contributing such waste to bear a larger percentage of cleanup costs than would be the case by using solely a volumetric basis.

3. Strength of Evidence Tracing the Wastes at the Site to the Settling Parties

The quality and quantity of the Government's evidence connecting PRPs to the wastes at the site obviously affects the settlement value of the Government's case. The Government must show, by a preponderance of the evidence, that the PRP's are connected with the wastes in one or more of the ways provided in Section 107 of CERCLA. Therefore, if the Government's evidence against a particular PRP is weak, we should weigh that weakness in evaluating a settlement offer from that PRP.

On the other hand, where indivisible harm is shown to exist, under the theory of joint and several liability the Government is in a position to collect 100% of the cost of cleanup from all parties who have contributed to a site. Therefore, where the quality and quantity of the Government's evidence appears to be strong for establishing the PRP's liability, the Government should rely on the strength of its evidence and not decrease the settlement value of its case. Discharging such PRPs from liability in a partial settlement without obtaining a substantial contribution may leave the Government with non-settling parties whose involvement at the site may be more tenuous.

In any evaluation of a settlement offer, the Agency should weigh the amount of information exchange that has occurred before the settlement offer. The more the Government knows about the evidence it has to connect the settling parties to the site, the better this evaluation will be. The information collection provisions of RCRA and/or CERCLA should be used to develop evidence prior to preparation of the evaluation.

4. Ability of the Settling Parties To Pay

Ability to pay is not a defense to an action by the Government. Nevertheless, the evaluation of a settlement proposal should discuss the financial condition of that party, and the practical results of pursuing a party for more than the Government can hope to actually recover. In cost recovery actions it will be difficult to negotiate a settlement for more than a party's assets. The Region should also consider allowing the party

to reimburse the Fund in reasonable installments over a period of time, if the party is unable to pay in a lump sum, and installment payments would benefit the Government. A structured settlement providing for payments over time should be at a payment level that takes into account the party's cash flow. An excessive amount could force a party into bankruptcy, which will of course make collection very difficult. See the memorandum dated August 28, 1983, entitled "Cost Recovery Actions under Section 107 of CERCLA" for additional guidance on this subject.

5. Litigative Risks in Proceeding to Trial

Litigative risks which might be encountered at trial and which should weigh in consideration of any settlement offer include traditional factors such as:

a. *Admissibility of the Government's evidence*

If necessary Government evidence is unlikely to be admitted in a trial because of procedural or substantive problems in the acquisition or creation of the evidence, this infirmity should be considered as reducing the Government's chance of success and, therefore, reducing the amount the Government should expect to receive in a settlement.

b. *Adequacy of the Government's evidence*

Certain aspects of this point have already been discussed above. However, it deserves mention again because the Government's case depends on substantial quantities of sampling, analytical and other technical data and expert testimony. If the evidence in support of the Government's case is incomplete or based upon controversial science, or if the Government's evidence is otherwise unlikely to withstand the scrutiny of a trial, the amount that the Government might expect to receive in a settlement will be reduced.

c. *Availability of defenses*

In the unlikely event that one or more of the settling parties appears to have a defense to the Government's action under section 107(b) of CERCLA, the Government should expect to receive less in a settlement from that PRP. Availability of one or more defenses to one PRP which are not common to all PRPs in the case should not, however, lower the expectation of what an entire offering group should pay.

6. Public Interest Considerations

The purpose of site cleanup is to protect public health and the environment. Therefore, in analyzing a settlement proposal the timing of the cleanup and the ability of the Government to clean up the site should be considered. For example, if the State cannot fund its portion of a Fund-financed cleanup, a private-party cleanup proposal may be given more favorable consideration than one received in a case where the State can fund its portion of cleanup costs, if necessary.

Public interest considerations also include the availability of Federal funds for necessary cleanup, and whether privately financed action can begin more quickly than Federally-financed activity. Public interest concerns may be used to justify a settlement of less than 100% only when there is a demonstrated need for a quick remedy to protect public health or the environment.

7. Precedential Value

In some cases, the factual situation may be conducive to establishing a favorable precedent for future Government actions. For example, strong case law can be developed in cases of first impression. In addition, settlements in such cases tend to become precedents in themselves, and are examined extensively by PRPs in other cases. Settlement of such cases should always be on terms most favorable to the Government. Where PRPs will not settle on such terms, and the quality and quantity of evidence is strong, it may be in the overall interest of the Government to try the case.

8. Value of Obtaining a Present Sum Certain

If money can be obtained now and turned over to the Fund, where it can earn interest until the time it is spent to clean up a site, the net present value of obtaining the sum offered in settlement now can be computed against the possibility of obtaining a larger sum in the future. This calculation may show that the net present value of the sum offered in settlement is, in reality, higher than the amount the Government can expect to obtain at trial. EPA has developed an economic model to assess these and other related economic factors. More information on this model can be obtained from the Director, Office of Waste Programs Envorcement.

9. Inequities and Aggravating Factors

All analyses of settlement proposals should flag for the decision makers any apparent inequities to the settling parties inherent in the Government's case, and apparent inequities to others if the settlement proposal is accepted, and any aggravating factors. However, it must be understood that the statute operates on the underlying principle of strict liability, and that equitable matters are not defenses.

10. Nature of the Case that Remains After Settlement

All settlement evaluations should address the nature of the case that remains if the settlement is accepted. For example, if there are no financially viable parties left to proceed against for the balance of the cleanup after the settlement, the settlement offer should constitute everything the Government expects to obtain at that site. The questions are: What does the Government gain by settling this portion of the case? Does the settlement or its terms harm the remaining portion of the case? Will the Government have to expend the same amount of resources to try the remaining portion of the case? If so, why should the settlement offer be accepted?

This analysis is extremely important and should come at the conclusion of the evaluation.

V. Partial Cleanups

On occasion, PRPs may offer to perform or pay for one phase of a site cleanup (such as a surface removal action) but not commit to any other phase of the cleanup (such as ground water treatment). In some circumstances, it may be appropriate to enter into settlements for such partial cleanups, rather than to resolve all issues in one settlement. For example, in some cases it is necessary to conduct initial phases of site cleanup in order to gather sufficient data to evaluate the need for and type of work to be done on subsequent phases. In such cases, offers from PRPs to conduct or pay for less than all phases of site cleanup should be evaluated in the same manner and by the same criteria as set forth above. Settlements performed at the site. This provision does not cover preparation of an RI/FS, which is covered by a separate guidance document: Lee Thomas and Courtney Price's "Participation of Potentially Responsible Parties in RI/FS Development" (March 20, 1984).

VI. Contribution Protection

Contribution among responsible parties is based on the principle that a jointly and severally liable party who has paid all or a portion of a judgment or settlement may be entitled to reimbursement from other jointly or severally liable parties. When the Agency reaches a partial settlement with some parties, it will frequently pursue an enforcement action against non-settling responsible parties to recover the remaining costs of cleanup. If such an action is undertaken, there is a possibility that those non-settlors

would in turn sue settling parties. If this action by nonsettling parties is successful, then the settling parties would end up paying a larger share of cleanup costs than was determined in the Agency's settlement. This is obviously a disincentive to settlement.

Contribution protection in a consent decree can prevent this outcome. In a contribution protection clause, the United States would agree to reduce its judgment against the non-settling parties, to the extent necessary to extinguish the settling party's libility to the nonsettling third party.

The Agency recognizes the value of contribution protection in limited situations in order to provide some measure of finality to settlements. Fundamentally, we believe that settling parties are protected from contribution actions as a matter of law, based on the Uniform Contribution Among Tortfeasors Act. That Act provides that, where settlements are entered into in "good faith", the settlors are discharged from "all liability for contribution to any other joint tortfeasors." To the extent that this law is adopted as the Federal rule of decision, there will be no need for specific clauses in consent agreements to provide contribution protection.

There has not yet been any ruling on the issue. Thus, the Agency may still be asked to provide contribution protection in the form of offsets and reductions in judgment. In determining whether explicit contribution protection clauses are appropriate, the Region should consider the following factors:

- Explicit contribution protection clauses are generally not appropriate unless liability can be clearly allocated, so that the risk of reapportionment by a judge in any future action would be minimal.
- Inclusion should depend on case-by-case consideration of the law which is likely to be applied.
- The Agency will be more willing to consider contribution protection in settlements that provide substantially all the costs of cleanup.

If a proposed settlement includes a contribution protection clause, the Region should prepare a detailed justification indicating why this clause is essential to attaining an adequate settlement. The justification should include an assessment of the prospects of litigation regarding the clause. Any proposed settlement that contains a contribution protection clause with a potential ambiguity will be returned for further negotiation.

Any subsequent claims by settling parties against non-settlors must be subordinated to Agency claims against these non-settling parties. In no event will the Agency agree to defend on behalf of a settlor, or to provide direct indemnification. The Government will not enter into any form of contribution protection agreement that could requrie the Government to pay money to anyone.

If litigation is commenced by non-settlors against settlors, and the Agency became involved in such litigation, the Government would argue to the court that in adjusting equities among responsible parties, positive consideration should be given to those who came forward voluntarily and were a part of a group of settling PRPs.

VII. Releases from Liability

Potentially responsible parties who offer to wholly or partially clean up a site or pay the costs of cleanup normally wish to negotiate a release from liability or a covenant not to sue as a part of the consideration for that cleanup or payment. Such releases are appropriate in some circumstances. The need for finality in settlements must be balanced against the need to insure that PRPs remain responsible for recurring endangerments and unknown conditions.

The Agency recognizes the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites. It is possible that remedial measures will prove inadequate and lead to imminent and substantial endangerments, because of unknown conditions or because of failures in design, construction or effectiveness of the remedy.

Although the Agency approves all remedial actions for sites on the National Priorities List, releases from liability will not automatically be granted merely because the Agency has approved the remedy. The willingness of the Agency to give expansive releases from liability is directly related to the confidence that Agency has that the remedy will ultimately prove effective and reliable. In general, the Regions will have the flexibility to negotiate releases that are relatively expansive or relatively stringent, depending on the degree of confidence that the Agency has in the remedy.

Releases or covenants must also include certain reopeners which preserve the right of the Government to seek additional cleanup action and recover additional costs from responsible parties in a number of circumstances. They are also subject to a variety of other limitations. These reopener clauses and limitations ar[illegible] described below.

In addition, the the Agency can address future problems at a site by enforcement of the decree or order, rather than by action under a particular reopener clause. Settlements will normally specify a particular type of remedial action to be undertaken. That remedial action will normally be selected to achieve a certain specified level of protection of public health and the environment. When settlements are incorporated into consent decrees or orders, the decrees or orders should wherever possible include performance standards that set out these specified levels of protection. Thus, the Agency will retain its ability to assure cleanup by taking action to enforce these decrees or orders when remedies fail to meet the specified standards.

It is not possible to specify a precise hierarchy of preferred remedies. The degree of confidence in a particular remedy must be determined on an individual basis, taking site-specific conditions into account. In general, however, the more effective and reliable the remedy, the more likely it is that the Agency can negotiate a more expansive release. For example, if a consent de[illegible] or order commits a private party to [illegible] meeting and/or continuing to attain health based performance standards, there can be great certainty on the part of the Agency that an adequate level of public health protection will be met and maintained, as long as the terms of the agreement are met. In this type of case, it may be appropriate to negotiate a more expansive release than, for example, cases involving remedies that are solely technology-based.

Expansive releases may be more appropriate where the private party remedy is a demonstrated effective alternative to land disposal, such as incineration. Such releases are possible whether the hazardous material is transported offsite for treatment, or the treatment takes place on site. In either instance, the use of treatment can result in greater certainty that future problems will not occur.

Other remedies may be less appropriate for expansive releases, particularly if the consent order or agreement does not include performance standards. It may be appropriate in such circumstances to negotiate releases that become effective several years after completion of the remedial action, so that the effectiveness and reliability [illegible] the technology can be clearly demonstrated. The Agency anticipa[illegible] that responsible parties may be able to achieve a greater degree of certainty in

settlements when the state of scientific understanding concerning these technical issues has advanced.

Regardless of the relative expansiveness or stringency of the release in other respects, at a minimum settlement documents must include reopeners allowing the Government to modify terms and conditions of the agreement for the following types of circumstances:

• Where previously unknown or undetected conditions that arise or are discovered at the site after the time of the agreement may present an imminent and substantial endangerment to public health, welfare of the environment;

• Where the Agency receives additional information, which was not available at the time of the agreement, concerning the scientific determinations on which the settlement was premised (for example, health effects associated with levels of exposure, toxicity of hazardous substances, and the appropriateness of the remedial technologies for conditions at the site) and this additional information indicates that site conditions may present an imminent and substantial endangerment to the public health or welfare or the environment.

In addition, release clauses must not preclude the Government from recovering costs incurred in responding to the type of imminent and substantial endangerments identified above.

In extraordinary circumstances, it may be clear after application of the settlement criteria set out in section IV that it is in the public interest to agree to a more limited or more expansive release not subject to the conditions outlined above. Concurrence of the Assistant Administrators for OSWER and OECM (and the Assistant Attorney General when the release is given on behalf of the United States) must be obtained before the Government's negotiating team is authorized to negotiate regarding such a release or covenant.

The extent of releases should be the same, whether the private parties conduct the cleanup themselves or pay for Federal Government cleanup. When responsible parties pay for Federal Government cleanup, the release will ordinarily not become effective until cleanup is completed and the actual costs of the cleanup are ascertained. Responsible parties will thereby bear the risk of uncertainties arising during execution of the cleanup. In limited circumstances, the release may become effective upon payment for Federal Government cleanup, if the payment includes a carefully calculated premium or other financial instrument that adequately insures the Federal Government against these uncertainties. Finally, the Agency may be more willing to settle for less than the total costs of cleanup when it is not precluded by a release clause from eventually recovering any additional costs that might ultimately be incurred at a site.

Release clauses are also subject to the following limitations:

• A release or covenant may be given only to the PRP providing the consideration for the release.

• The release or covenant must not cover any claims other than those involved in the case.

• The release must not address any criminal matter.

• Releases for partial cleanups that do not extend to the entire site must be limited to the work actually completed.

• Federal claims for natural resource damages should not be released without the approval of Federal trustees.

• Responsible parties must release any related claims against the United States, including the Hazardous Substances Response Fund.

• Where the cleanup is to be performed by the PRPs, the release or covenant should normally become effective only upon the completion of the cleanup (or phase of cleanup) in a manner satisfactory to EPA.

• Release clauses should be drafted as covenants not to sue, rather than releases from liability, where this form may be necessary to protect the legal rights of the Federal Government.

A release or covenant not to sue terminates or seriously impairs the Government's rights of action against PRPs. Therefore, the document should be carefully worded so that the intent of the parties and extent of the matters covered by the release or covenant are clearly stated. Any propsed settlement containing a release with a possible ambiguity will be returned for further negotiation.

VIII. Targets for Litigation

The Regions should identify particular cases for referral in light of the following factors:

—Substantial environmental problems exist;
—The Agency's case has legal merit;
—The amount of money or cleanup involved is significant;
—Good legal precedent is possible (cases should be rejected where the potential for adverse precedent is substantial);
—The evidence is strong, well developed, or capable of development;
—Statute of limitations problems exist;
—Responsible parties are financially viable.

The goal of the Agency is to bring enforcement action wherever needed to assure private party cleanup or to recover costs. The following types of cases are the highest priorities for referrals:

—107 actions in which all costs have been incurred;
—Combined 106/107 actions in which a significant phase has been completed, additional injunctive relief is needed and identified, and the Fund will not be used;
—106 actions which will not be the subject of Fund-financed cleanup.

Referrals for injunctive relief may also be appropriate in cases when it is possible that Fund-financed cleanup will be undertaken. Such referrals may be needed where there are potential statute of limitation concerns, or where the site has been identified as enforcement-lead, and prospects for successful litigation are good.

Regional offices should periodically reevaluate current targets for referral to determine if they meet the guidelines identified above.

As indicated before, under the theory of joint and several liability the Government is not required to bring enforcement action against all of the potentially responsible parties involved at a site. The primary concern of the Government in identifying targets for litigation is to bring a meritorious case against responsible parties who have the ability to undertake or pay for response action. The Government will determine the targets of litigation in order to reach the largest manageable number of parties, based on toxicity and volume, and financial viability. Owners and operators will generally be the target of litigation, unless bankrupt or otherwise judgment proof. In appropriate cases, the Government will consider prosecuting claims in bankruptcy. The Government may also select targets for litigation for limited purposes, such as site access.

Parties who are targeted for litigation are of course not precluded from involving parties who have not been targeted in developing settlement offers for consideration by the Government.

In determining the appropriate targets for litigation, the Government will consider the willingness of parties to settle, as demonstrated in the negotiation stage. In identifying a manageable number of parties for litigation, the Agency will consider the recalcitrance or willingness to settle of the parties who were involved in the

negotiations. The Agency will also consider other aggravating and mitigating factors concerning responsible party actions in identifying targets for litigation.

In addition, it may be appropriate, when the Agency is conducting phased cleanup and has reached a settlement for one phase, to first sue only non-settling companies for the next phase, assuming that such financially viable parties are available. This approach would not preclude suit against settling parties, but non-settlors would be sued initially.

The Agency recognizes that Federal agencies may be responsible for cleanup costs at hazardous waste sites. Accordingly, Federal facilities will be issued notice letters and administrative orders where appropriate. Instead of litigation, the Agency will use the procedures established by Executive Orders 12088 and 12146 and all applicable Memoranda of Understanding to resolve issues concerning such agency's liability. The Agency will take all steps necessary to encourage successful negotiations.

IX. Timing of Negotiations

Under our revised policy on responsible party participation in RI/FS, PRPs have increased opportunities for involvement in the development of the remedial investigations and feasibility studies which the Agency uses to identify the appropriate remedy. In light of the fact that PRPs will have received notice letters and the information identified in section III of this policy, prelitigation negotiations can be conducted in an expeditious fashion.

The Negotiations Decision Document (NDD), which follows completion of the RI/FS, makes the preliminary identification of the appropriate remedy for the site. Prelitigation negotiations between the Government and the PRPs should normally not extend for more than 60 days after approval of the NDD. If significant progress is not made within a reasonable amount of time, the Agency will not hesitate to abandon negotiations and proceed immediately with administrative action or litigation. It should be noted that these steps do not preclude further negotiations.

Extensions can be considered in complex cases where there is no threat of seriously delaying cleanup action. Any extension of this period must be predicated on having a good faith offer from the PRPs which, if successfully negotiated, will save the Government substantial time and resources in attaining the cleanup objectives.

X. Management and Review of Settlement Negotiations

All settlement documents must receive concurrence from OWPE and OECM-Waste, and be approved by the Assistant Administrator of OECM in accordance with delegations. The management guideline discussed in Section II allows the Regions to commence negotiations if responsible parties make an initial offer for a substantial proportion of the cleanup costs. Before commencing negotiations for partial settlements, the Regions should prepare a preliminary draft evaluation of the case using the settlement criteria in section IV of this policy. A copy of this evaluation shoud be forwarded to Headquarters.

A final detailed evaluation of settlements is required when the Regions request Headquarters approval of these settlements. This written evaluation should be submitted to OECM-Waste and OWPE by the legal and technical personnel on the case. These will normally be the Regional attorney and technical representative.

The evaluation memorandum should indicate whether the settlement is for 100% of the work or cleanup costs. If this figure is less than 100%, the memorandum should include a discussion of the advantages and disadvantages of the proposed settlement as measured by the criteria in section IV. The Agency expects full evaluations of each of the criteria specified in the policy and will return inadequate evaluations.

The Regions are authorized to conclude settlements in certain types of hazardous waste cases on their own, without prior review by Headquarters or DOJ. Cases selected for this treatment would normally have lower priority for litigation. Categories of cases not subject to Headquarters review include negotiation for cost recovery cases under $200,000 and negotiation of claims filed in bankruptcy. In cost recovery cases, the Regions should pay particular attention to weighing the resources necessary to conduct negotiations and litigation against the amounts that may be recovered, and the prospects for recovery.

Authority to appear and try cases before the Bankruptcy Court would not be delegated to the Regions, but would be retained by the Department of Justice. The Department will file cases where an acceptable negotiated settlement cannot be reached. Copies of settlement documents for such agreements should be provided ot OWPE and OECM.

Specific details concerning these authorizations will be addressed in delegations that will be forwarded to Regions under separate cover. Headquarters is conducting an evaluation of the effectiveness of existing delegations, and is assessing the possibility of additional delegations.

Note on Purpose and Uses of this Memorandum

The policies and procedures set forth here, and internal Government procedures adopted to implement these policies, are intended as guidance to Agency and other Government employees. They do not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The Government may take action that is at variance with the policies and procedures in this memorandum.

If you have any questions or comments on this policy, or problems that need to be addressed in further guidance to implement this policy, please contact Gene A. Lucero, Director of the Office of Waste Programs Enforcement (FTS 382-4814), or Richard Mays, Senior Enforcement Counsel (FTS 382-4137).

Appendix—Discussion of Issues Raised by Interim CERCLA Settlement Policy

This appendix discusses in greater detail certain issues raised by the interim policy and identifies specific issues for public comment. It focuses on issues of broad public concern, rather than issues related primarily to internal Agency management. The section headings of this attachment generally parallel the specific sections of the enforcement policy.

I. General Principles

The discussion of general principles sets out the overall philosophy governing the Superfund enforcement program. To achieve the greatest possible number of timely and effective cleanup actions, the Agency must strike a balance between two opposite approaches. One approach emphasizes quick resort to the Fund and enforcement authorities, and the other features more incentives for private party cleanup.

We have attempted to combine features of both these approaches into a vigorous enforcement program that will encourage private party cleanups. These approaches, and their limitations, are described in greater detail below.

Under one general approach, the Agency would quickly resort to either

enforcement action such as litigation and administrative orders, or Federal government cleanup under the Fund. Releases from liability and explicit contribution protection clauses would be strictly limited under this approach, and the time for negotiations prior to enforcement or Fund-financed cleanup action would be short. The limitation of this general approach is that EPA may not always be able to move to clean up enough sites, because of restrictions on the use of the Fund and the time and resources needed to compel cleanup through enforcement. Furthermore, many private parties believe that, as a general matter, they can conduct cleanup activities more quickly and at less cost than the Federal government, and have clamed that this approach may discourage private party initiatives.

Under the other general approach, the Agency would provide additional incentives to encourage PRP cleanup. For example, settlements would allow more expansive releases from liability, contribution protection would be provided, and EPA would take as much time as needed to resolve issues through negotiations before it resorted to enforcement action or Fund-financed cleanup. It is possible that the Agency would reach more negotiated settlements under this approach. One limitation of this approach is that the Agency would assume financial risks if it becomes clear in light of changed circumstances or improved knowledge of site problems that additional cleanup action is needed; expansive releases from liability would preclude the Agency from pursuing responsible parties for additional cleanup costs.

Also, protracted negotiations would delay cleanup of sites. Further, private party cleanups may not increase without an attendant aggressive enforcement program (unilateral administrative orders, imminent hazard enforcement actions under CERCLA section 106, and cost-recovery actions under section 107) because private parties may lack an incentive to reach negotiated settlements.

We have attempted to strike a balance between the two directions, recognizing that no approach may be completely adequate to satisfy all of these concerns. While the Agency remains committed to a strong and vigorous enforcement program, it recognizes that negotiated private party cleanups are essential to a successful cleanup program. The Agency will minimize impediments to voluntary cleanup, and take aggressive enforcement action against those parties whose recalcitrance prevents settlements or makes complete settlement impossible.

The Agency solicits comments on whether any additional factors or principles should be considered by the Agency in formulating a settlement policy.

II. Management Guidelines for Negotiation

The previous settlement policy included a resource management guideline for use after the Agency has evaluated the case using the settlement criteria and determined that the prospects for successfully pursuing the case were good. The guideline stated that the Agency would generally negotiate only if the initial offer from PRPs was for 80 percent of the remedy or costs of cleanup. This 80 percent threshold was established so that the Regional offices would spend their time and resources negotiating cases where settlement on acceptable terms seems more likely. EPA considered retaining that guideline in this interim policy.

The threshold was not intended to be an absolute barrier to offers for less than 80 percent, and the earliest drafts of this interim policy indicated that offers for less than that amount might be considered. However, some PRPs may have perceived the guideline as an absolute barrier, and been reluctant to approach the Agency with valid settlement offers because those offers were not for 80 percent of the remedy or costs of the cleanup. Minor volumetric contributors of wastes to the site would generally be unwilling to offer 80 percent. It is also possible that a few recalcitrant parties who refused to join a group settlement offer could prevent the others from coming up with an 80 percent offer.

The Agency considered a variety of approaches for providing potentially responsible parties with a greater opportunity and incentive for becoming involved in negotiations. They include:

- Eliminating the threshold;
- Eliminating the threshold for certain categories of PRPs or cases;
- Lowering the threshold;
- Allowing deviation from the threshold when the Region has prepared an evaluation of the case, and Headquarters has reviewed this evaluation; and
- Allowing negotiations with individual parties, as long as the Region ultimately recovers a certain percentage of the costs of cleanup.

The approach in the interim policy combines elements of a number of these options. It eliminates the 80 percent threshold. Instead, the interim policy states that the Agency will negotiate only if the initial offer from PRPs constitutes a substantial proportion of the remedy or cleanup costs. Regions are asked to weigh the potential resource demands for conducting negotiations against the likelihood of getting 100 percent of costs or a complete remedy. Thus, while an offer of 80 percent is not required to initiate negotiations, there will be cases where offers of 80 percent will de deemed inadequate. Offers to negotiate for a partial settlement or cleanup should be evaluated by Regions using the criteria set forth in section IV of the policy. A copy of these draft evaluations are to be forwarded to Headquarters for review.

The policy announced today also recognizes that in certain limited categories of cases, it may be appropriate for Regions to enter into negotiations even though offers do not represent a substantial portion of costs. These categories include administrative settlements of cost recovery actions where total cleanup costs were less than $200,000, claims in bankruptcy, and administrative settlements with *de minimis* contributors of wastes. The term *"de minimis"* does not include parties who deposited any significant amount or type of waste at a site.

The approach of deleting the resource management guideline should provide a greater incentive for individual or small groups of PRPs to negotiate settlements. It should also give the Regions and the litigation team more flexibility in negotiating and settling with low volume PRPs. In addition, the 80 percent figure will not serve as a point of departure for negotiations, limiting the initial offers to that stated threshold percentage. PRPs should find it easier to develop proposals for settlement, and the ability of recalcitrants to obstruct a settlement will be reduced. However, since the objective of the Agency is still to obtain complete cleanup by PRPs, or 100 percent of the costs of cleanup, there will be cases where offers of 80 percent will be deemed inadequate. If a partial settlement offer is accepted, the Agency is committed to vigorous pursuit on non-settlors.

This approach, however, may increase the likelihood that Regional resources will be consumed by fragmented multiple negotiations with a wide variety of parties. The more intensive and time-consuming negotiations that may be necessary might ultimately limit the number of settlements that can be reached. It also places a higher burden on the Regions and Headquarters to assess the adequacy of settlement proposals in light of the settlement criteria, and to determine that sufficient

parties are left to provide the remaining cleanup costs.

The Agency solicits comment on whether substantial settlements will be possible without a threshold and whether eliminating the threshold will encourage a greater number of settlements for either a substantial portion of the costs of cleanup or of the cleanup itself. The Agency also solicits comment on how the term "*de minimis* contributor" should be defined.

III. Release of Information

The Agency will release information concerning the site to facilitate discussions of settlement among PRPs. This information will include:

—Identity of notice letter recipients;
—Volume and nature of wastes identified as delivered to the site;
—Any ranking by volume of material sent to the site.

Release of some of this material to PRPs is discretionary under the Freedom of Information Act (FOIA).

Under the policy announced today, information released to PRPs will generally be conditioned on a reciprocal release of information by PRPs. The Agency solicits comment on whether information exempt from disclosure under FOIA should be made available to PRPs on a discretionary basis.

IV. Settlement Criteria

As discussed above, there will no longer be any specific threshold for considering settlement offers from PRPs. Rather, settlement offers will be evaluated using the criteria in this seciton. Evaluations under these criteria should result in a full evaluation of the offer and will promote consistency among Regional offices. These criteria will apply in evaluation offers from PRPs (1) to clean up the site, (2) to pay for clean up of the site, and (3) in cost recovery actions. These criteria include:

- Volume of waste contributed by each PRP;
- Nature of waste contributed;
- Strength of evidence tracing waste to settling parties;
- Ability of settling parties to pay;
- Litigative risks in proceeding to trial;
- Public interest considerations;
- Precedential value;
- Value of obtaining a present sum certain;
- Inequities and aggravating factors;
- Nature of case that remains after settlement.

Many of these criteria are typical for assessing offers to settle any type of litigation. Although the Agency will consider offers of less than 100 percent in accordance with this policy, it will do so in light of the Agency's position that PRP liability is strict, joint and several unless it can be shown by PRPs that injury at a site is clearly divisible. EPA solicits comment on the need, if any, for additional criteria.

V. Partial Cleanups

Under the interim policy, EPA will now, on occasion, consider PRP offers to perform or pay for one phase of a site cleanup. The interim policy discusses the circumstances in which it may be appropriate to enter into settlements for such partial cleanups. ESA solicits comments on these arrangements.

VI. Contribution Protection

Contribution among responsible parties is based on the principle that, where liability is joint and several, a party who has paid more than his proportional share of a judgment or settlement is entitled to reimbursement from other liable parties. When the Agency reaches a partial settlement with some parties, it will frequently pursue an enforcement action against non-settling responsible parties to recover the remaining costs of cleanup. If such as action is undertaken, there is a possibility that those non-settlors would in turn sue settling parties, arguing that the settlors are liable to them for contribution. If this action by non-settling parties is successful, settling parties could end up paying a larger share of cleanup costs than was determined in the Agency's settlement.

A contribution protection clause in a consent decree is one method to prevent this outcome. While maintaining the right to go against non-settlors for all remaining relief, the United States could agree to reduce its judgment against the non-settling parties, to the extent necessary to extinguish the settling party's liability to the non-settling third party. This suggested approach is one of several contribution protection options available to the government. Parties negotiating settlement have frequently sought such protection.

The position taken by the government in litigation involving contribution is that the courts should adopt a Federal rule of decision that follows section 4 of the Uniform Contribution Among Tortfeasors Act. Section 4 provides that, where settlements are entered into in "good faith," the settlors are discharged from "all liability for contribution to any other tortfeasors." Under this interpretation, there is no need to provide contribution protection to PRPs who reach good faith settlements with the government. (We do not support adopting section 1 of the Uniform Act as a Federal rule of decision. Section 1 would preclude settlors from seeking contribution from non-settlors unless the settlors financed or performed a 100 percent cleanup at a site.)

However, since the right of contribution under CERCLA is not yet a settled question, the Agency can take two approaches in response to requests from PRPs for contribution protection:

- argue that under its legal interpretation, explicit contribution protection clauses are unnecessary;
- provide explicit contribution protection clauses in consent decrees on a case-by-case basis, based on the Agency's ability to clearly apportion liability, the percentage of the cleanup represented by the settlement, and a case-specific consideration of the law which is likely to be applied.

Explicit contribution protection clauses may serve as an incentive for private party settlement, because PRPs may be more confident with a settlement which includes an explicit contribution protection clause as part of an agreement. It is consistent with our position on joint and several liability and our support for a uniform Federal rule of decision in this area. However, explicit contribution protection clauses have several limitations. For example, the Agency may become vulnerable to part of the cleanup costs that would otherwise be borne by responsible parties. In addition, the drafting problems involved with such clauses are complex. Finally, such clauses may embroil the Federal government in complex litigation rather than resulting in final settlements.

In the interim policy published today, the Agency has authorized a very limited use of contribution protection clauses. The Agency is soliciting public comment on whether the interim policy provides for contribution protection in the proper circumstances.

VII. Releases From Liability

Potentially responsible parties have frequently sought total releases from past and future liability as a condition of settlement. The Agency has generally been reluctant to grant such total releases because they impair the Agency's ability to assure cleanup in light of changed conditions or new information concerning a site.

We recognize the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites. It would be inappropriate for the Agency to assume the responsibility for cleanup if previously

unknown or undetected conditions arise or are discovered after settlement, or if new information indicates there may be an imminent and substantial endangerment to public health or welfare or the environment.

Three broad approaches for reconciling the concerns of the Agency and of PRPs are to:

- authorize releases for remedial actions taken pursuant to EPA-approved RI/FS and design;
- authorize total releases for remedial actions taken pursuant to EPA-approved RI/FS and design, but include a reopener clause allowing the Agency to seek additional cleanup action or cleanup costs for unknown conditions that indicate possible imminent and substantial endangerments;
- allow very limited releases with reopener clauses that not only cover imminent and substantial endangerments, but require private parties to respond to all other releases or threats of release from the site.

The guidelines in this policy take the second approach. We recognize that an expansive release policy would be an incentive for private party cleanup, but its value as an incentive must be weighed against the scientific uncertainties surrounding the nature of exposure to hazardous substances, their degree of toxicity, and the effectiveness of remedies.

Generally, the expansiveness of a release will depend on the degree of confidence that the Agency has in a remedy. It may be appropriate to negotiate a more expansive release where responsible parties consent to meeting and continuing to attain health based performance standards. In addition, the Agency is considering allowing more expansive releases where the private party remedy is a demonstrated effective alternative to land disposal, such as incineration.

Under the second approach, designed for remedial actions, PRPs will be required to assume risks of imminent and substantial endangerments attributable to problems not known by the Agency at the time the remedy was selected. In return, EPA will be responsible for responding to future releases of contaminants that do not rise to the level of an imminent and substantial endangerment (assuming that, if PRPs conduct the remedial action, the approved remedy is maintained as required).

Releases will be of a similar scope, whether activities will be conducted by EPA or by private parties. Any release policy that allowed more extensive releases when the Agency conducted the cleanup actions than when private parties conducted the actions would discourage private party cleanup, or, at a minimum, encourage private parties to pay for government cleanups rather than conduct the remedial action themselves. Private party conduct of the remedial action is preferable because it is likely to occur sooner than Agency cleanup, and the use of private money frees the government to use the Fund for other sites with no identified PRPs.

The Agency is also considering whether a more expansive release may be allowed where the PRPs hire an approved contractor to perform the cleanup, and the PRPs' performance is secured by a satisfactory premium payment or surety bond in an amount well in excess of the estimated cost of the work. The term "premium payment" refers to risk apportionment device under which the risk of an ineffective remedy would be mitigated by a cash payment in excess of cleanup costs, or another financial assurance mechanism.

The Agency solicits comments on the interim release policy, including the circumstances under which releases should be granted, reopener conditions that should be included, and when releases should become effective. The Agency also solicits comment on the premium payment or surety bond concept.

VIII. Targets for Litigation

The Agency is not legally required to bring action against all potentially responsible parties at a site. The interim policy provides that the Agency will continue to identify targets for litigation on the basis of factors such as financial viability, strength of the case, and our ability to manage litigation. This policy also provides an additional incentive for voluntary cleanup by targeting recalcitrants for litigation.

The presence of a Federal agency as a potentially responsible party at a hazardous waste site sometimes delays negotiations because the position of the Federal PRP may not be clear to government negotiators or other PRPs. The interim policy provides that Federal facilities are to be treated like other PRPs in most respects except being joined as a party in litigation. The reference to administrative orders is intended to direct the Regions to make more aggressive use of administrative orders in dealing with Federal facilities. Instead of litigation, we will use the procedures established by Executive Orders 12088 and 12146 and appropriate Memoranda of Understanding to resolve issues remaining with these facilities after negotiation ends. EPA will encourage Federal facilities to participate in these negotiations.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

MAR 27 1985

MEMORANDUM

SUBJECT: PRP Participation in RI/FS

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

TO:
Director, Office of Emergency and Remedial Response
Region II

Director, Air and Waste Management Division
Regions III, IV, VI, VII, VIII

Director, Waste Management Division
Regions I, V

Director, Toxics and Waste Division
Region IX

Director, Air and Waste Division
Region X

Regional Counsels, Regions I-X

It has come to my attention that there is confusion in some Regions regarding private-party participation in remedial investigation and feasibility studies (RI/FS). General guidance on this topic is provided in the policy dated March 20, 1984 (attached). However, in order to resolve that confusion, please make note of the following guidelines:

- Responsible party searches should be completed and notice letters sent prior to obligation of all RI/FS targeted for initiation on the FY 85 (or FY 86) Superfund Comprehensive Accomplishments Plan (SCAP).

