

PRP Search Manual



Prepared for:
Personnel Performing PRP Searches



Addendum to the *EPA PRP Search Manual* November 2011

The purpose of this addendum is to inform users of the *EPA PRP Search Manual* (September 2009) of three recent guidance documents that address Superfund potentially responsible party (PRP) search issues. These documents were developed by EPA's Office of Site Remediation Enforcement in response to recommendations made by EPA's Office of Inspector General in the report *EPA Needs to Improve Internal Controls to Increase Cost Recovery* (October 7, 2009), which is available at <http://www.epa.gov/oig/reports/2009/20090427-09-P-0144.pdf>. These documents supplement, but do not supersede, the existing contents of the *PRP Search Manual*.

1. "EPA's Continued Efforts to Enhance CERCLA Cost Recovery" (July 2, 2010).

This guidance document addresses a number of CERCLA cost recovery issues, one of which relates to documentation of the results of PRP searches. Section VI. ("Appropriately Document All Costs") discusses close-out memoranda that memorialize decisions not to pursue cost recovery for removal or remedial costs under CERCLA. The guidance notes that, in addition to the decision document itself, "the Region should also place in the permanent site file all supporting documentation, such as an index of all PRP search documents . . . used in making the decision not to pursue further cost recovery" and the index should include "the physical or electronic location of the supporting documents."

2. "PRP Search Documentation Summary Requirements for Decision Documents to Not Pursue Cost Recovery Where Unaddressed Past Costs Are Greater Than \$200,000" (March 8, 2011).

- **Attachment A: "PRP Search Reference Summary"**
- **Attachment B: "PRP Search Activities Verification Form"**

This guidance document "establishes standard and mandatory PRP search documentation requirements to be included in Decision Documents . . . memorializing the Agency's determination to not pursue cost recovery, where total unaddressed past costs are greater than \$200,000." The guidance identifies minimum PRP search documentation requirements and provides as attachments: (a) the "PRP Search Reference Summary," which can be used to document PRP search tasks that were completed and where the results are located; and (b) the "PRP Search Activities Verification Form," which can be used to attest that all reasonable PRP search tasks have been completed to support the decision not to pursue cost recovery. The guidance also provides that the regions may use alternative methods of documenting a PRP search and its results, provided that they meet key requirements identified in the guidance.

3. **“Transmittal of „Preliminary Potentially Responsible Party Search Completion’ Measure Definition for Incorporation into the Superfund Program Implementation Manual for FY2012” (June 23, 2011).**

- **Attachment: “Preliminary Potentially Responsible Party Search Completion Definition and Documentation/Reporting Requirements”**

This memorandum transmitted the final text of a new “Preliminary PRP Search Completion” Superfund enforcement program measure to be included in the *Superfund Program Implementation Manual*. The measure identifies preliminary PRP search activities “taken to make an initial identification of PRPs at a site in order to determine if there are PRP(s) that are able to perform or finance all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site.” A preliminary PRP search is complete when the following tasks, as described in the measure and where applicable, have been completed and properly documented: (a) site location and property description; (b) current and past site ownership identification/notification; (c) site operation identification/notification; (d) site owner/operator liability/financial viability determination; and (e) arranger/transporter identification/notification. Alternatively, a preliminary PRP search is deemed complete if the region has “entered into a settlement with or issued orders to compel the identified PRPs to perform the initial non-emergency response action at the site” after completing some of the preliminary PRP search tasks. The measure also defines CERCLIS reporting requirements for preliminary PRP search completions and requirements for documenting the results of preliminary PRP searches in the site file, which can be satisfied using the “PRP Search Reference Summary” format described in the March 8, 2011, “PRP Search Documentation Summary Requirements” guidance document (which is discussed above).



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

JUL - 2 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: EPA's Continued Efforts to Enhance CERCLA Cost Recovery

FROM: Elliott J. Gilberg, Director
Office of Site Remediation Enforcement

TO: Regional Counsel, Regions I-X
Superfund Division Directors, Regions I-X

Over twenty years ago EPA issued the Superfund Cost Recovery Strategy ("Strategy"),¹ which noted that "cost recovery is one of the highest priorities of the Superfund program." This is as true today as it was in 1988. Many of the practices set forth in that Strategy and other relevant guidance are still in use today, and OSRE encourages the continued and enhanced use of these practices. In addition, we encourage the Regions to look for new ways to increase the effectiveness of EPA's cost recovery efforts. The purpose of this memorandum is to highlight some important cost recovery practices, and to encourage Regions to reevaluate their Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as "Superfund") cost recovery programs with an eye toward looking for areas of potential improvement.²

Currently, OSRE is taking steps to reinforce and evaluate areas of the cost recovery program. We have begun to evaluate Regional cost recovery documentation practices when EPA decides not to pursue cost recovery and we are examining the types of write-off or close-out documents (e.g., "Ten Point" summaries) prepared by Regions.³ Our evaluation focuses on the Regions' justifications for preparing write-off or close-out documents and how the Regions memorialize their write-off or close-out decisions in these documents. OSRE is also determining how and where the Regions maintain their decision documents and other related correspondence. Additionally, OSRE is surveying the Regions for enhanced cost recovery practices that can be

1 Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, OSWER Dir. No. 9832.13.

2 This memorandum is intended solely for the guidance of employees of EPA. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts. Nothing in this memorandum supersedes existing guidance and, as always, the Regions have the discretion to use an approach that has the greatest likelihood of success and will maximize the amount of recovery.

3 See EPA Needs to Improve Internal Controls to Increase Cost Recovery (October 7, 2009) (This OIG Report evaluated cost recovery activities at non-NPL removal sites to determine the Agency's internal controls to monitor cost recovery, document PRP searches and removal milestones, and ensure accurate cost recovery data.).

shared with other Regions. OSRE will also work with the Regions on developing sample or model documents to aid EPA's cost recovery, focusing on areas such as potentially responsible party (PRP) search documentation, field letters for removal actions, and compromises in administrative settlements.

I. Appropriate and Aggressive Use of Demand Letters

We encourage the aggressive use of demand letters in all appropriate cases. Often an initial demand for remedial costs is incorporated in a Special Notice Letter notifying the recipient of its potential liability as well as providing the recipient with the government's incurred costs to date and anticipated future costs. As noted in guidance, however, EPA may issue a written demand letter anytime after costs (removal or remedial) have been incurred under CERCLA.⁴ In some instances, it might be appropriate for EPA to issue a "stand-alone" written demand letter. The most common example is issuing a written demand letter at the conclusion of a removal action. Not only does a written demand letter create a formal mechanism for the Agency to recover its costs, but it also initiates the accrual of interest on expended costs.⁵

In addition, it is not necessary for a Region to anticipate referring a matter to the Department of Justice (DOJ) in order to issue a written demand letter. The Strategy states, "a demand letter should be issued . . . where response costs have been incurred under CERCLA *regardless of whether a decision has been made to initiate a judicial proceeding for cost recovery*"⁶ (emphasis added). It is not a prerequisite that the Region must contemplate referring a matter to DOJ if payment is not received in order to issue a demand letter.⁷ Issuing a written demand letter does not negatively impact the cost recovery program if, at some later date, the Region decides that it would not be appropriate to refer the matter to DOJ or that it is not an appropriate use of the Agency's limited resources to negotiate a settlement.⁸ Nevertheless, if EPA elects to issue a written demand letter, it must have a reasonable basis for believing the recipient is a PRP under section 107 and is therefore responsible for EPA's costs under the statute.

II. Continued Use of CERCLA Section 107(l) Liens

We recommend that Regions routinely use section 107(l) liens to preserve cost recovery opportunities. Under section 107(l) of CERCLA, a lien exists by operation of law in favor of the United States at any site at which EPA has spent Superfund monies. The Superfund lien arises on property subject to or affected by Superfund removal or remedial response actions when EPA incurs costs for such action and provides written notice of potential liability to the owner of the property. To perfect the lien, the Region should send the property owner a Notice of Intent to

4 See Written Demand for Recovery of Costs Incurred Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Bruce Diamond, March 21, 1991.

5 See 42 U.S.C. § 9607(a). Demand letters should explicitly state that interest begins to accrue on expended costs at the time of demand.

6 Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, page 22.

7 In many cases, however, failure to respond to a demand or failure to provide a good-faith offer will result in enforcement action by the Agency.

8 In fact, in low dollar cases the Region might know early on that it will not refer the matter to the Department of Justice. Nevertheless issuing a demand might still be appropriate.

Perfect Federal Lien and provide an opportunity for a hearing before a neutral official. If a hearing is requested, the Region may wait to record the lien after the neutral official has concluded that the statutory elements for recording the lien have been satisfied. Section 107(l)(3) of CERCLA provides that if the State has not by law designated an office for receipt of the notice of the lien, then the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located.

