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Office of Enforcement
and Compliance Assurance
Office of Site Remediation Enforcement

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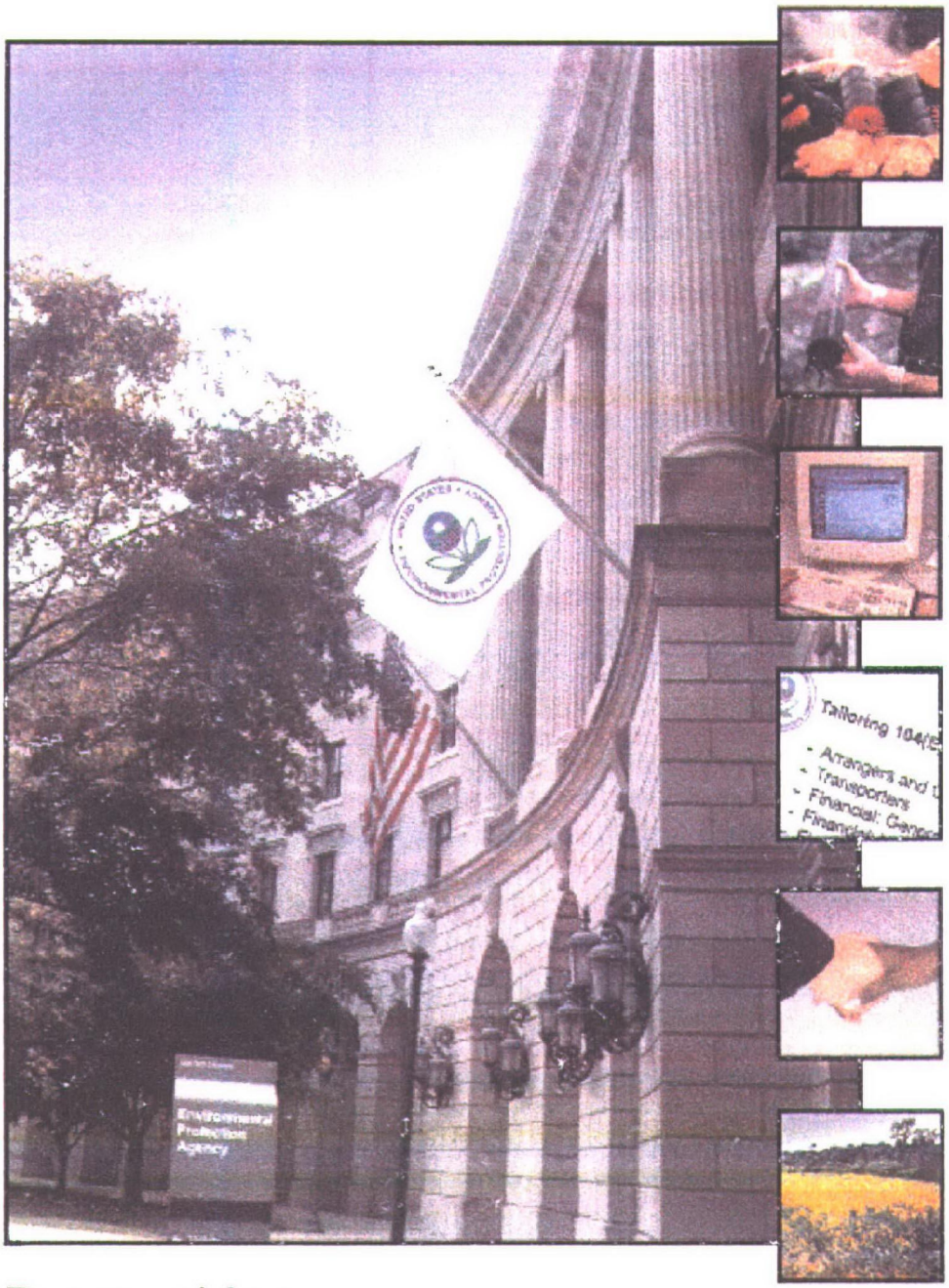
PRP Search Manual



Prepared for:
Personnel Performing PRP Searches

United States Environmental Protection Agency
Washington, D.C. 20460

August 20, 2003

Office of Enforcement and Compliance Assurance

MEMORANDUM

SUBJECT: Transmittal of the 2003 Potentially Responsible Party Search Manual

FROM: Susan E. Bromm, Director /s/
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers (Regions I - X)
Regional Counsel (Regions I - X)

I am pleased to announce the distribution of the 2003 Potentially Responsible Party Search Manual (Manual).

The Manual was written by a dedicated group of Agency experts who are involved in the PRP search process, and reviewed by a national work group and the PRP Search Enhancement Team. Their collective effort has resulted in a useful tool that will enhance the PRP search process.

The Manual is a working document intended to provide information to those persons involved in the PRP search process. Users are encouraged to provide any comments regarding the Manual to one of the PRP Search Enhancement Team members/contacts (Team) listed below. Any changes that need to occur to the Manual due to new legislation, new policy or guidance and from relevant comments received, will be documented by the Team, and the Manual will be updated as necessary.

Procedures and information contained in the Manual are based on current, existing EPA policy and guidance. For the users' convenience, any references and/or guidance documents mentioned in the Manual are supported by a web-site address or hard copy.

Six (6) hard copies are being provided to Team members to distribute in their regions. The Team will now begin the process to place the Manual on-line. Future updates of Manual chapters will be available electronically.

If you have any questions or comments regarding this Manual, please contact Nancy Deck at 202/564-6039 (deck.nancy@epa.gov) or a PRP Search Enhancement Team member.

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Preface

The Potentially Responsible Party Search Manual provides an overview of the PRP search process, identifies tools for finding PRPs early in the process, and provides a framework for conducting thorough PRP searches that identify the universe of PRPs with comprehensive evidence of liability. It provides an outline of the general objectives of the PRP search, describes typical baseline and followup PRP search tasks, and provides specific tools and references from which the user may select those most appropriate for a particular search or site.

The manual may be used at "new" sites where PRP searches are planned, at sites where PRP searches are ongoing, and at sites where the PRP search was considered "complete" but additional tasks may need to be performed for settlement or cost recovery purposes. It is designed primarily as a reference tool for EPA, state, and tribal staff involved in PRP searches, and is not intended to circumscribe or limit the legitimate investigative activities and inquiries of experienced PRP search staff.

The manual is composed of four chapters: Overview of CERCLA and PRP Searches, PRP Search Planning Overview, Baseline PRP Search, and Followup PRP Search.

Chapter 1

Overview of CERCLA and PRP Searches presents an overview of CERCLA and CERCLA liability, the use of PRP search information, and general information about how and why the Agency gathers, exchanges, and manages PRP search information.

Chapter 2

PRP Search Planning Overview describes potential roles and responsibilities of parties involved in PRP searches, factors that should be considered in search planning, and opportunities for PRP input to the search process.

Chapter 3

Baseline PRP Search describes tasks most often performed during the initial PRP search.

Chapter 4

Followup PRP Search describes more specialized tasks that may be employed during a followup to the baseline phase in order to complete the PRP search.

Acknowledgments

This manual was prepared by the Office of Site Remediation Enforcement in EPA's Office of Enforcement and Compliance Assurance. The manual is a result of a collective effort by a national workgroup comprised of representatives from various Headquarters and Regional offices and the Potentially Responsible Party (PRP) Search Enhancement Team. Nancy Deck served as EPA's Project Manager and Neilima Senjalia as the Management Advisor. The PRP Search Enhancement Team guided and provided assistance throughout the revision process. The culmination of this teamwork is a manual which serves as a reference document and covers all aspects of the PRP search process.

The following persons provided significant input in the development, review or with specific chapters of the manual. Many thanks go out to these and all other persons who contributed.

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Headquarters Contractor: DPRA Incorporated

NOTE: The PRP Search Manual and future updates thereof will be available electronically on the EPA Internet. For availability of the electronic version and additional information, please contact Nancy Deck at 202/564-6039 (deck.nancy@epa.gov) or a PRP Search Enhancement Team member listed above and in Appendix H).

Disclaimers

This manual supersedes the PRP Search Manual, August 27, 1987 (9834.3-1A) and the PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program, June 29, 1989 (9834.3-2a) published by the U.S. Environmental Protection Agency's former Office of Waste Programs Enforcement.

The policies, methods, and procedures set forth in this manual, and internal government procedures adopted to implement them, are intended as guidance for U.S. Environmental Protection 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 at variance with the policies, methods, and procedures in this manual.

When the term **"generator"** is used in this manual, it is not used in its most commonly understood sense, i.e., "a party that creates a material." The term has a broader meaning under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Refer to subsection 1.2.4, "Categories of Potentially Responsible Parties," which states that it is commonly used to designate an entity that generated a hazardous substance or arranged for its disposal or treatment. Thus the term **"generator"** can encompass corporations that have entered into disposal contracts, waste brokers, and corporate officers who are involved in, or responsible for, waste disposal.

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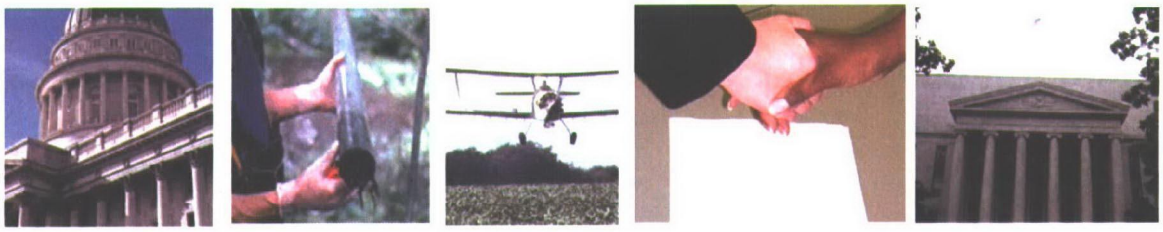
Chapter 1



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1.0 Overview of CERCLA and PRP Searches

1.1 Overview of CERCLA

The objective of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (*see* Chapter 1 references, page 39) is to reduce and eliminate threats to human health and the environment posed by uncontrolled hazardous waste sites. To meet this objective, CERCLA created:

- a hazardous waste site response program; and
- a comprehensive liability scheme that authorizes the government to hold persons who caused or contributed to the release of hazardous substances liable for the cost or performance of cleanups.

In enacting CERCLA, Congress authorized the President or the delegated federal agency to draw funds from a revolving trust fund called the Hazardous Substance Superfund ("Superfund," "Trust Fund," or "Fund") to respond to releases or threatened releases of hazardous substances.[1]

CERCLA provides EPA with three basic options for cleaning up a hazardous waste site:

[1]The petroleum and chemical feed stocks tax and the environmental income tax (EIT) along with funds from general revenues funded the Superfund. These taxes have not been levied since the end of 1995 when the taxing authority expired.

- Under CERCLA sections 104 and 107, EPA can perform a response action at the site using Superfund money and recover response costs from potentially responsible parties (PRPs).

- Under CERCLA section 106, EPA can order, or ask a court to order, PRPs to clean up the site.

- Under CERCLA section 122, EPA can enter into settlement agreements with PRPs that require PRPs to clean up the site or pay for cleanup under CERCLA section 107.

1.1.1 Overview of the Superfund Cleanup Process

CERCLA section 104(a) authorizes the President to respond to a release or substantial threat of release to the environment of a hazardous substance or a pollutant or contaminant. Also, CERCLA section 104 authorizes the President to address hazardous waste sites through removal and remedial response actions. By executive order, EPA and other federal agencies have been delegated authority to undertake these response actions. EPA also has responsibility for overseeing all response actions at sites on the National Priorities List (NPL).

"Removal" is defined in CERCLA section 101(23) as "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 action 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."

"Remedial action" is defined in CERCLA section 101(24) as "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."

EPA may respond to a release or substantial threat of release into the environment of any hazardous substance, or to a release or substantial threat of release into the environment of any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare. CERCLA section 104, however, limits Fund-financed removal actions by both time and cost. Without a case-specific waiver, the President may only use Trust Fund money to finance removal actions for up to one year and up to $2 million. Waivers of the time or cost limits may be issued to abate an emergency or to allow removal activity that is consistent with further remedial actions at the site.

CERCLA section 104 limits the use of Superfund money for remedial actions to sites meeting the following three conditions:

- The site is listed on the NPL.

- The state in which the site is located either contributes or provides financial assurances for 10 percent of any remedial costs incurred by Superfund and all operations and maintenance (O&M).

- The remedial action is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

A site does not have to be listed on the NPL for EPA to perform a removal, site investigation, or remedial design, or to enforce a remedial action. (NPL listing only limits EPA's performance of a remedial action.) Also, if a state or subunit of a state owned or operated the site, the state must contribute at least 50 percent of the response costs incurred. CERCLA section 104(c)(3) exempts tribes from the requirement that states provide assurances regarding future maintenance and cost sharing at remedial action sites.

CERCLA section 104(a)(3) and (4) limits EPA's authority to respond to releases or threats of release of naturally occurring substances, from products that are part of the structure of residential or other buildings, and into drinking water supply systems due to deterioration through ordinary use of the system unless the President determines that the release or threat of release is an emergency and no one else has the authority and ability to respond to it.

The major regulation implementing CERCLA is the National Oil and Hazardous Substances Pollution Contingency Plan. (*See* Chapter 1 references, page 39.) It establishes the framework for implementing Superfund response actions to address releases or threats of releases of hazardous substances, pollutants, or contaminants. The NCP was revised in 1994 to reflect the oil spill provisions of the Oil Pollution Act of 1990 (OPA) (*see* Chapter 1 references, page 39) and is occasionally supplemented with regulations implementing amendments of CERCLA.

1.1.2 Overview of CERCLA Enforcement

EPA has adopted an "enforcement first" policy for removal and remedial actions at CERCLA sites. This means that when PRPs for a site have been identified, EPA typically will first pursue the PRPs to conduct the site response rather than conduct the cleanup with Superfund money.

EPA may seek to obtain PRP participation through voluntary settlements, unilateral orders, or litigation. Approximately 70 percent of all Superfund cleanups are PRP-lead. In addition, EPA may take the lead for cleanup activities and seek to recover its costs from PRPs.

A PRP search seeks to establish evidence of liability by identifying PRPs and associating their waste type and volume with that found at the site. EPA identifies PRPs and collects evidence by sending section 104(e) information request letters, reviewing documents, conducting interviews, and performing research.

The information gathered during a PRP search should enable EPA to assess the nature of the party's involvement at the site (such as owner, operator, generator, or transporter, described in subsection 1.2.4). The PRP search should gather information about a party's potential defenses (e.g., third party defense) or exemptions (e.g., municipal solid waste). In addition, the PRP search should identify those PRPs that may have a limited ability to pay (ATP) or are insolvent or defunct ("orphan"). Finally, the PRP search should assist in the early identification of contributors of relatively small quantities of hazardous substances (e.g., de minimis and de micromis parties.)

One of the primary objectives of the PRP search is to identify the entire universe of PRPs. Thorough PRP searches enhance EPA's success in negotiating with PRPs to conduct the response activity under EPA's oversight. In addition, early identification of PRPs enables EPA to issue general notice letters (GNLs) promptly to parties to inform them of their potential liability at a site. These PRPs may then be able to help EPA locate other PRPs to share the cost of the response activity. When PRPs are identified and notified early in the remedial process, there is a greater likelihood that they will decide to undertake appropriate response actions.

Finally, the early identification of PRPs affords EPA the opportunity to settle with small volume contributors promptly, thereby minimizing their transaction costs. For example, CERCLA section 122(g) authorizes de minimis settlements with parties whose contribution is minimal in amount and toxicity if the settlement involves only a minor portion of the response costs.

1.2 CERCLA Liability

1.2.1 Prima Facie Case

"Prima facie" is not a CERCLA definition but a legal term meaning "legally sufficient to establish a fact or case unless disproved." This term is used to describe the basic set of facts that EPA must be able to prove to establish that a person is liable under CERCLA, i.e., that:

- there was a release or threatened release;
- of a hazardous substance;
- from a facility;
- that caused the government to incur response costs; and

- the party is in at least one of the four classes of PRPs described in CERCLA section 107(a).

There are several key definitions associated with the elements listed above:

- "Release" is defined in CERCLA section 101(22) as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment."

- "Hazardous substance" is defined in CERCLA section 101(14) as any substance EPA has designated under specified provisions of the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, and the Resource Conservation and Recovery Act (RCRA). (*See* Chapter 1 references, page 39.) EPA also may designate additional substances as hazardous substances under CERCLA. EPA maintains and updates a list of hazardous substances in Title 40 of the Code of Federal Regulations, Part 302. (*See* Chapter 1 references, page 39.)

- "Pollutant or contaminant" is defined in CERCLA section 101(33) as any other substance not on the list of hazardous substances which "will or may reasonably be anticipated to cause" adverse effects in organisms or their offspring.

- "Facility" is defined in CERCLA section 101(9) as "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 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." The term "facility" has been interpreted to include the site of a hazardous waste disposal operation; ground upon which hazardous substances were deposited; and trucks from which hazardous substances were released into the environment, even though the trucks themselves were not the subject of a removal or remedial action.

- "Response" is defined in CERCLA section 101(25) as "remove, removal, remedy, and remedial action." Response costs include the costs of investigations, sampling, remedial studies, monitoring, and testing to identify the nature and extent of the release or threatened release, or the extent of the danger to public health, welfare, or the environment; planning and implementation of a response action; the recovery of costs associated with these actions, including costs incurred by EPA and other entities, such as the Department of Justice (DOJ), Coast Guard, and the states. These response costs include direct as well as indirect costs (general EPA operating costs). Costs associated with the oversight of PRP response actions are also recoverable.[2] Section 104(a)(1) specifically

[2] In states under the jurisdiction of the United States Court of Appeals for the Third Circuit – Pennsylvania, New Jersey, Delaware, and the Virgin Islands – there are limitations on EPA's authority to recover costs for oversight. *See* U.S. v. Rohm & Haas Co., 2 F.3d 1265 (3d Cir. 1993) (costs of EPA's oversight of a removal action conducted by a private party cannot be recovered under CERCLA). This aspect of the Rohm & Haas decision has not been followed outside the Third Circuit.

provides for recovery of oversight costs for PRP-conducted remedial investigation and feasibility study (RI/FS) work. Response costs do not include civil penalties for violations of statute, but they do include interest on past expenditures.[3] Response costs incurred prior to CERCLA's enactment also may be recovered. Cost recovery actions may be filed at any time after response costs have been incurred; however, they must be initiated within the statute of limitations defined in CERCLA section 113(g)(2) and described in more detail in section 4.9 of this manual.

1.2.2 Strict Liability

CERCLA section 107(a) imposes strict liability on the four classes of parties described and listed on page 10. Strict liability means that PRPs are liable even if:

- the problems caused by the hazardous substance release were unforeseeable;
- the PRP's actions were legal at the time they occurred; and
- state-of-the-art waste management practices were used at the time the materials were disposed of.

1.2.3 Joint and Several Liability

In addition, CERCLA liability is usually joint and several. This means that any one PRP can be held liable for the entire cost of site cleanup, regardless of the share of the waste contributed by that PRP. The PRP who pays the costs can then seek contribution from the non-paying PRPs. In general, however, EPA attempts to identify and notify the universe of PRPs at a site and negotiate with the largest manageable number of parties.

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[3] Comptroller Policy Announcement 87-17, "Interest Rates for Debts Recoverable Under the Superfund Amendments and Reauthorization Act of 1986," September 30, 1986. *See* Chapter 1 references, page 40.

Joint and several liability is based on the legal concept of "indivisible harm." Therefore, a PRP may be able to defend against the application of the full extent of joint and several liability in a particular case if it can show that the harm it caused or for which it is responsible is divisible and reasonably capable of apportionment.[4] Where hazardous substances are commingled following disposal at a site, evidence that a single PRP's contribution caused a distinct and segregable environmental harm is typically unavailable. This is important because the divisibility defense requires a fact-intensive analysis, and because the defendant bears a heavy burden of proof. The defendant must demonstrate that the hazardous substances it sent to a site caused a specific, separate, and distinct environmental harm from other environmental harm at the site.[5]

Determining divisibility requires the PRP search team to carefully review the specific contribution of each PRP to the release of hazardous substances that resulted in the contamination at the site. A reasonable basis for such determinations should be well documented.

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[4] *See*, e.g., United States v. Monsanto, 858 F.2d 160, 171-72 ("While CERCLA does not mandate joint and several liability, it permits it in cases of indivisible harm."); United States v. Marisol, Inc., 725 F.Supp. 833 (M.D. Pa. 1989); United States v. Ottati & Goss, Inc., 630 F.Supp. 1361 (D.N.H. 1985) (burden on defendant to show apportionment is proper).

[5] United States v. Western Processing Co., 734 F.Supp. 930, 942 (W.D. Wash. 1990).

1.2.4 Categories of Potentially Responsible Parties

CERCLA section 107(a) imposes liability on four classes of persons:

- current owners and operators of a facility;
- former owners and operators of a facility;
- persons who arranged for treatment or disposal of hazardous substances (commonly referred to as "generators"); and
- transporters of hazardous substances who selected the disposal site.

Any person who falls within the definition of one of these classes may be held liable under CERCLA unless one of the statutory defenses or exemptions to liability applies. (*See* subsections 1.2.5 and 1.2.6.)

Current Owners and Operators of a Facility

CERCLA section 107(a)(1) imposes liability on the present owner(s) and operator(s) of a vessel or facility from which there has been a release of a hazardous substance, even if they did not own or operate the facility at the time of disposal of hazardous substances. The term "owner or operator" is defined in section 101(20), and has been interpreted broadly by courts to include almost any person who has an ownership interest in or the ability to manage or control a business. The definition excludes, however, a person who holds indicia of ownership primarily to protect a security interest (e.g., a lender) if the person does not

participate in the management of the facility. (*See* CERCLA section 101(20)(A) and the discussion of secured creditors in subsection 1.2.6 of this manual for more details.)

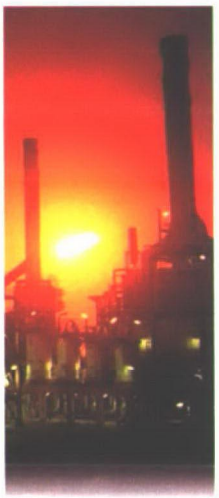
Courts also have imposed owner/operator liability on parent corporations and corporate officers and personnel. In some instances, they have applied traditional principles of corporate law to "pierce the corporate veil" and hold such parties liable. In other cases, they have looked to the language of CERCLA itself to find that a parent corporation or corporate individual has exercised sufficient control to render it an operator for purposes of CERCLA liability. (*See* subsection 3.6.10 for further discussion of the liability of parent corporations and corporate individuals.)

Former Owners and Operators of a Facility

CERCLA section 107(a)(2) imposes liability on any person who owned or operated a facility at the time of disposal of any hazardous substance at the facility. Thus, unlike current owners and operators, a former owner or operator is liable only if disposal of hazardous substances occurred while the person owned or operated the facility. The term "disposal", however, incorporates the broad definition of that term under RCRA. It has been interpreted by some courts to include releases that occur long after the hazardous substance was initially disposed of at the facility.[6]

[6]Liability for "passive migration" is determined by the specific case law of the federal circuit where the site of the release is located, and federal circuits are divided on this issue. *See*, e.g., ABB Industrial Systems Inc. v. Prime Technology, Inc., 120 F.3d 351 (2d Cir. 1997); United States v. CDMG Realty, 96 F.3d 706 (3d Cir. 1996); Joslyn Mfg. Co. v. Koppers Co. Inc., 40 F.3d 750 (5th Cir.) (interpreting disposal to require active human conduct); but *see* Nurad, Inc. v. William Hooper & Sons Co., 966 F.2d 837 (4th Cir. 1992) (upholding CERCLA liability for passive migration).

For example, if Party A owned the site and disposed of hazardous substances there during ownership and later sold the property to Party B, both parties could be held liable. Party A could be held liable because the disposal took place when it owned the property. Some courts have ruled in similar cases that Party B is liable if, for example, drums or tanks containing hazardous substances leaked at the facility during Party B's ownership even if Party B did not place the drums or tanks on the property and no longer owns the property.



Generators

CERCLA section 107(a)(3) imposes liability on a person who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at any facility owned or operated by another party and containing such hazardous substances. Although the statute does not use the term "generator," this term is commonly used to refer to persons who generated the hazardous substance or arranged for its disposal or treatment. "Generators" may include corporations that entered into disposal contracts, waste brokers, or corporate officers who are involved in or responsible for waste disposal activities.

A person may be held liable as a generator even if that person did not select the disposal location. To establish generator liability, EPA must demonstrate that an actual or threatened release of any hazardous substance occurred at the facility, not that the generator's actual hazardous substance was released.

An arrangement for disposal or treatment may take a wide variety of forms, including a conventional oral or written contract or a toll processing agreement where disposal of hazardous substances is

inherent in the work to be performed under the agreement.[7] The sale of hazardous substances may constitute an arrangement for disposal or treatment; however, the sale of a hazardous substance as a finished product does not.[8] Whether a sale of a product constitutes the sale of a "useful product" or an arrangement for disposal typically is a fact-specific determination.

A generator's liability may follow its waste from site to site. For example, if a generator sends its waste to site A and site A's operator sends some of that waste to site B, the generator may be liable for the costs of cleaning up both site A and site B.

Transporters

CERCLA section 107(a)(4) imposes liability on a person who accepts a hazardous substance for transportation to a disposal or

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[7]Under the so-called "Aceto" theory of liability, a chemical manufacturer who contracts with another company to formulate raw materials into finished product can be liable as an "arranger for disposal" if the manufacturer retains ownership of the hazardous substances and the formulator generated and disposed of waste contemporaneously with formulation. United States v. Aceto Agricultural Chemicals Corp., 872 F.2d 1373 (8th Cir. 1989). Courts have looked at a variety of factors to determine "arranger" liability, including: "(1) whether a sale involved the transfer of a "useful" or "waste" product; (2) whether the party intended to dispose of a substance at the time of the transaction; (3) whether the party made the "crucial decision" to place hazardous substances in the hands of a particular facility; (4) whether the party had knowledge of the disposal; and (5) whether the party owned the hazardous substances." *See*, e.g., Concrete Sales and Services, Inc. v. Blue Bird Body Co., 211 F.3d 1333 (11th Cir. 2000).

[8]*See*, e.g. United States v. Maryland Sand, Gravel and Stone Co., 39 Env't Rep. Cas. 1761 (D. Md. 1994) (imposing liability where defendants transferred toxic substances generated as by-products in their operations for which they had no further use, even when the recipients placed some value on the waste); State of California v. Summer del Caribe, 821 F. Supp. 574, 581 (N.D. Cal. 1993) (affirming there is no CERCLA liability where the transaction involves the sale of a useful product, such as a new product, manufactured specifically for the purpose of sale, or a product that remains useful for its normal purpose in its existing state).

treatment facility or site selected by such person. The term "transportation" is defined to include the movement of a hazardous substance by any mode, including any stoppage in transit which is temporary and incidental to the transportation movement.

The key factor in establishing transporter liability is that the transporter must have selected the disposal site. If the transporter can demonstrate that the generator selected the site, then the transporter is not liable.

1.2.5 Statutory Defense to CERCLA Liability

A person identified as a potentially responsible party may claim a statutory defense to liability based upon CERCLA section 107(b). Section 107(b) provides that a party is not liable if a release was caused solely by:

- an act of God, as defined in section 101(1);
- an act of war; or
- an act or omission of a third party other than an employee or agent of the defendant or one in a contractual relationship with the defendant (commonly referred to as the "third party" defense).

Third Party Defense

In order to establish a third party defense under section 107(b)(3), a person has the burden of proving that the act or omission was conducted by someone other than the person claiming the defense, and by someone with whom that person has no contractual relationship. In addition, the person must establish that he: (1) exercised due care with respect to hazardous

substances; and (2) took precautions against foreseeable acts or omissions of the third party and any consequences thereof. The defense is not available to a person who has actual knowledge of a release or threatened release during his ownership and subsequently transfers the property to another person without disclosing the release or threatened release. In addition, the person may not have caused or contributed to the contamination.

CERCLA section 101(35)(A) defines "contractual relationship" to include land contracts, deeds, or other instruments conveying interests in land (e.g., property owners). A contractual relationship does not exist - and the defense still applies - if the property was acquired after the disposal or placement of the hazardous substances and one or more of the following circumstances is established:

- The person had no knowledge or reason to know that there was a release of hazardous substances at the property at the time of acquisition and that, prior to acquisition, the person made all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice.

- The person 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.

- The person acquired the property by inheritance or bequest.

This third party defense is often referred to as the "innocent landowner" defense.

The Small Business Liability Relief and Brownfields Revitalization Act of 2002 (*see* Chapter 1 references, page 40) clarified the "all appropriate inquiry" required regarding condition of the property. For purchasers of residential property, CERCLA section 101(35)(B) provides that a facility inspection and title search will be sufficient. For all other purchasers, the determination is based upon date of purchase. For purchases prior to May 31, 1997, CERCLA section 101(35)(B) sets forth a narrative standard directing courts to consider a list of factors, including specialized knowledge of the person, the obviousness of the contamination, and the relationship of the purchase price to the property value. For purchases on or after May 31, 1997, section 101(35)(B) incorporates the American Society for Testing and Materials' (ASTM) Standard Practice for Environmental Site Assessment: Phase 1, which applies until EPA promulgates regulations regarding all appropriate inquiry.

In addition, the amendments also require that "innocent landowners" can only maintain this defense by complying with certain continuing obligations. A purchaser must take reasonable steps to stop any continuing release, to prevent any threatened new release, and to prevent or limit any human, environmental, or natural resource exposure to hazardous substances. All innocent landowners must provide cooperation, assistance, and access to persons conducting response actions at the facility, and comply with and maintain land use restrictions and institutional controls.

1.2.6 Statutory Exemptions and Protections from CERCLA Liability

In addition to the statutory defenses to CERCLA liability, CERCLA provides statutory exemptions and protections from liability for certain parties.

De Micromis Parties

CERCLA section 107(o) provides a qualified statutory exemption from liability for response costs for de micromis generators and transporters where: (1) the total amount of material containing hazardous substances contributed by the party to a site was less than 110 gallons of liquid materials or less than 200 pounds of solid materials; (2) the site is listed on the NPL; and (3) all or part of the party's disposal, treatment, or transport occurred before April 1, 2001.

The exemption does not apply, however, if the President determines that: (1) the person sent materials that contributed or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration; (2) the person has failed to comply with an information request or administrative subpoena; (3) the person has impeded, through action or inaction, a response action or natural resource restoration; or (4) the person has been convicted of a criminal violation for conduct related to the exemption.

Municipal Solid Waste Parties

Section 107(p) conditionally exempts three categories of parties from liability for response costs as a generator under section 107(a)(3):

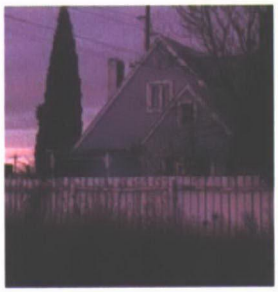
- owners, operators, or lessees of residential property;
- a business entity (including a parent, subsidiary, or affiliate of the entity) that, during the three years preceding written notice of its potential liability, employed on average not

more than 100 full-time individuals, or the equivalent thereof, and is a small business concern from which was generated all of the municipal solid waste (MSW) attributable to the entity with respect to the facility; and

- an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (*see* Chapter 1 references, page 40) and exempt from tax under section 501(a) of the Code that during the tax year preceding written notice of liability employed 100 or fewer paid individuals at the location from which all MSW was generated.

The conditional exemption does not apply to parties liable as owners or operators under section 107(a)(1) or (2) or as transporters under section 107(a)(4).

Contiguous Property Owners



CERCLA section 107(q) protects from owner or operator liability persons that own land contaminated solely by a release from contiguous property, or similarly situated property, owned by someone else, if the owner:

- is not a PRP or affiliated with a PRP;
- did not cause, contribute, or consent to the release of hazardous substances; and

- conducts "all appropriate inquiry" prior to purchase and demonstrates that it did not know or have reason to know of contamination. (*See* subsection 1.2.5 of this manual for a discussion of the "all appropriate inquiry" requirement.)

In order to maintain the liability protection, the owner must:

- take reasonable steps to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to hazardous substance release;
- provide cooperation, assistance, and access;
- comply with and maintain land use restrictions and institutional controls;
- comply with CERCLA information requests and administrative subpoenas; and
- provide legally required notices.

Bona Fide Prospective Purchaser

CERCLA section 107(r) protects a "bona fide prospective purchaser" (BFPP) whose potential liability is based solely on the purchaser's being an owner or operator of a facility so long as the purchaser does not impede the performance of a CERCLA response action. Section 101(40) defines a BFPP as a person, or tenant of that person, who acquires ownership of a facility after January 11, 2002, and:

- establishes that disposal at the facility occurred prior to acquisition;
- is not a PRP or affiliated with a PRP;
- made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and new standards contained in section 101(35)(B);
- takes reasonable steps to stop any continuing releases, prevent any threatened future releases, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance; and
- provides cooperation, assistance, and access, complies with and maintains land use restrictions and institutional controls, complies with information requests and administrative subpoenas, and provides legally required notices.

A critical distinction between the BFPP provision and the innocent landowner and contiguous property owner provisions is that the BFPP can purchase with knowledge of the contamination and still have CERCLA liability protection. Section 107(r) provides, however, that a BFPP may be subject to a "windfall lien" for unrecovered response costs incurred by the United States at a facility where the response action increases the fair market value of the facility. The lien is limited to the lesser of the increase in the fair market value attributable to EPA's response action or the unrecovered response costs.

On July 16, 2003, EPA and DOJ issued an interim enforcement discretion policy entitled Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA. The "Windfall Lien" policy explains when EPA generally would, and would not, seek compensation for increasing a property's market value through a Superfund response action. Under new Section 107(r) of CERCLA, added by the recent Brownfields Amendments, bona fide prospective purchasers are not liable as owner/operators for CERCLA response costs. However, the property they acquire may be subject to a windfall lien if an EPA response action has increased the fair market value of the property. The interim policy explains that, absent a Superfund response action at a site, the United States has no windfall lien on that property. For properties that have been the subject of an EPA response action, the policy: sets forth factors that may lead EPA and DOJ to assert a windfall lien and provides examples of a number of situations where EPA will generally not pursue a windfall lien; describes EPA's and DOJ's general approach to settling windfall liens; and discusses letters and agreements that EPA may provide to prospective purchasers to address any windfall lien concerns. *See* Chapter 1 references, page 40 for copies of the guidance, attachments, and a frequently asked questions document.

Scrap Recyclers

The Superfund Recycling Equity Act (SREA) (*see* Chapter 1 references, page 40) signed into law on November 29, 1999, was passed as part of the Omnibus Appropriations Bill and is codified as an amendment to CERCLA at 42 U.S.C. 9627 and incorporated into CERCLA as section 127. This amendment exempts from the generator and transporter liability sections of CERCLA certain generators and transporters who "arranged for recycling of recyclable materials." Owners and operators of sites are ineligible

for the exemption, as are generators and transporters of non-recyclable materials or generators and transporters of recyclable materials that fail to meet the criteria necessary for the exemption.

A PRP's liability should be carefully examined before determining the applicability of SREA. If the region determines that a party is a PRP, then the region may evaluate whether the PRP is exempt under SREA. Regions should not presume a party's eligibility for the exemption absent either a demonstration of proof by the party that it was recycling consistent with section 127 or other site-specific information that suggests that the party is eligible for the exemption.

Recyclable materials defined under SREA include scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, spent lead-acid, spent nickel-cadmium batteries, and other spent batteries. (*See* CERCLA section 127 for further details on SREA.)

Secured Creditors

CERCLA section 101(20)(A) and (E) exempts from owner/operator liability any person who, without participating in the management of a facility, holds indicia of ownership primarily to protect that person's security interest in the facility. Holding a security interest means having a legal claim of ownership in order to secure a loan, equipment, or other debt. This exemption protects from CERCLA section 107 owner/operator liability those persons, such as private and governmental lending institutions (e.g., banks), who maintain a right of ownership in, or guarantee loans for, facilities that become contaminated with hazardous substances.

Under CERCLA section 101(20)(F), which was added to CERCLA by amendment in 1996, a lender "participates in management" and will not be protected by the secured creditor exemption if it either:

- exercises decision making control over environmental compliance related to the facility, such that the lender has undertaken responsibility for hazardous substance handling or disposal practices; or

- exercises control at a level comparable to that of a manager of the facility, such that the lender has assumed or manifested responsibility with respect to (1) day-to-day decision-making regarding environmental compliance, or (2) all, or substantially all, of the operational (as opposed to financial or administrative) functions of the facility other than environmental compliance.

The term "participate in management" does not include certain activities (provided those activities do not rise to the level of participating in management as defined in CERCLA section 101(20)(F)), such as:

- inspecting the facility;

- requiring a response action or other lawful means to address a release or threatened release;

- conducting a response action under CERCLA section 107(d)(1) or under the direction of an on-scene coordinator (OSC);

- providing financial or advisory support toward an effort to prevent or cure default; or

- restructuring or renegotiating the terms of the security interest.

With respect to post-foreclosure activities, a lender that did not participate in management prior to foreclosure, did not contribute to or cause a release, and seeks to divest itself of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, is not an "owner or operator" if it:

- sells, re-leases (in the case of a lease-finance transaction), or liquidates the facility;

- maintains business activities or winds up operations;

- undertakes a response action under CERCLA section 107(d)(1) or under the direction of an OSC; or

- takes any other measure to preserve, protect, or prepare the facility for sale or disposition.

Fiduciaries

CERCLA section 107(n) limits the CERCLA liability of fiduciaries. The term "fiduciary" means a person acting for the benefit of another party as a bona fide trustee, executor, or administrator, among other things. It does not include a person who either:

- acts as a fiduciary with respect to a for-profit trust or other for-profit fiduciary estate, unless the trust or estate was created because of the incapacity of a natural person, or as part of, or to facilitate, an estate plan; or

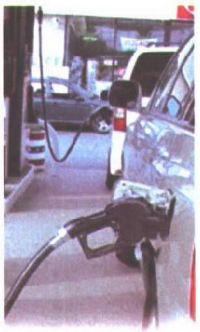
- acquires ownership or control of a facility for the objective purpose of avoiding liability of that person or another person.

Under CERCLA section 107(n), fiduciary liability under any provision of CERCLA cannot exceed the assets held in the fiduciary capacity. In addition, a fiduciary will not be liable in its personal capacity for certain actions, such as:

- undertaking or requiring another person to undertake any lawful means of addressing a release of a hazardous substance;

- enforcing environmental compliance terms of the fiduciary agreement; or

- administering a facility that was contaminated before the fiduciary relationship began.



The liability limitation described above does not limit the liability of a fiduciary whose negligence causes or contributes to a release or threatened release.

Service Station Dealers

Service station dealers may be eligible for an exemption from liability as a generator or transporter under CERCLA section

107(a)(3) or (a)(4) if the dealer accepted from the public used oil for recycling which is:

- not mixed with any other hazardous substance; and
- 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.

The exemption applies only to recycling transactions that occur after the effective date of EPA's used oil regulations (March 8, 1993). (*See* Chapter 1 references, page 40.) A service station dealer still may be held liable under CERCLA section 107(a)(1) and (2) as an owner or operator.

State and Local Governments

CERCLA section 107(d)(2) provides that, except for gross negligence or intentional misconduct, state and local governments are not liable for costs or damages resulting from an emergency response to a hazardous substance release or threatened release. Under CERCLA section 107(d)(1), a person rendering care or assistance in accordance with the NCP, including but not limited to state and local governments, cannot be held liable under CERCLA for costs or damages resulting from such care unless the care or assistance is rendered in a negligent manner. Such a person can be liable for costs or damages as the result of his negligence.

CERCLA section 101(20)(A) exempts from owner/operator liability units of state and local government that "involuntarily" acquire CERCLA facilities, provided they did not cause or contribute to the

contamination. Governmental entities may also be protected from liability resulting from involuntary acquisition by the third party defense of CERCLA section 107(b)(3), as discussed in subsection 1.2.5 of this manual. Examples of involuntary acquisition include those made by a government entity that is:

- acquiring property following abandonment or tax delinquency;
- acting as a conservator or receiver pursuant to a clear and direct statutory mandate or regulatory authority (such as acquiring the security interests or properties of failed private lending or depository institutions);
- undertaking foreclosure or its equivalent while administering a governmental loan, loan guarantee, or loan insurance program;or
- acting pursuant to seizure or forfeiture authority.

Federally Authorized Permittees

Section 107(j) excludes from CERCLA liability response costs resulting from a "federally permitted release." Although EPA has full authority under CERCLA to respond to federally permitted releases, the permittee is not liable for cleanup costs resulting from such releases. CERCLA section 101(10) defines releases that qualify as federally permitted releases (e.g., the discharge of pollutants in compliance with a National Pollutant Discharge Elimination System permit under the Clean Water Act).

Pesticide Applicators

Section 107(i) excludes from CERCLA liability response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). (*See* Chapter 1 references, page 40.)

1.2.7 EPA's Discretionary Policies

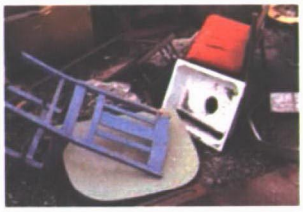
The Agency may exercise its discretion in deciding whether to pursue certain parties who fall within a category of liable parties under section 107(a). EPA has issued several policies concerning the exercise of its enforcement discretion. These policies, which are described below, are discretionary and therefore not legally binding on any party, including EPA. When identifying and classifying the PRPs at a site, the Agency's discretionary enforcement policies and guidance should be considered. These include (but are not limited to):

De Micromis Parties

In November 2002, EPA and DOJ jointly issued the Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties (November 6, 2002). (*See* Chapter 1 references, page 41.) As discussed above, CERCLA section 107(o) provides a statutory exemption for certain de micromis parties. This settlement policy addresses the United States' position regarding those parties that fall within the statutory definition of de micromis (referred to herein as "exempt de micromis parties"), and those parties that fall outside the statutory definition, but who may be deserving of similar treatment based on case-specific factors (referred to herein as "non-exempt de micromis parties"). As a matter of national

policy, EPA intends to use its enforcement discretion, as necessary, to achieve settlements that provide appropriate relief for those non-exempt de micromis parties that are being sued in contribution or threatened with a suit by other responsible parties.

Municipal Solid Waste Parties



In 1989, EPA issued the Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes (December 12, 1989) (hereinafter "1989 MSW Policy"). (*See* Appendix A.) The 1989 MSW Policy sets forth the criteria by which EPA generally determines whether to exercise enforcement discretion to pursue MSW generators or transporters as PRPs under CERCLA. The 1989 MSW Policy provides that EPA generally will not identify a generator or transporter of MSW as a PRP unless there is site-specific evidence that the MSW disposed of by that party contained hazardous substances derived from a commercial, institutional, or industrial process or activity. The 1989 MSW Policy also addresses certain provisions that may be appropriate in settlements with municipal owners or operators.

Building upon the 1989 MSW Policy, EPA issued its Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites (February 5, 1998) (hereinafter "1998 MSW Policy"). (*See* Chapter 1 references, page 41.) The 1998 MSW Policy states that EPA will continue its policy to generally not identify generators and transporters of MSW as PRPs at NPL sites. In an effort to reduce contribution litigation by third parties, the 1998 MSW Policy also identifies a methodology for settlements with generators and transporters of MSW at NPL sites who request a settlement with the United States. Finally, the 1998 MSW Policy identifies a presumptive settlement range for municipal owners and operators of co-disposal sites on the NPL.

As discussed in subsection 1.2.6, CERCLA section 107 was amended in 2002 to provide an exemption from liability for response costs to certain residential, small business, and non-profit generators of MSW at sites on the NPL. In August 2003, EPA and DOJ jointly issued the Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA § 107(p) (August 20, 2003) (hereinafter the "2003 Interim Guidance"). (*See* Chapter 1 references, page 41.) The 2003 Interim Guidance discusses the statutory exemption and identifies some factors to be considered in the exercise of enforcement discretion under the exemption. In addition, the 2003 Interim Guidance provides that the 1989 and 1998 MSW policies remain in effect and should be applied where appropriate.

Bona Fide Prospective Purchasers

Since 1989, EPA has negotiated agreements that provide a covenant not to sue for certain prospective purchasers of contaminated property prior to their acquisition of the property, in order to resolve the potential liability due to ownership of such property. These agreements are known as prospective purchaser agreements (PPAs). As discussed above, CERCLA limits the liability of persons who qualify as bona fide prospective purchasers (BFPPs). In May 2002, EPA issued a memorandum titled Bona Fide Prospective Purchasers and the New Amendments (May 31, 2002). (*See* Chapter 1 references, page 41.) In this memorandum, EPA states that, in most cases, the Brownfields Amendments make PPAs from the federal government unnecessary. The memorandum describes when, primarily because of significant public benefit, EPA will consider providing a prospective purchaser with a covenant not to sue.

Contiguous Property Owner

In 1995, EPA issued its Policy Towards Owners of Property Containing Contaminated Aquifers (May 24, 1995). (*See* Chapter 1 references, page 41.) Although the 1995 policy is similar to the exemption in favor of contiguous property owners in CERCLA section 107(q) in many respects, the 1995 policy is broader, and may apply to parties that do not qualify under the statutory exemption. Under the 1995 policy, where hazardous substances come to be located on or in a property solely as the result of subsurface migration in an aquifer from a source or sources other than the affected property, EPA will not take an enforcement action against the owner of such property to require the performance of response actions or the payment of response costs. The following conditions apply:

- The landowner did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substances through any act or omission. The failure to take affirmative steps to mitigate or address groundwater contamination, such as conducting groundwater investigations or installing groundwater remediation systems, will not, in the absence of exceptional circumstances, constitute an omission by the landowner within the meaning of this condition.

- The person who caused the release is not an agent or employee of the landowner, and was not in a direct or indirect contractual relationship with the landowner. In cases where the landowner acquired the property, directly or indirectly, from a person who caused the original release, application of the policy will require an analysis of

whether, at the time the property was acquired, the landowner knew or had reason to know of the disposal of hazardous substances that gave rise to the contamination in the aquifer.

- There is no alternative basis for the landowner's liability for the contaminated aquifer, such as liability as a generator or transporter under CERCLA section 107(a)(3) or (4), or liability as an owner by reason of the existence of a source of contamination on the landowner's property other than the contamination that migrated in an aquifer from a source outside the property.

Residential Homeowner

In 1991, EPA issued its Policy Toward Owners of Residential Property at Superfund Sites (July 3, 1991). (*See* Chapter 1 references, page 42.) Under this policy, EPA will not require residential owners of property to undertake response actions or pay response costs unless the residential homeowner's activities lead to a release or threatened release of hazardous substances resulting in a response action. The policy applies to properties that are owned and used exclusively for single-family residences of one to four units. Furthermore, the owner's knowledge of the presence of contamination on the property at the time of purchase or sale does not affect this discretionary policy. However, if the residential owner's activities lead to a release or threatened release resulting in a response action, the enforcement policy will not apply. The policy also does not apply if the owner of the property refuses to provide access to the residential property when requested or interferes with response activities conducted on the residential property.

1.3 PRP Notification of Liability

When PRPs have been identified, EPA's general policy is to notify them of their potential liability, advise them of the intended response action, and afford them the opportunity to pay for or conduct response actions. Where circumstances require, EPA may issue concurrently to each PRP a notice of potential liability (general notice letter) and a notice of opportunity to negotiate to conduct the response action (special notice letter). EPA uses different notice letters for different recipients, each with a different tone as well as content. These include the general notice letter (GNL), special notice letter (SNL) for RI/FS, SNL for remedial design and remedial action (RD/RA), notice of decision not to use an SNL, combined GNL/104(e) letter, combined GNL/demand letter, informational notice letter to local governments, first point of contact letter with de minimis PRPs, and model comfort letter to property owners.

1.3.1 General Notice Letters

A GNL is a notice that informs PRPs of their potential liability for past and future response costs. GNLs generally contain the following information:

- notification of potential liability under sections 106 and 107(a) of CERCLA, including notification that;
    - CERCLA section 107 authorizes the Agency to initiate cost recovery actions to recover all costs not inconsistent with the NCP incurred in responding to the release or threatened release of hazardous substances,

- CERCLA section 106 authorizes the Agency to issue administrative orders or take judicial action compelling the PRP to implement the response selected by EPA to abate an imminent and substantial danger caused by the release or threatened release of hazardous substances, and

- The Agency encourages PRPs to voluntarily perform or finance those response activities that EPA determines to be necessary at the site,

- to the extent practical, information that supports the PRP designation, such as the dates of ownership of real site property or the period of time that the company operated the facility;

- information about the general opportunity to discuss any selected response action and opportunities to undertake the selected response action, including;

  - discussion of any planned response measures,

  - the merits of forming a PRP steering committee,

  - the deadline for the PRPs to respond, in writing, indicating their willingness to participate in the response action at the site, and

  - the name and phone number of the EPA contact for PRPs or their attorneys,

- information about development of the administrative record pursuant to the NCP; and

- a demand for reimbursement of EPA costs.

General notice letters have frequently encouraged PRPs to undertake response actions. Although EPA is not required to do so, providing as much information as possible to PRPs concurrently with the GNL often yields the best results, including identification of additional PRPs, better responses to 104(e) information requests, and, ultimately, more productive negotiations with PRPs for performance of the work under a settlement agreement.[9]

1.3.2 Special Notice Letters

The SNL, authorized under CERCLA section 122(e)(1), is a written notice to PRPs that triggers an enforcement moratorium -- a period during which no response work is performed at the site and EPA and the PRPs may negotiate a settlement concerning response actions at the site. The SNL contains the following:

- information about the Agency's discretionary authority under section 122(e) of CERCLA to formally negotiate the terms of settlements pursuant to special notice procedures if EPA determines that such procedures would facilitate an agreement and would expedite a response action at the site;

[9]The OSRE memorandum Revised Final Guidance on Disseminating EPA s SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999) (*see* Chapter 1 references, page 42) states that EPA will notify small businesses of their right to comment on regulatory enforcement activities when EPA makes its "initial enforcement contact" with the business. Under CERCLA, the initial enforcement contact is typically a general or special notice letter. *See* Chapter 1 references, page 42 for the Small Business Fact Sheet.

- information on the recipient's potential liability;
- conditions of the enforcement moratorium;
- description of a good faith offer;
- description of future response actions, if known;
- statement of work to be performed;
- additional information, including information on additional PRPs, site fact sheets, volumetric ranking if available;
- demand for past costs; and
- for RD/RA and non-time-critical removal SNLs, a statement whether the site is eligible for orphan share compensation under the Orphan Share Policy (June 3, 1996) (*see* Chapter 1 references, page 42) and, if so, the maximum amount appropriate for compensation.

EPA may, at its discretion, choose not to follow special notice procedures. It may instead send a letter to PRPs stating that it is not going to use special notice procedures because, for instance, negotiations are already underway, and outlining EPA's plans for the negotiations. Due to the urgency of emergency and time-critical removals, they do not follow special notice procedures. For procedures applicable to them, refer to the Superfund Removal Procedures Removal Enforcement Guidance for On-Scene Coordinators (April 1992). The volume referenced is one of a ten-volume series of guidance documents collectively titled Superfund Removal Procedures. (*See* Chapter 1 references, page 42.)

1.3.3 Types of Settlements

EPA and the PRPs set forth settlements in legal documents that describe the requirements of the response action. If the response action is an RI/FS, RD, or RA, EPA and the PRPs usually use an administrative order on consent (AOC). An AOC is a legally binding administrative order that EPA and the PRPs agree to and sign. A consent decree (CD) is similar to an AOC in that negotiations are bilateral; however, a CD is a judicial action that must be approved by DOJ, filed in federal court, and approved by a judge before it becomes final.

If a settlement between EPA and the PRPs includes a remedial action, CERCLA requires that the settlement take the form of a CD. AOCs are the preferred settlement mechanism for RI/FSs and removals. The above settlement devices are addressed in more detail in Chapters V and VIII of EPA's Enforcement Project Management Handbook and in the Addendum to the Interim CERCLA Settlement Policy. (*See* Chapter 1 references, page 42.)

A number of activities take place in preparation for RD/RA negotiations, including substantial completion of the PRP search. Thus it is important that sufficient attention be given to the PRP search before the RD/RA negotiations phase commences. PRP search activities may be initiated at the preliminary assessment and site investigation (PA/SI) phase of the enforcement timeline.

Chapter 1 References

Name	Section	Location
Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986	1.1	42 U.S.C. § 9601 et seq. http://uscode.house.gov/DOWNLOAD/42C103.DOC
National Oil and Hazardous Substances Pollution Contingency Plan	1.1.1	40 C.F.R. Part 300 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr300_02.html
Oil Pollution Act of 1990	1.1.1	33 U.S.C. § 2701 et seq. http://www.epa.gov/oilspill/lawsregs.htm
Clean Air Act	1.2.1	42 U.S.C. § 7401 et seq. http://www.epa.gov/air/oaq_caa.html
Clean Water Act	1.2.1	33 U.S.C. § 1251 et seq. http://www.epa.gov/oilspill/lawsregs.htm
Toxic Substances Control Act	1.2.1	15 U.S.C. § 2601 et seq. http://www.access.gpo.gov/uscode/title15/chapter53_.html
Resource Conservation and Recovery Act	1.2.1	42 U.S.C. § 6901 et seq. http://www.epa.gov/epaoswer/osw/laws-reg.htm
CERCLA Hazardous Substances	1.2.1	40 C.F.R. Part 302 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr302_02.html

Chapter 1 References

Name	Section	Location
Comptroller Policy Announcement 87-17, Interest Rates for Debts Recoverable Under the Superfund Amendments and Reauthorization Act of 1986 (September 30, 1986)	1.2.1	http://www.epa.gov/ocfo/finstatement/superfund/int_rate.htm
Small Business Liability Relief and Brownfields Revitalization Act of 2002	1.2.5	Public Law 107-118 (H.R. 2869) http://www.epa.gov/brownfields/pdf/hr2869.pdf
Internal Revenue Code of 1986	1.2.6	26 U.S.C. http://www.access.gpo.gov/uscode/uscmain.html
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	1.2.6	http://www.epa.gov/compliance/resources/policies/cleanup/superfund
Superfund Recycling Equity Act	1.2.6	42 U.S.C. § 9627 http://www.access.gpo.gov/uscode/uscmain.html
Used Oil Regulations (September 10, 1992)	1.2.6	57 Federal Register 41,612
Federal Insecticide, Fungicide, and Rodenticide Act	1.2.6	7 U.S.C. § 136 et seq. http://www.epa.gov/opptsfrs/home/rules.htm

Chapter 1 References

Name	Section	Location
Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties (November 6, 2002)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wv-exmpt-dmicro-mem.pdf
Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes (December 12, 1989)	1.2.7	Appendix A
Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites (February 5, 1998)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/munic-solwst-mem.pdf
Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA § 107(p) (August 20, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf
Bona Fide Prospective Purchasers and the New Amendments (May 31, 2002)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bonf-pp-cercla-mem.pdf
Policy Toward Owners of Property Containing Contaminated Aquifers (May 24, 1995)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contamin-aqui-rpt.pdf

Chapter 1 References

Name	Section	Location
Policy Towards Owners of Residential Property at Superfund Sites (July 3, 1991)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/policy-owner-rpt.pdf
Revised Final Guidance on Disseminating EPA s SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999)	1.3.1	http://www.epa.gov/compliance/resources/policies/civil/sbrefa/index.html
Small Business Fact Sheet	1.3.1	http://www.epa.gov/compliance/incentives/smallbusiness/index.html
Orphan Share Policy (June 3, 1996)	1.3.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/orphan-share-rpt.pdf
Superfund Removal Procedures Removal Enforcement Guidance for On-Scene Coordinators (April 1992)	1.3.2	EPA Publication 9360.3-06 http://www.ntis.gov/products/epasuper.htm
Enforcement Project Management Handbook	1.3.3	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
Addendum to the Interim CERCLA Settlement Policy Issued on December 5, 1984 (September 30, 1997)	1.3.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/adden-settle-mem.pdf

Chapter 2

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2.0 PRP Search Planning Overview

The primary purpose of the PRP search is to identify parties who may be liable under CERCLA. The PRP search is also designed to gather information establishing, for each PRP, the elements of liability discussed in the previous chapter. In addition, PRP searches can accomplish several other objectives, including:

- furthering site characterization by providing information on hazardous substances used, site boundaries, disposal practices, and locations for conducting sampling activities;
- providing information for;
    - notice letters and information release, and
    - a waste-in list in order to do a volumetric ranking,
- assessing the appropriateness of possible settlements and potential litigation risks in light of the PRP's liability, ability to pay response costs, and statutory factors such as de minimis settlement eligibility, mixed funding, orphan share compensation, and divisible harm;
- identifying whether wastes are hazardous wastes in order to assess potential applicable or relevant and appropriate requirements (ARARs) (*see* Chapter 2 references, page 94);and

- providing names of PRPs to;
    - ensure that the Agency can notify PRPs of the proposed plan (for remedial action), and
    - be included in community relations mailing lists.