- The above requirement applies equally to fund lead projects (both Federal and State lead), federal enforcement lead projects and state lead enforcement projects.

- Notice letters should be sent far enough in advance to allow potentially responsible parties (PRPs) to organize themselves for negotiations and to become familiar with the site.

- A reasonable opportunity should be provided through negotiations for PRPs to undertake the RI/FS in accordance with EPA's work plan and RI/FS guidance under the jurisdiction of consent administrative order. However, negotiations should not be lengthy.

If you have any questions about these guidelines, please contact either Barbara Elkus (382-4819) or John Cross (382-4825) of my staff.

Attachment

cc: David Buente, DOJ
William Hedeman
Fred Stiehl

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

OCT 9 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RES

MEMORANDUM

SUBJECT: Timely Initiation of Responsible Party Searches, Issuance of Notice Letters, and Release of Information

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

TO: Addressees

PURPOSE

This memorandum re-emphasizes the importance of early identification of potentially responsible parties (PRPs) and timely issuance of notice letters for the RI/FS. These actions support the Agency's policy to secure cleanup by responsible parties in lieu of Superfund use, where such cleanup can be accomplished in a timely and effective manner. The sooner PRPs are identified and notified about their potential responsibility, the more time they have to organize themselves to assure responsibility for the RI/FS and cleanup (See "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasiblity Studies Under CERCLA," Lee M. Thomas and Courtney M. Price, March 20, 1984).

This memo also clarifies Agency policy on release of site-specific information to PRPs and others. It supplements the information release section of the Interim CERCLA Settlement Policy (December 5, 1984). The clarification is designed to facilitate information exchange in order to encourage effective negotiation and coalescing by PRPs among themselves. Effective PRP negotiations and coalescing are likely to engender effective settlement discussions with the government.

INITIATION OF PRP SEARCHES

In an effort to expedite and streamline the RI/FS process, you should focus attention on early identification of PRPs and timely issuance of notice letters. As you are aware, in FY 86 you will be required to conduct PRP searches for NPL Updates 3, 4, 5, and 6. This will be reflected in your SCAP targets.

In order to accomplish this, it will be necessary to start PRP searches concurrently with developing sites for listing. At the latest, PRP searches should be initiated when candidate sites are sent to HQ for NPL quality control review. You will need to plan accordingly for this activity, particularly in your case budgets.

Technical assistance resources for PRP searches are available through the Techncial Enforcement Support Contracts, TES I and TES II, and are coordinated through the case budgeting process. Each Region will be given a line of credit to support the costs of responsible party searches, title searches, and financial assessments. This credit will be allocated by a straight-forward calculation of average past costs of such activities multiplied by the number to be done in each Region.

Because of the heavy work undertaken by TechLaw in both the TES I and TES II contracts, the prime contractors have been distributing new work assignments for PRP searches to other subcontractors. This should result in more timely reports.

NOTICE LETTER ISSUANCE

Timely issuance of notice letters for the RI/FS normally means that notice letters are issued as soon as possible after completion of the PRP search and prior to any Federally-financed response action. Timing of the notice letter should take into account the number of PRPs and the complexity of the data associating PRPs with the site. In general, notice letters should be issued 60 days before obligation of RI/FS funds (See "Procedures for Issuing Notice Letters," Gene A. Lucero, October 12, 1984). PRPs should therefore have sufficient time to organize themselves and initiate preliminary contacts and discussions with Agency personnel. This will also avoid delay in beginning a Fund financed RI/FS should it become necessary.

Notice letters are generally combined with information requests under RCRA §3007 and CERCLA §104(e) (See "Policy on Enforcing Information Requests in Hazardous Waste Cases", Courtney M. Price, September 10, 1984). Notice letters are an important step in determining whether a PRP is willing and financially capable of undertaking a proper response. The NEIC Technical Information Center is a useful source for assessing the financial viability of PRPs that offer stock to the public. For privately held companies, the TES contract can be used to estimate the financial capability.

Notice letters should be issued only to parties where sufficient evidence is available to make a preliminary determination of liability under CERCLA §107. Where doubt exists as to whether available information supports notice letter issuance, information requests should be sent prior to notice letters.

In the past, notice letters were sent to PRPs who may or may not have been liable under CERCLA. This may be avoided by issuing notice letters to parties where sufficient evidence is available to make a preliminary determination of liability under CERCLA §107. For example, parties known to have arranged for disposal of material which is not known to contain a hazardous substance should not receive a notice letter. The Regions should be particularly aware of the adequacy and completeness of the PRP searches. This will mean expending resources on the quality review of contractors' work. I'm sure this will save critical resources at a later time in the enforcement process.

In addition, it is imperative that copies of notice letters be sent to Headquarters for purposes of tracking and responding to information requests. Along with other reporting requirements, each Region will be responsible for sending copies of notice letters quarterly.

RELEASE OF SITE-SPECIFIC INFORMATION

It is important to conduct PRP searches, issue notice letters and collect information as soon as possible, not only to expedite the RI/FS process, but to ensure that certain site-specific information is available for use by PRPs. Availability of this information to PRPs will help PRPs organize and negotiate among themselves.

As stated in the Interim CERCLA Settlement Policy, EPA will release certain site-specific information to PRPs in order to facilitate settlement discussions. This information includes:

- Identity of notice letter recipients;
- Volume and nature of wastes to the extent identified as sent to the site ("waste-in" list); and
- Ranking by volume of material sent to the site, if available

There are, however, certain limitations with regard to the information outlined above. For example, summary conclusions about the volume and nature of waste sent to a site, including a volumetric ranking should be provided to the extent that such information exists. Volumetric rankings should be developed when the Region determines that the rankings will be of significant benefit to the Agency and responsible parties in facilitating settlement or cleanup. Moreover, due to their preliminary and summary nature, EPA will not expend resources to explain or defend any list or ranking. Lists or rankings released to PRPs and others should always contain appropriate disclaimers.

The settlement policy states that release of information to PRPs should generally be conditioned on a reciprocal release of information by PRPs. The reciprocal release policy does not apply to the release to PRPs of the names of other notice letter recipients on a site, or to waste-in lists and volumetric rankings. Release of any additional information, however, should be conditioned on a reciprocal release of information by PRPs. In determining the type of additional information to be released, Regions should consider the possible impact on any potential litigation.

Again, it is important to conduct PRP searches, issue notice letters, and collect information as soon as possible so that the information discussed here is available for use. Waste-in lists and volumetric rankings should be developed as soon as possible after completion of PRP searches. This information should be provided with notice letters, if available. Such information may also be released in advance of notice letters upon request when the Region determines it will facilitate settlement.

The names of notice letter recipients are available to the public in response to requests under the Freedom of Information Act (FOIA) (See "Releasing Identities of Potentially Responsible Parties in Response to FOIA Requests," January 26, 1984). The names may also be released at the Agency's initiative without a FOIA request. Now, to the extent the information exists, waste-in lists and volumetric rankings will also be available to the public under FOIA and at the Agency's discretion. Thus, requests for information on notice letter recipients and for waste-in lists or volumetric rankings should be handled consistently whether the requests are made by PRPs or the general public.

For further information on topics discussed in this memo, please contact Linda Southerland at FTS 382-2035.

Addressees:

Director, Office of Emergency and Remedial Response
Region II

Director, Air and Waste Management Division
Regions III, IV, VI, VII, VIII

Director, Waste Management Division
Regions I, V

Director, Toxics and Waste Division
Region IX

Director, Air and Waste Division
Region X

Regional Counsels, Regions I-X

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

DEC 23 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Policy for Enforcement Actions Against Transporters Under CERCLA

FROM: Gene A. Lucero, Director Gene A. Lucero
Office of Waste Programs Enforcement

Frederick F. Stiehl Frederick F. Stiehl
Associate Enforcement Counsel for Waste

TO: Regional Counsels
Regional Waste Management Division Directors

Background

Section 107(a)(4) of CERCLA imposes liability for response costs on:

> "any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities 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..."

Substantial controversy has arisen over the interpretation of this provision particularly as it relates to interstate common or contract carriers. The Agency's practice has previously been to issue notice letters to all transporters. In some circumstances, civil judicial enforcement actions have named transporters as defendants prior to a determination of whether they selected the facility. More recently, the Agency practice has been to bring suit only against those transporters who have selected the facility or site.

Transporters involved at many Superfund sites have argued that CERCLA was intended to impart liability only when the transporters selected the facility or site to which the hazardous substances were delivered. Consequently, those transporters contend that interstate common or contract carriers, who under the authority of the Interstate Commerce Commission do not exercise control of the destination of shipments, are excluded from the liability provision of §107(a)(4). No judicial opinion has been rendered to date on the interpretation of this provision.

Policy

As part of the responsible party searches, Regional staff should gather and review all available information related to transporters and the nature of their involvement with the facilty or site at which the hazardous substances are located. This review should include all of the common sources of information such as site records and records from federal, state and local regulatory agencies. In addition, information related to the transporters should be obtained through §104(e) information request letters to the owner/operators, generators and to the transporters. Information request letters, and any subsequent interviews, should seek documentation as to the source, volume, nature and location of wastes transported. Regional staff should also seek to identify through this process the role of the transporter in the selection of the facility or site.

Notice letters informing transporters of potential liability under CERCLA will not be issued unless and until the information gathering process indicates that the transporter may have selected the site or facility to which the hazardous substances were delivered. (However, as indicated above, information request letters should be routinely sent to all transporters.) Issuance of notice letters to transporters is appropriate only when information obtained indicates that the transporter may have selected the site or facility.

Similarly, enforcement actions (whether administrative or judicial) would be brought under §106 or §107 only under the same circumstances. As a matter of policy, EPA will bring action only against transporters where information is available which indicates that the transporter selected the site or facility. However, in the event that information is inconclusive due to a lack of cooperation from transporters in providing information, EPA may bring action against any transporter to compel full response to information requests.

Transporter Liability Under RCRA

This policy is not intended to address the potential liability of hazardous waste transporters under RCRA §7003. The recent RCRA amendments explicity state that the imminent hazard provisions of RCRA apply to past and present transporters who contributed to the transportation of solid or hazardous waste.

For further information on this policy and its application to particular sites, please contact Michael Kilpatrick of OWPE (382-4835) or Heidi Hughes of OECM-Waste (382-2845).

Note on Purpose and Uses of this Memorandum

The policies and procedures set forth here, and internal Government procedures adopted to implement these policies, are intended as guidance to Agency and other Government employees. They do not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The Government may take action that is at variance with the policies and procedures in this memorandum.

cc: Superfund Branch Chiefs
Superfund Enforcement Section Chiefs
David Buente, DOJ
Lisa Friedman, OGC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C 20460

MAR 27 1986

MEMORANDUM

SUBJECT: Potentially Responsible Party Searches

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

Thomas P. Gallagher, Director
National Enforcement Investigations Center

TO: See Below

With the current initiative to step up our enforcement efforts, along with the expected increased efforts necessary to accomplish the goals in the proposed CERCLA amendments, the number and depth of Potentially Responsible Party (PRP) searches will continue to increase. To handle this workload, we are seeking the assistance of more contractors, including the OWPE TES contractors, REM, 8(a) firms and small businesses. Furthermore, for state lead enforcement cases, the states will be expected to perform PRP searches.

In order to implement this large effort, we propose that NEIC's evidence audit team be used to both train and audit contractors performing PRP searches. In addition, this contractor would review the responsible party search process within the Agency for both removal and remedial sites to determine if further support services are needed.

If you have any suggestions as to how we can implement this, please contact Mike Kosakowski in OWPE (202/382-5611) or Rob Laidlaw at NEIC (FTS 776-5122). We believe that this cooperative effort will result in timely and comprehensive PRP searches. If there are no major objections, we will incorporate the details on how this will work into the Potentially Responsible Party Search Manual which is currently under development by NEIC.

Addressees

Directors, Waste Management Division, Regions I, V, VIII
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Waste Management Division, Region III
Directors, Air & Waste Management Division, Regions IV, VI, VII
Director, Toxic and Waste Management Division, Region IX
Director, Hazardous Waste Division, Region X
Superfund Branch Chiefs, Regions I-X
Superfund Enforcement Section Chiefs, Regions I-X
Regional Counsels, Regions I-X
TES Contract Contacts

cc: OWPE Regional Coordinators
Fred Stiehl, OECM-Waste
Mike Kosakowski, OWPE
Rob Laidlaw, NEIC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FEB 12 1987

OSWER Directive Number 9835.4

MEMORANDUM

SUBJECT: Interim Guidance: Streamlining the CERCLA Settlement Decision Process

FROM: J. Winston Porter
Assistant Administrator
Office of Solid Waste and Emergency Response

Thomas L. Adams, Jr.
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Regional Administrators, Regions I-X
Waste Management Division Directors, Regions I-X
Regional Counsels, Regions I-X

During the Administrator's Superfund Implementation Meeting of November 19-20, 1986, several concepts were presented for streamlining and improving the CERCLA settlement decision process. Those concepts addressed three major areas:

1. Negotiation Preparation;
2. Management Review of Settlement Decisions; and
3. Deadline Management.

The purpose of this memorandum is to set forth those concepts in greater detail and to define the roles, responsibilities and procedures necessary to implement this important initiative.

BACKGROUND

Under CERCLA, EPA's goal has been and will continue to be to maximize the number of sites which can be cleaned up. Congress clearly indicated their support for this goal in the Section 122 settlement procedures of the Superfund Amendments and Reauthorization Act of 1986 (SARA). That goal requires constant review of old policies and development of new measures which promote privately financed response actions.

Clearly, one important measure to encourage settlement is to maintain aggressive use of Section 106 administrative and judicial enforcement authorities to compel private party response (see Porter/Mays memorandum "Use of CERCLA §106 Judicial Authority-Short Term Strategy", dated July 8, 1986). The Office of Solid Waste and Emergency Response (OSWER) has recently amended aspects of the Superfund Comprehensive Accomplishments Plan (SCAP) to offset some of the attendant project delay due to CERCLA Section 106 litigation. Regions may now request funding for remedial design (RD) for enforcement lead sites concurrent with their referral. This approach not only minimizes the time where no site action proceeds, but also puts the government in a stronger position at trial. Regions would be expected to pursue the litigation to completion absent extraordinary circumstances or compelling public health concerns.

Congress recognized the value of enhancing the settlement process in enacting SARA. The provisions for Section 122 are based in large part upon EPA's Interim CERCLA Settlement Policy (50 FR 5034) and are designed to increase potentially responsible party (PRP) participation in response actions. The new provisions related to special notice, information sharing and negotiation moratoria are particularly important. They attempt to strike a balance between the competing demands of prompting more settlements, conserving limited government resources, and minimizing the delay in the clean-up process.

Additionally, our experience in the last six years has shown us that the way in which we manage other parts of the settlement process can also have dramatic effects on the chances for successful negotiations. For example, setting deadlines too tightly can destroy the willingness of PRPs to attempt to settle. On the other hand, prolonged and inconclusive negotiations can seriously delay response actions at a site. Based on our experience, and comments from the Regions and other parties involved in the process, the Agency has concluded that there are three areas, in addition to the matters covered by SARA, where certain changes will help improve and streamline our process for conducting settlement discussions:

- Negotiation Preparation;
- Management Review of Settlement Decisions; and
- Deadline Management.

Before describing these changes in the sections which follow, a brief description of the problems that have been encountered will help to explain why this guidance has been prepared.

There are two kinds of problems sometimes associated with negotiation preparation: instances where EPA does not fully prepare itself for negotiations and instances where EPA does not facilitate the preparation of PRPs. Negotiations are occasionally begun without the benefit of government proposed settlement documents (e.g., a draft consent decree and technical support documents). Ideally, negotiating teams should have a strategy for settlement which addresses goals, interim milestones for continuing negotiations, firm schedules and followup steps in the event settlement is not achieved. When EPA does not adequately plan, it is difficult for the government to live up to its responsibilities in moving discussions towards conclusion.

Perhaps more important, though, are the issues related to our support of the PRP preparation process. PRPs at Superfund sites are often facing multi-million dollar liability. There are generally many of them (sometimes hundreds) and our success in negotiations is greatly influenced by the extent to which the PRPs have the time and information to organize themselves. Our occasional failure to give early notice or to provide adequate information (including draft settlement documents) to PRPs has been clearly counterproductive. Conversely, in those instances where notice has been given early in the process, substantial information has been made available and where EPA has assisted in the formation of steering committees (with or without third party assistance), we have been much more successful in settlement efforts.

Prompt conclusion of some negotiations has also been occasionally hampered by breakdowns in EPA's management review of settlement decisions. Superfund settlements have frequently posed issues which are difficult either because of their precedential nature or the sheer magnitude of the clean-up. Delayed decisions often affect the willingness of PRPs to settle and always impair the credibility of the negotiating team. When delays have occurred, they are generally attributable to several factors. In some instances, negotiating teams did not raise issues to management early in the process, and decisions ultimately are forced by crisis. In other cases, decisions seemingly can be made only by the highest levels of Headquarters management. The relative inaccessability of those decision-makers to decide on critical issues in a timely way has sometimes been a major impediment to settlement.

The third problem area in the settlement process relates to managing deadlines for negotiations. In recognition of the fact that these are multi-party negotiations over complicated legal and technical issues, a reasonable opportunity should be provided. However, guidelines must be established for bringing closure to issues so as not to excessively delay the clean-up at the site. At times, decisions are made to extend negotiations based on a showing of some subjective "progress", even where there is no concrete result to show for that progress. Decisions are sometimes made to continue negotiations based on concerns over future cost recovery actions.

In order to substantially improve the CERCLA settlement process, attention must be given to solutions for each of the three areas discussed above. The framework set forth herein is intended as a major first step in that direction. However, refinement and modification of these steps will be considered based on your comments and experience gained in the coming months.

SETTLEMENT PROCESS IMPROVEMENTS

Negotiation Preparation

Regions should improve negotiation preparation through four activities:

1. Earlier, Better Responsible Party Searches
2. Earlier Notice and Information Exchange
3. Initiating Discussions Earlier
4. Preparation of a Strategy and Draft Settlement Documents.

The PRP Search is the first step in the settlement process and is one of the most critical to success. Regions must pay close attention to both the timing and quality of the PRP search since inadequate information on the identity of PRPs and their contributions can be a significant impediment to the PRPs organizing themselves to present an offer of settlement. Guidance and targets established under the SCAP now require that PRP searches be initiated concurrent with the Expanded Site Investigation or National Priorities List (NPL) scoring quality assurance process. PRP searches are required to be completed not later than the year in which the site is proposed for the NPL. Contractor efforts should be supplemented by issuance of information request letters or the use of administrative subpoenas (a new provision of SARA) at the earliest possible time. It is imperative that these searches be comprehensive and of high

quality. That places a heavy responsibility on Regional staff to provide direction to and review of contractor efforts. In-house civil investigators will be hired and available to Regions this year to assist in this effort. In addition, Headquarters staff from both OSWER and the Office of Enforcement and Compliance Monitoring (OECM) will revise the the "Potentially Responsible Party Search Manual" as well as present a training program for Regional staff and contractors on the conduct and review of PRP searches. That training should be initiated late this year. In the meantime, Regional staff should carefully evaluate the adequacy of PRP searches for sites scheduled for fund obligations or judicial referral during FY 87 and early FY 88 to determine whether supplemental work is necessary.

Regions should give notice to PRPs of their potential liability through the traditional notice letters at the earliest practicable time and, in all cases, well in advance of initiating the negotiation moratorium. This is not to be confused with the Special Notice which triggers the moratorium as described in §122(e). (Guidance on Special Notice and the moratorium is forth-coming.) It is not acceptable to postpone issuing notice until only the minimal time for negotiations remains prior to obligation of funds. Notice may be given to some parties where further investigation or analysis is necessary to identify additional PRPs.

Notice letters should routinely include information requests under Section 104(e) if not previously issued. Notice letters should to the maximum extent practicable also provide information as to other PRPs (i.e. names, volumes contributed and rankings). In some cases, it may be more pratical to provide this information after analyzing the responses to the information requests.

It is likewise important to initiate discussions with PRPs earlier in the process. While formal negotiations may not begin until after Special Notice and closer to the planned obligation date for the project, EPA should encourage earlier discussions that will further the process of educating the PRPs as to the site, EPA's approach to it and the information we have that may bear on allocation or other pertinent matters.

The litigation team must also begin early the process of preparing draft settlement documents and a negotiation strategy. A draft Consent Decree (or administrative order for Remedial Investigation/Feasibility Study (RI/FS)) should be prepared along with any negotiation support documents outlining technical objectives to be presented at or before the first negotiation

session. (Note that a "Negotiation Support Document" to be used as a technical attachment for an RI/FS settlement may be prepared by a contractor but must be initiated well in advance of negotiations). Regional staff should also prepare for regional management review a negotiation strategy which addresses:

- initial positions on major issues with alternative and bottomline positions or statements of settlement objectives;
- schedule for negotiations which identifies not only the drop-dead date but also interim milestones at which negotiations can be evaluated for progress (date for good faith proposal with line-by-line response to draft settlement document; date for resolution of major issues related to scope of work, funding arrangements, reimbursement; date for receipt of all necessary submittals from PRPs such as technical attachments, preauthorization requests, trust agreements, etc);
- strategy and schedule for action against PRPs in the event negotiations are unsuccessful (i.e., issuance of unilateral Administrative Order (AO) concurrent with Remedial Design (RD) obligation, Section 106 referral, etc).

The timing of most of these activities is critical and in many cases will be related to the proposed date of obligation of funds. For that reason, management attention to the entire site management planning process is critical to ensure that the required activities at sites are properly sequenced. In order to assist you in this, attached for your Region is an Enforcement Confidential printout taken from the Integrated SCAP which shows the status of key settlement related activities for sites with planned obligations during FY 87 or FY 88. (Attachment I)

Management Review of Settlement Decisions

To help improve the management review of settlements, this section sets out roles and accountability in the decision process. In addition, it adds two new elements to focus and streamline policy review:

- A Settlement Decision Committee (SDC); and the
- Assistant Administrator (AA) Level Review Team.

The existing negotiation team approach will continue to be the primary vehicle for developing settlements. The negotiation team will routinely be comprised of a representative from the Waste Management Division and a representative from the Office of Regional Counsel. Department of Justice (DOJ), OECM, the Office of Waste

Programs Enforcement (OWPE) staff and appropriate State representatives may participate as necessary. The responsibilities of the negotiation team are to:

- ensure that PRP searches, notice and information exchange are properly scheduled and completed;
- develop a comprehensive negotiations strategy in advance of negotiations;
- develop and share draft settlement documents, including technical scopes of work, in advance of negotiations;
- conduct negotiations; and
- raise issues to the Regional Administrator, and where necessary, to the Settlement Decision Committee for resolution.

The Regional Administrator, in consultation with DOJ, is expected to be the primary decision-maker on CERCLA settlement issues. Administrative settlements for RI/FS are fully the Regional Administrator's responsibility. OSWER and OECM concurrence continues to be required on remedial settlements. In particular, certain major or precedential issues in Remedial Design/Remedial Action (RD/RA) negotiations should be referred for early Headquarters resolution. Those issues include mixed funding or preauthorization arrangements, broad releases, de minimis settlements, deferred payment schemes, and remedies that deviate significantly from the Record of Decision (ROD). More detailed guidance on those issues will be prepared and made available to you in the coming months.

At the same time such guidance is being prepared, Headquarters will develop an oversight program that ensures quality and consistency in Regional program administration, and provides sufficient feedback to allow future policy adjustments. Once guidance is finalized, some experience has been gained, and the oversight program is in place, we fully expect that the Regional Administrator will have broad authority to reach settlement decisions within the framework of that guidance. In the meantime, initial delegations of certain new authorities will be limited by consultation or concurrence requirements. After a period of experience, waivers of concurrence may be made to those Regions which demonstrate continuous quality and consistency in administering the CERCLA enforcement process. At this point, which is likely to occur within approximately one year, OSWER and OECM will largely fill an oversight role, assuring effective settlements consistent with applicable guidance and developing additional guidance as necessary. That role will also include periodically reviewing whether waivers of concurrence remain justified.

In the interim, a Settlement Decision Committee (SDC) has been created in Headquarters to provide timely action on issues which require Headquarters review. The SDC will be made up of the following individuals:

Chair: Gene A. Lucero, Director, OWPE
Members: Edward E. Reich, Associate Enforcement Counsel for Waste, OECM
David T. Buente, Chief, Environmental Enforcement Section, DOJ
Basil G. Constantelos, Director, Waste Management Division, Region V
Bruce Diamond, Regional Counsel, Region III

Henry L. Longest, Director, Office of Emergency and Remedial Response (OERR) (when necessary)

Regional representatives to the SDC will be rotated every six months. The SDC will meet approximately every 3-4 weeks, or more often if necessary. Its primary responsibility will be to coordinate decisions on policy issues raised by Regions. Most settlement issues requiring Headquarters review will be resolved at this level. The Chief, Compliance Branch, CERCLA Enforcement Division (CED), OWPE will serve as secretary for the SDC and will coordinate communicating policy decisions to the affected Region, and more broadly where decisions create precedent which may be transferable to other sites. The SDC will also monitor Regions' progress towards finalizing settlements, paying particulary close attention to pending deadlines.

Regions should access the SDC through either OECM-Waste or the CERCLA Enforcement Division, OWPE. Regions should be prepared to provide a brief summary of the issue, options and their recommendation. Regions may, at their discretion, attend the SDC meeting to present or elaborate on the issue. (More detailed procedures will be established by the SDC.)

The Assistant Administrator Review Team which was established during April 1986, will become a formal part of the management review and decision-making process. The group will be chaired by the AA-OSWER and include the AA-OECM and the Assistant Attorney General for Lands and Natural Resources, DOJ. The primary function of this Team will be to provide overall policy direction on settlement concepts, but will also be available to resolve major policy issues specific to sites where necessary, as determined by the SDC. The AA Review Team will meet at least quarterly, but may convene more frequently, if required by circumstances. As Chair of the AA Review Team, the AA-OSWER must approve extensions of negotiations beyond the 30 day authority granted to Regional Administrators below.

Deadline Management

Effective management of negotiations in the CERCLA program will require increase management attention both in Regions and Headquarters. In order to facilitate the management overview that will be necessary, particularly within both the program and counsel's office in the Region, OSWER will provide to you periodic reports from the Integrated SCAP, similar to Attachment I, which highlight negotiations in progress or planned for the next quarter. Headquarters staff and management will use these reports to track the progress of and preparation for negotiations.

Recognizing the complexity of CERCLA settlement discussions, it is clear that there will be instances where extension of discussion beyond the moratorium period will be appropriate. The framework for considering extensions includes:

1. Thirty day Extension by the Regional Administrators
2. Additional Extension by AA-OSWER in Exceptional Circumstances

While the SARA Section 122 provisions related to special notice and negotiation moratoria are discretionary, EPA policy will be that those provisions should generally be employed. Section 122 provides for up to a 120 day moratorium before remedial action, during which time EPA may not initiate enforcement action or remedial action. The full moratorium period is conditioned on receiving a good faith offer from the PRPs within 60 days. In its absence, the moratorium expires after 60 days. (Note that while EPA may proceed with design work, as a general rule we will not.) Where adequate preparation as discussed above has preceded special notice, Regions should generally be able to conclude negotiations, or at a minimum, resolve all major issues during that period. While negotiation extensions should not be encouraged, Regional Administrators may grant extensions to negotiations when it is believed that a settlement is likely and imminent. However, this period should not to exceed 30 days.

Further extension of negotiations beyond that 30 day period may be approved only by the AA-OSWER. Absent that approval, Regions are expected to move forward with Fund-financed action, administrative order or judicial referral where appropriate. (Note that negotiations may be resumed at any point after referral and filing of a Section 106 action.) Extensions will be granted only in rare and extraordinary circumstances and will generally be for short duration where the expectation is that final agreement is imminent. Requests for extension should be made by the Regional Administrator in writing through the Director, OWPE to the AA-OSWER

and should set out succinctly: 1) the length of extension requested; 2) status of negotiations (issues resolved and those unresolved); 3) justification for extension; and 4) actions to be taken in the event that negotiations are unsuccessful. The AA-OSWER will only consider requests for extensions made by the Regional Administrator and not direct requests made by PRPs.

In order to avoid any misunderstanding, these limitations should be communicated to the PRPs early in any discussions. Moreover, the schedule for negotiations, so long as it respects these deadlines, is always open to adjustment by agreement among the parties.

As discussed earlier, it is important to recognize that negotiations are not limited to the 120 day period established by the special notice provisions of the law. Information requests and traditional notice letters should be sent as soon as possible, and initial discussions should almost always occur with PRPs before the special notice is provided. We are developing more detailed guidance on notice letters, and the use of the special notice procedures, and we anticipate circulating this guidance for comment within the next month.

One of the lessons learned as a result of the limited April-May 1986 funding during the Superfund slowdown was that there are benefits derived by having several settlements which are on a parallel and firm schedule for final resolution. Not only did we find that firm schedules tend to force issues to resolution, but it proved to facilitate management review in that sites with similar issues could be dealt with concurrently. In order to extend this "clustering" effect, OSWER is considering including in the FY 88 Strategic Planning and Management System (SPMS) commitments a target for completion of RD/RA negotiations.

Approach for RI/FS Negotiations

In light of the delegation of RI/FS decisions, much of the above process is not relevant for RI/FS negotiations. The Agency continues to encourage PRP conduct of RI/FS in appropriate circumstances (see Thomas/ Price memorandum "Participation of Potentially Responsible Parties in Development of Remedial Investigation and Feasibility Studies", dated March 21, 1984). RI/FS settlement issues should generally be resolved by the Regional Administrator and need not be submitted to the SDC or the AA-level review group. Section 122 authorizes a 90 day moratorium for negotiations, conditioned on receiving a good faith offer from PRPs within 60 days of special notice. Regional Administrators have discretion to terminate or extend negotiations after 90 days. However, extension of negotiations beyond an additional 30 days should be authorized by the Regional Administrator only in

limited cases. The points made above in Negotiation Preparation are equally applicable to RI/FS negotiations, with the exception that negotiation strategies do not require Headquarters review.

SUMMARY

Implementation of these steps to streamline the settlement process was identified by the Administrator as one of his highest priorities under SARA. We urge you to give this topic the same priority in your Regions and provide a commensurate level of management attention.

If you have any questions about these measures or their implementation, please contact either of us directly.

Attachment

cc: Superfund Branch Chiefs
Regional Counsel RCRA/CERCLA Branch Chiefs
Enforcement Section Chiefs
Gene A. Lucero
Henry Longest
Ed Reich
Jack Stanton
Russ Wyer
David Buente

Appendix H
List of Contacts

NOTE: Two additional sources listing possible contacts:

Sources of State Information on Corporations
Washington Researchers, Ltd.
Washington, D.C.

EPA Headquarters Telephone Directory
U.S. EPA
Washington, D.C.