EPA has encouraged the use of CERCLA section 107(l) liens in various guidance documents.⁹ Although the Regions expend resources perfecting and maintaining liens, in many instances a lien is an effective cost recovery tool.¹⁰ For example, in one case a bankruptcy court approved a Stipulation and Order that reimbursed EPA approximately \$2.6 million in response costs from the filing of a lien. The money was disbursed from the proceeds of the sale of the source property at a Superfund site. EPA received 75% of the property sale proceeds by advancing an argument that the vast majority of its CERCLA lien took priority over the next largest claim, a county's real property tax lien, which was filed after EPA's lien arose. EPA argued its lien had priority because a plain reading of section 107(l)(3) of CERCLA made it clear that a CERCLA lien is subject only to the rights of purchasers, holders of security interests, or judgment lien creditors whose interests are filed under applicable State law before notice of the CERCLA lien has been filed.

Liens provide EPA the opportunity to recover CERCLA section 104(b) investigation and monitoring costs incurred by EPA regardless of whether an enforcement document is in place. In addition, filing a lien and demonstrating a willingness to proceed to a lien hearing can sometimes encourage an uncooperative party to move toward settlement. Finally, at some sites the only asset is the property and the lien allows the Agency to recover some of its costs once the property is sold.

III. Using Section 106(a) Unilateral Orders to Preserve Cost Recovery Resources

It is not unusual with a time-critical removal action to initiate the response as a Fund-lead activity. With a time-critical removal, the necessity to address the release, or threat of release, initially takes precedence over conducting a PRP search to find a liable party that can perform the response. Regardless, Regions should initiate a PRP search as early as practicable because it is vital to identify any viable PRPs that will be able to complete the removal action as a PRP-lead activity. Regions should routinely assess the possibility of converting Fund-lead removal actions into enforcement-lead. We encourage the Regions to develop a formal evaluation process for removal actions that will allow the Regions to reassess the status of liable parties and explore the option of issuing a section 106(a) order to a liable party to complete the removal action.¹¹ Such an approach fulfills the "enforcement first" policy of the Agency and allows Regional removal

9 See Guidance on Federal Superfund Liens, Thomas L. Adams Jr., September 22, 1987; Supplemental Guidance on Federal Superfund Liens, William A. White, July 29, 1993; Use of Federal Superfund Liens to Secure Response Costs, Barry Breen, May 28, 2002.

10 We recognize that in cases where the value of the site property is extremely low and is not likely to appreciate it might not be appropriate to expend resources perfecting a 107(l) lien.

11 For more on issuing UAOs for time-critical removal actions, see Issuance of Administrative Orders for Immediate Removal Actions, Lee M. Thomas, Feb. 21, 1984. It should be noted that issuing a UAO is not the only possible option for the Agency. Time permitting, Regions might find it more beneficial to negotiate an Administrative Order on Consent rather than issue a UAO.

resources to be preserved for other Sites where a viable, liable party is not available to perform the response.¹²

IV. Consider Pursuing Costs Where the Total Site Costs are Less Than \$200,000

In 1995, EPA issued guidance stating that Regions may prepare an abbreviated Decision Document for cases where total response costs are less than \$200,000.¹³ Unfortunately, this brief guidance may have inadvertently given the impression that it is generally not appropriate for EPA to pursue claims under \$200,000. The intent was not to discourage the pursuit of these smaller dollar claims, but rather to provide the Regions with flexibility to decide how best to manage smaller dollar claims by using an informal cost-benefit analysis. With very small dollar claims it will rarely make sound financial sense to perform an extensive and costly PRP search or to issue numerous demands or information requests. However, considering the numerous and varied cleanup cases EPA manages, it is very likely that Agency enforcement action would be appropriate in some cases.¹⁴

Additionally, the Agency has become more adept at recovering CERCLA costs due to a standardized cost recovery approach, and it is now possible to pursue some of these smaller dollar claims more efficiently. While it is true that the Agency has historically placed, and continues to place, a higher priority on cost recovery cases over \$200,000, there may be other reasons besides the dollar value of the case to pursue enforcement.¹⁵

Since the inception of the Superfund program EPA has recovered nearly \$138 million at sites where total costs were less than \$200,000, and we strongly encourage the Regions to continue pursuing smaller dollar claims whenever appropriate. The standard for pursuing these smaller dollar claims is the same for any other claim for response costs -- the Regions should weigh the resources needed to recover the costs against the amount that may be recovered, while considering the likelihood of recovery.¹⁶

V. Anticipate and Pre-empt Bankruptcy's Impact on Cost Recovery

Although EPA settlements often allow for "periodic" billing of future response costs, the Agency strives to bill its costs annually.¹⁷ The importance of annual billing has been highlighted recently by a number of bankruptcy filings involving companies that were historically considered highly solvent that have extensive environmental liabilities at Superfund sites nationwide.¹⁸

12 See Enforcement First for Remedial Action at Superfund Sites, John Peter Suarez and Marianne Lamont Horinko, September 20, 2002 (PRPs should conduct removal actions whenever possible, and EPA should pursue enforcement opportunities throughout the Superfund process).

13 See Cost Recovery Cases Where Site Costs Total Less Than \$200,000.00, Bruce M. Diamond, May 12, 1995.

14 For example, when the PRP is known; where the evidence is straightforward and uncontested; and where the PRP is viable.

15 There are some cases, where, even if the enforcement costs to the Agency potentially exceed the estimated recovery, EPA might decide that it is appropriate to pursue its claim because of an important legal or policy issue or the party's recalcitrance.

16 Interim CERCLA Settlement Policy, Lee M. Thomas, Courtney M. Price, F. Henry Habicht, December 5, 1984.

17 See CERCLA Future Response Costs: Settlement, Billing and Collection, Kenneth Patterson, June 20, 2002.

18 Within the last few years, many companies, including Chrysler, General Motors, ASARCO and W.R. Grace, have filed for protection under Chapter 11 of the United States Bankruptcy Code.

Sending annual bills in the years prior to a company's bankruptcy filing increases the probability that the Agency's annually incurred costs would be paid in full by the party before a potential bankruptcy filing. Once a PRP files for bankruptcy, all of EPA's unpaid response costs are lumped together in its proof of claim, with the potential that EPA will not recover all of its costs. As a way of maximizing our recovery of incurred costs, Regions should continue to strive to bill future response costs annually, recognizing the potential impact any subsequent bankruptcy filing would have on our recovery.

VI. Appropriately Document All Costs

As noted in the 1988 Cost Recovery Strategy, if a Region decides not to pursue a cost recovery action for either removal or remedial costs, a decision must be documented in a close-out memorandum.¹⁹ The Region should prepare a similar document in cases where the Agency has settled either administratively or judicially for less than 100% of costs and does not contemplate pursuing non-settling parties for the balance of the Agency's unrecovered costs. In the judicial context, this is typically done in the Ten Point Settlement Analysis that accompanies the referral to DOJ for entry of the consent decree.²⁰

In the administrative context, it is equally important to perform a similar analysis and generate a final decision document.²¹ It is essential for EPA's final decision document to identify total costs incurred by EPA, noting the amount of costs recovered, and any compromise of costs, including a justification for the compromise. The final decision document memorializes the Region's evaluation of the remaining cost recovery potential at the site and its decision to remove the case from further consideration by the Agency. This documentation should be retained in the site file so that a Region can easily provide justification for the decision not to pursue costs in response to any internal or external audit or cost recovery review.²² In addition to the final decision document, the Region should also place in the permanent site file all supporting documentation, such as an index of all PRP search documents and financial analyses used in making the decision not to pursue further cost recovery. The index should include the title of the final decision document, the date the document was created/finalized and the physical or electronic location of the supporting documents. The final decision document is enforcement confidential and should not be included in the administrative record.

Along with preparing the appropriate decision document, the Regions should continue to enter decision document information in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS).²³ When entering this information, the Region

19 See Guidance on Documenting Decisions Not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988.

20 If the decision not to pursue unrecovered costs is made after the Ten Point is finalized the Region should create a close-out memorandum that documents the basis of the decision not to pursue unrecovered costs. See Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, page 39-40.

21 The name of the final decision document may vary by Region, for example, the "close-out" Memorandum, a "write-off" memorandum or a "decision not to take cost recovery action."

22 Creation of a final decision document to not pursue cost recovery does not bar the Agency from re-opening the case in the event additional parties or evidence is discovered at a later date. Any subsequent action, however, might be barred by the statute of limitations in section 113(g).

23 For consistency the CERCLIS justification should be explicitly stated in the closeout document.

will include the appropriate basis for not pursuing costs.²⁴ CERCLIS provides seven possible justifications for the decision not to pursue costs.²⁵ These are:

- (1) No PRPs identified;
- (2) No viable PRPs;
- (3) Insufficient evidence;
- (4) Questionable case;
- (5) Insufficient Resources;
- (6) Consideration of Response Work; and
- (7) Other.

As a point of clarification, “insufficient resources” refers to Regional resources, not PRP resources, and can only be used in cases where the total costs of response do not exceed \$200,000.²⁶ If a PRP is defunct, bankrupt, or insolvent, the proper category is “no viable PRPs.” “Questionable case” generally refers to a legal impediment to filing a cost recovery action (*e.g.*, the statute of limitations has run). “Consideration of Response Work” is for cases where costs are written off due to consideration of response work that the party has performed at the Site.

The “Other” category should be used sparingly to represent cases that truly do not fall within one of the other specific categories. When the “Other” category is selected, Regions are strongly encouraged to use the comment field in CERCLIS to provide additional details of the decision and avoid the necessity of any additional follow-up to determine the basis of the decision.