Effective PRP searches are fundamental to the Agency's enforcement strategy of obtaining increased PRP involvement in conducting response activities. PRP searches initiated concurrently with the PA/SI can often yield information that can be used to better characterize the site, involve identified PRPs in finding other PRPs, and provide for earlier identification of de minimis, de micromis, and insolvent or defunct parties. Effective communication between site assessment and PRP search personnel can save sampling and characterization expenses and expedite the remedial process by identifying early action opportunities. A thorough PRP search ultimately should result in a faster, more efficient, and fairer settlement with PRPs, leading to a more timely cleanup of the site.

Where feasible and appropriate, EPA may share information with PRPs during the PRP search. EPA and PRPs may have a shared interest in the outcome of PRP searches, and cooperation may be mutually beneficial. Such cooperation may save Agency resources and assist in developing a good working relationship between PRPs and EPA. For instance, when EPA establishes early communication with PRPs by making available factual site information to help PRPs understand why they received an information request from the Agency, a more productive working relationship may develop. It is likely that the information

provided to EPA in response to the information request will be of better quality and thus may reduce the number of followup information requests. (*See* section 2.4 for further details on releasing information.)

Several themes that guide the Superfund program have increased the importance of information exchange among stakeholders. These include the focus on accelerating cleanups and conducting them in a more efficient manner; "enforcement first," which strives to increase PRP involvement in site response actions; and administrative improvements to the Superfund program, which include orphan share compensation and the use of third party neutrals to assist with information gathering and exchange.

Initiating community involvement activities as early as possible can also reap many benefits, including information on additional PRPs. Areas adjacent to most Superfund sites often contain a large number of residents who may have lived in the area for quite some time. Many of these residents have specific knowledge concerning the site and are usually very willing to discuss their observations. The local community should be routinely considered a potential source of information.

Achieving the Agency s goals of accelerating cleanups, increasing PRP involvement in response actions, and making settlements with PRPs fairer requires careful and coordinated planning of the PRP search. This planning process involves identifying key personnel involved in the PRP search, outlining their roles and responsibilities, determining timing and duration of PRP search

activities, and identifying tasks to be performed. The PRP search planning process should be a team effort. The PRP search plan ought to have been fully implemented before RD/RA negotiations commence.

2.1 Roles and Responsibilities

A regional person is generally assigned lead responsibility for overseeing each site-specific PRP search. Regions often task contractors to perform certain PRP search tasks to the extent that the tasks are not considered inherently governmental functions. Each of EPA s regional offices has its own unique structure in place for performing PRP searches. However, some general descriptions of key players and responsibilities cut across regional variations.

2.1.1 PRP Search Team

Management Team

In the past several years, there has been increased planning, coordination, and integration among remedial, site assessment, and removal staff, and increased dedication of resources to the "front end" of the Superfund timeline, i.e., the PA/SI phase. In some regions, this strategy has been facilitated by a standing management team of regional EPA decision makers. The purpose of such a team is to ensure appropriate and effective coordination, communication, and integration of Superfund responses, and adequate personnel, funds, and decision-making processes to accelerate site responses. With respect to PRP searches, management will generally take PRP search information into consideration when establishing priorities and direction for the site response. Although the management team

is not involved in the day-to-day management of the PRP search, it may request specific information about PRPs to determine the appropriate enforcement response, potential dollar needs for orphan share compensation, etc. Furthermore, it can play an important role in determining the appropriate sites to "front load" with resources for the PRP search.

PRP Search Manager

Some regions designate remedial project managers (RPMs) to oversee contractor performance of a PRP search. The search is done though a work assignment under an EPA enforcement support contract or interagency agreement with a sister agency. Other regions have organized PRP search sections devoted solely to performing PRP searches, using an appropriate combination of RPMs, OSCs, civil investigators (CIs), case developers, enforcement specialists, enforcement project managers, cost recovery specialists, and environmental protection specialists to manage PRP searches. The person designated as the PRP search manager for a particular site should ensure that she works closely with the attorney assigned to the site and with any other staff who may be participating in the PRP search. It is the responsibility of the PRP search manager to ensure that the following tasks are performed, as necessary and appropriate:

- establish PRP search priorities;
- establish PRP search strategy;
- develop PRP search work assignments, budgets, and schedules;

- manage contractor-conducted search tasks;
- define the scope of the search;
- review baseline, interim, and final contractor deliverables;
- introduce the contractor to state and local government contacts, as needed;
- issue information request, general notice, and special notice letters;
- ensure followup on all tasks necessary for conducting a complete search;
- implement quality assurance and quality control (QA/QC) procedures to ensure the accuracy of data gathered during the search;
- ensure that adequate information is gathered for special notice letters;
- ensure that adequate evidence of a PRP's liability and ability to pay is gathered; and
- ensure that the universe of PRPs is given an opportunity to provide input into the completeness of the Agency's PRP search efforts.

Remedial Project Manager

The RPM is the Agency official designated to coordinate, monitor, and direct remedial and certain other response activities at NPL sites. It is imperative that the RPM understand the Agency's policies and procedures for completing a thorough PRP search, regardless of whether the RPM is involved in performing it. Understanding the issues and tasks involved in the PRP search will be necessary when working with the PRPs during the RI/FS, engineering evaluation and cost analysis (EE/CA), or RD/RA negotiations. The RPM may serve as work assignment manager on a PRP search or assist other Agency personnel performing or overseeing the search.

One RPM responsibility is to oversee the PRPs' performance of response activities. Once PRPs have agreed to perform response actions at a site, the RPM is responsible for ensuring that the studies or cleanup activities are performed correctly and in accordance with the AOC or CD, CERCLA, the NCP, and relevant policy and guidance. RPMs are extensively involved with the PRPs during response actions, so it is very important that they play a prominent role in planning and conducting baseline and followup PRP search activities.

On-Scene Coordinator

The OSC is the Agency official designated to coordinate, monitor, and direct removal actions. However, at sites where remedial activity is ongoing, the RPM may play a key role in securing and overseeing PRP removal response. OSCs, like RPMs, need to understand the PRP search process whether or not they are

actively involved in the search itself. The nature and extent of an OSC's involvement in PRP search efforts will depend on the nature of the removal and urgency of responding to the release or threat of release. In addition to the PRP search manager tasks already identified, *see* subsection 2.3.1 for other PRP search-related tasks during removal actions.

Civil Investigator

The CI typically performs specialized PRP search tasks such as interviews with private parties and specialized investigative work related to waste disposal, PRP identification, etc. CIs may assist case attorneys in preparing CERCLA section 104(e) information request letters, reviewing evidence, and conducting interviews. In some regions, CIs work exclusively on either removal or remedial PRP searches. Potential advantages to this approach are that it allows the investigator to become familiar with the special types of investigative situations that each presents, prevents conflicts between the remedial and removal programs, and ensures an investigator's availability in cases involving time-critical removals.

PRP searches often involve complex evidentiary and legal issues. If PRP searches are conducted or managed by RPMs, OSCs, or other personnel not experienced in performing enforcement investigations, it is advisable to involve both enforcement staff and counsel in planning PRP search activities as well as in reviewing information obtained, contractor deliverables, and conclusions drawn.

EPA Attorney

The level of involvement of the case attorney in the PRP search may vary from region to region, site to site, and with the nature and number of legal issues associated with the site. RPMs, CIs, and other PRP search staff should seek to involve the case attorney as early as possible to ensure that collected information meets evidentiary standards and that the scope of the PRP search is appropriate. It is very important to seek and obtain attorney input regarding sufficiency of evidence questions, title searches, conducting interviews, definition of site, and classification of PRPs (e.g., de micromis, insolvent). In addition, most PRPs retain legal counsel to represent them throughout the conduct of the response action. Thus it is important that the regional case attorney, at a minimum, be involved in the critical PRP search planning and implementation milestones identified in the PRP search plan.

Contractor

As mentioned earlier, each region performs PRP searches in a slightly different manner, depending on the organization of the region, availability of staff with PRP search experience, number of PRP searches, and other factors. Most, if not all regions, however, utilize contractors in some capacity when performing PRP searches. Contractor support activities include establishing and maintaining PRP databases, performing title searches, preparing PRP search reports, and reviewing and compiling records. Contractors, however, cannot perform inherently governmental functions. Prohibited activities include liability determinations and issuance of information request letters. Regional contracting officers (COs) and project officers (POs)

should be consulted regarding the regional enforcement contract's scopes of work and its suitability for obtaining PRP search task support. (*See* Appendix B for a list of regional COs and POs.)

Financial Analyst

There are situations when specialized expertise is needed to make difficult ability to pay determinations, assess complex PRP financial records or business transactions, and evaluate bankruptcy claims. In these instances, regions may use in-house financial analysts (if available), EPA's National Enforcement Investigations Center (NEIC) staff expertise, or contractors with this expertise.

Use of SEE Personnel in PRP Searches

The Senior Environmental Employment (SEE) program was formally established through the Environmental Programs Assistance Act (June 12, 1984). (*See* Chapter 2 references, page 94.) Under this Act, EPA is authorized to enter into cooperative agreements (CAs) with certain private, non-profit organizations designated by the secretary of labor as organizations that are eligible to receive funds under Title V of the Older Americans Act (1965). (*See* Chapter 2 references, page 94.) The Act specified that individuals age 55 and older in temporary, short-term assignments can provide technical assistance to federal, state, and local environmental agencies for projects on pollution prevention, abatement, and control. Most, if not all, regions participate in the SEE program.

A SEE employee, although not an EPA employee, working for EPA in a PRP search investigative role could take on the following tasks:

- assisting in coordinating with other regional PRP search personnel to assure effective implementation of national investigative policy or guidance; and

- providing training or technical assistance on possible techniques and approaches to other personnel who are involved in fact finding or information gathering.

If SEE personnel are used to support PRP searches or investigations, they should have:

- general knowledge of criminal and civil provisions of environmental protection statutes, particularly the provisions of statutes governing the illegal generation, disposal, and transportation of pollutants, toxic substances, and hazardous materials;

- knowledge of investigation principles and techniques, including laws and decisions relating to investigative procedures; functions and jurisdictions of agencies; and the scope, application, and interpretation of laws enforced by EPA;

- skill in the use of investigative techniques to gather evidence to establish facts needed to make a case; and

- the ability to conduct interviews and draft interrogatories; recognize, explore, and utilize leads; detect less-than-evident discrepancies in information; prepare reports; plan, organize, and conduct investigations; and testify in legal, quasi-legal, or administrative proceedings. (SEE employees who conduct interviews must identify themselves as contractors.)

2.1.2 Opportunities for PRP Input to the Search

Planning a PRP search involves identification of the roles and responsibilities of the key players involved in the PRP search effort. At some sites, PRPs may be key players in the PRP search process. Although EPA performs the primary PRP search functions, consideration should be given during the planning process to the potential benefits to the Agency of using PRP resources to accomplish certain search tasks, such as waste-in list development, allocations, corporate research, etc.

Since the inception of Superfund in 1980, a significant number of parties have participated in or conducted a variety of PRP search tasks in an effort to identify additional parties with whom response costs might be shared. In several instances, PRP resources and expertise have helped identify additional parties and accelerate the settlement process.

Background

This section provides guidance for facilitating timely and meaningful participation by PRPs based on regional and headquarters PRP search staff and case teams' experience and

analysis of the PRP search process. Recommendations for involving PRPs in the search process arose from the following:

- The National PRP Search Work Group, formed in early 1995. This work group's efforts resulted in several recommendations for enhancing the PRP search process.

- Superfund administrative reforms, including the PRP search pilot project, expedited settlement pilot, alternative dispute resolution (ADR) pilot, and allocations pilot. These reforms demonstrated that early involvement of PRPs can greatly benefit and facilitate the PRP search process.[1]

- The National PRP Search Enhancement Team, formed in 1997, studied past and present regional search processes, and surveyed those involved in and with the case teams, including states, tribes, and other federal agencies. The team proposed enhancements for the search process based on the recommendations, lessons learned, and experience of those involved in the various cases.

[1] The first round of Superfund administrative reforms began in 1993, the second round in February 1995, and the third round in October 1995 *See* Chapter 2 references, page 94

Specific findings that resulted from this experience and analysis include:

- PRPs often have access to specific information not readily available to EPA that may significantly expedite either site characterization (site history and chemical process information) or PRP status determinations (names, finances, and relationships). In addition, EPA may have information that could assist in PRP allocation efforts. This information was generally shared with PRPs following EPA's receipt and review of responses to CERCLA section 104(e) information requests, a point early enough to maximize use of the information and forge constructive working relationships with the PRPs.[2] In the case of confidential business information (CBI), the Agency must withhold information from PRPs.

- PRP steering committees can be utilized to coordinate and share information relevant to their site. Such constructive working relationships often lead to enhanced settlement opportunities and prevent delays during negotiations.

Potential Benefits of Involving PRPs in the Search

Involving PRPs in the search process allows them to provide information that helps EPA create a broader base of knowledge

[2] EPA has addressed the need for information exchange and sharing in Releasing Information to PRPs at CERCLA Sites (March 1, 1990), Issuance of Interim Rule Disclosure of Confidential Data to Authorized Representatives of the United States and Potentially Responsible Parties (January 5, 1993), and other guidance documents *See* Chapter 2 references, page 94. The interim rule applies only to the release of EPA's contractors' documents to PRPs, not to the release of other PRPs' documents

and facilitates identification of PRPs. Regional experience has demonstrated that involving PRPs in the PRP search process:

- results in the identification of additional PRPs;
- leads to improved response action planning;
- leverages the resources of the PRPs, saving time and money for both the PRPs and EPA; and
- enhances the likelihood of settlement by;
    - narrowing the number of issues requiring resolution,
    - limiting the issues that PRPs may have among themselves, and possibly reducing the likelihood of third party litigation,
    - developing working relationships, and
    - developing relevant information leading to settlement.

Degree of PRP Involvement/Input to the Search

The Agency should provide PRPs the opportunity to participate in or provide input to the PRP search process. Recognizing that the degree of PRP involvement or input can vary greatly, this section

offers processes used and recommendations made by the regions for addressing the level of PRP involvement. The ultimate responsibility for bringing the PRP search to an appropriate conclusion lies with the Agency. It is the case team's responsibility to determine PRPs' degree of involvement in the search process.

While considering the potential nature and extent of PRP involvement in the search process, the case team should:

- determine the specific information needed from the search; and
- consider whether any PRP has an unfair advantage, bias, or position that would limit the availability of information to any other party.

When determining the level and type of input needed, the case team may be influenced by the following circumstances:

- confidentiality of information issues;
- the presence of third party tort issues or contribution litigation among the PRPs;
- the presence and level of cooperation that the PRPs have demonstrated;
- site-specific factors such as timing or large numbers of known PRPs; and
- status of interaction between EPA and PRPs at the site.

The tasks that the PRPs perform should be structured accordingly (e.g., identifying the categories of parties that EPA wants existing PRPs to focus on in their search activities). Some examples of tasks that have been successfully undertaken by PRPs can be found on page 67.

There may be instances where the case team determines that in order to avoid any appearance of bias, it is appropriate for the PRP to hire a neutral ADR professional to perform certain tasks instead of performing them itself, for example:

- facilitating information exchange among PRPs and between PRPs and EPA;
- allocating costs;
- testing settlement options;
- focusing issues;
- dispelling misconceptions;
- resolving misunderstandings; and
- helping create functional relationships.

Guidelines

Regardless of the level of PRP involvement or the tasks conducted by the PRPs, they should be made aware that the Agency will retain responsibility in the following areas:

- conducting and overseeing the PRP search;
- determining the timing and extent of the PRP search;
- deciding when and how to evaluate information submitted for EPA review;
- determining which parties will receive a CERCLA section 104(e) information request or notice letter;[3]
- determining which parties to name as PRPs; and
- determining the terms of settlement(s) with the identified PRPs.

Following are general guidelines to assist in determining when and how regions might benefit from PRP involvement in and input to PRP search activities:

- Begin the PRP search as early as possible, compiling baseline information regarding operation of the site and identifying the liability of the major viable PRPs. Identify to what extent the PRPs are to be involved, then invite the PRPs to be involved in the search process.

[3] The OSRE memorandum Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999) states that EPA will notify small businesses of their right to comment on regulatory enforcement activities when EPA makes its "initial enforcement contact" with the business *See* Chapter 2 references, page 94. Under CERCLA, the initial enforcement contact is typically a general or special notice letter *See* Chapter 2 references, page 95 for the Small Business Fact Sheet.

- Balance the goal of achieving fairness in the search process by involving PRPs with the need to keep the process manageable. EPA may request that input be channeled through organized groups of PRPs (e.g., steering committees) whose liability EPA has established.

- Ensure that the PRPs involved in the search process are in compliance with any CERCLA section 104(e) information requests issued to them and have committed themselves to supplement those responses in a timely manner as additional information becomes available.

- Determine which tasks the PRPs are capable of performing. Discuss their involvement in the search process with them. The PRPs can perform some tasks with EPA oversight, EPA and the PRPs can share some tasks, and EPA can reserve some tasks for itself. Reflect this agreement in writing, e.g., in a letter memorializing tasks, roles, authorities, and deadlines. Define the period during which PRPs may provide EPA with information on other parties, and clearly communicate that PRPs need to adhere to deadlines in order to avoid delays.[4]

- Communicate to the PRPs that;

    - The work they perform must be fully documented to support its completeness and accuracy. All supporting records and documentation must be submitted to EPA for

[4]Failure of the PRPs to meet agreed deadlines may result in EPA takeover of a task a PRP has agreed to perform, which may increase costs to PRPs. It also may result in information being obtained too late to be considered

possible inclusion in the site's administrative record or use as evidence in federal court, as appropriate.

- The information submitted by them regarding other parties may be used by EPA for litigation and negotiation purposes, and therefore should not be submitted subject to protection under the Privacy Act (*see* Chapter 2 references, page 95) privilege, or a claim of CBI[5] unless absolutely necessary. The information may qualify for protection under other laws. EPA should determine the nature of the material submitted and whether other laws apply as early as possible. This is particularly important to do if the information has been or will be exchanged among the PRPs. These issues can be complex and are best addressed on a case-by-case basis.

- All participating parties must have equal access to information.

- EPA should advise PRPs of its enforcement discretion policies.

- EPA should encourage use of ADR professionals to assist in information gathering and PRP identification efforts where appropriate.

[5]As defined in 40 CFR Part 2, Subpart B. *See* Chapter 2 references, page 95.

PRPs who participate in the search process should commit themselves to working with EPA in good faith for the duration of the search.

Identification of Additional Parties

EPA and PRPs have an interest in assuring that the list of PRPs is as complete as possible prior to the start of settlement negotiations and private PRP allocation efforts. Regions are encouraged to provide the previously identified PRPs with an equal opportunity to identify and propose other parties for consideration as PRPs.[6] One way to accomplish this is by soliciting information on additional PRPs in the GNLs.

Generally, EPA should extend this opportunity in the GNLs, in writing. The letter extending the opportunity should:

- specify that PRPs must explain the legal and factual basis of identified parties' liability and submit supporting documentation;
- state that all waste-in lists submitted should explain all assumptions made in compiling them; and
- establish a deadline for submitting information so EPA has time to consider it for a particular purpose (e.g., issuance of SNLs).

[6] The case team should build in time during the planning of response and enforcement actions to allow for the potential need for EPA to issue followup CERCLA section 104(e) information request letters to newly identified parties before EPA makes final PRP determinations.

The earlier in the PRP search process additional parties are identified, the better chance EPA has of getting existing and newly identified PRPs to participate in settlement negotiations.

As previously stated, EPA generally should invite the PRPs in writing, but the case team should decide how to extend the invitation in specific cases. Some options for extending the invitation include:

- making a verbal request to the owner or operator for information about other PRPs (generators, transporters, or other owners or operators) and documenting in writing any input provided, or taking an administrative deposition so that the sworn testimony can be provided to other PRPs;

- publishing newspaper advertisements and setting up telephone hotlines;

- identifying PRPs at emergency removal sites to resolve past Agency or PRP costs;

- using a more inclusive or formal process for longer-term response actions (PRPs should be asked as early as possible, e.g., at the beginning of the RI/FS or EE/CA to identify other PRPs); and

- extending the invitation at a meeting or via teleconference with individual PRPs or the PRP steering committee when time does not permit a written invitation.

Regardless of the process EPA uses to afford PRPs the opportunity to identify additional parties, EPA should document in writing the process used and the input received. One way of documenting the information is with signed first-person narratives obtained in interviews.

EPA is under no legal obligation to address information provided by PRPs identifying other PRPs or to advise them whether the new parties were determined to be PRPs, but EPA should provide some feedback or explanation as to why the newly identified parties were or were not named.[7] Factors to consider in determining the appropriate response to PRPs when EPA determines the information provided by them cannot be considered may include:

- adequacy and timeliness of the information submitted;
- ability of EPA to respond in a timely manner; and
- the administrative burden of responding.

Additional Opportunities for Enhancing the PRP Search Process and Involving PRPs

Several cases and sites have incorporated the following to enhance the involvement of PRPs in the search process:

[7]Model CERCLA section 104(e) letters provide examples of questions for PRPs that relate to information concerning other PRPs *See* Chapter 2 references, page 95 for sample information request letter questions In addition, EPA personnel are required to document their decisions to exclude certain PRPs from any CERCLA section 106 UAOs that are issued, or not to issue UAOs to late-identified PRPs *See* Chapter 2 references, page 95 for OSRE memorandum, Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs (August 2, 1996)

- using ADR professionals or neutrals to facilitate information gathering activities and communication among PRPs and with EPA (ADR professionals, e.g., mediators, allocation specialists, do not make determinations on the liability of PRPs or the appropriateness of Agency decisions on the use of information; rather, neutrals may be used to assist PRPs and EPA in designing and conducting information gathering or to support PRP efforts to organize these activities. Use of ADR professionals has proven particularly useful in assisting PRP involvement at early stages of the Superfund process and during PRP allocation activities.);

- using CERCLA section 104(e) information requests with questions designed to obtain information on additional parties related to a site and tailoring specific information requests to the type of PRP and his involvement at the site;

- establishing repositories of publicly available non-enforcement-sensitive site information, and developing databases to make site information accessible to widely dispersed parties; and

- interviewing people with knowledge of the site as early as possible.

Information Provided and Tasks Conducted by PRPs During Some PRP Searches

PRPs may be sources of information. The types of information they provide may include:

- information for the preparation of waste-in lists;
- factual information for EPA to consider in determining who should receive CERCLA section 104(e) requests;
- information obtained from depositions taken by the PRPs in private contribution actions; and
- statements or affidavits of potential witnesses.

PRPs may engage in information search activities. Information search activities may include:

- performing or supplementing title searches;
- obtaining public documents from on-line searches and other sources;
- providing advice and documentation on industry-specific waste streams and process information;
- obtaining corporate records and providing factual information to support EPA determinations of corporate successorship and liability of parent corporations and corporate officers and directors;
- locating witnesses or other parties; and
- performing witness interviews and providing EPA with affidavits or investigative notes from interviews.

PRPs may participate in compiling and processing information and providing resources. Such activities may include:

- sharing information from in-house databases;
- managing document repositories;
- preparing volumetric rankings and waste-in lists and sharing the results, supporting information, assumptions, and methodologies with EPA; and
- funding neutral ADR professionals to assist in information gathering efforts.

NOTE: PRPs must never represent themselves as EPA personnel when performing PRP-search related tasks

2.2 Site Management Plan

Superfund sites often present enormous logistical, technical, and legal challenges. In order to properly mesh technical site investigations, PRP search activities, community involvement, PRP involvement, site cleanup activities, and cost recovery activities, a site management plan may be prepared. The plan helps identify the site activities as well as timing, resources, and milestones. The lead agency (EPA or the state) is responsible for developing the site management plan, which will most often be prepared by the lead remedial program technical person assigned to the site, usually the RPM. Development should be closely coordinated with the case attorney, management team, and any other necessary staff.

The site management plan should define the roles and responsibilities of individual team members as well as the role of management. The plan may describe each participant's activities and deliverables, objectives, and issues associated with the site, proposed schedule of events, and resource issues.

2.3 PRP Search Plan

The site management plan addresses the broader issues associated with the PRP search, such as timing, duration, and resource needs of the PRP search, whereas a site specific PRP search plan focuses on the "nuts and bolts" of how the PRP search will be conducted. The PRP search plan should be considered iterative in nature since it is not possible to predict with certainty all the types of information that may need to be gathered, the questions and issues that may develop during the baseline phase, or the followup tasks that will be necessary to complete the search.

Developing a PRP search plan consists of the following six tasks:

1. Developing a plan for managing the PRP search, including the baseline search, issuance of information request letters, additional search tasks, investigative strategy for identifying generators and transporters, followup on additional work that may occur due to any data gaps that may develop during the search, and evidence reviews;

2. Identifying sites or issues that may require specialized strategies, staff, or contractors with specialized skills, such as;

    - municipal landfills,
    - battery recycling sites,
    - area-wide groundwater contamination or stream contamination where sources are not apparent,
    - remote sites, e.g., where one company owned or operated multiple sites and transshipped wastes between them, or
    - mining sites, particularly those that are very old or involve districts and large watersheds,

3. Defining roles and responsibilities for all members of the PRP search team;

4. Identifying review points for assessing the direction and thoroughness of the PRP search;

5. If resources exist and there is a need for specialized support, developing a detailed scope of work to obtain contractor support, with provisions for phased deliverables, realistic due dates, and assignment of a work assignment manager to provide technical direction to the contractor, review deliverables, and assist with contract management;

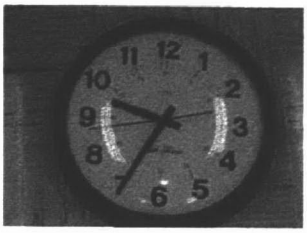
6. As appropriate, including opportunities for PRP involvement in the PRP search, e.g., language in information request letters requesting PRP nominations or information, questions in witness interviews, tasks which PRPs may perform or in which they may participate.

PRP search plans should not be confused with PRP search work plans. Work plans are documents prepared by contractors which detail work to be performed by the contractor and identify proposed staff in response to a scope of work prepared and issued by EPA or another contracting agency.

To ensure that the PRP search plan addresses potential legal, technical, community involvement, and policy issues that may be associated with the PRP search, the PRP search manager should include all EPA staff working on the site (CI or other investigative staff, RPM, OSC, site assessment manager (SAM), community involvement coordinator, attorney) in the development of the plan.

2.3.1

Timing and Duration



EPA initiates PRP searches once it is reasonably certain that EPA will incur response costs. PRP searches may be performed in phases, with a preliminary PRP search initiated during or immediately after a removal response, or near the conclusion of the PA/SI, before a site is proposed for listing on the NPL. The objectives of a preliminary PRP search may include: 1) identifying the current site owner or operator in order to determine whether she is capable of or willing to perform actions to stabilize conditions at the site; 2) learning more about potential hazards that may be encountered and require a response; or 3) gaining access to the site. Once a removal response has been completed or the site has been proposed for listing on the NPL, a more extensive PRP search will be undertaken. In practice, depending on resources and the urgency of site response actions, there may or may not be a break between the preliminary PRP search and the more extensive PRP search.

PRP search activities are generally iterative, rather than discreet, especially at more complex sites. For example, at a watershed contaminated by mining activity where there are hundreds of waste piles or discharging mine adits that could be sources, the PRP search team may wait until technical staff have determined which waste piles or adits will require a response before undertaking extensive ownership and operational history research. In such situations, the region may choose to have a contractor conduct research on archive, library, and government agency records for all individual mines and mills within the site, but initiate title searches for individual mine properties only when a response action for the facility is being planned.

A PRP search may be considered complete when, in the best judgment of the site team, the following factors have been satisfied:

- all relevant and material leads from CERCLA section 104(e) responses, interviews, and other primary or source documents have been pursued;

- PRPs have been afforded opportunities to participate in or contribute to the PRP search, and the information has been verified and/or authenticated and incorporated in the PRP search;

- sufficient information and evidence have been obtained to support the government's liability case, or determine that no viable PRPs exist or can be found; and

- ability to pay determinations have been made for those PRPs who have asserted inability to pay in good faith.

The following two sections provide a more detailed discussion of the timing and duration of PRP searches at removal and remedial sites.

Removal Searches

When PRPs are known and are able to perform the removal, EPA prefers that they undertake the response action. PRPs currently undertake approximately 20 percent of all removals. EPA's goal is to maximize PRP participation in the removal process, which means PRP searches in the removal context are increasingly important.

A PRP investigation should be part of the preliminary assessment that an OSC conducts under NCP section 300.410. (*See* Chapter 2 references, page 95.) An important reason for initiating a PRP search at this point is to identify and locate the property owner(s) in order to obtain access. To the extent appropriate under the circumstances, the search should proceed to identify other PRPs and attempt to have them perform the necessary removal action. If the removal is conducted with federal funds from the Superfund, supplemental searches during a stabilization action may be warranted to identify PRPs to take over the action and reimburse EPA's response costs.

The level of effort of the PRP search tasks in the removal context depends on the amount of time between discovery of the release or threatened release and execution of the action memorandum, the urgency of the release or threatened release, the likely expenditures on the removal, and available resources.

EPA classifies removals into three categories:

1. Emergency Removals

Emergency removals are initiated in response to a release or threatened release that requires on-site activities within hours of determination that an action is needed.

In emergency situations where the PRPs are not immediately known, the PRP search is often conducted in two phases. Initially, oral inquiries are made of municipal officials and reasonably available on-site personnel, and reviews of readily available site records are undertaken. This also may be an

appropriate time to interview neighbors and adjacent businesses. Activities include documenting, photographing, or photocopying visual evidence linking PRPs to the site, including drum labels, shipping records, and vehicle registrations, and notifying either the regional office that handles criminal investigations or the National Enforcement Investigations Center (NEIC) if criminal activity is suspected.

An expedited work assignment (*see* Appendix C) may be used through the Superfund Technical Assistance and Response Team (START), the Superfund Enforcement Support Services (SESS), or other available contract vehicles. The OSC should prioritize and expedite certain search activities to support the notice, negotiation, and AOC process before the removal begins. This may mean notifying PRPs orally of their potential liability after consulting with the Office of Regional Counsel (ORC) and following up with a notice letter as soon as possible after the oral notification. Once the site is stabilized, a second, more extensive phase of PRP identification should commence.

2. Time-Critical Removals

Time-critical removals are initiated when the lead agency determines, based on a site evaluation, that a removal action is appropriate and on-site activities must be initiated within six months.

In time-critical situations, the OSC should follow procedures that expand upon the PRP search activities discussed for emergency situations. Title searches and on-site interviews also should be

conducted. CERCLA section 104(e) information requests that include questions pertaining to generators and financial viability may be used to obtain additional evidence.

3. Non-Time-Critical Removals

Non-time-critical removals (NTCRs) are initiated when the lead agency determines, based on a site evaluation, that action is appropriate but a planning period of more than six months is available before on-site activities must begin. NTCRs are often managed by RPMs.

PRP searches for NTCRs are expected, generally, to obtain the same level of PRP information that would be gathered during a PRP search at a remedial site. As in remedial searches, followup activities should be completed in time for SNLs. Typical NTCR PRP search tasks include:

- reviewing EPA, state, and local agency files for information regarding land use, owners and operators, waste handling, and disposal permits;
- questioning of persons on or near the site in greater detail;
- conducting extensive on-site and off-site interviews;
- reviewing documents left on site, e.g., manifests (generator information), business records (business partners, financial status, etc.), payroll records (former employees who may have information about generators, operators, or on-site waste disposal);

- conducting title searches; and
- obtaining historical aerial photographs.

Many traditional pre-remedial site assessment tasks provide information needed for the PRP search. These tasks need not be duplicated by the PRP search staff. Appendix D contains a checklist that was developed to assist early on-site responders (OSCs, SAMs, RPMs, etc.) in documenting valuable information on PRPs and site conditions. To avoid duplication of these tasks, early on-site responders should fill out the checklist as completely as possible and forward a copy to the regional CI or enforcement staff person conducting the PRP search, put a copy in the site file, and provide a copy to the case attorney.

Remedial Searches

Remedial sites typically require comprehensive PRP searches that may be performed in two or more phases. Search activities should begin as soon as the region believes that the site is "NPL-caliber" and that a long-term response is appropriate. NPL-caliber sites include those involving:

- contaminated aquifers used for public drinking water;
- soils in residential areas or schools contaminated with hazardous substances significantly above background levels; and
- sensitive environments, with threatened or endangered species, containing hazardous substances significantly above background levels.

Timing and duration goals for remedial searches should be to:

- identify a sufficient number of viable PRPs concurrently with the NPL listing of a site to negotiate performance of the RI/FS;

- identify and classify PRPs such that EPA can offer de minimis parties a settlement prior to conclusion of the RI/FS (pre-ROD);

- identify the full universe of PRPs, including insolvent and defunct parties, prior to issuance of RD/RA SNLs;

- identify the insolvent and defunct parties so that an orphan share can be calculated, if appropriate, and the number of viable PRPs for negotiations can be established; and

- identify and classify other parties, such as de micromis and MSW contributors, parties with ability to pay problems, etc., prior to issuing SNLs.

Proof of liability may be more complex at old sites with limited documentation. With potentially numerous and complex legal and technical issues to address at remedial sites, a phased approach to the PRP search should be considered. A phased approach may initially yield a core group of financially viable, capable, and cooperative PRPs with whom EPA can negotiate performance of the RI/FS. EPA may then continue PRP search efforts, perhaps with assistance from the PRPs, while the core group of PRPs is performing the RI/FS.

Followup activities to the initial phase of a remedial search will be highly site-specific and may be dictated by leads developed from preserved evidence or sampling and response activities. On one hand, relatively straightforward enforcement sites, such as owner/operator sites, may only require a few interviews as followup to evidence preservation activities in order to establish PRP liability and determine ability to pay. On the other hand, complex enforcement sites, such as recycling operations, area-wide ground water sites, and landfills typically require more comprehensive followup activities that may include a large number of information request letters and interviews and development of transactional databases.

For planning purposes, regions should identify a general period of two to five quarters for conducting PRP searches, with more time allowed for complex, multi-generator sites. Some complex sites, such as those with area-wide ground water contamination with multiple sources of hazardous substance releases or stream sediment contamination, may require specialized tasks that extend through the RI. Where enforcement staff and resources allow, a baseline PRP search report should be completed 90 days before the start of the RI/FS, and the interim final PRP search report should be completed at least 90 days prior to issuing RD/RA SNLs. PRP search starts and completions are two of the program measures currently being used to track overall program progress.

Recommended activities for a thorough PRP search are:

- initiating a dialogue with early-identified PRPs to provide an opportunity for PRP input to the PRP search;

- collecting the financial and waste contribution data needed to perform PRP orphan share calculations;
- following up on all leads to identify parties at the site;
- obtaining the information necessary to make de minimis and de micromis determinations;
- categorizing all parties (e.g., generator/transporter, owner/operator, de minimis/de micromis); and
- performing a financial viability determination of all PRPs asserting inability to pay.

Even if a PRP search is deemed complete, EPA may undertake additional search activities. This is likely to be the case when followup search activities are needed to support the Agency's cost recovery efforts against non-settlors or at sites with Trust Fund-financed cleanups. For instance, additional information request letters can be sent to a facility's suppliers during cost recovery litigation in an effort to obtain more evidence about the facility's waste. If EPA is engaged in ongoing litigation (e.g., cost recovery), PRP search personnel should coordinate closely with the assigned attorney in issuing any such information requests. Although strong precedents support the claim that EPAs administrative information gathering authorities are separate and distinct from the civil discovery process, it would nevertheless be prudent for case teams to carefully consider their available options in the scenario of ongoing litigation.

2.3.2 Streamlining Considerations

Due to constrained resources and an increased focus on gathering more PRP search information earlier, possible ways to increase the efficiency of a PRP search include:

- multi-site work assignments;
- simultaneous submission of reports to all Agency reviewers;
- open procurement authority for enforcement staff;
- an early on-site responder's checklist to avoid duplicating tasks; and
- use of third-party (ADR) neutrals to facilitate gathering and exchange of information, and PRP organization and coalescence efforts, where appropriate.

Several regions use multi-site work assignments designed to expedite PRP search efforts and other enforcement support by eliminating individual work assignments for each PRP search effort. Through narrowly defined and directed tasks, the multi-site work assignment provides EPA with a means to obtain expedited support in acquiring and managing PRP search information. A general work plan is prepared by a contractor based on EPA's statement of work for a multi-site open work assignment for enforcement support. Once the general work plan is approved by EPA, an EPA work assignment manager (WAM) initiates site-specific tasking through the use of a technical direction memorandum (TDM) to the contractor. The

TDM must be approved by the EPA project officer, and will direct the contractor to perform specific tasks for a designated site and describe the type of deliverables required. The TDM further provides the contractor with a site account number for charging work performed for the site and a target date for completion of the work. An example of a multi-site work assignment is provided in Appendix C. PRP search staff should consult their region's COs or POs to determine whether PRP search work can be performed under a multi-site work assignment. A list of regional COs and POs is provided in Appendix B.

Some regions are reducing PRP search deliverable review times by requiring the PRP search contractor to submit copies of the draft baseline and interim final PRP search reports simultaneously to the program and ORC offices. Regions are also encouraged to require phased deliverables instead of one or two deliverables over the life of the PRP search. Phasing can reduce the risk of contractors conducting searches that are entirely off track, increase product quality, and provide opportunities to modify the PRP search approach incrementally.

A few regions have successfully piloted procedures streamlining the process for reimbursing Agency employees for out-of-pocket expenses incurred in the performance of official duties. This streamlining simply involves the use of an open procurement request (PR) against which a succession of claims may be made, instead of the current process of preparing a new PR for each claim. Enforcement investigative staff typically make repeated small purchases in the performance of their duties, primarily for photocopying services. Since it is usually impossible to identify all the potential sources of documents in advance, such as

libraries, county courthouses, and universities, blanket purchase agreements (BPAs) are not a practical alternative. These institutions do not normally accept bank cards. Some regions have found credit card checks useful in these situations. Open PRs are established for each investigator, authorizing the individual to incur expenses for photocopying up to the amount of funding committed under the PR.

Investigators obtain reimbursement for such expenses by providing receipts and documenting a Standard Form (SF) 1164 referencing the open PR. Enforcement investigative staff should consult the appropriate contract and financial personnel in their region to determine specific procedures for open procurements. An early on-site responder's checklist is another useful tool for streamlining the process and reducing duplication of activities.

2.4 PRP Search Tasks

PRP search planning should identify the site-specific activities necessary to achieve the search's goals. The nature and number of search tasks will vary from site to site. For instance, a PRP search at an industrial plant site with only a few owner/operators should only require a baseline effort, with few or no followup tasks necessary. For multi-generator or multi-transporter sites, PRP searches typically are conducted in two phases, baseline and followup. Since each site involves a unique set of legal and technical issues, there is no fixed set of tasks that must be performed during every PRP search. However, a list of tasks commonly performed during a PRP search is provided in Chapter 4 of the Enforcement Project Management Handbook. Chapters 3 and 4 of this manual describe in detail common and more specialized tasks frequently performed in PRP searches. Those

developing the PRP search plan should determine which tasks should be performed, the sequence in which the tasks should be performed, and the schedule of deliverables.

Release of Information

The Agency must follow guidelines when determining whether to release information. The Agency emphasizes the importance of a consistent approach when releasing information to PRPs about the identity, relative contributions, type, and quantity of wastes at a site. Consult the Agency's Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993). *See* Appendix E for details on the release of information.

Information may be released through direct contact with PRPs, in conjunction with issuance of general notice letters or special notice letters, or by other means. For example, if a large number of PRPs are identified at a site, and a PRP steering committee has been formed, an effective means of information release could be steering committee distribution of information to all PRPs. If no steering committee exists, it may prove very beneficial for EPA or a neutral party to convene a meeting of PRPs at either the EPA regional office, state office, or a location central to the PRP community. The goal here is for EPA and state staff involved with the site to provide information, answer questions, and receive input from the PRPs. Convening a meeting of PRPs can result in the identification of additional PRPs and facilitate formation of a PRP steering committee.

Information release also may occur when the region invokes special notice procedures under section 122(e)(1) of CERCLA. When invoking CERCLA section 122 special notice procedures,

EPA must provide PRPs with waste-in lists, volumetric rankings, and a list of PRPs' names and addresses, "to the extent such information is available." Documents may include manifests, logbooks, waste tickets, receipts, and CERCLA section 104(e) responses.

Handling Sensitive Records

Confidential Business Information

CBI is commercial or financial information obtained from a person that is privileged or confidential. Protection of CBI keeps others from deriving a business advantage from information to which a specific party has exclusive rights. CBI includes such items as trade secrets and other proprietary information (for example, the design of an innovative treatment technology). When a company submits information that it thinks should be treated as CBI, it should label the data as such and explain why the information is considered confidential. It may be helpful to advise PRPs of these requirements when issuing them information request letters under CERCLA section 104(e). EPA does not have to decide whether the information is CBI unless someone requests its release; however, EPA must maintain the security of that information as if it were CBI until EPA makes a determination to the contrary. (See Chapter 2 references, page 95 and 40 CFR 2.201 et seq. for information on EPA procedures for making CBI determinations.)

Enforcement-Confidential / Enforcement-Sensitive

Enforcement-sensitive records are documents, such as plans for enforcement actions, case-specific enforcement strategies, and draft PRP search reports, that might damage EPA's enforcement case if they were released. Therefore regions should establish records management processes and procedures that prevent the unauthorized release of enforcement-confidential and enforcement-sensitive documents, and that are consistent with applicable law.

Information Requested Pursuant to FOIA

The Freedom of Information Act (FOIA) imposes two basic requirements:

- a duty to publish or otherwise make publicly available certain classes of agency records, 5 U.S.C. § 552(a); and

- a duty to make all other agency records publicly available upon written request, unless specifically exempt by statute, 5 U.S.C. § 552(b). (*See* Chapter 2 references, page 96.)

Under FOIA, a record includes any information currently maintained by the agency in any format. An "Agency record" is a record that was created by or is under the control of an agency. FOIA does not require an agency to create a record in response to a request for information, nor require an agency to provide future records.

A FOIA search requires review by manual or automated means of Agency records for the purpose of locating responsive records. The agency needs to make "reasonable efforts" to search for records in electronic form, except when the search would "significantly interfere" with the operation of the agency's computer systems. The search need only be reasonable; it need not uncover every responsive document in existence, but an agency employee must not avoid searching for records known to exist.

The initial response should inform the requester of the agency's decision to release or deny records, when it will release records, and that the requester may appeal the agency's decision. The initial response is due 20 working days after receipt of the request. The agency may obtain a 10-day extension by informing the requester in writing of "unusual circumstances" that will cause delay, such as the need to search separate office and field locations, search voluminous records, or consult another agency. Failure of the agency to respond within deadlines may constitute an exhaustion of administrative remedies, allowing the requester to go to court immediately.

Title 5 U.S.C. § 552(b) defines nine categories of records that are exempt from release under FOIA.

Exemption 1 - National security

This exemption protects from disclosure national security information concerning national defense or foreign policy that has been properly classified in accordance with procedural requirements of an executive order. EPA received classification authority in 2002.

Exemption 2 - Internal rules and practices of an agency
This exemption applies to two kinds of records: (1) records the disclosure of which may lead to the subversion of an agency rule or policy, and (2) technically responsive yet purely inconsequential records that contain little information of value in comparison to the burden of having to provide it to the requester.

Exemption 3 - Records specifically exempted by statute
Congress often exempts specific kinds of records through an "Exemption 3 statute" instead of a FOIA amendment. Laws that exempt specific records include the Federal Rules of Criminal Procedure (grand jury information), the Patent Act (unfiled patent application materials), Procurement Integrity Act (site selection information), and certain statutes dealing with the location of endangered species. Critical infrastructure statutes many contain FOIA exemption provisions.

Exemption 4 - CBI/Trade secrets
Information that is claimed as CBI or a trade secret by a submitter may initially be withheld from a FOIA requester pending a confidentiality determination by the Office of General Counsel (OGC) or ORC. Exemption 4 triggers an automatic appeal in which an EPA legal office issues a confidentiality determination and FOIA appeal determination even if the requester never officially appeals the initial denial. The agency will determine that information required to be submitted to it is confidential only if release would either cause substantial competitive harm to the submitter or impair the government's ability to obtain such information in the future. Information that is voluntarily submitted to the agency has only to meet the lower

standard of not being otherwise publicly available. Information must involve a formula or production process to be granted trade secret status. Most business information is not a trade secret under that definition.

Exemption 5 - Privileged communications

A record must satisfy two criteria to qualify for this exemption. First, the record must be inter- or intra-agency, meaning it cannot have been shared outside the executive branch. Records or information that originated outside the executive branch may nonetheless be considered intra-agency if the source is a "consultant." A "consultant" is one who assisted the agency's decision making process by advising the agency on a matter in which the consultant has no stake in the outcome and is not otherwise advancing an interest or agenda that may benefit it over other parties. Settlement records often must be released because they are not inter- or intra-agency records. Second, the record must be protected by a civil discovery privilege. Common privileges include:

Deliberative process privilege

The record must be pre-decisional and deliberative. The purpose of the privilege is to promote frank and honest discussion of options prior to a decision and to avoid public confusion about the rationale behind an agency decision. Indicators of the privilege include the management level of the author, the point in the decision-making process when the record was created, and how the record was used. The privilege does not lapse after a decision is made, and generally does not cover facts.

Attorney-client privilege

The record must have been drafted by or at the direction of an attorney and contain advice regarding a client's legal issue and must have been generated and maintained in confidence. The purpose of the privilege is to facilitate effective representation by promoting frank and open discussion between attorney and client. The agency – not an individual employee or program office – is the client. Privilege may protect opinions and facts. Privilege does not attach unless the attorney is actually employed or acting in a legal capacity. Privilege can protect communications with any EPA employee, not just members of management. .

Attorney work product privilege

The record must have been drafted by or at the direction of an attorney in anticipation of litigation, and generated and maintained in confidence. The purpose of the privilege is to protect the mental impressions and work product generated by an attorney while representing a client in litigation. Litigation need not have commenced; the work product only needs to identify specific claims that may reasonably lead to litigation. A record that was generated as a normal part of an agency's functions that later may be relevant to litigation is not covered. The privilege may also apply to factual materials.

Exemption 6 - Personal privacy

This exemption protects personal information whose disclosure would constitute a "clearly unwarranted" invasion of personal privacy. The purpose of FOIA is to allow public inspection of information that is relevant to the workings of government, not

necessarily every piece of information the government possesses. This exemption requires a constant balancing of the public interest in the requested information and the individual's right to privacy.

Exemption 7 - Law enforcement

This exemption applies to documents that are compiled for civil or criminal law enforcement purposes. The exemption applies to documents the disclosure of which:

- could reasonably be expected to interfere with law enforcement proceedings (open investigations only; documents relating to closed investigations must be released);
- would deprive a person of his right to a fair trial;
- could reasonably be expected to constitute an "unwarranted" invasion of personal privacy (lower threshold than Exemption 6);
- could reasonably be expected to disclose a confidential source;
- would disclose law enforcement techniques and procedures and could reasonably be expected to risk circumvention of the law; or
- could reasonably be expected to endanger the life or physical safety of an individual.

Exemption 8 - Banking information

This exemption applies to records used by agencies responsible for the regulation or supervision of financial institutions.

Exemption 9 - Well data

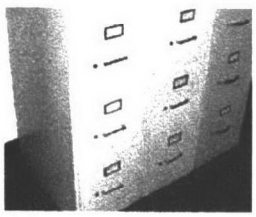
This exemption applies to geological and geophysical information and data, including maps, concerning wells.

ORC or OGC should be consulted whenever a question arises about releasing records. EPA employees risk criminal liability by releasing protected information such as CBI materials or Privacy Act information. Regional FOIA officers should be consulted on requirements for responding to FOIA requests.

2.5 Document Filing and Retention and Release

During the planning process, the search manager should establish a file structure for the search, considering factors such as regional file structure, anticipated volume of information, nature of PRP interaction with EPA on the PRP search, anticipated information exchange, FOIA response requirements, and evidentiary concerns; ascertain whether the accumulated data is likely to be voluminous enough that an electronic system for managing it will be needed; and develop or obtain such a system. The PRP search manager should utilize the expertise of the records manager in each region. This person is an invaluable organizing and managing records. A document control system for identifying and tracking documents should also be established.

2.5.1 Document Management



2.5.2 CERCLIS/WasteLAN

The Comprehensive Environmental Response, Compensation, and Liability Information System/Waste Local Area Network (CERCLIS/WasteLAN), is an information management system made available to EPA's regional offices and headquarters. It incorporates numerous site-related subjects.

CERCLIS/WasteLAN includes a number of features intended to facilitate PRP searches and the sharing of PRP data. These features are particularly important when interstate or multi-state PRPs are concerned. Data entered into CERCLIS/WasteLAN about parties that are associated with a general notice letter, special notice letter, enforcement instrument, or filed litigation referral are available to all regions the following Monday. This data-sharing capability, combined with features that make it easy to find out if a particular individual or firm is already in the database, is intended to reduce the need to repeat preliminary work that has already been done by others.

In addition to basic information (name, address, phone number) on all parties associated with a site, CERCLIS/WasteLAN also stores information describing the involvement of the identified PRPs at the site, a history of any enforcement actions taken, what response actions the PRPs have undertaken or committed themselves to perform, and information about correspondence issued by the Superfund program. CERCLIS/WasteLAN is available at most work stations in regional offices, and training is available. A summary of CERCLIS/WasteLAN's capacity and the type of PRP-related data gathered, along with examples of screens used when entering data, can be found in Appendix F.

Information Management

Factual information gathered during a PRP search can be grouped by its source and within each source by PRP. Information request letters and responses should be organized and maintained for use by Agency personnel. Government documents, title search documents, PRP documents, interview summaries, and information request letters and responses may be grouped separately. Index numbers should be assigned to all documents to ease referencing of the evidence summary sheets and the PRP search report. Section 3.2 of this manual discusses some factors involved in database creation and the storage and special handling of documents.

Chapter 2 References

Name	Section	Location
Applicable or Relevant and Appropriate Requirements (ARARs)	2.0	http://www.epa.gov/superfund/action/guidance/remedy/arars.htm
List of Regional COs and POs	2.1.1	Appendix B
Environmental Programs Assistance Act (June 12, 1984)	2.1.1	http://www.epa.gov/epahrist/see/brochure/law.htm
Title V of the Older Americans Act	2.1.1	42 U.S.C. § 3056 et seq. http://wdsc.doleta.gov/seniors/other_docs/owp-106-501.pdf
Superfund Reforms Home Page (June 1993, February 1995, and October 1995)	2.1.2	http://www.epa.gov/superfund/programs/reforms
Releasing Information to PRPs at CERCLA Sites (March 1, 1990)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/release-prp-rpt.pdf
Issuance of Interim Rule: Disclosure of Confidential Data to Authorized Representatives of the United States and Potentially Responsible Parties (January 5, 1993)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/iss-confdata-mem.pdf
Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999)	2.1.2	http://www.epa.gov/compliance/resources/policies/civil/sbrefa/index.html

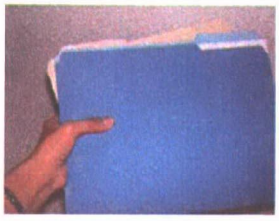
Chapter 2 References

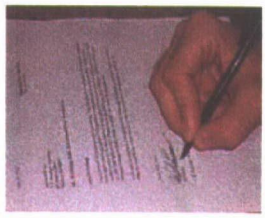
Name	Section	Location
Small Business Fact Sheet	2.1.2	http://www.epa.gov/compliance/incentives/smallbusiness/index.html
Privacy Act	2.1.2	5 U.S.C. § 552 et seq. http://www.access.gpo.gov/uscode/title5/parti_chapter5_.html
40 CFR Part 2, Subpart B (CBI)	2.1.2	40 C.F.R. Part 2 http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr2_00.html
Sample Information Request Letter Questions	2.1.2	http://intranet.epa.gov/oeca/osre/docs/html
Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs (August 2, 1996)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/reason-cer106-rpt.pdf
Enforcement Project Management Handbook	2.3	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
National Oil and Hazardous Substances Pollution Contingency Plan	2.3.1	40 C.F.R. Part 300 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr300_02.html
Multi-site Open Work Assignment (expedited work assignment)	2.3.1	Appendix C
Checklist for Removal/Pre-remedial Sites	2.3.1	Appendix D

Chapter 2 References

Name	Section	Location
Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993)	2.4	Appendix E
Freedom of Information Act (Reference Guide)	2.4	5 U.S.C. § 552 et seq. http://www.epa.gov/foia/guide.html
Quick Reference Guide for Using CERCLIS/WasteLAN	2.5.2	Appendix F

Chapter 3





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3.0 Baseline PRP Search

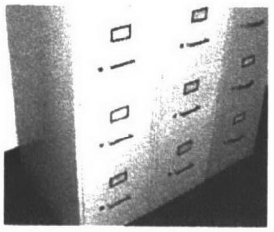
This initial phase of the PRP search is focused on collecting evidence that establishes the liability of owner/operator PRPs and identifies generator/transporter PRPs. The exact nature, number, and sequence of search tasks will vary from site to site. However, this chapter describes 10 tasks that are often completed as part of the baseline PRP search. Keep in mind that the specific activities undertaken at a given site will depend on what is needed to achieve the Agency's PRP search goals for that site. The 10 baseline PRP search tasks are:

1. Review files and collect records;
2. Organize records and track correspondence;
3. Issue information request letters;
4. Conduct interviews;
5. Perform title searches;
6. Conduct business status and financial research;
7. Develop site summary;
8. Compile waste-in information;
9. Classify PRPs; and
10. Prepare baseline PRP search report.