EPA HEADQUARTERS*

Assistant Administrator for Solid Waste and Emergency Response

Office of Emergency and Remedial Response (Superfund)
Mail Code: WH-548
(202) 382-2180

Emergency Response Division
Mail Code: WH-548B
(202) 475-8720

Hazardous Response Support Division
Mail Code: WH-548A
(202) 475-8600

Hazardous Site Control Division
Mail Code: WH-548E
(202) 382-4632

Office of Solid Waste
Mail Code: WH-562
(202) 382-4627

CERCLA Enforcement Division
Mail Code: WH-527
(202) 382-4812

RCRA Enforcement Division
Mail Code: WH-527
(202) 382-4808

* A complete list of EPA organizations is available in the EPA Headquarters Telephone Directory. The mailing address for each of the divisions listed is:

401 M Street, S.W.
Washington, DC 20460

EPA REGIONAL CONTACTS

Region 1:
Waste Management Division
USEPA Region 1
JFK Federal Building
Boston, MA 02203

Tel.: FTS 565-3666; CML (617) 565-3666

Region 2:
Site Investigation and Compliance Branch (Rm. 402)
USEPA Region 2
26 Federal Plaza
New York, NY 10278

Tel.: FTS 264-8123; CML (212) 264-8123

Region 3:
CERCLA Enforcement Section (3HW12)
USEPA Region 3
841 Chestnut St., 6th Floor
Philadelphia, PA 19107

Tel.: FTS 597-2365; CML (215) 597-2365

Region 4:
Investigations and Compliance Section
USEPA Region 4
345 Courtland St., N.E.
Atlanta, GA 30365

Tel.: FTS 257-2930; CML (404) 347-2930

Region 5:
Hazardous Waste Enforcement Branch (5HE-12)
USEPA Region 5
230 South Dearborn St.
Chicago, IL 60604

Tel.: FTS 353-6431; CML (312) 886-7337

Region 6:
Superfund Compliance Section (6H-EC)
USEPA Region 6
1201 Elm St.
Dallas, TX 75270

Tel.: FTS 729-9714; CML (214) 767-9714

Region 7:
Air & Waste Management Division
USEPA Region 7
726 Minnesota Avenue
Kansas City, KS 66101

Tel.: FTS 758-6864; CML (913) 236-2856

(continued)

EPA REGIONAL CONTACTS (Continued)

Region 8:

Air & Waste Management Division
USEPA Region 8
999 18th St. (1 Denver Place) Tower 1
Denver, CO 80295

Tel.: FTS 327-1798; CML (303) 293-1518

Region 9:

Toxics & Waste Management Division (T-4)
USEPA Region 9
215 Fremont St.
San Francisco, CA 94105

Tel.: FTS 454-7734; CML (415) 974-7734

Office of Territorial Programs
USEPA Region 9
215 Fremont St.
San Francisco, CA 94105

Tel.: FTS 454-7431; CML (415) 974-7431

Region 10:

Hazardous Waste Division (Mailstop 524)
USEPA Region 10
1200 6th Ave.
Seattle, WA 98101

Tel.: FTS 399-1993; CML (206) 442-1993

ALABAMA

Air Pollution Control Commission
645 S. McDonough
Montgomery, AL 36130
(205) 832-6770

Dept. of Environmental Mgmt.
Water Division
1751 Federal Drive
Montgomery, AL 36130
(205) 271-7700

Dept. of Environmental Mgmt.
Indus. & Hazardous Waste Sec.
1751 Federal Drive
Montgomery, AL 36130

Dept. of Public Health
Environmental Health Admin.
State Office Bldg.
Montgomery, AL 36104
(205) 832-3176

Dept. of Public Health
Water Improvement Commission
3815 Interstate Court
Montgomery, AL 36130
(205) 277-3630

Geological Survey of Alabama
State Oil and Gas Board
P.O. Drawer O
University, AL 35468
(205) 349-2852

Office of Secretary of State
Corporation Division
524 State Office Building
Montgomery, AL 36130
(205) 832-6855

Office of Secretary of State
UCC Division
State Office Bldg., Room 536
Montgomery, AL 36130
(205) 832-3572

ALASKA

Dept. of Administration
Uniform Commerical Code
Pouch D
Juneau, AK 99811
(907) 465-2272

Dept. of Commerce & Economic
Development
Corporate Section
Pouch D
Juneau, AK 99811
(907) 465-2531

Dept. of Environmental
Conservation
Oil Pollution Control
Pouch O
Juneau, AK 99811
(907) 465-2653

Department of Environmental
Conservation
Air and Solid Waste Mgmt.
Section
Pouch O
Juneau, AK 99811
(907) 465-2666

Dept. of Environmental
Conservation
Air and Quality Section
Terrestiral Programs
Pouch O
Juneau, AK 99811
(907) 465-2631

Dept. of Environmental
Conservation
Waste Programs
Pouch O
Juneau, AK 99811
(907) 465-2640

ARIZONA

Corporate Commission
2222 W. Encanto Bldg.
Suite 210-D
Phoenix, AZ 85009
(602) 271-3625

Secretary of State
1700 W. Washington Street
Phoenix, AZ 85007
(602) 271-4285

Dept. Of Health Services
Environmental
Health Services
2005 North Central Avenue
Phoenix, AZ 85007
(602) 258-6381

Department of Water Division of
Resources
Remedial Action Division
99 East Virginia
Phoenix, AZ 85007
(602) 266-1586

ARKANSAS

Dept. of Pollution Control &
Ecology
P.O. Box 9583
8001 National Drive
Little Rock, AR 72201
(501) 371-1701

Department of Health
Bureau of Public Health Eng.
Donoghey Bldg., 13th Floor
Seventh & Main Sts.
Little Rock, AR 72201
(501) 562-7444

Division of Air Pollution Control
(501) 371-1136

Secretary of State
Corporation Division
State Capitol Bldg.
Little Rock, AR 72201
(501) 371-1010, Ext. 25

Solid and Hazardous Division
(501) 562-7444

Water Division
(501) 371-1701

Secretary of State
UCC Division
State Capitol Bldg.
Little Rock, AR 72201
(501) 371-1010, Ext. 23

CALIFORNIA

Air Resources Board
Stationary Source Control Div.
P.O. Box 2815
Sacramento, CA 95812
(916)445-0750

Dept. of Health Services
Toxic Substance Control Division
1219 K Street
Sacramento, CA 95814
(916)324-3752

Dept. of Water Resources
1416 9th Street
P.O. Box 388
Sacramento, CA 95802
(916)445-6582

Governor's Off. of Planning & Research
Project Coordination Unit
State Clearinghouse
1400 10th St., Room 121
Sacramento, CA 95814
(916)445-0613

Secretary of State
Corporate Filing Division
1230 J. Street
Sacramento, CA 95814
(916) 445-0620

Secretary of State
UCC Division
P.O. Box 1738
Sacramento, CA 95808
(916) 445-8061

Solid Waste Management Board
1020 9th St., Suite 300
P.O. Box 1743
Sacramento, CA 95814
(916) 322-3330

Water Resources Control Board
Legal Division
P.O. Box 100
Sacramento, CA 95801
(916) 445-7762

COLORADO

Department of Health
4210 E. 11th Ave.
Denver, CO 80220

Office of Environmental Programs
(303) 320-4180

Air Pollution Control Division
(303) 331-8500

Waste Management Division
(303) 320-8333, Ext. 4364

Water Quality Control Division
(303) 320-320-8333, Ext. 3231

Remedial Programs
(303) 320-8333, Ext. 3355

Public Utilities Commission
500 State Services Bldg.
1525 Sherman Street
Denver, CO 80203
(303) 866-3174

Secretary of State
Corporations Division
1575 Sherman Street
Denver, CO 80203
(303) 839-2361

Secretary of State
Corporations Division
1575 Sherman Street
Denver, CO 80203
(303) 839-2563

CONNECTICUT

Dept. of Env. Protection
165 Capitol Ave.
Hartford, CT 06115
(203) 566-5524

Air Compliance Unit
(202) 566-4030

Hazardous Materials Mgmt.
Unit
(203) 566-5712

Water Compliance Unit
(203) 566-3245

Water Resources Unit
Wetlands Management Section
(203) 566-7280

Office of the Secretary of State
Corporation Division
30 Trinity Street
Hartfort, CT 06115
(203) 566-3216

Office of the Secretary of State
UCC Division
30 Trinity Street
Hartford, CT 06115
(203) 566-3216

DELAWARE

Dept. of Natural Resources
and Environmental Control
Division of Env. Control
Air Resources Section
P.O. Box 1401
Tatnall Bldg.
Dover, DE 19901
(302)678-4791

Dept. of Natural Resources
and Environmental Control
Division of Env. Control
Water Resources Section
P.O. Box 1401
Tatnall Bldg.
Dover, DE 19901
(302)678-4761

Department of Natural Resources
and Environmental Control
Wetlands Section
Blue Hen Mall, Room 203
Dover, DE 19901
(302)736-4691

Secretary of State
Corporations Dept.
P.O. Box 898
Dover, DE 19901
(302) 678-4221

Secretary of State
Uniform Commercial Code Div.
P.O. Box 793
Dover, DE 19901
(302) 678-4279

Solid Waste Authority
P.O. Box 455
Dover, DE 19903-0455
(302) 736-5361

DISTRICT OF COLUMBIA

Dept. of Environmental Services
Environmental Health Admin.
Bureau of Air & Water
Quality Control
5010 Overlook Ave., SW
Washington, DC 20032
(202) 767-7651

Government of the District of
Columbia
Dept. of Transportation
Bureau of Design,
Engineering and Research
613 G Street, NW
Washington, DC 20001
(202) 939-8060

Dept. of Public Works of
the District of Columbia
Public Space Maintenance Admin.
Solid Waste Permit Branch
6523 Chillum Place, NW
Washington, DC 20012
(202) 767-8176

Dept. of Consumer and
Regulatory Affairs
Housing and Environmental
Regulation Administration
Hazardous Waste Section
P.O. Box 37200
Washington, DC 20013-7200
(202) 767-8414

FLORIDA

Bureau of Geology
903 West Tennessee St.
Tallahassee, FL 32304
(904) 488-2817

Dept. of Env. Regulation
2600 Blair Stone Rd.
Twin Towers Office Bldg.
Tallahassee, FL 32301
(904) 488-4807

Solid Waste Management Prog.
(904) 488-0300

Office of Public Information
(904) 488-9334

Hazardous Waste Management
Program
(904) 488-0300

Secretary of State
Division of Corporations
Capital Bldg., Room 2001
Tallahassee, FL 32304
(904) 488-9000

Secretary of State
UCC Division
Capitol Bldg., Room 2001
Tallahassee, FL 32304
(904) 488-1010

GEORGIA

Dept. of Natural Resources
Environmental Protection Div.
270 Washington St., SW
Atlanta, GA 30334
(404) 656-3214

Air Protection Branch
(404) 656-6900

Water Protection Branch
(404) 656-6593

Secretary of State
Corporations Dept.
225 Peachtree St., NE.
Suite 600
Atlanta, GA 30303
(404) 656-2185

Secretary of State
Securities Division
State Capitol, Room 214
Atlanta, GA 30334
(404) 656-2894

HAWAII

Department of Health
Division of Environ. Health
1250 Punchbowl Street
Honolulu, HI 96813
(808) 548-6455

Department of Health
Environmental Protection and
Health Services Division
Environmental Permits Branch
P.O. Box 3378
Honolulu, HI 96813
(808) 548-6410

Dept. of Regulatory Agencies
Business Registration Div.
P.O. Box 40
Honolulu, HI 96813
(808) 548-6521

Uniform Commerical Code
Bureau of Conveyances
P.O. Box 2867
Honolulu, HI 96813
(808) 548-3108

IDAHO

Dept. of Health & Welfare
Division of Environment
700 W. State St., 5th Floor
Boise, ID 83720-9990
(208) 384-2393

Bureau of Air Quality
(208) 384-2903

Bureau of Water Quality
(208) 384-2433

Department of Lands
Statehouse
Boise, ID 83720
(208) 334-3280

Department of Water Resources
Groundwater Programs
Statehouse
Boise, ID 83720
(208) 334-4479

IDAHO (cont'd)

Hazardous Materials Bureau
(208) 334-4118

Dept. of Health & Welfare
Division of Support Services
Administrative Procedures Sec.
450 W. State St., 9th Floor
Boise, ID 83720
(208) 384-2433

Secretary of State
Corporations Division
State House, Room 203
Boise, ID 83720
(208) 384-2300

Secretary of State
UCC Division
State House, Room 203
Boise, ID 83720
(208) 384-2300

ILLINOIS

Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706
(217) 782-5562

Secretary of State
Corporation Department
Centennial Building
Springfield, IL 62756
(217) 782-7880

Secretary of State
UCC Division
Centennial Bldg., Room 030
Springfield, IL 62756
(217) 782-7518

INDIANA

Board of Health
Air Pollution Control Division
1330 W. Michigan Street
Indianapolis, IN 46206
(317) 633-0619

Board of Health
Div. of Land Pollution Control
1330 West Michigan Street
Indianapolis, IN 46206
(317) 243-5014

Board of Health
Div. of Water Pollution Control
1330 W. Michigan Street
(317) 633-0176

Board of Health
Environmental Health Bureau
1330 W. Michigan Street
Indinapolis, IN 46206
(317) 633-8404

Secretary of State
Corporation Division
State House, Room 155
Indianapolis, IN 46204
(317) 633-6576

Secretary of State
UCC Division
State House, Room 157
Indianapolis, IN 46204
(317) 633-6393

IOWA

Department of Water, Air & Waste Management
Henry A. Wallace Bldg.
900 E. Grand Avenue
Des Moines, IA 50319
(515) 281-8690

Secretary of State
Corporation Division
State Capitol Bldg.
Des Moines, IA 50319
(515) 281-5204

Secretary of State
UCC Division
Grimes Bldg.
Des Moines, IA 50319
(515) 281-3226

KANSAS

Corporation Commission
Conservation Division
200 Colorado Derby Building
202 West First Street
Wichita, KS 67202-1286
(316) 263-3238

Department of Health and the Environment
Division of Environment
Forbes AFB
Topeka, Kansas 6620-7200
(913) 812-9360 or (913) 862-9360

Secretary of State
UCC Department
The Statehouse
Topeka, KS 66612
(913) 296-2236

Secretary of State
Corporation Department
The Statehouse, 2nd Floor
Topeka, KS 66612
(913) 296-2236

KENTUCKY

Department of Natural Resources and Environmental Protection
Environmental Protection Bureau
Capital Plaza Tower
Frankfort, KY 40601
(502) 544-3350

Department for Natural Resources and Environmental Protection
Division of Water Quality
1065 Highway 127 South
Century Plaza
Frankfort, KY 40601
(502) 564-3410

Office of Secretary of State
Corporation Division
Capital Building, Room 154
Frankfort, KY 40601
(502) 564-7330

Department of Mines and Minerals
1120 Graham Avenue
P.O. Box 680
Lexington, KY 40586
(606) 254-0367

LOUISIANA

Bureau of Environmental Services
Air Quality Section
325 Loyola Avenue
New Orleans, LA 70112
(504) 568-5122

Bureau of Environmental Services
Division of Health
325 Loyola Avenue
New Orleans, LA 70112
(504) 568-5100

Department of Environmental Quality
Solid Waste Management Division
P.O. Box 44066
Baton Rouge, LA 70804
(504) 342-1265

Office of Conservation
P.O. Box 44275
Baton Rouge, LA 70804
(504) 342-5540

Bureau of Environmental Services
Water Quality Section
325 Loyola Avenue
New Orleans, LA 70112
(504) 568-5101

Office of Environmental Affairs
Air Quality Division
P.O. Box 44066
Baton Rouge, LA 70804
(504) 342-1206

Department of Environmental Quality
Water Pollution Control Division
P.O. Box 44091
Baton Rouge, LA 70804-4066
(504) 342-6363

Secretary of State
Corporation Division
P.O. Box 44125
Baton Rouge, LA 70804
(504) 925-4704

MAINE

Department of Conservation
Bureau of Parks and Recreation
State House Station 22
Augusta, ME 04333
(207) 289-3821

Department of Environmental Protection
Bureau of Water Quality Control
Ray Building
Hospital Street
Augusta, ME 04333
(207) 289-2591

Department of Environmental Protection
Division of Licensing and Enforcement
Bureau of Oil and Hazardous Materials
State House Station 17
Augusta, ME 04333
(207) 289-2651

Department of Conservation
Land Use Regulation Commission
State House Station 22
Augusta, ME 04333
(207) 289-2631

Department of Environmental Protection
Bureau of Land Quality Control
Ray Building, Hospital Street
State House Station #17
Augusta, ME 04333
(207) 289-2111 or (207) 289-2631

Secretary of State
Corporation Division
State Office Building
Augusta, ME 04333
(207) 289-3676

MAINE (Cont'd)

Dept. of Environmental Protection
Division of Information Education
State House
Augusta, ME 04333
(207) 289-2691

Dept. of Environmental Protection
Division of Public Assistance
Station 17, State House
Augusta, ME, 04333
(207) 289-2343

Secretary of State
UCC Division
State Office Building
Augusta, ME 04333
(207) 289-3676

MARYLAND

Chesapeake Bay Commission
60 West Street, Suite 200
Annapolis, MD 21401
(301) 263-3420

Department of Health and Mental Hygiene
Bureau of Air Quality
201 West Preston Street
Baltimore, Maryland 21201
(301) 383-2410

Department of Health and Mental Hygiene
Division of Solid Waste Control
201 West Preston
Baltimore, MD 21201
(301) 225-5709

Department of Health and Mental Hygiene
Office of Environmental Programs
201 West Preston Street
Baltimore, MD 21201
(301) 225-5750

Department of Health and Mental Hygiene
Office of Environmental Programs
Hazardous Waste Management Administration
201 West Preston Street
P.O. Box 13387
Baltimore, MD 21201
(301) 225-5649

Department of Health and Mental Hygiene
Water Management Administration
201 West Preston Street
Baltimore, MD 21201
(301) 383-2737

Department of Health and Mental Hygiene
Environmental Health Administration
201 West Preston Street
Baltimore, MD 21201
(301) 383-2740

Department of Natural Resources
Water Resources Administration
Tawes State Office Building
Annapolis, MD 21401
(301) 269-2265 or (301) 269-3871

Department of Natural Resources
Water Resources Administration
Resource Protection Program
Tawes State Office Building
Annapolis, MD 21401
(301) 269-3877

State of Assessment and Taxation
301 West Preston Street
Baltimore, MD 21201
(301) 383-3330

MASSACHUSETTS

Department of Environmental Quality Engineering
One Winter Street, 7th Floor
Boston, MA 02108
(617) 292-5673

Department of Environmental Quality Engineering
Division of Air Quality Control
One Winter Street
Boston, MA 02108
(617) 292-5630

Department of Environmental Engineering
Division of Hazardous Wastes
One Winter Street
Boston, MA 02018
(617) 292-5583, 5481, or 727-4293

Department of Environmental Quality Engineering
Division of Water Pollution Control
Executive Office of Environmental Affairs
110 Tremont Street
Boston, MA 02108
(617) 727-3855

Department of Environmental Quality Engineering
Division of Water Pollution Control
One Winter Street
Boston, MA 02018
(617) 292-5673

Department of Public Health
Division of Air & Hazardous Materials
Executive Officers of Human Services
600 Washington Street, Room 320
Boston, MA 02111
(617) 727-2658

Board of Fire Prevention
Department of Public Safety
1010 Commonwealth Avenue
Boston, MA 02215
(617) 556-4500

Department of Public Safety
State Board of Fire Marshal's Office
Board of Fire Prevention
Boston, MA 02113
(617) 292-5581

Merrimack River Valley Flood Control Commission
c/o Division of Water Resources
Leverett Saltonstall Building
Government Center 100
Cambridge
(413) 773-3601

State Building Code Commission
John W. McCormack
State Office Building, 13th Floor
One Ashburton Place
Boston, MA 02108
(617) 727-3200

Secretary of State
Corporations Division
One Ashburton Place, 17th Floor
Boston, MA 02108
(617) 727-2853

Secretary of State
UCC Division
One Ashburton Place, Room 1711
Boston, MA 02108
(617) 727-2860

MICHIGAN

Department of Natural Resources
Stevens T. Mason Building
P.O. Box 30028
Lansing, MI 48909
(517) 373-1950

Department of Natural Resources
Air Quality Division
Stevens T. Mason Building
P.O. Box 30028
Lansing, MI 48909
(517) 322-1330

Department of Natural Resources
Environmental Services Division
Office of Hazardous Waste Management
Box 30028
Lansing, MI 48909
(517) 373-6620 and 2730

Department of Natural Resource
Water Quality Division
P.O. Box 30028
Lansing, MI 48909
(517) 373-1947

Department of Natural Resources
Resource Recovery Division
P.O. Box 30028
Lansing, MI 48909
(517) 373-2730

Department of Public Health
Bureau of Environmental &
Occupational Health
P.O. Box 30035
3500 North Logan Street
Lansing, MI 48909
(517) 373-1410

Department of Commerce
Corporation & Securities Bureau
P.O. Box 30054
Lansing, MI 48909
(517) 373-0493

Secretary of State
UCC Unit
Lansing, MI 48918
(517) 373-0810

MINNESOTA

Minnesota, Wisconsin, Boundary Area
Commission
619 Second Street
Hudson, Wisconsin 54016
(715) 386-9444

Pollution Control Agency
Solid and Hazardous Waste Division
1935 West Conty Road B-2
Roseville, Minnesota 55113-2785
(612) 296-7278

Pollution Control Agency
Division of Water Quality
1935 West County Road, B-2
Roseville, MN 55113-2785
(612) 296-7238

Secretary of State
Corporation Division
State Office Building, Room 180
St. Paul, MN 55155
(612) 296-2803

Pollution Control Agency
1935 West Country Road, #B-2
Roseville, Minnesota 55113-2785
(612) 296-7765

Pollution Control Agency
Division of Air Quality
1935 West County Road B-2
Roseville, MN 55113-2785
(612) 296-7331

MINNESOTA (Cont'd)

Secretary of State
UCC Division
State Office Bldg., Room 180
St. Paul, MN 55155
(612) 296-2434

MISSISSIPPI

Air & Waste Pollution Control Commission
P.O. Box 827
Robert E. Lee Building
Jackson, MS 39205
(601) 354-2550

Secretary of State
Corporation Division
P.O. Box 136
Jackson, MS 39205
(601) 354-6541

State, Oil, and Gas Board
1404 Sillers Building
P.O. Box 1332
Jackson, MS 39205
(601) 359-3737

Department of Natural Resources
Bureau of Pollution Control
Division of Solid Waste Management
P.O. Box 10385
Jackson, Mississippi 39209
(601) 961-5171

Department of Wildlife Conservation
Bureau of Marine Resources
USM Gulf Park Campus
P.O. Box Drawer 959
Long Beach, MS 39560
(601) 864-4602

Secretary of State
UCC Division
P.O. Box 136
Jackson, MS 39205
(601) 354-6545

MISSOURI

Department of Natural Resources
Division of Environmental Quality
Box 1368
Jefferson City, MO 65102
(314) 571-3241

Secretary of State
Corporations Division
State Capitol, Room 207
Jefferson City, MO 65102
(314) 751-4153

Secretary of State
UCC Division
P.O. Box 1159
Jefferson City, MO 65102
(314) 751-2360

Department of Natural Resources
Division of Environmental Quality
Water Pollution Control Program
P.O. Box 176
Jefferson City, MO 65101
(314) 751-3241

Department of Natural Resources
Waste Management Program
Division of Environmental Quality
1915 Southridge Drive
P.O. Box 1368
Jefferson City, MO 65102
(314) 751-3241

MONTANA

Department of Health and
Environmental Sciences
Environmental Sciences Division
Cogswell Building
Helena, MT 59601
(406) 444-2406

Department of Natural Resources and
Conservation
Water Resources Division
Natural Resources Building
32 South Ewing
Helena, MT 59601
(406) 444-6610

Secretary of State
Corporation Department
State Capitol
Helena, MT 59601
(406) 449-2034

Secretary of State
Corporation Department
State Capitol
Helena, MT 59601
(406) 449-2034

NEBRASKA

Department of Environmental Control
P.O. Box 94877
301 Centennial Mall, South
Lincoln, NE 68509
(402) 471-2186

Secretary of State
Corporation Division
State Capitol
Lincoln, NE 68509
(402) 471-4079

Nebraska Natural Resources Commission
301 Centennial Mall South
P.O. Box 94876
Lincoln, NE 68509
(402) 471-2081

NEVADA

Department of Conservation and
Natural Resources
Division of Environmental Protection
201 South Fall Street
Capitol Complex, Room 221
Carson City, NV 89710
(702) 885-4670/4380

Secretary of State
Corporations Division
Capitol Complex
Carson City, NV 89710
(702) 885-5203

Environmental Protection Services
201 South Fall Street, Room 120
Carson City, NV 89710
(702) 885-4670

Secretary of State
UCC Division
Capitol Complex
Carson City, NV 89710
(702) 885-5203

NEW HAMPSHIRE

Bureau of Solid Waste Management
Division of Public Health
State Lab Building
Hazen Drive
Concord, NH 03301
(603) 271-2605

Department of Health & Welfare
Pollution Control Agency
Hazen Drive
Concord, NH 03301
(603) 271-2487

Department of Health and Welfare
Division of Public Health Services
Office of Waste Management
Health and Welfare Building
Hazen Drive
Concord, NH 03301
(603) 271-4474

Department of Resources and Economic Development
Division of Resources Development
Concord, HN 03301
(603) 271-2343

Secretary of State
Corporation Division
State House, Room 113
Concord, NH 03301
(603) 271-3244

Water Resources Board
37 Pleasant Street
Concord, New Hampshire 03301
(603) 271-3406

Water Supply & Pollution Control Air Commission
P.O. Box 95
105 Loundon Road
Concord, NH 03301
(603) 271-3503

Water Supply and Pollution Control Commission
Oil Pollution Division
P.O. Box 95
Hazen Drive
Concord, NH 0301
(603) 271-3503

Secretary of State
UCC Division
State House, Room 203
Concord, NH 03301
(603) 271-3242

NEW JERSEY

Department of Environmental Protection
P.O. Box 2807
Trenton, NJ 08625
(609) 292-2916

Department of Environmental Protection
Bureau of Air Pollution Control
P.O. Box CN 027
Trenton, New Jersey 08625
(609) 292-6704

Department of Environmental Protection
Office of Hazardous Substances Control
120 Route 156
Yardville, NJ 5560
(609) 292-5560

NJPDES Permit Administration
Division of Water Resources
Water Quality Management
P.O. Box CN 027
Trenton, NY 08625
(609) 292-6891

NEW JERSEY (cont'd)

Dept. of Environmental Protection
Division of Coastal Resources
CN 401 Trenton, NJ 08625
(609) 292-2885

Department of Environmental Protection
Division of Waste Management
Bureau of Hazardous Waste
32 East Hanover Street
Trenton, New Jersey 08625
(609) 292-6891

Department of Environmental Protection
Division of Water Resources
1474 Prespect Street
Box 2809
Trenton, New Jersey 08625
(609) 292-0580

Secretary of State
Commerical Recording Section
State House
P.O. Box 1330
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(609) 292-5284

Secretary of State
UCC Division
State House
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Trenton, NJ 08625
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NEW MEXICO

Environmental Improvement Board
Crown Building
P.O. Box 968
Santa Fe, NM 87503-0968
(505) 827-9814

Environmental Improvement Board
Environmental Improvement Division
State Health and Environment
Department
Hazardous Waste Unit
P.O. Box 968
Santa Fe, MN 87503
(505) 984-0020

Environmental Improvement Division
Ground Water/Hazardous Waste Bureau
P.O. Box 968
Santa Fe, NM 87503
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Health and Environment Department
Water Quality Control Division
P.O. Box 968
Santa Fe, NM 87503
(505) 984-0200 (Ext. 318)

Secretary of State
Uniform Commerical Code
Legislative Executive Building, Room 400
Santa Fe, NM 87503
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State Corporation Commission
P.O. Drawer 1269
Santa Fe, NM 87501
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NEW MEXICO (cont'd)

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Health & Environment Department
P.O. Box 968
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NEW YORK

Department of Environmental
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(518) 457-5557/or 457-7326
or 475-3446

Department of Environmental Conservation
Division of Solid Waste
Bureau of Hazardous Waste
50 Wolf Road
Albany, NY 12333-0001
(518) 457-3273

Department of Environmental
Conservation
Division of Air
Bureau of Source Control
50 Wolf Road
Albany, NY 12233
(518) 457-6390

Department of State
UCC Division
P.O. Box 7021
Albany, NY 12231
(518) 474-4763

Department of Environmental
Conservation
Division of Solid and Hazardous Waste
50 Wolf Road
Albany, NY 12233-001
(518) 457-6858

Office of Secretary
Certification Division
162 Washington Avenue
Albany, NY 12231
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NORTH CAROLINA

Department of Natural Resources and
Community Development
Environmental Management Commission
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Raleigh, NC 27611
(919) 733-5083

Department of Natural Resources and
Community Development
Wastewater Management
512 North Salisbury Street
Raleigh, NC 27611
(919) 733-7120

Department of Environmental
Management
Department of Natural Resources and
Community Development
512 North Salisbury Street
Raleigh, NC 27611
(919) 733-7015

Department of Natural Resources
and Community Development
Office of Coastal Management
512 North Salisbury Street
P.O. Box 27687
Raleigh, NC 27611-7687
(919) 733-2293

NORTH CAROLINA (cont'd)

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Community Development
Division of Environment Management
Air Quality Management
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Secretary of State
Corporation Department
116 West Jones Street
Raleigh, NC 27611
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Department of Natural Resources and
Community Development
Division of Environmental Management
Groundwater Branch
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512 North Salilsbury Street
Raleigh, NC 27611-7687
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Secretary of State
UCC Division
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Raleigh, NC 27611
(919) 733-4205

NORTH DAKOTA

Department of Health
Air Pollution Control
Environmental Engineering Division
1200 Missouri Avenue
Bismarck, ND 58505
(701) 224-2348

Industrial Commission
Oil and Gas Division
900 East Bouldevard
Bismarck, ND 58505
(701) 224-2969

Department of Health
Environmental Waste
Management and Special Studies
1200 Missouri Avenue, Room 302
Bismark, ND 58505
(701) 224-2366

Office of the North Dakota State
Division of Engineering
900 East Boulevard
Bismark, ND 58505
(701) 224-2210

Department of Health
Waste Management Program
Division of Hazardous Waste
Management and Special Studies
1200 Missouri Avenue
Box 5520
Bismarck, ND 58505
(701) 224-2366

Secretary of State
Corporation Department
State Capitol
Bismarck, ND 58505
(701) 224-2900

Department of Health
Solid Waste Management
Environmental Engineering Division
1200 Missouri Avenue
Bismarck, ND 58505
(701) 224-2366

Secretary of State
UCC Department
State Capitol
Bismarck, ND 58505
(701) 224-2900

Department of Health
Water Supply & Pollution Control
Environmental Engineering Division
1200 Missouri Avenue
Bismarck, ND 58505
(701) 224-2354

OHIO

Ohio Department of Natural Resources
Division of Oil and Gas
Fountain Square
Columbus, Ohio 43224
(614) 265-6916

Ohio Department of Natural Resources
Division of Soil and Water Districts
Fountain Square
Columbus, OH 43224
(614) 265-6610

Environmental Protection Agency
Office of Wastewater Pollution Control
361 East Broad Street
Columbus, OH 43215
(614) 466-7427

Environmental Protection Agency
Ohio Central Office
P.O. Box 1049
361 East Broad Street
Columbus, Ohio 43216-1049
(614) 466-8565

Environmental Protection Agency
Division of Water Quality
Ground Water Quality Monitoring
and Assessment
Ground Water Section
361 East Broad Street
Columbus, Ohio 43216-1049
(614) 466-8565

Environmental Protection Agency
Legal Records Section
361 East Broad Street
Columbus, OH 43215
(614) 466-6037

Environmental Protection Agency
Office of Air Pollution Control
361 East Broad Street
Columbus, OH 43215
(614) 466-6116

Environmental Protection Agency
Office of Hazardous Materials Management
361 Broad Street
Columbus, OH 43125
(614) 466-8565

State Fire Marshal's Office
Department of Commerce
8895 East Main Street
Reynoldsburg, Ohio 43068
(614) 864-5510

Secretary of State
Corporation Division
30 East Broad Street
State Office Tower
Columbus, OH 43215
(614) 446-3910

Secretary of State
UCC Division
30 East Broad Street
State Office Tower
Columbus, OH 43125
(614) 466-3623

OKLAHOMA

Environmental Health Services
Department of Health
10th and Stonewall
Oklahoma City, OK 73152
(405) 271-5204

Department of Health
Air Quality Services
1000 Northeast 10th Street
P.O. Box 53551
Oklahoma City, OK 73152
(405) 271-5220

Uniform Commerical Code
County Clerk
320 Robert S. Kerr Ave., Room 141
Oklahoma City, OK 73105
(405) 236-2777, Ext. 402

Water Resources Board
P.O. Box 53585
1000 N.E. 10th, 12th Floor
Oklahoma City, Oklahoma 73152
(405) 271-2555

Secretary of State
Corporate Records Division
State Capitol Building, Room 101
Oklahoma City, OK 73105
(405) 521-3048

OREGON

Department of Energy
Energy Facility Siting Council
Labor and Industrial Relations Bldg.
Room 102
Salem, Orgon 97310
(503) 378-4040

Department of Environmental Quality
Solid Waste Division
522 S.W. 5th Avenue
P.O. Box 1760
Portland, Oregon 97207
(503) 229-5913 and 6015

Department of Environmental Quality
Water Quality Control Division
1234 S.W. Morrison Street
Portland, OR 97205
(503) 229-5324 or 6474

Departtment of Environmental Quality
Air Quality Control Division
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1234 S.W. Morrison Street
Portland, OR 97207
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Department of Geology and Mineral Industries
910 State Office Building
1400 S.W. Fifth Avenue
Portland, OR 97201
(503) 229-5580

Department of Land Conservation and Development
1175 Court Street, N.E.
Salem, OR 97310
(503) 378-4926

Secretary of State
UCC Division
Capitol Building, Room 132
Salem, OR 97310
(503) 378-4146

State Corporation Commission
Commerce Building
Salem, OR 97310
(503) 378-4166

PENNSYLVANIA

Department of Environmental Resources
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Harrisburgh, PA 17120
(717) 787-6640

Department of Environmental Resources
Division of Solid Waste Management
Bureau of Land Protection
P.O. Box 2063
Harrisburg, Pennsylvania 17120
(717) 657-4588

Department of Environmental Resources
Bureau of Air Quality and Noise Control
P.O. Box 2063, Fulton National Building
Harrisburg, PA 17120
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Department of State
Corporation Bureau
North Office Building, Room 308
Harrisburg, PA 17120
(717) 787-3006

Department of Environmental Resources
Bureau of Water Quality Management
P.O. Box 2063, Fulton Building
Harrisburgh, PA 17120
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Department of Environmental Resources
Division of Compliance and Monitoring
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RHODE ISLAND

Department of Environmental Management
Division of Water Resources
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75 Davis Street
Providence, Rhode Island 02908
(401) 277-2797

Secretary of State
Corporation Department
State House, Room 219
Providence, RI 02903
(401) 277-3040

Department of Environmental Management
83 Park Street
Providence, RI 02903
(401) 277-2771

Secretary of State
Division of UCC
State House, Room 18
Providence, RI 02903
(401) 277-2521

Department of Environmental Management
Division of Air and Hazardous Materials
204 Cannon State Health Building
75 Davis Street
Providence, RI 02908
(401) 277-2797

Department of Environmental Management
Division of Land Resources
Solid Waste Management Program
75 Davis Street
Providence, RI 02908
(401) 277-2797

SOUTH CAROLINA

Department of Health & Environmental Control
Bureau of Wastewater & Stream Quality Control
2600 Bull Street
Columbia, SC 29201
(803) 758-3877

Department of Health and Environmental Control
Ground Water Protection Division
Facility Impact Analysis Section
2600 Bull Street
Columbia, South Carolina, 29201
(803) 758-5213

Department of Health & Environmental Control
Bureau of Air Quality Control
2600 Bull Street
Columbia, SC 29201
(803) 758-5406

Department of Health & Environmental Control
Environmental Quality Control
2600 Bull Street
Columbia, SC 29201
(803) 758-5450

Department of Health and Environmental Control
Bureau of Solid and Hazardous Waste Management
2600 Bull Street
Columbia, South Carolina 29201
(803) 758-5681

Secretary of State
Corporation Division
P.O. Box 11350
Columbia, SC 29211
(803) 758-2744

Water Resources Commission
P.O. Box 4440
3830 Forest Drive
Columbia, South Carolina, 29240
(803) 758-2514

Secretary of State
UCC Division
P.O. Box 11350
Columbia, SC 29211
(803) 758-2744

SOUTH DAKOTA

Department of Water and Natural Resources
Office of Water Quality
Joe Foss Building
Pierre, SD 57501
(605) 733-3351 or 4523

Department of Water and Natural Resources
Division of Air Quality & Solid Waste
Joe Foss Building
Pierre, SD 57501
(605) 733-3329

Department of Water and Natural Resources
Solid and Hazardous Waste Program
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501-3181
(605) 733-3151

Secretary of State
Corporation Division
State Capitol Building
Pierre, SD 57501
(605) 733-3537

SOUTH DAKOTA (cont'd)

Secretary of State
UCC Division
State Capitol Building
Pierre, SD 57501
(605) 733-3537

TENNESSEE

Department of Health and the Environment
Division of Solid Waste Management
TERRA Building
150 Ninth Avenue
North Nashville, Tennessee 37219
(615) 741-3424

Department of Public Health
Bureau of Environmental Health Service
Division of Air Pollution Control
Capitol Hill Building, Room 256
Nashville, TN 37219
(615) 741-3931

Department of Public Health
Bureau of Environmental Health Service
Division of Water Quality Control
Cordell Hull Building, Room 621
Nashville, TN 37219
(615) 741-2275

Secretary of State
Commerical Code Division
Central Services Building, C1-100
Nashville, TN 27219
(615) 741-3276

Secretary of State
Records Section
Central Services Building, C1-101
Nashville, TN 37219
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TEXAS

Air Control Board
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Attorney General's Office
Environmental Protection Division
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Capitol Station
Austin, TX 78711
(512) 475-4143

General Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, TX 78701
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Secretary of State
Certifying Division
Sam Houston Bldg., 6th Floor
Austin, TX 78711
(512) 475-2916

TEXAS (cont'd)

Department of Health
Division of Solid Waste Management
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(512) 458-7271 or 7111

Secretary of State
UCC Division
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Capitol Station
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(512) 475-3457

Department of Water Resources
Solid Waste Section
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Capitol Station
Austin, TX 78711
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Texas Water Commission
Publications Distribution
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Capitol Station
Austin, TX 78711
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Salt Lake City, Utah 84110
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Division of Environmental Health
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Salt Lake City, Utah 84145-0500
(801) 533-4145

Bureau of Water Pollution Control
Environmental Health Services Branch
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150 West North Temple, Suite 410
Salt Lake City, UT 84110
(801) 533-6146

State Water Pollution Committee
State Division of Health
44 Medical Drive
Salt Lake City, Utah 84113
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Environmental Health Services Branch
P.O. Box 2500
150 West North Temple, Suite 426
Salt Lake City, UT 84110
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Secretary of State
State Capitol Building, Room 203
Salt Lake City, UT 84114
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Bureau of Air Quality
Environmental Health Services Branch
P.O. Box 2500
150 West North Temple, Suite 420
Salt Lake City, UT 84110
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VERMONT

Agency of Environmental Conservation
Department of Water Resources and
Environmental Engineering
Environmental Engineering Division
State Office Building
Montpelier, VT 05602
(802) 244-8755

Agency of Environmental Conservation
Environmental Engineering Division
Solid Waste Section
State Office Building
Montpelier, VT 05602
(802) 244-8702

Department of Health
Division of Environmental Health
60 Main Street
Burlington, VT 05401
(802) 863-7220

Secretary of State
Corporations Office
Pavillion Building
Montpelier, VT 05602
(802) 828-2386

Secretary of State
UCC Office
109 State Street
Montpelier, VT 05602
(802) 828-2363

VIRGINIA

Council on the Environment
9th Street Office Building, Room 903
Richmond, VA 23219
(804) 786-4500

Department of Health
Division of Solid and Hazardous
Waste Management
109 Governor Street
Richmond, VA 23219
(804) 225-2667

Marine Resources Commission
Environmental Division
P.O. Box 756
2401 West Avenue
Newport News, VA 23607-0756
(804) 245-2811

Potomac River Fisheries Commission
222 Taylor Street
P.O. Box 9
Colonial Beach, VA 22443
(804) 224-7148

State Air Pollution Control Board
9th Street Office Building, Room 1106
Richmond, VA 23219
(804) 786-2378

Clerk's Office
State Corporation Commission
P.O. Box 1197
Richmond, VA 23209
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UCC Division
State Corporation Commission
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Richmond, VA 23209
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State Water Control Board
2111 Hamilton Street
Post Office Box 1143
Richmond, VA 23230
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WASHINGTON

Department of Ecology
Water Resources Management Division
Office of Water and Land Programs
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Olympia, Washington 98504
(206) 459-6000

Department of Licensing
UCC Division
P.O. Box 9660
Olympia, WA 98504
(206) 753-2523

Department of Ecology
Air Resource Division
Mail Stop PV-11
Olympia, WA 98504
(206) 753-0211

Department of Ecology
Hazardous Waste Section
Mail Stop PV-11
Olympia, WA 98504
(206) 459-6000/6305

Department of Natural Resources
Division of Marine Land Management
Public Lands Building #12
Olympia, WA 98504
(206) 753-5317

Secretary of State
Corporate Division
Legislative Building
Mail Stop AS22
Olympia, WA 98504
(206) 753-7115

Department of Ecology
Shoreline Division
Coastal Management Section
Olympia, WA 98504
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WEST VIRGINIA

Air Pollution Control Commission
1558 Washington Street East
Charleston, WV 25305
(304) 348-2275

Department of Natural Resources
Division of Water Resources
Hazardous Waste/Ground Water Branch
1205 Greenbrier Street
Charleston, WV 25305
(304) 348-7861 or 5935

Attorney General's Office
Environmental Protection Division
W-435 State Capitol
Charleston, WV 25305
(304) 348-2522

Secretary of State
Corporation Division
State Capitol
Charleston, WV 25305
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Department of Mines
Office of Oil and Gas
1613 Washington Street, East
Charleston, WV 25311
(304) 348-2055

Secretary of State
UCC Division
State Capitol
Charleston, WV 25305
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WEST VIRGINIA (cont'd)

Department of Natural Resources
Water Resources Division
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WISCONSIN

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101 South Webster Street
Madison, Wisconsin 53707
(608) 266-3084 or 7718

Department of Natural Resources
Bureau of Air Management
4610 University Avenue, 12th Floor
Madison, WI 53707
(608) 266-7718

Department of Natural Resources
Bureau of Natural Resources
Regulation and Zoning
P.O. Box 7921
101 South Webster Street
Madison, Wisconsin 53707
(608) 226-2121

Department of Natural Resources
Bureau of Solid Waste Management
4610 University Avenue
P.O. Box 7921
Madison, Wisconsin 53707
(608) 266-3084

Department of Natural Resources
Bureau of Water Quality
4610 University Avenue, 11th Floor
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Madison, WI 53707
(608) 266-3910

Department of Natural Resources
Division of Environmental Standards
4610 Unversity Avenue
Madison, WI 53707
(608) 266-1099

Secretary of State
Corporation Division
244 West Washington Avenue
Madison, WI 53702
(608) 266-3590

Secretary of State
UCC Division
244 West Washington Avenue
Madison, WI 53702
(608) 266-3087

WYOMING

Department of Environmental Quality
Division of Air Quality
122 West 25th Street
Cheyenne, WY 82002
(307) 777-7391

Office of State Oil and Gas Supervisor
123 South Durbin
P.O. Box 2640
Casper, WY 82602
(307) 234-7147

Department of Environmental Quality
Water Quality Division
Herschler Building, 3rd Floor
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7534 or 7781

Department of Environmental Quality
Division of Solid Waste Management
401 West 19th Street
Cheyenne, Wyoming 82002
(307) 777-7752

Secretary of State
Corporation Division
State Capitol, Room 110
Cheyenne, WY 82002
(307) 777-7370

Appendix I
Sample Reports

APPENDIX I

SAMPLE REPORTS

Every PRP search report is different with respect to content and, to a lesser extent, organization. The reports differ for several reasons: (1) the history of every site is different; (2) the requirements of each report are different; (3) the individuals, contractors, and government staff who investigate the site and write the reports are not the same for every site.