The following CERCLIS data pull shows the approximate use of each category for not pursuing cost recovery since the inception of the Program:

Justification	Percentage of Write-offs
No Viable PRP	29%
No PRPs Identified	11%
Questionable Case	3%
Insufficient Evidence	2%
Insufficient Resources	2%
Other	20%
Two or more justifications provided	13%
No justification provided	20%

Based on the data, approximately twenty percent of the time, the Regions failed to select a category or use the comment field in CERCLIS to justify the write-off. Another twenty percent of the time, the Region selected the “Other” category, but failed to provide a reason in

²⁴ CERCLIS refers to the decision not to pursue costs as a “write-off.”

²⁵ Six of the justifications are taken directly from Guidance on Documenting Decisions not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988.

²⁶ See Guidance on Documenting Decisions not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988, page 5. If a Region needs additional resources for a cost recovery case over \$200,000 it should contact OSRE for assistance.

CERCLIS for the write off.²⁷ Thus, in roughly forty percent of the cases where costs were written off, CERCLIS provides no assistance in determining why costs were not pursued.

OSRE recognizes that there are final decision documents for these cases, but without the additional details as to why the cases fit into the “Other” category, CERCLIS does not provide a quick and easy way to report why the costs were not pursued. It is important for the Regions to accurately identify the bases of the decisions not to pursue costs in CERCLIS, as accurate data entry is critical to a more robust review and analysis of these write-off cases.

VII. Conclusion

This memorandum is the first step in a continuing dialogue with the Regions on maintaining and improving CERCLA cost recovery. OSRE encourages Regions to revisit current cost recovery practices and adopt suggestions from this memorandum where appropriate. In addition, we look forward to working with the Regions to identify opportunities to improve the efficiency and effectiveness of the cost recovery program. Questions or comments regarding this document may be directed to David Dowton (dowton.david@epa.gov) 202-564-4228, Carolyn Lane-Wenner (lane-wenner.carolyn@epa.gov) 202-564-5129 or Ruth Broome (broome.ruth@epa.gov) 202-564-6077.

cc: Superfund Removal Managers, Regions I-X
Superfund Regional Counsel Branch Chiefs, Regions I-X
Information Management Coordinators, Regions I-X
Stefan Silzer, Director, Office of Financial Management (OFM), OCFO
Rafael Stein, Director, Financial Services Division, OCFO
Iantha Gilmore, Director, Program Costing Staff, OFM, OCFO
Meshell Jones-Peeler, Deputy Director, Program Costing Staff, OFM, OCFO

²⁷ Although many of the “Other” or “no reason given” selections in CERCLIS occurred early in the Program, Regions are still selecting “Other” often enough that it poses a concern.



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

MAR 8 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: PRP Search Documentation Summary Requirements for Decision Documents to Not Pursue Cost Recovery Where Unaddressed Past Costs are Greater Than \$200,000

FROM: Elliott J. Gilberg, Director
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers, Regions I – X
Regional Counsel, Regions I - X

I. Background/Purpose

In 2009, the Environmental Protection Agency's (EPA) Office of Inspector General (IG) evaluated cost recovery activities at removal sites not on the National Priorities List (NPL) to identify EPA's internal controls for monitoring cost recovery, documenting potentially responsible party (PRP) searches, documenting removal milestones, and ensuring accurate cost recovery data.¹ As a result of the evaluation, the IG recommended that EPA's Office of Enforcement and Compliance Assurance (OECA) develop standard and mandatory PRP search documentation requirements that Regions would complete as part of the cost recovery decision document (closeout memo).

OECA agreed with the IG's recommendation. As such, this guidance establishes standard and mandatory PRP search documentation requirements to be included with Decision Documents (DD) memorializing the Agency's determination to not pursue cost recovery, where total unaddressed past costs are greater than \$200,000. This will ensure that standard and consistent PRP search information is available and easily locatable for all situations where EPA issues such decision documents. Based on this guidance, in the future these decision documents should:

- describe the PRP search activities undertaken for the site,
- summarize the results from those activities,
- include references for all PRP search documents used to make the decision to not pursue the unaddressed costs, and
- identify where those PRP search documents are located.

¹ See *EPA Needs to Improve Internal Controls to Increase Cost Recovery* (October 7, 2009) available at <http://www.epa.gov/oig/reports/2009/20090427-09-P-0144.pdf>.

The attached documentation tool is intended as a standard format for documenting the PRP search activities a Region has completed prior to issuing a decision to not pursue cost recovery.

II. Minimum Documentation Requirements

The PRP Search Documentation Reference Summary (hereafter referred to as the Reference Summary (Attachment A) should include, at a minimum, the following information in order to sufficiently document the site-specific PRP search activities that were conducted by the Region. The reference summary should be attached to the PRP Search Activities Verification Form identified under Section III and/or the cost recovery Decision Document. The minimum PRP search documentation requirements include:

A. Site name/identifiers

This section includes the official site name, aliases, operable units, and the site-spill identifier (SSID) from the Integrated Financial Management System (IFMS).

B. Point of Contact

This section includes the name of the individual(s) responsible for the site-specific PRP search activities at the time the Reference Summary or Regional Alternative, provided for in Section VII, is completed and verified. The Region should provide the individual's contact information for follow-up.

C. PRP Search Activities Accomplished

This section includes the title/description of the PRP Search activities completed. The Reference Summary divides PRP search activities into several major categories based on those essential tasks defined in Chapter 2 of the PRP Search Manual². Those categories are further detailed in the Reference Summary and include several mandatory activities relating to the property owners, site operational history, and liability/viability³ determinations for identified responsible parties.

D. Activity Completion Date

This section includes the date on which each specific PRP search activity was completed. This may be the date on which a specific reference document was created or reviewed by the PRP Search staff person referred to in paragraph B, above.

² <http://www.epa.gov/oecaerth/resources/publications/cleanup/superfund/prpmanual/prp-search-man-cmp-09.pdf>

³ In this context, viability relates to the continued existence of a PRP in some form. It does not necessarily include a formal ability to pay determination.

E. Reference Document Location

This section includes the specific location in the site file, including, but not limited to Superfund Document Management System (SDMS) index information, folder locations, and Bates stamping numbers, for documents supporting each PRP search activity listed in the Reference Summary.

III. PRP Search Activities Verification

The Reference Summary should be attached to either (1) the PRP Search Activities Verification form or (2) the Decision Document. The subject PRP Search Activities Verification form or associated Decision Document should contain the site name and the SSID, a synopsis/summary of the results of the PRP search efforts for the site, or portion of the site in question. If this information is included in the Decision Document in lieu of a separate PRP Search Activities Verification form, it should also include the amount of past costs being addressed through the action. If the PRP Search Activities Verification form is for a portion(s) of a defined site, the Region should indicate the unique SSID for the subject portion(s), or assign another unique site identifier to the portion(s) in question.

The PRP Search Activities Verification form should contain a signed statement by the individual in the Region (e.g., investigator or the investigator's supervisor), responsible for overseeing PRP search activities at the site (or portion thereof), attesting that sufficient PRP search tasks have been completed at the site to support the decision to not pursue unaddressed past costs. The document should be addressed to the person responsible for oversight of PRP search activities in the Region, as well as to the site file. An example/sample is attached (Attachment B). Once the PRP Search Activities Verification form is signed, the date of the final signature should be entered into CERCLIS as the PRP search completion date. After entry into CERCLIS, the signed document should be added to the official site file.

IV. Scope

The Reference Summary is only required for sites where the Region decides to not pursue cost recovery and unaddressed past costs are greater than \$200,000. Regions may, at their discretion, choose to use the associated Reference Summary and PRP Search Activities Verification form as a supporting document when proceeding with Fund-lead remedial action sites, certain Fund-lead removal actions, as determined by the Regions, and at sites where EPA issues a Decision Document to not pursue cost recovery less than \$200,000.

V. Alternative Methods for Satisfying Guidance Requirements

As an alternative to completing and attaching the "PRP Search Reference Summary" and associated PRP Search Activities Verification form, Regions may include a formal PRP Search Report to satisfy the requirements of this guidance, provided that the report contains a detailed summary/bibliography of the documents cited in the report. If the documents cited in the formal

PRP Search Report are included in the report or its appendices, this shall be deemed sufficient to satisfy the requirements of this guidance. The PRP Search Report should be annotated to identify the physical or electronic location of the documents referenced in the report.

In addition, should the Region have an alternative mechanism that meets the key requirements of the Reference Summary and associated PRP Search Activities Verification form, such as the 10-point settlement analysis, it may use that mechanism as an alternative to the examples provided in this guidance. Questions concerning whether the alternative mechanism meets the requirements of this guidance should be directed to the OSRE Leader, National PRP Search Enhancement Team.

VI. Prior Applicable Guidance

EPA has previously issued the following guidance and policy memoranda that address Superfund cost recovery and what is required of EPA when it makes a decision to not pursue cost recovery which remain pertinent and relevant today.