See Appendix G for a checklist of PRP search tasks.

3.1 Review Files and Collect Records

The objective of this task is to locate and obtain copies of all records pertinent to the site and relevant to the PRP search. Relevant records may include correspondence, photographs, sound or magnetic recordings, computer tapes, drawings, hazardous waste manifests, technical data and reports, permits, notices of



violations (NOVs), complaints, investigations, site owner records, fire department chemical reports, litigation files, bankruptcy files, local newspaper accounts and records, and information available on line. These records are potential sources of information on site history, identity of PRPs, and additional contacts. Before an effective file review can take place, it is critical to become familiar with the site and all background information. This task generally starts with a review of EPA files to determine the volume, content, and nature of existing information. As a starting point, the PRP search manager should coordinate with the region's record center to determine what information is available within the region. Because state and local offices can be a valuable resource in the search process, their records should be reviewed concurrently with EPA's files or soon thereafter. A thorough search for records in other federal agencies, local offices, and other sources should be performed. This task can be conducted at the same time as the title search and interviews.

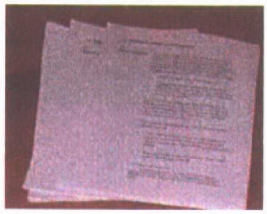
3.1.1 Federal Files

Federal records may be found in EPA's regional record centers or in files in the CERCLA, RCRA, Emergency Planning and Community Right to Know Act (EPCRA), air, water, regional counsel, and criminal investigations offices. Documents maintained in these offices may include permits, inspection reports, correspondence, records of violations and enforcement actions, and criminal records. These documents often reference other federal agencies that are, or were, involved with the site or a PRP. Taking full advantage of intra-Agency communications and databases, such as the CERCLIS/WasteLAN database and the On-Line Targeting Information System (OTIS), can also yield information on a site or PRP within the region. Federal sources of information can include the following:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
• Department of the Interior	maps and aerial photographs
• Nuclear Regulatory Commission	licenses, permits, studies
• U.S. Geological Survey	studies and ground water data
• Environmental Photographic Interpretation Center	aerial photographs
• National Oceanic and Atmospheric Administration	meteorological data
• U.S. Army Corps of Engineers	studies, permits, records at federally owned sites
• Occupational Safety and Health Administration	inspection reports, health and safety incident information
• Securities and Exchange Commission	current and archival PRP documents, including financial statements, corporate business publications, quarterly and annual reports
• Coast Guard	incident response reports
• Food and Drug Administration	inspection reports (the FDA had records of facility inspections from the 1970s at one Region 2 site)
• Federal Emergency Management Agency	relocation information
• Federal Records Center	retired federal record files
• U.S. Forest Service	maps, title searches, studies
• Bureau of Land Management	mining information

3.1.2

State Files



State offices may maintain valuable technical information pertaining to a site. This information may prove useful in planning and implementing site response actions. Of particular interest are documents located in the state's Superfund & RCRA program offices as well as records located in the secretary of state and attorney general's offices. It is a good idea to familiarize yourself with the organizational history of state offices in order to determine the possible location of all needed records. When offices are reorganized, they sometimes retain files that address subjects for which the office is no longer responsible. The region may want to consider including language in State Multi-Site Cooperative Agreements providing that the state will compile information that it has on file for each site (e.g., spills, permits issued, compliance history, orders, citizen complaints). This should result in preservation of PRP-related information and more timely identification of PRPs. If states provide information to EPA in this manner, the PRP search manager should coordinate this in advance with the state and include this activity in the PRP search plan. Types of information collected from state files can include the following:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
• Environmental Agency	licenses, permits, studies, inspection reports, sample data
• Water and Soil Conservation	studies
• Attorney General	correspondence, lawsuits, orders
• Secretary of State	corporation names and addresses, registered agents, articles of dissolution, annual reports, limited partnership filings

3.1.3 Local Government Files

Local government offices may contain accident reports, permits and licenses, local disposal guidelines, inspection and violation notices and reports, and memoranda and correspondence between site owner/operators and local officials. In some cases, local officials may have prepared site history memoranda and lists of hazardous materials. Relevant local government records can be found in:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
• Office of the City or County Attorney	correspondence, permits, licenses, enforcement actions
• Health Department	accident reports, lists of hazardous materials
• Department of Public Works	operation maps, applications, inspection and violation reports
• Wastewater Management or Pollution Department	permits and licenses, correspondence, control department's inspection and violation reports
• Planning, Land Use, and Engineering Departments	plat maps, aerial photos, operations maps, correspondence, applications
• Zoning Boards	applications, plat maps and aerial photos
• Police and Fire Departments	accident reports, lists of hazardous materials
• City Clerk/County Clerk/Recorder's Office/Tax Assessor's Office	deeds, leases, grants, addresses, mortgages and liens, easements, agreements, legal property descriptions
• Historical Society	past business at the site

3.1.4 Other Records

Other good sources of information can include:

The PRPs

- PRP management;
- employees;
- suppliers;
- independent contractors; and
- customers.

Sources of information commonly in PRPs' possession are:

- information on other PRPs (including those not previously identified);
- hazardous materials listings;
- shipment manifests;
- transporter records;
- Material Safety Data Sheets (MSDSs) for substances used by PRPs;
- correspondence; and
- corporate records such as board meeting minutes.

Public Libraries, University Libraries, and Historical Societies

- local business collections;
- local newspapers, community newsletters, and articles or newsletters published by businesses associated with the site;

- documents and other paper collections donated by well-known individuals in the community; and
- specialized collections (e.g., mining, collections of aerial photographs).

Residents Living Adjacent to the Superfund Site

- identity of PRPs (particularly leads early in the PRP search);
- location of waste disposal areas; and
- information about other activities at the site relevant to the PRP search.

Other Sources of Information

- on-line sources of free information;
- subscription on-line information sources (e.g., Choicepoint, Dataquick);
- Sanborn Fire Insurance maps;
- Polk/Cross directories; and
- commercial aerial photograph companies.

Early contact with the community may provide important site and PRP information, establish an EPA and community dialogue, and encourage productive community involvement throughout the life of the project.

3.1.5 Special Planning Considerations

Performing file reviews and collecting records may involve some special planning considerations such as:

Document Production and Retention

It is important to determine the best method for reproducing the records. Factors relevant to this decision include cost, accessibility of the facility that will be maintaining the records, and the current regional records guidance. If any of the records are to be placed in a public docket, the technology available to the public for accessing those records at the chosen facility (e.g., microfilm readers, computer terminals) should be taken into account.

In many instances the integrity of records and chain of custody issues need to be considered to ensure that the evidentiary value of documents is not compromised. Also consider Bates stamping[1] documents, as this will help verify that no document has been lost and allows for accurate refiling of documents. (*See* also subsection 3.2.1)

Volume of Records

If the estimated volume of records to be reviewed and copied is large, a contractor may be better suited than EPA to perform this baseline task. If use of a contractor[2] is a feasible option, EPA may want to initially accompany the contractor in reviewing the records to determine which documents are relevant and need to be copied.

---

[1]Bates stamping, which is done by hand with a specially-designed mechanical stamp, is often used in the legal industry to number or date/time mark images as they are processed In recent years, more high-tech marking technologies have been developed that can create images with copyrights by putting a company name, logo, or legal copyright mark on documents as they are scanned or filmed These imaging technologies can also automatically add sequential numbering to the images

[2]When contractor support is being contemplated for any PRP search task, make certain that all conflict of interest (COI) checks have been done before the task begins Coordinate with the regional project officer (RPO) or contracting officer (CO) to confirm that all necessary contract documentation is in place Only the CO can make the final determination about the possible existence of a COI

Depending on the volume of records or the release policy of the keeper of the documents, it may be more efficient to:

- copy the records at the agency with the help of a rental copier or temporary help;
- send the records to a local vendor for copying under the supervision of the contractor staff;
- microfilm the documents and then produce hard copies from the microfilm;
- procure or rent portable, hand-held scanners as an alternative to removing, handling, and copying hard copies; or
- scan documents onto a CD-ROM and provide a database on line (this method was used successfully for site records in Region 4 during an allocation pilot).

Confidential Information

EPA frequently encounters records that someone claims are confidential. Confidentiality claims generally fall into two categories, government privileged documents and confidential business information.

Government Privileged Documents

Enforcement-sensitive intra-agency memoranda are among the most common privileged federal government documents. Privileged memoranda often concern permit actions, inspections,

and regulatory violations. These confidential records often provide valuable PRP and site information, such as degree of cooperation with the state at the time of disposal. **Government privilege is discretionary**. [Note: As a general rule, an agency's ability to make a discretionary disclosure of exempt information will vary according to the nature of the FOIA exemption and the underlying interests involved. FOIA exemptions 2 and 5 protect a type of information that is not subject to any such disclosure prohibition. (*See* FOIA discussion in section 2.4 of this manual.)] Consequently, it is important to work closely with the PRP search managers and regional counsel when deciding how to handle potentially privileged records. In some cases, records remain marked as confidential when there is no longer any reason to treat them as confidential. Regional and state counsel should work together to resolve confidentiality issues concerning state records. Such coordination could also be addressed in the State Multi-Site Cooperative Agreement discussed previously.

Confidential Business Information

Files obtained from PRPs may be subject to a CBI claim. While government privilege is discretionary, CBI is a matter of law. Consult with your PRP search manager and case attorney if CBI is an issue. Generally, enforcement contracts include a CBI clause, and contractor personnel sign CBI agreements at the time the contract is awarded. The PRP search manager, PO, and CO, however, can verify that fact and provide procedures for CBI claims. State records and records from other federal agencies may be subject to such claims as well. If a contractor is performing the file review and records collection task for EPA, and the PRP makes a CBI claim, the contractor should immediately inform the PRP

search manager. The PRP search manager should then consult with the EPA PO and CO responsible for the contract under which the file review is being conducted. The Agency will then determine whether it is appropriate for the contractor to review the records and whether the records in question are CBI.

Health and Safety

The health and safety of the personnel conducting the file review and record search are an important concern. Documents or records encountered during this task may be contaminated with hazardous substances. While not common, this problem does arise on occasion. If document contamination is suspected (e.g., because records were found in a contaminated warehouse, documents are stained), the PRP search manager should be notified immediately and the Agency should attempt to determine the probable degree of contamination and its associated health effects, whether the documents should be tested, and possible methods to obtain clean copies. If a contractor is performing the task, the contractor's health and safety plan (in accordance with procedures outlined in the PRP search work plan) must be current before the contractor begins work with contaminated records.

Access Refusal

If EPA or EPA's contractor is refused access to records or other sources of pertinent information, EPA or the contractor should document the circumstances of refusal and identify when, where, and by whom access was denied. This information should be provided to the EPA case attorney. Often, parties refusing access have little or no knowledge of EPA's information gathering

authority under CERCLA, and access can often be obtained subsequently through informal dialogue between the case attorney and the property owner or the owner's counsel, if one has been retained. If a contractor is conducting a records search, the Agency should provide the contractor with a letter of introduction that explains access rights. This should be a standard operating procedure when a contractor is responsible for records collection and file review.

3.2 Organize Records and Track Correspondence

A good system for organizing, storing, and tracking site files and tracking correspondence is imperative for case development, litigation, and cost recovery efforts. Check with your region's records manager and other case teams to assess what file structures are already in place and effective. Chapter 15 of the Enforcement Project Management Handbook (*see* Chapter 3 references, page 215) can be consulted for information on organizing site records. Effective tracking of the status of information request letters and other correspondence greatly enhances the Agency's ability to share information with PRPs and other parties and saves time and resources.

3.2.1 Organization

For large, complex sites that have recently entered the Superfund "pipeline," it may be beneficial to create a document identification form to assist in organizing, documenting, and tracking site records. A document identification form should contain basic identifying information for each site document, such as the document's source, date, title, and author and may also be tailored to include other information relevant to a specific site. This form can help avoid later duplication of effort and provides a good

audit trail. The PRP search team should weigh the benefits derived from the use of a document identification form against the effort required to use it before deciding to use this records management tool.

Records compilation and tracking may involve a fairly simple file organization; but, some sites, especially large sites with many PRPs and a large volume of records spanning a number of years, may require a more complex file organization. To choose the best method of organizing documents, the following factors should be considered:

- types of information needed from the documents;
- volume of documents;
- regional file structure;
- capabilities of the organizer;
- ease of document retrieval;
- long-term tracking needs and capabilities;
- potential document security issues (especially since databases are often shared);
- unique site-specific needs;
- nature and number of potential users; and
- time required to organize documents.

Manual Arrangement of Documents

If a simple organization will meet the records management objectives for a site, a manual arrangement may be utilized. Documents may be organized by chronological order, subject matter, PRP, or author. The documents are then assigned an index number (e.g., using a Bates stamp, microfilm frame number),

and an index for the entire document set is developed. To be user friendly, multiple indexes should be developed based on index number, document title, author, and date of document, or other characteristics as decided by the case team.

Use of a Database

[Note that the following consists of very basic suggestions for organizing the content of a database. At the time of finalizing this manual, several regions had developed or were in the process of developing databases that are far more advanced technically than these basic suggestions. Please check with your regional PRP search enhancement team member/contact (*see* Appendix H) for information specific to your region.]

If a more complex organization is required, such as an organization with extensive cross-referencing or keyword indexing, creating a database, as outlined below, may be advisable:

- Group documents of similar content, such as scientific research, environmental studies, or legal documents.
- Assign an index number to each of the documents.
- Decide what information to use in the database index. Examples of information from each document might include the index number, document title, date, author, and addressee.
- Develop a more complex database, if required, using a coded designation for particular subject matter, a database index to refer to a particular subject, and/or keyword indexing.

- Program the database to access information in various ways, e.g., chronological order, author, keyword, subject matter.

When establishing a database for site documents, keep in mind that new documents will be added periodically. The database index may require significant revisions if a large number of new documents are discovered after the keywords are selected or the index is created. When planning a PRP search for which a complex file organization may be necessary, time and resource requirements for database maintenance and modifications must be part of the planning in order to assure the continued usefulness of the database.

3.2.2 Correspondence Tracking

Tracking correspondence with PRPs and other parties often requires use of a database due to the large number of parties involved. If a database is necessary, the following factors should be considered prior to database development:

- the information that should be tracked for information request letters, including;
    - identity of the recipients of information request letters,
    - delivery status (e.g., accepted, refused receipt, address unknown),
    - response status (e.g., no response, partial response, complete response),
- capacity of database system;

- procedures for entry and retrieval of information (keeping the database user-friendly);
- types of summaries and reports needed;
- number of waste types that may need to be tracked;
- nature and number of database users;
- resource requirements for database development and maintenance;
- contractor support requirements;
- period of performance of the contract;
- expected period of database use;
- compatibility of contractor hardware/software with the Agency's hardware/software; and
- ease with which the database system can be taken over by another contractor or agency.

Care should be taken not to clutter printouts with any information not required, or with unprofessional comments. A voluminous printout of information will likely negate the desired benefits of tracking, which are to promote information sharing and increase time and cost savings. As with any database system development, a quality assurance program should be incorporated for data entry and edits.

Maintain a Backup

A manual system for correspondence tracking should also be in place in the event that the primary information retrieval system fails. Responses to information requests should be organized alphabetically by party or in a similar system. Index numbers should be assigned to all documents and an index of the correspondence should be created.

3.3 Issue Information Requests

Section 104(e) of CERCLA and section 3007(a) of RCRA authorize the Agency to issue information request letters. These letters are used for information gathering purposes and do not designate an entity as a potentially responsible party. Most regions have model information request letters. *See* the Agency guidance Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995), Chapter 3 references, page 215. In addition, the Office of Site Remediation Enforcement (OSRE) has provided the regions with a compilation of sample information request letter questions that have historically produced good responses. The letters and questions are specifically tailored to the type of site (e.g., chemical plants, dry cleaners), the sophistication of the recipient (e.g., individual, small business, large corporation), the recipient's involvement with the site (e.g., owner, operator, transporter), and the nature of the information sought.

Recipients of information request letters may be requested to produce records or to provide information on site ownership, site operation, their financial position, wastes sent to the site, possible generators and transporters, and the existence of records.

Subsection 3.3.1 of this manual provides additional information on the nature and content of information request letters.

Section 104(e) of CERCLA authorizes the Agency to issue information request letters to any person (including business entities and government agencies) who may have information about a site, not just to persons who may be PRPs. The authority to issue letters under section 104(e) is delegated to specific individuals within each region. Issuing information request letters is a basic component of nearly all PRP searches. Under section 104(e)(2) of CERCLA, "[a]ny 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 documentation 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."

RCRA section 3007(a) provides that "[f]or purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, 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."

The Agency's statutory information gathering authority is broad enough to allow EPA to seek any information that is reasonably calculated to lead to information about the release. Although EPA's authority is broad under section 104, the Agency is sensitive to the substantial burden that may be imposed upon parties who receive an information request. Most regions have model 104(e) letters. Additionally, OSRE has compiled a repository of sample questions to help streamline the information gathering process. (*See* Chapter 3 references, page 215.) These questions were compiled from the regions and are tailored to specific kinds of parties (e.g., small entities, transporters, individuals). Use of these samples is at the region's discretion.

3.3.1 Identify Recipients/Draft Information Requests

Records obtained through the review of files may contain a number of potential sources of information and names of PRPs. Before drafting the information request letter, the PRP search team should:

- develop and maintain a list of potential recipients of information request letters;
- select who from the list should receive information request letters;
- verify the current addresses of recipients; and

- make decisions on the tone, content, and format of each letter, depending on the individual recipient or category of recipient.

Although site-specific needs will ultimately determine what to include in an information request, the following factors should generally be considered when drafting information request letters:

On-Line Information Sources

On-line services are a rapidly growing source of PRP information. Obtaining information through on-line research is, in some cases, the fastest and most effective method of obtaining PRP information; however, the difficulty with this type of research is knowing what is available and how to access it.

Most on-line sources are available nationally and can be accessed through the internet, but some are not available in every EPA region or state. If this is the case, public libraries, universities, colleges, or schools can be contacted to determine their capabilities and use requirements. These institutions frequently provide services for minimal fees. In addition, contractors typically have numerous on-line capabilities.

A list of potential PRP-related on-line information sources is provided in Appendix I. Contact numbers and fee schedules, where available, are listed, but PRP search staff should start by contacting their regional LAN administrator, information support staff, or EPA librarian to determine what subscription on-line sources are currently available in the region and if any use

restrictions apply to them. EPA's Superfund Enforcement Directory (SFED) is a nationwide on-line directory of Superfund Enforcement personnel and resources. (*See* Appendix J for more information concerning the directory.)

Nature of Recipient

The nature of the recipient (e.g., individual, corporation, municipality) significantly affects the content of the information request. Where feasible, information requests should be tailored to each PRP or information source. Tailoring the request can greatly improve the quality of the response, reduce the need for follow-up requests, and reduce the burden on the recipient of the request. The types of information typically requested from each kind of PRP (e.g., owner, operator, transporter, generator) are presented later in this section.

Recipient's Understanding of CERCLA

The PRP search team should consider the degree to which an information request recipient is likely to understand CERCLA. It is not always feasible to ascertain a recipient's degree of understanding of CERCLA; however, the PRP search team can usually make some assumptions. For instance, it can assume that "ABC Corporation," which has been involved as a PRP at a number of Superfund sites, has a good understanding of CERCLA. Thus, the information request letter can use technical and legal terms which do not have to be described in detail. Similarly the team can generally assume that a "Mrs. Joyce Smith" at a residential address likely has little or no knowledge of CERCLA or legal terminology. In this situation, the request should contain clear, non-legal language and be as concise as possible. A sample initial

information request letter for individuals or small businesses is provided in Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995).

Confidentiality Considerations

If there is reason to believe that the recipient will be concerned with the confidentiality of its response, the PRP search team should insert confidentiality language into the information request letter that is consistent with 40 CFR Part 2, Subpart B (40 CFR sections 2.201-2.311). From a practical standpoint, it makes sense to include this language with each request as it serves two purposes. First, it defines the boundaries of a confidentiality claim, reducing the likelihood of a general assertion of confidentiality. Second, it makes clear to the recipient that EPA may have to release information provided in a response. Also, the presence of such language will reassure the recipient that the response will be handled in an appropriate manner. Similarly, if EPA plans to use contractors to review and organize responses, inserting language in the letter identifying the contractor and explaining its duties may help to reduce recipients' concerns.

Pursuant to EPA's CBI regulations, the PRP search team should request that recipients segregate information being claimed as CBI from non-CBI information. Segregation of this information can improve future information sharing with other parties by allowing for the quick release of information for which no claim of confidentiality has been asserted.

Recipient's Willingness to Cooperate

Occasionally EPA has reason to believe that a recipient of an information request may not be cooperative in responding to the request or may take actions to avoid liability. This belief can be based on past experience with the party, or on correspondence pertaining to previous permit violations, police reports, state investigations or interviews, or other documents. In such cases, the PRP search team should consider including language in the information request letter that asserts EPA's authority and describes the recipient's responsibilities. For instance, the False Statements Act (*see* Chapter 3 references, page 215) provides for criminal penalties for any person who provides unsworn false statements or conceals information from an agency or department of the United States. This Act clearly applies to statements made to civil investigators, any written responses to questions, and signed statements. The letter might also note that a party would be in violation of the Federal Debt Collection Procedures Act (*see* Chapter 3 references, page 215) if he transferred property or assets to avoid a federal debt under CERCLA.

The PRP search team may also ask the recipient to send copies of requested documents to EPA and to maintain the original documents for a specified period of time. The primary benefit of requesting the preservation of records is notifying parties of their legal duty to preserve relevant evidence. The region should consider these factors when deciding on inclusion of preservation language.

Site/PRP Information Needed

The PRP search team should determine:

- what information is needed to identify PRPs (e.g., manifest data, names, addresses);
- what information is needed to determine PRP's liability (including possible defenses to liability); and
- what site information is needed for future investigations or response actions (e.g., physical characteristics of the site, historical data, sample data).

Once this information has been gathered, the PRP search team can draft the letters to ensure that the responses will contain information that will advance the PRP search and the site cleanup. The repository of sample CERCLA 104(e) questions cited in footnote 3 includes questions grouped according to site type, such as mining site questions, PCB site questions, and lead battery site questions.

Need for PRP Financial Information

Under CERCLA section 104, the Agency has the right to collect financial information in order to determine a PRP's ability to pay response costs or perform response work. Although it is important to assess a PRP's ability to pay response costs, the PRP search team needs to evaluate the best time for seeking such information. The team may choose not to request this information in the first round of information requests unless the liability of the recipient as a PRP has been reasonably established. Some regions

have found that seeking information such as tax returns and checking account statements during the first round of questions has been counterproductive. Recipients of information requests who are asked to provide financial information about the site in their first contact with EPA are often reluctant to do so because they feel it is an unnecessary burden or intrusion on them and may seek legal counsel to prepare a response or protest to the Agency. Such actions can lead to delay in getting information needed to coalesce PRPs and initiate a site response. Therefore, EPA may wait until it issues general notice letters and ask recipients to contact EPA if they believe they may have an ability to pay problem. EPA can then send appropriate financial questions to the PRP. In this way, recipients without ability to pay problems avoid having to answer financial questions and submit voluminous financial records.

When an information request letter concerns a removal action, it may be necessary to solicit financial information from PRPs so that the region can decide whether to issue a CERCLA section 106 administrative order requiring the PRPs to conduct the removal.

Desired Format and Due Date for Response

When developing the information request, the PRP search team should select an appropriate format for the response. There are several options, including:

- a written response for each question;
- a fill-in-the-blank checklist; and
- a written response, signed by the recipient of the letter or a corporate officer, describing their efforts to locate documents or knowledgeable persons.

The format will likely vary from site to site or party to party. In addition to the format, consideration should be given to how much time the recipient may need to adequately respond to the request. Time is often of the essence; information requests typically provide 30 days from the receipt of the letter for a response. Methods for facilitating timely, complete responses include:

- Establish an information repository or publicly accessible website related to PRP search activities before or immediately after issuance of the first round of information requests. The purpose of such a repository or publicly accessible website is to make available non-confidential information to assist recipients of the information requests in better responding to the request, reduce the number of inquiries or requests to the Agency for information, and provide information to the community at an early point.[3] The nature and location of a repository or publicly accessible website may vary from site to site. One region, with assistance from a contractor, developed a database for the repository. Physical locations have included regional offices, state and county facilities, and rental space at facilities that manage records and provide chain of custody services. Contents of the repository could include;

    - site history,
    - environmental studies, reports, and sample data,
    - copies of notice letters/information request letters;
    - previous site response reports, if applicable (e.g., an OSC report), and
    - a copy of CERCLA, the NCP, and relevant guidance,

[3]For more information on sharing information with PRPs, consult Releasing Information to Potentially Responsible Parties at CERCLA Sites (March 1, 1990) *See* Chapter 3 references, page 215

- Initiate a dialogue with information request recipients immediately after issuing the information requests. Such a dialogue could be in the form of a "town meeting" at which the PRP search team;

    - explains the information-gathering process,
    - explains why information request recipients received their information request,
    - presents factual site information,
    - identifies the location and purpose of the repository,
    - explains the Agency's authorities and the recipients' responsibilities, and
    - provides copies of site summaries.

Where the information requests are issued concurrently with a notice letter to perform the RI/FS or some other response action, this dialogue provides an excellent opportunity for PRPs to coalesce as a group, exchange information with each other, and assure that better and more timely information is provided in their responses.

Potential Burden of Responding to Request

Responding to an information request letter imposes a burden on the recipient. Therefore the PRP search team should review the generic list of questions to narrow or eliminate questions that are not appropriate for the individual recipient.

Type of Information Needed

Information that is collected generally can be classified as either quantitative or qualitative:

Quantitative Data. This is typical waste-in information -- gallons, drums, cubic yards, and other numerical descriptions of the materials contributed by the parties.

For most sites, the information of interest will likely be quantitative. It can include either waste volumes (including waste-in, waste-out, or waste remaining, depending on the circumstances), or narrative descriptions that can be converted into waste volumes.

Qualitative Data. This includes all other information that describes a party, its waste material, or its relationship to a site, and can range from a substance name (e.g., waste oil, trash), to the nature of a transaction (e.g., sale, manifested disposal), to information relevant to PRP status (e.g., a contract confirming that a party conveyed property with knowledge of contamination).

For owner/operator sites, specific kinds of information may be required when certain liability issues are raised. For instance, when the Agency seeks to establish successor liability, it is important to gather as much factual information as possible regarding the relationship of the alleged successor to the prior owner/operator. Consequently, if a corporation may be the legal successor in interest to a PRP business/corporation, questions seeking information about that relationship should be included in the information request sent to that corporation. Similarly, when a parent corporation may be liable for the acts of its subsidiary under the legal standard set by the United States Supreme Court in the case United States v. Bestfoods, 524 U.S. 51 (1998), information requests should seek factual information about the relationship between the parent and its subsidiary. The case

attorney should provide the questions appropriate to either a Bestfoods or successor liability inquiry. More information on these issues is provided in section 3.6.

Regulatory agencies often have relatively little information concerning older sites, illegal disposal sites, and owner/operator sites because the acts resulting in the release of hazardous substances at these sites were not subject to a regulator's authority or were not closely monitored by a regulator. The absence of detailed government documentation about such sites makes the use of information requests all the more important. Similarly, chemical formulator cases (i.e., generator cases based on an Aceto theory of liability, where the Agency argues that waste generation is inherent in a facility's chemical formulation operations) frequently cannot be built around information found in regulatory files. When preparing information request letters for such sites, the PRP search team should be particularly careful to evaluate information about the site that is available from other sources, and include questions in its information requests that solicit the remaining information needed to establish liability.

Components of Information Request Letters

Although information request letters should be tailored to individual recipients, listed below are some elements that are commonly included and types of information that are commonly requested from the various categories of parties:

For All Recipients

The information request letter should:

- identify the site and briefly describe it;
- explain why the Agency thinks the recipient may have information about the site;
- cite EPA's statutory authority under section 104(e) of CERCLA or section 3007(a) of RCRA to request information (When determining the statutory authority under which to request information, make sure that the official who has signed the letter has been delegated the information gathering authority for each statute identified in the letter. For example, a letter that requires the production of information pursuant to both CERCLA section 104(e) and RCRA section 3007 may be challenged if the EPA official who signs the letter has been delegated only CERCLA section 104(e) authority);
- indicate that the Agency plans to enforce its information gathering authority in CERCLA section 104(e)(5);[4]
- set forth the purpose of the request and its relationship to the overall case;
- indicate that the response must be in writing;

[4]As previously discussed, EPA should consider the recipient's level of legal sophistication and degree of familiarity with CERCLA when determining the content and tone of the information request letter. It may not be desirable in every instance to cite the enforcement provisions of CERCLA in the first round of letters.

- indicate that the recipient is responsible for informing the Agency if any information contained in the PRP's response is confidential and subject to protection under section 104(e) of CERCLA;

- advise the recipient that it must supplement its response if new information comes to light;

- inform the recipient that he may contact the Agency if he has questions or needs clarification about what is being requested; and

- clearly identify when the response is due.

For Owners

The information request letter should ask for:

- names and addresses of all known previous owners and current owners;

- periods of ownership and type of ownership;

- a synopsis or analysis of the contractual agreements and relationships currently existing or which existed in the past between the parties;

- site history during their ownership, including activities, operations, disposal practices, and site conditions, as well as information on amounts, nature, and locations of disposal;

- known disposal practices, substances, and location of disposal under previous owners and operators of the facility;
- information on whether wastes were RCRA hazardous wastes;
- identity of lessors, lessees, and terms of any leases, including lease payment amounts, allowable and prohibited activities under the terms of the lease, and whether there have been attempts to enforce the provisions of the lease (it is recommended that copies of leases be obtained);
- information related to exemption, defenses, and de minimis status; and
- the names of individuals with control.

For Operators

The information requested from operators is similar to that requested from owners, except that detailed descriptions of the operations should be requested from operators. Operator information requests should always request information to identify present and past individuals in charge in order to identify persons with more complete information regarding facility operations, as well as persons who may be liable as operators of the facility under the tests set forth by the United States Supreme Court in United States v. Bestfoods.

For Owners and Operators

- Questions about financial information generally seek to determine a PRP's ability to pay for or perform a cleanup, and may include questions about comprehensive general liability and environmental impairment insurance.

- When an owner/operator's financial records survive, they often contain the amounts and dates of customer invoices and payments, and serve both as a primary source of information and a secondary source of conversion rates, which allow a customer's "one load at $ 5.00" record to be translated to an appropriate volume.

- Site financial records may be in the form of accounts payable and receivable ledgers, copies of incoming and outgoing invoices and checks, deposit slips, and customer account statements.

- One of the most important categories of information to seek from the owner/operator is the identity of possible off-site generators or transporters associated with the site. Such information may include:

    - names and addresses, quantities, and materials sent to or from the site; and
    - any arrangements made with regard to materials.

- **Materials Handling Information.** Ask the owner/operator to provide a description of information it has on each shipment of materials disposed of, transported to, stored, or treated at the site, including:

- dates of shipment or disposal;
- quantity and nature of the materials;
- hazardous substances (as defined in 40 CFR section 302.4) contained in the materials, including information on the waste and waste stream as possible RCRA hazardous wastes (this information will help the Agency determine if RCRA is an applicable or relevant and appropriate requirement for future response actions, or may be used later in an allocation of PRP responsibility); and
- what was done with the material after it reached the facility (e.g., further processing).

- **Documentation.** Request copies of all business records relating to activities at the site, including customer lists, gate logs, batch reports and analytical test records, worker notebooks, laboratory reports on samples of materials, storage locations for handled items, ledgers, invoices, accounts receivable and back-up income records for taxes, correspondence, permit applications, operation reports, deeds and leases, and spill notifications. Also, consider asking for correspondence that addresses shipments that were discontinued because the material was not accepted or correspondence that threatens to discontinue shipments if material does not meet standards. This information may be very useful in distinguishing the hazards and threats posed by materials associated with various PRPs.

Additional Items to Request from Owner/Operators

- names and addresses of individuals who have information regarding the items listed above;
- any data or studies resulting from environmental investigations at the site;
- a description of the files searched by the person (or corporation) in response to the Agency's request;
- special information for particular classes of sites, such as municipal landfills; and
- a description of the recipient's personal or corporate relationship to the site.

In some cases, the recipient will be unable to provide EPA with the information sought. In these cases, the PRP search manager may determine that it is necessary to require the recipient of the letter, or a corporate officer responding for a corporation, to describe the efforts made to locate information or knowledgeable persons, and to sign the entire response under penalty of perjury.

For Generators/Transporters

Generator/transporter information requests are often issued in the follow-up phase of the PRP search based on information received from the initial round of information requests. The PRP search team is encouraged, however, to identify and issue requests to generator/transporters as early as possible in order to establish a core group of PRPs to work with and facilitate determining which parties are exempt, de minimis, insolvent, or defunct.

Information request letters to persons who arranged for disposal (generators) and transporters are typically similar in scope to the letters issued to owners/operators. Information request letters issued to generators should request information regarding their liability. The PRP search team should give special attention to corporate/subsidiary and successor liability issues. In addition, the information request should seek information that will establish whether the substance was a listed or characteristic hazardous waste as defined by EPA. Generator/transporter information requests are discussed in further detail in subsection 3.3.1.

3.3.2 Mail and Track Information Requests For Generators/ Transporters

To the extent possible, PRP search managers should arrange for the verification of the address, and identify an appropriate point of contact (e.g., registered agent, corporate counsel) for each recipient prior to mailing information request letters. While confirming this information may be burdensome at sites with hundreds of recipients, it can greatly reduce the number of letters that are returned due to an incorrect address.

Information request letters should be sent via certified mail, return receipt requested. Delivery may also be accomplished through Federal Express. Use of post office box addresses should be avoided because there may be no signature to indicate receipt of the letter. Date stamp the "green cards" (i.e., the returned receipts) as they are received by EPA; returned receipt cards often do not show the date on which the letter was received, and it is difficult to take enforcement action for late responses without proof of when the information request letter was received. The information on the return receipt provides the Agency with proof that a representative of the recipient received the letter. Within a week of the mailing, there will likely be some letters returned to

EPA due to reasons such as "address unknown," "no forwarding address," or "refused receipt." Information request letters may also be sent via air courier if the courier provides documentation of the delivery attempt and of the receipt of the delivery. For letters with address problems, the PRP search manager should attempt to obtain a valid address for the intended recipient and re-send the information request. Although this requires some effort, any effect on the schedule will likely be relatively minor and the rewards from successful delivery could be significant. Tracking information request letters should be planned in advance of their mailing (*See* subsection 3.3.2).

Performing an analysis of the responses received is among the most important elements of the PRP search. The PRP search plan should designate the person responsible for tracking and receiving information requests. Information request letters are a basic component of most PRP searches, and responses may be the only source of information. Consequently, it is very important that the responses are reviewed by appropriate personnel in a timely manner. Summaries of responses, which are often created with contractor support, can be quite useful when a large number of parties or requests are involved.

For those letters that are unclaimed or refused, the PRP search manager should work with the case attorney to identify options for successful delivery. If you are confident that you have the correct address of a PRP and the letter is continually being refused, the letter can be delivered by the CI or search manager. When parties fail to comply or only partially comply with information requests, the Agency will consider its options for encouraging or compelling compliance, which are discussed in detail in sections 4.1 and 4.2 of this manual.

3.3.3 Analyze Responses

Responses to information requests should be analyzed for:

- information that links a party to the site;
- information establishing liability;
- information that establishes a PRP's financial viability, if necessary; and
- leads that may provide the region with additional information about a particular PRP, other parties, or site characteristics.

Information request responses may help the PRP search team develop a history of site activities and describe the involvement of various parties in the treatment or disposal of hazardous materials. The PRP search team should take care when extracting information on site history for the baseline PRP search report, especially when responses are from hostile, uncooperative parties or those with significant liability concerns; there are often conflicting interpretations of a site's chronology of events. Responses can be compared to aerial photographs, state permits, correspondence, and other information in an attempt to verify site history. The team member who reviews a response should note if the response appears incomplete or false. In these situations, the PRP search manager and case attorney should determine the appropriate enforcement action.

After analyzing the responses, the PRP search team can begin to develop a list of parties associated with the site who may be PRPs. It is suggested that the team present PRP liability information in evidence summary sheets created expressly for documenting the liability of each PRP. A separate evidence sheet for each PRP is advisable.

A PRP's assertion of a CBI claim on information that it provides to EPA necessitates treatment of it as CBI unless and until such time as OGC or ORC determines that the information is not entitled to confidential treatment.[5] PRP search managers should segregate any materials respondents claim as CBI from non-CBI materials upon receipt of the information if the respondent has not already segregated the materials. CBI is a complex issue and it is important to follow in making CBI determinations, as the improper release of CBI can result in civil and criminal penalties. The materials for which a CBI claim has been asserted can then be forwarded to OGC or ORC for a CBI determination. *See* 40 CFR section 2.201, 2.204(a) and (b), and 2.310.

3.3.4 Develop Response Summaries

After analyzing the responses to the information request, it may be helpful to develop summaries of all the responses received. Response summaries aid the development of site history and encourage PRP involvement. Summaries can be very useful for decision makers or other parties involved in the PRP search, who can review the summaries rather than each individual response. Contractors can be called upon to assist the Agency in developing response summaries for cases with numerous information requests. Care should be taken, however, to avoid having contractors perform legal analyses or reach conclusions about PRPs' liability, as these functions must be performed by EPA personnel.

[5] 40 CFR section 2.201 et seq. (*see* Chapter 3 references, page 215) sets out the procedures for making CBI determinations EPA may determine the confidentiality of business information as soon as it is received (*See* 40 CFR section 2 204(a)(2), authorizing EPA to make a CBI determination even though no request for release of the information has been made.)

3.3.5 Information Request Followup

Once the due date for a response has expired and the responses have been reviewed, the PRP search manager should coordinate with the case attorney on appropriate followup actions, if needed. These actions may include:

- issuing a followup letter;
- using alternative means to seek a response or clarify the request;
- issuing an administrative order to compel compliance; and
- initiating a judicial action asking a court to compel compliance.

During the review of information request responses, it sometimes becomes apparent that the recipient simply did not understand what was being requested, or the recipient did not fully appreciate the Agency's authority to obtain information or the recipient's responsibilities in this regard. A followup letter may be appropriate for clarifying the requests or being more explicit in describing the Agency's enforcement authorities. There are a number of model followup letters available in the regions that have proven to be effective.

Alternative means of seeking responses to information requests are routinely employed in the regions. In some situations, it may be appropriate to place a telephone call to the recipient in order to determine the basis for a lack of response (e.g., more time is needed, clarification is required). A telephone call should be followed up in writing to document the nature and content of the call. In other situations, a personal visit to a recipient to discuss the information request has been effective in obtaining requested information. Consider using a less time-consuming approach than

the previous two methods by developing a "speedy type memo", such as a generic pre-formatted "post-it"-type memo that is filled in and mailed to the recipient for a response along with the original information request. This could serve as a simple follow-up method of seeking clarification of the response or requesting additional information. When using any of these methods, the resource requirements and time involved for followup actions must be weighed against the potential gain to the Agency and other PRPs.

Administrative subpoenas, penalties, and administrative and judicial actions to compel compliance with information requests are discussed in sections 4.2 and 4.3. Due to the time-intensive nature of these actions, they are usually reserved for the follow-up phase of the PRP search.

3.4 Conduct Interviews

Interviews complement the collection of relevant site records and aid in the development of site-specific information that may not be recorded in government and PRP documents. They are another tool for collecting or clarifying information on PRPs, other parties who may have information, site history, disposal operations, locations of disposal, or other issues relevant to the PRP search. Interviews also may help identify the existence of relevant documents such as business and hauler licenses, landfill permits, zoning permits, and building permits.

The PRP search team should ascertain what the state bar rules are for providing notice to the attorney representing a business entity before current employees, and in some cases former employees, are interviewed. The rules of professional conduct for attorneys vary from state to state, so it is important to determine what rules

apply in each case. These rules often consider employees to be part of the corporation or business, with the result that the corporate attorney may have a right to be notified of the interview and to be present for it. These considerations may apply even if the EPA attorney is not present, as CIs, contractors, or private investigators can be said to be working "at the direction of the EPA attorney." Violations of these rules could subject the supervising attorney to a range of sanctions.

3.4.1 Interview Considerations

Interviews are generally performed to identify additional PRPs or gather evidence for liability determinations. If site documents do not exist, interviews may be the only method available to obtain the information needed to complete the search. The interview questions, therefore, should generally focus on whether the interviewee:

- may have participated in the activity being investigated; or
- may have witnessed the activity.

If site documents do exist, interviews may help clarify the content of the documents or identify additional leads. The interviewer may also attempt to determine how the documents were prepared, how to gain access to documents not already in the Agency's possession, and how to authenticate documents, if necessary. Interview questions should focus on whether the interviewee:

- has knowledge of how the documents were compiled and who compiled them;
- is in possession of the documents; or
- may have additional information.

Factors to consider when deciding whether to conduct interviews include:

- nature and volume of information already obtained;
- nature and volume of information potentially to be gained from interviews;
- time required to plan, coordinate, and conduct interviews;
- timing considerations (how interviews fit into scheduled site activities);
- capabilities and availability of interviewer;
- location and availability of interviewees;
- sources of interviewees;
- documentation or admissibility requirements (i.e., are written summaries, taped interviews, or signed statements admissible?); and
- canons of ethics and disciplinary rules.

Nature and Volume Considerations

If the nature and volume of information already obtained is sufficient to meet the PRP search objectives, conducting interviews may not be necessary. Although interviews generally provide useful information, the nature and volume of information

potentially to be gained from an interviewee should be weighed against the time and effort necessary to plan, coordinate, and conduct the interview.

Timing Considerations

Interviews require time, money, and personnel skilled in conducting interviews. Timing considerations may dictate that only a few interviews be conducted during the initial phase of the PRP search, and further interviews be postponed until the follow-up phase. In some circumstances, however, the value of an interview to the PRP search may be great enough to justify delaying completion of the PRP search report. EPA encourages conducting interviews early in the information gathering process whenever possible (e.g., concurrent with the "file review and record collection" search task) rather than issuing many rounds of information request letters. This is particularly true when gathering information from owner/operators and employees of owner/operators. Often, the persons most knowledgeable about a site are those who worked there. As time passes, their memories become less clear and they are less likely to be available, so it is best to gather information from them early in the PRP search. Interviews, however, should complement information request letters, not be used in lieu of them.

At PRP search pilot sites, early use of interviews in place of multiple rounds of 104(e) information request letters was found to be particularly helpful. A number of PRP search teams reported that early interviews were a considerable aid in understanding the nature and history of the site. Getting this information early allowed them to focus the remainder of the PRP search more effectively, and also helped them plan a better investigation of the contamination at the site.

Capabilities of the Interviewer

When deciding to conduct interviews, the capabilities and availability of qualified Agency personnel are an important consideration. Interviews should be planned far enough in advance to allow the interviewer to become familiar with the site, PRP search strategy, and pertinent questions.

Participants in the PRP search pilot program reported that much of the success of early interviews can be attributed to the personal contact between the interviewer and the persons being interviewed. PRP search personnel noted that interviews are often a more effective information-gathering tool than 104(e) letters. Interviews may have several advantages over written contacts:

- An interviewer can follow up immediately on important statements, rather than send another letter.
- People generally give broader and more valuable answers when being interviewed in person.
- Eye-to-eye contact allows the interviewer to better judge whether an interviewee is forthcoming and truthful.
- Interviews with persons who are cooperative but elderly, ill, or illiterate often generate useful information that a 104(e) letter would not.

It is helpful to have access to civil investigators early in the PRP search process to assist with interviews. Individuals who will not consent to be interviewed should be sent a 104(e) letter or subpoena if the potential testimony is determined to be relevant.

Location and Availability of Interviewees

Another important consideration when evaluating use of interviews is the location and availability of potential interviewees. Ideally, all interviewees would live in close proximity to one another and relatively close to the regional office. Interviewees, however, are often scattered across the country, located in another country, or unwilling to be interviewed. The PRP search team should balance the value of each potential interview against its cost in time and money and then prioritize the interviews. The age and potential disabilities of an interviewee should be taken into account when balancing the value of an interview against available resources. As discussed above, sometimes an interviewer can obtain information that would not be provided in a 104(e) response. If resources are not sufficient to conduct face-to-face interviews, interviews can be conducted on the phone.

Documentation and Admissibility Requirements

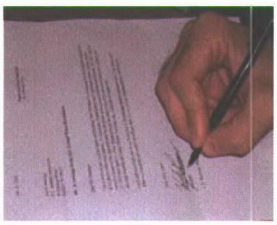
When considering the use of interviews as an information gathering tool, it is important to determine the intended use of the interviews. An Agency employee's notes from an interview generally have less evidentiary value than a 104(e) response signed by a PRP, and may not be admissible at trial. Concerns about the evidentiary value of information obtained in an interview may determine who should perform the interview, when the interview should be conducted, or whether the interview should be conducted. If the Agency desires to produce evidence that will be admissible in court, then a route other than interviews typically should be pursued.[6]

[6]There are caveats to this statement In general, recorded or signed statements gained from interviews can be useful in litigation, even though not admissible at trial as evidence. *See* Federal Rules of Evidence 801 through 817, Chapter 3 references, page 216 for more information on the use of recordings and signed statements

3.4.2 Who Performs the Interview

Interviews should be performed by EPA staff who have experience or specialized training in how to conduct interviews. They are usually performed by CIs, but in some instances case attorneys, paralegals, and RPMs have performed or participated in interviews.

Interviews should only be conducted by personnel who have been trained in interviewing techniques and evidentiary collection processes. It is important that the interviewer be familiar with any state due process requirements that may apply at the site in question and with ethics rules or local bar rules concerning the admissibility of evidence. Consultation with all case team members is strongly advised before interviews are conducted.



Sworn Statements

Civil investigators play a critical role in exercising the Agency's authority under CERCLA sections 104(e) and 122 (e)(3)(b). They and other trained personnel generally collect information from individuals by conducting interviews pursuant to section 104(e). Typically, the CI will record the interview on tape or in writing. These records do not constitute "sworn statements" because CIs are not authorized to administer oaths subject to the penalties of perjury. Federal law, 18 U.S.C. §1621, provides that to commit perjury, a declarant must "[have] taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered." (*See* Chapter 3 references, page 216.) Thus, to administer oaths, a person must be an officer of the court. Short of an amendment to CERCLA, CIs cannot, by themselves, obtain sworn statements. There is no legal impediment, however, to CIs obtaining signed

statements. Signed statements can be quite valuable in court proceedings. *See* subsection 3.4.5 for more information on signed statements.

3.4.3 Identifying Interviewees

Interviewees are typically persons who may be able to identify or locate PRP and site documents. After a thorough review of collected site information, the PRP search team should develop a list of potential interviewees by name and address. Once the list is developed, the PRP search manager should prioritize the interviewees based on factors such as age or condition, plans to move out of the area, or one of the factors listed above in subsection 3.4.1. The PRP search manager should also review the prioritized list of interviewees in light of resources available (time, staff, and money) to conduct the interviews.

Potential interviewees include:

Site Operators and Employees (Present and Past)

- plant manager
- supervisors
- gate and scale operators
- contractors
- transporters (truck drivers)
- plant engineer
- equipment operators
- plant workers
- companies
- RCRA Subtitle D waste disposal haulers

On-site Visitors

- vendors
- recyclers
- inspectors
- customers

Federal Government Officials

- federal courts
- national law enforcement agencies
- Department of Veterans Affairs
- U.S. Postal Service
- bankruptcy courts
- Securities and Exchange Commission
- Occupational Safety and Health Administration

State Government Officials

- environmental agencies
- registry of motor vehicles
- attorney general
- probate/superior courts
- bureau of vital statistics
- secretary of state
- professional licensing board
- department of public health

Local Witnesses

- police officers
- city/county clerks and assessors
- local government
- county health department
- local library
- firefighters
- neighbors
- building inspectors
- meter readers (water, gas, electric)
- historical societies

3.4.4 Conducting Interviews

Before conducting interviews, the interviewer should become familiar with the site and the information needed by:

- reviewing EPA background information on the site;
- obtaining names of state or local government agencies and officials involved with the site; and
- generating a list of site-specific questions.

Preparing for and conducting the interview may involve:

- preparing a general outline of discussion points;
- determining whether the interviewee is represented by an attorney;
- knowing the elements of liability and the Agency's case;
- understanding the industry in question, thereby establishing the interviewer's credibility;
- using visual aids to aid the memory of interviewees;
- preparing specific questions beforehand to ensure that all topics consistent with the PRP search strategy are covered;
- having two persons present at the interview, if possible, one serving as the note taker, the other as the primary interviewer (another potential benefit of having two persons present is that any charge of intentionally making false oral statements needs to be corroborated by two persons in order to gain a conviction);
- considering whether an EPA attorney should attend the interview if the interviewee's attorney is going to attend; and
- determining the interviewee's association with the site and the basis of her knowledge (e.g., first-hand information, rumors).

Government Officials

Interviewing federal, state, or local government officials can be very productive because these officials, especially state and local officials, often have an intimate knowledge of the site. Contact with government officials is generally made by telephone or, if necessary, by letter or in person. Because of the civil investigator's experience in conducting interviews, and their peer relationship as government employees, it is highly recommended that regional CIs, rather than contractors, conduct interviews of other government personnel. Telephone calls will suffice in most cases. If a contractor is conducting the interview, the contractor should identify himself as an EPA contractor conducting background research on the site or have a letter of introduction from EPA if the interview is being done in person. The most important criteria for selecting the interviewer are experience and knowledgeability. Government officials should be asked about:

- the availability of relevant documents in the government's files;
- whether and how 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, including any notices of violation (NOVs);
- administrative or legal actions involving the site and the PRPs, and the location of relevant documents;

- relevant state or local regulatory requirements and the location of pertinent documents such as landfill permits, building permits, and zoning ordinances;

- any news media articles about the site; and

- other possible knowledgeable people or organizations.

Former government employees are also a potential source of information. Attempt to work out an acceptable arrangement with officials or attorneys for the relevant agency, even if the scope of the interview is limited. After obtaining the approval of the former employee's agency, the former employee should be contacted to request an interview, just as with other private parties. As always, contractors performing interviews should be required to obtain approval from the PRP search team before contacting interviewees.

Interview Facts and Tips

Although the CI and other regional staff conducting interviews should take advantage of training in interview techniques available from a variety of sources, the following list contains basic tips to keep in mind when conducting interviews:

- Attempt to obtain information from more than one source.

- Obtain factual information regarding the background of the interviewee.

- If an interviewee requests anonymity, investigators do not have the authority to grant anonymity and, depending on the type of statement made during the interview, even the DOJ trial attorney may not have that authority.[7]

- Consider hiring a private investigator who is skilled in interview techniques to conduct interviews.

- Obtain the cooperation of the interviewee; the interview may be a precursor to a deposition. Cultivate the interviewee, establish a relationship of trust, and never lie or deceive.

- Obtain background information about records. This is important for determining the credibility of the interviewee and the reliability of records. Find out who prepared the records and, how, why, when, and from what source they were prepared.

- Verify the accuracy of information from other sources (e.g., use one interview to support another). Use documents to confirm information whenever possible.

- Attempt to pin down numbers (e.g., "How many drums were there? More than 10? More than 50?").

- Conduct interviews in a businesslike manner with professional demeanor.

[7] Many investigators advise the interviewee that they (the EPA investigators) will forward a request for anonymity to an official who has authority to grant the request, then offer the party the following options (1) to discontinue the interview until assurance can be given, or (2) to go through with the interview even though anonymity has not been granted

- Use language that is understandable to the interviewee; avoid acronyms and technical or legal jargon.

- Do not assume that you know what the interviewee is saying; clarify when in doubt.

- When arranging the interview environment, consider individual or cultural "zones of comfort" regarding seating and privacy.

- Ask the same question a variety of ways.

- Paraphrase and repeat to the interviewee to ensure a mutual understanding of what is being said.

- Let the interviewee get through his story once before challenging or asking detailed questions.

- Attempt to resolve inconsistencies in the interviewee's responses before leaving the interview.

- Conclude the interview by summarizing important information, asking if the interviewee can think of anything else that was not covered, establishing a way to keep in touch (e.g., provide a business card), and attempting to obtain any documents identified during the interview.

- Early interviews can sometimes advance the PRP search process more quickly than sending 104(e) letters to the same individuals. For example, an early interview of an owner/operator helped the PRP search team in one region

better understand the business practices leading to contamination of the site. The general manager was able to show PRP search personnel how business records were kept at a treatment and storage facility and how to read those records. The region was then able to identify other PRPs and use its enhanced understanding of how the site had operated to write more specific 104(e) letters for those PRPs.

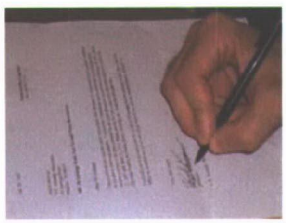
It is suggested that the interviewer indicate in her interview notes what can be substantiated and what is speculation.

3.4.5 Interview Documentation

Interviews are generally documented in one of three ways:

1. Written summaries;
2. Recorded interviews; or
3. Sworn statements (affidavits) confirmed by a notary (should include a statement to the effect that the declarant/affiant swears under penalty of perjury that the aforegoing is true and correct).

Signed statements become "sworn statements" if notarized.



A **written summary** of an interview is a document summarizing the facts presented by the interviewee, which are then organized and summarized in the interviewer's own words. Although the summary should be written in the third person, it may be helpful to include direct quotes from the interviewee within the text, especially when the quotes are particularly incriminating, descriptive, or inflammatory. Setting aside such language in quotes allows the information to be conveyed to the reader without bringing the interviewer's neutrality into question.