Attached are various examples of PRP search reports. The examples are sections or subsections of larger reports. Because these reports are enforcement- confidential, the names of PRPs, individuals, and places have been replaced with fictitious names. The case studies are briefly described below.

Example	Description
1	**TYPICAL PRP SEARCH** The first example represents a PRP search on a public town dump with many PRPs. This report includes most of the different types of tasks involved in a PRP search (that is, title search, PRP search, and corporate status/financial assessment).
2	**TYPICAL PRP SEARCH** This example represents an investigation of a private sanitary landfill and includes most of the different types of tasks in a PRP search. This report differs from Example 1 in two respects: - The information is organized differently. - The method of referencing the collected data is different. This report is complete except for Appendix A (partial references) and the other appendices.

3 **COMPLETE TITLE SEARCH**

This example represents a report which included only a title search. The history of ownership is explained with numerous figures.

4 **PARTIAL TITLE SEARCH**

This example is a title abstract from a larger report showing another method of depicting chain-of-title information.

5 **CORPORATE STRUCTURE/FINANCIAL ASSESSMENT**

A corporate structure/financial assessment is shown in Example 5. This example was taken from a larger report and is more detailed than the same sections of a general PRP report.

6 **FINANCIAL ASSESSMENT**

This example is also of a financial assessment and is presented because of the unique way in which the financial standing of a company was analyzed through business ratios.

7 **RECORDS COMPILATION/TRANSACTIONAL DATABASE**

Example 7 is a report that includes a records compilation and a transactional database. Data from a records search were compiled into a computerized bibliographic database summarizing all hazardous waste transactions related to a specific site.

8 **GENERATOR RANKING**

This example is also from a transactional database used to produce a generator ranking. The sample shows three of the reports that were produced from the records compilation.

9 **INTERVIEW SUMMARIES**

Example 9 illustrates a different way to present interview summaries.

Example 1
Typical PRP Search

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1.	Frankfurt Dump Site Location	2-2

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A. Summary of Interviews
B. List of Knowledgeable People Not Interviewed
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ATTACHMENTS

1. File Documents
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1.0 INTRODUCTION

1.1 Scope of Work

M & M Environmental Conservation, Inc. received a work assignment from EPA Region 15 to perform a potentially responsible party search on the Frankfurt Dump located in Mayville County, Illinois. The purposes of this responsible party search were to conduct a title search of the property, identify parties potentially responsible for past disposal of wastes at the site, identify the level of involvement for each potentially responsible party by obtaining information on the types and quantities of wastes disposed of at the site, and assess the current financial status of the potentially responsible parties.

1.2 Site Background

The Frankfurt Dump, located on Manchester Road in Mayville County, is presently inactive, except that the site continues to receive sawdust and tree and brush refuse for disposal by open burning (Minoltan, 1985). Wastes from the surrounding residential, commercial, and industrial generators were brought to the landfill starting in the early to mid-1960s and continued until the latter part of 1979 (Minoltan, 1985). The Illinois Department of Health and Environment, Division of Solid Waste Management ordered the landfill closed after lengthy delays in beginning operations of a substitute landfill and solid waste incinerator.

The Frankfurt Dump was owned and operated by the City of Frankfurt during the landfill's operational years. The city remains the owner of the property. Wastes generated throughout the city and county were transported to the dump by private residents, commercial haulers, private industries and the City of Frankfurt (Carter, 1985). The Frankfurt Dump was identified as a Superfund site on the National Priorities List released by EPA on December 10, 1983. This designation was based on the hydrogeologic setting in which the site is located and the analytical results of water and sediment samples taken on April 6, 1982, which showed elevated levels of lead and phenol (Truth, 1985).

1.3 Approach

The initial task of this work assignment was to contact knowledgeable state and local officials to gather information concerning the landfill and potentially responsible parties. Table 1 lists the officials interviewed.

Due to the limited files concerning the Frankfurt Dump at the Region 15 office, state and local files were duplicated and submitted to EPA as documentation to support this potentially responsible party search. Copies of documents referenced in this report are included in Attachment I.

Telephone and personal interviews of persons knowledgeable of this site were conducted to gather information concerning the landfill and potentially responsible parties. Table 2 lists the persons contacted for this task. A summary of the interviews of state and local officials and local residents is provided in Appendix A. Appendix B contains a list of additional persons who may have information on the site; however, repeated attempts by M & M to contact these persons were unsuccessful.

Title information on the property was obtained from Charles and Mike, Attorneys at Law, a law firm in Frankfurt, Illinois. Attachment II contains copies of all recorded documents since 1956; certified copies of the deeds; a copy of the tax map obtained from the Mayville County Tax Assessor's office; and a title opinion from the referenced law firm.

Corporate status and financial information on the potentially responsible parties were obtained from Dun and Bradstreet's computerized data base; Moody's Municipal and Government Manuals; and the Illinois Secretary of State (Records Section). Copies of the Dun and Bradstreet Reports and State Financial Reports are provided in Attachment III.

Table 1. State and Local Officials Interviewed

Name	Telephone	Position
Mr. Mike A. Wallace	(111)760-0462	Mayor of Frankfurt, Illinois
Mr. Phil Smith	(111)762-3472	Former Chief of Frankfurt Fire Department
Ms. Myrna Minoltan	(111)956-3672	Environmental Specialist, Illinois Division of Air Pollution Control, Department of Health and Environment
Mr. Tom Mitchell	(111)771-3016	Environmental Engineer, Illinois Division of Air Pollution Control, Department of Health and Environment
Mr. Eddy Lambert	(111)771-3620	Chief of Section 1067, Illinois Division of Solid Waste Management, Department of Health and Environment
Ms. Regina F. Jackson	(111)771-2125	Former Environmental Engineer, Illinois Division of Solid Waste Management, Department of Health and Environment
Ms. Jean Johnson	(111)771-2129	Former Senior Geologist, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. Robert Wallace	(111)771-3675	Former City Manager of Frankfurt, Illinois
Mr. Raymond Davis	(111)771-2242	Chief of Permitting Section, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. Thomas S. Milton	(111)771-3679	Environmental Specialist, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. Charles Wright	(111)762-3627	Chief of Superfund Section, Illinois Division of Solid Waste Management, Department of Health and Environment

Table 1. (Continued)

Name	Telephone	Position
Mr. Earl Gibson	(111)956-2572	Chemist, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. Harold Falls	(111)956-6003	Chief of Enforcement Section, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. Richard Brown	(111)975-3672	Environmental Specialist, Illinois Division of Solid Waste Management, Department of Health and Environment
Mr. James Carter	(111)771-3919	Environmental Specialist, Mayville County Health Department, Illinois Division of Solid Waste Management, Department of Health and Environment

Table 2. Local Residents Interviewed

Name	Telephone
Mr. Steven Bracy	No Phone
Dr. Lee Ward	(111)760-3474
Mr. Keith Moore	(111)956-3620
Mr. Kenneth Porch	(111)771-4020

2.0 HISTORY OF THE SITE

2.1 Title Search Findings

The legal description of the property known as the Frankfurt Dump is provided in Attachment II. The owner of the Frankfurt Dump during its operational years, 1964 to 1979, has been identified as the City of Frankfurt. This 20-acre property was used as a rock quarry before the city bought it. It appears that the city has not sold any part of the approximately 20 acres since it was originally acquired in 1964. Figure 1 shows the location of the landfill owned by the City of Frankfurt (Charles and Mike, 1985).

The chain of title since 1956 is as follows:

The City of Frankfurt acquired the Realty of Deed from Mr. S.W. Webb and his wife, Ronda Webb, as recorded on August 21, 1964.

Mr. and Mrs. Webb acquired the property from the Mayville County Highway Department and Mayville County by deed as recorded on December 28, 1960.

Mayville County Highway Department and Mayville County acquired the Realty by Deed from Mr. P. S. Barnett and his wife, Sandra Barnett, as recorded on April 25, 1956.

2.2 Operational and Regulatory History

The Frankfurt Dump was used as a general solid waste disposal site during its operational years. No censoring or discrimination of influent waste occurred. The general public, industrial, commercial, and residential persons were not restricted as to the types of wastes they could place in the landfill (Carter, 1985). Since the dump was the only public disposal site in the county from 1964 to 1979, the Frankfurt Dump may have served all residents of Mayville County. However, this has not been confirmed.

Note: This figure has
purposely been removed.

Figure 1: FRANKFURT DUMP
MAYVILLE COUNTY
SCALE 1:24000

A former limestone quarry, the Frankfurt Dump was known as the Manchester Tract, Tract No. 3 of the Robert M. Johnson Property (County Register, Mayville County, Illinois, 1956). Prior to receiving wastes, the site contained two separate bodies of water. The southern body of water is presently completely filled with wastes and covered with dirt (Smith, 1985).

The northern body, which was the original quarry, was approximately 500 feet square and averaged 15 feet deep (Kemper, 1973). Currently, about 80 percent of this area has been filled with wastes and dirt. The northern end is the deepest area of the original quarry and is still open (Health Environment, Inc., 1982).

The Illinois Solid Waste Disposal Act, ICA 53-4301 to 53-4315 and 53-4321, empowered the Commissioner of the Illinois Department of Public Health (IDPH) to adopt and enforce rules and regulations for the construction of new solid waste disposal facilities and sites and the alteration of existing solid waste disposal facilities and sites on and after July 1, 1970. Under this same act, the commissioner was further empowered to adopt and enforce rules and regulations governing the operation and maintenance of solid waste disposal facilities, operations, and sites on and after July 1, 1972 (Illinois Code Annotated, 1969). Prior to passage of this act, the construction and operation of solid waste disposal facilities was primarily at the discretion of those who owned and operated such facilities (Davis, 1985).

On July 20, 1973, Mr. Mark Kemper, an environmental geologist employed by the Division of Solid Waste Management, IDPH visited the Frankfurt Dump for the purposes of preparing a geologic review and obtaining water samples. His review, dated July 23, 1973, stated that "the site is definitely not suitable for use as a sanitary landfill due to the lack of soil as cover material and buffer zone for filtration purposes." He added, "large amounts of contaminated water may be entering fractures in bedrock and eventually Danvis Creek and/or wells that exist within ½ to 1 mile or more away." He also noted that "residue of burned refuse and raw refuse

is inundated by the water. Oil and other floating debris (sawdust among others) floats on this body of water. Gas bubbles are present. No evidence of fish or other aquatic life exists in the water." He concluded that this site had no future for use as a sanitary landfill (Kemper, 1973).

On August 16, 1973, Mr. Raymond Davis, an employee of the Division of Solid Waste Management, IDPH reported visiting the Frankfurt Dump to investigate a report that the dump was burning. In his report, Mr. Davis described observing a truck owned by Lockland Corporation, Inc., a company that contracts for solid waste removal, dumping a load of hospital waste into the fire (Davis, 1985).

On August 21, 1973, the Illinois Department of Public Health, filed a lawsuit in Mayville County Chancery Court (Mayville Chancery No. 3060) to bring the City of Frankfurt into compliance with the Illinois Solid Waste Disposal Act.

Subsequently, the city proposed to the Illinois Department of Public Health a plan to comply with the law by building and operating a solid waste incinerator. The city further proposed to the state a plan for the interim maintenance and final closure of the dump. This plan would allow the city sufficient time to economically comply with the Illinois Solid Waste Disposal Act while completing construction of its solid waste incinerator. In addition, the city proposed hauling the noncombustible ash produced by the incinerator to a registered sanitary landfill. The Mayville County Chancery Court was informed of the city's proposal in the summer of 1974. Shortly thereafter, the court ordered the city to provide the State of Illinois, Department of Public Health, with plans and specifications for the proposed incinerator. In early 1975, those plans were approved by the state.

In addition to violating the state solid waste disposal laws at this time, the Frankfurt Dump was operating in violation of the Illinois Air Pollution Control Regulation by operating a source without a permit and openly burning waste. Numerous violations had been filed in the state's Air Pollution Control Office (Illinois Division of Air Pollution Control, 1976).

Several site inspections and meetings were held in the spring and early summer of 1977 to discuss the city's progress toward abating the open burning and beginning the closure process (Tindy, 1977). The city claimed it was having trouble locating a suitable site for the new incinerator and landfill.

By mid-August, the city began closure operations by applying a soil covering atop the waste. However, the burning continued (Illinois Division of Solid Waste Management: Inspection Report, 1977a).

On October 29, 1977, Mr. John Wallace, an employee with Division of Solid Waste Management IDPH, reported observing a private hauler burning plastic wastes in the dump. These wastes were produced by Zangoma Chemicals of Illinois. He also reported observing the private hauler, Lockland Corporation, Inc., unloading wastes next to the open fire in the dump (Illinois Division of Solid Waste Management: Inspection Report, 1977b).

The State of Illinois filed a motion on November 23, 1977 in the Mayville County Chancery Court asking the court to order the city to comply with the closure requirements. This agreement was reduced to an agreed order and entered on record in this cause on February 6, 1978. The agreed order required the city to extinguish all fires at the dump, to stop anyone from setting fires, and to immediately extinguish any fires that do occur. In addition, the city agreed to submit an executed contract between the city and a registered landfill which would accept the ash and noncombustible wastes and serve as a backup disposal system, or submit to the state a potential site for a sanitary landfill to be operated by the city. The agreed order required the city to submit the contract by February 1, 1978, or submit the approvable site by April 1, 1978.

Due to the failure of the city to provide the required contract or approvable site, a petition for contempt was filed in the Chancery Court for Mayville County, and on May 12, 1978, the court ordered the city to appear in court for a show-cause hearing scheduled for June 5, 1978 (Chancery Court for Mayville County, 1978a). The hearing continued until July 3,

1978 (Mayville County Court, 1978b). At the hearing, the Court for Mayville County found that the city was making reasonable efforts to obtain an approvable sanitary landfill and was continuing to make progress in constructing its solid waste incinerator. However, the city was ordered to adhere to certain procedures in operating the landfill in order to minimize the fire hazards (Mayville County Court, 1978c).

From mid-1978 to mid-1979, the dump was receiving dirt as waste cover and no burning occurred. The dump was finally closed by the end of 1979 (Minoltan, 1985).

On March 3, 1982, a hazardous waste site inspection was conducted by the U.S. EPA. Persons from the Division of Solid Waste Management, Illinois Department of Health and Environment (name changed from Illinois Department of Public Health) participated in this inspection led by the U.S. EPA contractor, Health and Environment, Inc., under the Field Investigation Team Program. The site inspection determined that a field investigation was necessary. Health and Environment submitted the results of investigations and sampling they conducted on April 6, 1982 in a report dated December 20, 1982. This report indicated that elevated concentrations of lead, manganese, phenol, and various other organic and inorganic compounds were present at the site (Health and Environment, 1982).

The U.S. EPA identified the Frankfurt Dump as a Superfund site on the National Priorities List released on December 10, 1982 (Truth, 1983).

In April 1984, the Illinois Division of Solid Waste Management, met with the City of Frankfurt to discuss the city's knowledge and participation in the dumping of waste at the Frankfurt Dump. During that meeting, the state requested the city to produce a list of industries who used the dump from 1960 through 1979 (Bailey, 1984). The city responded to the state's request on May 1, 1984 by submitting a list of 29 industries that used the dump between 1960 and 1979 and a list of 17 industries, now closed, that used the dump during the same period of time (Fact, 1984).

The Superfund Section of the Division of Solid Waste Management, Illinois Department of Health and Environment, mailed out survey forms to all 46 industries identified by the City of Frankfurt. A review of the state's files showed that 26 industries responded, all stating that they did not dispose of hazardous waste or substances at the Frankfurt Dump with the exception of Taylor Corporation. This company reported disposing of four hazardous substances at the dump. Included in Attachment I are the responses to the survey.

In a letter dated June 25, 1984, the U.S. EPA was designated as the lead agency for any future actions regarding the Frankfurt Dump (Illinois Division of Solid Waste Management - Superfund Section, 1985).

2.3 Historical Sampling and Hazardous Constituents

Records obtained through a file search of the Illinois Department of Health and Environment, Divisions of Solid Waste Management and Air Pollution Control, and the Mayville County Health office show that the Lewisburg Dump has been the subject of two sampling visits. The first occurred on April 6, 1982 and was conducted by U.S. EPA Region 15 field investigation team, Health and Environment, Inc. The results of the sampling analysis were submitted to U.S. EPA Region 15 on December 20, 1982.

The second sampling visit was conducted by the Illinois Division of Solid Waste Management on August 11, 1983. The purposes of this visit and subsequent analyses were to confirm the findings of the previous analysis and to further characterize the areas of potential migration from the fill area.

The sampling plan for the first visit was relatively comprehensive involving composite soil; lagoon water and sediment; on-site leachate water and soil; and nearby spring, drainage ditch, and streams water and sediment samples. The results of the inorganic analyses of water and soil/sediment samples indicated elevated concentrations of lead at all sampling stations,

with the exception of the drainage stream. Lead concentrations equaled or exceeded levels specified in the National Interim Primary Drinking Water Standards Criteria at several sampling points. Manganese exceeded the water quality criteria at two locations. In addition, aluminum and iron concentrations appeared to be high at all sampling locations.

Five organic compounds were detected at the site. These compounds included phenol, toluene, chlordane, PCB-1242, and bis (2-ethylhexyl) phthalate (Health and Environment, 1982).

The sampling plan for the second visit conducted by the State of Illinois was designed to duplicate the sampling from the previous visit. Due to the extremely dry conditions found at the site during the second visit, no water samples could be obtained from nearby springs, drainage ditches, or creek. Also, no leachate samples could be taken on the site. However, samples were obtained from the lagoon and from the surrounding fill area. The results of the analyses for these samples indicated that all contaminants, with the exception of PCB, were significantly lower than the previous analyses. It should be noted, however, that the confirmed values for the contaminant PCB was below the regulatory limit of 50 ppm (Forester, 1983).

Due to the generally non-industry-specific types of contaminants detected at the site, and considering the wide diversity of influent wastes and refuse generated throughout the county and potentially disposed of at the dump, it is difficult to determine precisely all the industrial, commercial, or residential responsible generators. However, for these same reasons, it is unreasonable to eliminate any parties within the Frankfurt Dump service area. Therefore, all served parties may be potentially responsible parties.

Of the hazardous constituents detected at the site, lead and manganese have received the most attention based on the file documents obtained from the state (Illinois Division of Solid Waste Management, 1985). According to the Illinois Division of Solid Waste Management - Superfund Section's

Legislative Report, the estimated volume of waste contained in the Frankfurt Dump is 138,888 cubic yards, of which approximately 1,388 cubic yards contain hazardous waste. Furthermore, the report states that the types of wastes of concern include paint, pickling liquor, and wood waste. At least three pencil manufacturers in the Frankfurt service area have contributed paint, lacquer, and wood waste to the dump. In addition to the pencil manufacturers, a cosmetic company located within the service area has repeatedly been mentioned during conversations and interviews with knowledgeable parties. The constituents of concern also indicate that industries dealing with metal and metal-coating operations would likely have contributed to the contamination.

2.4 Disposal of Industrial Wastes

A number of specific industrial wastes have been identified as being disposed of at the dump. These wastes include sawdust; pencil leads (probably graphite); paint residues and sludges; lacquer thinners; inks; cosmetic powders; plastics; metal cuttings; waste wire; screws, nuts, bolts, and scrap metal; and synthetic and leather shoe material cuttings. The companies identified as possibly generating these wastes include: Mark Pentel Corporation, Hard Ink and Pencil Corporation, M. R. Loose Pencil Company, Labix, Inc., Zangoma Plastics, Inc., Lock Containers, Mars Die Casting, Inc., Saturn Die Casting, Inc., Taylor Corporation, Illinois Metal Corporation, Eastern Root & Penreco, Julino - Rockford and Frankfurt (closed), Sacks Electric Company, Unichem-Frankfurt, and Perm Iron Works. These industries are included here based on repeated references to them by Mr. Steven Bracy and Mr. Keith Moore, Sr. Both individuals are local residents claiming to have knowledge of the dump site and its activities. Additional industries located and operating within Mayville County have not been linked to the site at present. These additional industries are identified in Section 4.0, Unconfirmed Potentially Responsible Parties.

2.5 Residential and Commercial Users

Since the Frankfurt Dump was open to all who wished to use the facility, it is possible that several surrounding communities hauled their wastes to the landfill. Mayfield County communities that were identified as possibly contributing wastes are City of Rockford, Moonville, Zionville, Deerfield, and Lansing (Minoltan, 1985). These communities are very small and have not been listed as potentially responsible parties because there is no indication that they were involved in generating or transporting hazardous or industrial-type wastes.

The City of Frankfurt provided waste disposal service to customers residing within its limits. These customers consisted of private residences as well as some small commercial establishments. There were occasions, however, when the city hauled wastes for industries located within the city limits. (Wallace, 1985).

The City of Frankfurt hauled wastes to the site. Mr. Daniel Knox hauled sawdust and similar wastes for Labix, Inc. Lockland Corporation, a solid waste resource/recovery firm located in Sutton County, Illinois, was identified as hauling waste for the Taylor Corporation (Bracy, 1985).

3.0 POTENTIALLY RESPONSIBLE PARTIES

The following are listed as potentially responsible parties based on references in the documentation obtained from the state or county files, documentation from the title search, or from information gathered during interviews with individuals knowledgeable of the site. It is possible that this list of potentially responsible parties is incomplete since activities at this landfill occurred six to 20 years ago and no records were maintained by the City of Frankfurt (Wallace, 1985). Most of the potentially responsible parties listed below were not mentioned earlier in the site history because the relationship between the site and the generator or hauler is uncertain. The identified potentially responsible parties presented below are grouped as generators, haulers, or owners.

3.1 Generators

As discussed in Chapter 2.0, Site History, the City of Frankfurt provided the State of Illinois with a list of industries that used the dump during the site's operational years (see Table 3) (City of Frankfurt, 1984). Based on the documents obtained in the state and county files, little evidence exists which links the industries listed in Table 3 with the Frankfurt Dump. However, inspection reports, filed by the state, repeatedly reference "pencil manufacturers" and "sawdust." There are four industries listed below which manufacture pencils; they include Labix, Mark Pentel, Pearl Pencil Company, and Hard Ink and Pencil.

Zangoma Plastics, Inc., Julino, Inc., and Taylor Corporation are the only other industries specifically noted in any of the documentation reviewed in this search.

TABLE 3.

PRESENTLY ACTIVE INDUSTRIES USING THE FRANKFURT DUMP FROM 1960 TO 1979

INDUSTRY	YEARS USED
Saturn Die Casting	1977 - 1979
Milton Jones Manufacturing Co., Inc.	1960 - 1979
Labix	1964 - 1979
LaPorte, Inc.	1970 - 1979
M. F. Dailey	1960 - 1979
Sacks Electric Company	1960 - 1979
Mark Pentel	1960 - 1979
Julino, Frankfurt	1960 - 1979
Taylor Corporation	1960 - 1979
Safety Equipment	1963 - 1979
Frankfurt Machine Works, Inc.	1960 - 1979
Mayville Manufacturing	1969 - 1979
Sony Machine Works	1974 - 1979
Lock Containers	1975 - 1979
Pearl Pencil Company	1961 - 1979
North Printing Shop	1960 - 1979
Pioneer Machine Works, Inc.	1963 - 1979
Hard Ink & Pencil	1964 - 1979
National Paper Company	1977 - 1979
Unichem Frankfurt	1966 - 1979
Illinois Metal Corporation	1978 - 1979
Zangoma Plastics, Inc.	1972 - 1979
Mars Die Casting	1960 - 1979
Weathertamer, Inc.	1977 - 1979
Julino (Rockford)	1960 - 1979
Eastern Root & Penreco, Inc.	1961 - 1979
Perm Iron Works	1960 - 1979
Nando, Inc.	1960 - 1979
Frankfurt Materials, Inc.	1974 - 1979

TABLE 4.

PRESENTLY CLOSED INDUSTRIES USING
THE FRANKFURT DUMP FROM 1960 to 1979

National Corporation
Wicks Homes, Inc.
Frankfurt Casting Company
The Pool Company
Frost Company
Cubbie Foods Company
Mayville County Bakery
White Mill
Frankfurt Footwear, Inc.
Red House, Inc.
The Island Company
Frankfurt Auto Parts
Frankfurt Tires
Mayville County Food Corp.
Knox Manufacturing Co.
P & T Industries
Frankfurt/Monroe Manufacturing Company

A review of the State of Illinois, Division of Solid Waste Management's 1985 Hazardous Notification Summary yielded the following information regarding wastes generated by four companies mentioned in Table 3. This is the most current information available from the state. It is possible that this information is not entirely accurate due to unreported changes in the wastes generated by the industries.

Company Name	Wastes Generated	Code
Taylor Corporation	Trichloroethylene	F001
	1.1.1 Trichloroethane	F002
	Non-Halogenated Solvents	F005
	Paint Wastes	D001
	Wastewater Treatment Sludges from Electroplating Operations	F006
	Waste Sulfuric Acid	D002
	Iron Phosphate	D000
	Zinc Phosphate	D000
	Trivalent Chromium	D000
	Waste Chromium	D007
Labix	Mineral Spirits	D001
	Acetone	F003
Mark Pentel	Ink Formulation Solvents	K086
Unichem Frankfurt	Freon	F001
	Alcohol and Flux	D001

Of the companies identified by the City of Frankfurt (Table 3), the State of Illinois had no records to indicate that the companies listed below ever notified any regulatory authority that they were a hazardous waste generator, transporter, treater, storer, or disposer. Further investigation of these companies is recommended. The address and telephone number for each of these companies are provided below. This information was obtained from the State of Illinois, Division of Solid Waste Management and the Economic and Community Development office.

Milton Jones Manufacturing Company, Inc.
205 Green Ave.
Frankfurt, IL 60622
Telephone: (111)771-6021

LaPorte, Inc.
840 W. Wabash Ave.
Frankfurt, IL 60612
Telephone: (111)771-6002

M. F. Dailey
Morton Road
Frankfurt, IL 60625
Telephone: (111)771-6027

Safety Equipment
Evergreen Park
Frankfurt, IL 60225
Telephone: (111)771-4740

Frankfurt Machine Works, Inc.
202 North Avenue
Frankfurt, IL 60247
Telephone: (111)771-2462

Mayville Manufacturing
Joliet Rd.
Frankfurt, IL 60622
Telephone: (111)771-1060

Sony Machine Works
Eastern Pkwy.
Frankfurt, IL 60622
Telephone: (111)771-3372

North Printing Shop
621 S. State
Frankfurt, IL 60622
Telephone: (111)771-3747

Pioneer Machine Works, Inc.
325 W. Western Ave.
Frankfurt, IL 60622
Telephone: (111)771-3676

National Paper Company
366 S. Monroe
Frankfurt, IL 60622
Telephone: (111)771-3600

Eastern Root and Penreco, Inc.
260 E. Madison Ave.
Frankfurt, IL 60622
Telephone: (111)771-2078

Perm Iron Works
26 E. Mack St.
Frankfurt, IL 60622
Telephone: (111)771-7070

Nando, Inc.
900 S. Harrison St.
Frankfurt, IL 60622
Telephone: (111)771-6056

The companies listed below are presently closed. Attempts to obtain a past address, telephone number, or name of an employee were unsuccessful based on a review of the 1984 Directory of Illinois Manufacturers, the Thomas Register, Standard and Poor's, and the Illinois Economic and Community Development Business Files.

National Corporation
Wicks Homes, Inc.
Frankfurt Casting Company
The Pool Company
Frost Company
Cubbie Foods Company
Mayville Bakery
White Mill
Frankfurt Footwear, Inc.
Red House
The Island Company
Auto Parts
Frankfurt Tires
Mayville County Food Corporation
Knox Manufacturing Co.
P & T Industries
Frankfurt/Monroe Manufacturing Company

3.2 Haulers

The City of Frankfurt was the largest hauler of solid waste to the dump. The waste consisted primarily of residential garbage, trash, brush, and limbs. However, the city also hauled wastes from some industries located within the city limits (Wallace, 1985). Other companies identified as

waste haulers include some of the companies identified above as waste generators. The parties that have been identified as having both generated and transported their wastes to the Frankfurt Dump include Julino, Inc., Hard Ink and Pencil Corporation, Pearl Pencil Company, and Mark Pentel Corporation.

Other haulers identified in this search include Lockland Corporation (Monroe, Illinois) for the Taylor Corporation and Mr. Daniel Knox (private individual) for Labix, Inc. Zangoma Plastics used a private hauler for transporting their waste to the dump (Brown, 1977b). The hauler for Zangoma Plastics was not identified in this search.

3.3 Site Owners

The site owner during the period of time that the site was receiving wastes was identified in the title search as the City of Frankfurt. However, the precise date on which wastes were first received by the landfill is unknown. Conveyance documents indicate the property was sold to the City of Frankfurt in 1964. However, a review of the list of industries using the dump, as submitted by the City of Frankfurt, indicated that some of the industries contributed wastes to the dump as early as 1960. Attempts to confirm the date when wastes were first placed on site were unsuccessful.

4.0 UNCONFIRMED POTENTIALLY RESPONSIBLE PARTIES

This section provides a list of companies that may have contributed wastes to the Frankfurt Dump. Due to the lack of available information, the types of waste generated by these companies are unknown. It is possible, however, that some of the wastes generated from these companies were hazardous and, if so, could have led to the present contamination of the Frankfurt Dump. The companies listed in Table 5 were included in this report because they cannot be eliminated as potentially responsible parties at this time. Further investigation of these companies is recommended.

The following list of generators is a compilation of several lists of industries obtained from various sources. Those sources are:

- 1984 Directory of Illinois Manufacturers Published by InfoIllinois
- Illinois Division of Air Pollution - Control File Index for Mayville County
- Illinois Division of Solid Waste Management - Hazardous Waste List of Regulated Sites

It should be emphasized that the companies usually found in these sources are manufacturers that produce industrial wastes, as opposed to service-or retail-type businesses which usually produce non-hazardous wastes.

This list is divided into three groups to categorize the industries according to the likelihood of the generated waste streams being hazardous. This division is based on information regarding the industry's products or process/operation from Standard Industrial Classification Codes listed in the 1984 Directory of Illinois Manufacturers, source name/operation description listed with the Illinois Division of Air Pollution Control, interviews of knowledgeable people, and the Illinois Division of Solid Waste Management - Hazardous Waste List of Regulated Sites.

The first group consists of those industries whose waste streams are most likely to be hazardous. For the purposes of this report, this group is designated "Most Likely."

The second group consists of those industries whose waste streams are least likely to be hazardous. This group is designated "Least Likely."

The last group consists of those industries whose waste streams are unknown and, therefore, cannot be categorized without more information on the individual company. This group is designated "Waste Streams Unknown."

TABLE 5.

UNCONFIRMED POTENTIALLY RESPONSIBLE PARTIES

Group 1. Most Likely

Morse Company
Frankfurt Casting Co., Inc. (closed)

Group 2. Least Likely

Sintra Company
Cermak Food Store
Morgan Nursing Home
Longlife Concrete
Scrap Metal, Inc.
Pat Mill
Winter Mill
Mayville County Dairy Store

Group 3. Waste Streams Unknown

Rubber Products Company, Inc.
Red Packaging, Inc.
Frankfurt Times, Inc.
Sumy Bicycle
Welder's Association
Morris Hospital
Joliet Hospital
Vico Cargo, Inc.
Frank Road Builders, Inc.
Mayville County Health Department
Carol Hill, Inc.
Mayville County Board of Education
Green Bay Co.
Luna Food, Inc.

Group 3. (continued)

U.S.A. Bottling Works, Inc.
General Hospital
Central Natural Gas Co.
Jordan Research Center
Korex Corporation
Lee Packaging
Father & Sons, Inc.