- Superfund Cost Recovery Strategy (J. Winston Porter, July 29, 1988) available at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cost-recover-mem.pdf>;
- Guidance on Decisions not to Take Cost Recovery Action (Jonathan Z. Cannon, June 7, 1988) (attached); and
- Cost Recovery Cases Where Site Costs Total Less Than \$200,000 (Bruce M. Diamond, May12, 1995) <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/costrecovcase-mem.pdf>.

These three guidance documents address, among other subjects: (1) when it is appropriate to make a decision to no longer pursue cost recovery; (2) what types of PRP search activities should generally be performed prior to making a decision to not pursue cost recovery; (3) how to document the basis for decisions to not pursue cost recovery; and (4) the universe of sites/cases that are subject to PRP search and documentation requirements. This guidance document supplements the above referenced documents. This guidance does not supersede the above referenced documents or affect existing requirements related to preparation of 10-point settlement analyses for CERCLA judicial enforcement actions.

VII. Enforcement Confidentiality

The attached Reference Summary and any associated documents (or alternative documents used to meet these requirements), once completed and submitted to the site file, should be evaluated by the Region on a case by case basis to determine if they should be treated as “enforcement confidential” and therefore not to be released under FOIA.

VIII. Contact Information

If you have any questions, please contact Bruce Pumphrey or Nancy Deck of the Program Evaluation and Coordination Branch, at 202-564-4222 or 202-564-6039, respectively.

Attachments

cc: National PRP Search Enhancement Team
Superfund Regional Counsel Branch Chiefs
Monica Gardner
Kenneth Patterson
Benjamin Lammie
Helena Healy
Reference Summary Guidance Development Team

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Site/Case Identification Information

Site Name:

Operable Unit (Where appropriate):

Site Spill Identifier:

Enforcement/Cost Recovery Contact Name:

Site Attorney Name:

Prior Site Enforcement/Cost Recovery Contact:

Amount Covered by Decision Document (direct and Indirect Costs):

Basis for not pursuing cost recovery:

- ☐ No PRPs Identified at the site
- ☐ PRPs Identified in Search Not Financially Viable
- ☐ Available evidence does not support one or more elements of a prospective case
- ☐ Pursuit of costs is not justified. Cost of pursuing cost recovery will exceed likely cost recovery and/or documented response costs
- ☐ Legal case is so questionable that cost recovery should not be pursued
- ☐ Limited Agency resources are being directed at higher priorities.
- ☐ Other Reasons (please describe)

PRPs Investigated:

Name	Current Owner/ Operator	Owner/ Operator at Disposal	Arranger	Transporter

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

A. Information Collection/Associated Party ID	Applicable (Y/N?)	Completed (FY/Q)
A1 - Property Ownership (Mandatory)		
<Supporting Document Name, Date, and Location>		
A2 - Operational History (Mandatory)		
<Supporting Document Name, Date, and Location>		
A3 - Waste Contribution/Other Party ID		
<Supporting Document Name, Date, and Location>		
A4 – Transporter Identification		
<Supporting Document Name, Date, and Location>		
A5 - Other Investigative Information		
<Supporting Document Name, Date, and Location>		
A6 - Ground Water-Specific Party Information		
<Supporting Document Name, Date, and Location>		
A7 - Mining-Specific Party Information		
<Supporting Document Name, Date, and Location>		
B. Liability Evaluation (Mandatory)		
<Supporting Document Name, Date, and Location>		
C. PRP Contribution Evaluation (as appropriate)		
<Supporting Document Name, Date, and Location>		
D. PRP Financial Viability/ATP/Insurance		
<Supporting Document Name, Date, and Location>		
E. PRP Notification		
<Supporting Document Name, Date, and Location>		
F. Other Site Specific PRP Analysis (as determined necessary by Region)		
<Supporting Document Name, Date, and Location>		

**PRP Search Activities Verification Form
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Date:

Subject: Verification of PRP Completion for Site Name/SSID site located in (City/State).

From: Site Enforcement/Cost Recovery Specialist (or other Regional designee)

To: Designated Regional Official/Site File

The purpose of this memorandum is to verify that as of (Date) attesting that all reasonable PRP search tasks have been completed at the site in support of the Regional decision not to pursue cost recovery, heretofore referred to as the "Decision Document," in the amount of \$ (Decision Document Amount Addressed) dated (Date Decision Document signed by designated Regional Official).

Attached is the PRP Search Reference Summary or Regional Alternative which list all PRP search documents that were used in making this determination and their respective location. Questions regarding this verification or the contents of the attached reference summary should be address to the Site Enforcement/Cost Recovery specialist for this site.



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

JUN 23 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transmittal of "Preliminary Potentially Responsible Party Search Completion" Measure Definition for Incorporation into the Superfund Program Implementation Manual for FY2012

FROM: Elliott J. Gilberg, Director *Elliott J. Gilberg*
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers, Regions I – X
Superfund Regional Counsel Branch Chiefs, Regions I – X

Attached is the "Preliminary Potentially Responsible Party (PRP) Search Completion" guidance document which describes preliminary search activities for identifying PRPs related to a site. This document also provides guidance on how to properly document the activities conducted in order to determine if there are PRPs to perform, or finance, all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site. The guidance contained in this document will be incorporated as a reporting measure into the Superfund Program Implementation Manual (SPIM) for implementation beginning in FY2012.

The "Preliminary PRP Search Completion" measure was developed in response to the Office of Inspector General(OIG) Evaluation Report titled "EPA Needs to Improve Internal Controls to Increase Cost Recovery," Report Number: 09-P-0144, dated April 27, 2009. The OIG recommended that the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) develop and implement a control to "monitor the status and timeliness of PRP searches at non NPL sites." OECA agreed with the recommendation and worked with the Regions, via the National PRP Search Enhancement Team, Superfund Policy Managers and Office of Regional Counsel Superfund Branch Chiefs to develop the measure. "Preliminary PRP Search Completions" will be tracked in CERCLIS to help EPA determine if basic PRP search activities have been completed and if they led to timely PRP response and/or cost recovery actions. When developing the measure, our focus was to ensure that the completion of the activities outlined in the guidance would maximize the opportunity for PRP response while not causing undue delays in initiating a timely Fund or PRP-lead initial "non-emergency" response action at a site.

Regions are expected to begin reporting "Preliminary PRP Search Completions" beginning in FY2012 for NPL and non-NPL sites where a non-emergency removal or remedial response action is expected at a site. The Preliminary PRP Search enforcement action is being added to CERCLIS and will be available for update beginning in FY2012. Should you have any questions or concerns, please contact Bruce Pumphrey of my staff at 202-564-4222 or via e-mail at pumphrey.bruce@epa.gov.

Attachment

cc: National PRP Search Enhancement Team
Monica Gardner
Karin Leff
Benjamin Lammie
Helena Healy

Attachment

Preliminary Potentially Responsible Party Search Completion Definition and Documentation/Reporting Requirements

Definition: “Preliminary PRP Search Completion:” the completion of certain activities taken to make an initial identification of PRPs at a site in order to determine if there are PRP(s) that are able to perform or finance all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site.

The Preliminary PRP Search will be considered complete when the Regions perform the PRP Search tasks steps outlined in section 1 or 2 below.

1. Regions have completed and properly documented PRP Search tasks A-E, below, as appropriate and practicable.

A. Site Location and Property Description

The Region has, as thoroughly as possible, identified the site location (*including one or more of the following: street address; parcel ID#; legal description from current deed of ownership; and/or tax map*) as necessary to complete requirement 1.B. below.

B. Current and Past Site Ownership Identification/Notification

The Region has, using the tools most appropriate for the site, conducted activities to identify current site owners as well as past site owners at the time of disposal of hazardous substances and where those site owner PRPs exist and can be located within a reasonable time, considering the exigencies of the situation, the Region has provided verbal notice and/or issued General Notice Letters to those parties the Region determines to be liable and capable of performing the initial response action at the site¹. In addition, as a part of this task, Regions have obtained information necessary to secure site access in order to allow for performance of the initial non-emergency response action at the site.

C. Site Operation Identification/Notification

If the operator(s) of the site/facility that caused the release or threat of release of hazardous substances are different from the site/facility owner(s) at the time of disposal, the Region has undertaken PRP Search activities necessary to identify site/facility operators and where those site operator PRPs exist and can be located within a reasonable time, considering the exigencies of the situation, the Region has provided verbal notice and/or issued General Notice Letters to those parties the Region determines to be liable and capable of performing the initial non-

¹ Regions may decide not to provide notice to certain liable and capable parties identified under tasks 1B, 1C, and 1E, , but should document the basis for such decisions to the site file through such mechanisms as the Removal Action Memo Enforcement Addendum or the RI/FS Enforcement Decision Document.

emergency response action at the site

D. Site Owner/Operator Liability/Financial Viability Determination

For each party identified under A., B. or C. of this section, the Region has determined, based on publicly available information whether: (1) the party may be liable under Section 107(a) of CERCLA; and (2) the party may be financially capable of performing or paying for all, or a portion of, the initial non-emergency response action at the site.

E. Arranger/Transporter(A/T) Identification/Notification

The Region has determined, based on readily available information such as site records, that either (1) no A/T PRPs appear to exist at the site or (2) there are A/T PRPs at the site, and the Region has provided verbal notice and/or issued General Notice Letters to those A/T PRPs initially identified through such information who the Region determines to be liable and capable of performing the initial non-emergency response action at the site and determined that, to the extent that A/T PRPs exist, additional PRP search efforts may be required.