The written summary should begin with a heading that includes the interviewee's name, title, address, phone number, and other identifying information; the date and time the interview was conducted; and the identity of others present, including the interviewer. If records were provided during the interview, describe the records in the written summary and state where they were obtained. If visual aids were used during the interview, note when and where they were used and attach copies to the report, if possible. The written summary should be prepared as soon as possible after the interview.

A **recorded interview** can only be obtained with the permission of the interviewee. When recording an interview, the interviewer should begin by recording an introduction that includes the interviewer's name, the date and time of the interview, the location, and the interviewee's name. The interviewer should ask the interviewee if he understands that the interview is being recorded, and verify that it is being done with his permission. Ask the interviewee to spell his name, provide his address, and state his date of birth. The interviewer also may ask the interviewee for his social security or driver's license number, but cannot compel the interviewee to provide them. The interviewer can proceed with the questions after concluding this introduction.

After the interview is over, verify with the interviewee that he understood that the conversation was being recorded and that it was done with his permission. The interviewer should provide a closing that includes her name, the name of the interviewee, and the date and time the interview ended. A transcription of the recorded interview serves as the written record of the conversation. After the transcription is completed, the original tape should be secured in a safe location and the location of the original tape and identity of the transcriber referenced in the transcript.

In some instances the interviewee cannot appear in person and the interview takes place by telephone and is tape-recorded. If the interviewee agrees to the telephone conversation being taped, the telephone conversation can be taped on a recorder containing a beep tone warning. Before taped interviews are conducted over the telephone, state laws pertaining to recording telephone conversations should be thoroughly reviewed.

Signed statements are summaries of an interview that are written in the first person and signed by the interviewee. The interviewer should conduct the interview and take notes as usual. However, the written summary of the interview should be in the first person, as if the interviewee were writing the notes of the interview herself. The interviewer may choose to summarize the statement directly following the interview, or return with the statement on another occasion. In either case, the interviewee will read the summary and confirm that it represents the information that she conveyed in the interview. She will then sign the statement.

Although a written summary or recorded interview is useful and in most instances adequate for the purpose of gathering information, a signed statement can have a higher degree of credibility as evidence. However, interviewees are sometimes not comfortable signing a statement, and may ultimately choose not to sign the statement after the interviewer has gone to the effort of preparing it. Consequently, the purpose of the interview and the need for a signed statement should be carefully evaluated before such a statement is created and an interviewee is asked to sign it.

The same database used to organize and track files and other records may be used to store information concerning completed interviews. All interview documentation should be assigned an index number for easy retrieval.

3.5 Perform Title Search

Objectives of the title search include:

Primary Objectives

- identify past and present owners and operators;
- identify owners and operators at the time of disposal; and
- provide a chain of title.

Other Objectives

- obtain the deed for evidence;
- identify abutting properties and their owners;
- supply title search documentation;
- identify knowledgeable persons;
- determine site use; and
- identify outstanding liens against the property and types of liens.

3.5.1 Determine Ownership Interests

Scoping a Title Search

The scoping process should focus on the history of both ownership and site activities. Before beginning the title search, the researcher will need to obtain information on the site location (including the county in which it is located), a site description, and specific Agency requirements for the title search. The researcher

may be an EPA employee, a contractor, or a title company subcontracted to the contractor. A survey of the site may be required if the legal description or exact location of the site is unknown. A survey may also be necessary if the site consists of several parcels and the relationship between the parcel boundaries and the site boundaries is unclear. A title search may also be conducted for parcels adjacent to the site if the Agency needs to obtain access from owners whose properties abut the site. In addition, a title search for adjacent parcels may provide names of people who are familiar with past or present site activities; these people can then be contacted and interviewed. It also may provide information about other activities in the area that may have contributed to contamination at the site.

The PRP search manager, in consultation with the case attorney, should specify site-specific title search requirements. Site-specific determinations should include:

- the time period the title search is to cover;
- the area the title search is to cover (a legal description of the site is best; however, county tax assessor parcel numbers and the street address are useful in the absence of a legal description);
- whether certified copies of the title documents are required; and
- the format of the title search results summary.

Documentation

Types of documentation that should be reviewed and, where relevant, copied may include:

- warranty deeds
- quitclaim deeds
- deeds of trust
- leases
- administrator's and uniform executor's deeds
- judgments
- mineral leases
- real estate contracts
- grant deeds
- mortgages
- easements
- trustee's deeds
- Article 9 statements (part of the UCC)
- financing statements
- plat maps
- liens (e.g., tax, mechanics)

In general, title search companies provide a summary of the chain of title and may also provide corporate information about the owner of the facility. The review of title records usually will not focus on additional information relevant to environmental conditions at the site unless such information is specifically requested.

3.5.2 Develop a "Title Tree"

The next major step in the title search process is to develop a "title tree." A reference list of all recorded documents, including their location (by book number and page number), should be developed and added to the PRP search database. Recorded documentation may include those documents outlined above. Generally, a brief description of each transaction is provided, including an indication whether the transaction affected all or a portion of the site. This summary of site ownership history may include:

- the terms of the transaction (e.g., a 5-year recorded lease);
- whether the transaction transferred all rights to the land (e.g., in mining areas it is important to know whether the mineral rights were transferred with the surface rights);
- explanations of specific terms like quitclaim deed, conditional sales contract, partial release of deed of trust and mortgage; and
- charts and maps, if considered useful.

In addition, information should be obtained 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 the schedule of beneficiaries. These documents are generally located in the office of the secretary of state, not in the office where land title information is located (typically the county clerk's office).

The PRP search manager should review title search work products to determine whether:

- the correct property was researched;
- the correct 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 (i.e., no gaps appear in the chain); and

- leases and deeds were reviewed for restrictive language concerning groundwater or land use.

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

3.6 Business Status and Financial Research

3.6.1 Introduction

- CERCLA section 107(a) identifies four classes of "persons" who may be liable for costs incurred by the United States, a state, or an Indian tribe and who may be liable to perform future response actions at a site. (*See* discussion in section 1.2 of this manual.)

- Individuals and a variety of commercial and governmental entities may qualify as a person because of their own acts and omissions or because of the acts or omissions of others. (*See* CERCLA section 101(21) for the definition of "person.")

- The PRP search should determine, for each PRP identified, whether the person still exists, if the person is still viable, and the exact name used by the person today.

- In many cases, records gathered, such as manifests or trip tickets, may identify a PRP as the PRP was known years ago. During the time that has elapsed since the records were created, the name of the entity may have changed and a different business may be operating under the same name. Therefore, it is crucial to trace each person from the time of liability to the present so that EPA can correctly identify who is liable to perform or pay for the cleanup.

- For individuals, a portion of this research is completed by performing skip tracing and asset searches.

- Liability may extend beyond the assets and the earnings of the person, depending on the type of person (e.g., sole proprietor, partnership, corporation) and as provided by the laws of the state in which the entity operates.

- Liability of a person may continue long after the original person or business has ceased to exist. As a result, more than one existing person may be liable.

3.6.2 Forms of Business Organization

The following is a general introduction to the forms in which a business may be organized. It includes a definition of each form, a brief description of the formalities required to begin the form, and a simplified description of who is liable for the acts, omissions, and debts of a business organized in that form. Formation and liability of a business or commercial entity are governed primarily by the law of the state in which the entity operates or is headquartered. Identifying the specific business entity (or form) is necessary in order to accurately identify the PRP, as well as collaterally liable parties.

[Note: This section presents a general overview of the formation and liability of businesses and may not be applicable to every case. It is recommended that you consult with the appropriate attorney in your region when assessing the potential liability of PRPs associated with a particular site.]

3.6.3 Person

In order to understand the significance of various business forms as they relate to the CERCLA liability scheme, it is helpful to review the definition of "person" in the statute. CERCLA section 101(22) defines a "person" 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."

As defined, each person can perform commercial acts, such as opening bank accounts, buying or leasing property, selling merchandise, borrowing money, and providing services. As a consequence of these commercial acts, persons can be liable, under both civil and criminal statutes, for the consequences of their acts or failures to act. For instance, a partnership can be held liable for damages caused by an employee of the partnership, performing an act within the scope of his employment, who injures another person. Obviously, the partnership could not be imprisoned for criminal violations, but it could be assessed fines. For civil actions, the partnership may be required to pay damages or perform any other remedy required by a court judgment.

3.6.4 Business Organization

The organization of a business, both in terms of the formalities of creating a business and the structure or form of the business, is governed primarily by state law. Almost all states have adopted all or parts of several model laws, such as the Uniform Commercial Code (UCC), the Model Business Corporation Act, and the Uniform Partnership Act. Each state, however, has the authority to codify its own requirements for those who wish to start a business.

The three most common business organizations are:

1. Sole proprietorships;
2. Partnerships; and
3. Corporations.

3.6.5 Sole Proprietorships

Definition: Businesses owned and operated by an individual (or a married couple). The business is regarded as an extension of the person, with no legal or commercial distinction.

Taxation: The profits and losses of the sole proprietorship are reported directly on the individual's tax return and are normally recorded on a Schedule C, which is attached to the individual income tax return, Form 1040.

Ownership and Liability: All the assets of the business are owned by the individual, the individual controls the activities and direction of the business, and the individual is liable for all the debts and obligations of the business. Accordingly, any asset owned solely by the individual could be reached to satisfy any debt of the sole proprietorship. For assets owned by the individual

jointly with another individual(s), it may be necessary to research the laws of the state where the asset is located or the individual resides. This is especially true for non-business assets owned jointly with a spouse.

Registration: A sole proprietorship is not generally required to formally register to establish a business but may be regulated by a variety of state and local agencies, often for reasons related to health and safety, professional standards, or tax revenue. Accordingly, a sole proprietor may need to file appropriate documents in order to use a fictitious business name or to obtain a business license.

3.6.6 Partnerships: General Partnerships and Limited Partnerships

Definition: Partnerships are associations of two or more persons, as co-owners, to carry on a business for profit. Partners can be people, other partnerships, corporations, trusts, or any other person as defined under state law. There are generally two types of partnership, general and limited.

Taxation: Even though the partnership itself is not required to pay income tax, the partnership is required to file a return of partnership income (Federal Form 1065). Attached to the partnership return is Form K-1, which allocates all income or loss of the partnership among the partners. Each partner then reports its portion of the profit or loss on its own income tax return.

Ownership and Liability: Partnership property is owned by the partnership, and may not be used to directly satisfy the personal debts or obligations of the partners. Under specific circumstances, however, a creditor may move to dissolve the partnership or sell the debtor partner's interest to resolve the personal debts of the

partner. Although debts of a partner may not directly attach to the assets of a partnership, the debts of the partnership may attach directly to the assets of general partners.

3.6.6.A Elements Specific to a General Partnership

Unless there is an appropriate filing in the state where the business activity occurs to create some type of person such as a limited partnership or corporation, any group of two or more persons (other than a married couple) that is formed for a common business purpose normally falls into the category of a general partnership. In a general partnership all partners are general partners, i.e., they participate in the management and operation of the business. Each general partner may bind or legally obligate the partnership. Each general partner is entitled to full information and disclosure about partnership matters and business. Each general partner has a fiduciary relationship to the others; that is, each owes the others his best efforts to make the partnership as successful as possible. Typically, a general partnership is formed by a written agreement that may or may not be recorded with the county or the state in which the partnership does business. A general partnership may also be formed by oral agreement.

Ownership and Liability: Each partner is personally liable for all debts and obligations of the partnership. Accordingly, the assets of each general partner may potentially be reached by a creditor. Assets of the partnership, however, belong to the partnership, and may not be used to satisfy the personal debts of partners.

Registration: A general partnership usually does not require any formal registration to establish the business, but may be regulated by a variety of state and local agencies, often for purposes related to health and safety, professional standards, or tax revenue.

Accordingly, a partnership may need to file appropriate documents in order to use a fictitious business name or to obtain a business license.

3.6.6.B Elements Specific to a Limited Partnership

Definition: A limited partnership is a business association of at least two legal persons, one or more of whom are general or managing partners, and the rest of whom are limited partners. Limited partners invest capital in the partnership, but do not participate in its management. They are investors, much like shareholders in a corporation, entitled to distributions of profits, but without any authority to direct or run the business (no control). Limited partners may sell their interest without dissolving the partnership and without the consent of the other partners. Their withdrawal or death does not dissolve the partnership. A statement or agreement of limited partnership must be in writing and filed, either with the county in which the partnership has its principal office or with the secretary of state's office, or both. Failure to file the appropriate papers and abide by the appropriate state regulations for the state in which the business activity takes place, may affect the limitation of liability that generally protects the limited partners. As in general partnerships, general partners have a fiduciary responsibility to the limited partners to put forth their best efforts toward the success of the partnership.

Ownership and Liability: A general partner has unlimited liability for the debts and obligations of the limited partnership. A limited partner's liability is normally limited to the amount of his investment.

Registration: A statement or certificate of limited partnership must be filed with the secretary of state or equivalent and, when required by specific states, with the county in which the partnership has its principal place of business. The statement or certificate generally identifies the partnership name, partnership address, general partners, agent for service of process, and term or duration of partnership. Partnership interests or percentages may also be identified.

3.6.7 Corporations

Most states have adopted the Model Business Corporation Act or the Revised Model Business Corporation Act, which lends uniformity to the requirements for incorporation. Nearly every state, however, has adopted different requirements for documents that need to be filed, the jurisdiction for filing those documents, the amount of disclosure required, and regulations governing the sale of stock, among other items. These differences make it necessary to become familiar with the requirements of each state.

Definition: The *Corpus Juris Secundum* (18 C.J.S. §2) explains that a corporation is an artificial entity created by the law of its state of incorporation. A corporation is made up of a body of individuals (shareholders) "united as a single separate entity under a common name" with a perpetual existence. For legal purposes, a corporation's status under the law is that of an individual, even though one corporation may be a subsidiary or affiliate of another corporation or corporations.

Although an artificial person, a corporation "is entitled to rights under the law, and must enforce its own rights and privileges."

The "essential attribute of a corporation is the capacity to exist and to act, within the powers granted, as a legal entity" separate and distinct from its shareholders.

The characteristics of a corporation generally include:

- the capacity of perpetual existence;
- the power to sue or be sued in the corporation's name;
- the ability to purchase, own, and sell property and real estate;
- the ability to engage in specified business as set forth in its articles of incorporation; and
- any other characteristics and powers as provided by statue.

"The law of the state of incorporation," however, "determines the status, nature and functions of a corporation."

Taxation: Unless the corporation is a Chapter S corporation, it files its own tax return and is responsible for paying the income tax on the corporation's earnings. Any divestiture of assets from the corporation to the shareholders is identified as a dividend and this dividend is taxed on the shareholders' tax returns.

Ownership and Liability: Shareholders own stock in the corporation. The corporation in turn owns the assets of the corporation. Shareholders, officers, and directors are generally not liable for the debts of the corporation. Shareholders are at risk to the extent of their investment in the corporation.

Regulation: Corporations must be incorporated under state law and must comply with regulations applicable in that state in order to maintain the corporation's standing as a person. Corporations must also register in the state in which they conduct business. In some states, a corporation that has had its corporate charter revoked no longer operates as a corporate person and may instead be operating as some other type of entity (e.g., partnership,sole proprietorship). In addition, corporations seeking to sell stock or other securities to the general public are regulated by the Securities and Exchange Commission (SEC), and must provide substantial disclosure to the public, as noted in subsection 3.6.11.

3.6.7.A

Elements Unique to Corporations

- ***Continuity.*** A corporation is established in perpetuity, and can continue to operate even in the event of death, disability, or withdrawal by shareholders, directors, or officers.

- ***Transferability of equity interest.*** Equity interest in a corporation is evidenced by shares of stock, which can generally be freely sold or transferred, subject to applicable regulations.

- ***Constitutional rights similar to, but more restricted than, those of a natural person.*** Constitutional rights granted to corporations include protection from unreasonable search and seizure, freedom of speech, and the right to trial by jury. Constitutional rights not granted to corporations include the privilege against self-incrimination and privacy rights.

- ***Separate existence as a legal person.*** A corporation exists as a person at law, separate and distinct from its shareholders, directors, officers, and employees.

- ***Claims of creditors.*** When a corporation is dissolved or winds up its affairs, assets of the corporation must be used to satisfy creditors first. Creditors must be notified and given an opportunity to present a claim for payment. After all creditors are paid, then stockholders are entitled to a pro rata distribution of remaining assets, if any.

3.6.7.B

Classification of Corporations

Public vs. Private Corporations

In a public corporation, stocks or shares are listed on a stock exchange such as the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and are available for purchase or sale either directly from the corporation or via a stock brokerage firm such as Charles Schwab, Merrill Lynch, PaineWebber, or Morgan Stanley Dean Witter. In order to offer securities for sale to the general public, a corporation must provide a very high level of disclosure, including disclosure of specified financial statements, matters that are material to the economic existence or well-being of the business, the identity of the corporation's major shareholders, and the identity of entities seeking to acquire major stock interests. Such disclosures are filed with the SEC and are required as long as the corporation remains publicly traded.

In privately held corporations, stock or shares are sold or issued only to selected private parties, and are not offered or sold publicly. Shares are often held by one person, a family, or those

who incorporate the business, and shareholders are often directors or officers of the corporation as well. Such a corporation is generally known as a "close" or "closely held" corporation.

C vs. S Corporations

In C corporations, both the corporation and its shareholders are subject to income tax. (The corporation is taxed on its net income, and shareholders must report any dividends received from the corporation as well as gains (or losses) on the sale of stock.) There are no limits to the number of shareholders in C corporations, and C corporations may be either publicly or privately held.

An S corporation is a corporation that elects to be taxed like a partnership, such that the income of the corporation is allocated or passed through to the shareholders. S corporations avoid the double taxation of C corporations, since only the shareholders report taxable income in the form of dividends or distributions. S corporations are limited by law to 35 or fewer shareholders and are normally privately held corporations.

Domestic vs. Foreign and Alien Corporations

A corporation is a domestic corporation in the state in which it incorporates. It is a foreign corporation in all other states in which it qualifies to do business. An alien corporation is a corporation qualified to do business in a state in this country, but incorporated in a different country, such as Great Britain or the Netherlands. Consult OGC regarding the feasibility of imposing CERCLA liability on foreign corporations, alien corporations, or holding companies owned or capitalized by alien corporations.

Profit vs. Non-Profit Corporations

Profit corporations are established as business enterprises whose primary goal is to produce goods or services that may be sold for more than it costs to make or furnish the goods or services. Even though a for-profit corporation may not show a "profit," particularly on its tax returns, it remains a for-profit corporation by virtue of the form in which it was incorporated. Non-profit corporations are established to conduct a variety of enterprises, but are distinguished from for-profit corporations in that dividends are never distributed to stockholders. In general, non-profits do not even issue stock. Non-profit corporations often manage condominiums or common ownership associations, foundations, and other beneficial enterprises.

3.6.7.C Evolution of Corporations

Name Changes

All corporations must be authorized by a state in order to conduct business in that state, and are granted the exclusive right to use their corporate names as part of that authorization. As long as a corporation abides by the appropriate state regulations, such as filing annual reports and paying applicable state taxes and fees, it maintains exclusive rights to this corporate name. The practical effect is that there is only one corporation at a time within a state using precisely the same name, i.e., there may only be one General Electric Corporation in a state operating at any one time.

Sometimes a corporation decides to change its name or merges with another corporation and as a result of the merger assumes a new corporate name. Upon assuming the new corporate name, the old corporate name may become available for use by another

business. The corporate name may also become available if the corporate charter is revoked, the corporation is dissolved, or the corporate authorization lapses due to inactivity or failure to file an annual report.

As a result of name changes, more than one corporation may at different times conduct business under the same corporate name. Also, because corporations must be authorized to conduct business on a state-by-state basis, it is possible for two distinct, unrelated companies with the same corporate name to operate in adjoining states. Once a corporation has been identified, it is necessary to confirm its name and the state of incorporation where Superfund liability arose. Once this specific corporate entity is identified, it is then necessary to determine the current status of this corporation.

A corporation cannot escape liability simply by changing its name. If investigation reveals that ABC Corporation was incorporated in 1970 and sent hazardous substances to a Superfund site in 1975, it is still liable today even if it changed its name to XYZ Corporation in 1995.

Mergers

A merger is a combination of two or more corporations into one surviving corporation. As a general rule, the liabilities of the combining corporations are inherited by the surviving corporation. Accordingly, once evidence of a corporation's liability has been established, all that is needed to link the liability case to the company that survived the merger is documentation from the state that confirms the merger. Examples of such documentation may include:

- articles of incorporation and amendments;
- resolutions of the board of directors;
- merger agreements; and
- proxy statements.

Asset Sales

A corporation may sell part of its business operations, facilities, or other assets (e.g., real property, equipment) to another corporation, but it cannot avoid CERCLA liability simply by divesting itself of an asset. For example, a corporation may sell a facility where hazardous substances were deposited, but doing so will not relieve it of liability under CERCLA section 107(a)(2) if it owned the facility at the time of disposal. Therefore the PRP search should continue to investigate the selling corporation with particular attention to the proceeds of the asset sale. (*See* subsection 3.6.10 for exceptions to this general rule.)

3.6.7.D

Sale of Stock in a Corporation

The ownership of stock in a corporation may change over time. The exchange of stock in and of itself does not change the corporate person. Accordingly, if the only change in a corporation is the ownership in stock, then there is no change in the identity of the liable party.

If the facts developed during a PRP search identify a situation where either a majority or all of the stock of a liable corporation is sold to a different "person," it may be appropriate to conduct a more thorough investigation to confirm that the exchange of stock was the only change that took place. In some circumstances, ownership of all or a majority of the stock of a corporation by one person may signal the existence of additional PRPs. These issues are discussed in subsection 3.6.10.

3.6.8 Indemnification Agreements

An indemnification agreement is a contract between two or more parties in which one party agrees to be obligated to pay for or reimburse another party upon the occurrence of specific events as set forth in the contract. A PRP may seek to transfer its liability to another party through such an indemnification agreement. Since the United States is not typically a party to such agreements, it is not necessarily bound by their terms and conditions. Moreover, resolution of disputes and alleged failures to perform arising from such contracts requires recourse to a court of competent jurisdiction. In some instances, it may turn out that the indemnifying party is incapable of fulfilling its obligations due to a lack of financial resources.

When a PRP search identifies the existence of an indemnification agreement, ORC and possibly DOJ should be consulted to determine how best to proceed. Generally, it is the responsibility of the parties to the indemnification agreement to assure compliance with the agreement. Although an indemnifying party may agree to perform or pay for work, it is important that the United States retain enforcement authority over the PRP who is being indemnified. Under appropriate circumstances, EPA may seek an agreement from the indemnifying party not to contest its obligation to indemnify the PRP. If the indemnifying party agrees, it is essential that its agreement not be obtained in a way that inadvertently effects a waiver of the United States' enforcement authority over the PRP who is being indemnified.

3.6.9

Other Entities

Trusts

Trusts are legal creations, often created to hold property so that assets may be transferred to another person without expensive and lengthy probate court proceedings, or to avoid inheritance taxes. There are typically three parties identified in a trust agreement. The grantor or trustor bequeaths or transfers property to the trust. The trustee is the manager or executive for the trust, with an obligation to follow the trust documents in managing and distributing trust assets. The beneficiary or beneficiaries are the persons who are to receive or inherit the property. One type of trust, often known as a spendthrift trust, provides for the distribution of property or income according to a fixed schedule or at the direction of a trustee to one or more beneficiaries in order to prevent the beneficiary from squandering it all at once. Trusts may also be established to provide for the long-term care of an incompetent or disabled individual, particularly when the beneficiary is younger than the grantor. Trusts are created pursuant to state law, and the forms, purposes, and limitations of trusts vary from state to state. Because a trust may have legal standing as a "person" under state law, it may be liable as a PRP under CERCLA. It is therefore essential to understand the law of trusts of the state in which the trust was created and of the state in which the assets of the trust are located.

A trust is created by a trust document or instrument, which may or may not be recorded, but must be in writing. The document identifies the parties and describes the property, which may be personal or real property, that is to become the trust estate. The document also lists the duties of the trustee, provides for successor trustees, and enumerates the conditions under which trust assets may be distributed to the beneficiaries. Some trusts

are irrevocable, which means that the property is transferred without the possibility of the grantor changing her mind. Other trusts are revocable, which means that the grantor retains the right to revoke the trust and recover the trust property. In cases where a PRP grantor continues to enjoy the use or benefit of the trust property, EPA may conclude that the trust is a sham and take legal action to void or set aside the transfer of the trust property.

Trusts are required to file federal income tax returns (Form 1041) annually to report income, expenses, distributions of trust property, and any tax liability.

Holding Companies

A holding company is a corporation formed to own the stock of one or more subsidiary corporations. It is a subcategory of a parent corporation, in that it typically does nothing more than own the stock of corporations that actually create goods or provide services.

Shell Corporations

A shell corporation is a corporation that exists on paper, but has no real existence. Often a shell corporation may be a holding company or the shell may exist only to preserve a corporate name, public image, or intangible right or property. The officers, directors, and shareholders of a shell corporation may be difficult to identify, and may not actually conduct any business.

Joint Venture

In many respects, a joint venture is indistinguishable from a general partnership. It is an association of two or more entities, generally with a finite or defined purpose. An example of a joint venture is an association of two construction companies who "jointly" bid on and construct a large building that would be beyond the capacity of either company separately. Joint venture agreements may be, but do not have to be, written. The primary difference between a joint venture and a partnership is that the joint venture is generally formed for the duration of a project, and then disbanded, while the life of a partnership is governed by the time specified in the partnership agreement or the desires of the partners.

Municipalities

Counties, cities, and municipalities are creations and subdivisions of state governments, established by charter or other act of the state legislature. They are legal entities, much like corporations, but have the power to require investments by the public through taxes in addition to offering voluntary investment opportunities through municipal bonds.

Limited Liability Company

Many states have adopted provisions under either their Uniform Commercial Code or Business Corporation Act to allow for the creation of a business entity known as a "limited liability company." This can be organized as either a sole proprietorship or a general partnership, but the member(s) or company enjoy(s) the limited liability protection generally afforded to shareholders of

corporations. Requirements include public notice or registration of the entity as a limited liability company and, in some cases, use of the term limited liability in the company name.

3.6.10 Additional Liability Theories

As a PRP search progresses, information gathered may suggest that the investigation be expanded to include additional "persons." This section supplements the discussion of CERCLA liability in Chapter 1 by outlining theories of extended potential liability under CERCLA. This information is intended to assist regional attorneys and others participating in or performing the PRP search in developing appropriate liability recommendations. Because the interpretation and validity of these liability theories may be viewed or applied differently in each federal judicial district and from state to state, it is strongly recommended that ORC and DOJ be consulted to ascertain the current applicable judicial interpretation given the facts of each specific case.

3.6.10.A Direct Liability of a Person as an Operator or as a Person Who Arranged for Disposal or Treatment of Hazardous Substances

Subject to the appropriate legal defenses and exemptions outlined in subsections 1.2.5 and 1.2.6, the owner of real property constituting a Superfund site is a responsible party. CERCLA, however, does not limit liability solely to the owner of the real property. Instead, as discussed in subsection 1.2.4, liability may also be imposed upon operators and on "persons" who arranged for treatment or disposal of hazardous substances (generators) and transporters. As the PRP search proceeds, many additional "persons" are often identified who played more or less extensive roles in directing or managing the activities of the business entities whose acts in turn created the hazardous conditions found at the Superfund site. Based on case-specific information developed

during the PRP search, the Agency may establish that the actions and involvement of these "persons" were so extensive that liability should be imposed upon them, notwithstanding such traditional shields against liability as the corporate shield or a person's status as a limited partner. Federal courts have held that these actively involved persons may be named PRPs based upon the definition of "person" in CERCLA sections 101(21) and 107(a) under a liability theory known as direct liability.

3.6.10.B Corporate Officers, Directors, Shareholders, or Employees

In addition to holding a corporation liable, the United States has brought CERCLA actions against individual officers or shareholders of corporations. In general, corporate officers, directors, shareholders, and employees have limited individual liability for unlawful or tortious acts of a corporation. Courts, however, have applied by analogy the standard of direct CERCLA liability established in United States v. Bestfoods (discussed in paragraph 3.6.10.C) to corporate officers, directors, shareholders, and employees. Courts have ruled that an officer or director may be "directly liable," i.e., personally liable, under CERCLA given any of the following fact patterns:

- A corporate officer, employee, shareholder, or director participated personally in the activity leading to the release of hazardous substances.

- A corporate officer, employee, shareholder, or director exercised extensive control over waste handling or disposal operations.

- A corporate officer, employee, shareholder, or director exercised control over facility operations and could have prevented or significantly abated the release of hazardous substances.

Direct liability is imposed when the actions of an officer, employee, shareholder, or director of a corporation exceed the normal limits and accepted behavior, practices, or duties of his position. Evidence that shows that an individual's activities exceeded the scope of his normal duties and responsibilities with respect to site operations, particularly in directing activities that relate to the disposal of hazardous substances, is crucial to a finding of direct liability. For example, a treasurer of a corporation is usually given responsibility for the corporation's financial affairs, as set forth in the articles of incorporation or the corporate bylaws. If the treasurer directs corporate employees to drain liquid waste containing trichloroethylene (TCE) into a disposal trench, he may be held directly liable as an operator just as the corporation is liable. Direct liability may also apply to related or affiliated corporations.

3.6.10.C Liability of Parent and Affiliated Corporations

In United States v. Bestfoods, 524 U.S. 51 (1998), the United States Supreme Court established a standard of direct liability under CERCLA section 107(a)(2) for parent corporations as operators of facilities owned or operated by subsidiary corporations. In Bestfoods, the court held that a parent corporation that jointly operates or exercises control over the environmental operations of its subsidiary's facility may be held directly liable as an operator of the facility under CERCLA section 107(a)(2). The court also stated that the question is not whether

the parent operated the subsidiary, but whether the parent directly operated the subsidiary's facility. This may be demonstrated by showing that the parent corporation managed, directed, or conducted operations specifically related to the release or disposal of hazardous substances, or made decisions affecting compliance with environmental regulations at the facility. The court also stated that a parent's control over a subsidiary, although not giving rise to direct liability, if extensive enough, may establish indirect liability. (*See* the discussion below on piercing the corporate veil.)

The court in Bestfoods also held that a parent corporation cannot be held directly liable merely because directors and officers hold positions in both the parent and the subsidiary corporations. To impose direct liability in situations with common officers or directors, it must also be shown that the officers and directors were acting in a manner (1) advantageous to the parent; and (2) obviously contrary to the interests of the subsidiary. The direct liability of a parent corporation arising from the actions of shared officers or directors may only be imposed after an analysis of the specific facts of each case using traditional corporate law tests or principles. As a fundamental part of this analysis, the Court emphasized the importance of corporate decisions that are not made in the best interests of the subsidiary.

3.6.10.D

Elements of Direct Liability

The investigation to determine whether corporate officers or parent corporations may have direct operator liability should be focused on the degree and extent of involvement of each person. Were the actions of a corporate officer or parent sufficiently beyond the scope of a normal relationship to show that the corporate officer or parent directly operated the corporation? Did the actions of the corporate officer or parent qualify as an

arrangement to treat or dispose of hazardous substances? Evidence that merely describes the basic elements of ordinary and customary management or supervision is not sufficient to meet the standard of direct liability. Instead, the PRP search should seek to document the actions of a person participating in the activities of corporation at a level of involvement much greater than the customary role of an officer or parent corporation.

In a potential direct liability case, documentation should include information reflecting specific actions taken and directions and orders issued by a potentially liable person. Documentation should also show the extent and nature of the involvement of the person in the corporation, paying particular attention to decisions or activities that resulted in or contributed to the release of hazardous substances. A comparison of the person's job description and duties with the duties and activities actually performed as demonstrated by documents and testimony can be particularly helpful and telling.

Documentation relevant to supporting a direct liability case includes:

- corporate minutes;
- records of stock;
- corporate checks, signature cards, and bank statements;
- leases, rental agreements, purchase agreements, and all other documents reflecting transactions between the corporation and a related or affiliated party;
- list of officers (shared officers?);

- list of directors (shared directors?);
- shareholders (does one person or entity own a controlling interest?);
- affiliation schedules;
- corporate financial statements;
- statements of employees or other knowledgeable individuals;
- position descriptions;
- employment agreements; and
- travel records.

3.6.10.E Piercing the Corporate Veil

Piercing the corporate veil is a legal doctrine through which a corporation's shareholders, who generally are shielded from liability for the corporation's activities, can be held personally liable for those activities. This is in contrast to traditional corporate liability schemes, in which shareholder liability is limited to the money a shareholder has invested.

In Bestfoods, the Supreme Court left open the question (and federal courts are divided on this issue by appellate circuit) whether state common law or federal common law should apply to veil-piercing claims in actions to enforce CERCLA's indirect

liability.[8] Most courts (federal and state) apply a multi-pronged test to determine if a shareholder is liable for the wrongdoing of the corporation of which he is an owner. Factors often considered by courts include whether:

- control over the corporation by those to be held liable was so complete that the corporation had no separate mind, will, or existence of its own;

- control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; or

- injury or unjust loss resulted to the plaintiff from such control and wrongdoing.

Generally, the doctrine of piercing the corporate veil is invoked to prevent fraud or achieve equity, particularly in the treatment of creditors of the corporation. Accordingly, as a prerequisite to piercing the corporate veil, courts generally require the corporate entity to demonstrate that it is unable to pay its liabilities or debts, whether these are Superfund cleanup costs, salaries, debts to suppliers, or taxes. (*See* Carter-Jones Lumber Co. v. LTV Steel Co., 237 F.3d 745 (6th Cir. 2001) (Shareholder's mere control of a corporation may be sufficient to establish indirect liability and joint liability as an arranger.).)

[8]Because the federal courts of appeals are divided on this issue, it is necessary to determine what the controlling law is for the circuit in which a specific case may be litigated because state veil-piercing requirements are stricter than federal common law requirements.

In order to pierce the corporate veil successfully, the party seeking to pierce the veil has the burden of showing why the veil should be pierced and what injustice, fraud, inequity, etc. will occur if the veil is not pierced (e.g., the taxpayers will be required to pay for the costs of a CERCLA cleanup instead of the wrongdoers who are trying to hide behind a corporate shield). The type and amount of evidence needed to pierce a corporate veil so as to impose CERCLA liability on corporate officers, directors, shareholders, or employees is not the same in all federal or state courts. The law governing the standards to be applied varies. It is very important, therefore, to consult ORC and, when appropriate, DOJ as soon as information is obtained suggesting that piercing the corporate veil might be warranted or required.

Corporate acts or omissions that support piercing the corporate veil include:

- failure to observe corporate formalities, including failure to;
    - properly incorporate (articles of incorporation) or file appropriate documents with the state,
    - hold meetings of the board of directors,
    - hold meetings of stockholders,
    - issue or account for stock, and
    - approve or ratify major actions of officers,
- failure to treat corporate property as the corporation's property;
- failure to properly capitalize the corporation;
- commingling of assets (e.g., combining corporate funds with personal funds); and

- related-party transactions that are not at arms length or do not involve reasonably adequate consideration.

The creditor must show that the corporation is a sham by accumulating as much evidence as possible to support the indicators listed above. Documentation that may be important includes:

- corporate minutes (including evidence that such minutes were not kept);
- records of stock;
- corporate checks, signature cards, and bank statements;
- leases, rental agreements, purchase agreements, and all other documents reflecting transactions between the corporation and a related or affiliated party;
- lists of officers (shared officers?);
- lists of directors (shared directors?);
- shareholders (does one person or entity own a controlling interest?);
- affiliation schedules;
- corporation financial statements; and
- statements of employees or other knowledgeable individuals.

3.6.10.F

Successor Liability

As a general rule, a person who purchases some or even all of the assets of a business from another person during the course of an arms-length transaction is not liable for the debts or other obligations of the seller. There are exceptions to this rule, however, depending on the facts and circumstances of the sale and on relevant case law in the judicial circuit in which jurisdiction lies. Circumstances under which liability may pass to the purchaser of business assets include:

- The buyer expressly or impliedly agrees to assume the seller's liabilities. Because EPA was not a party to this transaction or contract, it is essential to seek advice from regional counsel to determine whether EPA may independently move against the buyer to enforce such an agreement or if it is necessary to proceed against the seller to enforce this portion of the contract.

- The transaction amounts to a de facto merger or consolidation. As discussed in subsection 3.6.7, when there is a formal merger between two or more corporations, liabilities of the merging corporations are automatically assumed by the surviving corporation. A de facto merger describes an asset purchase agreement that, for all practical purposes, amounts to a merger. Most states have standards that define a de facto merger. These standards typically include the following elements:

    - there is a common relationship between the buyer and seller;

    - the buyer acquires essentially all the assets of the seller; and

- the seller is dissolved soon after the sale.

- The transaction (asset sale) is fraudulently entered into to escape liability.

- The buyer is a mere or "substantial" continuation of the seller. Factors that some courts have relied upon in identifying "mere continuation" asset purchases include:

  - retention of the same employees;

  - retention of the same supervisory personnel;

  - use of the same production facilities in the same location;

  - production of the same product;

  - use of the same name;

  - continuity of assets, i.e., the buyer uses the same machinery, sells to the same customers, buys from the same suppliers;

  - continuity of general business operations;

  - holding out as a successor to the former enterprise; and

  - holding out as identical to the former enterprise (e.g., using the same name, letterhead, business cards).

Documentation that may help determine whether the standards for successor liability enumerated above have been satisfied includes:

- the asset purchase agreement with all attachments, schedules, or exhibits;
- corporate resolutions;
- employment contracts;
- customer lists;
- supplier lists;
- invoices and stationery;
- advertising;
- bulk transfer notices (notices mailed to creditors of the seller and published in newspapers of general circulation in the area where the sale occurred);
- business escrow documents reflecting the asset sale; and
- property appraisals.

Key points to remember when reviewing and evaluating asset purchase agreements include:

- The person selling the business assets is normally referred to as a predecessor. The court may require that EPA first look to the remaining assets of the predecessor to satisfy a liability before EPA is allowed to look to the assets of the

successor. Accordingly, the PRP search must identify the current operational status, viability, and ability to pay of the predecessor. Some states require, as a precondition to imposing successor liability, a demonstration that the predecessor is insolvent or defunct.

- Because EPA is not normally a party to indemnification agreements or an indemnification clause within asset purchase agreements, EPA generally is not bound by the terms and conditions of indemnification agreements. Normally, only the parties to an indemnification agreement can enforce its terms. Accordingly, providing EPA a copy of an indemnification agreement may not relieve a party of CERCLA liability.

- In attempting to evaluate the potential successor liability of a purchaser, the objective is to gather evidence of as many of the liability factors discussed above as possible. The standard of proof is the preponderance of evidence, and no one factor makes the case in the appropriate court jurisdiction.

- Successor liability is a continually evolving field of law. Consequently, it is critical to consult with ORC and DOJ when making a liability determination based on successor liability.

3.6.11 Financial Research

Effective financial research starts with a knowledge of the regulatory requirements and record-keeping policies for the location where the transaction took place. On-line databases and credit reporting services are very useful aids to understanding prior events, but the information obtained using these services

may not be sufficiently reliable to be used as evidence. This is especially true when researching the sale and acquisition of companies. The various sources of financial information about businesses are discussed below.

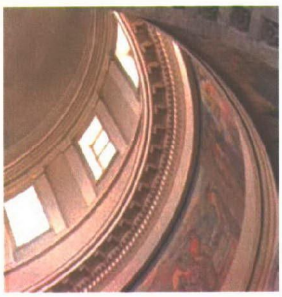
3.6.11.A Corporation and Partnership Filings Required by States

Required business filings differ from state to state, both in terms of what information must be provided and where documents must be filed. In many states, corporations and limited partnerships are required to file documents with the secretary of state in order to defend any action in a state court. Accordingly, almost all corporations and partnerships have filed the requisite documents.

- For corporations, required filings include the corporate registration, which contains a list of officers and directors, articles of incorporation, and all amendments of the articles.

- For partnerships, required filings include the partnership agreement, which contains a list of all partners and their interests in the partnership, and may include a list of partnership property.

- Documents evidencing corporate name changes and mergers are also filed with state agencies.



When reviewing corporate filings make sure that the available information is consistent with the span of time of potential liability. Some state offices archive older records. In those offices, it is typically necessary to make a specific request to review older filings.

3.6.11.B County Filings and Other State Regulatory Agency Filings

Depending on the location and the type of company, documents may exist that identify the person and the address used by the person at the time of filing. County deed offices are very useful in establishing a sequence of owners of real property, particularly when the name of a purchaser on a deed is different from the eventual seller named on the deed.

3.6.11.C Court Filings

Federal and state courts are often good sources of information that is useful for establishing corporate liability. Sometimes financial issues relevant to a CERCLA investigation have been addressed under a labor grievance or a property dispute. A review of prior legal actions and an examination of the evidence introduced in those actions can be helpful.

3.6.11.D Federal Sources

The SEC has large amounts of information relevant to purchases, sales, mergers, and divestitures of publicly held companies. The more current information is available on line. In addition, publicly available paper documents describe activities as far back as the 1930s. Other federal agencies may have information such as contracts and contract amendments that may help establish liability.

3.6.11.E Corporate Directories

Corporate directories provide summaries of useful financial information for a variety of businesses. Older editions of these directories often are helpful in tracking name changes and the acquisition and sale of plants. These directories can also be used to establish the state of incorporation, as well as the fate of inactive, dissolved, or defunct corporations, or corporations which have merged, been acquired, or have otherwise disappeared.

Useful corporate directories include the Dun & Bradstreet Million Dollar Directories, Directory of Obsolete Securities, Standard & Poor's Industrial Manuals, and Walker's Manual of Western Corporations. Corporate directories can be found in the business section of most public libraries and are updated at least annually. In addition, industrial directories are compiled annually for most states, and larger libraries may maintain a historical collection of such directories, particularly for their state.

3.6.11.F Credit Reporting and On-Line Services

On-line services often provide corporate information for a limited number of years or provide information that is not current. Check with the data provider to verify the period of time that the data cover and whether full data or only limited portions are being provided. These systems are very useful for gathering information quickly, but additional effort is often needed to fully understand or verify the information. Appendix I provides a list of on-line resources that may be useful to a PRP search team.

3.7 Site Summary Development

Preparing a site summary prior to preparation of the baseline PRP search report serves two purposes:

1. It focuses the PRP search team on any information gaps or incomplete baseline tasks prior to preparation of the baseline PRP search report. If information gaps or incomplete tasks are identified, the PRP search team can take steps either to complete or re-do tasks or to defer decisions to a later date when more complete information is available.

2. It consolidates and facilitates sharing of information. A site summary assembles pertinent, non-confidential site chronology and property history information in one place. This summary can be shared with PRPs if it does not contain confidential or privileged information. The summary can also be used by Agency and state decision makers as a quick reference to assist in making decisions.

At this point in the PRP search process, site documents have been organized consistent with the information management provisions of the PRP search plan and reviewed for pertinent site data, information that links a party to the site, sufficiency of evidence establishing the liability of the PRP, financial viability, and potential leads about other parties involved with the site. This review should result in a history of activities and parties involved in the treatment or disposal of hazardous substances at the site, and a compilation of other factual site information.

Site History

Factual background information about the site as well as a history of the facility should be presented here. This history of the facility as a hazardous substance site should begin with the first industrial use or disposal at the site and continue through to current activities. It should identify in detail the kinds of activities conducted at the facility and the owners/operators during each period, including principal individuals. It should also identify by reference any data on substances at the site (e.g., in drums, containers) and, to the extent that the information is available, include a discussion of the environmental risks that the site presents. This will allow enforcement efforts to focus more closely on site activities that are linked to EPA response actions.

Factual Site Information

Factual site information that should be contained in a site summary includes:

- site location and size;
- adjoining properties;
- brief description of site history to include;
    - site owner/operator(s),
    - when operations began,
    - type of operations at the site, and
    - types of substances manufactured, treated, stored, or disposed of,
- permits applied for or granted; and
- warnings or notices of violations issued by regulatory agencies.

All information contained in this subsection should be based on factual records, and each piece of factual information cited should reference where the source record can be found. Following the brief description, a detailed description of site history should be presented in chronological order.

The owner/operator discussion should identify the period of each person's ownership or operation of the facility, and describe what hazardous substances were disposed of and by whom during each such period. The owner/operator section should also include a title abstract or narrative provided by the title search company or title researcher. To aid the reader in reviewing title search results, a

title tree or graphs depicting the chain of title may be useful. Any language in the title restricting the use of the property due to wastes deposited at the site or past industrial practices should be noted.

3.8 Compile Waste-In Information

In addition to developing evidence for CERCLA section 106 and 107 actions, a PRP search should develop waste-in information for waste-in lists and volumetric rankings wherever practicable.

- A waste-in list provides the volume and nature of substances contributed by each PRP at a facility.

- A volumetric ranking is a ranking by volume of the hazardous substances at a facility.

If EPA invokes special notice procedures under CERCLA section 122(e)(1), the Agency is required to provide PRPs, to the extent that such information is available, with waste-in lists, volumetric rankings, and a list of PRP names and addresses. Aside from the statutory provisions for development and release of such information, experience has demonstrated that waste-in lists and volumetric rankings are a valuable tool in bringing about settlements at Superfund sites. When presented with an estimate of the nature and volume of hazardous substances contributed to a site, PRPs are better able to coalesce into committees and determine allocations among themselves, and often are more willing to participate in settlement negotiations with EPA. While not every site is a logical candidate for a waste-in list or volumetric ranking, development of such lists and rankings is generally beneficial whenever practicable.

In the past, owner/operator transactional records were the only waste-in information developed during the baseline phase of the PRP search. The follow-up phase focused on generator and transporter liability and volumetric rankings. Since current Agency policy calls for early settlement with small-volume waste contributors, however, generator-specific waste-in information should be developed during the baseline phase so that de minimis and de micromis determinations can be made as soon as possible. For detailed guidance on waste-in lists and volumetric rankings, consult the Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991); for detailed guidance on the use of waste-in information in settlements with small-volume contributors, consult the Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A) (July 30, 1993). (*See* Chapter 3 references, page 216.)

3.8.1 Transactional Databases

Sections 3.2 and 3.3 discussed the value of databases for tracking correspondence and information requests. Similarly, large amounts of information on generator and transporter waste types and volume gathered from previous baseline tasks can best be managed with a transactional database. Transactional databases are used at recycling sites, landfills, and other such sites with large numbers of generators. Information contained in transactional databases is generally derived from evidence summary sheets and waste stream analyses. Waste stream analyses are discussed in section 4.7 of this manual.

Evidence Summary Sheets - Generators

A separate evidence summary sheet generally is prepared for each shipment or group of shipments of a hazardous substance sent by a generator to a site for treatment or disposal. The evidence summary sheet for the generator should contain the following information pertaining to the hazardous substance(s) at the site:

- relationship of substances to the threat;
- volume;
- identification by name of the hazardous substances;
- EPA's determination of any RCRA hazardous wastes codes; and
- substances found at the site that the generator is known to produce.

Information on hazardous substances presented in the evidence summary sheets should be referenced to supporting documents in the correspondence tracking databases, if developed, or in the site file database. This information should be verified during the RI at the site.

Evidence Summary Sheets - Transporters

Evidence summary sheets should be kept for all transporters who accepted hazardous substances for transport and selected the treatment or disposal facility to which the shipment was sent. It is useful to identify all transporters, not just those who selected the site, since they will identify the generators. Although the transporters may not have selected the site, and consequently

may not be liable, the transporter's customer may be liable as a generator. By identifying all transporter volume, the database can ensure that each transporter volume is linked to a generator, thereby making sure all generators are identified. A transporter evidence summary sheet should include the volume and nature of the hazardous substances and describe any evidence that the transporter selected the treatment or disposal site. Again, all the information on the evidence summary sheets should be referenced to supporting documents in the correspondence tracking and site file databases.

As with the site file, correspondence, and information request tracking databases, the information contained in the transactional database should be screened for relevance to the PRP search. If a contractor is responsible for developing the database, the contractor must work with EPA to determine the document criteria. The QA/QC process should screen for duplicative documents and either eliminate them or enter the documents into the database as duplicates. The QA/QC process should also be applied to document codes and field definitions, which may 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 of obtaining the document sources (e.g., PRP, EPA), recipients, and attachments.

3.8.2 Waste-In Lists and Volumetric Rankings

At some point during the baseline phase of the PRP search, the PRP search team should assess the quality and completeness of the waste-in information and determine whether waste-in lists and volumetric rankings will be developed, and by whom. CERCLA gives EPA considerable discretion whether to develop a waste-in list or volumetric ranking. Whether the records at a site constitute

sufficient evidence to produce waste-in lists and volumetric rankings is a highly site-specific determination. Regions should develop an approach for assessing waste-in information that is internally consistent and based on a common set of considerations. Where waste-in lists and volumetric rankings are developed by EPA, the following three rules should be followed when making assumptions about waste-in information:

- **Assumptions should be defensible.** Established conversion standards (converting to common units of measurement such as gallons or cubic yards) should be used and assumptions should be based on patterns established in the data in order to avoid charges that an assumption is arbitrary or capricious.

- **State assumptions openly.** When interpreting illegible numbers on a manifest, or assuming a disposal destination from an unclear hauling ticket, it is preferable to let PRPs know where EPA made assumptions and to identify where ambiguity still exists. Clearly stated assumptions contribute to the credibility of a waste-in list and give PRPs the opportunity to make their own corrections. Assumptions should be reviewed by the case attorney to ensure that they are legally supportable.

- **Be consistent.** PRPs involved at more than one site within a region will be aware of any discrepancies in the kinds of assumptions made for waste-in lists at these sites. Disputes over inconsistent assumptions only slow down the settlement process.

Whom To Include on Waste-in Lists

Generators are usually included on a waste-in list when evidence indicates they contributed hazardous substances to a Superfund site. Transporters should be included on waste-in lists when the transporter, not the generator, determined where the hazardous substances were to be taken for treatment or disposal. As a policy matter, EPA implements CERCLA sections 107(a), 101(20)(B), and 101(20)(C) by not including transporters on a waste-in list if they did not select the site or facility to which hazardous substances were delivered. Thus, while all transporters should be sent 104(e) information request letters, only those transporters who appear to have selected the site for hazardous substance disposal should be sent notice letters.

Format and Content of Waste-in Information

Waste-in Lists

Waste-in lists contain the volume and nature of substances contributed by each PRP identified at a facility. At a minimum, the lists should contain columns for the names and addresses of PRPs as well as the types and volumes of hazardous substances. Although EPA is under no statutory obligation to release information beyond the waste-in list, regions should consider releasing supplemental waste-in list information unless there are countervailing legal, policy, or strategy reasons not to do so. Supplemental waste-in information can include, but is not limited to:

- the dates of shipments;
- the names of transporters;

- the types of evidence from which the waste-in lists were derived; and
- comments to clarify assumptions, ambiguities, and double-counts.

When most PRPs at a site are generators, waste-in lists should be organized by generator, with a column provided for listing the transporter of each shipment in order to link the generator to the site. When there are multiple transporter PRPs, it may be advisable to prepare separate waste-in lists for generators and transporters.

Volumetric Rankings of Substances at a Facility

To the extent such information is available, CERCLA requires that special notice recipients be provided with a volumetric ranking of hazardous substances at the facility. This ranking lists hazardous substances and their respective volumes in descending volumetric order. It can be developed from waste-in list information.

Volumetric Rankings of PRPs

Volumetric PRP rankings (sometimes referred to as generator rankings) rank PRPs in descending order by volume and express their contributions as a percentage of the total volume of hazardous substances at the facility. Although CERCLA section 122(e)(1)(B) requires EPA to provide special notice recipients with "the volume and nature of substances contributed by each potentially responsible party identified at the facility," to the extent such information is available, CERCLA does not require that this information be aggregated into a volumetric PRP ranking. A number of regions release information in this format, however, because they feel it provides a logical starting point for negotiations. Regions should bear in mind and convey to the PRPs

that waste-in information provided with special notice is intended as an estimate of individual PRP contributions, and is neither definitive nor binding in any way. It is intended solely as information to facilitate settlement agreements between PRPs and the Agency.

When there is insufficient information to convert volumes into a single unit of measurement, regions may provide a volumetric ranking using raw data from records in an unconverted form. PRPs can then choose to clarify ambiguities concerning volumes or substances in order to produce a better list upon which to negotiate.

Special Considerations

Commonly Contributed Volumes

When hazardous substances are contributed both by a generator and a transporter that designated the treatment or disposal site, regions are advised to:

- attribute the volumes to both parties when compiling waste-in information;
- not try to apportion responsibility for a hazardous substance shipment generated by one PRP and transported by another among the two PRPs in a volumetric ranking or waste-in list; and
- let the PRPs, or the independent neutral, allocate commonly contributed volumes during the site allocation process.

Because this approach may result in double-counting shipments, regions should provide PRPs with an explanation of why shipments have been double-counted and clearly identify, by means of a comment field or other notation, which shipment volumes have been attributed to both generators and transporters.

Municipal Landfills

Like mining and area-wide groundwater sites, landfills are notoriously difficult sites at which to compile accurate waste-in information, both because of poor record-keeping practices and because of the mixture of different wastes disposed of at landfills. In many instances, most of the wastes in a municipal landfill are not hazardous substances and do not belong in a waste-in list or volumetric ranking.

Non-exempt generators and transporters of municipal solid waste or sewage sludge generally will not be notified as PRPs unless evidence shows that:

- the waste or sludge contains a hazardous substance; and
- the hazardous substance came from a commercial, industrial, or institutional process or activity.

Generators and transporters of commercial trash, however, are generally notified as PRPs unless they can demonstrate that:

- none of the hazardous substances contained in the trash are derived from a commercial, institutional, or industrial process or activity; and

- the amount and toxicity of the hazardous substances do not exceed the amount normally found in common household trash.

Removal Sites

Some removal sites are not good candidates for compiling waste-in information because they require cleanup action sooner than the time it would take to produce waste-in lists. Even after the work has been started, however, there may be a need to prepare the waste-in list, especially if cost recovery litigation is likely. Even if a waste-in list cannot be prepared because of time constraints, it is important to notice as many parties as possible to limit due process issues that may be raised by PRPs. At non-time-critical removal sites, the creation of waste-in lists and volumetric rankings should be seriously considered as there is more time available to prepare them at these sites than other removal sites. When adequate transaction documentation exists and settlement seems possible, regions should prepare waste-in lists and rankings as described in section 122(e)(1) for release to PRPs. Because removals may proceed at an accelerated rate, it is important to start the waste-in preparation early, spend less time fine-tuning lists and rankings, and release the information to PRPs as early as possible.

For more general information on preparing waste-in lists and volumetric rankings; specific considerations for solvent recycling and transshipment sites, lead battery sites, and mining sites; and releasing waste-in information, consult the Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991).

3.9 Classify PRPs

The objective of this task is to classify identified parties into the broad categories of owner, operator, transporter, or generator, and then more specifically into other categories, such as de minimis, de micromis, insolvent, or defunct.