5.0 FINANCIAL ASSESSMENT

The selection of potentially responsible parties for the following financial assessments was based on several factors: the type of waste generated, the evidence obtained during interviews and state and local government file reviews, and the volume of waste generated by the industry.

The following information was obtained through the Dun and Bradstreet computer data base, Moody's Industrial Manuals, and financial reports filed with the Illinois Secretary of State, unless otherwise noted. These sources were used to obtain information on selected potentially responsible parties; in certain cases, financial information was unavailable from these sources.

The information collected on each company is provided in Attachment III. The identified registered agents for these potentially responsible parties are listed in Appendix C.

5.1 Generators

Taylor Corporation

The Taylor Corporation is a subsidiary of the Chancy Corporation. The parent company owns 150 percent of the capital stock and has seven other subsidiaries. The Taylor Corporation sells to the parent corporation on 15-day terms. Chancy makes advances to the subsidiary as needed up to $90,000,000. There are no blanket parent company guarantees or endorsements. The manufacturing plant in Frankfurt is one of two plants owned by Taylor Corporation.

The Taylor Corporation Frankfurt Manufacturing Plant is located at:

New York Avenue
P. O. Box 320
Frankfurt, IL 60622
Telephone: (111)771-3336

The company's vice president is Eddy Towns. Jack Nelson is the credit manager.

The Taylor Corporation headquarters is located at:

6401 S. Houston Ave.
Lockport, IL 60622
Telephone: (111)371-7624

The chief executive is Frank M. Petty, President.

Other executives are:

James Mitchell	Vice President
Willy Reynolds	Vice President
Ronald Presley	Vice President and Treasurer
George Presley	Secretary

Dun and Bradstreet reports that on February 10, 1985 Ronald Presley declined to submit a financial statement. However, he stated that sales for 1984 were $630,000,010. He also stated that sales for the fiscal year ending December 31, 1984 were greater than for the same period in 1983. Profit for the same period was also up. Efforts to obtain a balance sheet were unsuccessful.

Chancy acquired majority stock interest in the Taylor Corporation, Lockport, Illinois, in 1962. In 1977, Chancy increased its equit from 60 percent to 80 percent. In 1980, the remaining 20 percent of outstanding common stock was acquired.

The Chancy Corporation reported to its stockholders net sales of $4,122,363,004 for fiscal year ending December 31, 1984. Their headquarters are located at:

Glenview, IN 49022
Telephone: (132)675-1331

Chancy officers are:

Mike Moore	Chairman, President and CEO
Peter Webb	Executive Vice President
J. R. Walsh	Executive Vice President
Sandra Walsh	Executive Vice President

A portion of a balance sheet dated December 31, 1984 is shown in Table 6.

Hard Ink and Pencil Corporation

Incorporated on July 2, 1964, Hard Ink and Pencil Corporation is a manufacturer of wood and mechanical pencils, pens, and erasers. The company is currently in good standing with the Illinois Secretary of State. Provided in Attachment III is a copy of the current Certificate of Good Standing for the Hard Ink and Pencil Corporation. The company employs approximately 100 persons, and its general office is located at:

122 Marquette Avenue
Frankfurt, IL 60621
Telephone: (111)771-3459

The company president and owner of all stock is Jean Nelson. Robert Smith is the vice president in charge of manufacturing, and Celia Scorpio is the secretary and controller. This is an established business dating back to 1929. The company owns a 170,000 sq. ft. one-story concrete block building in good condition located in the industrial section of Frankfurt.

Sales for 1984 were $10,000,000. A current financial statement was not available. Efforts to obtain a balance sheet were unsuccessful.

Table 6. Portion of Balance Sheet for Chancy Corporation

(x $1,000)

Assets:	
Cash & short term investments	$ 310,621
Receivables, net	199,476
Inventories	359,726
Prepaid expenses	34,719
Deferred income taxes	7,890
Total Current Assets	912,432
Land, buildings, equipment, etc.	613,886
Less: Depreciation and amortization	226,975
Net Buildings, etc.	386,911
Investments	255,577
Other assets	10,095
Total	$1,565,015
Liabilities:	
Notes payable to banks	-
Accounts payable, accrued expenses, etc.	$ 371,832
Income taxes	3,922
Long term debt due currently	-
Total Current Liabilities	375,754
Product warranty	14,432
Debenture 3½s, 1980	-
Debenture 5-3/4s, 1986	8,448
Debenture 9-5/8s, 2000	41,903
5½% notes, 1980	-
5½% 5.7% lease obligations	2,400
Subsidiary debt	-
Deferred Federal income tax	25,796
Minority int. in consol. subs.	-
Common stock ($1 par)	36,617
Paid-in surplus	32,620
Retained earnings	1,027,045
Total stockholders' equity	$1,096,282
Total	$1,565,015

Lock Containers Division, Lock H. Corporation

Lock Containers is a division of the Lock H. Corporation. Incorporated in Ohio on February 17, 1930, the Lock H. Corporation is an outgrowth of a business founded in 1846. The Lock H. Corporation has more than 25 wholly owned subsidiaries located throughout the world and is primarily engaged in the pulp and paper industry.

The Lock Container Division manufactures and sells standard and special purpose corrugated shipping containers. These products are sold from 14 plants located in various areas of the United States, largely in the mid-western and southern regions. The Frankfurt Plant is located at:

David Parkway
Frankfurt, IL 60622
Telephone: (111)771-3500

The division was established in 1975 and employs approximately 80 persons. Managers of the plant include:

M. C. Baker	General Manager
K. P. Harper	Sales, Service Manager
L. T. Cagle	Comptroller

The Lock H. Corporation is a large conglomerate with over 20,000 employees. Sales for the year ending December 31, 1983 exceeded $2.7 billion, and the corporation reports its worth at over $970 million. Gross profits were $642 million for 1984.

The company's annual report shows it has in place a revolving credit agreement for up to $45 million. There was no borrowing under this agreement in 1984. Dun and Bradstreet reports business trend is up and condition strong.

The corporate headquarters are located at:

Evergreen Place
Queens, WI 45463
Telephone: (602)331-6022

Lock's chief executive and chairman of the Board is Richard D. Lewis. Other executives include:

R. P. Davis	President and Chief Operation Officer
P. W. Branson	Senior Vice President; International
K. V. Lock	Senior Vice President; Legal & General Counsel

Table 7 shows a portion of a balance sheet as of December 31, 1984.

Table 7. Portion of Balance Sheet for Lock H. Containers Division
(x $1,000)

Assets:	
Cash and short term investments	$ 126,400
Notes and accounts receivable	313,700
Inventories	185,900
Prepaid insurance, taxes, etc.	23,600
Total Current Assets	649,600
Invest. in & adv. to jt.-owned cos.	382,900
Other investments & assets	121,400
Construction funds	58,700
Property, plant & equip.	1,691,300
Less: Depreciation reserve	699,000
Net property	1,051,000
Net assets of discont. oper.	-
Total	$2,204,900
Liabilities:	
Accounts payable	$ 298,100
Accr. interest, taxes, wages etc.	152,900
Installments on long tm. debt, curr.	25,400
Prov. for income taxes	23,100
Total Current Liabilities	499,500
Long term debt	531,200
Deferred items	203,800
$2.80 cum. conv. preferred (no par)	-
$2.80 cum. conv. pfd. (1968)(no par)	-
Common stock	184,100
Retained earnings	724,100
Additional paid-in capital	95,000
Foreign currency translation adj.	dr32,800
Co.'s pro rata int. in shs. held by affil.	-
Total stockholders' equity	970,400
Total	$2,204,900

Example 1

Pages 5-8 through 5-22 not included

This facility is located at the following address:

1246 Wacker Street
Frankfurt, IL 60622
Telephone: (111)771-4677

Listed below are the corporate executives:

Clint White	President, CEO
Mrs. M. F. Scalia	Vice President
Sandra Burger	Secretary
Richard Stark	Production
Mike Wayne	Purchasing
Charles Cosby	Sales Marketing Engineer
John Kelly	Personnel
Anthony Jones	Manufacturing

Attempts to obtain additional financial information were unsuccessful.

5.2 Haulers

Two haulers were identified as potentially responsible parties. They are Lockland Corporation and the City of Frankfurt. Mr. Daniel Knox, a private individual, was referred to while interviewing Mr. Steven Bracy, the nearest resident to the dump. A financial assessment was not conducted on Mr. Knox due to the uncertainty of Mr. Bracy's statements (Bracy, 1985). It is possible that there were other parties hauling wastes to the dump during its operational years. However, this search did not identify any additional haulers. The financial assessment for the City of Frankfurt is provided in 5.3 of this report.

Lockland Corporation

Lockland Corporation is in the business of recovering scrap materials and selling them for profit. These materials consist primarily of scrap metal.

Incorporated in Illinois on March 27, 1970, the company was founded in 1913 by Jimmy Lockland. Present control and 100 percent of the capital stock is owned by Lawrence Les. This succession took place in 1938. The company is located at:

704 S. Western Avenue
Harvey, IL 60427
Telephone: (111)374-4441

The company employs 30 people at their 10,000 square foot, one-story steel building, which serves as their headquarters. Sales for 1983, as reported by Lawrence Les, President, were $7 million. He also stated that sales for the 11 months ending November 30, 1984 were up compared to the same period of 1983. Efforts to obtain additional financial information for this company were unsuccessful.

5.3 Site Owner

The site owner has been identified as the City of Frankfurt, Illinois. The city operated the landfill and disposed of the city's residential and commercial refuse.

With a population of 8,760 in 1980, the City of Frankfurt is the county seat of Mayville County.

As of June 30, 1983, the general improvements bonded debt for the City of Frankfurt was $364,000. Water and sewer revenues were $2,300,000, while natural gas revenues totalled $175,350. The incinerator debt was $1,265,000 (Moody's, 1985).

The water and sewer bonds and the general obligation bonds are rated Baa (Moody's, 1985).

Attachment III contains a copy of the financial data included in Moody's Municipal and Government Manual.

6.0 SUMMARY AND RECOMMENDATIONS

The objective of this work assignment, to search for and identify potentially responsible parties, was completed by contacting state and local government employees to determine their knowledge of the site and to locate pertinent files. The pertinent files identified were reviewed to obtain additional information. Persons other than government employees who were knowledgeable of site activities were also contacted by M & M. A title search was completed to identify the owners of the site. This report lists the waste generators, waste haulers, and the site owner identified as being potentially responsible for the contamination of the Frankfurt Dump.

Not all of the waste generators identified in this report have been associated with hazardous waste. Due to the lack of waste analyses prior to disposal at the landfill, many of the wastes disposed of at the site are unknown. Only a few of the potential generators identified were listed as hazardous waste generators in 1980 by the U.S. EPA. However, this does not necessarily mean that each potential generator was producing the same type of waste in 1980 as was being produced during the time of disposal operations at the Frankfurt Dump (1960-1979).

The possibility of locating existing records maintained by the potentially responsible generators, haulers, and owner should be investigated through the use of CERCLA 104(e) claim letters. This information would be useful in determining the extent of involvement for those parties identified by the City of Frankfurt (Tables 3 and 4) as having used the dump. Furthermore, additional information should be obtained from Lockland Corporation through the use of a similar claim letter since this company was identified as a transporter of waste to the dump.

The majority of those individuals interviewed during the investigation have repeatedly stated that most of the waste generated in Mayville County was disposed of in the Frankfurt Dump. There are possibly additional potentially responsible parties that were not identified by the sources contacted or reviewed by M & M in this search.

REFERENCES

INTERVIEWS:

Wallace, Mike A., 1985, Mayor of Frankfurt, Personal Interview (October 2).

Smith, Phil, 1985, retired Frankfurt Fire Department Chief, Personal Interview (October 2).

Minoltan, Myrna, 1985, Environmental Specialist employed by the Illinois Division of Air Pollution Control, Telephone Interview (September 23).

Bracy, Steven, 1985, nearest Resident to Site, Personal Interview (October 2).

Johnson, Jean, 1985, Former Geologist employed by the Illinois Division of Solid Waste Management, Personal Interview (September 27).

Davis, Raymond, 1985, Chief of Permitting Section employed by Illinois Division of Solid Waste Management, Personal Interview (August 15).

Carter, James, 1985, Environmental Specialist employed by the Mayville County Health Department, Personal Interview (October 2).

FILE DOCUMENTS:

TINDY, Jerome, 1977, employed with Illinois Division of Solid Waste Management, Letter to Jim Jordan, City Manager. Re: Corrective measures and site closure, (August 3).

COUNTY REGISTER, Mayville County, Illinois, 1956.

HEALTH AND ENVIRONMENT, INC., 1982, Field Investigations of Uncontrolled Hazardous Waste. Site: FIT Project: Investigation Report, Frankfurt Dump Site, Frankfurt, Illinois, (December 20).

WALLACE, Robert, 1983, Frankfurt City Manager, Letter to Diana Norman, Division of Solid Waste Management (September 12).

KEMPER, Mark, 1973, Environmental Geologist with Illinois Department of Public Health, Geologic Review of Frankfurt Dump, Mayville County, (July 23).

MAYVILLE COUNTY CHANCERY COURT, 1977, Civic Action No. 4387, Motion submitted by Mr. Daniel Cook, Illinois Department of Public Health.

MAYVILLE COUNTY COURT, 1978a, Civil Action No. 4387, Petition for Contempt submitted by R. Daniel Cook, Illinois Department of Public Health.

MAYVILLE COUNTY COURT, 1978b, Civil Action No. 4387, Show Cause Order.

MAYVILLE COUNTY COURT, 1978c, Civil Action N. 4387 Order.

JORDAN, Moses, 1984, Frankfurt City Manager, Letter to Robert Bailey, Director of Illinois Division of Solid Waste Management, (May 1).

ILLINOIS CODE ANNOTATED, 1969, Solid Waste Disposal Act, Sections 53-4301, 53-4315, 53-4321,

ILLINOIS DIVISION OF AIR POLLUTION CONTROL, 1976, Notice of Violation issued by Neil Morean, Air Pollution Specialist, (September 30).

ILLINOIS DIVISION OF SOLID WASTE MANAGEMENT, 1977a, Inspection Report prepared by Richard Brown, (August 15).

ILLINOIS DIVISION OF SOLID WASTE MANAGEMENT, 1977b, Inspection Report prepared by Richard Brown, (Oct. 29).

ILLINOIS DIVISION OF SOLID WASTE MANAGEMENT - Superfund Section, 1985, Legislative Report.

APPENDIX A

SUMMARY OF INTERVIEWS

SUMMARY OF INTERVIEWS

Mr. Mike A. Wallace, current Mayor of the City of Frankfurt, stated that he assumed that the list of industries using the dump as submitted to the state was complete. He stated that, in generating the list, the city merely took account of the industries in the city and county and produced the list. The city kept no records of industries using the dump. He concluded by stating that the local residents, Mr. Moore and Mr. Bracy, tend to obscure any facts regarding the dump since they feel they may benefit by their exaggerations. Mr. Wallace stated that the city hauled wastes primarily for the residential and commercial customers located within the city limits. However, there were times when the city provided this service to the city's industries.

Mr. Phil Smith, retired Chief of Frankfurt Fire Department, stated that the city owned and operated the site. The site contained two bodies of water before everyone began dumping garbage there. The southern body was used as a swimming hole and the northern was a fishing hole. The southern body is now completely filled with wastes and covered with dirt. He also stated that anyone may have hauled or generated wastes disposed of in the dump. He did recall that a shoe factory from Rockford disposed of their wastes at the dump. Mr. Smith stated that the lagoon was spring fed. He recalled obtaining water from the lagoon to fight a fire in the dump. Using a 1,500 gallon per minute fire pump, he pumped 24 hours a day, every other day, for 30 days and did not significantly draw down the lagoon water. Mr. Smith concluded by saying he thought the dump is now cleaner than it has ever been.

Ms. Myrna Minoltan, Environmental Specialist, employed by the Division of Air Pollution Control, State of Illinois, stated that the city owned the property and that the local pencil companies were still dumping sawdust there. She said the sawdust was probably burning and has issued Notice of Violations for open burning of garbage. She indicated the new incinerator began operation in 1980. A construction permit was issued in 1975. She indicated the ash and noncombustibles were to be disposed of in the new landfill. She suspected that all companies in Mayville County dumped

there and would be a potentially responsible party. She also suspected that the communities of Rockford, Moonville, Zionville, Deerfield, and Lansing contributed wastes to the dump since they are located in Mayville County. Based on her files, she said the old landfill was still operating in September 1979. By January 24, 1980, the files showed the dump closed. She stated that the incinerator was completed about 1981. She further indicated that wood wastes are exempt from the open burning regulation and that the state could not do anything if only sawdust was burning. She concluded by saying that she lives in that area and cannot say definitely which companies dumped wastes at the site.

Mr. Steven Bracy, local resident nearest the landfill, stated that the landfill was open to the general public throughout the county, and he felt that just about anyone could have placed wastes there. He recalled that Lee Mover Company hauled wastes for the Taylor Corporation. Their wastes were composed of skids, cardboard, paper, nuts, bolts, screws, and waste metals. The waste metals were recovered for salvage sometime during the operation of the landfill, but he could not recall when. He said the Taylor Corporation contributed wastes to the dump throughout the landfill operation. He also mentioned that Mr. Daniel Knox hauled sawdust for one of the three pencil manufacturers located in Mayville County and the company called Labix, which produces cosmetics and pencils. He recalled that the pencil manufacturers disposed of waste paint and paint containers (5-gallon buckets). He also stated that the shoe companies disposed of waste leather and manmade shoe sole materials. Zangoma Plastics, a local company, disposed of styrofoam wastes which were hauled by their own trucks. Mr. Bracy also stated that he believed a truck was buried on-site after being destroyed by fire while dumping wastes on site. This occurred sometime between 1975 and 1977.

Mr. Tom Mitchell, Environmental Engineer with Division of Air Pollution Control, State of Illinois, said that he did not have any specific information concerning the responsible parties. He stated that the City of Frankfurt installed an incinerator there in order to close out the dump and tee pee burner. He has received many complaints about the smoke emanating from

the site, and the companies that now burn their wastes at the incinerator are probably the same companies that contributed wastes to the dump. He recommended that I talk with Myrna Minoltan at the Regional Office in Louisville.

Mr. Eddy Lambert, Chief of 1067 Section, State of Illinois, stated that permitting of solid waste landfills started around 1972 and that possibly the Frankfurt file located in the Division of Solid Waste Management, State of Illinois, would contain an application and/or copy of the Frankfurt Permit. He recommended interviewing Mr. Raymond Davis regarding the Frankfurt Dump.

Ms. Regina F. Jackson, formerly employed with the State of Illinois as an environmental engineer, stated that probably all the industries in the county dumped at the site. She stated that while she was on the site she saw pieces of lead similar to that used in pencils for marking. She also saw paint and waste inks on the site. She believed that the pencil manufacturers are potentially responsible parties. She stated that Lock Containers was probably a potentially responsible party also. She said that the site was closed by the state and that the Frankfurt Dump case was turned over to the U.S. EPA on March 3, 1984. She indicated the site was closed, but not officially. The site received a soil cap, seeding, and planting.

Ms. Jean Johnson, former geologist employed by the State of Illinois, conducted a geologic investigation of the site. She stated that while she was employed with the state that she sent out and received responses to a questionnaire. The questionnaire was used to contact industries in Mayville County inquiring of their involvement with the Frankfurt Dump. The surveyed industries were identified by the City of Frankfurt. She logged in the responses which stated that all but one industry handled no hazardous waste. She concluded by stating that the dump is probably not officially closed.

Example 1

Pages A-4 through A-7 not included

APPENDIX B

LIST OF KNOWLEDGEABLE PERSONS

NOT INTERVIEWED

The following persons were identified as possibly being knowledgeable about the Frankfurt Dump. Initial attempts to locate or interview these persons were not successful.

Mr. Joel Victory was identified during the review of the state files. Mr. Victory is a past mayor of Frankfurt and resides at 224 Rocky Highland, Frankfurt, IL 60609. Efforts to contact him at his home telephone (111/771-6200) were unsuccessful.

Mr. Jack Bracy, was identified during the review of the state files. Mr. Bracy was a city employee who worked at the dump for an unknown period of time. The Frankfurt area directory assistance found no number listed under this name.

Mr. Peter Nelson was identified during the interviews of Mr. Keith Moore and Mr. Steven Bracy. Mr. Nelson is a local resident that may have information that could identify additional potentially responsible parties. Several telephone calls were placed to his home telephone at various times of the day with no response. This number is (111)771/4624.

Mr. Robert H. Sagan was identified during the review of the state files. Mr. Sagan is a past mayor of Frankfurt. Several telephone calls were placed to his home telephone at various times of the day with no response. This number is (111)771-3003.

Mr. Robert Fuller was identified during the review of the state files. Mr. Fuller was a city employee who may have worked at the dump. The Frankfurt area directory assistance stated that his telephone number is unpublished.

Mr. Jimmy L. Jordan, was identified during the review of the state files. According to Mr. James Carter, a local resident and an employee of the Mayville County Health Department, Mr. Jordan is presently retired and residing in Frankfurt. The Frankfurt area directory assistance found no number listed under this name.

Example 2
Typical PRP Search

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APPENDIX A: Documents Index
APPENDIX B: Interview Summaries

ATTACHMENT I: DNR and Payne County Health Department Records
ATTACHMENT II: U.S. EPA Records
ATTACHMENT III: Title Documents

Draft PRP Report

Payne Disposal Service

I. INTRODUCTION

A. Project Background

The Payne Disposal Service landfill is an active sanitary landfill located on approximately 158 acres in Alma Township, Payne County, New York, near the City of Clinton. The land began being used as a landfill in 1966, and it continues to operate under the name of Midway Waste Systems (New York) Inc. Throughout this report, the Payne Disposal Service landfill will be referred to as the "Payne Disposal landfill" or the "site". Fourteen acres on the site have been authorized by the New York Department of Natural Resources (DNR) as a Type II landfill to receive general refuse, garbage, rubbish, construction and demolition, waste water sludges, and industrial waste. At no time has the site been approved to receive liquid wastes. The site has experienced leachate discharges of organic chemicals, threatening both surface and groundwater. The extent of contamination as of June 13, 1984 had not been determined, according to the EPA file available to Marta (500).

EPA Region 13 requested Marta, Inc. to provide litigation support in searching for parties responsible for waste at the site. Regional contacts Jim Moore and Keith Paton provided specific direction regarding the information to be developed. Marta proposed in its Work Plan to identify, copy and review relevant federal, state, and county records and place those copies in a composite chronological file, interview persons knowledgeable about the site, conduct a title search for site ownership, and prepare a report detailing the research results which includes a list of potentially responsible parties and which references specific documents. The primary Marta researcher for this project is Ms. Janet Ross. The project manager is Mr. Stewart Anderson.

B. Project Approach

Marta received copies of relevant EPA files on the site and contacted state and local officials to determine the extent and nature of records available on the site. These officials also were interviewed regarding their personal knowledge of the site. Under EPA's direction, Marta contacted private citizens regarding their personal knowledge of site activities. Each individual contacted for records or information on the Payne Disposal landfill site was advised that Marta was under contract to the U.S. EPA to request

such information. In addition a title search was performed to identify former and current owners of the site.

C. Contacts

Marta contacted officials at the New York Department of Natural Resources (DNR) for information and records regarding the Payne Disposal landfill. DNR officials contacted were:

Captain Hubbard, Law Enforcement Division, Adams District Office (333/195-9210)
David Tharton, Environmental Enforcement Division (333/195-9250
William Murphy, Chief, Investigations and Legal Services Branch, Environmental Enforcement Division (333/196-9525)
Denise Gilbert, Site Assessment Unit, Remedial Action Section, Groundwater Quality Division (333/196-3542)
Tom Adams, Environmental Engineer, Air Quality Division, Adams District Office (333/198-1004)
Karen Cooper, Sanitarian, Region 13 (333/198-1955)
Ron Lee, Groundwater Quality Division (333/199-1111)
Captain Bill Bryer, Law Enforcement Division, Headquarters (333/196-1122)
Synthia Berg, Engineer, Groundwater Quality Division (333/197-5551)
Peter Berke, Chief, Environmental Hazard Control Unit, Groundwater Quality Division (333/197-1922)
Nate Bell, Water Quality Specialist, Groundwater Quality Division (333/197-5432)
Dave Bryn, Forensics Evidence Specialist Investigations and Legal Services Branch, Environmental Enforcement Division (333/195-1919)
Roy Archer, Surface Water Division (333/195-2757)
Bruce Allig, Conservation Officer, Law Enforcement Division (333/245-8998)
Leonard D. Elden, Groundwater Quality Division (333/295-9001)

Mr. Louis Warren, Senior Environmental Specialist at the New York Toxic Substances Control Commission also was contacted by Marta. He stated that the Commission looks into site upon request of citizens, legislators, or state agencies. It has no file on the Payne Disposal landfill.

Marta contacted the following local officials for information:

City of Lenox, Paul Egel, City Engineer (333/245-2161); City Clerk; and Waste Water Treatment Plant
Village of Joliet, Ralph Paxel, (333/554-9286), title unknown
City of Clark, City Manager (333/640-3271)

Payne County, Larry Dole, Assistant Environmental Health Director, County Health Department; and County Clerk (333/251-8654)
City of Adams, Department of Public Service, and Waste Water Treatment Plant (333/640-9581)
Township of Holm, Richard Dinoff, Clerk, and Dave Dawson, Fire Chief (333/230-7698)
Township of Kate, Carleen Pike, Secretary, and Russell Hyde, Fire Chief (333/230-9951)
City of Kozy, City Manager, (333/230-4556)

Each of these municipality officials reported that trash from the municipality had been taken to the Payne Disposal landfill. When specific waste or haulers of waste to Payne Disposal landfill were mentioned, that information is noted in the Potentially Responsible Party Information section of this report. Of these municipalities, only Lenox had licensing requirements for haulers. Lenox's "dray licenses" were used before 1971, and the records are incomplete because some were destroyed when the city offices were moved.

Richard Dinoff, the Clerk of Holm Township, provided more detailed information than did other municipal officers. A summary of his telephone interviews and letters is included in Appendix B to this report.

With EPA authorization, Marta conducted telephone interviews with several knowledgeable citizens to develop potentially responsible party and other site-related information. Summaries of these interviews are included in Appendix B to this report, and selected information is incorporated into the Discussion of Site section.

Individuals contacted by Marta were:

Site Neighbors
Will Russell (333/230-8386)
Mr. and Mrs. Sam Hights (333/230-3333)
Nancy Horn (333/230-1950)
Alice Isaac (333/250-2151)
Charles and Winfred Nolson (333/230-1444)

Former Site Employees or Workers
Lawrence Moyer (333/290-2173)
Charles Oscar (333/251-2900)
David Earl (333/230-9225)
Rick Hopkins (333/234-8675)
Jim Hopp (333/234-4156)
Pat Hoover (333/230-1234)
Hugh Hyde (333/230-5678)
Dunn Nate (333/230-9104)

Fred Paxton (333/234-2435)
John Egan (333/239-4253)
Terry Egel (333/194-5252

D. Site Related Records

The sources identified below were contacted by Marta for records and information on the site. This section described the available records and the type of information provided by each source. Records provided by these sources are presented as Attachments I and II to this report. An index to the documents is included in Appendix A to this report.

1. New York Department of Natural Resources (DNR)

Ron Lee of the Groundwater Quality Division of the DNR indicated that the "600" file kept by his Division is the complete DNR file on the site. ("600" refers to the Solid Waste Management Act, Act. No. 600 of the Public Acts of 1978, as amended, which is the relevant New York statute regarding regulation of sanitary landfills.) While other divisions such as Environmental Enforcement may have files on the site, duplicate copies of significant documents would be in the officials "600" file. Marta received from Mr. Lee a complete copy of his files.

The DNR files ranged from 1966 to 1985 and included solid waste disposal applications and licenses; solid waste disposal evaluation reports; correspondence with site operators, generators, haulers, consultants, and other regulatory offices; analytic results of and reports on geological, environmental, and engineering studies of the site and surrounding area; and information on enforcement action against the operators. Identification of potentially responsible parties is generally found in correspondence asking for or granting approval for disposal of a particular type of waste in the landfill.

Marta also contacted Denise Gilbert of the Site Assessment Unit, Remedial Action Section of the Groundwater Quality Division. The contents of her file on the site were reviewed on the phone, and copies of documents not already in Marta's file were copied and sent to Marta. These documents include the Site Description prepared by the Site Assessment Unit in 1984.

William Murphy of the Investigations and Legal Services Branch supplied a copy of one Report of Incident from his Payne Disposal landfill file and copies from his file on Laramy, which is another site owned by Midway Waste Systems, Inc. (274, 537, and 540). The latter documents are being provided to EPA separate from this report.

2. Payne County Health Department

Larry Dole, the Assistant Environmental Health Director, provided Marta with photocopies of Health Department files relating to the site except for documents which he believed were also in the DNR files. Attached to his letter of March 4, 1985 is a list of documents which he did not provide (368). Marta's review of this list confirmed that those document types were already in Marta's possession.

Files received from the Health Department spanned the years 1972 to 1985 and included much of the same types of correspondence as were in the DNR files, with some additional information about site inspections, fires at the site, and specific generators' waste.

3. U.S. EPA Region 13

Marta received Region 13 documents from three different sources. Jim Moore provided the Hazard Ranking System file on Payne Disposal. Peter Jordan provided copies of documents relating to Development Company, which is a potentially responsible party for the site. Bruce Allis provided copies of inspection reports for the Payne Disposal landfill relating to disposal of wastes from Kopper Company. The EPA records are presented in Attachment II.

The remainder of this Draft Report has been organized as follows:

Section II - Discussion of Site: Information is presented on the ownership of the site and its use as a disposal site. This information has been developed through a review of available documents, telephone interviews with knowledgeable individuals, and a title search.

Section III - Potentially Responsible Party Information: Each responsible party identified during the course of Marta's research is listed in this section. For each party listed, a brief description of its apparent involvement with the site is provided, along with its facility address, if indicated on the documents. The current corporate status of site owners and operators is also provided.

Section IV - Conclusions and Recommendations: Conclusions based on the currently available information regarding responsible parties are provided, along with recommendations for developing additional responsible party information.

DNR and Payne County Health Department documents obtained by Marta are presented as Attachment I, ordered chronologically and marked with sequential numbers from 1 to 373 in the lower right-

hand corner. EPA documents obtained by Marta remain in the files in which they were received and are also numbered sequentially, starting with 500. They are presented as Attachment II.

When more than one document is in a stapled unit, the first document is numbered in the normal fashion and successive documents are numbered with decimals. For example, Document 16 has attachments which are numbered 16.01, 16.02, and 16.03. References to supporting documents are presented throughout this report by means of these document numbers.

Also in the lower right-hand corner of each document is an alphabetic code which indicates the source of the document, as follows:

Notation	Source
(nothing)	DNR, Groundwater Quality Division "600" file
H	Payne County Health Department
& H	both DNR and Payne County Health Department
I	DNR, Investigations & Legal Services Branch, Environmental Enforcement Division
S	DNR, Site Assessment Unit, Remedial Action Section, Groundwater Quality Division
P	Holm Township
N	neighbor
E	EPA

Attachment III includes the title search documents, and Appendices A and B include the Document Index and Interview Summaries, respectively.

II. DISCUSSION OF SITE

A. Site History

This section provides a site history based on information developed through record review and interviews during the course of this research. Where applicable, reference is made to individuals or documents supporting the information being presented.

1. Owners and Operators of the Site

This subsection focuses on the identity of all identified parties that owned or operated the site, including wherever available the names of individuals who from the record would appear to be familiar with overall site operations. In some time periods, the name of the party responsible for site operation is not clearly indicated in the documents.

Corporate information for the site owners and operators was obtained from the Secretaries of State in New York, California, Ohio, and Iowa. This information may be found in Section III.

Mr. Allen Doe was identified by several sources, including former employees Lawrence Moyer and John Egan, as the first operator of the Payne Disposal landfill. He signed the first license application on April 8, 1966 as Secretary Treasurer of Payne Disposal Service Co. (16.01). Lawrence Moyer indicated that Fritz Morris was at one time a partner with Mr. Allen Doe in the Payne Disposal Service Co. business but was later bought out by Mr. Allen Doe in 1974 or 1975. Lawrence Moyer believed that Fritz Morris had furnished the initial capital and business knowledge for the start-up of the company. Payne Disposal Service Co.'s first mortgage was signed by Mr. Allen Doe as Secretary-Treasurer and Fritz Morris as President on October 23, 1969.

Mr. Allen Doe apparently operated the landfill until some time between May and August 1978 when according to a former employee he sold the business to Vinet, Inc. An Evaluation Report dated May 4, 1978 prepared by Jerry Wilson of the DNR shows Kelvin Doe as the property owner and operator (91). The next Evaluation Report, dated August 21, 1978, shows the site operator as Mark Doe (Allen Doe's son) and the owner as Payne Disposal; and the Application for Solid Waste Disposal Area License of the same date shows the owner as Vinet, Inc. with Mark Doe as General Manager (94, 95). Former employee John Egan indicated to Marta that after Allen Doe sold the business to Vinet, Inc., Allen Doe continued for a while as manager. Former employee Terry Egel said that Allen and Mark Doe managed together for a while under Vinet, Inc.'s ownership, before Vinet, Inc. brought in Daniel Monroe.

As confirmed in an October 23, 1978 letter from DNR to Vinet, Inc., it agreed to "provide professional management of the landfill during the management changeover beginning October 23" (101). By October 27, 1978, Daniel Monroe was receiving mail as manager of Payne Disposal Service Co. (102). Former employees Russell Hyde, John Egan, and others mentioned that Payne Disposal Service Co. brought in Daniel Monroe and Ted Garcia as managers. The first mention of Garcia in the files was in a December 29, 1978 letter from ABC Consultants, Inc. to DNR regarding their engineering work at the site (126).

Daniel Monroe and Ted Garcia appear to have co-managed the site under Vinet, Inc.'s ownership until sometime between December 5, 1979 and January 4, 1980, when the new operator was said to be Steve Norris (181, 190). Monroe's name does not appear in the file after that date. Norris is shown as site operator on Evaluation Reports from March 4, 1980 through May 12, 1980 and again on October 2, 1980 (193, 206, 212.01, 228).

Former employees Charles Oscar and Dunn Nate both indicated to Marta that Ralph King had a contract to do cover operations at the landfill. Oscar said that King had two companies, Wicks and U.S. Can; and that one of these companies had folded, but he did not recall which one. Ralph King's name first appeared in the documents on September 18, 1980, when he was listed as the operator on an Evaluation Report (227). References to King or Wicks appear again in letters dated Mary 5, 1982 and November 6, 1984 (292, 353). On April 19, 1985, Dunn Nate mentioned that he had heard that Midway Waste Systems Inc. (hereinafter "Midway") would be terminating the relationship with King at the end of the month because of dissatisfaction with King's performance of the cover operations.

The first mention of Midway as property owners was also on the September 18, 1980 Evaluation Report (227). The next Evaluation Report, on October 2, 1980, shows three names as property owners: Vinet, Inc., Healthy Life, and Midway. The relationship of these three companies is not clear from the documents, nor is it clear when the site ownership changed. A Schedule of Compliance was signed by Vinet, Inc. on December 19, 1980 (223.01). A DNR interoffice memo on March 9, 1981 reported that the facility recently had changed ownership (241). The next two Evaluation Reports showed Midway as owner and Ted Garcia as manager (244, 246); but a DNR letter dated April 8, 1981 identified Ted Garcia as a representative of Vinet, Inc., and a June 12, 1981 letter said that Vinet, Inc. would be signing a contract for slurry wall construction (248, 258).

Healthy Life is shown as property owner and Ted Garcia is shown as the operator on Evaluation Reports from May 1, 1981 through December 2, 1981 (251, 259, 262, 266.01, 268, 273). Paul Clark and/or Ken Col of Healthy Life were sent correspondence about the landfill from August 20, 1981 to December 29, 1981 (263, 275, 277). However, on February 9, 1982, Ken Col wrote a letter on letterhead that showed "Payne Disposal Service Company, a Vinet, Inc. Company". He signed the letter for Vinet, Inc. and sent a carbon copy to P. Clark of Midway Waste Systems, Inc. (284).