OR

2. The Region has completed all, or a portion of, the above PRP Search tasks and entered into a settlement with or issued orders to compel the identified PRPs to perform the initial non-emergency response action at the site.

Reporting and requirements for documentation of Preliminary PRP Search Completion

If the Region has satisfied the Preliminary PRP Search Completion requirement by satisfying the tasks identified in Section 1, above, the Region should document this accomplishment in CERCLIS and in the site file. The documentation of the Preliminary PRP Search Completion for the site file should include a summary of the PRP Search tasks completed for each site. Such documentation can follow the format referenced in the January 2011 PRP Search Reference Summary guidance document, or the Region can follow a format already established, as long as it documents the Preliminary PRP Search Completion tasks performed and results (e.g., Removal Action Memorandum Enforcement Addendum, RI/FS Enforcement Decision Document as outlined in the 2005 RI/FS Guidance, OSWER Directive 9355.2.21(August 9, 2005)). The date that the documentation summarizing the PRP search tasks is created should be recorded as the completion date of the Preliminary PRP Search Completion milestone in CERCLIS.

If the Region has satisfied the Preliminary PRP Search Completion requirement by performing the tasks identified in Section 2., above, the date of the enforcement action/settlement to compel the initial non-emergency response action at the site should be recorded in CERCLIS. That date should also be used as the completion date of the

Preliminary PRP Search Completion milestone in CERCLIS, while not required, Regions may also want to document the PRP search activities accomplished prior to meeting the requirements in section 2 in the site file, through the use of the PRP Search Documentation Summary or other Regional mechanism.



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

September 30, 2009

Office of Enforcement and Compliance Assurance

MEMORANDUM

SUBJECT: Transmittal of the 2009 PRP Search Manual

FROM: Elliott Gilberg, Acting 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 2009 PRP Search Manual. This manual supersedes the PRP Search Manual of September 2003.

The manual was written by Agency subject-matter experts who are involved in the PRP search process, and the National PRP Search Enhancement Team. Their collective effort has resulted in a useful tool that enhances the PRP search process. Procedures and information contained in the manual are based on current, existing EPA policy and guidance. For the user's convenience, any references and/or guidance documents mentioned in the manual are supported by a web site address or hard copy.

The manual is a working document intended to provide information to persons involved in the PRP search process. Users are encouraged to provide comments regarding the manual to one of the National PRP Search Enhancement Team members listed below.

Hard copies are being provided to team members to distribute in their regions. The team is pleased also to be distributing the manual to state and tribal peers who are involved in enforcement and PRP search activities.

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.

PRP Search Enhancement Team Members

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Preface

The PRP 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 and gather comprehensive evidence of liability. It provides an outline of the general objectives of the PRP search, describes typical baseline and follow-up 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 sites where PRP searches are planned, where PRP searches are ongoing, and where the PRP search is considered sufficiently complete to pursue a response or cost recovery enforcement action or determine that no liable, viable PRPs exist. It is designed primarily as a reference tool for EPA, state, and tribal staff members involved in PRP searches, and is not intended to circumscribe or limit the legitimate investigative activities and inquiries of experienced PRP search personnel.

The manual includes four chapters:

Chapter 1

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

Chapter 2

PRP Search Planning 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

Follow-up PRP Search describes more specialized tasks that may be employed during a follow-up to the baseline phase of the PRP search.

NOTE: The PRP Search Manual's electronic version is available at EPA's Internet site http://www.epa.gov/compliance/cleanup/superfund/prp_manual.html. Future updates will also be posted at this Internet address.

Acknowledgments

The PRP Search Manual was prepared by the Office of Site Remediation Enforcement in EPA's Office of Enforcement and Compliance Assurance. The manual is the result of a collective effort by the National PRP Search Enhancement Team and representatives from various headquarters and regional offices. Nancy Deck served as EPA's Project Manager and Monica Gardner as Management Advisor. The culmination of this teamwork is a manual that serves as a reference document and covers all aspects of the PRP search process.

Many persons, too numerous to name, provided significant input in the development and review of the manual, and our appreciation and thanks go to them for their contributions.

National PRP Search Enhancement Team

James Israel (Region 1); Carol Berns (Region 2); Carlyn Prisk (Region 3); Herb Miller and alternate Blake Sterling (Region 4); Gladys Watts, Fouad Dababneh, and Tom Marks (Region 5); Courtney Kudla and alternate Robert Werner (Region 6); Cheryle Micinski, and alternate Norma Tharp (Region 7); Mike Rudy (Region 8); Monika O'Sullivan (Region 9); Susan Haas and alternate Grechen Schmidt (Region 10); Clarence Featherson, Eric French, Stephen Keim, Nancy Deck (Team Leader), and Monica Gardner (Manager Advisor), Office of Site Remediation Enforcement.

Headquarters Contractor: DPRA Incorporated

Disclaimers

This manual supersedes the PRP Search Manual of September 2003 published by the U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance, Office of Site Remediation 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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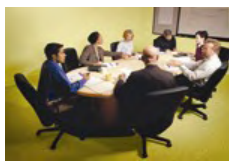
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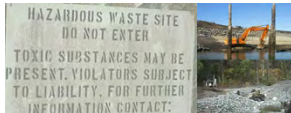
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1.0 Overview of CERCLA and PRP Searches

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, p. 38) 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:

- 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.

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. The Superfund program is currently funded primarily through annual appropriations of general taxpayer dollars.

- Under CERCLA Section 122, EPA can enter into settlement agreements with PRPs that require PRPs to clean up the site or reimburse the United States 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), a list of the nation's most contaminated sites.

EPA may respond to a release or substantial threat of release into the environment of any hazardous substance; EPA may also respond to a release or substantial threat of release into the environment of any pollutant or contaminant provided that the release may present an imminent and substantial danger to public health or welfare.

“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 actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.” CERCLA Section 104(c)(1), however, limits Fund-financed removal actions by both time and cost. Without a case-specific waiver, Trust Fund money may only be used to finance removal actions for up to one year and

up to \$2 million. A waiver of the time or cost limits may be issued to abate an emergency or allow removal activity that is consistent with further remedial action at the site. Issuance of such “consistency” waivers requires that a site be proposed for or listed on the NPL.

“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.”

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 operation and maintenance (O&M).
- The remedial action is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan.

EPA may perform a removal, site investigation, or remedial design, or enforce a remedial action at a site not listed on the NPL. A site must be listed on the NPL, however, for EPA to fund 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) limits EPA's authority to respond to a release or threat of release:

- of a naturally occurring substances in their naturally occurring and unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;
- from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or
- into public or private drinking water supply systems due to deterioration of the system through ordinary use.

Section 104(a) gives the President authority to respond notwithstanding the limitations in (a)(3) provided that there is a determination 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 (NCP). (See Chapter 1 References, p. 38.) 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, p. 38) 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 settlements, unilateral orders, or litigation. In addition, EPA may take the lead for cleanup activities and seek to recover its costs from PRPs. At 95 percent of non-federal facility Superfund sites where there are known viable, liable parties, the Agency endeavors either to reach a settlement or take an enforcement action before the start of a remedial action.

1.1.3 Objectives of the PRP Search

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 collecting site documents, performing title searches, 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 potential liability at the site (such as current owner or operator; prior owner or operator at a time of disposal; arranger/generator; or transporter who selects the disposal location, described in Section 1.2.4 of this manual). The PRP search should gather information about a party's potential defenses (e.g., third party defense, divisibility) or exemptions (e.g., municipal solid waste, Superfund Recycling Equity Act). 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. (See "Interim Guidance on the Ability to Pay and De minimis Revisions to CERCLA Section 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act" (May 17, 2004), Chapter 1 References, p. 38.)

1.2 CERCLA Liability

1.2.1 Categories of Potentially Responsible Parties

CERCLA Section 107(a) imposes liability on four classes of person:

- current owners and operators of a facility;
- former owners and operators of a facility at the time of disposal;
- persons who arranged for treatment or disposal of hazardous substances (commonly referred to as "generators" or "arrangers"); 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 Sections 1.2.5 and 1.2.6 of this manual.)



Current Owners and Operators of a Facility

CERCLA Section 107(a)(1) imposes liability on the current 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 Section 1.2.6 of this manual for more details.) In addition, current owners who meet the statutory criteria of bona fide prospective purchasers in Section 101(40) are not liable as owners or operators under CERCLA. (See CERCLA Section 107(r) and further discussion in Section 1.2.7 of this manual.)

Courts also have imposed owner/operator liability on parent corporations and corporate officers and personnel. In 1998, in *United States v. Bestfoods*, 524 U.S. 51 (1998), the Supreme Court set forth the instances in which a parent corporation may incur “direct” liability as a CERCLA Section 107(a)(2) operator. In *Bestfoods*, the Supreme Court held that a parent corporation is subject to direct operator liability where it “manage[s], direct[s], or conduct[s] operations specifically related to pollution, that is, operations having to do with leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.” Courts have also applied the *Bestfoods* test for direct operator liability to corporate officers and shareholders.