3.9.1 Identify PRPs

Throughout the PRP search process, information should be analyzed with the following questions in mind:

- Is the information sufficient to establish PRP liability?
- What volume of waste was disposed of or treated at the site?
- Can the PRP(s) contribute toward cleanup efforts?
- Are there additional leads which should be pursued?
- Have past and present owners/operators been identified?
- Does the information presented resolve liability inquiries?
- Is the waste-in information complete?
- Are recommended follow-up activities documented?

The PRP search team should routinely perform such analyses in order to collectively identify any weaknesses in the existing PRP search efforts, identify any next steps, and determine the timing of these steps.

These analyses are particularly important to ensure effective collection of:

- information about owner/operator liability and financial viability;
- updated PRP names and addresses;
- information about the volume and nature of substances sent to the site;

- information on the contributing parties;
- information that can be used to determine whether a person should receive a notice letter; and
- evidence of each PRP's liability.

A list of parties identified as PRPs should be developed with complete names, addresses, and contacts. This list should contain:

- names of contact persons;
- addresses;
- phone numbers, if available;
- name of the legal contact, if the parties have representation;
- date of list preparation; and
- contact person for all correspondence.

It is very important that the addresses of PRPs or their contacts be verified for accuracy. Verification prior to preparation of the baseline PRP search report reduces the need for additional or subsequent re-mailings of general or special notice letters and helps ensure that PRPs receive adequate notice and due process rights. Failure to satisfy these procedural requirements may lead to significant problems later in the Superfund process. PRP lists can be included as an appendix to the site summary section of the baseline PRP search report and are considered non-confidential. PRP search reports are more fully discussed below in section 3.10.

3.9.2 Define PRP Category

PRP classification initially involves grouping PRPs into one of the following CERCLA categories:

- owners (past or present);
- operators (past or present);

- generators;or
- transporters.

Further classification of PRPs into sub-categories of the above categories may be appropriate depending on site-specific needs and the nature and volume of information available. The following are examples of sub-categories:

- ability to pay (ATP) parties;
- de minimis;
- de micromis;
- MSW;
- residential homeowner;
- insolvent or defunct;[9]
- status known, but quantity of waste unknown.

It may be beneficial to classify non-PRPs into such categories as:

- status unknown;
- residential homeowner;
- knowledgeable witness;
- adjacent landowner.

If corporate information is available, the list should include the date of incorporation, whether corporate PRPs currently exist, the fate of inactive companies, current mailing addresses (including facility, headquarters, and registered agent), and parent or

[9]During the baseline phase of the PRP search, it may not be possible to conclusively determine if a party is insolvent or defunct due to the time-consuming nature of this determination However, preliminary determinations on a party's status as insolvent or defunct should be attempted during this phase, with follow-up information requests or other information gathering techniques used during the follow-up phase to make the final determination. Insolvent and defunct determinations are discussed in section 4 6 of this manual.

successor companies. Information about individuals and unincorporated companies should include their current locations, their associations with other PRPs, and their relationships to the site.

In most instances PRP classifications are pre-decisional and subject to review during the PRP search, and consequently are considered confidential. Nonetheless, they can help the PRP search team and other Agency staff in corresponding with PRPs, conducting financial assessments, directing follow-up activities, and many other tasks.

3.10 Prepare Baseline PRP Search Report

The baseline PRP search report is a preliminary report that contains available information on the owners/operators, generators, and transporters. This report provides a chronological summary of site history and the facts pertaining to PRPs' liability. Information supporting conclusions within the report is generally included in appendices. The baseline report is generally followed by the interim final PRP search report except in simple owner/operator situations where the baseline report will usually suffice. *See* section 4.8 of this manual for further discussion of the interim final PRP search report.

3.10.1 Report Format and Content

Prompted by the Agency's emphasis on earlier information exchange with PRPs and other stakeholders, more efficient information gathering, and concern over whether PRP search reports were subject to discovery production demands and FOIA requests, several EPA regions have been using a revised format for the report. Traditionally, the PRP search report format consisted of the following sections: introduction, site history, PRP identification, and conclusions and recommendations. The problems that resulted from this format included:

- Time needed to prepare the entire baseline report delayed receipt of factual site summary information that could be used for early information sharing with other parties.

- Disputes over releasability of the PRP search report were common.

- Reports could not be updated easily to reflect development of additional or new information.

- Interpretations and conclusions were not clearly distinguished from established fact.

A revised PRP search report format (for both the baseline and interim-final reports) consists of two sections treated as separate deliverables, namely:

1. Site chronology and property history; and
2. PRP synopsis.

3.10.1.A Deliverable 1: Site Chronology and Property History

The known facts about the site and its PRPs are summarized without interpretation in the first section of the baseline report. The site chronology and property history and back-up information are included in supplemental appendices. This section contains no conclusions, interpretations, or inferences regarding liability. A separate site chronology and property history:

- highlights the source of information being used to establish facts;

- helps identify periods of time for which there is little or no conflicting information;

- facilitates updates during a phased PRP search; and
- may be released to PRPs and other members of the public.

Suggested contents and format of the site chronology and property history section of the PRP search report are shown in Figure 1.

3.10.1.B Deliverable 2: PRP Synopsis

The remainder of the baseline report is contained in the PRP synopsis section. This section of the PRP search report should be stamped "Privileged Work Product -- Deliberative/Attorney Work Product - Do Not Release Under FOIA". The PRP synopsis should include:

- PRPs identified during the research;
- PRP names, addresses, and telephone numbers;
- the basis for inclusion of each PRP;
- PRPs with potential defenses to or exemptions from liability (*See* subsections 1.2.5 and 1.2.6);
- major reference sources;
- the identity of other parties associated with the site and the nature of the association;
- conclusions and recommendations; and
- appendices.

A suggested outline for the PRP synopsis section of the PRP search report is presented in Figure 1.

3.10.2 Report Review and Distribution

A site chronology and property history created as an interim deliverable segregated from the PRP synopsis section of the baseline PRP search report allows EPA to review the information contained in it earlier in the PRP search process than if combined in the traditional report format. It is suggested that the PRP search manager and case attorney review the interim deliverable simultaneously to save more time in the internal review and approval process. Once approved, this information can be shared with interested stakeholders and placed in the site repository.

FIGURE 1: SUGGESTED PRP SEARCH REPORT FORMAT

DELIVERABLE 1: SITE CHRONOLOGY AND PROPERTY HISTORY

Introduction

- project background -- a brief "snapshot" of the site
- project approach, - who performed the research and under whose direction
- list of contacts -- public agencies that were contacted to collect information
- overview of report -- presents the basic layout of the report

DISCUSSION OF THE SITE

Site History -- factual background information about the site, including:

- site location and size
- adjoining properties
- brief description of site history, including:
  - site owners/operators
  - when operations began
  - type of operations
  - types of substances manufactured, treated, stored, or disposed of
  - whether the substances found on-site are in drums, containers, etc.
  - permits applied for or granted
  - warnings or notices of violations issued by regulatory agencies

Property History:

- summarizes the review of all title documents
- documents ownership of the property for the period of time relevant to the site
- presents a title tree or chain of title (including corporate name changes of property owners, conveyances, quitclaims, deeds, and liens)
- contains corresponding references to the relevant documentation
- includes a brief summary of the environmental threats posed by site activities and the potential cleanup activities.

FIGURE 1: SUGGESTED PRP SEARCH REPORT FORMAT *(cont'd)*

DELIVERABLE 2: PRP SYNOPSIS

Introduction

Discussion of the Site – Refer the reader to the first section of the report

PRPs – Cite statutory provisions and relevant policy/guidance as basis for inclusion as PRPs

PRPs -- Owners/Operators

- PRP name
- status (current owner, successor, etc.)
- current address
- headquarters address, if applicable
- registered agent
- President
- current status
- corporate information
- narrative description of basis for inclusion
- references
- nature and volume of hazardous substances associated with PRP
- reference to appendices or attachments for additional information, rankings, or groupings
- financial information, ability to pay issues

PRPs -- Generators (same information as for owner/operators)

Provide information in both a PRP summary and a volumetric ranking list format, to the extent this information is available. Depending on the complexity of the site, the region may develop a list by PRP of information that describes the chemical nature of the substances and links shipment/ volumetric conclusions to particular transporters and documents. In these instances, there should also be an assessment of whether the wastes were RCRA hazardous wastes for ARAR purposes.

PRPs -- Transporters (same information as for owner/operators)

Provide information in both a PRP summary and a volumetric format similar to the generator lists as described above.

FIGURE 1: SUGGESTED PRP SEARCH REPORT FORMAT *(cont'd)*

Special PRP Information

Include any special information that may have a bearing on whether a party is ultimately designated by EPA as a PRP. Examples include entities that have been or are in bankruptcy; individuals who are deceased and a description of the status of their estates; successor corporations; parent-subsidiary relationships; PRPs with potential defenses to or exemptions from liability (*see* sections 1.2.5 and 1.2.6); and defunct/insolvent PRPs.

Special Site Information

Highlight any unique or complex features associated with sites such as municipal landfills, area-wide groundwater or stream contamination sites, sites where the source of contamination is not clear, and sites from which wastes were sent to satellite facilities.

Other Parties Associated with the Site

Identify parties who may possess additional information on the site (e.g., witnesses, previous employees not yet located) and parties about whom information is currently not available to characterize them as a PRP. Present all relevant information here, such as names, addresses, phone numbers, basis for inclusion of this party in this subsection, and references.

Conclusions and Recommendations

Summarize the identified PRPs and parties associated with the site. Include recommendations for additional actions and an estimate of the time and resources needed to perform those actions. This type of information will allow the decision makers to make an informed decision when balancing the need for information with available resources and timing constraints.

Appendices

Include interview summaries, evidence sheets, potential questions for additional information request letters, and other documents referenced throughout the report.

CHAPTER 3 REFERENCES

Name	Section	Location
Checklist of PRP Search Tasks	3.0	Appendix G
Enforcement Project Management Handbook	3.2	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
PRP Search Enhancement Team Members/Contacts	3.2.1	Appendix H
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	3.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampledoc-cercla-mem.pdf
Disk Repository of Current CERCLA Section 104(e) Questions	3.3	http://intranet.epa.gov/oeca/osre/doc/960229.html
On-Line Sources of PRP Information	3.3.1	Appendix I
Superfund Enforcement Directory	3.3.1	Appendix J http://www.epa.gov/compliance/cleanup/superfund/find/sfed/index.html
False Statements Act	3.3.1	http://www.access.gpo.gov/uscode/title18/parti_chapter47_.html
Federal Debt Collection Procedures Act	3.3.1	http://www.access.gpo.gov/uscode/title28/partvi_chapter176_.html
Releasing Information to Potentially Responsible Parties at CERCLA Sites (March 1, 1990)	3.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/release-prp-rpt.pdf
EPA Regulations Governing Business Confidentiality Claims, 40 C.F.R. § 2.201-2.215	3.3.3	http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr2_01.html

Chapter 3 References		
Name	**Section**	**Location**
Federal Rules of Evidence 801-817	3.4.1	http://www.access.gpo.gov/uscode/title28a/28a_5_.html
Federal Perjury Statute, 18 U.S.C. § 1621	3.4.2	http://www.access.gpo.gov/uscode/title18/parti_chapter79_.html
Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/guide-volumet-rpt.pdf
Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A) (July 30, 1993)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-deminimis-rpt.pdf

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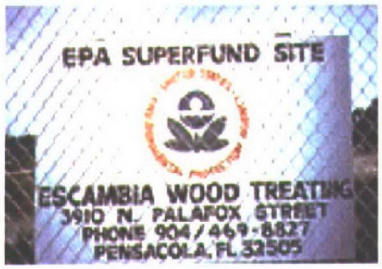

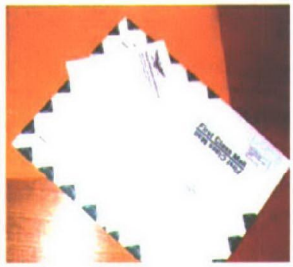

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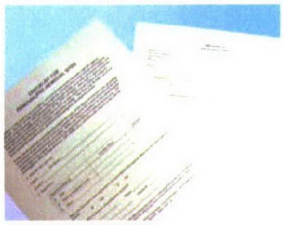

The PRP search team should analyze the information collected during the initial phase of the PRP search to determine whether:

- all reasonable leads on PRPs were pursued;
- PRP contributions to the site have been determined; and
- each PRP's liability and financial viability have been established.

A review of the information also should consider the reasons for pursuing or not pursuing leads. Once the review is complete, the PRP search team should decide whether additional followup activities are necessary.

Followup tasks are often needed to complete the PRP search, although all followup tasks may not be necessary for each search. For instance, followup activities may be conducted for sites where the PRP search was considered complete but new information requires performance of additional search tasks. The PRP search team must exercise professional judgment to determine which, if any, followup tasks are appropriate, beneficial, and necessary for a particular site.

Followup tasks can help insure a thorough, high-quality PRP search. These tasks vary from site to site, but generally fall into the following categories:

- information sources, including information request letters, administrative subpoenas, and Rule 27 testimony;

- waste stream analysis, including industrial surveys, process chemistry analysis, and waste stream inventory; and

- miscellaneous tasks, including financial assessments, corporate research, compelling compliance with CERCLA section 104(e) information requests, and orphan share, insolvent, and defunct determinations.

4.1 Issue Followup Information Request Letters

As stated in subsection 3.3.5, the PRP search team may issue followup requests during the baseline phase. Alternatively, the team may elect to defer such requests until the followup phase. There are many reasons why the team might want to defer issuance of such requests (e.g., time and resource considerations, site-specific circumstances).

Followup request letters may be necessary if a PRP complied only partially with the initial information request or the team needs to clarify the response. In addition, the team may need to issue such letters in cases where PRPs have "nominated" other parties, claiming that they are also liable. Finally, followup letters may be issued to obtain financial information needed to finalize insolvent and defunct determinations or analyze ability to pay.

Specialized 104(e) Questions

The Agency may need to ask more specialized questions in the followup information request letters to fill information gaps. Sets of 104(e) questions that have been developed and used by the regions have been compiled and grouped by subject matter in the Disk Repository of Current CERCLA Section 104(e) Questions (June 17, 1999). (*See* Chapter 4 references, page 257.)

Specialized questions are listed for the following categories:

- Arrangers and Generators
- Arrangers and Generators Recycling
- Transporters
- Financial: General Questions
- Financial: Lender Liability
- Financial: Other Entities
- Financial: Trusts
- Financial: Estates
- Financial: Successor Liability
- Financial: Parent Corporations
- Financial: Piercing the Corporate Veil
- Financial: General ATP
- Financial: Individual Ability to Pay Questions
- Financial: Individual Ability to Pay Form
- Financial: Form to Request ATP guidances, models, and tools from headquarters
- Financial: Dissolution
- Owner/Operator: General Questions
- Owner/Operator: General Manufacturing
- Owner/Operator: Chemical and Manufacturing Plants
- Owner/Operator: Grain Fumigants
- Owner/Operator: Polychlorinated Biphenyls Sites
- Owner/Operator: Solvents
- Owner/Operator: Landfills
- Owner/Operator: Mining
- Owner/Operator: Used Oil Facilities: Tar Oil
- Owner/Operator: Used Oil Facilities: Waste Oil
- Owner/Operator: Lead Battery Facilities
- Owner/Operator: Dry Cleaners
- Owner/Operator: Auto Shops
- Owner/Operator: Innocent Landowners

4.2 Compel Compliance with CERCLA Section 104(e)

If a recipient of a CERCLA section 104(e) information request letter fails to respond within the specified time or provides incomplete answers, a reminder letter should be sent to the unresponsive recipient. (*See* subsection 3.3.5 for discussion of information request followup actions.) In addition to warning the recipient of the risk of incurring penalties or civil judicial or administrative enforcement actions, the reminder letter provides him with an opportunity to contact EPA if he has questions or needs clarification. The reminder letter also satisfies the notice and opportunity for consultation requirement of CERCLA section 104(e)(5)(A) if enforcement by administrative order is contemplated, and should also satisfy any due process requirements for record review. If there is no response or if the response to a request is still unsatisfactory after the reminder deadline has passed, EPA may compel compliance with the request through either administrative or judicial action. The PRP search manager should coordinate with the case attorney on the enforcement strategy. The case attorney usually takes the lead on compelling compliance.

EPA can implement the following enforcement strategies:

- issue an administrative order to compel compliance with the request for responsive written information; or
- initiate a judicial action seeking a court order compelling the recipients to provide the requested information or documents; and
- seek civil non-compliance penalties.

Administrative Order to Compel Compliance

Under CERCLA section 104(e)(5)(A), the Agency can issue an administrative order to compel compliance with the information request. Administrative orders are issued by EPA and require notice and an opportunity for consultation. The order should indicate the date on which it becomes effective and also advise the respondent that penalties may be assessed by a court against any party who unreasonably fails to comply with the order. If the recipient continues to ignore the request for information, the Agency will have to prepare a referral package to DOJ requesting enforcement of its administrative order. This process, although potentially time-consuming, may allow EPA to obtain the needed information. Refer to Model Administrative Order for CERCLA Information Requests (September 30, 1994). (*See* Chapter 4 references, page 257.)

Judicial Action to Compel Compliance/Referrals to DOJ

CERCLA section 104(e)(5)(B) authorizes the federal government to initiate a civil lawsuit to compel a person to respond to the Agency's information request. A court will provide necessary relief as long as EPA's demand for information is not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.[1] A PRP that unreasonably fails to respond to a proper demand for information potentially faces substantial monetary penalties (currently up to $27,500 per day).[2] These civil penalties

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[1] *See* CERCLA section 104(e)(5)(B)(ii). 42 U S C §9694(e)(5)(B)(ii) *See* also United States v Tarkowski, 248 F 3d 596 (7th Cir 2001), denying EPA access as arbitrary and capricious.

[2] The statutory penalty of $25,000 per day set forth in CERCLA section 109(a)(1) was increased pursuant to the Civil Monetary Penalty Inflation Rule, December 31, 1996 *See* Chapter 4 references, page 257

are based on strict liability. EPA does not have to prove that the PRPs intended to violate the law by not responding in a timely manner.

The PRP search manager should work closely with the case attorney to determine the best strategy to pursue in view of all the factors surrounding partial or non-compliance with a section 104(e) information request. The region should be prepared to present the facts of the case when seeking DOJ action to compel compliance. The basis for the enforcement action (e.g., type of information sought, why the information is important, timing considerations) should be clearly stated in the referral in order to streamline the process within DOJ. In addition, the referral should contain evidence or findings that:

- EPA has a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance, pollutant, or contaminant at a given site or vessel;
- the information request was issued for the purpose of determining the need for a response or choosing or taking any response action under CERCLA Title I, or otherwise enforcing CERCLA Title I, with respect to the site or vessel;
- the respondent was requested to provide information relating to one or more of the three categories of information identified in CERCLA section 104(e)(2)(A)-(C); and
- the respondent did not comply with the request in a timely manner.

The case team should calculate the penalty by determining the maximum allowable penalty and adjusting it for litigation risk factors. Typically the penalty will at least seek to recover any economic gain created by the violation. In addition, the referral should include proof of service and should address possible defenses, such as good faith effort to comply.

For more detailed information, *see* the Final Model Litigation Report and Complaint for CERCLA Section 104(e) Initiative (January 1990), Chapter 4 references, page 257.

4.3 Issue Administrative Subpoenas

An administrative subpoena is an information gathering tool that can be used by the PRP search team. CERCLA section 122(e)(3)(B) authorizes EPA to issue administrative subpoenas, which require live testimony of witnesses (subpoena ad testificandum) or the production of documents (subpoena duces tecum) deemed necessary for performing a non-binding preliminary allocation of responsibility (NBAR) or "for otherwise implementing CERCLA Section 122." This means that in order to issue a subpoena for testimony by a live witness, EPA must show that the expected testimony is related to pursuit of an NBAR or other settlement activities. The purpose of the testimony should be clearly set forth in the supporting documents. The PRP search team should discuss a possible subpoena with the case attorney and consult Recommendations Concerning the Use and Issuance of

Administrative Subpoenas under CERCLA Section 122 (August 30, 1991) as well as Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas (August 25, 1988). (*See* Chapter 4 references, page 257.)

Administrative subpoenas may be judicially challenged. Therefore, it is important to document the rationale for invoking the authority provided in CERCLA section 122(e)(3)(B). In particular, it is important to show how the subpoena's issuance either furthers the NBAR process or satisfies the criterion of "otherwise implementing CERCLA Section 122." Accordingly, the subpoena should describe or identify as specifically as possible the information sought from the recipient. If documents are requested, a list of the specific documents or areas of inquiry is recommended. In addition, the subpoena should inform the recipient that he or she might claim certain information as CBI.

Generally, the procedural rights of a witness differ depending upon the Agency's intent to adjudicate or investigate. When the Agency issues an administrative subpoena pursuant to CERCLA section 122 (e)(3)(B), its purpose is to investigate or gather information. A witness served with an administrative subpoena does not have the following procedural rights:

- right of legal counsel to cross-examine;
- right of legal counsel for the witness to "speak on the witness record"; and
- right to receive aid in developing testimony or other forms of "coaching" from legal counsel during questioning.

No legal mandate prohibits the use of an administrative subpoena as an initial information gathering tool, but the Agency prefers using CERCLA section 104(e) information requests before issuing administrative subpoenas.[3] Information request letters are less intimidating and are generally more conducive to expeditious and favorable settlements than administrative subpoenas.

Witnesses who have received an administrative subpoena are entitled to receive the same fees and mileage reimbursement that are paid in U.S. courts. Travel expenses are paid at the same rates applicable to federal employees for items such as common carrier, hotel, subsistence, and mileage. It is the region's responsibility to budget for these expenses within the travel budget allocated to it. The PRP search team should work with the region's Financial Management Division to determine the paperwork requirements (e.g., procurement requests, government transportation requests, travel vouchers) when planning to use administrative subpoenas.

Referrals to Enforce an Administrative Subpoena

EPA may seek enforcement of an administrative subpoena if the recipient fails to appear to testify, fails to provide documentary evidence, or refuses to answer all the questions asked. CERCLA section 122(e)(3)(B) authorizes EPA to bring an enforcement action if this should happen. As with any legal enforcement proceeding, EPA must refer the case to DOJ, following the procedures set forth in the August 25, 1988 guidance. The

[3]Regional consultation with headquarters is not required prior to issuing administrative subpoenas as long as the subpoena does not deviate significantly from the model subpoena issued by the Agency in 1988. *See* Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas (August 25, 1988), Chapter 4 references, page 257 If the subpoena deviates significantly from the model, consultation with EPA's Office of Enforcement and Compliance Assurance is required

appropriate documents must be prepared by the case attorney, who will seek the necessary assistance from other PRP search team members. A referral to enforce an administrative subpoena consists of a draft petition for an order to show cause, a draft memorandum of points and authorities in support of the petition, and a draft order to accompany the petition. The memorandum of points and authorities should briefly set out the facts of the case and address any arguments or defenses that the respondent is likely to raise.

The referral should also contain all necessary exhibits in support of the petition, including an affidavit of service, a copy of the subpoena, an affidavit supporting the facts alleged in the petition from a person with knowledge of those facts, and any other relevant material that serves as the administrative record documenting the subpoena process.

4.4 Perpetuate Testimony Using Rule 27

[The following discussion of Rule 27 is provided for information purposes only. If you are considering taking a Rule 27 deposition, please consult your regional and DOJ counsel prior to taking any action.]

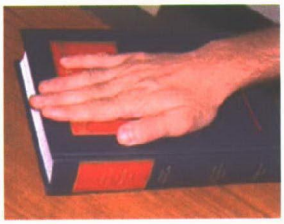
Where Rule 27 May Be Appropriate

Rule 27 of the Federal Rules of Civil Procedure (*see* Chapter 4 references, page 257) establishes a procedure for taking the deposition of a person before a civil action is filed in federal court. This method of obtaining testimony is used infrequently but can be a useful tool in a situation where the government is not able to file a case because it is not yet "ripe" for adjudication. The legal concept of "ripeness" requires careful legal analysis. Team

members should consult the case attorney as to whether and how this concept applies to their particular case. When an action cannot be brought immediately there may be a risk of losing the testimony of key witnesses due to death, departure from the country, or other circumstances incident to the passage of time. Rule 27 provides a means to record this testimony and use it in court should the witness not be able to testify.

Rule 27 can be a useful tool when conducting PRP searches. Sites where disposal may have occurred two or three decades ago frequently have few remaining witnesses. Those who are still alive, such as former truck drivers, may be quite old. Although rarely used, Rule 27 can provide the Agency with an important means of preserving the testimony of these witnesses in the event that they are later "unavailable" under the legal definition of that term.

Use of Rule 27 Testimony



Procedurally, the taking of a Rule 27 deposition does not differ in any way from a deposition conducted during discovery in a civil action ("discovery deposition"). The deponent has the right to counsel, may be cross-examined, and testifies under oath subject to the penalties of perjury. Furthermore, in terms of admissibility in court, there is no difference between testimony from a Rule 27 deposition and a discovery deposition. An attorney who wants to take a Rule 27 deposition, however, must get the court's permission, whereas a discovery deposition may be taken without special permission. This involves "petitioning the court" or filing the appropriate legal motions or briefs as necessary. This is done by the DOJ attorney and the regional case attorney. Although this can be a lengthy process, it is certainly worthwhile to preserve

testimony in case an important witness dies or becomes too ill to appear at the trial. In addition, the testimony elicited from Rule 27 depositions is admissible in a wider number of circumstances than testimony in response to an administrative subpoena issued pursuant to CERCLA section 122(e)(3)(B). As in the case of a discovery deposition, the other PRPs need to be notified that a deposition will take place and given an opportunity to attend.

Referral Procedure

Regional offices desiring to take a deposition pursuant to Rule 27 must prepare a summary referral package and forward it to DOJ. A Rule 27 package is less detailed than the standard litigation report since the requested action is less complex than initiation of a lawsuit.

There are two components of the package. The first and most important part is a background description of the Agency's actions and the need for a Rule 27 deposition. In short, this should briefly describe the Agency's actions at the site, including removals, remedial actions, enforcement actions, PRP search efforts, and other relevant activity necessary to familiarize DOJ with the case.

Next, there should be a detailed discussion that demonstrates that there is a substantial likelihood that the government would be successful in establishing each element enumerated in Rule 27(a)(1) and of receiving the court's approval for the deposition. All documentary evidence, such as medical records and correspondence with the witness, should accompany this discussion.

The second part of the package is the draft petition. Regional counsel should draft the petition for approval by DOJ.

The completed package should be sent to the appropriate assistant section chief at DOJ for review. The DOJ attorney will contact EPA's case attorney to discuss the resolution of any issues that may be identified. DOJ will file the petition with the court. If the court approves the petition, DOJ will provide notice to opposing counsel and arrange to take the deposition at an appropriate location such as the U.S. attorney's office nearest to the deponent. If the court denies the petition, Agency personnel may be required to provide additional evidence to substantiate the need for the proceeding.

4.5 Perform Ability To Pay Determinations

In cases where EPA is considering an ability to pay settlement, EPA must consider competing interests. On one hand, the Agency is charged with ensuring that hazardous waste sites are cleaned up, that Trust Fund expenditures are recovered, and that those responsible for contamination pay an appropriate share of cleanup costs. On the other hand, many individuals and businesses have limited resources with which to satisfy the government's claims. The latter consideration begins the ATP analysis, sometimes referred to as a financial assessment. The purpose of an ATP analysis is to develop the financial and economic information necessary to assess the ability of a PRP to address an environmental problem, pay a penalty, or provide funds for cost recovery. This assessment enables EPA to formulate an appropriate negotiation and litigation strategy. ATP determinations are usually made by staff with specialized expertise.

4.5.1 General Policy on Superfund Ability To Pay Determinations

EPA's General Policy on Superfund Ability to Pay Determinations (OSRE, September 30, 1997) (*see* Chapter 4 references, page 257) and model language for ATP settlements provide EPA with the means to settle the liabilities of PRPs with ATP issues in a way that "will not put a company out of business" and avoids imposing undue financial hardship on either businesses or individuals. CERCLA section 122(g), titled "De Minimis Settlements," was amended to specifically authorize EPA to: (1) negotiate settlements based on a PRP's ability to pay rather than on its full liability at the site; (2) require ATP applicants to promptly provide EPA with the information needed to assess the PRP's ability, or inability, to pay; and (3) consider alternative payment methods as may be appropriate when ATP PRPs are unable to pay the "total settlement amount at the time of settlement." Users of this manual should not rely solely on information presented herein, but should consult EPA's ATP policies and provisions in their entirety.

ATP settlement is reserved for persons who demonstrate that paying the amount sought by the government is likely to put them out of business or jeopardize their viability. It is also available to businesses and individuals who demonstrate that paying such an amount is likely to create an undue financial hardship. Undue financial hardship means that satisfying the government's claim would deprive the PRP of ordinary and necessary assets or render the PRP unable to pay for ordinary and necessary business or living expenses.

As the court noted in United States v. Bay Area Battery,[4] the government must be afforded the flexibility to take ability to pay into account in fashioning settlements under CERCLA. In

[4]United States v Bay Area Battery, 895 F Supp. 1524 (N D Fla 1995).

particular, it must consider the value of permitting businesses to continue earning money and employing workers, and demonstrate compassion for individual circumstances.

Conditions under Which EPA Will Consider a Claim of Undue Financial Hardship

Although an ATP settlement is based largely on the financial condition of the ATP candidate, other requirements have to be satisfied as well. These requirements include the following:

- The PRP requests the ATP settlement.
- The PRP provides sufficient information to carry the burden of demonstrating that payment of the full amount sought by EPA is likely to create an undue financial hardship.
- The ATP analysis is based on the best available information provided by the PRP.
- The ATP analysis considers the entire financial position of the PRP.
- The settlement does not release the PRP from other site-related responsibilities (e.g., providing necessary information, site access).
- The settlement is entered into on an individual basis with each person as defined by CERCLA.

- The settlement amount is in addition to expenditures that are recoverable from other sources.

- The settlement resolves all the PRP's liability at the site.

Evaluation of an entity's ability to pay generally consists of a two-part analysis. The first part of the analysis, called the "balance sheet phase," looks at the assets, liabilities, and owner's equity of the PRP, calculating the amount of money available from excess cash, sale of assets that are not ordinary and necessary, borrowing against assets, and owner's equity. The second part of the analysis, called the "income and cash flow statement phase," looks at the income and expenses of the PRP and generally calculates "available income" for a Superfund settlement over a five-year period. The number of years of available income, however, may be changed when circumstances warrant.

4.5.2 ATP Information Sources

EPA has developed the following enforcement computer models for analysis of financial issues that affect enforcement actions. These models are screening tools only and their use does not constitute a thorough analysis. In addition to the models, manuals are available that describe the use of ATP analyses and the methodologies relied on to perform them. (*See* Chapter 4 references, page 257.)

ABEL Model

ABEL is a computer program designed to evaluate the ability to pay of firms held liable for environmental penalties or Superfund cleanups, and is intended to be used as a screening tool. It estimates the probability that a firm can pay a penalty, contribute to the cleanup of a Superfund site, or invest in pollution control

equipment. ABEL is designed to accept tax data input directly from tax returns submitted by C corporations, S corporations, and partnerships (i.e., IRS forms 1120, 1120A, 1120S, and 1065, respectively). ABEL is convenient to use because virtually all business entities are required to file tax returns. In the absence of tax return data, analysis of private corporations can be performed using financial statements, loan applications, and Dun & Bradstreet reports, etc. ABEL also presents a two-phase analysis of a firm's financial health:

1. The financial profile presents a summary of the firm's balance sheet, income statement, and cash flow; ABEL also computes five financial ratios to provide a rudimentary measure of the company's financial health.

2. The ATP analysis estimates future cash flow based on the company's past performance.

INDIPAY Model

INDIPAY is a computer program designed to evaluate the ability to pay of entities for which the individual owner is responsible for the penalty or contribution, such as sole proprietorships, partnerships, and private individuals. The model requires one to three years of individual tax return data and the Individual Financial Data Request Form, a 10-page questionnaire filled out by the applicant.[5] INDIPAY provides two types of analysis:

[5] A questionnaire developed by Region IX can be found in Appendix K. This is an example, each region may develop its own methods of collecting financial data. *See* also footnote 6

1. Phase 1 is a quick assessment of an individual's level of net income and complexity of personal finances. If an individual has low income and uncomplicated finances, a Phase 2 analysis is unnecessary.

2. Phase 2 estimates whether the individual can pay a penalty, based on cash flow and ability to borrow additional funds.

These two scenarios are discrete, independent analyses. Their results should not be combined to determine ability to pay; instead, the lower of the two results is usually relied on.

MUNIPAY Model

The Municipal Ability to Pay Model (MUNIPAY) evaluates a municipality's, town's, sewer authority's, or drinking water authority's claim that it cannot afford compliance costs, cleanup costs, or civil penalties. MUNIPAY performs two different analyses, a demographic comparison, which uses U.S. Census data to compare the municipality to state and national norms, and an affordability calculation, which assesses the amount of currently available funds and, if necessary, funds available through financing.

CASHOUT Model

The CASHOUT Model is a tool which may assist EPA staff in developing settlement figures for certain Superfund settlements, commonly referred to as "cash outs." A common application includes de minimis settlements. The model calculates the present value of cleanup costs for a given Superfund site.

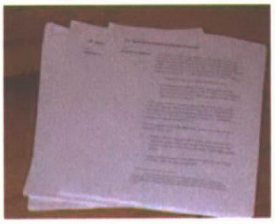
Other Sources of Information

Other potential sources of information for conducting financial analyses include:

- **THE NATIONAL ENFORCEMENT INVESTIGATIONS CENTER.** NEIC staff with financial analysis expertise are potential resources for conducting financial analyses.

- **DUN & BRADSTREET REPORTS.** Dun & Bradstreet (D&B) provides financial information on companies for a fee. D&B reports are frequently used for the purpose of evaluating credit worthiness. D&B reports provide information on company finances, payment history, and officers. D&B profiles allow comparison of the financial condition of similar companies.

- **AUDITED STATEMENTS.** Audited statements are financial statements made by an independent auditor. An independent auditor is an accountant who follows procedures required by generally accepted accounting principles (GAAPs) and generally accepted auditing standards (GAAS). Information from audited statements is consistent and is considered verifiable. Their footnotes often describe related party transactions and contingencies. These documents are prepared for purposes other than ATP analysis, however, and are verifiable in the context of accounting purposes only. If audited statements are not available, a review or compilation should be used.



- **UNAUDITED STATEMENTS.** Unaudited statements are financial statements usually prepared by someone with an accounting background for the management of a company. These statements are useful in that they are flexible in providing types of information such as environmental expenditures, but they are not verifiable. For a company's fiscal year, financial or unaudited statements are usually provided when an audit review or compilation is not available. For the most recent year-to-date financial information, unaudited statements are expected.

- **TAX RETURNS.** Federal income tax returns are among the most important documents for ATP analysis because they typically contain standardized information that can be used directly with the ABEL model. Returns must be signed, and include all supporting schedules. The Agency should request that each ATP candidate (business or individual) submit federal income tax returns for the past five years and a completed financial questionnaire.[6]

Forms that should be requested from different types of for-profit PRPs and individuals include:

- Form 1120 or Form 1120A (short form) plus supporting schedules for regular (Subchapter C) corporations;

[6]The case team should consult the financial analyst who will be reviewing the ATP candidate's financial information to ensure that all relevant information is requested. Region IX has developed questionnaires for financial information relating to ATP settlements with individuals, businesses, and trusts. See Appendix K for the Financial Statements for Individuals, Businesses, and Trusts.

- Form 1120S plus supporting schedules for Subchapter S corporations (Subchapter S corporations may not have more than 75 shareholders and must meet other requirements to qualify for this tax treatment.);

- Form 1065 plus supporting schedules including Schedule K-1 for each partner to a partnership and each partner's Form 1040;

- Form 1040 plus supporting schedules, which should include Schedule C (business income) for sole proprietorships (Sole proprietors should also submit an Individual Financial Data Request Form.); and

- Form 1040 plus supporting schedules for individuals (Individuals should also submit an Individual Financial Data Request Form.).

Other financial information resources include:

- **U.S. SECURITIES AND EXCHANGE COMMISSION.** The SEC requires all public companies (except foreign companies and those with less than $10 million in assets and 500 shareholders) to file registration statements, periodic reports, and other forms electronically through its Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Documents submitted to the SEC in compliance with federal laws and SEC regulations typically contain a mixture of information from audited statements, tax returns, and other sources. This information is available from the SEC on line. (*See* Chapter 4 references, page 258.)

- **COURT RECORDS.** These are a potential source of information, but locating them requires someone familiar with courthouse searches. Court records are usually reliable, but obtaining them can be costly and time-consuming.

- **ON-LINE SOURCES FOR PRP INFORMATION.** Information from on-line databases may be useful in clarifying or verifying information obtained from other sources, uncovering hidden assets, identifying related companies, and other purposes. *See* Appendix I for a list of on-line sources of PRP information.

- **INFORMATION REQUEST LETTER RESPONSES.** Non-PRPs, such as owners of nearby properties, often have valuable information about a site and its operations. Information request letters may be issued to any individual who may have information about a site. The PRP search team should consider issuing CERCLA section 104(e) requests to any party that might have information, whether or not the party is likely to be named as a PRP.

4.5.3 Performing Property Appraisals

[Note: If the U.S. is obtaining an appraisal for purposes of acquiring property, it must adhere to very strict appraisal rules that are, in part, codified.]

The Agency may need to assess the monetary value of certain contaminated real property to support remedial actions evaluated or undertaken in accordance with the NCP. This may include purchasing land and relocating residents. Property appraisals may be conducted both before and after remedial action. If EPA's

response action increases the fair market value of the property, EPA may have a CERCLA section 107(r) "windfall" lien for the increase in fair market value attributable to EPA's response action up to the amount of EPA's unrecovered response costs. Property appraisals may also be conducted during a PRP search to determine the assets of a PRP. For more detail on windfall liens, consult the Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003). (*See* Chapter 4 references, page 258.)

Since professional real estate appraisals may be expensive, each appraisal should be specifically authorized by the EPA primary contact when a contractor is conducting the PRP search. Less costly estimates of the "as is" property value may be developed by parties other than professional real estate appraisers. In either case, the PRP search team should carefully evaluate whether and what kind of property appraisal is needed before committing funds to conduct a property assessment. The researcher should also obtain the names of all Agency and DOJ personnel who may be using the information obtained from the property appraisal. Because appraisal assumptions affect the usefulness of value estimates, it is important for the researcher to be aware of the assumptions involved in the search.

- All the assumptions made when performing the appraisal should be noted. For example, the date on which remediation will be completed and the property will reach its post-remediation value can only be estimated. "As is" and "as modified" property valuations need clear and complete descriptions of the property modifications as well as consideration of "highest and best use" of modified property, i.e., its most productive appropriate use. In addition, it should be noted whether there is a fee simple title that is free and clear of all debts, liens, and encumbrances.

Selecting and retaining a real estate appraiser is an important part of the property appraisal process. To obtain information on a recommended real estate appraiser, the researcher may go to the local Chamber of Commerce, obtain member lists from appraiser associations such as the Institute of Real Estate Appraisers, or use the yellow pages. After researching the lists of property appraisers, several of these firms should be contacted in order to address the planned research, get a feel for the appraiser's qualifications and credentials, and ascertain if there are any potential conflicts of interest. If a contractor is involved in the selection process, it should clear its choice with the Agency. Finally, once the appraiser is approved by EPA, a contract should be prepared that includes a list of written assumptions for the appraiser and sets a ceiling on costs unless first notified by the appraiser.

The need for a property appraisal should be considered in the PRP search planning process. Any scheduling requirements should be clearly explained to the appraiser prior to signing a contract. If the schedule cannot be met "up front," another appraiser should be selected. The existence of nearby, comparable property recently subjected to value assessment should be considered prior to performing the property appraisal. Close contact and coordination must be maintained among all parties involved (EPA, contractor, appraiser) to define the comparable search area and be aware of scheduling and budgetary impacts. Finally, the appraiser should contact the EPA primary point of contact to determine if site access is required. If access is required, EPA should contact the site owner and request written consent. The Army Corps of Engineers may be available to perform property appraisals, pursuant to existing interagency agreements.

4.6 Perform Insolvent and Defunct Determinations

At sites where PRPs have agreed to perform cleanup (either remedial action under a CD, or non-time-critical removal activity under an AOC, EPA may have committed itself to compensate a portion of the shares of insolvent and defunct parties under the Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals (June 4, 1996).[7] (*See* Chapter 4 references, page 258.)

4.6.1 Definition

This interim guidance applies where:

- EPA initiates or is engaged in ongoing negotiations for RD, RA, or a non-time-critical removal at an NPL site;
- a PRP or group of PRPs agrees to conduct the RD/RA or RA pursuant to a CD or the non-time-critical removal pursuant to an AOC or CD; and
- an orphan share exists at the site.

The guidance does not apply at owner/operator-only sites or to federal facilities.

Orphan Share Definition

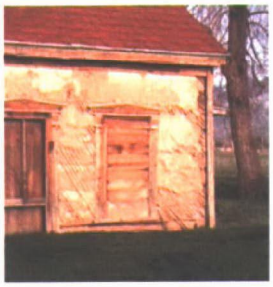
The term "orphan share" refers to the share of responsibility that is specifically attributable to parties EPA has determined are:

[7]Note that this guidance does not apply to CERCLA cost recovery settlements in which the parties are not agreeing to perform RD/RA work or a non-time critical removal. In these situations, reference the Addendum to the Interim CERCLA Settlement Policy issued on December 5, 1984 (September 30, 1997) (*see* Chapter 4 references, page 258), which provides the regions with direction for addressing potential compromises of CERCLA cost recovery claims due to the existence of a significant orphan share

- potentially liable;
- insolvent or defunct; and
- unaffiliated with any party potentially liable for response costs at the site.

The orphan share does not include liability attributable to:

- unallocable waste;
- the difference between a party's share and its ability to pay (the "delta"); or
- those parties such as de micromis contributors, MSW contributors, or certain lenders or residential homeowners that EPA would not ordinarily pursue for cleanup costs.



4.6.2 Insolvent and Defunct Determinations

A party is considered insolvent if EPA determines that the party has no ability to pay.

A party is considered defunct if it:

- has ceased to exist or ceased operations; and
- has fully distributed its assets such that the party has no ability to pay.

For both insolvent and defunct determinations, EPA's investigation must indicate that there is no successor or other affiliated party that is potentially liable.

Regions have the flexibility to determine the appropriate level of information gathering and analysis necessary to determine if a party is insolvent or defunct. In many situations, there will be

information readily available demonstrating that a party is insolvent or defunct, e.g., a CERCLA section 104(e) response. In most cases, however, some additional information gathering will be necessary.

The General Policy on Superfund Ability to Pay Determinations (September 30, 1997) (*see* Chapter 4 references, page 257) also may be useful in making insolvent and defunct determinations. Although ATP is a distinct determination, the analysis is similar to that required to make an insolvent and defunct determination.

The standard for determining a party's limited ability to pay is whether a payment of the amount sought by the government is likely to create an extreme financial hardship. Under ATP analysis, if EPA makes a finding that satisfaction of an environmental claim will prevent a PRP from paying for ordinary and necessary business expenses or ordinary and necessary living expenses, the proposed settlement amount should be reduced. This standard of "extreme financial hardship" applies when determining ATP parties for purposes of determining the orphan share at a site.

Specific Methods of Gathering and Analyzing Information

There are three levels of information gathering and analysis that may be considered in making orphan share determinations:

1. An initial screening process that focuses on public information, e.g., Census Bureau information, D&B reports, SEC filings, and limited financial submissions, e.g., five years of tax returns;

2. Computer models (e.g., ABEL, INDIPAY, MUNIPAY, CASHOUT Models), if the initial screening process indicates further analysis is required; and

3. Services of the region's financial analysts or of a financial analyst through contract support.

It is up to the region to determine the appropriate level of analysis for making an orphan share determination. Note that this applies only to the orphan share determination; the ATP guidance still requires the use of a financial analyst for an ATP settlement.

Tips and techniques to determine if a party is bankrupt include first checking with your regional bankruptcy contact person. This may save time and prevent duplicative effort. If she does not know the current status of the party, consider taking the following steps:

- Call the clerk of the bankruptcy court to see if a bankruptcy petition has been filed and whether it was granted or denied in cases of suspected insolvency. Once the date of the filing and the bankruptcy docket number have been obtained, a copy of the petition, list of secured creditors, and any other orders issued by the court granting or denying a petition may be reviewed. If the records are at the court, the court could arrange for information to be sent to a regional office, but this could involve a sizable fee. If the case is closed, the records may be at a federal records center. Access to these records may be obtained through the clerk of the court.

- Check with regional information managers for on-line systems, which may provide access to federal bankruptcy court records, dates of filings, and other relevant information.

If the party is bankrupt, a bankruptcy petition that has been granted does not necessarily indicate that a PRP is insolvent for purposes of the orphan share reform. The type of bankruptcy claimed is important. If a claim of Chapter 7 bankruptcy (complete dissolution and discharge) was granted, as opposed to a Chapter 11 bankruptcy (reorganization), it is more likely that the party may be determined to be insolvent for purposes of the orphan share reform.

To determine if a party has financial difficulties outside bankruptcy:

- Check to see if the PRP has fallen behind in payments to creditors and what the consequences of non-payment have been. For example, a case team may want to determine whether creditors have moved to take control of accounts receivable or secured property, or whether a creditor has arranged to auction secured property. Some of this information may be found in D&B reports. Other investigative techniques may be required. Consult CIs and financial analysts to identify further steps to take.

- Check the UCC filings to determine if creditors have perfected liens against a party's property. UCC filings are available on line and are filed with the secretary of state.

To determine if a corporation has ceased to exist or ceased operations:

- Check with the secretary of state to determine whether a certificate of dissolution has been filed in the case of a suspected defunct corporation.

- Check to see when the last annual filing was made. If one has not been made recently, this may be an indication that the corporation is going out of business or has ceased to operate; however, it could also indicate it is simply late in filing, so look beyond this record.

- Check to see if a state has revoked a corporate license. States may revoke corporate licenses if corporations are not in good standing for non-payment of the annual fee or other reasons.

To determine if a municipality or other government entity has ceased to exist:

- Check whether the entity has lost its status as a subdivision, public agency, or instrumentality of the state.

To determine if the PRP has additional resources:

- Ask the PRP to disclose its ability to recover expenses associated with the site in its response to CERCLA section 104(e) requests or financial questionnaires. A potential orphan PRP, like an ATP candidate, may be able to recover expenses from other sources. These sources may include insurance recoveries, indemnification agreements, contribution actions, and property value increases resulting from cleanup activities. If these funds are significant and likely to be recovered, the recovered expenses should be considered recoverable by the United States so that the party cannot be considered an orphan.

4.7 Perform Waste Stream Analyses

In some cases where documentation is very limited as to the nature and volume of wastes disposed of at a site, a waste stream analysis of the industrial activities conducted at the site is performed and the resulting information is entered into a transactional database. This analysis encompasses data derived from industrial surveys, process chemistry analyses, and waste stream inventory documentation.

4.7.1 Industrial Surveys

The primary focus of an industrial survey is to identify parties who owned or operated the site and may have contributed hazardous substances to the site. This is accomplished through surveying local businesses, reviewing government records, 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 sources as addressed previously in this manual, or when the site is in an area where neighboring facilities may have contributed to the contamination. If the site is located in a large metropolitan area, hundreds of industries could be PRPs.

4.7.2 Process Chemistry Analysis

The objective of a process chemistry analysis is to identify the nature and volume of wastes attributable to specific industries or companies. This determination is very important when little documentation exists to indicate who disposed of the wastes at a site. This task is usually conducted, however, only when the site has a history of receiving wastes from off-site generators. A thorough knowledge of industrial technology is essential for the analysis, which should be performed by an environmental scientist or process chemistry engineer.

Local industries are grouped according to products generated. Wastes associated with the production of those products are subsequently compared to contaminants found at the site. Once the person conducting the PRP search establishes a link between an industry and wastes disposed of at the site, additional data gathering efforts can be initiated to further define an identified company's specific waste generating and handling activities.

4.7.3 Waste Stream Inventory

The primary objective of performing a waste stream inventory is to compile an accurate list of wastes that were stored or disposed of at a site. This is accomplished by reviewing all waste stream records, operating log books, and analytical reports. This task may be required to determine the types and quantities of waste contributed by each PRP. Knowing the types of waste disposed of at a site is necessary to establish a relationship between the site and the PRPs. When a complete inventory of wastes is developed, it can be used in conjunction with process descriptions and industrial surveys to identify parties that may have been involved in disposal activities at the site. Before initiating a waste stream inventory, the investigator must know the locations and types of detected contamination.

In some cases, waste output models of a party's production facility are used. For example, if a facility manufactures 50 units in a given year with a corresponding by-product of two gallons of hazardous materials, then in the absence of other information it may be assumed that two gallons of by-product were generated in a recordless year if manufacturing remained at 50 units.

4.7.4 Mine Sites

For mine, mill, and smelter sites, it is important to evaluate the quantity of hazardous substances that might be released through various media, including acid generation potential and wind transport of dusts. Many mine sites have long histories and have been owned or operated by many parties. Since technologies for the extraction and processing of ores have improved, it may be appropriate to allocate response costs on the basis of volume and toxicity with earlier operations bearing a larger share.

4.8 Interim Final Report Preparation and Review

The interim final PRP search report is an expanded version of the baseline report. It includes substantial information on generators and transporters and focuses specifically on establishing liability and financial viability. The format for the interim final report is the same as for the baseline report. Section 3.10 of this manual contains a more complete discussion of the suggested report format.

An interim final PRP search report:

- provides justification for notice to a party of potential liability;
- identifies owner/operators and persons who arranged for treatment or disposal, such as generators and transporters;
- serves to support litigation;
- meets special notice requirements;
- provides information to negotiate settlement terms or take unilateral enforcement action;

- lists parties who were considered possible PRPs during the course of the search but were dropped from consideration for notice; and

- documents why parties are no longer considered PRPs.

In general, the interim final PRP search report should be completed in time for the issuance of SNLs and the release of information under CERCLA section 122(e), which includes the PRP names and addresses and the volume and nature of the substances at the site.

4.8.1 Interim Final Report Followup

Information on new PRPs, as well as additional evidence on the liability of existing PRPs, may be uncovered after the completion of the interim final report. Therefore, unless there is a full settlement, the search may not end with the completion of the interim final report, the issuance of general and special notice letters, or the release of the contractors from a work assignment. Keep this in mind when planning and implementing a PRP search.

4.9 Pursuing Litigation and Cost Recovery

CERCLA Section 106 and 107 Litigation[8]

In the case of a cost recovery referral, EPA sends a direct cost referral package to DOJ for litigation. As DOJ develops the case, regional staff will likely be called upon to perform litigation support

[8]If PRPs don't agree to perform work, whether it's the RD/RA, a removal, or RI/FS, EPA's first and strong preference is to issue a UAO If EPA fails to reach an agreement with the PRPs to conduct the work, EPA should issue a CERCLA section 106 UAO to all appropriate PRPs ordering them to conduct the response action. If the PRPs fail to comply with the UAO, EPA may initiate a judicial action requesting injunctive relief and/or CERCLA section 106 penalties for noncompliance. EPA may also initiate a Fund-financed response action

activities. These may include consulting with case attorneys on technical issues, reviewing PRP liability evidence, attending depositions, and testifying in court. The RPM or OSC often will budget for and manage litigation support contractors. At a minimum, cost recovery litigation requirements include:

- ensuring that the PRP search is complete and includes, to the extent EPA determines necessary, the entire universe of PRPs, PRP liability information that meets evidentiary standards, and thorough and accurate financial analyses;
- ensuring that the administrative record is complete;
- documenting costs and work performed which are attributed or allocated to the site, including both direct and indirect costs;
- sending demand letters; and
- negotiating with PRPs to try to obtain a settlement, thereby avoiding the need for a referral and litigation.

Litigation is not the preferred route, but it is available if necessary to get site remediation started or to recover the Agency's response costs. In either case, a thorough PRP search is essential to the success of negotiation or litigation.

Cost Recovery

There are five contexts in which the Agency traditionally recovers its costs:

1. If the Agency funds a removal or RI/FS and the PRPs agree to perform the RD/RA, the Agency may recover its past costs as part of the RD/RA settlement.

2. If the Agency funds a removal or the RI/FS and one group of PRPs agrees to perform the RD/RA while another group of viable PRPs does not agree to do so, the Agency may sue the non-settlors separately for unreimbursed response costs.

3. If the Agency funds the RD/RA because there was no settlement, it may seek all costs in a cost recovery action.

4. Where the time between the completion of a removal, RI/FS, or RD and the initiation of on-site construction is likely to exceed three years, EPA may sue for past costs and seek a declaratory judgment on liability.

5. Where there are multiple remedial operable units, EPA may pursue cost recovery at the first operable unit and seek declaratory judgment on liability for its costs at subsequent operable units, assuming that the operable units share the same set of PRPs.

Bankruptcy, or the possibility of bankruptcy, can arise in any of these contexts. When it becomes a factor, it may be advisable to initiate cost recovery earlier to strengthen EPA's claims.

Statute of Limitations

CERCLA section 113(g)(2) states that a cost recovery action must be commenced:

- for a removal action, within three years after completion of a removal action, except that such cost recovery action must be brought within six years after a determination to grant a waiver under CERCLA section 104(c)(1)(C) of this title for continued response action; and

- for a remedial action, within six years after initiation of physical on-site construction of the RA, except that if the remedial action is initiated within three years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action.

While CERCLA outlines the general parameters for timing of a cost recovery action, there are a number of site-specific issues that may be involved in determining when the statute of limitations (SOL) runs. Further consultation may be necessary to resolve these issues. For example, under CERCLA section 113(g)(2)(B), removal costs may be pursued as part of the cost recovery for remedial action if the remedial action is initiated within three years of completion of the removal.

At sites where there has been a series of remedial and removal actions, close attention must be paid to the SOL for each action. [*See* CERCLA section 121(f)(1)(F) (notification of state, including tribes) and CERCLA section 122(j)(1) (federal natural resource trustee including DOJ/BIA for tribes) for additional information related to SOLs.]

In selecting sites at which to pursue cost recovery, EPA places a priority on sites at which more than $200,000 were spent on the response action. If EPA decides to proceed with cost recovery, three parallel activities are conducted:

1. Ensuring that the liability information collected in the PRP search meets evidentiary standards;

2. Documenting the costs of the response action; and

3. Reviewing the compilation of the administrative record.

Once the Agency's costs have been documented and the PRPs are sufficiently identified, EPA sends demand letters to the PRPs. The demand letters notify the PRPs of their liability for EPA's cleanup costs. If negotiations result in a settlement, EPA and the PRPs may enter into an AOC or CD whereby the PRPs agree to reimburse EPA for its costs. If total U.S. government response costs at the site exceed $500,000 (excluding interest), DOJ must concur on the terms of the settlement.