Erick Burger's name appears as manager instead of Ted Garcia's on Evaluation Reports and correspondence beginning on February 17, 1982 (286, 287, 289, 290). On May 5, 1982, Erick Burger of Midway Waste Systems, Inc. was arraigned for insufficient cover at the landfill (293). After a May 11, 1982 Evaluation Report which shows Healthy Life as licensee, the Midway name appears exclusively on the documents (294). Erick Burger was apparently replaced by Robert Neil as the landfill manager some time between May 31, 1983 and August 16, 1983 (309, 316). As recently as January 28, 1985, Neil was still the site manager.

2. General Site Operation Procedures

Several former employees of Payne Disposal Service Co. provided Marta with information regarding the operation of the site, i.e., hours, procedures, record keeping and customers. This subsection summarizes such information. The reader is also directed to the interview summaries in Appendix B.

Payne Disposal Service Co. has picked up or received wastes under contract with residential, municipal, commercial, and industrial customers. In addition, individuals, hauling companies, and businesses have been able to dispose of waste on a single-load basis by paying according to the estimated volume of the load. Pat Hoover, former employee, indicated to Marta that most of the waste was local, and quite a bit was industrial.

Most municipalities in the area contract out their household trash pickup on an annual basis. The City of Clinton, however, appears to be an exception in that it picks up household trash in city trucks and delivers it to Payne Disposal landfill. It is known from Solid Waste Evaluation Reports filled out by Health Department officials that at least twenty municipalities have sent trash to the Payne Disposal landfill over the years of its operation (17, 21, 23, 24.01, 27, 31). In all likelihood there may be more. These twenty municipalities are listed in Section III of this report.

Former site employees provided some information on general procedures at the landfill. Fred Paxton said that in the period of his employment (February 1968 to February 1979), the gate to the landfill was kept locked at night until 5 a.m., and only employees had keys. In the first four or five years he was at the site (approximately 1968 to 1973), loads brought under contract were counted at the gate only one month out of the year. In the other eleven months, the billing was based on that one month's estimate. During those eleven months, someone was at the gate to estimate the volume of individual loads and take payments only on Saturdays. Mr. Paxton said that tickets were written for customers who were to be billed and receipts were given for cash payments.

Jim Hopp worked as a "ticket taker" for a few months in 1976 or 1977. He said that he estimated the volume of trash on all loads and entered that information in a logbook which would show only the hauler name and the volume in cubic yards. He gave receipts to the drivers and kept one copy of each for the landfill. The incoming trucks and roll-off containers were not checked at all to determine what waste was coming in for disposal, and there was no one at the gate even to estimate loads in the early morning hours. Twice he observed semi's dumping barrels of liquid which were left uncovered until morning.

Hugh Hyde said that the gate checked only those loads brought in by the general public. When an industrial customer was ready for pick-up or roll-off units from its facility, it would call the landfill office. A Payne Disposal Service Co. truck was sent, and the driver filled out a receipt which would be signed by a company representative. One copy of the receipt was given to the customer and the other went to the landfill office.

Dunn Nate said that he took money "at the shanty" for the first few months he worked at the landfill in 1978 or 1979. He checked loads and rejected things like paint, hot ashes, barrels, and liquids. Tires and tree stumps were discouraged by placing what he characterized as a "ridiculously high" price on their disposal. He said that someone else now checks every incoming load.

The business of the landfill grew over time. Lawrence Moyer estimated that between 1968 and 1976, 7 or 8 men worked there at a time, with a lot of employee turnaround and a lot of two-job workers. He said that there was very little change in the site operation from 1967 to 1976. Terry Egel, however, said that during 1979 there were about 12 employees at a time, and the landfill got more business and residential customers in that year.

Almost every former employee who was interviewed mentioned the long hours worked at the site. Drivers of roll-off trucks were given daily lists of companies which had requested pickups, and they had to finish those lists before stopping for the night. Fred Paxton said the heavy equipment operators quit for the day only when everything was covered. Only David Earl said that he worked from 8:00 to 5:00. Others estimated that they worked 15 to 18 hours daily, 50 to 84 hours weekly, and even some 24-hour days.

Dunn Nate mentioned Vinet, Inc.'s problems with insufficient equipment in poor condition. Breakdowns were an everyday problem. Midway, he said, had greater resources and put more money into the landfill and equipment, doing a 300% to 400% better job than had Vinet, Inc.

3. General History

This subsection focuses on the incoming waste types, the generators, and the site's compliance with applicable regulations, based on available records. Selected historical information from Marta's telephone interviews is included. Information about potentially responsible parties and waste types reported to Marta by former employees may be found in Section III and in Appendix B.

Generators and/or specific waste types were mentioned in the Health Department or DNR files for one of two reasons. If the generator, hauler, or landfill operator contacted one of the

regulatory bodies to request approval for disposal of a particular waste, and if at least part of that exchange was done on paper, the files would have a copy showing that company's name or a description of the waste. It would appear that in many instances the final decision was given verbally, because the file has no indication whether particular wastes were ultimately disposed at the site or not. This request and approval mechanism appears to have been voluntary. Karen Cooper of the DNR and Larry Dole of the Health Department both said that they would expect that many more companies sent industrial waste to the site than the few that were mentioned in the file.

The other reason a company's name may have appeared in the file is that a problem or infraction involving that company's waste was noted either during a regular inspection or while responding to an incident. Examples of companies whose names were mentioned for these reasons include The Lean Company, Karicol, and Development Company.

When Allen Doe filed his first Application for Solid Waste Disposal Area License on April 8, 1966, the Division of Engineering, New York Department of Public Health (NYDPH) regulated Type II landfills under Act 87; however, it appears that the Payne County Health Department also reviewed the application and attachments (Reference Doc. 16, 16.01).

According to Richard Dinoff, the Holm Township Clerk, there had been no prior uncontrolled dumping at the site, and the landfill began operations that summer or fall. The license was issued on September 27, 1966.

Neighbors of the site had tried to prevent the opening of the landfill by presenting a petition with 30 or 40 signatures, including those of Karl and Alice Isaac and Charles and Winfred Nolson. According to Charles Nolson, at least one meeting was attended by neighbors and their attorney, representatives of the Payne County Health Department and Holm Township, and someone other than Allen Doe representing the landfill.

For all inspections from September 26, 1966 to September 6, 1972, the Health Department used an NYDPH form titled "Solid Waste Disposal Evaluation Report" (17, 21, 23, 24.01, 27, 31, 53, 55). Except for a gap from September 1966 to February 1969, inspections were performed at least once a year. Applications for licenses were filed annually except for a gap in 1967 and 1968 (16.01, 20, 25.01, 28.02, 33.02). It is not clear whether no applications were filed in this period or the documents from those years simply were not in the DNR files.

By May, 1970, Allen Doe was inquiring about expanding the active site of the landfill to be on the flood plain of the River Windex (Reference Doc. 26). Payne Disposal Service Co. and their engineering consultants, ABC Consultants, Inc. dealt with the Flood Plain Management Section of the DNR and the Payne County Health Department in 1970 and 1971 (26, 29, 35, 36, 37).

On November 8, 1971, Freeport Testing Laboratory, Inc. submitted their "Report of Subsurface Ground Investigation and Laboratory Test Results" on the proposed expanded site (36). On December 21, 1971, the Division of Solid Waste Management of the NYDPH Bureau of Environmental Health wrote that the proposed extension would be feasible if properly engineered (38). John Warren of the DNR Geological Survey Division believed that the proposed expansion could adversely affect surface water quality if constructed according to the July 22, 1971 plan. He made three recommendations to retard subsurface leachate movement into the river: 1) a clay liner on the landfill bottom; 2) extend the perimeter dike downward and "key" it into a continuous layer of non-permeable material; 3) line the pit with soil sealant or plastic and installing a system of leachate collection and treatment (41). The Water Resources Commission tabled the matter on January 21, 1972 (42).

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* NOTE *
* *
* AN ADDITIONAL 13 PAGES OF THE ORIGINAL REPORT *
* HAVE BEEN OMITTED IN THIS SAMPLE REPORT. IN *
* THE ORIGINAL REPORT, SECTION II - DISCUSSION *
* OF SITE, CONTINUED TO DISCUSS THE HISTORY OF *
* SITE OPERATION AND SITE OWNERSHIP. *
* *
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III. POTENTIALLY RESPONSIBLE PARTY INFORMATION

Potentially responsible party information was put into Health Department or DNR files only when an infraction or problem was observed and noted or when there was correspondence regarding the acceptability of disposal of a particular waste at the site. Karen Cooper of DNR said that she is sure that there were many more companies that sent waste to the Payne Disposal landfill than the DNR's "600" file would show as generators or haulers. Some of the correspondence in the files, she said, was written because the

company in question (e.g. Scotch Industries) was caught handling its waste improperly. Larry Dole of the Health Department said that in later years, Midway asked for permission to accept questionable waste; but prior to Midway's operation of the site, the site operator seldom requested such direction.

Dole also indicated to Marta that in all likelihood, much of the chemical disposal in the landfill was done unbeknownst to the landfill operators. He indicated that companies would try to get rid of chemical wastes without letting the landfill know. One example which he recalled as having occurred either at this site or another was a company which included a bag of chlorine in its office trash.

Former employee John Egan reported to Marta in an interview that the site received sludge from factories; but he did not name the generators of that type of waste. Hugh Hyde, former employee and current Pekin Township Fire Chief, indicated to Marta that he filled out a receipt whenever he picked up containerized waste from a factory. One copy of the receipt was given to the factory and the other was taken to the landfill office. Former employee Jim Hopp described the use of receipts at the gate and indicated that a log book was kept with names of haulers and the estimated volumes of incoming waste. If these log books and receipts can be located, additional potentially responsible parties may be identified.

The companies listed below were identified through Marta's research by individuals and/or in documents as possible users of the site. The companies identified as generators are noted as "(G)", haulers are noted a "(H)", and owners or operators are noted as "(O)". Unless indicated otherwise, all referenced statements of individuals were made to Marta staff during telephone interviews. For summaries of these interviews, see Appendix B. Source documents are noted for each potentially responsible party referenced in documents. For each company listed, mailing address information is provided, when available.

Throughout this section, Health Department or DNR approval is noted for a company's planned disposal of certain materials. Unless noted otherwise, information available to Marta does not specifically document the actual disposal of such waste at the site.

1). Alint (H)
"no address available"

According to Pat Hoover, former employee, when Ted Garcia ceased being manager at the landfill, he operated a hauling company called Alint which had a contract with Midway to do commercial pickups. Ted Garcia is now with Sara Disposal.

2). Aron Plug Corporation (G)
303 Laramie Street
Clinton, WI 69260

Aron Plug generated a grinding sludge which was less than 2% liquid and consisted mostly of grinding wheel dust and a small amount of steel, with trace quantities of other metals. In a September 12, 1983 conversation and a September 14, 1983 letter, the County Health Department approved the disposal at Payne Disposal landfill. No volume or actual evidence of disposal was indicated (319).

3). Gulf Carton (G)
Knox, WI

Former employee Fred Paxton stated that roll-off containers were brought to the site from Gulf Carton.

4). Iron Braceley Co. (G)
Clinton, WI

Former employees David Earl, Dunn Nate, and Rick Hopkins all stated that waste from containerized units picked up at Iron Braceley Co. were disposed at the site. Mr. Nate said he believed that the company's real name is "All Steel Co."

5). Development Company (F)
920 E. Street
Clinton, WI 69260

According to the Remedial Action Master Plan for the Development Company Site, Development Company manufactured Chlorex from 1971 to 1979. This product, also called tri-chloroethylene or TCE, was used to cure rubber for products such as skateboard wheels (531). On March 30, 1979, a Health Department representative witnessed a roll-off unit from Development Company which had a chemical smell (147). The Health Department sent Development Company a copy of a letter about the incident. In response, the Development Company president wrote to the Health Department that he had given strict instructions "to keep separate all chemical waste from any trash that goes to your disposal hoppers" (148). Former employee Hugh Hyde recalled this incident.

According to Larry Dole, Chlorex became airborne from sloppy operations at the plant, a cleanup operation was conducted to clean the vicinity of the plant, and approximately 60 cubic yards of street sweepings with 0.5 to 2 ppm of Chlorex were disposed at the Payne Disposal landfill (504).

Documents which refer to groundwater testing for Chlorex in the vicinity of the Payne Disposal landfill range in date from

April 10, 1979, to August 5, 1982 (149, 154, 156, 157, 158, 207, 2134, 256, 264, 282, 283, 297). Wastes generated incidental to drilling operations near the Development Company wastewater treatment lagoon were approved to go to the Payne Disposal landfill on February 29, 1982 (192).

The U.S. EPA Region 13 has been involved with the Development Company site, and copies from Peter Jordan's files are included as reference documents 516 through 531. The State of New York filed a court case against Development Company in 1979 which was still in litigation as of February, 1981. In response to an EPA Superfund Questionnaire, the DNR reported that the limited resources of Development Company may not be sufficient to pay for cleanup activities (526).

6). May Trucking (H)
"no address available"

Former employee Fred Paxton mentioned this company as an outside hauler which brought waste to the landfill.

7). Kam Plastics (F)
"no address available"

Fred Paxton and Rick Hopkins recalled this company as generator of waste received at the site.

8). Cochic, Inc. (F)
Pekin Highway
Peky, WI 69260

The DNR Site Assessment Unit provided copies of documents which identify Cochic, Inc. as a generator of 11,000 cubic yards of waste disposed at the Payne Disposal landfill from 1970 to 1979. Evidently, Cochic, Inc. voluntarily submitted this information in 1979 for the Omar Survey by the Mall Connection and Kapa Trade Committee (257).

****
* NOTE *
* *
* AN ADDITIONAL 55 POTENTIALLY RESPONSIBLE *
* PARTIES WERE LISTED IN THE ORIGINAL REPORT. *
* *
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64.) Other Possible Site Users

Some haulers were mentioned by individuals interviewed by Marta as parties which may have taken waste to the site. Marta found no evidence to link these haulers to the site, and therefore have listed them below as possible site users:

2. Kelonix (H)
Dante, WI

For some unknown period of time, the city of Kozy had a contract with Kelonix for household trash removal for disposal at the site, according to the city manager.

b. Lone Disposal (H)
"no address available"

Former site employee David Earl reported that Mark Doe bought out Lone Disposal and formed Tony Recycle. Presumably, since Tony Recycle was identified as a company which hauled waste to Payne Disposal landfill, Lone Disposal may have also.

c. Maxim (H)
"no address available"

The Kozy City Manager reported that the city has a contract with Maxim to take waste from businesses to a landfill other than the Payne Disposal landfill.

IV. CONCLUSIONS AND RECOMMENDATIONS

Marta has developed a substantial amount of information regarding the waste disposal practices and operational history of the Payne Disposal landfill through a review of records obtained from EPA, the New York Department of National Resources, and the Payne County Health Department, supplemented by numerous telephone interviews conducted with neighbors of the site, former employees of the site operators, municipal officials, and individuals at the DNR and EPA. This information includes the identity of over 60 parties which are potentially responsible for waste disposed at the site.

As directed by EPA, Marta was to prepare this Draft PRP Report based on information developed to date. Certain further leads including primarily the names of additional municipalities known to have used the site and former employees remain to be pursued. After review of this Draft PRP Report, these leads plus any other research direction proposed by EPA can be pursued.

Information presented in this report on responsible parties is characterized by being based partly on the accounts of individuals who either observed the waste disposal or were otherwise knowledgeable of the activity at the site and partly on documents which suggest disposal of waste at the site. Based on the above information, the following are Marta's recommendations for developing additional responsible party information:

A. Contact Midway Waste Systems, Inc.

Midway should be requested to produce information and documentation regarding waste transactions at the site from 1966 to the present. Specifically, Midway should be requested to:

1) describe record keeping practices from 1966 to present that would identify generators and haulers of waste to the site;

2) provide any and all site documentation that would identify site users, including but not limited invoices, accounts receivable, log books, drive and gate receipts, and driver daily pickup lists;

3) provide any documentation of waste types;

4) provide contracts with municipal, corporate, or industrial customers for waste pickup; and

5) provide names of all former employees and managers and identify the scope of their knowledge of waste practices and the identity of potentially responsible parties.

In addition, Midway should be requested to identify and describe any and all waste transactions not evidenced in their recordkeeping, specifically identifying the type of waste and the waste generators and haulers.

Midway should also be requested to describe the relationship among Vinet, Inc., Healthy Life, and relationships with Wicks, U.S. Can, or any other subcontractor or broker involved in site management activities.

B. Contact Identified Potentially Responsible Parties

Each potentially responsible party should be requested to provide information and documentation describing waste transactions with the Payne site. Specifically, information and documents should describe the type and volume of waste disposed of at the Payne site.

C. Contact Municipalities

Marta has contacted several municipalities and obtained information regarding the nature of waste disposed of at the site. Several other known municipalities along with others identified by Midway should be contacted regarding the volume and type of waste disposed of at the Payne site.

D. Contact Knowledgeable Individuals

Marta has contacted several former site employees who appeared to be knowledgeable of site activities. Other employees and former employees of the landfill which are now known, along with those identified by Midway should be contacted generally regarding waste disposal and potentially responsible party information. Marta also contacted several employees of the DNR and Health Department who appeared to be knowledgeable of the site. Other such agency employees and former employees should also be contacted regarding their specific recollections of the landfill's operations.

The New York Department of Agriculture should also be contacted for information from documents and from recollections of knowledgeable individuals regarding disposal of PBB-contaminated materials at the site.

E. Current Corporate Status

Develop the current corporate status of potentially responsible parties as directed by EPA.

F. Financial Analysis

After EPA submission of a request to the NEIC for financial information on potentially responsible parties, develop additional financial information, as necessary.

APPENDIX A

DOCUMENT INDEX

PAYNE DISPOSAL SERVICE

001. Brochure for Payne Disposal Service Company, date unknown.

002. News article, "Payne Official Questions EPA Superfund Local Listing", prepared by John Norris, Daily Telegram, date unknown.

003. Handwritten note listing dates regarding plan of operation, dates from May 5, 1981 to August 27, 1981.

004. Handwritten note referencing name of Midway Waste Systems Landfill, dated 1984.

005. Cover Sheet, Payne Disposal, dated August 1966 thru December 1978.

006. Solid Waste Disposal Record, listing licenses held by Payne Disposal from 1969-70 to 1978-79.

007. NYDNR Evaluation Report form, undated.

008. Handwritten memo, illegible, date estimated at 1976.

009. Payne Disposal Test Data Sheet, partially illegible, date unknown.

010. Depth chart representing Payne Disposal Landfill, undated.

011. Construction specifications for soil bentonite slurry trench, undated.

012. Sketch of landfill, possibly dated July, 1982.

013. Well sampling data, handwritten, date range January, 1981 thru April, 1984.

014. Topographical map of landfill, undated.

015. Letter to Joel Smith, Payne Disposal, prepared by S.F. Wayne, New York Department of Conservation, dated August 12, 1966.

016. Letter to Mike Collins, NYDPH, prepared by Clifford Gossin, P.E. County Health Dept., dated August 18, 1966.

016.01 Application for Solid Waste Disposal Area License, prepared by Payne Disposal, dated April 8, 1966.

016.02 Surety Bond Form for Solid Waste Disposal License, prepared for Payne Disposal, by the Delta Insurance Company, dated April 6, 1966.

016.03 Power of Attorney, regarding the Delta Insurance Company, dated January 6, 1966.

017. Solid Waste Disposal Evaluation Report, re: Payne Disposal, prepared by County Health Dept., dated September 26, 1966.

018. Handwritten memo regarding ground and water problem, undated.

019. Letter to PDC, prepared for Carl Maxel, Environmental Health Section, Division of Engineering, by J.R. Bronson, Sanitarian, Environmental Health Planning Unit, dated September 28, 1966.

020. Application for Solid Waste Disposal Area license, prepared by Payne Disposal, dated January 21, 1969.

20.01 Surety Bond Form for Solid Waste Disposal License, prepared for Payne Disposal, by the Delta Insurance Company, dated August 31, 1968.

021. Solid Waste Disposal Evaluation Report, re: Payne Disposal, unsigned, dated February 13, 1969.

022. Letter to Tom Nixon, County Health Department, prepared for Carl Maxel, by J.R. Bronson, Environmental Health Planning Unit, dated May 16, 1969.

023. Solid Waste Disposal Evaluation Report, re: Payne Disposal, prepared by Payne County Health Dept., dated May 26, 1969.

024. Memo to unknown recipient, prepared by County Health Department, dated January 12, 1970.

024.01 Solid Waste Disposal Evaluation Report, re: Payne Disposal, prepared by County Health Dept., dated December 29, 1969.

024.02 Solid Waste Disposal Evaluation Report, re: Payne Disposal, prepared by County Health Dept., dated December 29, 1969.

Example 2

Appendix A pages 3 through 35 not included

Appendix B not included

Example 3
Complete Title Search

1.0 INTRODUCTION

1.1 SCOPE OF WORK

M & M Conservation, Inc. received Work Assignment No. 199 from the U.S. EPA Region 12 to perform a title search on the property known as Peanut Landfill in Cook County, Florida. The purposes of this title search are to:

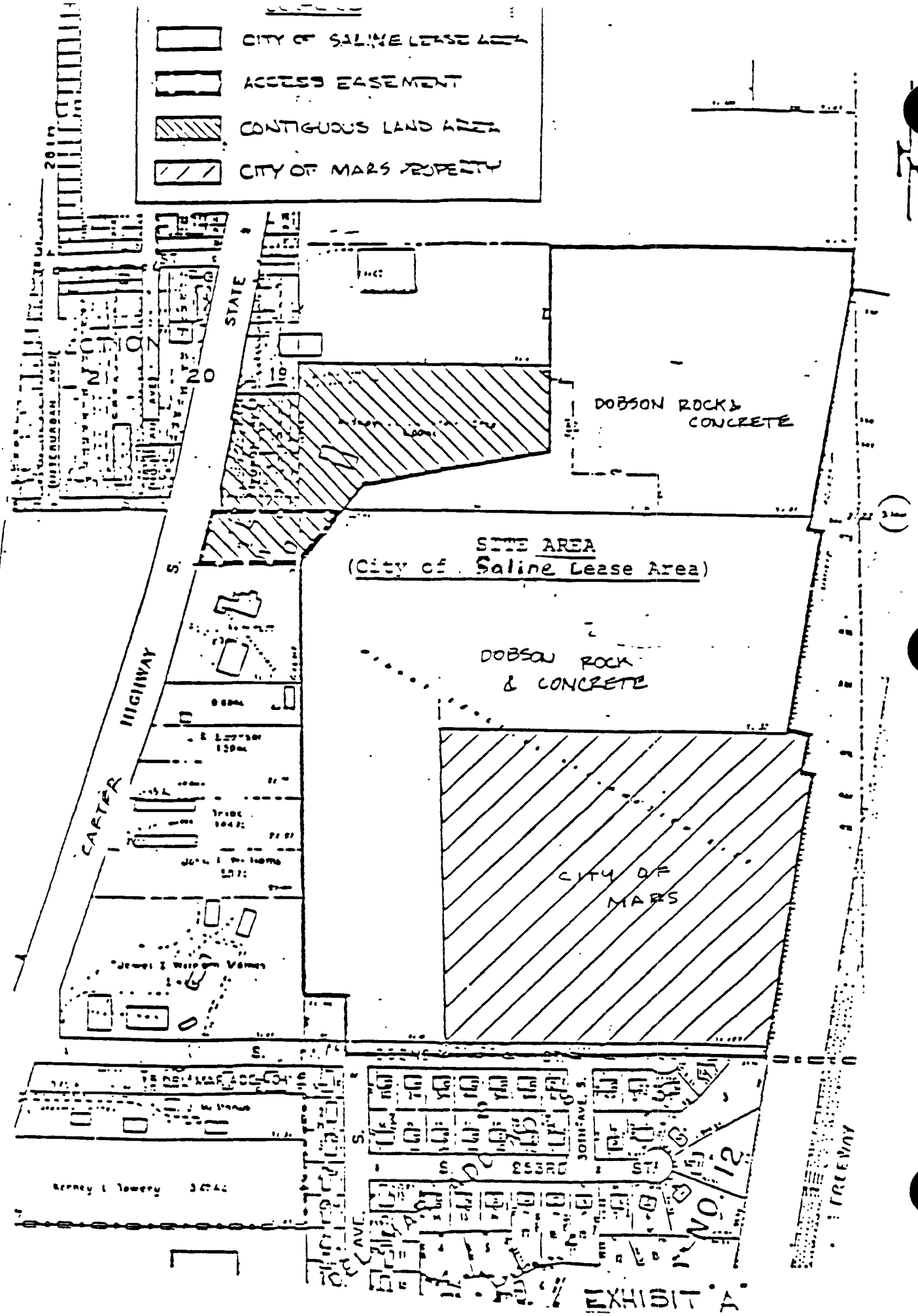
1) Identify the current owners of the site; and

2) Identify the two previous owners of the site.

1.2 PROJECT APPROACH

M & M subcontracted the title search to Bronx Title Insurance Company. M & M gave the title search firm a legal description and map of the site (Doc. No. 11), as provided by Richard Smith, U.S. EPA Primary Contact. All the documents obtained during the title search are included in Attachment I.

M & M used the information obtained through the title search to formulate a history of ownership for the site. The history involves several parcels that have been resubdivided over the years. Five figures have been included to illustrate how the parcel boundaries have changed over the years; all of these figures are drawn to the same scale. The site is currently divided into Parcels A, B, C, and D. Prior to 1983, the property now identified as Parcels B, C, and D was a portion of four


CITY OF SALINE LEASE AREA
ACCESS EASEMENT
CONTIGUOUS LAND AREA
CITY OF MARS PROPERTY
DOBSON ROCK & CONCRETE
SITE AREA
(City of Saline Lease Area)
DOBSON ROCK & CONCRETE
CITY OF MARS
CARTER
HIGHWAY
STATE
NO. 12
FREEWAY
EXHIBIT "A"

parcels identified as 2, 3, 4, and 5. Prior to 1955, Parcels 2, 3, 4, and 5 and also Parcel A where a portion of a larger area consisting three parcels identified as X, Y, and Z.

2.0 SITE OWNERSHIP HISTORY

2.1 PRESENT OWNERS

The property boundaries of the site based on the legal description provided in Doc. No. 11, are shown on Figure 1. Information in the document indicates that the site is leased by the City of Saline through a lease and easement agreement dated October 29, 1981 (Doc. No. 11). Using this information, Bronx Title Insurance Company conducted the title search and prepared a report entitled "Report for Court Proceedings" for the site (Doc. No. 10). The report divides the site into Parcels A, B, C, and D as shown on Figure 2. The report concludes that at the present time, Parcel A is owned by the City of Mars and Parcels B, C, and D are owned by Dobson Rock & Concrete, Inc., a Florida corporation.

2.2 OWNERSHIP HISTORY

Parcel A

Parcel A is a portion of property which, as of 1955, consisted of two adjoining parcels: X and Z. Parcels X and Z are shown in Figure 3 along with the present Parcel A. Toronto Paper Company, a Florida corporation, conveyed Parcel X to Frank Gallippi and Michael Coughlin through a deed executed on September 11, 1945 (Doc. No. 1).

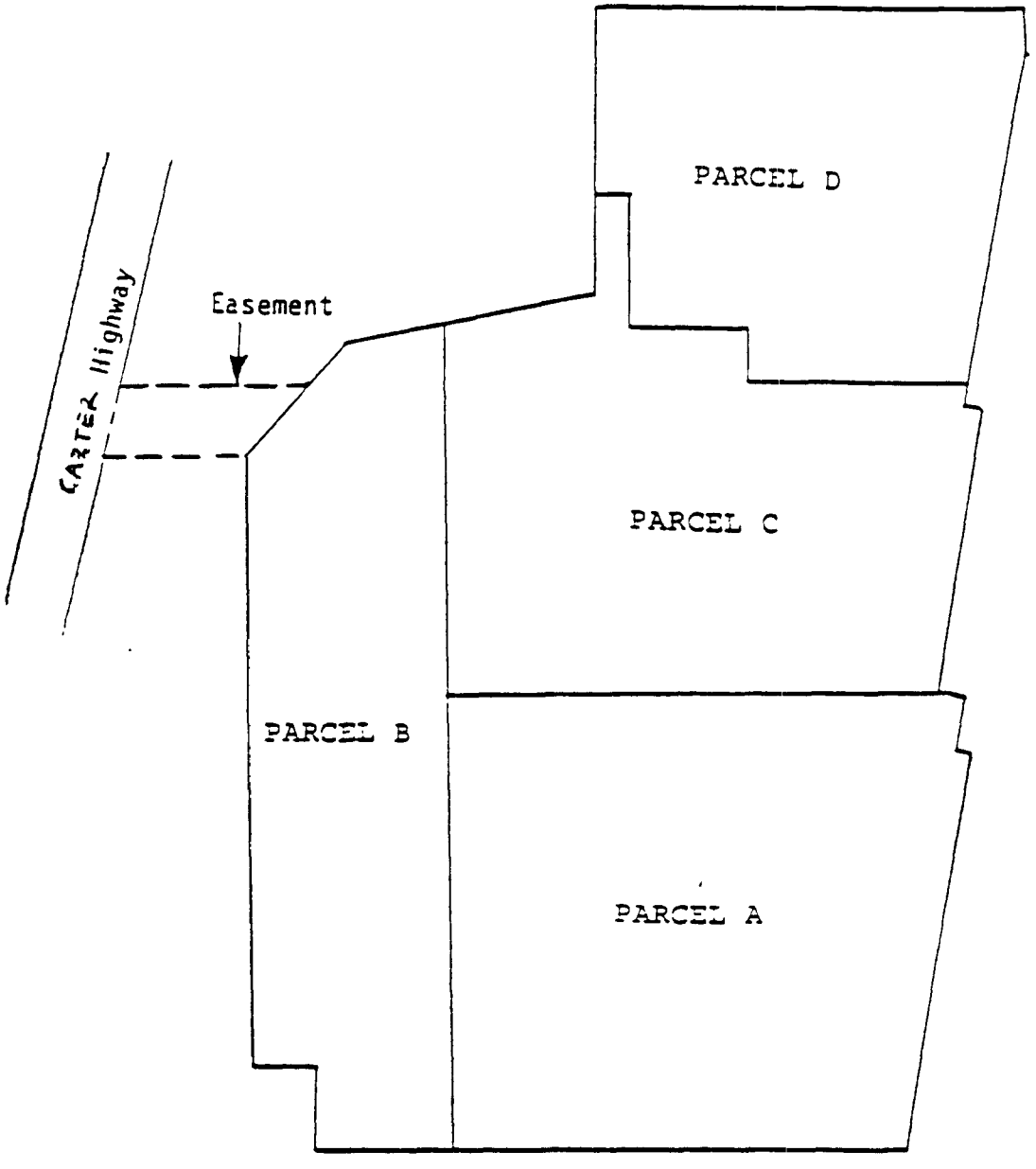


Figure 2: Parcels A, B, C, and D.

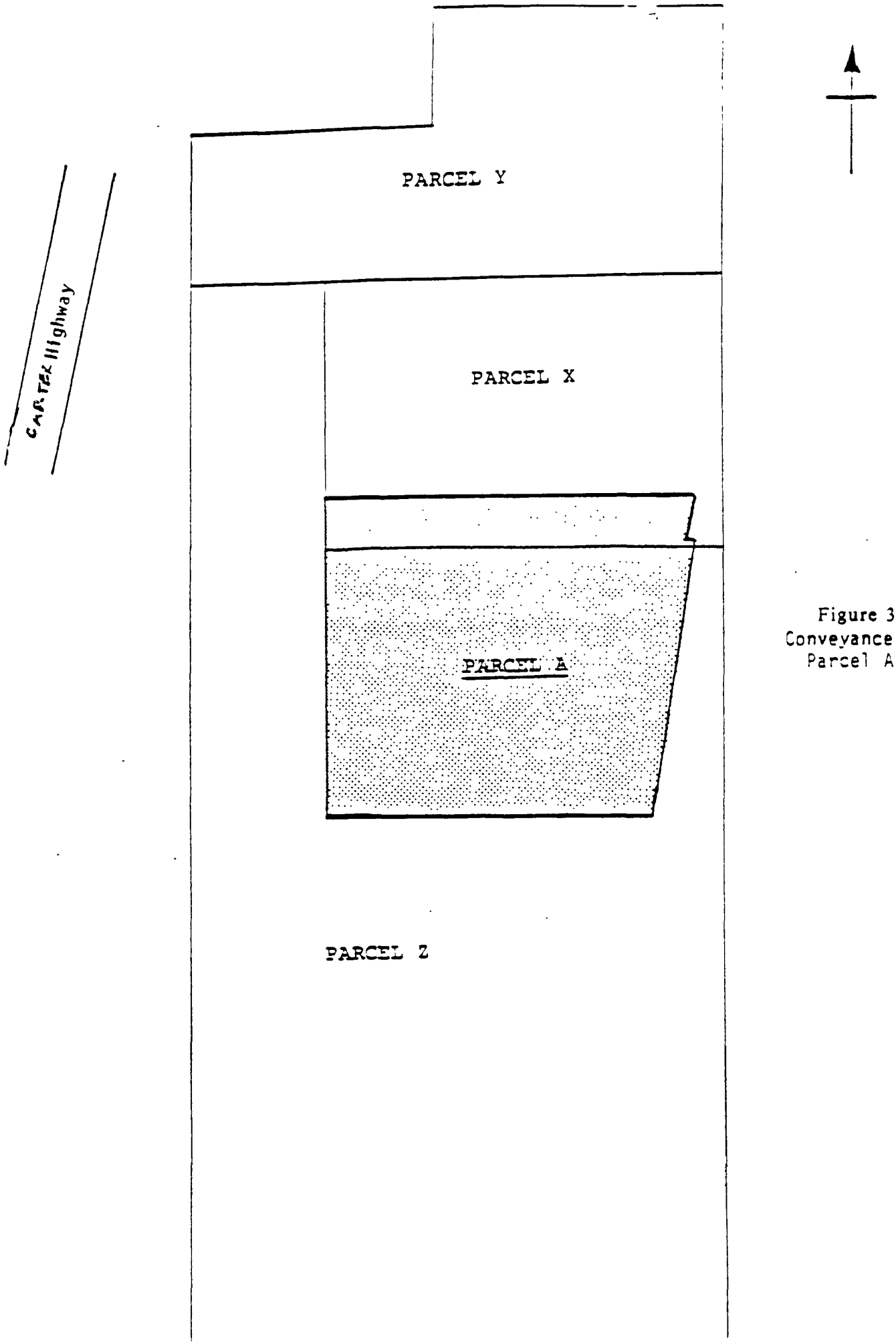


Figure 3:
Conveyance of
Parcel A

P. Cooper trustee of Duran Enterprises, a dissolved Florida corporation, conveyed Parcel Z to F. Gallippi and Susan Gallippi, husband and wife, through a deed dated March 15, 1955 and recorded May 13, 1955 (Doc. No. 3). This executed deed fulfilled a contract of sale dated July 9, 1946 between Duran Enterprises, Inc. as seller and F. Gallippi as Purchaser.

F. Gallippi and S. Gallippi conveyed Parcel A to the City of Mars, a municipal corporation, through a statutory warranty deed executed on July 25, 1966 (Doc. No. 4). Parcel A included a portion of Parcel Z, owned by Frank and Susan Gallippi (Doc. No. 3) and a portion of Parcel X, owned by Frank Gallippi and Michael Coughlin (Doc. No. 1). Available documents do not explain how Frank and Susan Gallippi conveyed a portion of Parcel X jointly owned by Frank Gallippi and Michael Coughlin. The 1966 deed conveying Parcel A to the City of Mars contains a provision reserving, "to the Grantors... and to a co-partnership consisting of Frank Gallippi, Mark Gallippi, Micheal Coughlin, Paul Gallippi, Steven Gallippi, and Saul Goldstein, and their successors and assigns, the sole and exclusive right to use, occupy, possess and remain in full possession and control of the said property, so long as the Grantors may find it necessary, and to deposit... non-putrescible type waste material... in accordance with a certain lease and easement agreement" of October 1965 and amendment agreement dated May 11, 1966 (Doc. No. 4).