In some instances, federal courts have applied traditional principles of corporate law to “pierce the corporate veil” and hold such parties liable indirectly as CERCLA owners. In addition to setting forth the

test for “direct” operator liability, *Bestfoods* also addressed conditions under which parent corporations may be “indirectly” liable as CERCLA “owners.” In *Bestfoods*, the Court distinguished indirect liability from direct liability by stating that although a parent corporation cannot be held directly liable as an owner of a polluting facility owned or operated by its subsidiary, the parent corporation’s corporate veil may be pierced – and the parent corporation may be held liable as an owner for the subsidiary corporation’s conduct – upon a finding that the corporate forum has been “misused to accomplish certain wrongful purposes, most notably fraud, on the [parent corporation’s] behalf.” *Bestfoods*, 524 U.S. at 62.

“Piercing the corporate veil” is “the judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for a corporation’s fraudulent or wrongful acts.” Black’s Law Dictionary, 3d Ed. In *Bestfoods*, the Court expressly declined to decide if courts should apply veil piercing standards arising from CERCLA-based federal common law or from state common law. *Bestfoods* at 63-64. (See Section 3.6.10 of this manual 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 under the Resource Conservation and Recovery Act. It has been interpreted by some courts to include releases

that occur long after the hazardous substance was initially disposed of at the facility.²

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.



Arrangers (or "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 a person who generated the hazardous substance, or arranged for its disposal or treatment, or did both.

Arrangers or 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. In addition, 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

² 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., Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863 (9th Cir. 2001) (gradual passive migration through soil which took place when prior owner had property was not a disposal); *United States v. 150 Acres of Land*, 204 F.3d 698 (6th Cir. 2000) (liability for disposal based on passive migration requires human activity); *ABB Industrial Systems Inc. v. Prime Technology, Inc.*, 120 F.3d 351 (2nd Cir. 1997); *United States v. CDMG Realty*, 96 F.3d 706 (3rd Cir. 1996); *Joslyn Mfg. Co. v. Koppers Co. Inc.*, 40 F.3d 750 (5th Cir. 1994) (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).

site B, the generator may be liable for the cost of cleaning up both site A and site B. To establish generator liability, EPA must demonstrate that there was a release or threatened release of a hazardous substance from a facility, but EPA does not need to prove 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. Courts have looked at a variety of factors to determine "arranger" liability, including but not limited to whether (1) a sale involved the transfer of a "useful" or "waste" product; (2) the party intended to dispose of a substance at the time of the transaction; (3) the party had knowledge of the disposal; and (4) whether the party owned the hazardous substances.

In *Burlington Northern & Santa Fe Railway Company v. United States*, the Supreme Court recognized that some situations plainly give rise to arranger liability. It said that, on the one hand, liability will attach if the "sole purpose" is to discard of a used and no longer useful hazardous substance. On the other, it said that there is no liability for merely "selling a new and useful product if the purchaser of that product later, and unbeknownst to the seller, disposed of the product in a way that led to contamination."³ Specifically, the Supreme Court in *Burlington Northern* found that a party with knowledge of spills *alone* was insufficient to prove that the party "planned for" the disposal, "particularly when the disposal occurs as a peripheral result of the legitimate sale of an unused, useful product" and the party took numerous steps to reduce the likelihood of spills. The Supreme Court found that to qualify as an arranger the party must have *intended* that "at least a portion of the product be disposed of." ⁴

³ *Burlington Northern & Santa Fe Ry. Co. v. United States*, 129 S.Ct. 1870, 1878 (U.S. 2009).

⁴ *Burlington Northern & Santa Fe Ry. Co. v. United States*, 129 S.Ct. 1870, 1876 (U.S. 2009).

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 treatment facility or site selected by the transporter. 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. Unless EPA can prove that the transporter chose the site, the transporter is not liable under CERCLA Section 107(a)(4).

1.2.2 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:

- 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:

- “Person” is defined in CERCLA Section 101(21) as “an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.”
- “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. (See Chapter 1 References, p. 38.) EPA also may designate additional substances as hazardous substances under CERCLA. EPA maintains and updates a list of CERCLA hazardous substances in Title 40 of the Code of Federal Regulations, Part 302. (See Chapter 1 References, p. 38.) The term does not include petroleum, including crude oil, unless it is specifically listed or designated as a hazardous substance under one of those Acts, and does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel.⁵



⁵ CERCLA's petroleum exclusion has been held in the case law to apply to refined and unrefined petroleum products even though some of the indigenous components and additives added during refining are listed hazardous substances. The petroleum exclusion has been held not to apply, however, if (1) the indigenous components are found in amounts in excess of amounts which would have resulted from refining, or (2) the indigenous components are added to the petroleum product during or after use.

- “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, but are not limited to:
 - the costs of site investigations;
 - enforcement costs, including PRP search costs;
 - 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; and

- the recovery of costs associated with these actions (including costs incurred by EPA and other entities, such as the Department of Justice (DOJ), U.S. Coast Guard, and the states).

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.⁶

Section 104(a)(1) specifically 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.⁷ 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.

1.2.3 Strict Liability

CERCLA Section 107(a) imposes strict liability on the four classes of parties described and listed on page 6. 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.

⁶ Previously, 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 were limitations on EPA's authority to recover costs for oversight. *See U.S. v. Rohm & Haas Co.*, 2 F.3d 1265 (3rd Cir. 1993). The Third Circuit Court of Appeals subsequently overturned *Rohm & Haas*, finding that the plain meaning of CERCLA allowed EPA to recover oversight costs. *See United States v. DuPont*, 432 F.3d 161 (3rd Cir. 2005)

⁷ 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, p. 39.)

1.2.4 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 to recover costs 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.

Joint and several liability is based on the legal concept of “indivisible harm.” 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 there are distinct harms or there is a reasonable basis for determining the contribution of each cause to a single harm.⁸ A common method for attempting to demonstrate distinct harms is based on geographical considerations, for example, where there are separate and distinct plumes of ground water contamination. Methods for attempting to demonstrate a reasonable basis for determining contributions to single harm can be far more complex.

Where successful, this divisibility defense apportions liability to a defendant based on the amount of harm contributed (e.g., if a defendant’s separate plume can be expertly modeled at causing 10% of the harm, that might mean the defendant would be found responsible for 10% of the response costs). Not all harms are capable of apportionment, and the burden of demonstrating divisibility is on the defendant.⁹ Furthermore, “when two or more causes produce a single, indivisible harm, ‘courts have refused to make an arbitrary apportionment for its own sake, and each of the causes is charged with responsibility for the entire harm.’”¹⁰

⁸ Restatement (Second) of Torts § 881; *Burlington Northern & Santa Fe Ry. Co. v. United States*, 129 S.Ct. 1870, 1881 (2009), citing *United States v. Chem-Dyne Corp.*, 572 F.Supp. 802 (S.D. Ohio 1983).

⁹ Restatement (Second) of Torts § 433B.

¹⁰ *Burlington Northern*, 129 S.Ct. at 1881, citing Restatement (Second) of Torts § 433A, Comment *i*.

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 generally difficult. The divisibility defense requires a fact-intensive analysis, and 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.¹¹

Divisibility issues typically are raised by PRPs who bring information to EPA's attention that they wish to be considered in the context of a settlement. EPA must then carefully review the information provided, which will likely include the PRPs' belief regarding the specific contribution of each PRP to the release of hazardous substances that resulted in the contamination at the site or why the harm is distinct. A reasonable basis for such determinations should be well documented. (See *United States v. Alcan Aluminum Corp.*, 315 F.3d 179 (2nd Cir. 2003), and *United States v. Hercules*, 247 F.3d 706 (6th Cir. 2001), for good discussions of the divisibility defense to joint and several liability.)

1.2.5 Statutory Defenses to CERCLA Liability

A person identified as a potentially responsible party may claim a statutory defense to liability based on 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).

¹¹ See, e.g., *United States v. Hercules, Inc.*, 247 F.3d 706 (8th Cir. 2001) (holding that the evidence proffered must be "concrete and specific").

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. 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 (SBLR&BRA or “Brownfields Amendments”) (*see* Chapter 1 References, p. 39) clarified the “all appropriate inquiry” into the previous ownership and uses of the property required by the statute. For purchasers of residential property, CERCLA Section 101(35)(B) provides that a facility inspection and title search are sufficient. For all other purchasers, the determination is based on the date of purchase. For property purchased prior to May 31, 1997, Section 101(35)(B) prescribes a narrative standard directing courts to consider a list of factors, including specialized knowledge of the “defendant,” the obviousness of the contamination, and the relationship of the purchase price to the value of the property if it were not contaminated. For property purchased on or after May 31, 1997, Section 101(35)(B) directs EPA to establish standards and practices for satisfying the all appropriate inquiries requirement. EPA issued a regulation establishing such standards and practices on November 1, 2005, which took effect November 1, 2006¹², and subsequently made available a detailed fact sheet on their implementation.¹³

The amendments also require that “innocent landowners” can maintain this defense only 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.

¹² “Standards and Practices for All Appropriate Inquiries,” 40 C.F.R. Part 312; Federal Register, Vol. 70, No. 210, November 1, 2005, pp. 66069-66113. (*See* Chapter 1 References, p.39.)