If one or more PRPs fail to reimburse EPA for the costs itemized in the demand letter(s), EPA may forward a referral to DOJ recommending litigation for cost recovery. Cost recovery actions for removals should be referred to DOJ as soon as possible after completion of the removal action, and ideally within one year after the completion date (unless the region plans to recover removal costs at the same time as remedial costs under CERCLA section 113(g)(2)(B) because it expects the RA to begin within three years of completion of the removal action). In all cases, removal cost recovery actions should be referred to DOJ no later than six

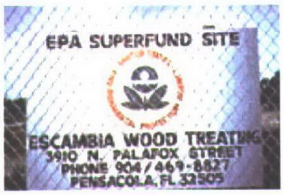
months before the SOL will expire. Cost recovery actions for remedial actions should be referred to DOJ at the time of initiation of physical on-site construction of the RA.

As an alternative to referring a cost recovery case to DOJ for immediate litigation, EPA may enter into a tolling agreement with the PRPs. A tolling agreement suspends the running of the statute of limitations either for a specified period or until specified events occur. By entering into a tolling agreement, EPA eliminates the need to file a cost recovery lawsuit immediately, thereby providing additional time to determine whether litigation is necessary. PRPs that enter into a tolling agreement do not admit any liability, agree to pay anything to the government, or compromise any of their existing legal rights.

Cost Recovery for Removals

Completing a removal will generally trigger an action to recover the costs of the removal. EPA will seek recovery of all costs if the removal was Fund-lead, or oversight costs if it was performed by the PRPs pursuant to a unilateral administrative order (UAO). As a general rule, cost recovery cases involving post-SARA removals (except those with CERCLA section 104(c)(1)(C) waivers) must be filed within three years of completion of the removal. If a remedial action is initiated within three years after the completion of the removal action, however, removal costs may be recovered in the RA cost recovery action, but will not be in every instance. The facts of a particular case frequently dictate when the "completion" of a removal has occurred at a site, and when the statute of limitations begins to run. In general, however, the date of demobilization of cleanup personnel at a site, usually evidenced by

a Pollution Report or Removal Closeout Memorandum, may indicate that the removal action has been completed. In this instance, the actual date of demobilization, not the date of the Report or Memorandum, represents the date of completion. Due to the fact-intensive nature of removal completion determinations, however, OSRE or OGC should be consulted whenever concern exists regarding the SOL for cost recovery. This is so because an incorrect determination as to when removal completion occurred will very likely bar the Agency from recovering its costs.



Cost Recovery for Sites in the Remedial Process

Cost recovery activities at sites in the remedial process are a function of past expenditures for removals, RI/FS, or RD; the outcome of RD/RA negotiations; and timing concerns related to the SOL date triggered by "initiation of physical on-site construction" of the RA.

"Initiation of physical on-site construction" represents the date when cleanup personnel went on site and undertook some type of physical activity, such as erecting a fence or installing utilities, that initiated the remedial action. Included among activities that do not constitute physical on-site construction are actions of an administrative nature, such as hiring contractors. Similar to the removal completion determination, the facts of the case are important, such that OSRE or OGC must be consulted when concern exists regarding the determination of physical on-site construction for SOL purposes. The physical on-site construction determination is critical, because a mistaken determination will likely bar the Agency from recovering its costs.

CHAPTER 4 REFERENCES

Name	Section	Location
Disk Repository of Current CERCLA Section 104(e) Questions (June 17, 1999)	4.1	http://intranet.epa.gov/oeca/osre/doc/ 960229.html
Model Administrative Order for CERCLA Information Requests (September 30, 1994)	4.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/modao-cerinf-mem.pdf
Civil Monetary Penalty Inflation Rule (December 31, 1996)	4.2	http://www.epa.gov/compliance/resources/policies/civil/penalty/cmpiar.html
Final Model Litigation Report and Complaint for CERCLA Section 104(e) Initiative (January 1990)	4.2	http://intranet.epa.gov/oeca/osre/docs.html
Recommendations Concerning the Use and Issuance of Administrative Subpoenas under CERCLA Section 122 (August 30, 1991)	4.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/subpoena-cercla-mem.pdf
Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas (August 25, 1988)	4.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cerc-infreq-mem.pdf
Federal Rules of Civil Procedure, Rule 27, 28 U.S.C	4.4	http://www.wvnb.uscourts.gov/frcp.htm#rule27
General Policy on Superfund Ability to Pay Determinations (September 30, 1997)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/genpol-atp-rpt.pdf
Index of OECA enforcement computer models and user manuals	4.5.2	http://www.epa.gov/compliance/civil/programs/econmodels/index.html

CHAPTER 4 REFERENCES

Name	Section	Location
Financial Statements for Individuals, Businesses, and Trusts	4.5.2	Appendix K
EDGAR	4.5.2	http://www.sec.gov/edgar.shtml
On-Line Sources of PRP Information	4.5.2	Appendix I
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	4.5.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf
Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals (June 4, 1996)	4.6	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/orphan-share-rpt.pdf
Addendum to the Interim CERCLA Settlement Policy Issued on December 5, 1984 (September 30, 1997)	4.6.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/adden-settle-mem.pdf

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

OSWER DIRECTIVE
#9834.13

DEC - 6 1989

MEMORANDUM

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes

FROM: Don R. Clay
Assistant Administrator

TO: Regional Administrators, Regions I - X

I. INTRODUCTION

A) Focus of Interim Policy

This memorandum establishes EPA's interim policy on settlements involving municipalities or municipal wastes under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). In particular, this interim policy indicates how EPA will exercise its enforcement discretion when pursuing settlements which involve municipalities or municipal wastes.[1] The municipal wastes addressed by this interim policy are municipal solid waste (MSW) and sewage sludge as defined below. This interim policy has been developed to provide a consistent Agency-wide approach for addressing municipalities and municipal wastes in the Superfund settlement process.

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[1] This interim policy does not provide an exemption from potential CERCLA liability for any party; potential liability continues to apply in all situations covered under Section 107 of CERCLA.

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Although this interim policy focuses on municipalities and municipal wastes, it addresses how private parties and certain kinds of commercial, institutional, or industrial wastes will be handled in the settlement process as well. It is important to address private parties and certain kinds of commercial, institutional, or industrial wastes in this interim policy because private parties sometimes handle municipal wastes or wastes of a similar nature and because municipal and private party waste streams are sometimes co-disposed at sites, particularly municipal landfills. The kinds of commercial, institutional, or industrial wastes covered by this interim policy include "trash from a commercial, institutional, or industrial entity" and "low-hazardous industrial wastes" as defined below.

There are three fundamental issues addressed by this interim policy. First is whether to notify generators/transporters of MSW or sewage sludge that they are considered to be potentially responsible parties (PRPs) and to include them in the Superfund settlement process. Such parties are usually municipalities, although they may include private parties as well. Second is how municipalities should be handled in the Superfund settlement process when the decision is made to notify them that they are PRPs under Section 107(a) of CERCLA. Third is how the treatment of municipalities and municipal wastes under this interim policy affects the treatment of private parties and certain kinds of

commercial, institutional, or industrial wastes in the Superfund settlement process.

Key questions specifically addressed as part of this interim policy include the following:

- Information Gathering: Should municipalities be included in the Agency's information gathering process? Should generators/transporters of MSW or sewage sludge be included in the information gathering process?
- Notification: Should municipalities be notified that they are PRPs? Should generators/transporters of MSW or sewage sludge be notified as PRPs?
- Settlements: How should municipalities be handled in the Superfund settlement process? What settlement process and settlement tools should be used to facilitate settlement involving municipalities or municipal wastes?
- Private Parties: How does the treatment of municipalities and municipal wastes affect the Agency's treatment of private parties and certain kinds of commercial, institutional, or industrial wastes?

B) Key Terms Used in Interim Policy[2]

The following defines the key terms used in this interim policy:

- The term "municipalities" refers to any political subdivision of a State and may include cities, counties, towns, townships, and other local governmental entities.
- The term "municipal solid waste" refers to solid waste generated primarily by households, but may include some contribution of wastes from commercial, institutional and industrial sources as well. As defined under the Resource Conservation and Recovery Act (RCRA), MSW contains only those wastes which are not required to be managed as hazardous wastes under Subtitle C of RCRA (e.g., non-hazardous substances, household hazardous wastes (HHW), or small quantity generator (SQG) wastes). Although the actual composition of such wastes varies considerably at individual sites, MSW is generally composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and

[2] The definitions provided under this section are for the purpose of this interim policy only. Where possible, this interim policy includes already existing definitions used under other Federal environmental programs (e.g., under the Resource Conservation and Recovery Act or the Clean Water Act). However, nothing in this interim policy affects the regulatory efforts of these other programs.

aluminum) and may contain small quantities of household hazardous wastes (e.g., pesticides and solvents) as well as small quantity generator wastes.[3] Many industrial solid wastes and some commercial and institutional solid wastes are managed separately from household wastes, but may enter the MSW waste stream.

- The term "municipal landfill" refers to any landfill, whether publicly or privately owned, that has received municipal solid waste for disposal.
- The term "sewage sludge" refers to any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage.[4]
- The term "trash from a commercial, institutional, or industrial entity" refers to waste which is very

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[3] All household wastes, including household hazardous wastes, are unconditionally exempt from the Federal hazardous waste regulations promulgated under Subtitle C of RCRA (See 40 CFR Section 261.4 (b)(1)). With regard to non-household sources of solid waste, if such waste is not a listed or characteristic hazardous waste accumulated in quantities exceeding the small quantity generator limitations (i.e., less than 100 kg/month of hazardous wastes and less than 1 kg/month for acute hazardous wastes), such waste is not required to be managed in a RCRA Subtitle C hazardous waste treatment, storage, or disposal facility (See 40 CFR Section 261.5). "Household hazardous wastes" refers to those wastes which are generated by households and would be managed as hazardous wastes under RCRA Subtitle C if they were generated by a non-household in quantities exceeding the small quantity generator limitations.

[4] The definition of sewage sludge is contained in the National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations published in the Federal Register as a final rule May 2, 1989 (See 40 CFR Part 122.2).

similar to the MSW that is derived from households. This term covers only those wastes that are essentially the same as what one would expect to find in common household trash. This term does not include hazardous substances that are derived from a commercial, institutional, or industrial process or activity.

- The term "low-hazardous industrial wastes" refers to high volume wastes that contain small quantities of hazardous substances derived from an industrial, commercial, or institutional process or activity. Examples may include certain paint sludges or industrial wastewaters.

II. CERCLA LIABILITY

Important questions have been raised about whether municipalities may be PRPs and whether municipal wastes (i.e., MSW and sewage sludge) may be considered hazardous substances under CERCLA.

A) Municipalities as PRPs

The statute does not provide an exemption from liability for municipalities. Municipalities may be PRPs like private parties if municipalities fall within the categories of liability specified under Section 107(a) of CERCLA. In general, Section 107(a) establishes liability for past and present owners or operators of facilities as well as generators or transporters of hazardous substances for the release or threatened release of

hazardous substances. Such parties may be liable for the costs of responding to a release or threatened release of hazardous substances as well as for resulting damages to natural resources. The specific categories of liable parties under Section 107(a) are:

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, [commonly referred to as "generators"[5]], and
4. any person who accepts or accepted any hazardous substances for transport to disposal or treatment

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[5] Persons who fall into this category are commonly referred to as "generators," although liability under this Section extends beyond "true generators" of hazardous substances to include persons who arranged for the disposal or treatment of hazardous substances owned or possessed by such party or another party. The term "generator" is used throughout this document to refer to any party who is potentially liable under Section 107(a)(3).

facilities, incineration vessels, or sites selected by such person [commonly referred to as "transporters"].

Section 107(a) describes liable parties as "persons" and the definition of "person" under Section 101(21) includes municipalities and political subdivisions of a State. Municipalities may, therefore, be PRPs as part of CERCLA's broad definition of who is potentially liable.

B) Municipal Wastes as Potential CERCLA Hazardous Substances

Similarly, the statute does not provide an exemption from liability for municipal wastes. Municipal wastes may be considered hazardous substances if they are covered under the definition of hazardous substances in Section 101(14) of CERCLA. As indicated under the definitions of MSW and sewage sludge, these municipal wastes are generally characterized by large volumes of non-hazardous substances and may contain small quantities of household hazardous or other wastes, although the actual composition of the waste streams vary considerably at individual sites. To the extent municipal wastes contain a hazardous substance that is covered under Section 101(14) of CERCLA and there is a release or threatened release, such municipal wastes may fall within the CERCLA liability framework.

III. INFORMATION GATHERING

The Regions should include all municipal and private party owners/operators and generators/transporters in the information

gathering process, including the generators/transporters of municipal wastes. This means that municipal owners/operators as well as municipal generators/transporters should generally receive Section 104(e) information request letters and should otherwise be fully included in the information gathering process like private parties. Information obtained through such letters or through other means is important for determining (among other things) whether it is appropriate to notify a party as a PRP, including whether to notify a generator/transporter of MSW or sewage sludge as discussed below.[6]

IV. NOTIFICATION OF POTENTIAL RESPONSIBILITY

A) Owners/Operators

The same approach will be used for both municipalities and private parties when determining whether to notify them as owners/operators. Specifically, such parties will generally be notified where they were past owners or operators of facilities at the time of disposal of hazardous substances, or they are present owners or operators of facilities where hazardous substances have been released or there is a threatened release.

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[6] The Regions may accept and consider credible site-specific information from any party to supplement their own information gathering efforts as appropriate.

B) Generators/Transporters[7]

1. Municipal solid waste: Municipalities and private parties will be treated the same when determining whether to notify them as PRPs when they are generators/transporters of MSW. Specifically, such parties will not generally be notified unless:

- the Region obtains site-specific information that the MSW contains a hazardous substance;[8] AND
- the Region has reason to believe that the hazardous substance is derived from a commercial, institutional, or industrial process or activity.

This means that EPA will not generally notify municipalities or private parties who are generators/transporters of MSW if only household hazardous wastes (HHW) are present, unless the truly exceptional situation discussed below exists. The general policy

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[7] The categories of wastes discussed below, i.e., relating to municipal solid waste, sewage sludge, trash from a commercial, institutional, or industrial entity, and low-hazardous industrial wastes, are defined in the "Introduction" to this interim policy (See I.B.).

[8] The term "site-specific" information refers to information pertaining to a particular Superfund site. "Site-specific" information does not generally include, for example, "general studies" conducted by EPA or other parties which draw general conclusions about whether MSW or sewage sludge typically contain a certain percentage of hazardous substances, unless the "general study" includes "site-specific" information obtained from the PRP or Superfund site in question. "General studies" may nonetheless be used to supplement "site-specific" information.

of not notifying parties who are generators/transporters of HHW extends to "HHW collection day programs" as well.[9]

This also means that such parties may be notified as PRPs if the MSW contains hazardous substances from non-household sources. Non-household sources include, but are not limited to, small quantity generator (SQG) wastes from commercial or industrial processes or activities, or used oil or spent solvents from private or municipally-owned maintenance shops.

Notwithstanding the above general policy, there may be truly exceptional situations where EPA may consider notifying generators/transporters of MSW which contains a hazardous substance derived only from households. Such notification may be appropriate where the total contribution of commercial, institutional, and industrial hazardous waste by private parties to the site is insignificant when compared to the MSW.[10] In this

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[9] The term "HHW collection day programs" refers to programs that have generally been sponsored by municipalities or community organizations whereby residents voluntarily remove their HHW from their household waste. The HHW is then typically disposed of in a RCRA Subtitle C hazardous waste facility and the household waste is typically disposed of in a RCRA Subtitle D solid waste facility.

[10] The Regions should consider both the volume and the toxicity of the commercial, institutional, and industrial hazardous waste when determining whether it is insignificant when compared to the MSW. In determining whether the volume is insignificant, the Regions should consider the total volume of such waste contributed by all private parties. In determining whether the toxicity is insignificant, the Regions should consider whether such waste is significantly more toxic than the MSW and whether such waste requires a disproportionately high treatment and disposal cost or requires a different or more costly remedial technique than that which otherwise would be

situation, the Regions should seriously consider notifying the generators/transporters of MSW containing a hazardous substance from households as PRPs and include them in the settlement process where it would promote either settlement or response action at the site.

2. Sewage sludge: Municipalities and private parties will be treated the same when determining whether to notify them as PRPs when they are generators/transporters of sewage sludge. Specifically, such parties will not generally be notified unless:

- o the Region obtains site-specific information that the sewage sludge contains a hazardous substance; AND
- o the Region has reason to believe that the hazardous substance is derived from a commercial, institutional, or industrial process or activity.

3. Trash from a commercial, institutional, or industrial entity: Parties who are generators/transporters of trash from a commercial, institutional, or industrial entity will not generally be notified as PRPs if such parties demonstrate to the Region that:

- o none of the hazardous substances contained in the trash are derived from a commercial, institutional, or industrial process or activity; AND

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technically adequate for the site.

- o the amount and toxicity of the hazardous substances contained in the trash does not exceed that which one would expect to find in common household trash.

4. Any other hazardous substance, including low-hazardous industrial wastes: Municipalities or private parties who are generators/transporters of "any other hazardous substance" will generally be notified as PRPs if the Region obtains information that the substance is hazardous or that it contains a hazardous substance. This includes notification of private parties who are the generators/transporters of low-hazardous industrial wastes. "Any other hazardous substance" in this category refers to any hazardous substance covered under Section 101(14) of CERCLA other than hazardous substances that may be contained in MSW, sewage sludge, or trash from a commercial, institutional, or industrial entity (as discussed under IV.B.1., IV.B.2., or IV.B.3. above). The generators/transporters of hazardous substances that may be contained as part of the waste streams discussed under IV.B.1., IV.B.2., or IV.B.3. should be addressed as specified above.

V. SETTLEMENTS

A) Settlement Process

Once the notification decision is made, the general goal and overall process for reaching settlement at sites involving municipalities or municipal wastes is the same as for other sites. The general goal remains to negotiate with PRPs to reach one settlement agreement that provides complete resolution of all

pending CERCLA claims, and is consistent with both applicable statutory requirements and EPA's Interim CERCLA Settlement Policy.[11] This means that at sites where both municipal and private PRPs exist, EPA will attempt to include both types of parties in one settlement agreement.

Although one settlement agreement is the goal for each site, separate settlement agreements may be used at any site to facilitate settlement, where appropriate. This includes sites involving municipalities or municipal wastes. Separate settlements are not automatically available to municipalities and are generally available to such parties under the same conditions as for private parties. Examples of separate settlements are Section 122(g) de minimis settlements and cash-outs which may be used when they are consistent with applicable statutory requirements and existing EPA guidance.[12]

B) Settlement Provisions That May Be Particularly Suitable for Certain Municipalities

As indicated, once parties are notified as PRPs, the overall process and goals for reaching settlement at sites involving municipalities or municipal wastes is the same as for other Superfund sites. Nonetheless, there are some settlement provisions (e.g., delayed payments, delayed payment schedules,

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[11] "Interim CERCLA Settlement Policy", February 5, 1985, 50 FR 5034.

[12] For example, see "Interim Guidance on Settlements with De Minimis Waste Contributors," June 30, 1987, 52 FR 24333.

and in-kind contributions) that may be particularly suitable for facilitating settlement with certain municipal PRPs because they take into account a municipality's status as a governmental entity.[13]

Such settlement provisions are not routinely available to municipalities. As a general rule, they may be considered where a municipality has successfully demonstrated to EPA that they are appropriate (e.g., where valid ability to pay or procedural constraints that affect the timing of payment exist). These settlement provisions may be embodied in separate settlements or they may be folded into a larger settlement that includes private parties. In addition, although these settlement provisions may be particularly suitable for municipalities, they may also be available to private parties, such as certain small businesses, where appropriate.

The following discusses how delayed payments, delayed payment schedules, and in-kind contributions may be used:

1. Delayed payment: If a municipality has demonstrated difficulty providing a lump-sum payment upfront for past costs or

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[13] In some circumstances a municipality's governmental status may impose practical constraints on its ability to carry out its legal obligation as a PRP under CERCLA. For example, a municipality may need to hold a special vote involving its legislative body or its citizens to gain approval to issue a bond or arrange other financing to cover cleanup costs at a Superfund site where it is a PRP. These settlement provisions are designed to take into account these types of unavoidable constraints that may exist.

for cleanup needs, the settlement could be structured to allow the municipality to pay at a specified future date. This would allow the municipality time to raise the money needed to cover its contribution. This may include an interest payment.

2. Delayed payment schedules (payments over time): An alternative to a delayed payment is to allow a delayed payment schedule where the settlement is structured to allow the municipality to pay over time based upon a predetermined schedule of payments. The payment schedule would be adjusted in such a way that the discounted present value of the payment would be greater than or equal to the settlement.[14]

3 In-kind contributions: The settlement could be structured to allow for an in-kind contribution, especially where a municipality can provide only a portion of its share of costs or is unable to provide a monetary payment. In-kind contributions may be made in conjunction with or in lieu of cash. Factors the Regions may use in considering the appropriateness of an in-kind contribution may include the overall financial health of the municipality, the amount of the municipality's share, the

[14] Delayed payment schedules may include "structured settlements" which are settlements paid over time generally through an annuity. EPA is currently developing guidance, titled "Interim Guidance on the Use of Structured Settlements Under CERCLA," which will establish criteria for evaluating whether a particular site is a good candidate for a structured settlement. EPA expects to issue this interim guidance in the Spring of 1990.

value of the in-kind contribution, and the effect of the in-kind contribution on the overall effort to achieve settlement.

One mechanism for allowing an in-kind contribution could be a "carve-out" order when, for example, the municipal PRP has agreed to provide the operation and maintenance at the facility. Other in-kind contributions could include the use of trucks and equipment to carry out cleanup activities, the installation of fences and the provision of other security measures to control public access to the site, or the use of the municipality's sewage treatment plant.

C) Contribution Protection

Nothing in this interim policy affects the rights of any party in seeking contribution from another party, unless such party has entered into a settlement with the United States or a State and obtained contribution protection pursuant to Section 113(f) of CERCLA.[15]

VI. DISCLAIMER

This interim policy is intended solely for the guidance of EPA personnel. It is not intended and can not be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves

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[15] Under Section 113(f), where EPA determines that settlement is in the best interests of the Federal government, CERCLA provides contribution protection to the settling parties for matters covered by the settlement. This may include a party who has not been notified as a PRP by EPA but wishes to settle its potential CERCLA liability.

the right to act at variance with this policy and to change it at any time without public notice.

VII. FOR FURTHER INFORMATION

For further information or questions about this interim policy, the Regions may contact Kathleen MacKinnon in the Office of Waste Programs Enforcement at FTS-475-9812. Inquiries by other persons should be directed to Ms. MacKinnon at 202-475-6771.

B

June 2003

ESS Contracts POs and COs

Region	Regional Contact	Phone Number	Fax Number
Region I	Filomena (Meme) DiNardo, PO (Zoned with Region 2)	617-918-1425	617-918-1291
Region II	Richard Graciano, PO	212-637-3271	212-637-4360
	Helen Eng, Alt. PO	212-637-4348	212-637-4360
	Kevin Weaver, CO	212-637-3357	212-637-3518
Region III	Joseph Tralie, PO	215-814-3337	215-814-3015
	Donna Kotsch, PO (Community Involvement)	215-814-5529	215-814-3015
	Donna McGowan, CO	215-814-5197	215-814-5211
Region IV	Jackie Dendy, PO	404-562-8876	404-562-8842
	Deborah Hoover, CO	404-562-8373	404-562-8370?
	Shayla Jenkins, CS	404-562-8385	404-562-8370?
	Charles Swan	404-562-8848	404-562-8842
Region V	Pankaj Parikh, PO	312-886-6707	312-886-0186?
Region VI	Karen Hartis, PO	214-665-6652	214-665-6660
	Georgia Okstel, CO	214-665-8310	214-665-7284
	Cheryl Hill, CS	214-665-2799	214-665-7284
Region VII	Jolleen Werst, PO	913-551-7108	913-551-7063
	Ron Stewart, CO	913-551-7743	913-551-7579
Region VIII	Carol Pokorny, PO	303-312-6970	303-312-6409
	Lisa Walker, CO	303-312-6475	303-312-6685
Region IX	Kathy Meltzer, PO/CO	415-972-3714	415-947-3558
Region X	(Does not have an ESS contract)		
Headquarters	Marlene Lemro, National Coordinator	202-564-4257	202-564-0089
	Joe Waddell, OAM Serve Center	202-564-4458	202-564-2558
	Joan Thurman, OAM ESS Team Leader	202-564-4497	202-564-2557

c

Statement of Work for the Multi-Site Open Work Assignment for Enforcement Support

Background

This Multi-Site Open Work Assignment (MOWA) is designed to provide EPA Region IX with expedited enforcement support to conduct Potentially Responsible Party Searches and related tasks to support Superfund enforcement actions. Through narrowly defined/directed tasks, this work assignment will provide EPA with a means to obtain timely, expedited support in acquiring and managing information concerning a Site. This information will be used in EPA enforcement actions such as negotiations, Administrative Orders and/or referrals to the Department of Justice. It is anticipated that the combined expenditure for tasks performed for any single Site under this work assignment shall normally not exceed $20,000.

In order to address the unique nature of this expedited work assignment, a phased approach towards implementation will be used. The contractor shall acknowledge receipt of this MOWA statement of work within 10 work days, as currently provided in the ESS contract. The contractor will then prepare a general work plan describing the methods and procedures to be employed to accomplish each of the specific tasks described in this MOWA statement of work. The contractor's work plan shall be submitted within 20 calendar days after acknowledgment of this work assignment. The EPA Project Officer (PO) shall be the approving official for this MOWA.

Another unique feature of this work assignment is negotiated pricing at the general work plan stage. The contractor shall use Attachment A to provide cost and level of effort estimates for each and every task in this work assignment. Estimated LOE for each task will be based on a "per unit" basis using the requirements and parameters described with each task. Unit pricing will be based on estimated expenditures of time by P-level, reproduction costs and administrative costs (computer time, overhead, etc ...) but will not include related travel expenses, which are Site specific. (During actual performance, departures from this "unit" pricing will be addressed and justified in the Site Implementation Memorandum as discussed below.) Subsequent initiation of work under this work assignment will be controlled through the use of Technical Direction, Memoranda, prepared by EPA and approved by the PO, and Site Implementation Memoranda and Monthly Status Reports, prepared by the contractor and approved by the EPA WAM.

Technical Direction Memorandum:

After approval of the general work plan, the EPA Work Assignment Manager (EPA-WAM) shall initiate site-specific tasking through the use of a Technical Direction Memorandum (TDM) to the contractor. This memorandum must be approved by the PO, and will direct the contractor to perform specifically enumerated tasks for a designated Site and describe the type of deliverables required (e.g. Letter Report; Documents; certified copies.) The memorandum will further provide the contractor with a Site Account Number to be used to charge work performed for the Site and a target date for completion of the work requested.

Site Implementation Memorandum:

Upon receipt of a TDM, the contractor may begin work immediately. Within 10 working days, the contractor shall provide the EPA WAM with the following information in a Site Implementation Memorandum (SIM):

1) Enumeration of the tasks to be performed with the estimated LOE (by P-level) and dollars anticipated for each specific task.

2) Delineation of the personnel and P-level of employees who will perform the tasks assigned.

3) Estimate of travel expenses (including P-level of traveler) to complete the tasks identified.

4) Justification of any tasks which are anticipated to exceed the "per unit" price used in the MOWA work plan.

The contractor shall not exceed $2,000.00 in expenses, including ODCs, per Site, prior to approval of the SIM estimates by the EPA PO, which approval shall be documented with an acceptance TDM signed by the PO. Expenses exceeding $2,000.00 will not be allowed and should not be incurred by the contractor until and unless such approval is received by the contractor. SIM approval shall normally occur within 5 working days of receipt of the SIM

Monthly Status Reports:

The contractor shall submit a Monthly Status Report to the EPA WAM, containing information through the 15th of each month and to be submitted by the 20th of each month. The report shall describe by Site the status of work being performed as well as the LOE in hours and dollar expenditures to date. In addition, the contractor shall also include a concise summary of costs incurred and LOE hours expended, accrued through the date of the report, attributed by Site, for the entire MOWA work assignment. This summary is for the purpose of tracking hours of LOE and dollars expended for the MOWA work assignment as a whole and is primarily for the benefit of the PO. More detail on the format and content of this report is contained in the section entitled SCHEDULE OF DELIVERABLES.

Scope of Work

The purpose of this work assignment is to provide narrowly directed support to EPA for enforcement related activities. The contractor's staff assigned under this work assignment shall be trained, qualified and appropriate to the specific task(s) directed. They shall also have knowledge of the general liability scheme under CERCLA, and be familiar with the following pertinent Department of Justice reviews, EPA guidance documents, and search manuals:

1. Potentially Responsible Party (PRP) Search Manual, OSWER Directive 9834.6, August 1987;

2. PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program , OSWER Directive 9834.3-2a, June 29, 1989; and

3. Guidance on Preparing and Releasing Waste-In Lists and Volumetric Rankings to PRPs Under CERCLA,, OSWER Directive 9835.16, February 22, 1991.

4. Elements of Liability Under Sections 104, 106, and 107 of CERCLA, U.S. Department of Justice, (current edition).

In most instances, the contractor will not be tasked to provide a comprehensive written report as envisioned in the PRP Search Supplemental Guidance (OSWER Directive 9834.3.2a) and the EPA PRP Search Manual. Specific deliverables will be identified in the Site specific TDM. A Completed Activity-Summary Memorandum shall generally be submitted at the completion of all tasks for each Site, as directed by the EPA WAM. This memorandum will briefly describe all activities performed to accomplish the directed tasks and a compilation of costs incurred.

Tasks Allowable Under this Work Assignment

The following tasks are included and authorized under this work assignment and may be assigned for a specific Site by the EPA WAM.

1] **Title Searches** - The EPA WAM will provide the contractor with a Site address (s) , a location map and, where available, specific parcel number(s). As specifically directed by the EPA WAM, the contractor will perform some or all of the following related tasks.

a) Obtain specifically identified title documents (and/or parcel maps).

b) Perform title searches, obtaining all documents for a specified period which evidence both current and possible past owners, lessors and lessees for a designated Site address(s).

c) Analyze title documents in order to provide a clear opinion as to the true ownership, quality, condition, and clarity of title for a designated period of time. This may include preparation of title tree diagrams and accompanying narrative reports.

Deliverables for this task shall include the following: copies of requested documents (certified or plain as specified in the TDM); a memorandum presenting title analysis conclusions (including related tables, charts or other aides as directed by the EPA WAM).

2] **Interviews** - The EPA WAM may direct the contractor to interview designated government/public officials and/or individuals connected with a Site's history to obtain information regarding a Site. Unless otherwise specified in the TDM, the contractor will prepare an appropriate outline focusing on proposed questions and methodology for the EPA WAM's approval prior to conducting the interview. Interviews may be conducted via telephone at the EPA WAM's written technical direction. Deliverable shall be a summary of the results of the interview which identifies at a minimum the date, time, place of interview, person(s) interviewed (including name, address, telephone number at work and home, occupation, and relation to the Site), interviewer, and a comprehensive summary of the information obtained during the interview.

3] **Document Collection** - At the written technical direction of the EPA WAM, the contractor shall obtain documents from designated public agencies, private parties, or other sources. EPA WAM will provide a list of the specific agencies or other sources to be contacted, as well as the types of documents to be collected.

Deliverable shall be the submission of a single copy (unless multiple copies are specifically requested by the WAM in the TDM) of the documents requested, with appropriate document identification as required in the TDM.

4] **Document Indexing** - At the written technical direction of the EPA WAM, the contractor shall be tasked to index a collection of documents obtained in connection with a Site. This indexing shall be performed in a manner and format consistent and compatible with the Superfund Records Center indexing format, but may, at the EPA WAM Is written technical direction, include additional entry fields for issue coding of documents.

Deliverable shall be the submission of a single hard copy of the document index plus one electronic version on 3.5 inch disc in a format compatible with Word Perfect 5.1, or such other software as may be specified through written technical direction by the EPA WAM. Alternatively, with the EPA WAM's approval, the contractor may transmit the document index directly to the Superfund Records Center via modem.

5] **Data Entry** - At the written technical direction of the EPA WAM, the contractor shall enter data into a CERCLA § 104(e) Information Letter Tracking System (to be provided by EPA) which will track mailing, receipt and return response to EPA Information Requests. At the written technical direction of the EPA WAM, the contractor may also be tasked to provide an analysis of the 104 (e) response to determine it I s completeness and/or to extract information.

Deliverable shall include updated 104 (e) tracking information, and/or a memorandum summary of data extraction for each respondent providing one or more of the following:

- Evidence of a release of hazardous substance.
- Purpose and/or use of facility.
- Evidence of a release of hazardous substances.
- Presence of physical features which significantly impact release or potential for release.
- Identification of chemicals used.
- Identification of waste streams and disposal methods.
- Corporate formalities and relationships of the subject.
- Apparent financial viability of subject.

6] **Waste Stream Analysis** - At the written technical direction of the EPA WAM, the contractor shall perform a chemical process analysis or a waste process analysis for a subject business activity, using information provided by EPA, by the subject business, or available from public sources, as specified in the TDM. If the contractor determines that the information supplied is insufficient to provide a reliable analysis, the contractor shall provide written recommendations specifying the kind of information and potential or probable sources for obtaining such additional information as is necessary to complete this task.

Deliverable shall be the submission of a technical memorandum detailing to the extent possible the probable waste stream and disposition of wastes for subject business and business activities.

7] **Business Status** - At the written technical direction of the EPA WAM, the contractor shall develop and/or resolve issues relating to the business structure, "familial" relationship(s), and ownership and control of business entities. This shall be accomplished through the use of public information sources, on-line data retrieval services, and by obtaining and analyzing documents, including responses to Information Request Letters, as directed by the EPA WAM through written technical direction memoranda.

Deliverable shall be a written submission summarizing the requested information, together with documentation to support conclusions drawn, either in a technical memorandum or incorporated within a larger deliverable.

8] **Financial Viability** - At the written technical direction of the EPA WAM, the contractor shall provide a financial viability analysis using EPA supplied information and/or publicly available information in order that EPA may make a determination regarding an entity's ability to satisfy Superfund liabilities.

Deliverable shall be the submission of a technical memorandum outlining the financial condition of the subject. At a minimum, the technical memorandum shall include either or both of the following: a high and low lump sum, figure based upon the entity's financial condition with a justification of the figures; and an analysis of the entity's ability to make installment payments over time. The deliverable shall be more fully described in the TDM authorizing performance of this task.

9] **Current Status** - At the written technical direction of the EPA WAM, the contractor may be tasked to verify and/or provide current names, responsible official and address information for subject entity(s). This task will normally be accomplished through use of on-line data retrieval sources, but may also require retrieval of publicly available documents, as directed, by the EPA WAM through written technical direction.

The deliverable will be an updated list providing current information, accompanied by printouts of the database- supplied information and/or requested documents.

10] **Expert Opinion** - At the written technical direction of the EPA WAM, the contractor may perform specialized tasks such as providing current real property appraisals, providing cadastral and/or spotted surveys of property to determine the location of physical features or structures in relation to property bounds, etc. , or providing expert opinions from technical experts, relating to any other task or tasks described in this MOWA work assignment.

The deliverable shall be a technical report resolving specific technical issues as assigned in a TDM, with whatever attachments or graphical presentations are authorized by the TDM.

11] **Summation & Reporting** - At the written technical direction of the EPA WAM, the contractor shall review all available information in order to develop a summary report which shall provide a chronological presentation of known facts (properly referenced to supporting documentation) regarding a Site. The contractor may also be required through written technical direction by the EPA WAM to prepare a separate memorandum detailing the evidence relating to the liability of each identified entity connected with a Site, containing the following general elements (unless otherwise directed):

- Overall Facility Summary
- Corporate Status / Business Information Financial Viability
- Property Ownership
- Detail of Operations Conducted Evidence of Release
- Relation to other PRPs.

The deliverable shall be a report and/or memorandum as identified above. Memoranda presenting evidence of liability will be marked as "Enforcement Confidential - Prepared in Anticipation of Litigation. 11 Since this report or memorandum does not include an analysis or appraisal of the strength or quality of the evidence, nor an analysis of liability, this deliverable will not ordinarily be classified as legal analysis. Chronological reports only shall <u>not</u> be marked Enforcement Confidential.

Schedule of Deliverables

A general Work Plan shall be prepared, as required under the ESS Contract, in response to this Statement of Work and submitted to EPA for approval within 20 calendar days after acknowledgment of receipt of this Statement of Work. Upon approval, performance of any tasks under this work assignment will be on an as-assigned basis through the use of Technical Direction Memorandum issued by the EPA PO and the EPA WAM, using the following general schedule.

Site Specific Tasking

EPA WAM will initiate a Technical Direction Memorandum to the Contractor providing general background information concerning the Site, a Site account number to be used, the specific tasks to be performed, the desired time frame for completion and a summary listing of known or suspected PRPs who may be involved with the Site. **This TDM must be signed by an PO, and is not valid without such signature.**

Within 48 hours (not including weekends and holidays) , the contractor will advise the EPA CO/PO verbally of any apparent or potential conflicts of interest that may arise concerning this Site. Thereafter, should additional information disclose an apparent conflict, the contractor shall appraise the EPA CO/PO within one working day.

Within five (5) work days of receipt of a TDM, the contractor shall submit a Site Implementation Memorandum detailing personnel assigned as well as anticipated schedule and projected costs to complete the tasks assigned. The EPA PO will approve this estimate with a TDM authorizing work to be performed or will notify the contractor in writing of any objections or disapproval. Any changes to the initial TDM shall be effected through sequential amendments to the TDM.

When all tasks for a specific Site have been completed, the EPA WAM shall, at the WAM's discretion, notify the Contractor WAM in writing to prepare a Completed Activity - Summary Memorandum which will summarize all tasks completed for the Site and include a re-cap of all expenses incurred for the Site. This Completed Activity - Summary Memorandum shall be. completed by the Contractor within ten (10) working days after notification of completion by the EPA WAM.

Monthly Reports

The contractor shall submit a monthly report to EPA detailing the following information for each Site for which activities have been performed or costs incurred:

For each Site:

- Activities conducted during the month. Costs incurred, by task, per month.
- LOE hours expended, by task and P level, for the month.
- Total monthly costs and LOE hours expended. Total Work Assignment Costs to date.
- Projected future costs to completion.

The information contained in the report shall be current through the 15th of each month, and the report shall be transmitted to the EPA PO by the 20th of each month.

The contractor is also expected to maintain frequent, verbal communication with the EPA WAM on progress, problems, issues or suggestions relative to individual Site tasking or the overall Work Assignment.

Period of Performance

The period of performance for this work assignment is through December 1, 1995.

Work Assignment Manager

The primary EPA Work Assignment Manager for this work assignment is **Cliff Davis,** who can be reached at (415) 744-2377. The alternate EPA WAMs for this work assignment are Mark Calhoon, Steve Simanonok and Nancy Riveland-Har, Lois Green, and Kim Muratore. Other WAMS may be added as needed. Any WAM may initiate TDMs, however only POs may sign and authorize TDMs.

ESTIMATED PER UNIT PRICING

Task	LOE Hours P4 P3 P2 P1	Contract MGMT.*	Dollar
1] Title Search (Per Parcel)			
a) Document			
b) All Docs.			
c) Analysis			
2] Interviews (Per Interview)			
a) Gov't. Agency			
b) Individual			
3] Document Collection (500 pgs./ 2 or fewer sources)			
4] Document Indexing (500 pgs.)			
5] Data Entry (10 letters)			
a) Tracking only			
b) Extraction			
6] Waste Stream Analysis (1 analysis)			
7] Business Status (1 entity)			
8] Financial Viability (1 analysis)			
9] Current Status (1 entity)			
10] Expert Opinion (1)			
11] Summation & Reporting			
a) Chron. Report			
b) Enf. Memo			
Monthly Contract Maintenance			

* CONTRACT MANAGEMENT is primarily quality assurance/quality control (QA/QC) activities, together with administrative activities such as time charging, logging in - assignments, and routing documents.

D

CHECKLIST FOR REMOVAL/PRE-REMEDIAL SITES

Completion of this form is not mandatory, nor is it directed solely towards a specific type of responder. The first on-site responder may begin the checklist which may include contributions from any of the following: EPA site assessment manager (SAM), on-scene coordinator (OSC), civil investigator (CI), remedial project manager (RPM), EPA contractor, state staff, or state contractor. This form should be filled out for future use by EPA or state staff in preservation of evidence related to the identification of potentially responsible parties. This form may be filled out at any point during the site discovery, assessment/investigation, or response phase.

It may not be possible to provide information for each of the items on this form but, providing information on as many of the items as possible will improve the overall efficiency of the site remediation and enforcement processes. When you have completed it to the extent feasible, please distribute copies of this form to the appropriate EPA and state personnel (e.g., civil investigators, EPA or state attorney, OSC, RPM, etc.), and place the original in the site file.

1. Potential Site referred:

Region: _____ **Site Name:**_____

Location:_____

2. Referred by:

Department/Agency	Contact Name	Phone #
☐ State		
☐ National Response Center		
☐ Other:		

3. Basic site information was requested to be submitted to the regional office from the above referral contact:

☐ **Yes** ☐ **No**

4. Identification of person completing this checklist:

Organization:_____ **Name:**_____

Title:_____ **Phone #:**_____

Mailing Address:_____

5. The OSC (or other First Responder) determines the urgency of the situation at the site, assessing the factual information referred against the criteria set forth in the National Contingency Plan.

6. Site Team formed, OSC, Attorney, Enforcement Specialist, Civil Investigator, Site Assessment Manager, Remedial Project Manager, EPA contractor, State staff, etc.

7. **Site Team reviews information to ascertain responsible corporate officers, registered agents, and principal environmental and/or health and safety contacts. Some examples of information to be reviewed and their source is:**

- ❑ **U.S. EPA media files (NPDES permits, RCRA information, EPCRA releases, CAA permits)**
- ❑ **State media files**
- ❑ **Local health department files**
- ❑ **Historical society information/historical photos**
- ❑ **Newspaper archives**
- ❑ **Local university archives**
- ❑ **Sanborn fire insurance maps**
- ❑ **Other** _____

8. **Obtain access agreement(s) with last known owner(s) of site property:**

❑ **Yes** ❑ **No** **Date obtained:** _____

9. **Identification of the property to be visited:**

- ❑ **Copy of deed**
- ❑ **Address:** _____
- ❑ **Plat #:** _____
- ❑ **Cross Street Location:** _____

10. **Identification of possible contacts that may be a source of information in the future, including complete names, titles, addresses, and telephone numbers. Include all people you encounter on the site, and anyone volunteering information about the site: ["Owners/operators, prior owners/operators, generators, transporters, local authorities, state and other federal agencies, local libraries, other]**

Association With Site and Number of Years*	Contact Name	Address	Phone No.

11. Interviews were conducted with the following contacts:

Interviewee	Association With Site and Number of Years	Date Interview Conducted	Interviewer	Transcript Available Yes/No

12. Information about records located onsite:

Type of Records *	Location of Records	Condition of Records**	Name of Person in Possession of Records

***Types of records, to include but not limited to: log books, driver's tickets, utility bills, payroll records, letterheads, or other specific correspondence or records.**

****Please identify if: contaminated, damaged, poor quality, good quality, other**

13. **Are there file cabinets on site?**

Number of File Cabinets	Location of File Cabinets	Condition of Cabinets/Files

14. **Were photographs taken?** ***[Note: photographs should conform to accepted photographic record protocol. Refer to TAT, site assessment, and criminal investigators for EPA photographic protocol]***

❑ **Yes** ❑ **No**

Photographs were taken of: _____

_____

_____

_____

15. **Were drums found at the Site?** ❑ **Yes** ❑ **No**

Number of Drums: _____

Number With Labels: _____

16. **Was sampling done?** ❑ **Yes** ❑ **No**

17. **Neighbors near the site:**

Name	Association With Site and Number of Years	Address	Phone No.	Interviewed and Date Yes/No

18. **Additional potential sources for gathering site information:**

- ❑ **Neighboring Businesses**
- ❑ **County Recorder:**
  - ❑ **Deed Information**
  - ❑ **Past Tax Information**
  - ❑ **Sidwell Maps**
- ❑ **Financial Information**
  - ❑ **Financial Institutions**
  - ❑ **Accountant Information**
  - ❑ **Commerce Clearing House (CCH) Publications (Capital Transactions)**
- ❑ **PRP Information on EPA Databases**
  - ❑ **CERCLIS**
  - ❑ **IDEA**
  - ❑ **FINDS**
  - ❑ **ERNS**
- ❑ **Electronic Database Review**
  - ❑ **Choice Point**
  - ❑ **Dun & Bradstreet**
  - ❑ **Lexis/Nexis (or Westlaw)**
  - ❑ **Corporate Information**
  - ❑ **Prior lawsuits, bankruptcy filings, SEC filings**
  - ❑ **Internet sources**

19. **OSC plans for:**

- ❑ **Removal action**
- ❑ **Removal scoping**
- ❑ **Public participation**
- ❑ **Establish administrative record**

20. **Based on information gathered to date, appropriate enforcement activities should be taken:**

- ❑ **Issue information request**
- ❑ **State an opportunity, in the information request, for the PRPs to provide information on additional PRPs**
- ❑ **Initiate title search**
- ❑ **Review relevant site records**
- ❑ **Initiate PRP search report**
- ❑ **Oral/written general notice letters issued to known PRPs**

21. **OSC prepares Action Memorandum**

- ❑ **Develop negotiation strategy**
- ❑ **Prepare draft administrative order on consent (AOC)**
- ❑ **Negotiate AOC or issue unilateral administrative order (UAO)**

[Note: when issuing UAOs, the enforcement team should follow guidance on Administrative Reforms - the UAO should be issued equitably to the largest manageable number of parties and the team should document the reasons why the UAO is not issued to all PRPs, if appropriate]

22. **Site cleanup:**

- ❑ **PRP-lead**
- ❑ **Fund-lead**

23. **Cost recovery phase:**

Complete enforcement investigations:

- ❑ **Followup on earlier PRP search**
- ❑ **Update title search if necessary**

Cost recovery activities:

- ❑ **Itemized cost summary**
- ❑ **Send demand letters**
- ❑ **Cost recovery referral**
- ❑ **Close-out memorandum (where appropriate, if case is not referred to DOJ)**
  - ❑ **Cost documentation package**
  - ❑ **Work performed documents**

Please use the following space to provide additional noteworthy information regarding this checklist and the site:

_____

_____

_____

_____

_____

_____

PLEASE ATTACH ALL RELEVANT INFORMATION THAT HAS BEEN REFERENCED IN THIS CHECKLIST AND DISTRIBUTE TO THE APPROPRIATE REGIONAL CIVIL INVESTIGATOR, SITE FILE, AND OTHER EPA OR STATE PERSONNEL AS APPROPRIATE.

E

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

MAR 31, 1993

MEMORANDUM

SUBJECT: Revised Policy on Discretionary Information Release Under CERCLA (OSWER Directive 01a)

FROM: Bruce X. Diamond, Direct
Office of Waste Programs Enforcement

William A. White, Enforcement Counsel for Superfund
Office of Enforcement

TO: Hazardous Waste Division Directors, Regions I - X
Regional Counsels, Regions I - X

This memorandum transmits the Revised Policy on Discretionary Information Release Under CERCLA, OSWER Directive 9835.12-01a. The draft policy was issued for review and comment on September 3, 1992.

OSWER Directive 9835.12-01a revises Releasing Information to Potentially Responsible Parties at CERCLA Sites, OWPE and OECM Waste, March 1, 1990, OSWER Directive 9835.12. In addition, the Directive is consistent with Guidance on Preparing and Releasing Waste-in Lists and Volumetric Rankings to PRPs Under CERCLA, OWPE, February 22, 1991, OSWER Directive 9835.16. Finally, the Directive supersedes all other previous policy and guidance on the question of discretionary information release under CERCLA.

We are confident that this revised policy will help to streamline and expedite the CERCLA settlement process. In addition, we believe that the policy will send a clear message to the PRP community that the Agency endeavors to administer the Superfund enforcement program in as fair and equitable a manner as practicable.

We would like to thank your staffs for the assistance they provided in developing this policy. Questions concerning implementation of the policy may be addressed to Bruce Gruenewald in the Office of Waste-Programs Enforcement (OS-5502G/FTS 703603-8935) or Patricia Sims in the office of Enforcement (LE-134S/FTS 202-260-2860).

Attachment

Superfund Branch Chiefs, Regions I - X
Regional Counsel Branch Chiefs, Regions I - X
PRP Search Chiefs, Regions I -

Revised Policy on Discretionary
Information Release Under CERCLA
OSWER Directive 9835.12-01a

OSWER Directive 9835.12-01a revises Releasing Information to Potentially Responsible Parties at CERCIA Sites, OWPE and OECM Waste, March 1, 1990, OSWER Directive 9835.12. In addition, the Directive is consistent with Guidance on Preparing and Releasing Waste-in Lists and Volumetric Rankings to PRPs Under CERCLA, OWPE, February 22, 1991, OSWER Directive 9835.16. Finally, the Directive supersedes all other previous policy and guidance on the question of discretionary information release under CERCLA.

Information release is an important means by which the Agency can facilitate PRP organization and coalescence. This serves the Agency's interests by helping to streamline and expedite settlements with PRPs. The purpose of this revised CERCLA information release policy is to minimize potential impediments to facilitating PRP organization and coalescence.

Consequently, information on PRP waste contribution at CERCLA sites normally should be made available to all PRPs as soon as practicable, preferably well before special notice is issued. Regions should consider releasing information through PRP meetings or directly to PRPs or PRP steering committees.

Information on PRP waste contribution at CERCLA sites, including that developed by EPA, can consist of manifests, waste tickets, logbooks, billing records, canceled checks, process engineering information, waste-in lists, volumetric rankings, and responses to section 104(e) information requests. Generally, information on PRP waste contribution should be released to PRPs and not withheld, nor should such information be made available only through Freedom of Information Act (FOIA) requests.

If information on PRP waste contribution is potentially subject to claims of privilege or FOIA exemptions, there nonetheless should be a preference in favor of release. Information subject to privileges or exemptions should be withheld only if a case-specific determination is

made by program personnel and legal counsel (and briefly noted in the case file) that an important purpose is served by withholding the information from the PRPs or the public. However, documentation concerning the exercise of prosecutorial discretion, such as which parties will be noticed or pursued in litigation, normally would not be releasable. When releasing information, the Agency must, however, ensure that disclosure of information that may be entitled to confidential treatment is made pursuant to section 104(e)(7) of CERCLA and 40 CFR Part 2.11

1In addition, under Agency policy, documents falling within Exemptions 7 (C) (privacy information) and 7 (D) (confidential informants) of FOIA are subject---to mandatory withholding. Sometimes, however, information falling within these exemptions will be contained in otherwise releasable records, and this information must be redacted prior to release.

The Agency also should make reasonable efforts to assist de minimis parties and parties unfamiliar with Superfund in the coalescence process by providing them with additional Superfund program information. De minimis parties can be small businesses or others with little or no previous Superfund experience. The Agency can implement this aspect of the policy by distributing Superfund background information prior to PRP meetings, and by holding special meetings for parties who are new to the program or who lack experience in the CERCLA settlement process.

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures 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 action at variance with this guidance and its internal implementing procedures.

F

Party Information

*This Quick Reference Guide will provide information on how to access, view, and enter information into the **Party Information** screens in the Enforcement module of WasteLAN. The **Party Information** screen contains relevant data pertaining to a Party at a site. There are eight tabs in the **Party Information** section which contain general party information, the sites at which each party is involved, their involvement, contacts, and other pertinent information.*

User Access Roles for Party Information Screen

Read Only: Headquarters Manager, Read Only, Community Involvement Coordinator, Headquarters Staff, Headquarters Budget/SCAP Coordinator.
Delete/Edit Rights: Regional Manager, Site Manager, Administrative Support/Data Entry, Superuser/All, Remedial Project Manager, Regional Attorney, Site Assessment Manager, On-Scene Coordinator, Civil Investigator, Cost Recovery Specialist/ Data Entry, Office of Regional Council (ORC) Data Entry Staff, IMC/IMC Staff/Budget Coordinator, Regional Manager Reviewer, Cost Recovery Coordinator, Brownfields Coordinator.

Accessing and Viewing the Party Information Screens

1. To access the **Party Information** screens from the Views menu, select Enforcement, Party Search/Information, and then Party Search. The **Party Search/ Information** screen is displayed.

   You can also access the Party Information screen by highlighting (click once) a party in either the 'Parties in Search Results' or 'Parties Associated With Current Site' boxes on the **Party Search** screen and clicking the *Info* button, or by clicking the *Add Party* button on any ***Parties*** tab within the Enforcement module.

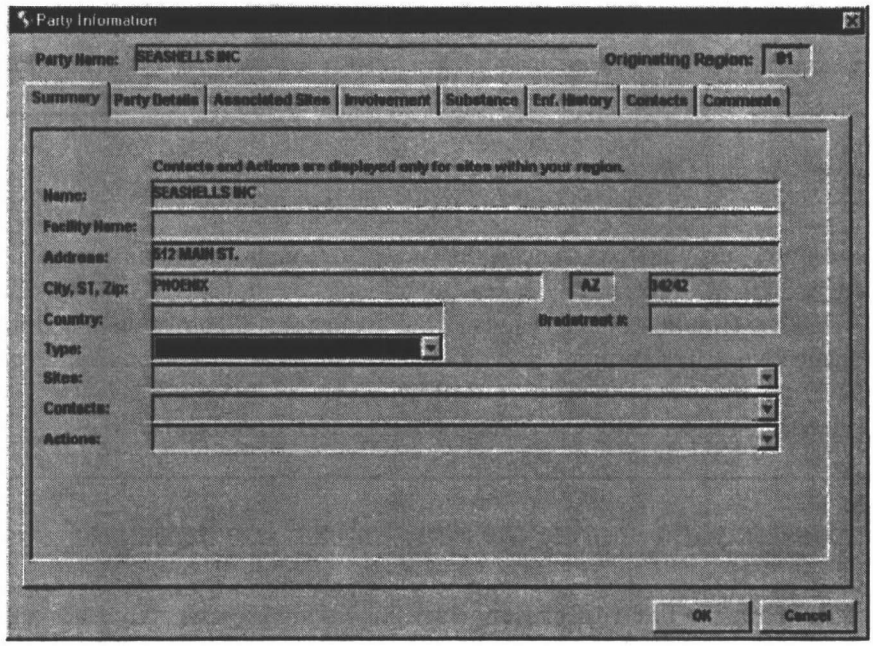
   NOTE: *For more information on searching for a party on the **Party Search/Information** screen, please see the Party Search/Information Screen Quick Reference Guide.*

Party Information Tabs

The Party Information screens contain data pertaining to a party at a site, including the party name, address, the sites at which they're involved, their involvement, and contacts. There are eight tabs in the Party Information section: ***Summary, Party Details, Associated Sites, Involvement, Substance, Enforcement History, Contacts, and Comments.***

Party Information

Summary Tab



The ***Summary*** tab gives you an overview of the **Party Information** section. The **Party Information** screen defaults to the **Summary** tab when accessed by clicking on the *Info* button on the **Party Search/Information** screen. These fields are uneditable. Information on the ***Summary*** tab includes Party Name, Address, Party Type and Sites and Actions associated with the party. To enter information, double-click on the field and you will be brought to the tab that contains the data entry screen for that field. For example, if you click on the Party Name field, you will be brought to the ***Party Details*** tab.