Parcels B, C, D

Parcels B, C, and D, presently owned by Dobson Rock & Concrete, Inc., are part of a property which, as of 1955, consisted of the three adjoining parcels identified as X, Y, and Z as shown in Figure 3. As stated earlier, Parcel X was conveyed to

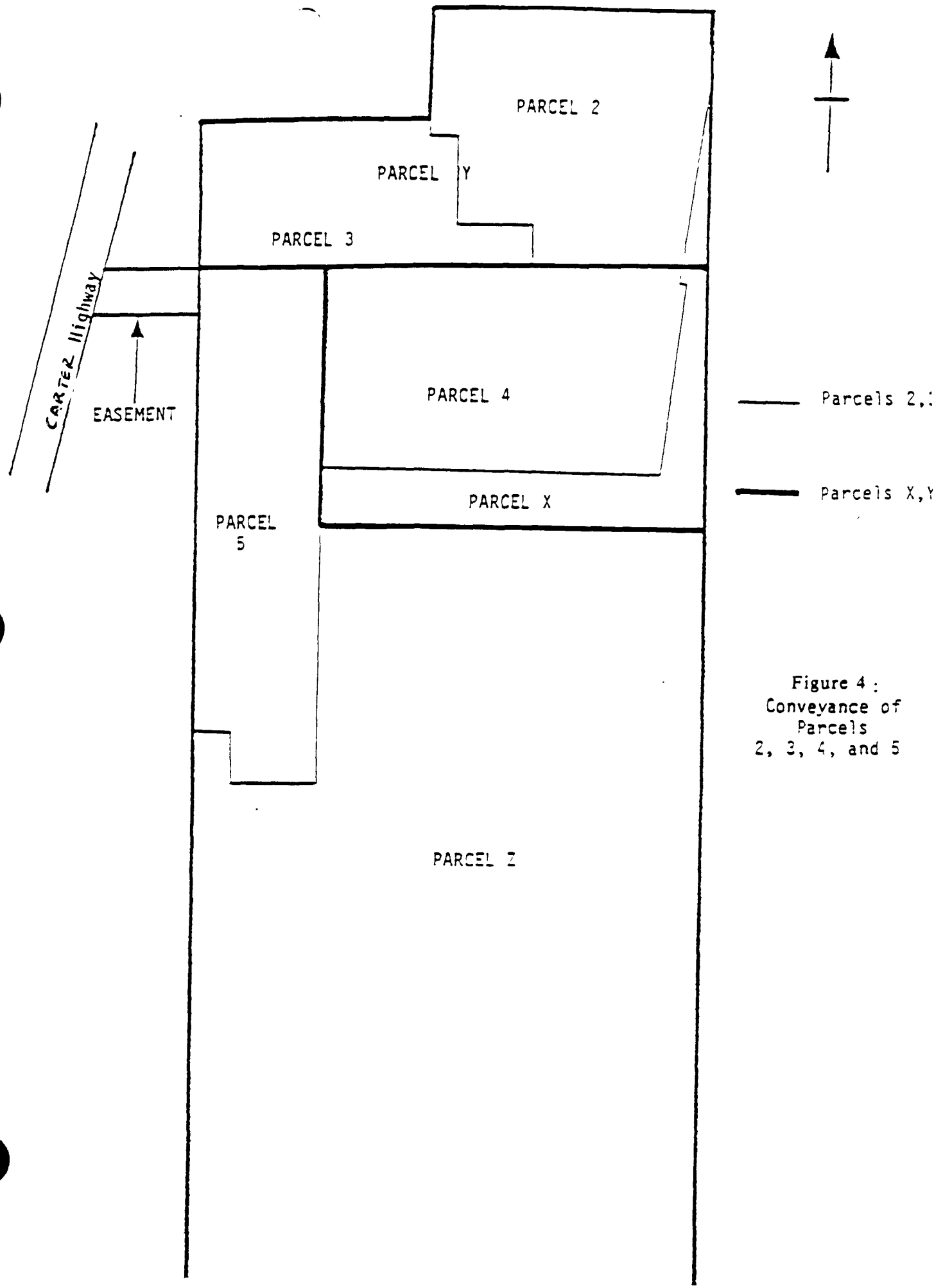


Figure 4 : Conveyance of Parcels 2, 3, 4, and 5

Frank Gallippi and Michael Coughlin on September 11, 1945 (Doc. No. 1) and Parcel Z was conveyed to Frank and Susan Gallippi on March 15, 1955 (Doc. No. 3). Elizabeth Duff conveyed Parcel Y to Frank Gallippi and Michael Coughlin through a statutory warranty deed executed on October 1, 1945 (Doc. No. 2).

A quit claim deed executed on April 5, 1978 (Doc. No. 5) by Mark Gallippi and Julia Gallippi, husband and wife, and Susan Gallippi, surviving spouse of Frank Gallippi, conveyed real estate which included Parcels 2, 3, 4, and 5 to Dobson Rock & Concrete Company, a partnership. The relationship between Parcels 2, 3, 4, and 5 and Parcels X, Y, and Z are shown in Figure 4. The Grantors in the quit claim deed gave up their share of the real estate ownership in exchange for a share in the partnership of Dobson Rock & Concrete Company. Barbara Coughlin, as Administratrix of the Estate of Michael Coughlin, is named as one of the Grantors in the quit claim deed, but she did not sign the instrument. Instead, she executed a separate quit claim deed on December 16, 1978 (Doc. No. 6), individually and as Administratrix of The Estate of Michael Coughlin, to convey her and the estate's shares of the ownership of the real estate to Dobson Rock & Concrete Company in exchange for a share in the partnership of Dobson Rock & Concrete Company.

On July 20, 1983, Dobson Rock & Concrete Company executed a quit claim deed (Doc. No. 7) conveying property which included Parcels 2 and 4 and portions of Parcels 3 and 5 to Dobson Rock & Concrete, Inc. These conveyed parcels currently make up Parcels B, C, and D of the site. The relationship between Parcels B, C, and D and Parcels 2, 3, 4, and 5 are shown in Figure 5. Dobson Rock & Concrete Company executed a statutory warranty deed on March 11, 1984 to correct the quit claim deed

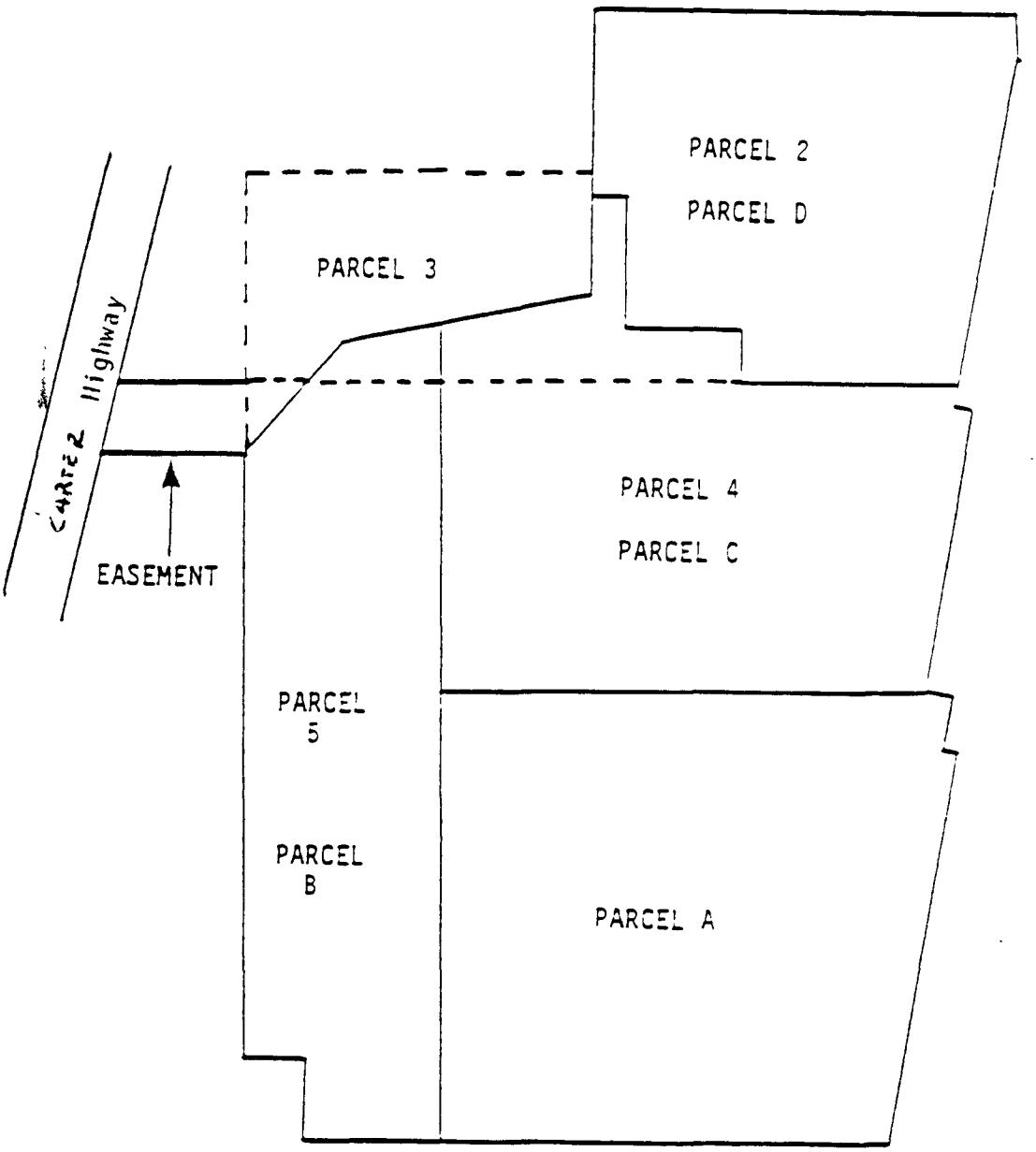


Figure 5: Conveyance of Parcels B, C, D

executed on July 20, 1983 (Doc. No. 9). The deed of March 11, 1984 did not affect the conveyance of the parcels that make up site Parcels B, C, and D. Mark Gallippi executed both deeds for Dobson Rock & Concrete Company.

The City of Mars designated Parcels 3, 4, and 5 in Figure 4 as Tax Lots 26, 33, and 14, respectively. When Dobson Rock & Concrete Company conveyed ownership of certain real estate to Dobson Rock & Concrete Inc., they transferred portions of Parcels 3 and 5 thus breaking-up Tax Lots 26 and 14. An agreement dated September 2, 1983 between Dobson Rock & Concrete Company, a Florida partnership, and Dobson Rock & Concrete, Inc., a Florida corporation, ajusted lot lines with approval from the City of Mars. Upon the lot line adjustment, the partnership owned all of revised Tax Lot 26 and the corporation owned all of revised Tax Lots 33 and 14 (Doc. No. 8). Revised Tax Lot 26 includes those portions of Parcels 3 and 5 which were not transferred to Dobson Rock & Concrete, Inc. Revised Tax Lot 33 includes Parcel 4 and a portion of Parcel 3 and is designated as site Parcel C as shown on Figure 2. Revised Tax Lot 14 includes portions of Parcels 3 and 5 and is designated as site Parcel B as shown on Figure 2 (Doc. Nos. 8, 11).

3.0 SUMMARY

The property known as Peanut Landfill is owned by the City of Mars which received title to Parcel A in 1966, and Dobson Rock & Concrete, Inc. which received title to Parcels B, C, and D in 1983. Previous owners of Parcel A include Frank and Susan Gallippi, Michael Coughlin, Toronto Paper Company, and Duran Enterprises. The previous owners for Parcels B, C, and D include Dobson Rock & Concrete Company, Frank and Susan Gallippi, Michael Coughlin, Toronto Paper Company, Elizabeth Duff, and Duran Enterprises.

REFERENCES

Document Number	Instrument	Date
1	Deed	09-11-45
2	Warranty Deed	10-01-45
3	Deed	03-15-55
4	Warranty Deed	07-25-66
5	Quit Claim Deed	04-05-78
6	Quit Claim Deed	12-16-78
7	Quit Claim Deed	07-20-83
8	Agreement	09-02-83
9	Warranty Deed	03-11-84
10	Report of Court Proceedings	06-26-85
11	Agreement	10-29-81

Example 4
Partial Title Search

SECTION 5

TITLE ABSTRACT

EPA requested that Contractor X conduct an abstract of title on the ACME Co. site to determine prior owners. The title abstract was conducted back to 1964, and supporting information appears in Appendix D.

Figure 3 shows the chain of title summary for this parcel, located in Township 1 South, Range 5 West, Section 11, Nowhere County. The current owner is Conglomerate Company.

As can be seen in Figure 3, on November 29, 1971 Large-as-Life Insurance Corporation was deeded the ACME Co. parcel foreclosure. The previous owners of the parcel, Fred G. Hithere Co. and Lammot D. Cuppers had mortgaged the land to Large-as-Life Ins. Corp. (Book 7890, Page 351). The owners of the parcel were in default of a mortgage, which amounted to $1,589,833 (Book 8642, Page 183). It is currently unclear what the mortgage was for. The property was then foreclosed to Large-as-Life Insurance Corp. by a Sheriff's deed (Book 8991, Page 734) dated 29 September, 1971.

On August 23, 1974 Large-as-Lite Insurance Corp. sold the ACME Co. parcel to Mr. and Mrs. Smith and John Doe (Book 10798, Page 328). On April 12, 1978 Mr. and Mrs. Smith sold the ACME Co. parcel to B&M Rental Equipment Co., (Book 12834, Page 904), the current owner.

EPA indicated that contamination of the ACME Co. site has occurred after 1973. This would indicate that Mr. and Mrs. Smith and B&M Rental Equipment Co. are both potentially responsible parties.

There are currently two known leases outstanding on the ACME Co. parcel. It should be noted that a lease does not have to be recorded with the Marian County Assessor. Consequently, there may be other leases pending on the property.

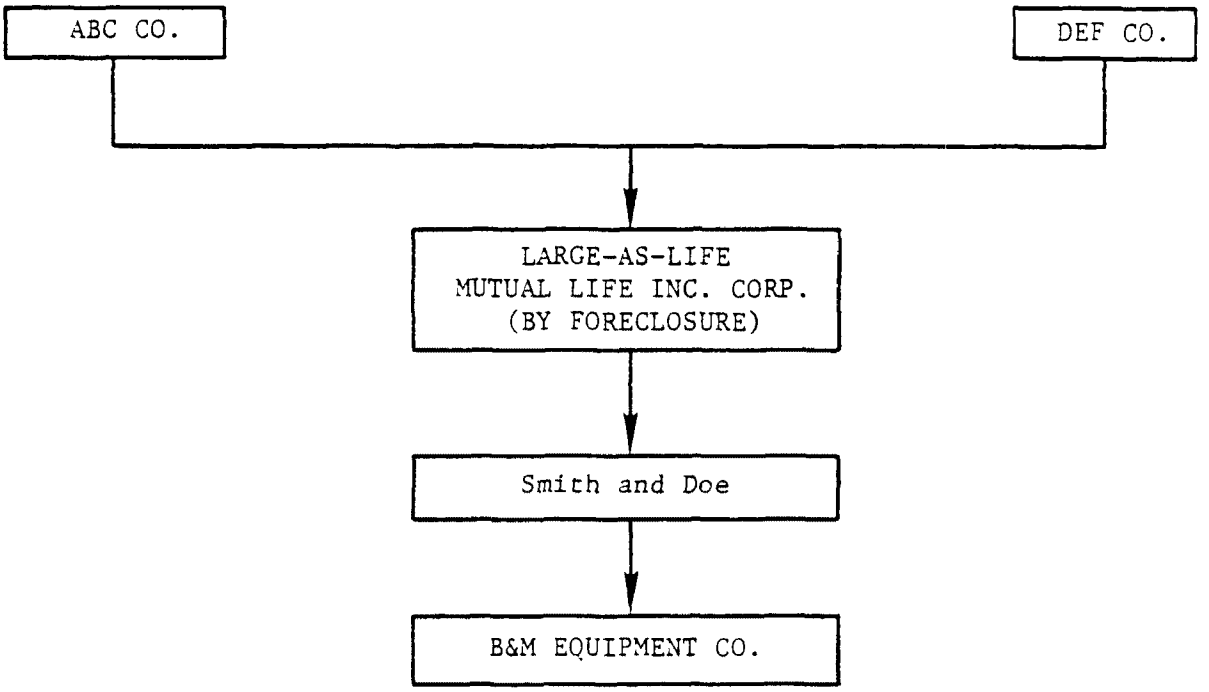


Figure 3. Chain of title summary for the B&M Co. parcel, December 13, 1985.

On July 28, 1982 the Agricultural Improvement and Power District leased a railroad spur that is located on the ACME Co. parcel (Book 16222, Page 331). This lease cites an unrecorded lease agreement whereby B&M Rental Equipment Co. leases the ACME Co. parcel to ACME Co. The lease has a period of five years. No other documentation on the ACME Co. lease was found.

The land has a current estimated market value of $88,370 including improvements. This estimate is derived by using a 1.15 multiplier (see Table 1). However, pesticide contamination could reduce market value prior to cleanup actions.

Example 5
Corporate Structure/Financial Assessment

SECTION 4

CORPORATE STRUCTURE/FINANCIAL ASSESSMENT

In determining the financial status of ACME Co. and B&M Rental Equipment Co. some assumptions have been made. These assumptions appear in Table 1. It is important to note that estimations of assets for potentially responsible parties is based on available data, and is only an estimation of actual financial status.

ACME CO.

Information on corporate structure was derived from a number of different sources and is presented below:

Full Corporate Name and Address

ACME Co.
P.O. Box 15
Yourtown, U.S.A. 12345

Facility Address

ACME Co.
P.O. Box 15
Yourtown, U.S.A. 12345

Registered Agent and Attorney

John S. Doe
Anywhere, U.S.A.

Officers, Directors and Incorporators

Jim Smith, President, Director, Shareholder and Incorporator
Dough Smith, Vice President and Incorporator
Mary Smith, Secretary, Director, and Incorporator

Table 1. ASSUMPTIONS USED IN DERIVING ASSETS OF POTENTIALLY RESPONSIBLE PARTIES

- To determine market value of land and improvements, contractor x used a 1.19 multiplier for residences, and 1.15 for commercial property. This information was one estimate from the County Assessor's office. It is assumed that the multipliers used by contractor x are accurate.

- Figures on 1984 income derived from previous years have been increased by 5.05% to estimate 1985 income. It is assumed that this is an accurate indication of inflation plus salary increases. This figure was derived from the Economic Report of the President, 1985, p. 291.

- If the ACME Co. parcel is badly contaminated with pesticides, this may adversely affect its selling price. The land and improvements currently have a market value of $88,369. If pesticide contamination renders this area unuseable, then this parcel could be worthless.

- Values on land and improvements were derived from the County Registry of Deeds records. It is assumed that these estimates are accurate. If EPA deems it important to pursue these figures, it may be necessary to retain an appraiser to confirm these findings.

- Assumes that contamination from the Co. parcel will not depress surrounding property values. For example, Doe and Smith own at least one parcel (No. 401 30 010 A) that is contiguous to he Oc. parcel. It contamination at the Co. site depresses surrounding property values, then estimates of Smith and Doe assets may not be accurate.

- Figures on corporate income were derived from Department of Corporations Annual Reports. These figures may have not been reviewed by a Certified Public Accountant. Assumes these figures are accurate.

Company Background

ACME Co. was incorporated in Alabama on December 28, 1970. The corporation is authorized to issue 2,000 shares of stock at $10.00 par value. Mr. Smith is listed on the 1985 Annual Report as the sole stockholder of ACME Co. ACME Co. formulates and custom blends pesticides for agricultural use. ACME Co. employs 6 people, including officers, and rents a 25,000 square foot one story aluminum building, presumably from B&M Rental Equipment Co. (8). On March 21, 1985 there was $20,000 in paid up capital from the stockholder. B&M Rental Equipment Co. owns the ACME Co. site. Materials used by ACME Co. are supplied by their customers, primarily local pesticide manufacturers. No information is currently available on clients of ACME Co. Their manufacturing season peaks from June to November, and is slow from December to March.

There are a few items of interest which deserve further mention. The Elk U.S. District Court and the Marian County Court records were searched for lawsuits pending against ACME Co. or principals. None were found. Furthermore, none have filed for bankruptcy.

Contractor X also researched records of the Uniform Commercial Code Division of the State of Alabama. This office records all liens a corporation holds for capital expenditures. This office reports no liens on record for ACME Co.

Alabama Department of Transportation records were reviewed to determine vehicles owned by ACME Co. This information is given in Table 2.

Financial data for ACME Co. is presented in Table 3. It is interesting to note that a large portion of current liabilities is made up by loans from stockholders.

Current ratio is the ratio of a company's current assets to current liabilities. It is an indication of a company's ability to quickly meet short term debts. Generally, a 3:1 ratio is considered safe, but this may vary considerably depending upon the specific industry in question.

Net income in 1980 dollars is given in Table 3 to show long term increases and decreases in ACME Co.'s earnings. It is based on 1980 dollars. There is a significant fluctuation in earnings for ACME Co., no clear increase or decrease in net income is apparent.

TABLE 2. VEHICLES OWNED BY ACME CO.

Year	Make/model
1946	Willy
1973	Travel Van
1978	Dodge Pickup[1]
1981	Chevrolet Sedan

Note: No liens pending against vehicles except as footnoted.

[1]Lien outstanding for $4,823.76

Source: Alabama Department of Transportation.

TABLE 3. FINANCIAL DATA FOR B & M CO. (ALL FIGURES IN DOLLARS EXCEPT FOR CURRENT RATIO)

	December 31,								
	1984	1983	1982	1981	1980	1979	1978	1977	1975
Current Ratio	3.30	1.35	0.48	0.03	0.15	0.12	0.05	0.50	11.89
Current Assets	2,558	3,442	1,905	418	3,336	3,917	1,554	10,352	22,604
Current Liabilities	776	2,544	4,010	12,012	22,039	31,945	28,269	20,804	1,909
Net Income	5,154	(9,158)	4,039	13,367	2,015	(6,701)	5,568	16,000	4,757
Net Income (1980 dollars)	4,090	(7,575)	3,449	12,119	2,015	(7,606)	7,030	21,769	7,285
Loans from Stockholders	---	2,097	2,348	10,402	20,201	28,374	24,474	13,274	---

Note: No data is available for 1976; See Table 1 for financial assumptions.

Source: Annual reports from the Department of Corporations on B&M & Co. Net Income in 1980 dollars is derived from the Economic Report of the President, 1985, page 291.

Figures given here indicate that ACME Co. is a fairly stable company. However, partial closure costs could have a significant impact on the financial future of this company.

ACME Co. Principals

Table 4 lists the current addresses and relationship of ACME Co. principals. All officers have held the same positions since January 1, 1972. Mr. Smith and Mary Smith were divorced on January 4, 1984 (9). This divorce record gives a full listing of both parties' assets, and appears as Appendix C. In this divorce, Mr. Smith agreed to pay $800 per month for child support, and $300 per month to Mary Smith. He must pay child support until his children are 18 or emancipated, and he must pay his wife for a period of 2 years from the time of divorce. Mr. Smith was given all of Ms. Smith's interest in ACME Co. as well as 400 shares of Elephant Oil Stock. This stock is currently valued at $62-1/8. It is currently unclear why Ms. Smith is still listed as Secretary and Director of ACME Co. in their 1985 Annual Report even though she no longer holds an interest in this company. Table 11 includes a summary listing of Mr. Smith and Mary Smith's assets.

Mr. Smith earned $1920.44 per month in January of 1984. Assuming a 5.05 percent increase per year (10), Mr. Smith now earns approximately $2018 per month, or $24,221 per year.

Mr. Smith is Vice President of ACME Co, and currently resides in Yourtown. Mr. Smith owns 40 acres of farmland in Coahoma County, AL. This land is identified as parcel no. 2073-000, and has an approximate market value of $25,959. There are no improvements on the property (Telecon between County Tax Assessor and Mr. Contractor, December 10, 1985).

Review of Arizona Department of Transportation records revealed no vehicles were owned by ACME Co. principals.

Contractor X investigated counties in the Yourtown area to determine if any of the ACME Co. principals are landholders. The following counties were searched: X, Y, Z and Q. According to the Marion County Assessor, only Ms. Smith held land. The Marion County Assessor reports the following information:

TABLE 4. PRINCIPALS OF B&M CO., AND THEIR AFFILIATIONS

Name	Affiliation
Mr. Jim Smith	President and Director since January 1, 1972, Incorporator and sole shareholder.
Mr. Doug Smith	Vice President since January 1, 1972, and Incorporator.
Mary Smith	Secretary and Director since January 1, 1972.

Source: Articles of Incorporation, Telephone and Informational Directories.

Parcel No. 1

Land Value	Improvements Value
18,000	$39,476

Assuming a 1.19 multiplier for current market value (see Table 1) this parcel is estimated to be worth $68,396 including improvements.

B&M EQUIPMENT CO.

Corporate structure data has been derived from a number of different sources, the results of which are presented below:

Full Corporate Name and Address

B&M Rental Equipment Co.
Anywhere, U.S.A.

Registered Agent and Attorney

Mr. Slick
Anywhere, U.S.A.

Officers, Directors and Incorporators

Mr. Smith, President, Director and Incorporator
Mary Smith, Secretary, Treasurer, Director and Incorporator

Company Background

B&M Rental Equipment Co. was incorporated on June 9, 1962 by the above individuals and is in good standing with the State of Alabama. The corporation is authorized to issue up to 16,000 shares of common stock at $1.00 par value. B&M Rental Equipment Co.'s incorporation papers state that it is involved in "renting and leasing of tools, cars and other vehicles". Contractor X researched many local sources of information in Anywhere (see Project Approach). However, there was no information on the nature of B&M Rental Equipment Co.'s business, or any indication that the business is active on a day-to-day basis. According to the Marian County Assessor, B&M Rental Equipment Co. owns one parcel of land, the ACME Co. site. The Marian County Assessor gives the following information on this parcel:

Parcel No. 2	Land Value	Improvements Value
	$12,412	$64,431

Assuming a 1.15 multiplier for current market value (see Table 1) this parcel is worth $88,370 including improvements. This figure may not be accurate, however, since pesticide contamination could have significantly lowered the value of this parcel.

It should be noted that B&M Rental Equipment Co. was incorporated by a Jim Smith and Mary Smith. It is assumed that these are the same individuals as the current officers, Mr. and Mrs. Smith.

A few items deserve further mention. The Elk U.S. District Court and Anywhere County County records were searched for lawsuits pending against B&M Rental Equipment Co. or principals. None were found. Furthermore, none have filed for bankruptcy.

Contractor X also researched records of the Uniform Commercial Code Division of the State of Alabama. This office records all liens a corporation holds for capital expenses. This office reports no liens on record for B&M Rental Equipment Co.

Review of Alabama Department of Transportation records revealed no vehicles were owned by B&M Rental Equipment Co.

Financial data for B&M Rental Equipment Co. is given in Table 5. It should be noted that current liabilities do not include taxes, and therefore are not accurate. For this reason current ratio is not included in Table 5.

B&M Rental Equipment Co. had a net income of $5,035 in 1984. It is currently unknown what the source of this income was. Part of this income may be from rental of the ACME Co. parcel. Figures on averaged net income show that B&M Rental has been operating at a break-even level since 1980. During this 4-year period, net income (1980 dollars) was $526. Net income in 1980 dollars is given in Table 5 to show long term increases or decreases in B&M Rental Equipment Co. earnings. It is based on 1980 dollars. These figures indicate that B&M Rental Equipment Co. may not be financially stable. However, sufficient information is not present to make a conclusive decision on the stability of this company.

TABLE 5. FINANCIAL DATA FOR B & M EQUIPMENT CO. (ALL FIGURES IN DOLLARS)

	December 31,								
	1984	1983	1982	1981	1980	1979	1978	1977	1976
Current Assets	11,526	7,413	5,406	8,011	4,798	17,729	13,046	8,525	2,576
Current Liabilities*	4,774	5,916	5,916	5,916	15,416	12,616	3,116	3,186	---
Net Income (Unaveraged)	5,035	(9,024)	(18,045)	16,666	4,294	6,994	6,642	10,245	---
Net Income (1980 dollars)	3,996	(7,464)	(15,410)	15,110	4,294	7,939	8,386	13,939	

Note: See Table 1 for financial assumptions.

*Does not include income taxes.

Source: Annual reports from the Alabama Department of Corporations on Co.. Net Income in 1980 dollars is derived from the Economic Report of the President, 1985, page 291.

B&M Equipment Co. Principals

Table 6 lists the current addresses of B&M Rental Equipment Co. principals and their relation to the company. Mr. Jim Smith and Doug Smith have held the same positions in B&M Rental Equipment Co. since May 1, 1962. In searching counties in the Yourtown area, Contractor X found that there are a number of parcels registered under ACME and/or John Smith. Using a 1.19 multiplier (see Table 1) the land currently has an estimated market value of approximately $289,000. It is important to note that this is only an estimate. This information should be confirmed by a certified appraiser.

Alabama Department of Transportation records were reviewed to determine vehicles owned by ACME and/or John Smith.

ACME TRENCHING AND BARRIER

While researching Alabama Department of Transportation records, it was noted that ACME Associates have an interest in ACME Trenching and Barrier, Inc. Information supplied below is from Dun & Bradstreet, December 20, 1985.

Full Corporate Name and Address

ACME Trenching and Barrier
Newtown, U.S.A.

Registered Agent

Harry Devine
P.O. 32
Newtown, U.S.A.

Officers and Directors

Jim Smith, President
Doug Smith, Vice President
Mary Smith, Secretary

Example 5

Pages 21 through 26 of Section 4 not included

Example 6
Financial Assessment

4.0 FINANCIAL ASSESSMENT

Financial data obtained from Dun & Bradstreet, Inc., Moody's Industrial Manual, Standard & Poor's Corporation, and the Glenville Township Assessor served as the basis for the financial assessment of the potential responsible parties. In certain cases, financial information was unavailable from these sources. References other than those listed above are referenced in the text. The information collected is provided in Attachment III. Addresses, phone numbers and contact persons for the local manufacturing facility and parent company are provided in Appendix C.

4.1 SITE OWNERS

Linex Landfillers, Inc.

Linex Recycling, Inc. was incorporated in California on September 20, 1973. Authorized capital consists of 1,000 shares of common stock owned by Laura Jordan, President. Other officers include:

Larry Jordan, Vice President
Diana Hoover, Secretary

Linex's business and operation have been discussed previously. The companylocation and headquarters are:

Box 1002
Essex Ave.
Franceville, CA 90274
(705) 336-2044

Assets from land and buildings owned by Linex total $93,810 (Table 8). A balance sheet for fiscal September 30, 1980 shows the following (Dun & Bradstreet, Inc., 1985):

Current Assets	$160,890
Current Liabilities	25,976
Working Capital	134,914
Other Assets	255,070
Worth	364,889
Sales	587,926

Net Income	30,769

The current ratio (current assets/current liabilities) of Linex in 1980 was 6.2, which is considered very good. The higher the ratio, the more assurance exists that the retirement of current liabilities can be made. Normally 2.0 or better is considered good. The industry financial norm for 1985 is 1.7 (Dun & Bradstreet, Inc., 1985).

Currently, Delta Express, Inc. is a mortgagee to the property owned by Linex. The mortgage was issued to secure payment pursuant to the terms of a contract for $125,000.

Harris and Company, Inc.

Harris and Company, Inc. was incorporated in California on January 1, 1952. Authorized capital consists of 10,000 shares of common stock owned by the officers. The principal officers include:

Chris P. Harris Jr., Chairman
James Poitier, President
Jeff Scorpio, Jr., Secretary

Harris' headquarters and facilities to manufacture hardwood lumber are located at:

662 N. Saline
Franceville, CA
705/336-2777

The true cash value of land with improvements on property owned by Harris is $517,000 (Table 8). Bill payments are on time indicating good liquidity. Sales are rated at 5.1 to 10.5 million dollars per annum.

In 1983, a transfer of ownership from CPH, Inc. to MCF, Inc., now known as Harris, included a $250,000 promissory note on equipment. In 1983, Harris mortgaged some property for $300,000 as collateral to secure a line of credit to be fully paid on or before October 5, 1993 (Attachment II, Harris & Co., Inc., 1983).

Raymond and Regina Morgan

The true cash value on property owned by Raymond and Regina Morgan in Glenville Township totals $17,460 for land and improvements. No other financial data was available.

Franceville, California

Franceville, California may be considered a potential responsible party if the site is redefined to include adjacent land. Financial information will be provided on Franceville if directed by the EPA primary contact.

Victor Welsh

Financial information will be provided on Victor Welsh, Inc. if directed by the EPA primary contact.

4.2 TRANSPORTERS

The only transporter identified was Linex Landfillers, Inc. Financial data for this company is presented in Section 4.1.

4.3 GENERATORS

Seventy generators were identified as using Linex for disposal services. The waste from 31 of these companies were reported by Linex as going to Janice County Landfill. Financial data were gathered for these 31 companies and are located in Attachment III. The focus of discussion was further narrowed to seven companies based on the following criteria selected by M & M and the EPA primary contact:

1) The companies represented a cross section of major manufacturing operations of the PRP generators. At least one company for each major type of operation was selected. These categories are electroplating, tool and die, plastics and printing;

2) The companies disposed of large quantities of waste through Linex; and

TABLE 8

LAND VALUATION OF PROPERTY OWNERS IDENTIFIED AS POTENTIAL RESPONSIBLE PARTIES[1]

OWNER	PROPERTY DESCRIPTION	TRUE CASH VALUE (Dollars) LAND	IMP	TOTAL	YEAR ASSESSED
Harris & Co., Inc.	FRL PT outlot 19 S11	5,400	103,250	108,650	1981
	Leiningers add Lots 1,2,3, and 4	4,750	14,630	19,380	1978
	Leiningers add N PT Lot 8	1,410	14,980	16,390	1978
	1st add S of RR outlot 18	9,520	253,720	263,240	1981
	1st add PT outlot 23	5,300	86,100	91,400	1978
	Part outlot 23 and 30	12,360	0	12,360	19--
	PT outlot 30	1,400	0	1,400	1978
	SPT E 5/12 W 1/3...	4,180	0	4,180	1983
				517,000	
Linex Landfillers, Inc. Recycling, Inc.	SM PT MID N2 SE4 S11 T31 R9	6,000	35,720	41,710	1978
	PT outlot 22, 23, 29 and 30 1st add.	11,620	40,470	52,090	19--
				93,810	
Morgan, Raymond	PT MID N2 SE4	4,900	11,380	16,280	1978
	Ex 2.78A S11 T31 129	1,180	0	1,180	1978
	Add S29FT E PT Ex.22A outlot 29-30-22				
				17,460	

NOTES: [1] Data from Glenville Township Assessor (Attachment III)

3) The companies were identified by Mr. Moore as possible contributors of potential hazardous waste to the PKT site.

The companies chosen (with parent corporations in parenthesis) are:

1) S. P. Hooser & Sons Co.
2) Marel Steel Inc. (Braniff Corp.)
3) Lou Chain Division (Lotex Corporation)
4) Dove, Inc. (Mash Patex, Inc.)
5) Pubix Corporation (Novel Corporation)
6) Merryl and File Division (Merryl, Inc.)
7) Universal Equipment Co., Inc.

The financial assessment of these seven companies includes partial balance sheets, discussions of significant corporate events and products, and a table of busienss ratios.