¹³ “Fact Sheet on All Appropriate Inquiries Final Rule,” EPA 560-F-05-240, November 2005. (*See* Chapter 1 References, p. 39.)

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

The Brownfields Amendments added CERCLA Section 107(o), which 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. (See also Section 1.2.7 of this manual for a discussion of EPA’s enforcement discretion policy toward non-exempt “de micromis” parties.)

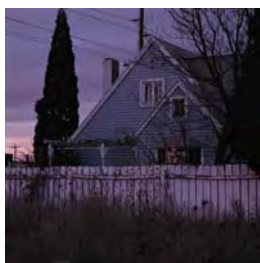


Municipal Solid Waste Exemption

Section 107(p), also added to CERCLA by the Brownfields Amendments, conditionally exempts three categories of parties from liability for response costs incurred with respect to municipal solid waste (MSW) disposed of at a facility on the NPL:

- an owner, operator, or lessee 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, p. 39) 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). (*See "Contiguous Property Owner Guidance Reference Sheet" (February 4, 2004), Chapter 1 References, p. 39; see also Section 1.2.7 of this manual for a discussion of EPA's enforcement discretion policy toward contiguous property owners.*)



Contiguous Property Owners

Another liability protection established by the Brownfields Amendments is CERCLA Section 107(q), which protects from owner or operator liability persons who 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 Section 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.

(See “Contiguous Property Owner Guidance Reference Sheet” (February 4, 2004), Chapter 1 References, p. 39; see also Section 1.2.7 of this manual for a discussion of EPA’s enforcement discretion policy toward contiguous property owners.)

Bona Fide Prospective Purchasers

The Brownfields Amendments to CERCLA now enable a person to acquire contaminated property without thereby being considered a PRP as the present owner of a Superfund site. By following the statutory requirements of CERCLA Section 101(40), such a person now may become a “bona fide prospective purchaser” (BFPP).

CERCLA Section 107(r) protects a 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. (See also Section 1.2.7 of this manual for a discussion of EPA's enforcement discretion policies toward prospective purchasers.)



Scrap Recyclers

The Superfund Recycling Equity Act (SREA) (*see* Chapter 1 References, p. 39) 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 in order to determine 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 under CERCLA Section 114(c) for an exemption from liability as a generator or transporter of hazardous substances 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 "Standards for the Management of Used Oil" (May 3, 1993). (See Chapter 1 References, p. 39.) 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

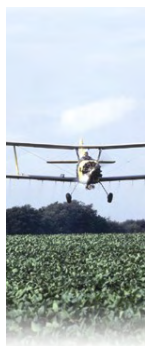
CERCLA Section 107(d)(2) provides that, except for gross negligence or intentional misconduct, state and local governments are not liable for costs or damages resulting from an emergency response to a hazardous substance release or threatened release. Under CERCLA Section 107(d)(1), a person rendering 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 Section 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 Permitted Releases

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).



Application of a Registered Pesticide

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, p. 39.)

1.2.7 EPA Enforcement Discretion Policies

The Agency may exercise its discretion in deciding whether to pursue certain parties who fall within a category of liable parties under CERCLA Section 107(a). EPA has issued several policies concerning the exercise of its enforcement discretion. Because they are discretionary, these policies are not legally binding on any party, including EPA. When identifying and classifying PRPs at a site, the Agency's discretionary enforcement policies and guidance should be considered.

"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, p. 39.) 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" ("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 ("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 Exemption

Prior to the Brownfields Amendments, EPA relied on MSW enforcement discretion policies. In 1989, EPA issued the "Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes" (December 12, 1989) ("1989 MSW Policy"). (See Chapter 1 References, p. 40.) 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 on the 1989 MSW Policy, EPA issued its "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" (February 5, 1998) ("1998 MSW Policy"). (See Chapter 1 References, p. 40.) The 1998 MSW Policy states that EPA will continue its policy of generally not identifying 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.

After the Brownfields Amendments added CERCLA Section 107(p), EPA and DOJ jointly issued the “Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA Section 107(p)” (August 20, 2003) (“2003 Interim Guidance”). (See Chapter 1 References, p. 40.) 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.

Contiguous Property Owners

In 1995, EPA issued its “Policy Towards Owners of Property Containing Contaminated Aquifers” (May 24, 1995). (See Chapter 1 References, p. 40.) Although the 1995 policy is similar to the exemption in favor of contiguous property owners in CERCLA Section 107(q), in some ways the 1995 policy is broader, and may apply to parties that do not qualify for the Section 107(q) 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 ground water contamination, such as conducting ground water investigations or installing

ground water 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.

Bona Fide Prospective Purchasers

Prior to the change in the CERCLA liability scheme discussed in Section 1.2.6 of this manual, EPA negotiated agreements that provided 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 in Section 1.2.6, CERCLA now limits the liability of persons who qualify as BFPPs. EPA's memorandum titled "Bona Fide Prospective Purchasers and the New Amendments" (May 31, 2002) (see Chapter 1 References, p. 40) 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.

On July 16, 2003, EPA and DOJ issued an interim enforcement discretion policy titled “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 Section 107(r) of CERCLA, bona fide prospective purchasers are not liable as owner/operators for CERCLA response costs. While a BFPP may not be liable, the property he acquires 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; 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, p. 40, for copies of the guidance, attachments, and frequently asked questions; see also “Windfall Lien Administrative Procedures” (January 8, 2008), Chapter 1 References, p. 40.)



Residential Homeowners

In 1991, EPA issued its “Policy Toward Owners of Residential Property at Superfund Sites” (July 3, 1991). (See Chapter 1 References, p. 40.) 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 enforcement discretion policy. However, if the residential owner's activities lead to a release or threatened release resulting in a response action, the enforcement discretion 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.

Good Samaritans at Orphan Mine Sites

EPA's Good Samaritan Initiative is an Agency-wide effort to facilitate the cleanup of certain watersheds affected by orphan mine sites by encouraging the efforts of certain non-labile parties ("Good Samaritans" or "Good Sams") who are willing to voluntarily clean up some of these sites. Concerns about incurring potential liability under CERCLA and the Clean Water Act (CWA) as a result of performing cleanup work at orphan mines have long discouraged voluntary cleanups at many of these sites. The Good Samaritan Initiative's principal purpose is to use the federal government's authority to provide greater legal certainty to Good Samaritans and resolve to the extent possible the threat of potential federal liabilities so that voluntary cleanups at these sites can proceed.¹⁴

1.3 PRP Notification of Potential 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

¹⁴ OECA/OSWER Memorandum, "Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans" (June 6, 2007). (See Chapter 1 References, p. 40.)

(general notice letter) and/or 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), which usually also includes a demand for past costs; notice of decision not to use an SNL; combined GNL/104(e) letter; and combined GNL/demand letter.

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 agree to 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.

(See "Sample General Notice Letter" (April 30, 2008), Chapter 1 References, p. 41.)

General notice letters usually encourage 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 Section 104(e) information requests, and, ultimately, more productive negotiations with PRPs for performance of the work under a settlement agreement.¹⁵



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 in which EPA postpones Fund-lead response actions and withholds

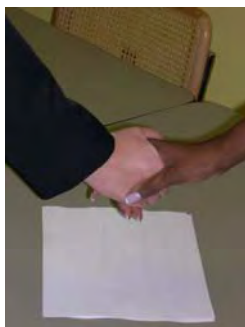
¹⁵ OSRE Memorandum, "Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity" (August 31, 1999) states that EPA will notify small businesses of their right to comment on regulatory enforcement activities when EPA makes its "initial enforcement contact" with the business. The initial enforcement contact under CERCLA is typically a general or special notice letter. (See Chapter 1 References, p. 41, for the memorandum and current Small Business Information Sheet.)

any enforcement action in order that 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;
- 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 other 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, p. 41) 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, Section 122 does not require special notice procedures. For procedures applicable to removals, refer to the "Superfund Removal Procedures Removal Enforcement Guidance for

1.3.3 Types of Settlements



On-Scene Coordinators" (April 1992). The volume referenced is one of a ten-volume series of guidance documents collectively titled Superfund Removal Procedures. (Chapter 1 References, p. 41.)

EPA sets forth settlements in legal documents that describe the requirements of the response action. If the response action is an RI/FS or RD, EPA usually requests that the PRPs enter into 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 required for an RA; it is similar to an AOC in that negotiations are bilateral. A CD, however, is a judicial action that must be approved by DOJ, filed with a complaint in federal court, and approved by a judge before it becomes final.

The above settlement devices are addressed in more detail in the "Addendum to the Interim CERCLA Settlement Policy." (See Chapter 1 References, p. 41.)