Some fields look like a dropdown list. These are all the fields where it is possible to select multiple values on the data entry screen. On this screen, the dropdowns display all sites with which the party is associated, the contacts related to the party, the Actions associated with the party, and the party type.

You will always have to return to the ***Summary*** tab to save the information you entered on each of the other tabs.

Party Details Tab

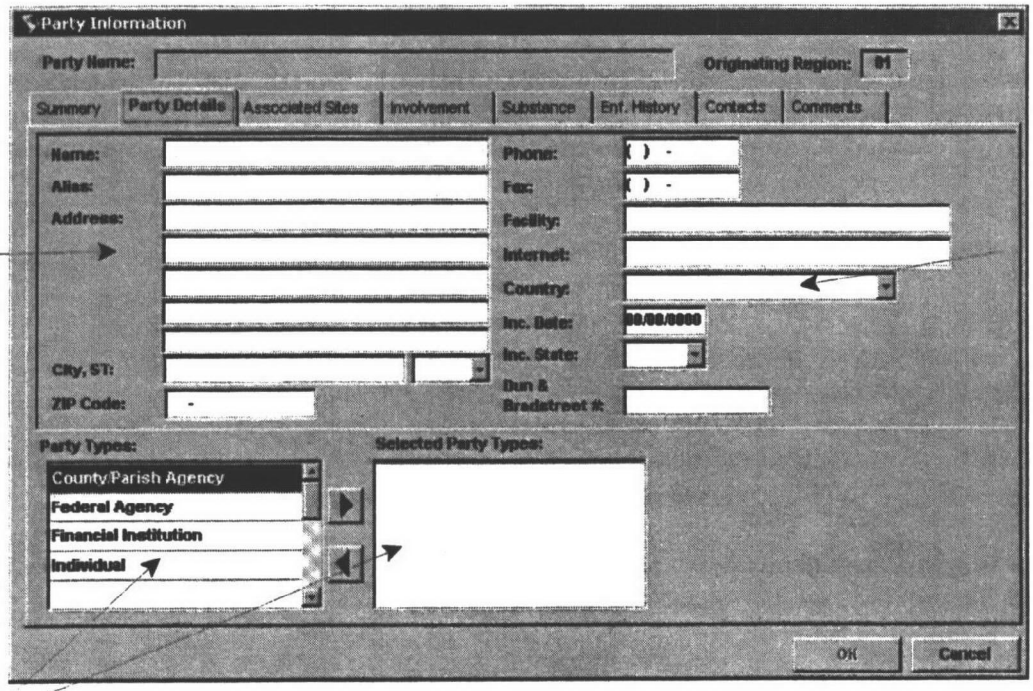
The ***Party Details*** tab is where you will add the basic information about the party. The **Party Search/Information** screen defaults to the **Party Details** tab when accessed by clicking the *Add Party* button on the **Party Search/Information** screen. All fields on this tab are editable unless the party has been sent a General or Special Notice letter or is associated with an Enforcement action.

1. To access the Party Details, click on the ***Party Details*** tab or double-click on the Name, Facility Name, Address, City, ST, Zip, Country, Bradstreet #, or Type fields on the ***Summary*** tab.

2. Type in information in the appropriate field for the Party Name, Alias, Address, City, State, Zip Code, Phone Number, Fax Number, Facility Name, Internet Address, Country, Date and State in which the party was incorporated, if appropriate, and Dunn & Bradstreet number. The system only requires that you enter the Party Name. A 1999 OSRE memo, however, requires additional information be entered for the party, for example the Party Address. Entering the address will increase the usability of the data; help reduce the number of duplicate parties in the system; eliminate data quality issues; and allow you to create and print mailing labels. If a user selects a country from the Country dropdown box and picks something other than "United States", the "Phone", "Fax", and "Zip Code" will be replaced with "Int'l Phone", "Int'l Fax", and "Postal Code." The "State" field will be deactivated and the new International fields will lack the formatting of the US codes.

Party Information

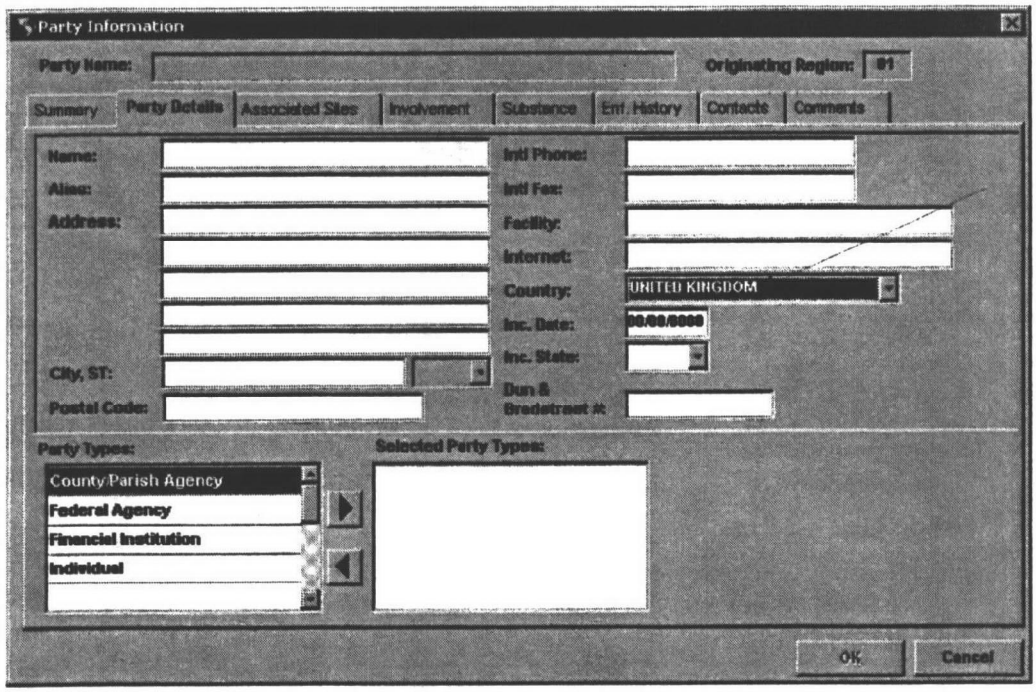
3. Identify the party type using the drag and drop box. Multiple values are allowed.



Fields to enter party address information

Use these fields to indicate the party type

Use this dropdown box to identify the country for the party you are entering. If the Country field is blank, or is populated with "United States", the Phone, Fax, and Zip Code fields will appear.



When the Country is selected and set to something other than Blank or "United States", the Phone, Fax, and Zip Code fields are replaced by "Intl Phone", "Intl Fax", and "Postal Code." The "State" field will be deactivated.

Party Information

Associated Sites Tab

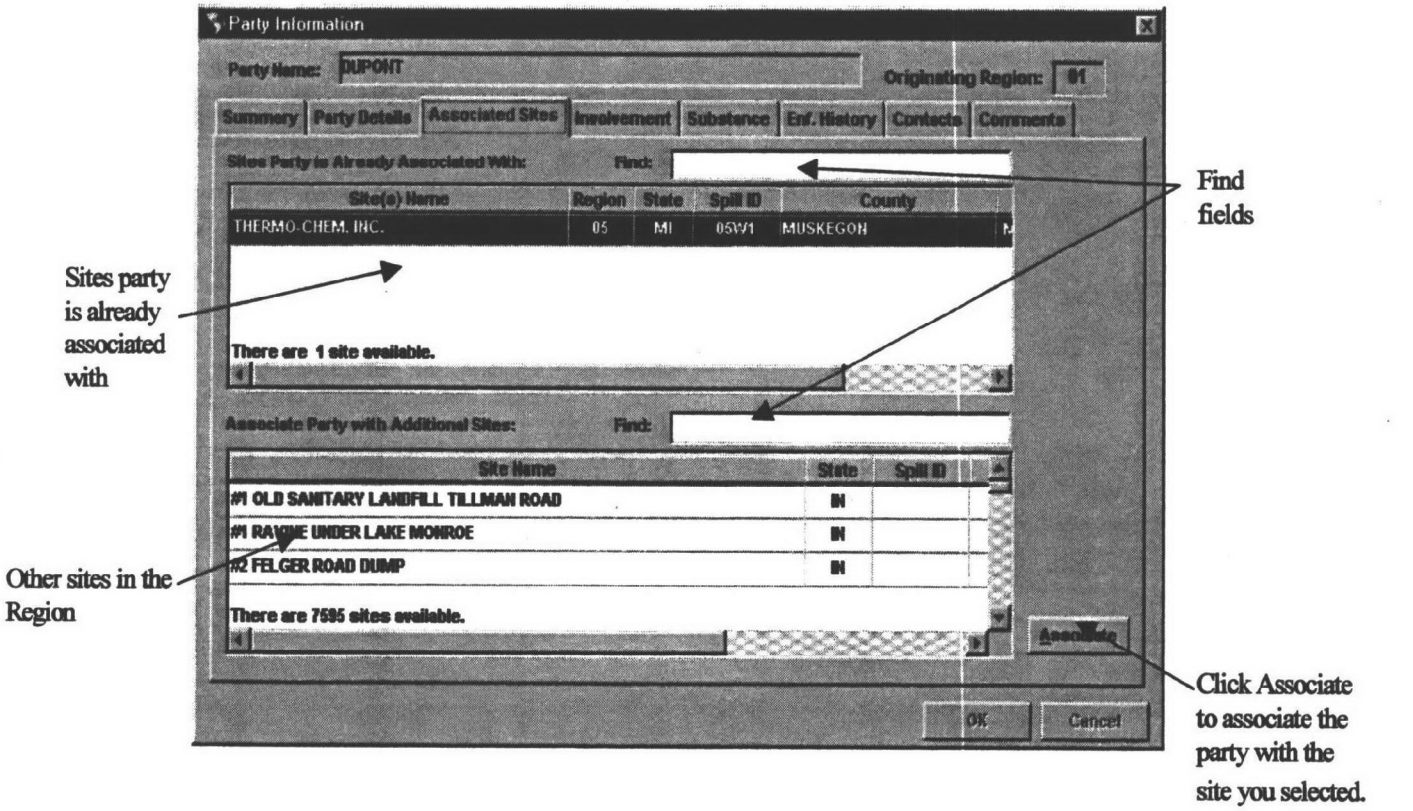
The ***Associated Sites*** tab displays the sites at which the PRP is involved. This tab is used to associate a party to a number of sites or a site other than your "global" site without going back to the **Site List**. If you are associating parties with the "global" site, you don't need to go to this tab. Just go back to the ***Summary*** tab to save your data and associate the party to the site.

1. To access the ***Associated Sites*** tab, double-click on the Sites field on the ***Summary*** tab, or click on the ***Associated Sites*** tab.

2. To see if a site has already been associated with the party, click in the Find field at the top of the 'Sites Party is Already Associated With' box. The closest alphabetical match will be displayed.

3. To search for a site with which you wish to associate the party, click in the Find field at the top of the 'All Sites in Current Region' field. The closest alphabetical match will be displayed.

4. To associate the party, highlight (click once) the desired site in the 'Associate Party with Additional Sites' field and click the *Associate* button. The ***Involvement*** tab is displayed.



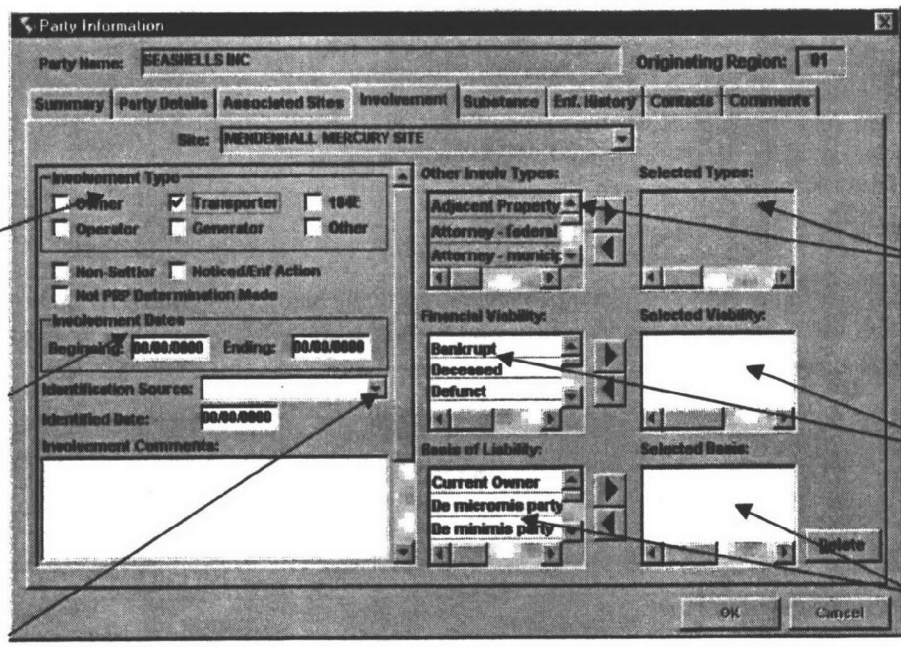
Party Information

The Involvement Tab

The ***Involvement*** tab allows the user to enter information on how the party is involved with the site.

1. To access the ***Involvement*** Tab, double-click on the Sites dropdown list on the ***Summary*** tab, click the *Associate* button on the ***Associated Sites*** tab, or click on the ***Involvement*** tab.

2. You are required to choose at least one Involvement Type. To select the Involvement Type, click in the appropriate box. A check mark will be displayed. If you choose "Other Involvement Type," the system requires you to select an "Other Involvement Type" from the drag and drop box on the right. To do this, highlight (click once) the desired "Other Involvement Type" on the left side of the screen and click the right arrow button or drag and drop the value into the Selected Types box. If you try to save your changes without indicating an "Other Involvement Type," a message will appear reminding you to select this field.



Check one of the Involvement Types

Other Involvement Type drag and drop field

Type the beginning and ending involvement dates in these fields

Financial Viability drag and drop box

Basis of Liability drag and drop box

Select an identification source from the dropdown list

3. Below the Involvement Types are three check boxes: Non-Settlor, Noticed/Enforcement Action and Not PRP Determination Made. The Noticed/ Enforcement Action box indicates that the party has been sent a general or special notice letter or has been associated with an enforcement instrument or litigation action. If you associate the party with a General or Special Notice Letter, Litigation action, or Enforcement Instrument, WasteLAN will automatically check the Noticed/Enforcement Action box.

   NOTE: *Users cannot uncheck the Noticed/Enf Action box after it has been system generated or has been saved. Parties where the Noticed/Enf Action box has been checked are snapshot to the national database and the other regions.*

Party Information

4. The Not PRP Determination Made checkbox indicates that determination has been made that the party is not a PRP. Similar to the Noticed/Enf Action checkbox, the Not PRP Determination Made checkbox can be manually entered or system generated. WasteLAN will automatically check in the Not PRP Determination Made box if you check "Other"as the only Involvement and select "Prospective Purchaser" as the only Other Involvement Type. If the checkbox is system generated, a message will pop up alerting you that the box has been checked. You can uncheck the Not PRP Determination Made box at anytime.

   NOTE: *Once a party has been snapshot it will always be available in the National database even if you later decide a party should not have received a notice letter or you make a determination that a party is not a PRP and check the Not PRP Determination Made checkbox.*

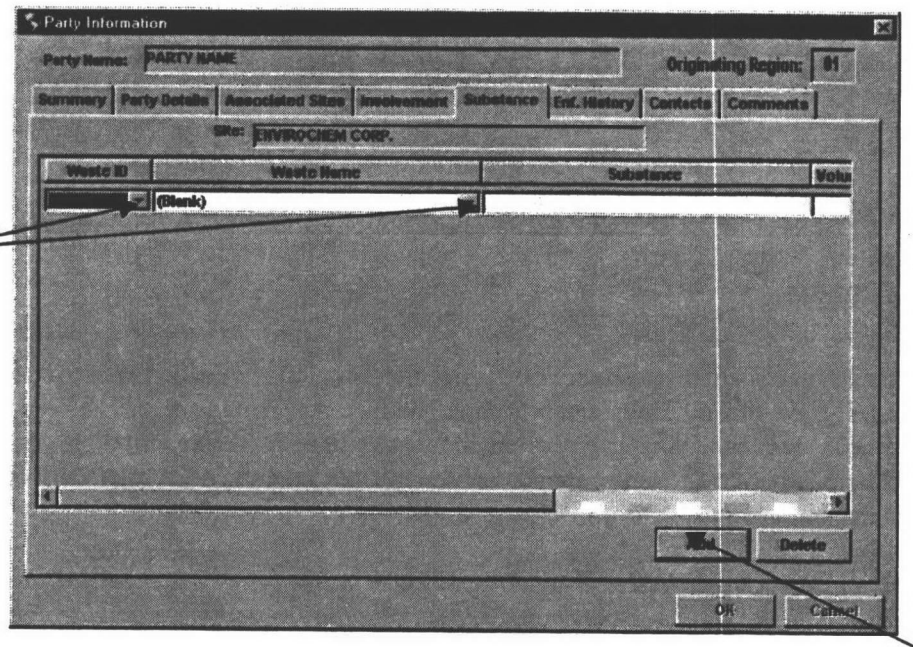
5. The ***Involvement*** tab also contains data fields to indicate the Basis of Liability and the Financial Viability of the party. These fields are drag and drop fields so that several selections may be made. To select a value in any of these drag and drop boxes, highlight the desired item in the 'Financial Viability' box or the 'Basis of Liability' box and click the right arrow button or drag and drop it from the left box to the right box.

The Substance Tab

The ***Substance*** tab allows you to associate the party with the wastes at a site.

1. To access the ***Substance tab*** click on the ***Substance*** tab.

2. To add a substance, click the *Add* button. You can enter a waste by selecting a Waste ID or Waste Name from the dropdown lists, or typing the substance name in the Substance Name field. If you select a Waste ID the system will display the Waste Name and vice versa.



Party Information

Using the Enforcement History Tab

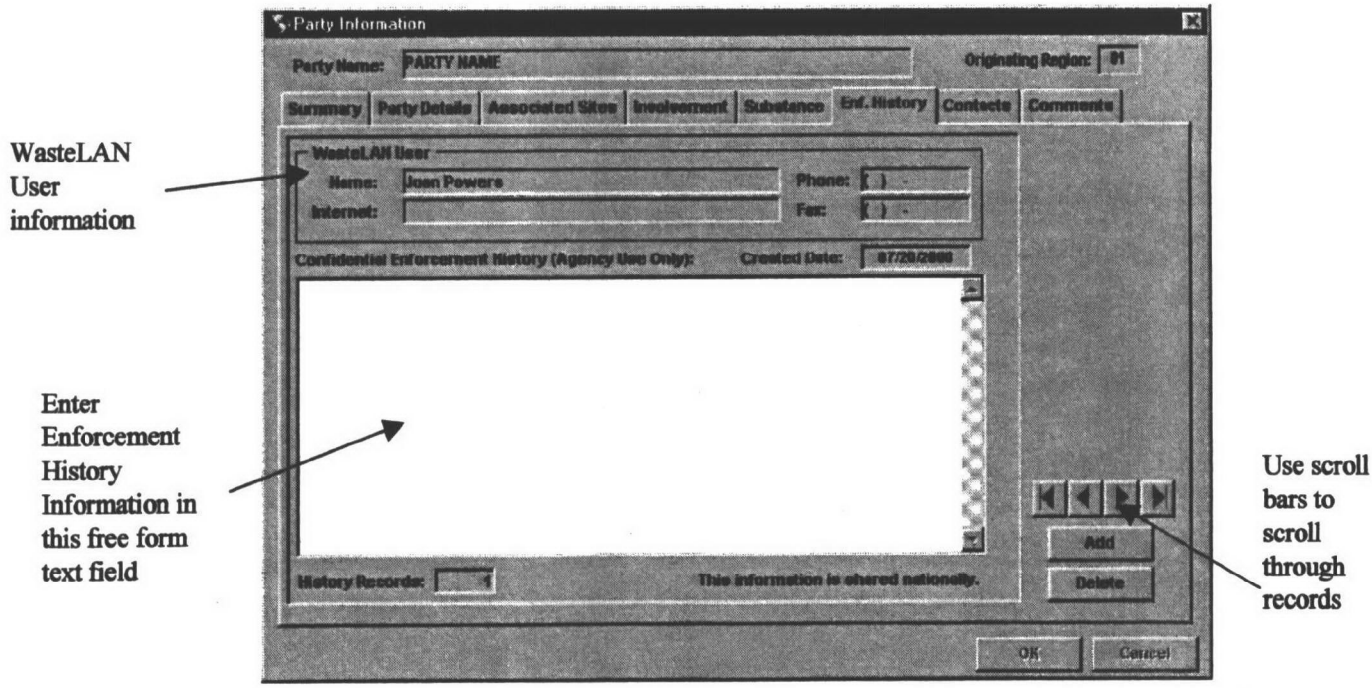
The purpose of the ***Enforcement History*** tab is to enter confidential information on your enforcement experiences with a party.

1. To access the ***Enf History*** tab click on this tab.

2. The information on the top of the tab is automatically filled based on your User information. The arrow keys on the bottom right of the screen allow you to scroll through multiple entries. The History Records field shows how many entries there are for the party. The enforcement history is shared with all regions.

3. To enter comments on your experiences with the party, click in the Confidential Enforcement History field and begin typing.

4. To add a new record, click the *Add* button and enter the appropriate information. To delete an existing record, click the *Delete* button.



Party Information

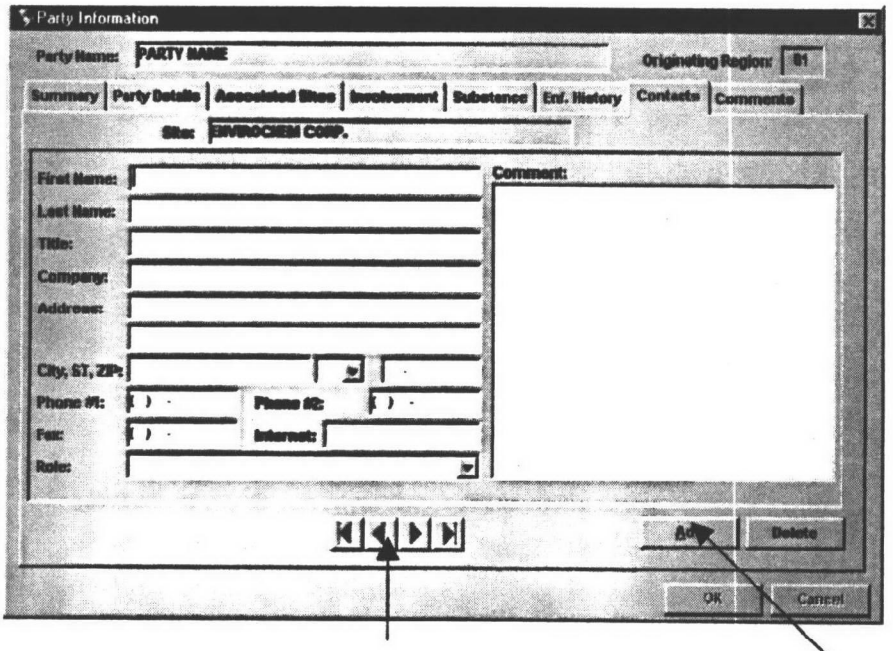
Contacts Tab

On the ***Contacts*** tab, you can enter information about people related to a party, for example, the party's attorney. The tab is the same as the Name List screen in WasteLAN. However, the only roles you will see are those related to a party. You must select a role for the contact by choosing one from the dropdown list.

1. To access the ***Contacts*** tab, double-click in the Contacts field on the ***Summary*** tab, or select the ***Contacts*** tab.

2. Enter the contact's name and address information and select a role. To see all the contacts for the party, use the arrows at the bottom of the screen.

3. To add a new contract click the *Add* button and enter the appropriate information. To delete an existing contact, click the *delete* button.



Use the scroll bars to scroll through the Contacts

Click the Add or Delete buttons to add or delete a Contact

Party Information

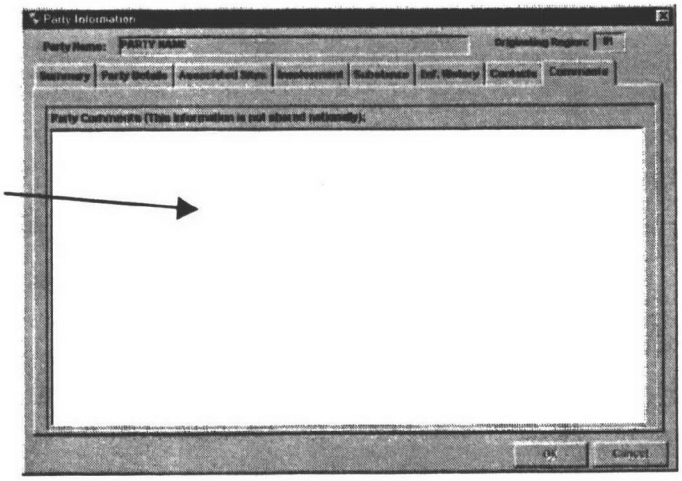
Comments Tab

The ***Comments*** tab allows you to enter comments about the party. The comments are not site specific and can only be viewed in your region. If you wish to make comments about a party that are specific to a site, you can do that on the **Involvement** tab.

1. To access the ***Comments*** tab click on the ***Comments*** tab.

2. To enter comments about the party click in the Party Comments field and begin typing.

Enter Comments here



Exiting the Party Information Screens

To exit the **Party Information** screens and save the site association and the information on the party, you must go back to the ***Summary*** tab. Clicking the *OK* button will bring up a message asking if you want to save your changes. Click *Yes* to save your changes and exit the **Party Information** screens.

G

CHECKLIST OF
PRP SEARCH TASKS

***NOTE:** This checklist is intended as a tool, listing tasks which may be assigned or performed during PRP searches, depending on site enforcement strategy and needs. The list which follows does not imply that all tasks must or should be performed, and the sequence in which tasks are performed should be governed by site strategy rather than the order listed below.*

Region: _____ Site Name: _____

Location: _____

TASK	TASK SELECTION CRITERIA / CONDITIONS

1. ☐ Agency Record Collection and File Review

Gather and organize the information; review records to extract PRP information and leads

Files are:	File Location	# of Pages
☐ Federal		
☐ State		
☐ Local		
☐ Other		

Use this space to describe anything unique about the records and their condition including business confidential, contamination, travel involved, access, other sources besides hard copy, etc.

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2. ☐ Title Searches ***Note: Recommend that title searches begin with the first industrial activity or use of the property. Alternatively, 50 years or the end of World War II may be used as a starting point for title history.***

A. ☐ Simple Title Search	Site involves less than five parcels and the site does not have a long history of industrial use.
B. ☐ Complex Title Search	Site involves more than five parcels and/or has a long history of industrial use.
C. ☐ Unknown Title Search	A site property description will need to be developed by EPA, or EPA's enforcement contractor along with an estimate of the title search cost.
D. ☐ Title Search for Recorded Instruments	Includes deeds, leases, mortgages, liens, plate maps, contracts. Necessary to support site history and PRP list. If litigation is expected, certified copies (see next task) are usually required for admissibility.
E. ☐ Certified Copies	Includes deeds, leases, mortgages, liens, death records, wills, lawsuits and contracts. Obtain certified copies if litigation is expected and case attorney requires certified copies for court admissibility.
F. ☐ Chain of Title	A chronological list of title instruments for quick reference to title transactions over time.
G. ☐ Property History Narrative	Requested for more complex sites when a detailed narrative description of property history would assist case development.

TASK	TASK SELECTION CRITERIA / CONDITIONS
3. ☐ Interviews with Government Officials	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.
4. ☐ Records Compilation	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 records, records may be computerized.
5. ☐ Compliance History	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.
6. ☐ PRP Status/PRP History	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.
7. ☐ PRP Name and Address Update	Current name and address information is obtained for identified PRPs. Includes name, address, registered agent, mergers, and name changes.
8. ☐ CERCLA 104 (e) Letters	EPA identifies PRPs and collects evidence by sending section 104(e) information request letters. The information gathered from 104(e) letters is critical to site history, status, chemical use, disposal, volume, and other information to determine liability.
9. ☐ Financial Status	Solicit financial information through CERCLA 104(e) authority regarding the financial condition of the PRPs. This task can provide PRP information such as financial status, officers, and current business operations.
Develop financial information for: (Identify public vs. private companies, etc.)	
A. ☐ Individual PRPs	Attach list of names and addresses
B. ☐ Partnership	Attach list of names and addresses
C. ☐ Corporation	Attach list of names and addresses
D. ☐ Exempt Organizations	Attach list of names and addresses
E. ☐ Other	Attach list of names and addresses
F. ☐ CERCLA 104(e)/ RCRA 3007(c) Letters	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.
10. ☐ History of Site Operations	*Note: This task may be more appropriately performed after issuance of information request 104(e) letters and the review of PRP files.* 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. Particularly useful if many operators or various types of operations were involved at the site.

Checklist for Tasking
Continued –

TASK	TASK SELECTION CRITERIA / CONDITIONS
11. ☐ Report Preparation	PRP reports should include sections on the site background, project approach, contracts and sources, site history, PRPs, and conclusions/recommendations.
12. ☐ Aerial Photographs and Sanborn Maps	Aerial photographs and Sanborn maps can provide detailed site information without accessing the site. They can also be used to compare site characteristics over a period of time.
13. ☐ CERCLA Subpoena Authority	Authority to serve administrative subpoenas to obtain evidence from PRPs and others. The subpoena is useful in situations when the PRP may not respond to the information request under 104(e) e.g., obtaining financial and account records from financial institutions.
14. ☐ Field Survey	This task is used to gather additional evidence through field activities such as general field inspection, document review, personal interviews, and drum label recording. Usually conducted only when there is no other information available about a site.
15. ☐ Industrial Survey	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.
16. ☐ PRP File Review	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.

Use this space to describe anything unique about the records and their condition including business confidential, contamination, travel involved, access, other sources besides hard copy, etc.

17. ☐ Private Citizen/PRP Interview	Interviews with persons known or suspected to possess unique information about the site. Interviews can be conducted via telephone, or in person at the discretion of the investigator and/or enforcement specialist. Detailed interviews, when needed, can be documented by a transcript.
18. ☐ EPA Investigations	Investigations can be useful in locating individuals, developing information regarding closely held financial assets, and interviewing parties with knowledge of the site activities. If a potential for danger exists, contact appropriate law enforcement personnel, such as EPA CID special agents, building security, or local police.
19. ☐ CERCLIS	CERCLIS is an EPA database which generally contains PRP information such as: name, addresses, types of letters sent (notice, demand and information request) and the dates sent, orders issued, and kind of PRP (owner, operator, generator, or transporter).

TASK	TASK SELECTION CRITERIA / CONDITIONS
20. ❑ Waste Stream Inventory	Compile an accurate inventory of wastes that were disposed of at the site by reviewing operating logbooks, analytical reports, and waste stream records.
21. ❑ Process Chemistry Analysis	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.
22. ❑ Database(s)	
A. ❑ Correspondence	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.
B. ❑ Inventory	Information management system 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.
C. ❑ Transactional	Site transaction databases are used to rank PRPs based on quantified site usage information. (See also Generator Ranking)
23. ❑ Financial Assessment	This task provides a more detailed analysis of a PRP's financial situation than the financial status task.
24. ❑ Generator Ranking	This is usually a work product(printout) from a transactional database project (see #22 above). The ranking orders generators by waste volume or other comparable unit.
25. ❑ Property Appraisal/Property Survey	Appraisal of site property owned by a PRP which may have value. Appraisal may focus on contaminated state or post-remedial state.

Please identify person completing this checklist:

Name: _____ Title: _____

Region/Other: _____ Phone Number: _____

Mailing Address: _____

H

List of Team Members for the PRP Search Enhancement Team

August 14, 2003

Team Member	Address
Doug Ballotti (P) (312) 886-4752 (F) (312) 886-4071	**U.S. EPA, Region 5** 77 West Jackson Boulevard/S-6J Chicago, IL 60604-3507
Lisa Blum (P) (202) 564-4283 (F) (202) 501-0269	**Office of Site Remediation Enforcement** **Regional Support Division** 1200 Pennsylvania Ave., N.W./2273A Washington, D.C. 20460
Nancy Deck, Team Leader (P) (202) 564-6039 (F) (202) 564-0074	**Office of Site Remediation Enforcement** **Policy & Program Evaluation Division** 1200 Pennsylvania Ave., N.W./2273A Washington, D.C. 20460
Clarence Featherson (P) (202) 564-4234 (F) (202) 501-0269	**Office of Site Remediation Enforcement** **Regional Support Division** 1200 Pennsylvania Ave., N.W./2273A Washington, D.C. 20460
Cheryle Micinski (P) (913) 551-7274 (F) (913) 551-7925	**U.S. EPA, Region 7** 901 N. 5th Street Kansas City, KS 66101-2728
Monica Gardner, Mgmt. Advisor (P) (202) 564-6053 (F) (202) 564-0074	**Office of Site Remediation Enforcement** **Policy & Program Evaluation Division** 1200 Pennsylvania Ave., N.W./2273A Washington, D.C. 20460
Harry Steinmetz (P) (215) 814-3161	**U.S. EPA, Region 3** 1650 Arch Street/3HS11 Philadelphia, PA 19103

List of Regional Contacts
for the
PRP Search Enhancement Efforts

August 14, 2003

Region	Regional Contact	Address
Region 1	**James Israel** (P) (617) 918-1270	**U.S. EPA, Region 1** 1 Congress Street
Alt.	**Barbara O'Toole** (P) (617) 918-1408	Boston, MA 02203-2211
Region 2	**Carol Berns** (P) (212) 637-3177 (F) (212) 637-3104	**Office of Regional Counsel** 290 Broadway - 17th Floor New York, New York 10007-1866
Region 3	**Harry Steinmetz** (P) (215) 814-3161 (F) (215) 814-3005	**PRP Investigations &** **Site Information Section** 650 Arch Street/3HS11 Philadelphia, PA 19103
Region 4	**Herb Miller** (P) (404) 562-8860 (F) (404) 562-8842	**Cost Recovery Section** **Waste Management Division** 61 Forsyth Street, S.W. Atlanta, GA 30303
Region 5	**Thomas Marks** (P) (312) 353-6591 (F) (312) 886-0753	**Remedial Enforcement Support Section** 77 West Jackson Blvd. (Mail Code SM-5J) Chicago, IL 60604
Region 6	**Buddy Parr** (P) (214) 665-6670 (F) (214) 665-6660	**Cost Recovery Section** **Superfund Division** 1445 Ross Avenue (Fountain Place)
Alt.	**Janice Bivens** (214) 665-6717	Dallas, TX 75202-2733
Region 7	**Dianna Whitaker** (P) (913) 551-7598 (F) (913) 551-7925	**U.S. EPA, Region 7** **CNSL/R7** 901 North 5th Street Kansas City, KS 66101
Region 8	**David Broste** (P) (303) 312-6209 **Greg Phoebe** (P) (303) 312-6466	**Office of Enforcement, Compliance, and** **Environmental Justice** 999 18th Street/8ENF-T Suite # 500 Denver, CO 80202-2466
Region 9	**Cliff Davis** (P) (415) 972-3125 (F) (415) 972-3520	**Superfund Division** 75 Hawthorne Street/SFD-7-B San Francisco, CA 94105
Region 10	**Deborah Burgess** (P) (206) 553-0459	1200 6th Avenue (MC: M/S ECL-110) Seattle, WA 98101

On-Line Sources of PRP Information

September 2003

Basic Internet Info and "How to Search" Articles

http://www.matisse.net/files/glossary.html (Glossary of Internet Terms)
http://www.onlinemag.net/JulOL97/net7.html (Internet Search Techniques and Strategies)
http://www.onlinemag.net/OL1998/net9.html (More Internet Search Strategies)

Search engines

http://www.google.com
http://hotbot.lycos.com
http://www.altavista.com
http://www.alltheweb.com
http://www.startingpage.com/html/search.html

Megasearch (search multiple search engines simultaneously)

http://www.ProFusion.com
http://www.metacrawler.com
http://www.thebighub.com
http://www.dogpile.com

Librarian's Index to the Internet

http://lii.org

Netcraft Web Site Finder

http://www.netcraft.com

Who is Database Search (gives info on computer identities)

http://www.arin.net/whois/arinwhois.html

Directories of Directories

http://search.netscape.com
http://search.netscape.com/nscp_browse.adp?id=10 (Reference/Directories)
http://search.netscape.com/nscp_browse.adp?id=57186 (Investigation/Records Research)

Scan millions of listings by name or e-mail address

http://people.yahoo.com
http://www.bigfoot.com
http://www.whowhere.com

Find someone on the Internet

http://my.email.address.is
http://www.startingpage.com/html/lookup.html (Directory of Databases)

E-Mail address searching FAQ

http://www.qucis.queensu.ca/FAQs/email/bigfinding.html

AT&T Nationwide Toll-Free 800/888 Directory.

http://www.tollfree.att.net/tf.html

Reverse Telephone Look-ups

http://www.infospace.com/info/revphone.htm
http://www.reversephonedirectory.com
http://www.anywho.com/rl.html

Telephone Directories

http://www.switchboard.com
http://www.teldir.com/eng/namc/us (Multiple Directories)
http://www.whowhere.lycos.com/Phone

Find people and businesses

http://www.startingpage.com/html/lookup.html
http://yp10.superpages.com

Find companies

http://www.freeality.com/findc.htm
http://www.startingpage.com/html/business.html

ZIP code lookup

http://www.usps.gov/ncsc/lookups/lookup_ctystzip.html
http://www.usps.gov/ncsc/lookups/lookup_zip+4.html
(for local post office telephone number 800-275-8777 option #4)

Find people who have recently moved by e-mail, domain name, address or name

http://www.semaphorecorp.com/default.html

Maps

http://www.mapquest.com
http://MapsOnUs.com
http://www.geographynetwork.com/maps/index.html
http://www.nationalatlas.gov/mapit.html
http://www.epa.gov/enviro/html/mod/mod.html (EPA maps)
http://www.freeality.com/maps.htm (Find map sites)

Scan the Social Security Death Index for the potentially dearly departed

http://www.ancestry.com/search/rectype/vital/ssdi/main.htm

EPA/Environment

http://es.epa.gov/oeca/main/compasst/compcenters.html (EPA Compliance Assistance)
http://www.ert.org (EPA Environmental Response Team)
http://es.epa.gov/oeca/osre (EPA Office of Site Remediation Enforcement)
http://www.epa.gov/OCEPAterms (EPA OCEPA Terms and Acronyms)
http://www2.ihsenv.com (Environmental Information - ENFLEX EH&S Database)
http://www.rachel.org/home_eng.htm (News and resources for environmental justice)
http://www.clu-in.org (Hazardous Waste Clean-up Information - CLU-IN)
http://www.trainex.org (EPA Training-Exchange)
http://es.epa.gov/oeca/oceft/neti.html (National Enforcement Training Institute)
http://www.achmm.org (Academy of Certified Hazardous Materials Managers)
http://www.epsilonsystems.com (Epsilon Solutions training)

Internal EPA

http://intranet.epa.gov/institute (EPA Institute)
http://intranet.epa.gov/fmdvally/policies/policies.htm (EPA Policy Announcements)
http://intranet.epa.gov/oeca/osre (EPA Site Remediation Enforcement InfoBase)
http://intranet.epa.gov/oerrinet (EPA OERR Superfund/Oil IntRAnet site)

Business Sites

http://www.startingpage.com/html/business.html (Directories)
http://www.wsj.com (Wall Street Journal)
http://www.thestreet.com
http://money.netscape.cnn.com/money (Money & Business from CNN Money)
http://localbusiness.com
http://netbusiness.netscape.com
http://www.fool.com (Motley Fool)
http://www.osha.gov/cgi-bin/est/est1 (Search OSHA Inspections)

http://www.cis.org/search.html (Search for Employers employing illegal aliens)
http://www.hoovers.com (Hoovers Company profiles)
http://www.qspace.com (Credit Reports Online)
http://www.thomasregister.com (Search ThomasRegister)
http://www.taxprophet.com (California Certified Taxation Law Specialist)
http://www.sec.gov/edgarhp.htm (Search SEC Filings - EDGAR)

Law

http://www.lawguru.com/search/lawsearch.html
(search on more than 535 legal search engines)
http://uscode.house.gov/usc.htm (Search U.S. Code)
http://www.arnet.gov/far (Federal Acquisition Regulation)
http://www.law.indiana.edu/v-lib/index.html (Virtual Library-Law)
http://supct.law.cornell.edu/supct/index.html (Published Supreme Court opinions)
http://www.martindale.com
(find lawyer by name, location, practice, firm, agency, school, etc.)
http://directory.findlaw.com (Lawyer Directory)

Libraries and Public Information

http://lcweb.loc.gov (Visit the Library of Congress online)
http://www.nhtsa.dot.gov/cars/problems/complain/Index.cfm (Search NHTSA)
http://www.infoplease.com/index.html (Almanacs and more)
http://www.newspapers.com (Locate Local Newspapers)

Bankruptcy

http://www.abiworld.org (American Bankruptcy Institute)
http://home.att.net/~jshablb (Bankruptcy Code in Windows Help File format)

Law Enforcement

http://www.fas.org/irp/gao/osi-97-2/soi_ch4.htm (GAO Investigators Guide to Info.)
http://www.ojp.usdoj.gov/bjs/welcome.html (Bureau of Justice Statistics)
http://virlib.ncjrs.org/LawEnforcement.asp (National Criminal Justice Reference Service)
http://www.iir.com/riss (DOJ's Regional Information Sharing Systems)
http://www.ncjrs.org (National Criminal Justice Reference Service w/ abstracts)
http://www.coplink.com
http://www.copnet.org

Directories of Government Sites

http://firstgov.gov (first click to the U.S. Government)
http://www.tray.com/fecinfo (Federal Election Commission political donations information)
http://www.visi.com/juan/congress (Find your congressperson)
http://www.statelocalgov.net/index.cfm (State and Local Government on the Net)
http://www.genealogy.com/00000229.html (Locate County Courthouses)
http://tracfed.syr.edu (Information about the federal government)

Time.com News Service

http://www.time.com/time

General Travel Information

http://intranet.epa.gov/ocfo/finservices/tmcfaq.htm
http://www.fedtravel.com/gsa/Default.asp
http://home.netscape.com/travel
http://flight.thetrip.com

Per Diem Rates

http://www.policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml

Stock Quotes

http://finance.yahoo.com

Mortgages and Loans

http://www.priceline.com
http://www.bestrate.com
http://www.quicken.com

J

U.S. Environmental Protection Agency

Office of Enforcement and Compliance Assurance

Close Window

Superfund Enforcement Directory (SFED)

Intro to SFED

One of the central functions of the PRP Search Enhancement Team is to encourage and support the sharing of information and coordination of activities among various EPA organizations that are involved in the site remediation enforcement process. Because people with experience and expertise in topics relevant to site remediation enforcement are spread throughout EPA Headquarters and the Regions, it is often difficult to know who to contact for information about a particular subject The purpose of the SFED is to provide a single resource that identifies EPA personnel who are involved in the site remediation enforcement process and their particular areas of expertise They may also function in other roles not reflected in the Enforcement Directory, and may have formal job titles not directly related to site remediation enforcement

SEARCHING THE DIRECTORY

The Enforcement Directory is a searchable contact list of EPA professionals who are involved in the site remediation enforcement process. The SFED enables you to search for EPA personnel by name, Region, PRP search enforcement subject, or PRP search enforcement title.

The search page is divided into sections by search method On the left sidebar, there are two options, a "Submit" option and a "Reset" option. The "Submit" option executes a search using the values entered in the search fields. The "Reset" option clears existing search values and allows you to enter new information.

☒	**Help icon:** This icon, located on the search page, provides quick search tips. Place the mouse over the icon to display the search information in a pop-up box.

Search by name: The "Search by name" search method enables you to search for a person using all or part of either their first or last name To search by name, enter a complete or partial first and/or last name in the fields then click on the "Submit" option on the sidebar or the "Submit" button at the bottom of the page. All personnel matching the search values provided will be displayed.

Search by Region: The "Search by Region" search method provides you with a complete list of EPA personnel by Region To search by Region, select one or more Regions from the scrollable menu. (To select multiple Regions, hold your Shift key to select a range of Regions or hold your Ctrl key to select individual Regions) When you have selected the Region(s), click on the right arrow button to enter the selected Region (s) in the selection box. (To remove a Region from the selection box, select the Region to be removed then click on the left arrow). To execute the search, click on the "Submit" option on the sidebar or on the "Submit" button at the bottom of the page. All personnel for the selected Region(s) will be displayed.

Search by PRP search enforcement subject: The "Search by PRP search enforcement subject" search method enables you to find personnel with knowledge/expertise in a particular subject area. To search by enforcement subject, select one or more subjects from the scrollable menu. (To select multiple subjects, hold your Shift key to select a range of subjects or hold your Ctrl key to select individual subjects). When you have selected the subject area(s), click on the down arrow to move the subjects to the selection box. (To remove a subject area from the selection box, select the subject to be removed then click on the up arrow). To execute the search, click on the "Submit" option on the sidebar or on the "Submit" button at the bottom of the page. All personnel with knowledge/expertise in the selected subject area(s) will be displayed. If you are unable to locate the subject you are searching for in the scrollable subject menu, you may locate it in the titles menu.

Search by PRP search enforcement title: The "Search by PRP search enforcement title" search method enables you to search for personnel by job title. To search by title, select one or more titles from the scrollable menu. (To select multiple titles, hold your Shift key to select a range of titles or hold your Ctrl key to select individual titles). When you have selected the title(s), click on the down arrow to move the titles to the selection box (To remove a title from the selection box, select the title to be removed then click on the up arrow) To execute the search, click on the "Submit" option on the sidebar or on the "Submit" button at the bottom of the page All personnel currently holding the selected title(s) will be displayed.

Sort Tips:
Your search results can be sorted in a variety of ways from the Main Page:

To sort contacts alphabetically by last name, click on the Name and Address heading. To find a specific contact, click the first letter of the contact's last name on the alphabet bar at the top of the screen. The sort will then start with that letter.

To sort contacts numerically by Region/HQ, click on the Region heading. To find a specific Region, click the Region number on the numerical bar at the top of the screen The sort will then start with that Region.

To sort contacts by subject, click on the Subject heading The contacts will be sorted numerically by Region, and alphabetically by subject within each Region

Printing:
To print the entire report once it is generated, click on the "Print List" option located on the left sidebar. To print the report page by page, click on the printer icon at the top of the screen. To return to the Main Page after printing, click on the browser "Back" button.

Email List:
To generate a list of email addresses for selected contacts, click on the "Email List" option on the left sidebar. Once the list has been generated, highlight the email addresses, place your cursor over the highlighted text, right click and choose "Copy", open your email program, and start a new message. Place the cursor in the "To:" field, right click, and choose "Paste."

Mailing Labels:

For mailing labels instructions, click the link above.

If you have any questions or comments regarding the Enforcement Directory please contact Nancy Deck at deck.nancy@epa.gov.

For a more complete guide to SFED, select the "User's Manual" option from the left sidebar of the Main Page.

Note: At this time SFED includes primarily EPA personnel. The directory will be expanded in the near future to include State, tribal, and other organizations that are involved in the site remediation or PRP search enforcement process.

Submit
Reset

Intro to SFED
User's Manual

Superfund Enforcement Directory

To search the directory, select one or more search criteria (Name, Region, Subject, or Title) and provide values to search for in the fields or select from the drop-down menus. Click on the "Submit" option in the sidebar or the "Submit" button at the bottom of the page to execute the search. To clear all fields, click on the "Reset" option on the sidebar.
Note: *When selecting multiple subjects or multiple titles, the search returns all records containing any of the selected subjects or titles*

PRP Search Enforcement Name

First Name [ ] Last Name [ ]

Region

Select from [ ] > < Selected [ ]

PRP Search Enforcement Subject

Select from [ ]

v ^

Selected [ ]

PRP Search Enforcement Title

Select from

Assistant General Counsel
Assistant Regional Administrator
Associate Director for Management
Branch Chief

v ^

Selected [ ]

Submit

Superfund Enforcement Directory

A total of 648 record(s) were found.
(1-10)

Next
Last

Subjects & Titles
View All Records
Search
Print List

Label Instructions
Mailing Labels
Email List

Intro to SFED
User's Manual
Contact us

Sort by Region

1 2 3 4 5 6 7 8 9 10 HQ

Name & Address	Phone / Email	Title	Region	Affiliate	Subject
Balzano, Kristin Mailcode SES, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02144-2023	(617) 918-1772 balzano.kristin@epa.gov	Enforcement Specialist (Paralegal)	01		• Liens • Negotiation/Litigation Support
Beland, Pat Mailcode HIO, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1205 beland.pat@epa.gov		01		• Information Management
Beling, John Mailcode SES, USEPA, Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1712 beling.john@epa.gov	Regional Counsel	01		• 104e Access • Administrative Subpoenas • Insurance Issues
Bosworth, Martha Mailcode HBS, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1407 bosworth.martha@epa.gov		01		• Cost Documentation • Cost Recovery • Electronic Data Management/EARS Workgroup • National PRP Search Conference Participant • Negotiation/Litigation Support • Oversight Billing • Oversight Costs • Statute of Limitations • Work Performed Documents
Boudrot, Diane (Nye) Mailcode SES, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1776 boudrot.diane@epa.gov	Enforcement Specialist (Paralegal)	01		• 104e Information Requests • Bankruptcy • Comfort Letters • Negotiation/Litigation Support • Notice Letters
Brill, Larry Mailcode HBO, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1301 brill.larry@epa.gov	Branch Chief (Superfund/ Remediation and Restoration I Branch)	01		• SF-Remedial Branch Chiefs Mail-out List
Callahan, Pauline Mailcode MHR, USEPA, Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1192 callahan.pauline@epa.gov	Training Coordinator	01		• Training CERCLA/RCRA
Catri, Cindy Mailcode SES, USEPA, Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1988 catri.cindy@epa.gov	Regional Counsel	01		• Applicable or Relevant and Appropriate Requirements • Remedy Review Board
Cavagnero, Richard A. Mailcode HIO, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	(617) 918-1202 cavagnero.rich@epa.gov	Deputy Director (Superfund)	01		
Chin, Stanley Mailcode HBS, USEPA Region 1 1 Congress Street, Suite 1100 Boston, MA 02114-2023	617.918.1401 chin.stanley@epa.gov	Branch Chief (Technical & Support Branch)	01		• SF-Remedial Branch Chiefs Mail-out List

Superfund Enforcement Directory

Superfund Enforcement Directory Contacts

The regional and HQ contacts who will be updating the directory are listed below. For any additions or corrections to the database please contact the following persons

Region	Name	Email
01	Barbara O'Toole	otoole.barbara@epa.gov
01	James Israel	israel.james@epa.gov
02	Carol Berns	berns.carol@epa.gov
02	Lucille Gould	gould.lucille@epa.gov
03	Harry Steinmetz	steinmetz.harry@epa.gov
03	Louise Wilson	wilson.louise@epa.gov
04	Herb Miller	miller.herbert@epa.gov
05	Marsha Adams	adams.marsha@epa.gov
06	Janice Bivens	bivens.janice@epa.gov
07	Dianna Whitaker	whitaker.dianna@epa.gov
08	Greg Phoebe	phoebe.gregory@epa.gov
09	Leslie Owyang_Chin	owyang-chin.leslie@epa.gov
10	Deborah Burgess	burgess.deborah@epa.gov
HQ	Nancy Deck	deck.nancy@epa.gov

This directory was developed by the PRP Search Enhancement Team/Contacts consisting of the following people:

Region	Name	Email
01	Barbara O'Toole	otoole.barbara@epa.gov
01	James Israel	israel.james@epa.gov
02	Carol Berns	berns.carol@epa.gov
03	Harry Steinmetz	steinmetz.harry@epa.gov
04	Herb Miller	miller.herbert@epa.gov
05	Thomas Marks	marks.thomas@epa.gov
05	Douglas Ballotti	ballotti.douglas@epa.gov
06	Buddy Parr	parr.buddy@epa.gov
06	Janice Bivens	bivens.janice@epa.gov
07	Dianna Whitaker	whitaker.dianna@epa.gov
07	Cheryle Micinski	micinski.cheryle@epa.gov
08	Gregory Phoebe	phoebe.gregory@epa.gov
08	David Broste	broste.david@epa.gov
09	Clifford Davis	davis.clifford@epa.gov
10	Deborah Burgess	burgess.deborah@epa.gov
HQ	Clarence Featherson	featherson.clarence@epa.gov
HQ	Nancy Deck	deck.nancy@epa.gov
HQ	Lisa Blum	blum.lisa@epa.gov
HQ	Monica Gardner	gardner.monica@epa.gov

K

EPA

U.S. Environmental Protection Agency, Region IX

Financial Statement for Individuals *

(If additional space is needed, attach a separate sheet)

our name and address *(including zipcodo and county)*		2. Home phone number	3. Marital status
Zip Codo	County	4 Social Security Numbers (optional) a Yours	b. Spouse

Section I — Employment Information

5. Present employer or business *(name and address)*	6 Business phone number	7 Occupation
5a. How long at present employment.		8. Check appropriate box ☐ Wage earner ☐ Partner ☐ Sole proprietor ☐ Corporate officer
9 Spouse's employer or business *(name and address)*	10 Business phone number	11 Occupation
9a How long at present employment		12. Check appropriate box ☐ Wage earner ☐ Partner ☐ Sole proprietor ☐ Corporate officer

Section II. — Personal Information

13. Name, address and telephone number of next of kin or other reference

Date of birth ▶	a. Yours	b. Spouse's	

Section III. — General Financial Information

15 Last three years Federal and state income tax returns filed	15a. Adjusted gross income on returns, per year	15b. List all states these returns were filed in

16. Bank accounts *(include Savings & Loans, Credit Unions, IRA and Retirement Plans, Certificates of Deposit, etc.)*

Name of Institution	Address	Type of Account	Account No.	Balance
Total *(Enter in Item 25)* ▶				

* This information is requested pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S C § 9604, and is not subject to approval of the Paperwork Reduction Act of 1980, 44 U.S.C § 3501, et seq.