Business ratios that measure solvency, indicate efficiency and reveal profitability for these seven companies are presented in Table 9. These ratios are produced from the balance sheets presented in Attachment III and the methods of calculation in Appendix F (Industry Norms and Key Business Ratios, Dun & Bradstreet, Inc., 1985).

A company's financial status can be evaluated by comparing its ratio with ratios of similar companies. Comparisons are made with industry norms specific to the principle line of business of each company (Dun & Bradstreet, Inc. 1985). The industry norms are presented in Table 9 in parenthesis. The relative value of the business ratios can be compared to the norms as indicated at the foot of Table 9. A complete discussion of the comparative technique is provided in Appendix F.

TABLE 9

POTENTIAL RESPONSIBLE PARTY BUSINESS RATIOS[A]

PRP / Parent Co.	Solvency Ratios: Quick Ratio *1	Solvency Ratios: Current Ratio *2	Efficiency Ratios: Collection Period *3	Efficiency Ratios: Assets to Sales *4	Profitability Ratios: Return on Sales *5	Profitability Ratios: Return on Assets *6	Source and Statement Date
S. P. Hooser	1.3 (1.7)[C]	1.5 (2.2)	57.2 (45.2)	0.78 (0.47)	0.07 (0.04)	0.10 (0.07)	Moody's, 1983
Marel Steel Braniff Corp.	0.6 (0.7)	1.5 (1.9)	42.8 (14.9)	0.59 (0.31)	0.04 (0.05)	0.06 (0.10)	Moody's, 1983
Lou Chain Div./ Lotex Corp.	3.8 (1.2)	5.6 (3.0)	51.4 (39.9)	1.11 (0.57)	0.07 (0.03)	0.06 (0.04)	Moody's, 1983
Dove Inc./Mash Patex, Inc.	1.7 (1.3)	2.9[B] (2.3)	56.5 (52.1)	0.75[B] (0.55)	0.09[B] (0.05)	0.12[B] (0.09)	Standard & Poor's Corp., 1984 Moody's, 1983
Pubix Corp/Novel Corp.	3.2 (1.1)	5.2 (1.8)	69.5 (41.6)	1.2 (0.05)	0.10 (0.02)	0.08 (0.02)	Moody's, 1983
Merryl Distrib. Div. and File Div./Merryl	2.2 (0.9)	3.0[B] (2.1)	71.9 (36.8)	0.64[B] (0.05)	0.07[B] (0.05)	0.11[B] (0.07)	Standard & Poor's Corp., 1984 Moody's, 1983
Universal Equipment Co., Inc.	1.8 (0.9)	2.7 (2.4)	31 (36.8)	0.24 (0.52)	NA (0.04)	NA (0.06)	Duns 00-546-1520 February 28, 1983

TABLE 9 CONTINUED

* INDICATORS (Dun & Bradstreet, Inc., 1985)

*1 Any time this ratio is greater than or equal to 1.0, the business is said to be in liquid condition. The larger the ratio, the greater the liquidity. Ratios should be compared to the industry norm for a more accurate analysis.

*2 Normally a ratio of 2 or higher is considered good. Ratios should be compared to the industry norm for a more accurate analysis.

*3 Generally, where most sales are for credit, any collection period more than one-third over normal selling terms (40.0 for 30-day terms) is indicative of slow-turning receivables. Collection period should be compared to the industry norm for a more accurate analysis.

*4 Abnormally low ratios can indicate overtrading which may lead to financial difficulties if not corrected. Extremely high ratios can be the result of overly conservative or poor sales management, indicating that a more aggressive sales policy may need to be followed.

*5 This reveals the profits earned per dollar of sales (Profit Margin) and therefore measures the efficiency of the operation.

*6 Companies efficiently using their assets will have a relatively high return while less well-run businesses will be relatively low.

NOTES

NA - Not available
A - Ratios are calculated from 1983 data; unless marked otherwise.
B - Ratios calculated from 1984 data.
C - Industrial norms for the PRPs principle line of business (Dun & Bradstreet, Inc., 1985).

Example 6

Pages 39 through 45 of Section 4 not included

Example 7
Records Compilation/Transactional Data Base

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Appendix B: Project Computer Disk Program Operating Instructions

Appendix C: Generator, Transporter, Document Type, and Waste Type Match Lists

Appendix D: Units Match List with Unit Conversion Factors

I. INTRODUCTION

A. Project Background

The Sheffield Disposal Services site is located in an agricultural area near Sutton, West Virginia. It is comprised of a fourteen-acre surface impoundment and a forty-acre landfarm. During operation of the site, from approximately 1963 to 1973, waste oils and solvents were collected and then disposed of by surface impoundment, incineration, and landfarm. The State ordered the site closed in 1979.

Due to the disposal of various liquid organic wastes at the site, including PCBs, and the subsequent possibility of groundwater contamination, the site has been ranked for the NPL.

B. Project Approach

In September 1985, Coopers, Inc. received Work Assignment Number 600 from EPA through P&M to compile a transactional database from Sheffield Disposal Services site records. The transactional database would summarize all hazardous waste transactions of the site from 1963 to 1984. Jane Nixon was designated as Project Leader for this case and Richard Morris as Project Manager. Coopers, Inc. met with the primary contact for the case, Max Kraxi of EPA Region II, to discuss project objectives and to obtain specific directions regarding the information to be developed. Larry Everts, EPA Region II, was appointed the new primary contact as of December 1, 1985.

Coopers, Inc. personnel travelled to Des Plaines, Virginia, to meet with the primary contact and to examine documents which EPA had obtained from the site owners, Fred and Connie Sheffield. Those documents containing transactional information were then photocopied in Des Plaines, Virginia, and shipped to the Coopers, Inc. Office in Winson, Georgia. A computerized summary listing of Virginia Waste Shipping Control Tickets obtained from the State by EPA was also photocopied and sent to the Coopers, Inc. office in Winson, Georgia.

Coopers, Inc. was instructed by EPA to organize the document copies into generator files and then chronologically into transactions within each generator file. At the request of EPA, the computerized database system was developed to be compatible with an IBM PCXT. Transactional information from each document, i.e., waste type and volume, was entered onto data sheets which were subsequently entered into a computer database. As a quality assurance measure, this information was then printed out and compared with the document copies for accuracy. Every document was compared with its corresponding database entry to provide 100% quality assurance.

C. Sources Contacted

The sources listed below were contacted by telephone or in person by Coopers, Inc.:

U.S. E.P.A. CONTACT

Max Kraxi
U.S. E.P.A. Region II
Air and Waste Management Division
305 S. Rossi Avenue
Des Plaines, Virginia 22070
Telephone: (703) 265-0000

Larry Everts
U.S. E.P.A. Region II
305 S. Rossi Avenue
Des Plaines, Virginia 22070
Telephone: (703) 765-0000

II. SUMMARY

In accordance with P&M Work Assignment Number 600, the following tasks have been completed:

Task 1: Initial contact and discussion with Region II personnel.

Task 2: Review and copying of EPA records regarding the Sheffield Disposal Services site. Record copies organized into files.

Task 3: Entry of information from records into a computer database, including generator, transporter, waste type, and volume.

Deliverables for this Work Assignment include the following:

- A computer disk containing the transactional database.
- A computer printout of the transactional database.
- A users guide to accompany the computer disk.

A brief explanation of each of the attached Appendices is listed below:

Appendix A - contains a description of the guidelines used in the data extraction phase of the case. These guidelines have been discussed with, and accepted by, the EPA primary contact.

Appendix B - contains the computer program users guidelines. The computer disks, transactional database printout, and the two boxes of site document photocopies will be sent under separate cover.

Appendix C - consists of the following match lists:

1. Generators of wastes deposited at Sheffield Disposal Services site.

2. Transporters of wastes deposited at Sheffield Disposal Services site.

3. Types of wastes deposited at Sheffield Disposal Services site.

4. Types of documents present in the Sheffield Disposal Services site files.

Appendix D - contains a list of units used in the database and a list of unit conversion factors which have been used for the generator ranking summary.

APPENDIX A

APPENDIX A

GUIDELINES FOR EXTRACTION OF
SHEFFIELD DISPOSAL SERVICES DOCUMENTS

JULY, 1986

I. INTRODUCTION

Photocopies of documents obtained by EPA Region II from the Sheffield Disposal Services site were sent to Coopers, Inc., in Winson, Georgia. At EPA's request, Coopers, Inc. compiled a database summarizing transactions involving the deposition of wastes at the Sheffield Disposal Services site. The attached printout displays the transactional information from the documents and is sorted by generator.

II. DESCRIPTION OF FIELDS IN THE DATABASE

The transactions have been sorted alphabetically by generator and listed in chronological order within each generator on this printout. Individual transactions are separated by lines, with three transactions per page. The headings for the entries in the printout correspond to the fields in the database. When possible, information was extracted from the documents exactly as it appeared on the documents. General exceptions are noted below, and exceptions for a specific transaction are noted in the comments field for that transaction. Information not present in a given field on a document was entered as "Not Ind" (not indicated) in the appropriate field. Information present but illegible on a document was entered as "Illegible" in the appropriate field.

A. Generator

Generators are identified as those parties responsible for the disposal of wastes at the Sheffield Disposal Services site. Documents such as Virginia Waste Shipping Control Tickets identify the generators as such. In other documents, such as invoices or shipping orders, the generator is identified as the party billed for shipments of waste disposed of at the Sheffield Disposal Services site. A list of the generator names and their respective computer access code numbers appears in Appendix C.

B. Date

The date appearing in the printout for each transaction represents the shipment date. This date was generally found on the following document types:

Shipping Order
Way Bill
Bill of Lading
Memo Acknowledging Bill of Lading
Virginia Waste Shipping Control Document
Purchase Order

When the shipment date was not available, the invoice date was entered and was followed by an "E" for estimated date. If the invoice date was not available, a date was estimated from other documents which may have been present.

When a complete date was not available, "01" was entered in place of the missing information. An "E" was then entered in the field immediately following the date to indicate that it was estimated. Incomplete dates were also estimated by inferring information from the preceding or following documents when available. These dates were denoted with an "E". Documents not having a date were entered as 01/01/99 and were also denoted with an "E", i.e., 01/01/99E.

C. Waste Type

The waste type was extracted as it appeared on the documents. For those transactions having more than one supporting document, the most specific waste type was used. For example, if there were two supporting documents for a transaction with waste types given as "sludge" on one document and "electroplating sludge" on the other, "electroplating sludge" was entered. Where the waste type description was too lengthy to fit in the database, an asterisk "*" was entered as a flag for the user to check the original document for a complete description. Lengthy waste types were also abbreviated if possible. The following abbreviations were used:

AL	Aluminum
ALK CMPND	Alkaline Compound
AMMON	Ammonium
AROM	Aromatic
CA	Calcium
CONTAM	Contaminated
DIOX	Dioxide

FE	Iron
HAZ	Hazardous
HCI	Hydrochloric Acid
HYDROCARB	Hydrocarbon
INORG	Inorganic
METH CHLOR	Methylene Chloride
MIN SPIRITS	Mineral Spirits
MISC	Miscellaneous
NA	Sodium
NONCHLOR	Nonchlorinated
ORG	Organic
SOLN	Solution
SOLV	Solvent
SULF	Sulfuric
TETRA	Tetrachloride
VEG OIL	Vegetable Oil

In those cases where several waste types with associated quantities per waste type appeared on a single document, each waste type with its respective quantity was entered as a separate transaction. For example, a document listing 40 gallons of waste oil, 5,000 gallons of sludge, and a 150-pound cylinder of chlorine was entered as three separate transactions, one for each waste type. If several waste types appeared with only one quantity on a document, the waste types were listed together and treated as a single transaction. Thus, a document listing 500 barrels of used oil, waste water, and sludge was entered only once with a waste type of used oil/waste water/sludge.

A list of waste types and associated computer-access codes can be found in Appendix C.

D. Waste Volume

The waste volume was extracted as it was written on the documents.

E. Waste Unit

Waste units were generally extracted as they appeared in the documents. However, for those transactions with more than one supporting document in which more than one unit was listed, the more specific unit was used. For example, if units such as drums and gallons appeared on different supporting documents, gallons was used.

Appendix D contains a list of units used plus computer-access codes.

For purposes of a final generator ranking summary, each unit has a calculated conversion factor so that total volumes of waste may be expressed in one unit, gallons. Units such as loads and cartons were given a conversion factor of 0.00. Cylinders of gas were also not included. The generator ranking summary will therefore not account for the following units: cartons, cylinders, lots, and cases. A listing of the units with their respective conversion factors is also included in Appendix D.

F. Transporter

The transporter often appears on documents as the "hauler," "carrier," or under "ship via:" as on a purchase order. A list of transporters with their respective computer-access codes appears in Appendix C.

G. Destination

The destination of wastes as indicated on the documents was generally Sheffield Disposal Services. Other destinations included Peace Waste Disposal and the Label Company, in which case wastes were shipped from a generator to Sheffield Disposal Services and then from Sheffield Disposal Services to the respective company.

H. Document Type

Many different types of documents were present in the Sheffield Disposal Services site records. These document types and their associated codes are listed in Appendix C. Documents which did not contain a printed name, such as "invoice" or "purchase order" were given a descriptive name, as in "typed statement," or "handwritten notes."

I. Document Number

Unique, pre-printed business form numbers which were used by the generator to reference a document were considered to be document numbers.

J. Inventory Number

Inventory numbers were assigned to the documents subsequent to their receipt by EPA. Each document was stamped with a unique, alpha-numeric number which appears in the lower right-hand corner of each page.

K. Code

A comment field has been included in the database. A single letter entered in the "code" field of the printout is an indicator of missing or unclear information. An explanation of each code letter can be found at the beginning of the printout and also on the computer database. A list of the comment codes and their explanations appears below:

Code	Explanation
A	Outgoing waste shipment from Sheffield Disposal Services.
B	Outgoing waste shipment from Sheffield Disposal Services to Label Company.
C	Peace Waste appears on documents as broker or middleman.
D	Sheffield Disposal Services is not specifically mentioned on this document, but was assumed to be the disposal site due to information present on similar, adjacent documents in the file.
E	Transaction is also listed under State of Virginia Receiver Monitoring Reports, as "Waste Shipped but not Received."
F	Document number obtained from Virginia Receiver Monitoring Reports.

APPENDIX B

APPENDIX B

PROJECT COMPUTER DISK

PROGRAM OPERATING INSTRUCTIONS

INTRODUCTION

The Sheffield Transactional Database Management System is a menu-driven program written in dBASE III and operational on all personal computers supporting dBASE III. The system operates in two modes: one for the manager, who has the capability of adding, editing, and deleting data; and one for the user, who can access the information in the form of database searches and reports, but cannot alter the contents. The manager mode is password-protected to ensure the integrity of the data. The system employs multicolored screens, but also operates on monochrome monitors. The program is delivered with a database that has been checked for accuracy in content, based on the documents available.

INSTALLING THE SYSTEM

The system is delivered with the assumption that it will be installed on a 10 megabyte fixed disk of an IBM PC or compatible using MS-DOS operating system. The programs and data files will occupy approximately 1.5 megabytes of disk storage, and have been placed on four sequentially-numbered floppy disks with the MS-DOS "BACKUP" command.

It is suggested that a subdirectory be created on the target system's fixed disk. If the subdirectory is called "SHEFIELD", follow this series of commands with the first floppy disk in the "A" drive:

```
C> RESTORE A:  C:\SHEFIELD\*.*
```

Insert the remaining floppy disks in order, as prompted.

STARTING THE SYSTEM

Set the current directory to the subdirectory where the program resides; for example:

```
C> CD C:\SHEFIELD
```

Bring up dBASE III. Obtain help from your system administrator or follow the instructions in the dBASE III user's manual. From the dBASE III "dot" prompt type:

```
. SET DEFAULT TO C
. DO SHEFIELD
```

From this point all terminal input will be with the database management program until the program is terminated.

MANAGER VERSUS USER MODE

The first menu to appear allows selection of the mode in which to operate. The manager mode requires a password to continue to the menu of management functions. When entering the password, the characters will not be shown on the screen. The password can be obtained from the primary contact. Selection of the user mode immediately brings up the menu of user functions, which is actually a limited subset of the manager functions with the exception of the review database records option. If a color screen is used, all management operations are conducted with an amber screen and all user functions are displayed in green.

DESCRIPTION OF SYSTEM FUNCTIONS

The following descriptions detail the operational features of the program. The "M" and/or "U" in parentheses next to the function indicates which mode offers this command (M-Manager, U-User).

Add Database Records (M)

Choosing this option begins the sequence to add new data to the database. A sub-option is offered to allow the previous record's information to be brought into the new record, then modified. This is useful when a series of records contain similar data. Information is input via a formatted screen.

The "arrow" keys on the keypad can be used to move the cursor around the screen. The "insert" and "delete" keys on the keypad are also useful for modifying the information as it is added. Holding the control key (CTRL) and the "END" key from the keypad simultaneously will end the add sequence at any point on the input screen. The program will prompt to continue or return to menu, allowing the user to continue adding records or return to the function menu.

Edit Data By Record Number (M)

This option allows the manager to alter data in existing records. The program prompts for the record number to be edited, then displays the record with the same screen as the "add" feature. The special keys described for the "add" feature function in this option also.

Delete Data Records (M)

This option prompts for the record number of the record to be deleted, then displays the information of the selected record in a formatted screen. The manager is given the option of recalling the record or actually deleting it. It should be noted that after a record is deleted, the record numbers for all subsequent records will change. Also note that after any delete, add, or edit functions have been performed, the utility option of reindexing the database must be performed for the program to work properly.

Search the Database (M, U)

This option presents a number of sub-options. The user selects whether a list of the record numbers meeting the search criteria is desired or if a display of the data in individual records is desired. The user also selects whether or not to print the results of the search or view the results on the screen.

Once these options are selected, the search selection screen is displayed. This displays the database items that can be searched with a code number used in the construction of the search phrase. The search phrase is constructed by:

1. Selecting the search parameter by number;

2. Selecting the search operator (e.g., =, >, <, $) from the list in the right, bottom screen;

3. Entering the information to be searched for in the space provided as "condition."

Thus, a phrase is created that can be read as "search for records where VOLUME is greater than 10000 gallons." Note that where data is coded, such as in generator name, the condition must be the code number of the generator, not the name itself. Refer to alphabetized lists of codes in Appendix D.

It is possible to search on a combination of up to three phrases. These are entered in sequence from the search selection screen. The combined phrases are joined by the "AND" operator only. No "OR" operator is available. For example, searches are conducted as: "search for records where phrase 1 AND phrase 2 AND phrase 3 are all true."

When the "display individual records" option is in effect, the first record in the database meeting the search condition(s) is displayed and the option to search for more records meeting the condition(s) is given. This will step through all records meeting

the condition(s) until no more are found. Also note that in the manager mode, the records are displayed in a format that allows the record to be edited, but in user mode the record contents are displayed but cannot be altered.

Generate Reports (M, U)

Selection of this option allows reporting of data in any of three report formats. The quality assurance and the final reports are similar except for the order in which the data are reported. The QA report appears in the same order that the records were entered into the database. The report prints the record number and all the data fields, irrespective of whether data exists in the fields. The final report is sorted alphabetically by generator and chronologically within each generator and, in most cases, only prints fields where data have been entered. The final report option allows for the selection of a single generator to be printed out or for all generators to be printed.

The summary report shows one line per generator, with the total gallons of waste generated and the percent of total waste. The summary is calculated by converting all volumes to gallons, according to predetermined conversion factors for all non-gallon units. The conversion factors are in the "units" match file. All reports are in 80-column format.

A list of the generators sorted alphabetically and their corresponding match codes can be displayed either on the screen or printed. Also, the user can print out a list of explanation codes which were used in the transactional database.

Utility Menu (M)

This option must be selected whenever records have been added or deleted from the database or when records have been edited to change generator information. The only option available is to reindex the database. This also updates generator information which is used for the summary report. Errors in reported results will occur if this option is not performed after the database is altered.

Review Database Records (U)

This unique user option allows individual records to be displayed on the screen. Records are chosen by number only, but are found instantaneously as opposed to the search function which can take some time. Once records are displayed, they can be printed individually by pressing the shift key and the "PrtSc" key simultaneously (this is referred to as a "Screen Dump").

Quit the System (M, U)

This option is selected at the end of a working session. It is important to select this option to quit the program. Never turn off the computer without first using this option - DATA CAN BE LOST. If you are working with the program on removable disks, never remove the disk until you have quit the system.

BACKING UP THE DATA

No program provision has been made for backing up data, because the program can be run from various disk drives and system configurations. Data should be backed up periodically by copying all DBF-extension files to other disks. This should be done from the DOS level with the COPY command. Use the BACKUP command if the files are too large for the disk to which files are being copied. It is a good idea to keep a backup copy of all PRG- and FMT-extension files in case the program itself should be corrupted. Consult with the system administrator for assistance.

MODIFYING CODED DATA

The program makes no provisions for modifying the files that contain coded data. These files are referred to as "match files" because they have a match for the code in the main database. Match files can be altered at the dBASE III system level by someone knowledgeable in dBASE III. These files must not be sorted in any other order than by the code number, or errors will occur in matching the data. It is important for the match number to always equal the record number in the match files or incorrect information may be printed. Create index files to view the match files in any other order.

APPENDIX C

APPENDIX C

GENERATOR MATCHLIST

Code	Generator
1	A&P INK
2	AMERICAN CHEMICAL, INC.
3	AMERICAN PRINTING CO.
4	AMERICAN WAXING CO.
5	ANVER OIL, INC.
6	APEX REFINING CO.
7	DIXON REFINING CO.
8	DOBSON STEEL, INC.
9	DOLE PRINTING
10	DUREX CHEMICAL CO.
11	FARGO OIL, INC.
12	FONNIE REFINING, INC.
13	GAFF OIL CO.
14	MA-CHEM, INC.
15	NEIL CHEMICAL CO.
16	NEWIS OIL CO.
17	POLIET CHEMICAL CO
18	PUNX UNIVERSITY
19	SONYX OIL CO.
20	SOUTHLANE STEEL CO.
21	TULSA CHEMICAL CO.

GENERATOR MATCHLIST (CONTINUED)

Code	Generator
22	VAMP OIL CO.
23	WEBB REFINING CO
24	WOLFF OIL, INC.
25	XENON OIL CO
26	ZAPP CHEMICAL

TRANSPORTER MATCHLIST

Code	Transporter
1	ARNOLD TRUCKING
2	BORRIS TRUCKING
3	BANIF TRANSPORTATION
4	CIME WASTE EXPRESS
5	CUBIX CHEMICAL CO.
6	DINEX TRUCKING
7	FALLS LTD
8	F&F TRANSPORT, INC.
9	G&S WATER CARRIER
10	GANTE TRANSPORT, INC.
11	HOOLER OIL CARRIER
12	ILLINOIS DISPOSAL SERVICE
13	JAPP TRANSPORT, INC.
14	JOHN DELIVERY SERVICE
15	KENOL EXPRESS
16	KELVIN TRANSPORTATION
17	LUMBARD EXPRESS
18	LENOX TRANSPORTATION
19	MOONEE EXPRESS
20	PAX WASTE CARRIER
21	REX TRUCK LINES

TRANSPORTER MATCHLIST (CONTINUED)

Code	Transporter
22	R&R TRUCKING
23	RALPH TRUCKING
24	SUNNY DISPOSAL SERVICE
25	TOLSON REFUSE CARRIER
26	VAN TRUCKING
27	WARREN TRANSPORTATION

DOCUMENT TYPE MATCHLIST

Code	Document
1	CHECK STUB
2	WAY BILL/BILL OF LADING
3	CORRESPONDENCE
4	HANDWRITTEN NOTES
5	INVOICE
6	LAB REPORT
7	MEM ACK. BILL OF LADING
8	SHIPPING ORDER
9	STRAIGHT BILL OF LADING
10	VA SHIPPING-CONTROL TICKT
11	TYPED STATEMENT
12	WAYBILL
13	WEIGHT TICKET
14	WEIGHT TICKET/BILL LADING
15	BILLING STATEMENT
16	PURCHASE ORDER
17	BILL LADING/FREIGHT BILL
18	TAPE RECEIPT
19	CONF. OF REMOVAL (GEN)
20	MANIFEST/BILL OF LADING
21	OFFICE MEMORANDUM

DOCUMENT TYPE MATCHLIST (CONTINUED)

Code	Document
22	CHECK STUB/TYPED STATEMT.
23	DELIVERY TICKET/TIME CARD
24	SCALE WEIGH TICKET
25	LETTER OF RECEIPT
26	LETTER OF INTENT
27	CONFIRMED PURCHASE ORDER
28	SHIP CTRL TICKET/BILL LAD
29	SHIP CTRL TICKET/WGH TKT
30	REQUISITION
31	INSTRUCTIONS
32	CONTRACT
33	CONDITIONS
34	LADING/WAYBILL,WEIGH TKT
35	APPLICATION FOR DISPOSAL
36	PHYSICAL PROPERTIES INFO
37	NOTE AND STATEMENT
38	REQUISITION/WASTE RECD
39	HANDWRIT NOTE-WASTE RECD
40	HANDWRITTEN INVOICE

WASTE TYPE MATCHLIST

Code	Waste
1	ANHYDROUS AMMONIA
2	CHEMICAL WASTE
3	CHLORINE
4	COOLING TOWER SLUDGE
5	CUTTING OIL
6	DRILLING MUD, OILY
7	FISH OIL EMULSION
8	FLOCKING WASTE
9	GLYCOL/HYDROCARBON/WATER
10	LIQUID WASTE
11	LUBE OIL/WATER
12	MOLASSES/WATER
13	MUD/SILT/WATER
14	NON-HAZ WASTE WATER
15	OIL/WATER
16	OILY WATER
17	SPENT CAUSTIC
18	WASHRACK SUMP MATERIAL
19	ALUM OXIDE/TITAN DIOXIDE*
20	FISH OIL EMULS/OIL/SLUDGE
21	OIL/WASTE WATER

WASTE TYPE MATCHLIST (CONTINUED)

Code	Waste
22	OIL/SOAP/WASTE WATER
23	WASTE OIL/WATER
24	MOTOR OIL/DIE OIL/WATER
25	WASTE OIL
26	WASTE WATER, CLASS 3
27	WASTE CODE 241050

APPENDIX D

APPENDIX D

UNITS MATCHLIST

Code	Unit	Conversion Faction
1	BARRELS (S)	55.000
2	CUBIC YARD (S)	201.960
3	GALLONS (S)	1.000
4	LOAD (S)	0.000
5	CARTON (S)	0.000
6	150-LB CYLINDER	0.000
7	TANK TRUCK (S)	4500.000
8	42-GAL. BARREL	42.000
9	2000-LB CYLIND.	0.000
10	DRUM (S)	55.000
11	POUND (S)	0.125
12	CUBIC FEET	5452.920
13	55-GALLON DRUMS	55.000
14	LOT	0.000
15	PINTS	0.125
16	25-GALLON DRUMS	25.000
17	CASES (24 CANS)	0.000
18	ILLEGIBLE	0.000
19	NOT INDICATED	0.000

Example 8
Generator Ranking

SITE - Site Records
Ranking of Generators by Total Waste Disposed

Rank	Generator	Total Volume (gallons)
1.		217250
2.		67550
3.		65501
4.		62645
5.		55385
6.		51900
7.		50120
8.		39130
9.		29195
10.		26400
11.		25000
12.		16830
13.		16656
14.		15665
15.		13090
16.		11990
17.		8800
18.		8313
19.		8195
20.		6930
21.		6490
22.		5610
23.		5000
24.		4565
25.		3660
26.		3504
27.		3082
28.		2915
29.		2915
30.		2758
31.		2145
32.		2090
33.		1595
34.		1375
35.		1265
36.		1210
37.		1100
38.		825
39.		688
40.		660
41.		643
42.		605
43.		500
44.		495
45.		385
46.		334
47.		331
48.		330
49.		330
50.		330
51.		220
52.		165

SITE - Site Records

Ranking of Generators by Total Price Paid for Disposal

Rank	Generator	Total Price (dollars)
1.		64279.00
2.		56185.00
3.		28557.50
4.		28026.25
5.		23387.00
6.		19465.00
7.		18756.00
8.		18616.00
9.		17265.00
10.		14019.00
11.		10000.00
12.		8175.00
13.		7138.00
14.		7089.00
15.		6626.00
16.		5280.00
17.		5122.00
18.		4785.00
19.		4072.50
20.		3750.00
21.		3150.00
22.		3025.00
23.		2772.00
24.		2616.00
25.		2305.00
26.		2040.00
27.		1947.00
28.		1664.00
29.		1500.00
30.		1500.00
31.		1428.00
32.		1325.00
33.		1300.00
34.		900.00
35.		900.00
36.		840.00
37.		750.00
38.		718.00
39.		713.00
40.		712.00
41.		668.00
42.		596.00
43.		575.00
44.		570.00
45.		500.00
46.		420.25
47.		418.00
48.		400.00
49.		300.00
50.		250.00
51.		225.00
52.		200.00

SITE - Site Records
Waste Types and Volumes

Generator:

Waste Description	Total Volume (Gallons)
Acetate	55
Acetone	110
Bayfit 551 polyiso cynate	220
Chemical waste	1850
Corn syrup	6105
Corn syrup waste	615
Ethylene glycol	55
G.E. silxicone	55
Glue	165
Isopropanol	55
M.E.K.	1155
M.E.K. scrap chemicals	55
MONDUR P F	275
Methylene chloride	2255
Mixed chemicals	220
Mult	55
Mult 5903	165
Oil	770
Poly oil	55
Poly oxialkylene	55
Povol	110
Sludge	55
Solvent standard R66	110
Stepoit BA 1273	55
Toluene	55
Waste kerosene	55
Waste oil	165
Water treatment	165
Water treatment waste	550

GENERAL ELECTRONIC

APPENDIX A

TELEPHONE INTERVIEW SUMMARIES

1/30/85 Marsha Thomas, U.S. EPA Region 15. The site is currently being used for storage of transformers. No other activity is occurring at the site.

2/10/85 Douglas City Hall. PCB level at the General Electronic site was lower than the amount allowed to be released.

2/13/85 Jim Ford. Office of Environmental Health, State Health Service Division. There was no containment of the PCB plume.

2/14/85 John Bronson, GW Air Pollution Control. Described the curtain pit burner incineration process. Bronson cancelled General Electronic permit to operate and incineration due to deteriorating walls of the incinerator. General Electric is on the Superfund List. Groundwater level is within 10 feet of the curtain pit burner and the ground was soaked up with oil around the incinerator.

3/1/85 Claude Wilson, former property owner. These partners were involved in the business: Wilson, Dunn (deceased), and Michelle Monroe. Approximately 10 years ago. Claude Wilson sold his one-third of the business to Jerry Gordon. Petty sold her inherited one-third of the transformer business to Jerry Gordon. Dux Chemicals is buying the property from Claude Wilson.

3/5/85 Michelle Monroe, partner, General Electronic. Claude Wilson initially owned the 40 acre parcel of land. Jerry Gordon and Ms. Monroe are equally owning partners. Ms. Monroe and Mr. paid Claude Wilson rent after he leased to two acre parcel of land from Dux Chemicals. Payment was charged to Mr. Monroe and Mr. Gordon for the land until 1984. No wastes have been removed from the property.

3/5/85 Jerry Gordon, Blending Machine, partner, General Electronic. Michelle Monroe owns and operates one-half of General Electric business. Mr. Gordon stated that he was a non-operating partner and had nothing to do with the business transactions of General.

3/4/85 Nate Nixon, TSCA, U.S. EPA Region. TSCA inspections were made on for improper storage of oil, violation of broken storage of PCBs, burning PCB oils, and lack of proper files.

3/5/85 Michelle Monroe, partner, Mr. Monroe explained what PCB laden oil and non-PCB laden oil was used for. He also explained the business operations at Northwest Transformer.

3/7/85 Nate Nixon, TSCA, U.S. EPA Region 3. Oil was drained into a 4,000-gallon bulk storage tank. The bulk storage tank did not cause the contamination but, the storage of the oil draining from the transformers to the bulk storage tank caused the contamination.

3/7/85 John Adams, Dux Chemicals is moving to another location east of Dolton, near the Empire Wood Company.

4/8/85 Norris Bolinbrook County Environmental Health Department. The Dolton-Dip garbage dump did not contribute PCB contamination to General Electronic.

4/8/85 Kathy Olson, Empire Wood Company trucks have been seen on Road. Transformers and green boxes are being disposed of at the back of Sumatra a wood shaving outfit.

4/8/85 Sumatra, a wood shaving outfit. No trucks have been seen moving materials on Grand Road.

5/13/85 Nate Nixon, TSCA, U.S. EPA Region 3. The records subpoenaed are extensive and include 15-20 utility companies. TSCA and Superfund are trying to coordinate both their activities to assist each other. Sampling had started March 17, 1985 and initial activities had started April 1, 1985. The by-products of PCBs are an issue being considered.

5/14/85 Marsha Thomas, U.S. EPA Region 3. The transformers are being moved to Grand to be stored on privately owned property which does not have to be RCRA approved.

6/11/86 John Bronson, Davis Air Pollution Control. On April 11, 1972, Northwest Transformer filed notice with Davis Air Pollution Control to build an incinerator. It was approved April 14, 1972. General Air Pollution got involved because of complaints from residential areas. The salvage yard incinerated transformers in an open pit from 1961 - 1972. On May 5, 1977 black smoke was observed. The salvage yard used oil to start their burning operations. January 13, 1984, Bronson told Mike, that if they were going to use the incinerator they should repair it. Davis Air Pollution Authority wrote a letter to Scrap on January 29, 1985 stating that they weren't allowed to use the incinerator. They replied stating that the incinerator had not been used since 1984. On February 6, 1985, their permit to operate the incinerator was cancelled.

FEDERAL GOVERNMENT CONTACTS

Marsha Thomas	U.S. EPA Region 15 57 East Wood Street Saline, KS 67007 (900) 224-3205
Nate Nixon	U.S. EPA Region 15 57 East Wood Street Saline, KS 67007 (900) 224-3772
Daniel Hooser	U.S. EPA Region 15 57 East Wood Street Saline, KS 67007 (900) 224-2704

STATE GOVERNMENT CONTACT

John Bronson	Davis Air Pollution Control 67 East Randolph Avenue Oak Park, KS 67007 (900) 304-7200
John Wayne	Department of Health Services 907 North State Street Bronx, KS 67003 (900) 624-1222

LOCAL GOVERNMENT CONTACTS

Burt Eastwood	Bolimbrook County Environmental Health Department 102 South Kennedy Drive Harvey, KS 67072 (900) 242-1050
Phillip Norris	Bolimbrook County Environmental Health Department 102 South Kennedy Drive Harvey, KS 67072 (900) 242-1114
Bob Carrington	Department of Social and Health Services 609 South Jeffrey Avenue Saline, KS 67145 (900) 762-4005
Douglas City Hall	256 West Ford Drive Dolton, KS (900) 692-2645

PRIVATE CITIZEN CONTACTS

Michelle Monroe Two locations:	Partner, General Electronic Main facility 50 South 2nd Avenue Dolton, KS 67228	 Scrab 309 West 77th Street Dolton, KS 67228
Jerry Gordon	Partner, General Electric Blending Machine P.O. Box 202 Saline, KS 67137 Work: (900) 335-9991	 Home: (900) 675-3332
Claude Wilson	Partner property owner 420 Clark Street Moline, KS (900) 667-3220	
John Adams	Partner, property owner Dux Chemical 60 North Nostrand Avenue Harvey, KS 67248 (900) 125-6661	
Gerald Regan	Attorney at Law P.O. Box 35 222 South Claxton Dolton, KS 67228 (900) 165-2002	
Jeff Reagan	Healthy Environment 39 South Melon Road Saline, KS 67145 (900) 167-2449	
Kathy Olson	Empire Wood Company 6720 Manish Avenue Dolton, KS (900) 165-9027	
Washington	981 West 66th Street Dalton KS 67228 (900) 165-5620	
Holly Apple	472 North Clarendon P.O. Box 670 Dolton, KS 67228 (900) 165-4403	