Section III - continued — General Financial Information

17 Charge cards, Lines of credit

Type of Account or Card	Name and Address of Financial Institution	Monthly Payment	Credit Limit	Amount Owed	Credit Available
Totals *(Enter in Item 31)* ▶					

18. Safe deposit boxes rented or accessed *(List all locations, box numbers, and contents including estimated market value)*

19. **Real Property** *(Brief description of property and type of ownership)*	**Address** *(Include county, state and parcel number)*
a	
b.	
c.	

20. **Insurance Policies** *(Name of Company)*	Policy Number	Type	Face Amount	Available Loan Value
Total *(Enter in Item 27)* ▶				

21 Additional Financial Information *(Court and administrative proceedings by or against you, legal claims[whether asserted or not], settlement agreements, employment agreements, consulting and similar agreements, "golden parachute" agreements, bankruptcies, repossessions, recent transfers of assets for less than full value, anticipated increases in income, real estate being purchased under contract, real or personal property being held on your behalf, condition of health, information on trusts, estates, profit-sharing plans, inheritance, etc., in or of which you are a participant or beneficiary).*

22. Are you currently receiving retirement benefits as a former civilian or military employee of the federal government? If so, give dates of service, agency or branch of service employed by, and location of employment.

23. Indicate any business entity with which you own five (5) percent or more of the outstanding stock (or other equity interest).

Name of Business Entity	Address	Percentage of Stock	Date Purchased

Section IV. Asset and Liability Analysis

Description	Current Market Value	Liabilities Balance Due	Equity in Asset	Amount of Monthly Payment	Name and Address of Issuer or Lien/Note Holder/Obligee	Date Pledged	Date of Final Payment
Cash and precious metals or gems							
25. Bank accounts							
26 a. Stocks							
b Bonds							
c. Mutual Funds, Partnership Interest, Securities and other Investments							
27. Cash or loan value of Insurance							
28 Vehicles *(Model, year, license)*							
a							
b.							
c.							
29. Real property *(From Item 19)* a.							
b							
c							
30 Other tangible assets (including art, boats, jewelry, options, etc.) or financial debts owed to you in excess of $1000							
a.							
b.							
c.							
d							
31 Bank revolving credit							
32 Other Liabilities (include judgements, notes, tax liens, etc.) a							
b							
c							
d							
e							
f							
g							
33. Federal and state Taxes Owed							
34 **Totals**			$	$	Enter in item 49		

List all transfers real & personal property, including cash (by gift or loan made not at fair market terms) that you have made within the last 3 years (items with a current market value of $1000.00 or more)

Date	Current Market Value	Sale Price You Received (if any)	Description of Property Transferred	To Whom (Indicate relationship to you)	Nature and Conditions of Transfer

Section V. Monthly Income and Expense Analysis

Income			Necessary Living Expenses	
Source	Gross	Net		
35 Wages/Salaries	$	$	47 Rent (Do not show mortgage listed in item 29)	$
36 Wages/Salaries *(spouse)*			48 Groceries (no. of people _____)	
37 Sales Commissions			49 Installment payments	
38 Interest - Dividends			50. Utilities (Gas $ _____ Water $ _____	
39. Net business income			Electric $ _____ Phone $ _____)	
40. Rental income			51 Transportation	
41 Pension/Social Security income			52 Insurance (Life $ _____ Health $ _____	
42 Pension/Social Security income *(spouse)*			Home $ _____ Car $ _____)	
43 Child Support			53. Medical *(describe if in excess of $500.00)*	
44. Alimony			54. Estimated tax payments *(if self-employed)*	
45. Other Income *(e.g investment income, capital gains)*			55. Other expenses *(specify)*	
46. **Total**	$	$	56. **Total**	$

Certification

Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

57 Your signature		58 Date

EPA

U.S. Environmental Protection Agency, Region IX

Financial Statement for Businesses *

(If additional space is needed, attach a separate sheet)

ur name and address *ncluding zipcode and county)*	1a Business name and address *(including zipcode and county)*	2. Business phone number ( )
		4. *(Check appropriate box)* ☐ Sole propretor ☐ Trust ☐ Partnership ☐ Other (specify) ☐ Corporation
3 Name and address of registered agent *(including zipcode and county)*		

5 State of incorporation (or country if foreign)	5a Employer Identification Number	6. Date of Incorporation	7a. Type of business / 7b SIC Code

8. Information about owner, partners, officers, directors, major shareholder (5% or more stock ownership), other holders of more than 5% equity interest, holders of rights to purchase more than equity interest and other persons with an ability to control

Name and Title	Effective Date	Home Address	Social Security Number (optional)	Phone Number	Total Shares or Interest

ction I — General Financial Information

9. Last three years Federal and state income tax returns ▶	Forms Filed	Tax Years ended	Net income before taxes

10. Bank accounts *(List all types of accounts including checking, savings, certificates of deposit, etc.)*

Name of Institution	Address	Type of Account	Account No.	Balance
		Total *(Enter in item 19)* ▶		

11 Bank Credit available *(Lines of credit, etc.)*

Name of Institution	Address	Credit Limit	Amount Owed	Credit Available	Monthly
Totals ▶					

.ocation, box number, and contents of all safe deposit boxes rented or accessed

* This information is requested pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604, and is not subject to approval of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq

Section I - *continued* **General Financial Information**

13 Real property

Brief Description and Type of Ownership	Address *(include county, state and parcel number)*
a.	
b.	
c	

14. Insurance policies owned with business as beneficiary

Name Insured	Company	Policy Number	Type	Face Amount	Available Loan Value
		Total *(Enter in Item 21)* ▶			

15. Additional Information *(Court and administrative proceedings by or against the business, settlement agreements, agreements to purchase or sell tangible or financial assets other than in the ordinary course of business, legal claims [whether asserted or not], bankruptcies, repossessions, recent transfers of assets for less than full value, anticipated increases in income, options to buy or sell real or personal property, real or personal property being purchased under contract, real or personal property being held on behalf of the business).*

15a. List all subsidiaries owned, joint ventures, partnerships and other entities controlled by the business. Provide current market value of the business' interest in such subsidiary or other entity.

16. Federal government departments or agencies with whom you have a contract for payment of goods or services

Agency Name	Address	Contract No.	Amount to be Received	Payment Due Date

16a. Federal government departments or agencies that have extended or given the business loans, grants or assistance, or to which you have applied (or anticipate applying for any loan, grant, or assistance) in the past 5 years.

17 Accounts/Notes receivable *(Include loans to stockholders, officers, partners, etc.)*

Agency Name	Address	Amount Due	Due Date	Status
	Total *(Enter in Item 20)* ▶			

Section II. Asset and Liability Analysis

Description (e)			Cur. Mkt Value (b)	Liabilities Bal. Due (c)	Equity in Asset (d)	Amount of Mo. Pymt. (e)	Name and Address of Lien/Note Holder/Obligee (f)	Date Pledged (g)	Date of Final Pymt. (h)
18. Cash on hand									
19. Bank accounts									
19a Securities and other financial assets owned									
20. Accounts/Notes receivable									
21 Insurance Loan Value									
22. Real property *(from item 13)*		a.							
		b.							
		c.							
		d							
23. Vehicles *(Model, year, license)*	a								
	b.								
	c								
24. Machinery and equipment *(Specify)*	a.								
	b								
	c								
25. Merchandise inventory *(Specify)*	a								
	b.								
26. Other Assets (including permits, licenses, tax loss carry forwards, agreements not to compete, other contracts) *(Specify)*	a								
	b								
	c								
	d.								
27. Other Liabilities *(Include judgements, notes, tax liens, etc.)*	a								
	b.								
	c.								
	d.								
	e.								
28. Federal & State Taxes Owed									
29. Totals									

Section III. Income and Expense Analysis

The following information applies to income and expenses during a one year period: _____ to _____	Accounting method used

Income		Expenses	
30. Gross receipts from sales, services, etc.	$	36 Materials purchased	$
31. Gross rental income		37. Wages and salaries of employees	
32. Interest		38. Wages/salaries/bonuses for officers, directors and stockholders	
33. Dividends		39. Rent	
34. Other income *(Specify)*		40 Installment payments *(from line 29)*	
		41 Supplies	
		42 Utilities / Telephone	
		43 Gasoline / Oil	
		44 Repairs and maintenance	
		45 Insurance	
		46 Current taxes	
		47 Other , including fees paid for services *(Specify)*	
35 Total ▶	$	48. Total ▶	$
		49. Net difference ▶	$

50. List all transferred real & personal property, including cash (by gift; by loan that was not at fair market terms; by sale for less than fair market value or made outside the normal course of business, etc.) that was made within the last 3 years (items of $3,000 [00] or more):

Date	Amount	Property Transferred	To Whom	Conditions of Transfer
			(Indicate any relationship to business or its partners, directors, stockholders, or other controlling persons)	

Certification

Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

51. Signature	52. Print Name / Title	53 Date

EPA

U.S. Environmental Protection Agency, Region IX

Financial Statement for Trusts *

(If additional space is needed, attach a separate sheet)

Name of Trust

2 Trustor Name and Address	3. Phone number

Section I Trustee Information

4 Name and address	5 Phone number
6 Name and address	7 Phone number

Section II. Beneficiary Information

8. Name, address and phone number	9 Name, address and phone number	10. Name, address and phone number

Section III. General Financial Information for Trust

11. Last three years Federal and state income tax returns filed	12 Adjusted gross income on returns, per year	13 List all states these returns were filed in.

14. Bank accounts *(include Savings & Loans, Credit Unions, IRA and Retirement Plans, Certificates of Deposit, etc)*

Name of Institution	Address	Type of Account	Account No.	Balance
Total *(Enter in Item 23)*				

* This information is requested pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604, and is not subject to approval of the Paperwork Reduction Act of 1980, 44 U S C § 3501, et seq

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Section III - continued — General Financial Information on Trust

15 Charge cards, Lines of credit

Type of Account or Card	Name and Address of Financial Institution	Monthly Payment	Credit Limit	Amount Owed	Credit Available
Totals *(Enter in Item 28)* ▶					

16. Safe deposit boxes rented or accessed *(List all locations, box numbers, and contents including estimated market value)*

17 **Real Property** *(Brief description of property and type of ownership)*	**Address** *(Include county, state and parcel number)*
a.	
b.	
c	

18. **Insurance Policies** *(Name of Company)*	Policy Number	Type	Face Amount	Available Loan Value
Total *(Enter in Item 24)* ▶				

19. Additional Financial Information *(Court and administrative proceedings by or against the Trust, legal claims[whether asserted or not], settlement agreements, employment agreements, consulting and similar agreements, "golden parachute" agreements, bankruptcies, repossessions, recent transfers of assets for less than full value, anticipated increases in income, real estate being purchased under contract, real or personal property being held on behalf of the Trust, condition of health, information on trusts, estates, profit-sharing plans, inheritance, etc., in or of which the Trust is a participant or beneficiary).*

20. Indicate any business entity in which the Trust owns five (5) percent or more of the outstanding stock (or other equity interest).

Name of Business Entity	Address	Percentage of Stock	Date Purchased

Section IV. Asset and Liability Analysis

Description	Current Market Value	Liabilities Balance Due	Equity in Asset	Amount of Monthly Payment	Name and Address of Issuer or Lien/Note Holder/Obligee	Date Pledged	Date of Final Payment
Cash and precious metals or gems							
22 Bank accounts							
23 a Stocks							
b. Bonds							
c Mutual Funds, Partnership Interest, Securities and other Investments							
24. Cash or loan value of Insurance.							
25. Vehicles *(Model, year, license)*							
a							
b.							
c							
26. Real property *(From Item 17)* a.							
b.							
c.							
27. Other tangible assets (including art, boats, jewelry, options, etc.) or financial debts owed to the Trust in excess of $1000							
a.							
b							
c							
d							
28 Bank revolving credit							
29. Other Liabilities (Include judgements, notes, tax liens, etc.) a.							
b.							
c.							
d							
e.							
f							
g							
30. Federal and state Taxes Owed							
31. **Totals**			$	$	Enter in Item 39		

List all transfers real & personal property, including cash (by gift or loan made not at fair market terms) to or from the Trust within the last 3 years (items with a current market value of $1000.00 or more)

Date	Current Market Value	Sale Price Trust Received (if any)	Description of Property Transferred	To Whom (Indicate relationship to the Trust)	Nature and Conditions of Transfer

Section V. Monthly Income and Expense Analysis of Trust Fund

Income			Necessary Expenses	
Source	Gross	Net		
32. Interest - Dividends	$	$	37 Trustee service fees	$
33. Net business income			38 Rent (Do not show mortgage listed in item 26)	
34. Rental income			39 Installment payments	
35. Other Income *(e.g investment income, capital gains – specify type)*			40 Utilities (Gas $ _____ Water $ _____	
			Electric $ _____ Phone $ _____)	
			41 Transportation	
			42 Insurance *(specify type)*	
			43 Other expenses *(specify)*	
36. **Total**	$	$	44 **Total**	$

Certification

Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

45. Your signature	46 Date

L

Acronyms and Abbreviations

A

AA	Assistant Administrator
AAG	Assistant Attorney General
ACL	Alternate Concentration Limit
ADR	Alternative Dispute Resolution
AM	Action Memorandum
AO	Administrative Order
AOA	Advice of Allowance
AOC	Administrative Order on Consent
AOC	Area of Contamination
AR	Administrative Record
ARARs	Applicable or Relevant and Appropriate Requirements
ARCS	Alternative Remedial Contracts Strategy
ASTSWMO	Association of State and Tribal Solid Waste Management Organizations
ATP	Ability to Pay

B

BFPP	Bona Fide Prospective Purchaser
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BPA	Blanket Purchase Agreement
BRAC	Base Realignment and Closure
BUREC	Bureau of Reclamation

C

CA	Cooperative Agreement
CAA	Clean Air Act
CAG	Community Advisory Group
CBI	Confidential Business Information
CD	Consent Decree
CD-ROM	Compact Disk Read-Only Memory
CEC	CERCLA Education Center (OSWER)
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CFR	Code of Federal Regulations
CI	Civil Investigator
CIC	Community Involvement Coordinator
CLP	Contract Laboratory Program
CO	Contracting Officer
COI	Conflict of Interest
COR	Contracting Officer's Representative
CR	Community Relations
CR	Cost Recovery
CRC	Community Relations Coordinator
CRC	Cost Recovery Coordinator
CRP	Community Relations Plan
CWA	Clean Water Act

D

DA	Deputy Administrator
DAA	Deputy Assistant Administrator
D&B	Dunn and Bradstreet
DCN	Document Control Number
DD	Division Director
DFO	Designated Federal Official
DOD	Deputy Office Director
DoD	Department of Defense
DOE	Department of Energy
DOI	Department of Interior
DOJ	Department of Justice
DOT	Department of Transportation
DPO	Deputy Project Officer
DQO	Data Quality Objective

E

EDGAR	Electronic Data Gathering, Analysis, and Retrieval
EE/CA	Engineering Evaluation/Cost Analysis
EJ	Environmental Justice
EMSL	Environmental Monitoring and Systems Laboratory
ENRD	Environment and Natural Resources Division (DOJ)
EPA	Environmental Protection Agency
EPAAR	EPA Acquisition Regulation (Manual)
EPCRA	Emergency Planning and Community Right-To-Know Act of 1986
EPIC	Environmental Photographic and Investigation Center
EPM	Enforcement Project Manager
EPS	Environmental Protection Specialist
ERCS	Emergency Response Cleanup Services
ERNS	Emergency Response Notification System
ERS	Environmental Response Services
ERT	Environmental Response Team
ESAT	Emergency Services Assistance Team
ESD	Environmental Services Division
ESD	Explanation of Significant Differences
ESI	Expanded Site Investigation
ESS	Enforcement Support Services

F

FACA	Federal Advisory Committee Act
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FFA	Federal Facility Agreement
FFEO	Federal Facilities Enforcement Office (OECA)
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FINDS	Facility Index System
FMD	Financial Management Division
FOIA	Freedom of Information Act
FR	*Federal Register*
FRC	Federal Records Center
FS	Feasibility Study
FSAP	Field Sampling and Analysis Plan

F *(continued)*

FTE	Full-Time Equivalent
FUDS	Formerly Used Defense Sites
FWPCA	Federal Water Pollution Control Act
FY	Fiscal Year

G

GAAPs	Generally Accepted Accounting Principles
GAAS	Generally Accepted Accounting Standard
GAO	General Accounting Office
GFO	Good Faith Offer
GIS	Geographic Information System
GNL	General Notice Letter
GPRA	Government Performance and Results Act
GSA	General Services Administration

H

HASP	Health and Safety Plan
HAZWOPER	Hazardous Waste Operations and Emergency Response
HQ	Headquarters
HRS	Hazard Ranking System
HSWA	Hazardous and Solid Waste Amendments (RCRA)

I

IAG	Interagency Agreement
IFMS	Integrated Financial Management System
IG	Inspector General
IGCE	Independent Government Cost Estimate
IMC	Information Management Coordinator

L

LAN	Local Area Network
LDR	Land Disposal Restrictions
LOE	Level of Effort
LSI	Listing Site Inspection
LTRA	Long-Term Response Action
LUST	Leaking Underground Storage Tank

M

MARS	Management and Accounting Reporting System
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MSCA	Multi-Site Cooperative Agreement
MSDSs	Material Safety Data Sheets
MSW	Municipal Solid Waste
MUNIS	Municipalities

N

NAAG	National Association of Attorneys General
NARPM	National Association of Remedial Project Managers
NBAR	Non-Binding (Preliminary) Allocation of Responsibility
NCLP	National Contract Laboratory Program
NCP	National Contingency Plan
NEIC	National Enforcement Investigation Center
NEJAC	National Environmental Justice Advisory Council
NEPA	National Environmental Policy Act
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NETI	National Enforcement Training Institute (OECA)
NFRAP	No Further Remedial Action Planned
NOAA	National Oceanic and Atmospheric Administration
NOSC	National Association of OSCs
NOV	Notice of Violation
NPDES	National Pollution Discharge Elimination System
NPL	National Priorities List
NRC	National Response Center
NRC	Nuclear Regulatory Commission
NRDs	Natural Resource Damages
NRT	National Response Team
NTCRs	Non-Time-Critical Removals
NTIS	National Technical Information Service

O

O&F	Operational and Functional
O&M	Operation and Maintenance
OAM	Office of Acquisition Management
OARM	Office of Administration and Resources Management
OD	Office Director
ODCs	Other Direct Costs
OECA	Office of Enforcement and Compliance Assurance
OEJ	Office of Environmental Justice
OERR	Office of Emergency and Remedial Response (now known as OSRTI)
OGC	Office of General Counsel
OIA	Office of International Activities
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPA	Oil Pollution Act of 1990
ORC	Office of Regional Counsel
ORD	Office of Research and Development
OSC	On-Scene Coordinator
OSHA	Occupational Safety and Health Administration
OSRE	Office of Site Remediation Enforcement (OECA)
OSRTI	Office of Superfund Remediation and Technology Innovation (formerly known as OERR)
OSW	Office of Solid Waste
OSWER	Office of Solid Waste and Emergency Response
OTIS	On-Line Targeting Information System
OU	Operable Unit

P

PA	Preliminary Assessment
PA/SI	Preliminary Assessment/Site Investigation
PCB	Polychlorinated Biphenyl
PCOR	Preliminary Close Out Report
PNRS	Preliminary Natural Resources Survey
PO	Project Officer
POLREP	Pollution Report
POTW	Publicly Owned Treatment Works
PPA	Prospective Purchaser Agreement
PPB	Parts per Billion
PPED	Policy and Program Evaluation Division (OSRE)
PPM	Parts per Million
PR	Procurement Request
PRP	Potentially Responsible Party
PRSC	Post-Removal Site Control

Q

QA	Quality Assurance
QA/QC	Quality Assurance/Quality Control
QAPP	Quality Assurance Project Plan

R

R&D	Research and Development
RA	Remedial Action
RA	Regional Administrator
RAC	Response Action Contractor
RACS	Response Action Contracting Strategy
RCMS	Removal Cost Management System
RCRA	Resource Conservation and Recovery Act
RCRAInfo	Resource Conservation and Recovery Act Information System
RD	Remedial Design
RD/RA	Remedial Design/Remedial Action
RDT	Regional Decision Team
RI	Remedial Investigation
RI/FS	Remedial Investigation/Feasibility Study
ROD	Record of Decision
RODS	Record of Decision System
RP	Responsible Party
RPM	Remedial Project Manager
RPO	Regional Project Officer
RQ	Reportable Quantity
RRT	Regional Response Team
RSD	Regional Support Division (OSRE)
RSE	Removal Site Evaluation
RSI	Removal Site Inspection
RTP	Research Triangle Park, North Carolina

S

SACM	Superfund Accelerated Cleanup Model
SAM	Site Assessment Manager
SAP	Sampling and Analysis Plan
SARA	Superfund Amendments and Reauthorization Act of 1986
SAS	Special Analytical Services
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Flexibility Act
SCA	State Cooperative Agreement
SCAP	Superfund Comprehensive Accomplishments Plan
SCORE$	Superfund Cost Organization and Recovery Enhancement System
SDWA	Safe Drinking Water Act
SEE	Senior Environmental Employee
SEP	Supplemental Environmental Project
SESS	Superfund Enforcement Support Service
SETS	Superfund Enforcement Tracking System
SF	Superfund
SI	Site Inspection
SMOA	State Memorandum of Agreement
SNL	Special Notice Letter
SOL	Statute of Limitations
SOP	Standard Operating Procedure
SOW	Scope of Work
SOW	Statement of Work
SREA	Superfund Recycling Equity Act
SSC	Superfund State Contract
SSI	Screening Site Investigation
STARS	Strategic Targeting Activities Reporting System
START	Superfund Technical Assessment and Response Team

T

TAG	Technical Assistance Grant
TAT	Technical Assistance Team
TBC	To Be Considered (Material)
TBD	To Be Determined
TC	Time-Critical (Removal)
TCLP	Toxicity Characteristic Leaching Procedure
TDD	Technical Directive Document
TDD	Telecommunications Device for the Deaf
TDM	Technical Direction Memorandum
TIO	Technology Innovation Office (OSWER) (now known as TIP)
TIP	Technology Innovation Program (OSWER) (formerly known as TIO)
TRI	Toxic Release Inventory
TSCA	Toxic Substances Control Act
TSDF	Treatment, Storage, and Disposal Facility

U

UAO	Unilateral Administrative Order
UCC	Uniform Commercial Code
USACE	U.S. Army Corps of Engineers
U.S.C.	U.S. Code
USCG	U.S. Coast Guard

U *(continued)*

USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
UST	Underground Storage Tank

W

WA	Work Assignment
WACR	Work Assignment Completion Report
WAF	Work Assignment Form
WAM	Work Assignment Manager
WasteLAN	Waste Local Area Network

M

Glossary

Administrative Order on Consent (AOC): A legal agreement signed by EPA and an individual, business, or other entity through which the entity agrees to take an action, refrain from an activity, or pay certain costs. It describes the actions to be taken, may be subject to a public comment period, applies to civil actions, and can be enforced in court. AOCs are most commonly used for removal actions and RI/FSs, but may be used for de minimis and cost recovery settlements.

Administrative Record (AR): The body of documents that "forms the basis" for the selection of a particular response at a site. For example, the AR for remedy selection includes all documents that were "considered or relied upon" to select the response action. An AR must be available at or near every site to permit interested individuals to review the documents and to allow meaningful public participation in the remedy selection process. This requirement does not apply to other ARs, such as those for deletion.

Administrative Subpoena: A command issued by EPA requiring testimony and, if necessary, the production of documents deemed necessary to the administrative investigation of a site. CERCLA section 122(e)(3)(B) authorizes the issuance of administrative subpoenas as is "necessary and appropriate" to gather information to perform a non-binding preliminary allocation of responsibility or "for otherwise implementing CERCLA section 122." No legal mandate prohibits the use of an administrative subpoena as an initial information gathering tool; however, the Agency prefers using 104(e) requests before issuing administrative subpoenas.

Alternative Dispute Resolution (ADR): A process that allows parties to resolve their disputes without litigating them in court. ADR involves the use of neutral third parties to aid in the resolution of disputes through methods that include arbitration, mediation, mini-trials, and fact finding.

Arbitrary and Capricious: Characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. Under CERCLA section 130(j)(2), a court ruling on a challenge to a response action decision will apply the arbitrary and capricious standard of review.

Arbitration: An alternative dispute resolution technique that involves the use of a neutral third party to hear stipulated issues pursuant to procedures specified by the parties. Depending upon the agreement of the parties and any legal constraints against entering into binding arbitration, the decision of the arbitrator may or may not be binding.

Brownfields: In general, the term refers to real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The term does not include:

- a facility that is the subject of a planned or ongoing removal action under CERCLA;
- a facility that is listed or proposed for listing on the National Priorities List (NPL);
- a facility that is the subject of a unilateral administrative order, a court order, an order of consent or judicial consent decree that has been issued to or entered into by the parties under CERCLA, the Solid Waste Disposal Act (SWDA), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA);
- a facility that is subject to corrective action under SWDA section 3004(u) or 3008(h), and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
- a facility that is a land disposal unit with respect to which a closure notification under Subtitle C of the SWDA has been submitted, and closure requirements have been specified in a closure plan or permit;
- a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States for an Indian tribe;
- a portion of a facility at which there has been a release of polychlorinated biphenyls (PCBs), and that is subject to remediation under the TSCA; or
- a portion of a facility, for which portion, assistance for response activity has been obtained under Subtitle I of SWDA from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

Cash-Out: A settlement that requires PRPs to provide up-front financing for a portion of the response action, rather than performing the work themselves. There are several types of cash-out settlement. A mixed-funding cash-out settlement requires the settling PRP to provide a substantial portion of the total response costs whereas a de minimis cash-out settlement requires a minor portion of the response costs to be paid by the settling PRPs.

CERCLA 106(b) Reimbursement Petition:	Petition by an entity, which has complied with a unilateral administrative order, requesting reimbursement from EPA for reasonable costs plus interest of conducting a response action. A person may be entitled to reimbursement if the person can establish that he or she is not liable for response costs under CERCLA section 107(a) or if the person can demonstrate that the Agency's selection of the response action was arbitrary and capricious or was otherwise not in accordance with law.
CERCLIS:	The acronym for the Comprehensive Enforcement Response, Compensation, and Liability Information System; a national information management system for the CERCLA program. CERCLIS inventories and tracks releases, accomplishments, expenditures, and planned actions at potential and actual Superfund sites.
Cleanup Activities:	Actions taken to deal with a release or threatened release of a hazardous substance that could affect humans or the environment. The term "cleanup" is sometimes used interchangeably with the terms remedial action, removal action, response, or corrective action.
Comment Period:	Period provided for public to review and comment on a proposed EPA action, rulemaking, or settlement.
Community Relations (Involvement):	EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns and incorporate them into the Agency decision-making process.
Community Relations (Involvement) Coordinator (CRC or CIC):	Lead Agency staff who works to involve and inform the public about the Superfund process and cleanup actions.
Community Relations Plan (CRP):	A document that identifies techniques used by EPA to communicate effectively with the public during the Superfund cleanup process at a specific site. This plan describes the site history, the nature and history of community involvement, and concerns expressed during community interviews. Additionally, the plan outlines methodologies and timing for continued interaction between the Agency and the public at the site.

Consent Decree (CD): A legal document, approved by a judge, that formalizes an agreement reached between EPA and one or more potentially responsible parties (PRPs) outlining the terms under which that PRP(s) will conduct all or part of a response action, pay past costs, cease or correct actions or processes that are polluting the environment, or comply with regulations where failure to comply caused EPA to initiate regulatory enforcement actions. The CD describes the actions PRPs will take, is subject to a public comment period prior to its approval by a judge, and is enforceable as a final judgment by a court.

Contribution: A legal principle according to which an entity can seek to recover some of the response costs for which it has already resolved liability with the United States. For example, when several PRPs are liable for a hazardous substance release, EPA is not required to pursue all of the PRPs. If EPA settles with or wins its case against a subset of PRPs, then the right of contribution enables the PRPs (i.e., the settling PRPs or those against whom a judgment is rendered) to seek recovery of a proportional share from other PRPs who were not named as defendants in EPA's suit or settlement, but who nonetheless contributed to the release.

Contribution Protection: A statutory provision that provides that any PRP who resolved its liability to the United States in an administrative or judicially approved settlement is not liable to other PRPs for claims of contribution regarding matters addressed in the settlement.

Cooperative Agreement (CA): Mechanism used by EPA to provide Fund money to states, political subdivisions, or Indian tribes to conduct or support the conduct of response activities. Subpart O of the NCP, 40 CFR Part 35, outlines specific response actions that may be conducted using CA funds.

Cost Recovery: A process by which the U.S. government seeks to recover money previously expended in performing any response action from parties liable under CERCLA section 107(a). Recoverable response costs include both direct and indirect costs.

Covenant Not to Sue: A contractual agreement, such as those authorized by CERCLA section 122(f) and embodied in a consent decree or administrative order on consent, in which the Agency agrees not to sue settling PRPs for matters addressed in the settlement. EPA's covenant not to sue is given in exchange for the PRPs' agreement to perform the response action or to pay for cleanup by the Agency, and does not take effect until PRPs have completed all actions required by the consent decree and administrative order on consent.

Covenant Not to Sue (*cont'd*): Covenants not to sue are generally given in either consent decrees or administrative orders. Under CERCLA, the use of covenants not to sue is discretionary. In effect, the Agency is authorized to agree to such a release of future liability only if the terms of the covenant include "reopeners."

Declaratory Judgment: A binding adjudication of rights and status of litigants. Within the context of CERCLA, the United States may file a claim seeking declaratory judgment on liability for past and future response costs at the site. If declaratory judgment on liability is granted, the United States does not have to prove liability in any future action with the defendant.

Defendant: A person against whom a claim or charge is brought in a court of law.

Demand Letter: A written demand for recovery of costs incurred under CERCLA. The primary purposes of written demands are to formalize the demand for payment of incurred costs plus future expenditures, inform potential defendants of the dollar amount of those costs, and establish that interest begins to accrue on expenditures. A demand letter may be incorporated into the special notice letter.

De Micromis Exemption: In general, a party shall not be liable under CERCLA section 107 if it can demonstrate that the total amount of the material containing hazardous substances that it generated and arranged for disposal at, or accepted for transport to, an NPL site was less than 110 gallons of liquid materials or less than 200 pounds of solid materials, unless those substances contributed significantly to the cost of the response action or natural resource restoration with respect to the facility; or the party has been uncooperative with EPA's response actions at the site; or the party has been convicted of a criminal violation for the conduct to which the exemption would apply.

De Minimis Contributor: PRPs who are deemed by the settlement agreement to be responsible for only a minor portion of the response costs at a particular facility. A determination of a PRP's responsibility is made based on the volume, toxicity, or other hazardous effects in comparison with other wastes at the facility. CERCLA section 122(g)(1)(A) expressly defines de minimis contributor.

De Minimis Landowner: PRPs who are deemed by the settlement agreement to be past or present owners of the real property at which the facility is located who did not conduct or permit the generation, transportation, storage, treatment or disposal of any hazardous substance at the facility, did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission, and had no

De Minimis Landowner *(cont'd)*:	actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance at the time of purchase. CERCLA section 122(g)(1)(B) expressly defines de minimis landowner.
De Minimis Settlement:	An agreement, either administrative or judicial, authorized by CERCLA section 122(g), between EPA and PRPs for a minor portion of response costs.
De Novo:	Generally, a new hearing or a hearing for the second time. At a *de novo* hearing, the court hears the case as the court of original and not appellate jurisdiction. Under CERCLA, for example, a judge may hear a case *de novo* if the administrative record is found to be incomplete or inaccurate. Such a hearing would allow judicial review that is not limited to the administrative record. A potential result of a *de novo* trial could be the court selecting the remedy.
Discovery:	A pre-trial procedure that enables parties to learn the relevant facts about the case. The Federal Rules of Evidence provide for extremely broad discovery. The basic tools of discovery are depositions, interrogatories, and requests for production of documents. One of the few limitations on the scope of discovery is that the material sought must be relevant to the subject matter of the pending suit, or likely to lead to the production of relevant material.
Easement:	A right afforded to an entity to make limited use of another's real property. An easement is one form of institutional control that may be required at a Superfund site if all the hazardous substances cannot be removed from the site. Easements may include limiting access or control of surface activities.
Eminent Domain:	The power to take private property for public use. Under the U.S. Constitution, there must be just compensation paid to the owners of this property. EPA exercises its power of eminent domain through the process of condemnation.
Enforcement Actions:	EPA, state, or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements, or to obtain penalties or criminal sanctions for violations.
Environmental Justice (EJ):	The fair treatment of people of all races, incomes, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs.

Explanation of Significant Differences (ESD): A document regarding a significant change to the record of decision when new information is discovered about a site or difficulties are encountered during the remedial design/remedial action phase of cleanup. An ESD is appended to the administrative record to inform the public of any significant changes that are being made to the selected remedy.

Extraordinary Circumstances: Situations that justify the deletion of a standard reopener in a consent decree. This release is granted infrequently and is given in response to unusual conditions related to liability, viability, or physical circumstances.

Federal Lien: A lien in favor of the United States authorized by CERCLA section 107(l) that may be imposed upon a PRP's property subject to a response action. The lien arises when the PRP receives written notice of its potential liability for response costs under CERCLA, or the Agency actually incurs response costs at a particular site. The lien continues until the PRP's liability is fully satisfied or the claim becomes unenforceable by operation of the statue of limitations.

Federal Register: A federal government publication that includes proposed regulations, responses to public comments received regarding proposed regulations, and final regulations. The *Federal Register* is published every working day by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408. The *Federal Register* publishes regulations and legal notices issued by federal agencies. These include presidential proclamations and executive orders, federal agency documents required by Congress to be published, and other federal agency documents of public interest. The *Federal Register* is available to the public through public libraries that are federal depositories, law libraries, and large university libraries.

Force Majeure: A clause common to construction contracts which protects the parties in the event that a portion of the contract cannot be performed due to causes that are outside of the parties' control (i.e., problems that could not be avoided by the exercise of due care, such as an act of God). These causes are known as *force majeure* events. *Force majeure* provisions are included in administrative orders on consent and consent decrees. These provisions stipulate that the PRPs shall notify EPA of any event that occurs that may delay or prevent work and that is due to *force majeure.* Two examples of *force majeure* may be raised as defenses to liability. CERCLA section 107(b) releases from liability any person who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance was caused solely by an act of God or an act of war (i.e., *force majeure*.)

Full Release: An agreement by EPA to release a PRP from any further liability for response costs. Under CERCLA section 122(j)(2), natural resource trustees may grant full releases of liability for damages to natural resources.

Fund (Hazardous Substance Superfund or Superfund Trust Fund): A fund set up under CERCLA to help pay for cleanup of hazardous waste sites and for legal action to force cleanup actions on those responsible for the sites. The fund is financed primarily with a tax on crude oil and specified commercially used chemicals.

General Notice Letter (GNL): A notice to inform PRPs of their potential liability for past and future response costs and the possible future use of CERCLA section 122(e) special notice procedures and the subsequent moratorium and formal negotiation period.

Generator: Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of hazardous substances owned or possessed by such a 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.

Good Faith Offer (GFO): A written proposal submitted by a PRP to the EPA to perform or pay for a response action. PRPs are given 60 days from the special notice to provide EPA a written GFO. The GFO must be specific, consistent with the ROD or proposed plan, and indicate the PRPs' technical, financial, and management ability to implement the remedy.

Hazard Ranking System (HRS): The principal screening tool used by EPA to evaluate risks to public health and the environment associated with abandoned or uncontrolled hazardous waste sites. The HRS calculates a score based on the potential for hazardous substances spreading from the site through the air, surface water, or ground water, and on other factors such as nearby population. This score is the primary factor in deciding if the site should be on the NPL and, if so, what ranking it should have compared to other sites on the list. A site must score 28.5 or higher to be placed on the NPL.

Indian Tribe: As defined by CERCLA section 101(36), 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.

Information Repository: Where the administrative record, current information, technical reports, and reference materials regarding a Superfund site are stored. EPA or the state establishes the repository in the community as soon as a site is discovered. It provides the public with easily accessible information. Repositories are established for all sites where cleanup activities are expected to last for more than 45 days. Typical community repository locations include public libraries and municipal offices.

Information Request Letter: Formal written requests for information, authorized by CERCLA section 104(e)(2)(A) through (C), issued during an administrative investigation. EPA is authorized to request information from any person who has or may have information relevant to any of the following:

- the kind and quantity of materials that have been or are being generated, treated, disposed of, stored at, or transported to a vessel or facility;
- the nature or extent of a release or threatened release of a hazardous substance, pollutant, or contaminant at or from a vessel or facility; and
- the ability of a person to pay for or perform a cleanup.

Failure to respond to or incomplete response to an informational request is subject to statutory penalties.

Innocent Landowner: A person who purchased or acquired real property without actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substances. PRPs may assert this claim as part of their defense, but only the court may make this determination based on CERCLA sections 107(b) and 101(35).

Joint and Several Liability: A legal doctrine defining the scope of a defendant's liability. When more than one PRP is involved at a site and the harm is indivisible, the court may impose joint and several liability upon all parties involved at the site. In this instance, each PRP involved at the site may be held individually liable for the cost of the entire response action.

Judicial Review: The court's review of a decision rendered by a federal agency or department or a court's review of an appeal challenging either a finding of fact or finding of law. Under CERCLA, for example, the court provides judicial review prior to entry of the consent decree. In addition, the court would provide judicial review of an EPA decision if a

Judicial Review *(cont'd)*: PRP submitted a "petition to review" to a federal court of appeals. The jurisdiction of the court and the scope of its review are defined by CERCLA section 113(h) and the Judicial Review Act, 28 U.S.C. §§2341-2351.

Lead Agency: The agency that primarily plans and implements cleanup actions. This could be EPA, state, or political subdivisions, other federal agencies, or Indian tribes. Other agencies may be extensively involved in the process, but the lead agency directs and facilitates activities related to a site, often including enforcement actions.

Mixed Funding: Settlements whereby EPA settles with fewer than all PRPs for less than 100 percent of the response costs. The settlement must provide a substantial portion, greater that 50 percent of the total response costs, and there must be viable non-settlers from which remaining response costs may be pursued. The three types of mixed funding settlement are preauthorization, cash-out, and mixed work.

Mixed Work: A type of mixed funding settlement whereby EPA and the PRPs agree to conduct discrete portions of the response action. Often EPA's portion of the work is paid for or performed by other PRPs as a result of subsequent settlements or unilateral administrative orders.

Moratorium: The period of time after special notice letters are issued during which the Fund will not be used to begin work at the site on the RI/FS or RA. EPA also will not seek to compel PRP action at the site during the moratorium.

Municipal Solid Waste: Waste material generated by a household; and waste material generated by a commercial, industrial, or institutional entity, to the extent that the waste material:

- is essentially the same as waste normally generated by a household;
- is collected and disposed of with other MSW as part of normal MSW collection; and
- contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste generated by a typical single family household.

National Oil and Hazardous Substances Pollution Contingency Plan (NCP):	The NCP is the major framework regulation for the federal hazardous substances response program. The NCP sets forth procedures and standards for how EPA, other federal agencies, states, and private parties respond under CERCLA to releases or threats of releases of hazardous substances, and under Clean Water Act section 311, as amended by the Oil Pollution Act of 1990, to discharges of oil.
Natural Resources:	Land, fish, wildlife, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, or controlled by the United States, state or local government, any foreign government, any Indian tribe, or any member of an Indian tribe.
Natural Resource Damages:	Damages for injury or loss of natural resources as set forth in CERCLA sections 107(1) and 111(b) and NCP section 300.615.
Non-Binding Preliminary Allocation of Responsibility (NBAR):	An allocation of the total cost of response among PRPs at a facility. CERCLA section 122(e)(3) allows EPA to provide NBARs to PRPs to facilitate settlement. An NBAR is not binding on the United States or the PRPs and cannot be admitted as evidence in court.
Orphan Share:	A portion of cleanup costs that cannot be assessed to a PRP as a result of either the PRP's insolvency or EPA's inability to identify PRP(s).
Owner or Operator:	Any person owning or operating a vessel or facility, or in the case of a hazardous substance being accepted for transportation, the common or contract carrier. It does not include a unit of state or local government that acquired ownership or control involuntarily through bankruptcy, tax delinquency, or abandonment.
Performance Bond:	A guarantee given by a contractor that a work assignment will be completed according to its terms and within the agreed time.
Performance Standards:	Provisions in consent decrees and administrative orders specifying specific levels of performance that site activities must achieve; often incorporated by reference into the record decision. The inclusion of such performance standards enables the Agency to assure measurable levels of cleanup that provide the protection desired.
Person:	An individual, firm, corporation, association, partnership, joint venture, commercial entity, U.S. government, state, municipality, or any interstate body.
Plaintiff:	A party who brings a legal action; the party who complains or sues in a civil action and is so named on the record.

Potentially Responsible Party (PRP): Any individual or entity including owners, operators, transporters, or generators who may be liable under CERCLA section 107(a).

Preauthorization: A type of mixed funding settlement whereby EPA preauthorizes a claim against the Fund by the PRPs for a portion of costs of conducting a response action. Once the preauthorization agreement is finalized, the PRPs conduct the response action, as outlined in settlement agreement, petition non-settling PRPs for reimbursement, and, if necessary, seek reimbursement from the Fund for the preauthorized amount not received from non-settling PRPs.

Premium: A sum paid or agreed to be paid by a PRP to cover risks associated with settlement. This sum represents an amount in addition to the cost of the response action. For example, a premium may be part of an early de minimis settlement due to potential inaccuracy of total response cost estimates or remedy failure.

Record of Decision (ROD): The official Agency document that explains which remedial cleanup alternatives have been considered, the selected remedy, technical background relative to the decision, and how the decision complies with the law.

Recalcitrant: A PRP that is persistently uninterested in or refuses to reach settlement or that fails to comply with a settlement or order.

Recusal: The voluntary or involuntary removal of a government official from any involvement in a specific matter. Recusal is used to preserve the ethical standards of public service. Recusal generally occurs when there is an appearance of a conflict between governmental responsibilities and private interest. Once a person is removed through recusal, she cannot participate in any activity relating to the matter; specifically, she cannot see any correspondence or participate in any meetings or negotiations related to the issue.

Remand: A legal term used when a court sends a case back to either a lower court or an administrative agency for further action. For example, under CERCLA, if an administrative record is found to be incomplete or inaccurate, one option of the reviewing court is to remand the case to EPA with instructions to compile an accurate and complete administrative record.

Remedial Action: A remedial action is one that is "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." Generally, response actions that take longer than a non-time-critical removal and are more complex than removals.

Removal: A removal is "the clean up or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release...[and] such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances..." Such evaluations include RI/FS. Removals are classified according to urgency as "emergency," for those requiring immediate response; "time-critical," for those that take no more than six months; and "non-time-critical" for removals that need up to a year or more.

Reopeners: Contractual provisions that preserve the Agency's right to compel the PRPs to undertake additional response actions or to pay costs for Agency response actions in addition to those agreed to in the settlement. Reopeners to liability are triggered when previously unknown conditions at the site are discovered, or information previously unknown to EPA is received, that indicates the remedial action is not sufficiently protective. Reopener provisions restrict the covenant not to sue by defining the conditions under which the settlement may be re-examined.

Remedial Investigation/ Feasibility Study (RI/FS): Activities conducted at an NPL site by EPA, or a PRP acting under an administrative order on consent (AOC) or (rarely) a unilateral administrative order (UAO), to assess site conditions and evaluate alternatives to the extent necessary to select a remedy, described in the record of decision (ROD), that will clean up the site in accordance with CERCLA section 121.

Remedial Design/Remedial Action (RD/RA): Response actions performed at an NPL site by EPA or a PRP under a consent decree (CD) approved and entered by a federal court. RD is the engineered design of the remedy selected by the RI/FS; RA is the construction and continuing operation and maintenance of the remedy.

Settlement: Resolution of a claim. Settlement occurs when a federal or state agency has a written agreement with PRPs regarding payment for and conduct of specified response actions. Settlements may be achieved administratively through an administrative order on consent or judicially through a consent decree.

Special Account: A sub-account of the Fund in which cash-out settlement funds may be deposited to segregate the funds and ensure that they are readily accessible for work at the site covered by the settlement.

Special Master: A court-appointed individual who oversees the progress of a complex case before it goes to trial. The scope of the special master's authority is set forth in an order of reference. Special masters are appointed only under exceptional conditions. For example, special masters may be appointed in cases requiring the interpretation of complicated technical data or voluminous information.

Special Notice Letter (SNL): A written notice to a PRP providing information on potential liability, conditions of the negotiation moratorium, future response actions, and demand for past costs. The SNL is authorized under CERCLA section 122(e)(1) and triggers the start of the negotiation moratorium.

Statute of Limitations (SOL): The statutorily defined period of time within which the United States, on behalf of EPA, must file a claim for cost recovery. If the United States does not file a case within the SOL, it may not be able to recover its costs from the PRPs.

Stipulated Penalties: Fixed sums of money that a defendant agrees to pay for violating the terms of a settlement. Procedures for invoking and appealing stipulated penalties and penalty amounts are agreed to in the administrative order on consent or the consent decrees.

Strict Liability: Legal responsibility for damages without regard to fault or diligence. The strict liability concept in CERCLA means that the federal government can hold PRPs liable without regard to a PRP's fault, diligence, negligence, or motive.

Transporter: A person who "accepts or accepted any hazardous substances for transport for disposal" to any site selected by such person, "from which there is a release or threatened release which causes the incurrence of response costs, of a hazardous substance..."

WasteLAN: The acronym for Waste Local Area Network. For historical reasons, EPA's regions use it when referring to CERCLIS.

Chapter 1 References

Name	Section	Location
Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986	1.1	42 U.S.C. § 9601 et seq. http://uscode.house.gov/DOWNLOAD/42C103.DOC
National Oil and Hazardous Substances Pollution Contingency Plan	1.1.1	40 C.F.R. Part 300 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr300_02.html
Oil Pollution Act of 1990	1.1.1	33 U.S.C. § 2701 et seq. http://www.epa.gov/oilspill/lawsregs.htm
Clean Air Act	1.2.1	42 U.S.C. § 7401 et seq. http://www.epa.gov/air/oaq_caa.html
Clean Water Act	1.2.1	33 U.S.C. § 1251 et seq. http://www.epa.gov/oilspill/lawsregs.htm
Toxic Substances Control Act	1.2.1	15 U.S.C. § 2601 et seq. http://www.access.gpo.gov/uscode/title15/chapter53_.html
Resource Conservation and Recovery Act	1.2.1	42 U.S.C. § 6901 et seq. http://www.epa.gov/epaoswer/osw/laws-reg.htm
CERCLA Hazardous Substances	1.2.1	40 C.F.R. Part 302 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr302_02.html

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Name	Section	Location
Comptroller Policy Announcement 87-17, Interest Rates for Debts Recoverable Under the Superfund Amendments and Reauthorization Act of 1986 (September 30, 1986)	1.2.1	http://www.epa.gov/ocfo/finstatement/superfund/int_rate.htm
Small Business Liability Relief and Brownfields Revitalization Act of 2002	1.2.5	Public Law 107-118 (H.R. 2869) http://www.epa.gov/brownfields/pdf/hr2869.pdf
Internal Revenue Code of 1986	1.2.6	26 U.S.C. http://www.access.gpo.gov/uscode/uscmain.html
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	1.2.6	http://www.epa.gov/compliance/resources/policies/cleanup/superfund
Superfund Recycling Equity Act	1.2.6	42 U.S.C. § 9627 http://www.access.gpo.gov/uscode/uscmain.html
Used Oil Regulations (September 10, 1992)	1.2.6	57 Federal Register 41,612
Federal Insecticide, Fungicide, and Rodenticide Act	1.2.6	7 U.S.C. § 136 et seq. http://www.epa.gov/opptsfrs/home/rules.htm

Chapter 1 References

Name	Section	Location
Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties (November 6, 2002)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wv-exmpt-dmicro-mem.pdf
Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes (December 12, 1989)	1.2.7	Appendix A
Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites (February 5, 1998)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/munic-solwst-mem.pdf
Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA § 107(p) (August 20, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf
Bona Fide Prospective Purchasers and the New Amendments (May 31, 2002)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bonf-pp-cercla-mem.pdf
Policy Toward Owners of Property Containing Contaminated Aquifers (May 24, 1995)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contamin-aqui-rpt.pdf

Chapter 1 References

Name	Section	Location
Policy Towards Owners of Residential Property at Superfund Sites (July 3, 1991)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/policy-owner-rpt.pdf
Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999)	1.3.1	http://www.epa.gov/compliance/resources/policies/civil/sbrefa/index.html
Small Business Fact Sheet	1.3.1	http://www.epa.gov/compliance/incentives/smallbusiness/index.html
Orphan Share Policy (June 3, 1996)	1.3.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/orphan-share-rpt.pdf
Superfund Removal Procedures Removal Enforcement Guidance for On-Scene Coordinators (April 1992)	1.3.2	EPA Publication 9360.3-06 http://www.ntis.gov/products/epasuper.htm
Enforcement Project Management Handbook	1.3.3	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
Addendum to the Interim CERCLA Settlement Policy Issued on December 5, 1984 (September 30, 1997)	1.3.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/adden-settle-mem.pdf

Chapter 2 References		
Applicable or Relevant and Appropriate Requirements (ARARs)	2.0	http://www.epa.gov/superfund/action/guidance/remedy/arars.htm
List of Regional COs and POs	2.1.1	Appendix B
Environmental Programs Assistance Act (June 12, 1984)	2.1.1	http://www.epa.gov/epahrist/see/brochure/law.htm
Title V of the Older Americans Act	2.1.1	42 U.S.C. § 3056 et seq. http://wdsc.doleta.gov/seniors/other_docs/owp-106-501.pdf
Superfund Reforms Home Page (June 1993, February 1995, and October 1995)	2.1.2	http://www.epa.gov/superfund/programs/reforms
Releasing Information to PRPs at CERCLA Sites (March 1, 1990)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/release-prp-rpt.pdf
Issuance of Interim Rule: Disclosure of Confidential Data to Authorized Representatives of the United States and Potentially Responsible Parties (January 5, 1993)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/iss-confdata-mem.pdf
Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999)	2.1.2	http://www.epa.gov/compliance/resources/policies/civil/sbrefa/index.html

Chapter 2 References		
Small Business Fact Sheet	2.1.2	http://www.epa.gov/compliance/incentives/smallbusiness/index.html
Privacy Act	2.1.2	5 U.S.C. § 552 et seq. http://www.access.gpo.gov/uscode/title5/parti_chapter5_.html
40 CFR Part 2, Subpart B (CBI)	2.1.2	40 C.F.R. Part 2 http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr2_00.html
Sample Information Request Letter Questions	2.1.2	http://intranet.epa.gov/oeca/osre/docs/html
Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs (August 2, 1996)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/reason-cer106-rpt.pdf
Enforcement Project Management Handbook	2.3	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
National Oil and Hazardous Substances Pollution Contingency Plan	2.3.1	40 C.F.R. Part 300 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr300_02.html
Multi-site Open Work Assignment (expedited work assignment)	2.3.1	Appendix C
Checklist for Removal/ Pre-remedial Sites	2.3.1	Appendix D

Chapter 2 References		
Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993)	2.4	Appendix E
Freedom of Information Act (Reference Guide)	2.4	5 U.S.C. § 552 et seq. http://www.epa.gov/foia/guide.html
Quick Reference Guide for Using CERCLIS/WasteLAN	2.5.2	Appendix F

CHAPTER 3 REFERENCES

Name	Section	Location
Checklist of PRP Search Tasks	3.0	Appendix G
Enforcement Project Management Handbook	3.2	http://intranet.epa.gov/oeca/osre/hbk_pdf/index.html
PRP Search Enhancement Team Members/Contacts	3.2.1	Appendix H
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	3.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampledoc-cercla-mem.pdf
Disk Repository of Current CERCLA Section 104(e) Questions	3.3	http://intranet.epa.gov/oeca/osre/doc/960229.html
On-Line Sources of PRP Information	3.3.1	Appendix I
Superfund Enforcement Directory	3.3.1	Appendix J
False Statements Act	3.3.1	http://www.access.gpo.gov/uscode/title18/parti_chapter47_.html
Federal Debt Collection Procedures Act	3.3.1	http://www.access.gpo.gov/uscode/title28/partvi_chapter176_.html
Releasing Information to Potentially Responsible Parties at CERCLA Sites (March 1, 1990)	3.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/release-prp-rpt.pdf
EPA Regulations Governing Business Confidentiality Claims, 40 C.F.R. § 2.201-2.215	3.3.3	http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr2_01.html

CHAPTER 3 REFERENCES

Name	Section	Location
Federal Rules of Evidence 801-817	3.4.1	http://www.access.gpo.gov/uscode/title28a/28a_5_.html
Federal Perjury Statute, 18 U.S.C. § 1621	3.4.2	http://www.access.gpo.gov/uscode/title18/parti_chapter79_.html
Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/guide-volumet-rpt.pdf
Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A) (July 30, 1993)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-deminimis-rpt.pdf

CHAPTER 4 REFERENCES

Name	Section	Location
Disk Repository of Current CERCLA Section 104(e) Questions (June 17, 1999)	4.1	http://intranet.epa.gov/oeca/osre/doc/ 960229.html
Model Administrative Order for CERCLA Information Requests (September 30, 1994)	4.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/modao-cerinf-mem.pdf
Civil Monetary Penalty Inflation Rule (December 31, 1996)	4.2	http://www.epa.gov/compliance/resources/policies/civil/penalty/cmpiar.html
Final Model Litigation Report and Complaint for CERCLA Section 104(e) Initiative (January 1990)	4.2	http://intranet.epa.gov/oeca/osre/docs.html
Recommendations Concerning the Use and Issuance of Administrative Subpoenas under CERCLA Section 122 (August 30, 1991)	4.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/subpoena-cercla-mem.pdf
Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas (August 25, 1988)	4.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cerc-infreq-mem.pdf
Federal Rules of Civil Procedure, Rule 27, 28 U.S.C	4.4	http://www.wvnb.uscourts.gov/frcp.htm#rule27
General Policy on Superfund Ability to Pay Determinations (September 30, 1997)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/genpol-atp-rpt.pdf
Index of OECA enforcement computer models and user manuals	4.5.2	http://www.epa.gov/compliance/civil/programs/econmodels/index.html

CHAPTER 4 REFERENCES

Name	Section	Location
Financial Statements for Individuals, Businesses, and Trusts	4.5.2	Appendix K
EDGAR	4.5.2	http://www.sec.gov/edgar.shtml
On-Line Sources of PRP Information	4.5.2	Appendix I
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	4.5.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf
Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals (June 4, 1996)	4.6.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/orphan-share-rpt.pdf
Addendum to the Interim CERCLA Settlement Policy Issued on December 5, 1984 (September 30, 1997)	4.6.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/adden-settle-mem.pdf

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