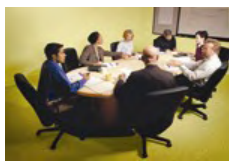
A number of activities take place in preparation for negotiations for removals, RI/FS, and RD/RA, including substantial completion of the PRP search. It is important that sufficient attention be given to the PRP search before these negotiations commence. PRP search activities may be initiated at the 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://www.epa.gov/emergencies/lawsregs.htm#laws
National Oil and Hazardous Substances Pollution Contingency Plan	1.1.1	40 C.F.R. Part 300 http://www.epa.gov/emergencies/lawsregs.htm#laws
Oil Pollution Act of 1990	1.1.1	33 U.S.C. § 2701 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Interim Guidance on the Ability to Pay and De minimis Revisions to CERCLA Section 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act (May 17, 2004)	1.1.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/atp-demin-122g-04.pdf
Clean Air Act	1.2.2	42 U.S.C. § 7401 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Clean Water Act	1.2.2	33 U.S.C. § 1251 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Toxic Substances Control Act	1.2.2	15 U.S.C. § 2601 et seq. http://www.epa.gov/agriculture/lasca.html
Resource Conservation and Recovery Act	1.2.2	42 U.S.C. § 6901 et seq. http://www.epa.gov/epawaste/index.htm
CERCLA Hazardous Substances	1.2.2	40 C.F.R. Part 302 http://www.epa.gov/emergencies/lawsregs.htm#laws

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)	1.2.3	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
Standards and Practices for All Appropriate Inquiries, 40 C.F.R. Part 312 (November 1, 2005)	1.2.5	http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr312_main_02.tpl
Fact Sheet on All Appropriate Inquiries Final Rule (October 2005)	1.2.5	http://www.epa.gov/brownfields/aai/aai_final_factsheet.pdf
Internal Revenue Code of 1986	1.2.6	http://www.irs.gov/taxpros/article/0,,id=98137,00.html
Contiguous Property Owner Guidance Reference Sheet (February 5, 2004)	1.2.6	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contig-prop-faq.pdf
Superfund Recycling Equity Act (CERCLA Section 127)	1.2.6	42 U.S.C. § 9627 http://www.epa.gov/emergencies/lawsregs.htm#laws
Standards for the Management of Used Oil	1.2.6	40 C.F.R. Part 279 http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr279_08.html
Federal Insecticide, Fungicide, and Rodenticide Act	1.2.6	7 U.S.C. § 136 et seq. http://www.epa.gov/agriculture/lfra.html
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

Chapter 1 References		
Name	Section	Location
Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes (December 6, 1989)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/munwst-dclay-mem.pdf
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 Section 107(p) (August 20, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.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
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
Windfall Lien Administrative Procedures (January 8, 2008)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wf-admin-mem.pdf
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf
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
Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans (June 6, 2007)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cercla-goodsam-principles-mem.pdf

Chapter 1 References		
Name	Section	Location
Sample General Notice Letter (April 30, 2008)	1.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/gnl-mod-08.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
Small Business Information Sheet (October 2007)	1.3.1	http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf
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	OSWER Directive 9360.3-06; NTIS Product Code PB92963409 http://www.ntis/search/index.aspx
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



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2.0 PRP Search Overview



The primary purpose of the PRP search is to identify parties who may be liable under CERCLA. The PRP search is designed to gather information establishing the elements of liability for each PRP.

Effective PRP searches are fundamental to the Agency's "enforcement first" strategy of obtaining increased PRP involvement in conducting response activities, and information obtained in the course of PRP searches serves a variety of other purposes in the remedial site response process. These purposes include:

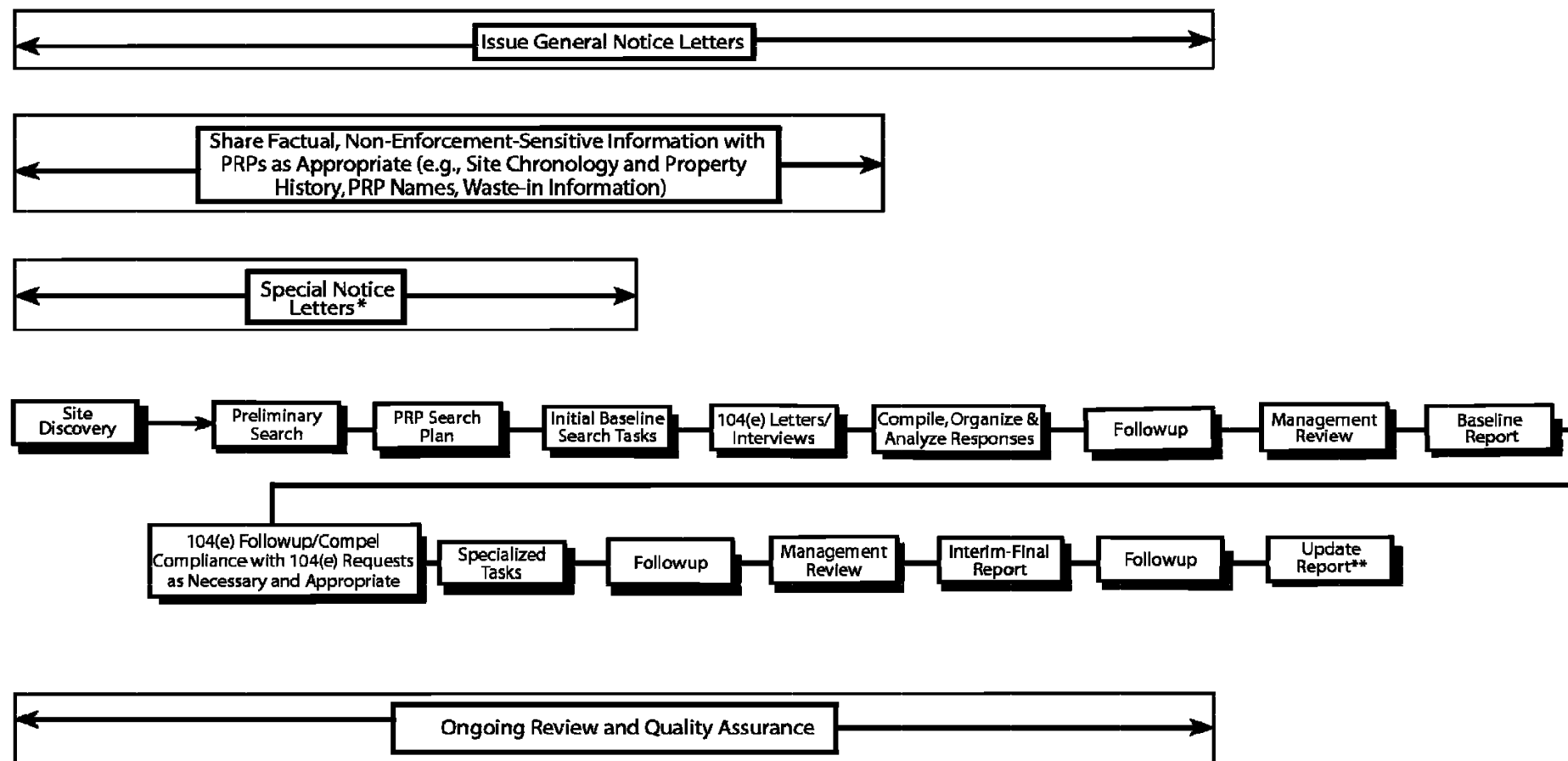
- finding out from whom to obtain site access;¹
- facilitating site characterization by providing information on hazardous substances used, site boundaries, disposal practices, and locations for conducting sampling;
- identifying individuals who may have historical information or historical knowledge of site activities;
- assessing potential applicable or relevant and appropriate requirements (ARARs) (*See Chapter 2 References, p. 81.*);
- developing waste-in lists and volumetric rankings; and
- assessing settlement prospects and litigation risks.

(*See Exhibit 1, "Overview of the PRP Search Process."*)

Achieving the Agency's goals of accelerating cleanups, maximizing PRP involvement in response actions, and reaching fair settlements

¹ OECM Memorandum, "Entry and Continued Access Under CERCLA" (June 5, 1987) (*See Chapter 2 References, p. 81.*)

Exhibit 1. Overview of the PRP Search Process



* Timing of special notice is generally dictated by response planning. The baseline phase of the PRP search should be essentially complete for the purpose of RI/FS Special Notice at least 90 days before the planned RI/FS start date. Improved evidence on liability and ability to pay will be collected during the RI/FS and follow-up phase, if necessary. Collection of such improved evidence will be completed, reviewed, and updated, if necessary, prior to issuance of RD/RA SNLs.

** Completed at least 90 days prior to issuance of RD/RA Special Notice Letters.

NOTE:

This exhibit presents an overview of a typical PRP search. It is not intended as a prescribed process for every PRP search. The appropriate process for a particular site is a matter for the professional judgment of the PRP search team.

with PRPs requires careful and coordinated planning of the PRP search. Planning involves identifying key personnel involved in the PRP search, outlining their roles and responsibilities, determining the timing and duration of PRP search activities, and identifying tasks to be performed. The PRP search planning process should be a team effort.

2.1 Roles and Responsibilities



In recent years, there has been increased planning, coordination, and integration among remedial, site assessment, and removal staff, and increased dedication of resources to the post-construction phase of the Superfund timeline, (e.g., five-year reviews and institutional controls).

Management Team

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. The team will generally take PRP search information into consideration when establishing priorities and direction for the site response.² 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, (e.g., the appropriate enforcement response or potential dollar needs for orphan share compensation). Greater emphasis on the post-construction phase does not reduce the need to apply PRP search resources early in the listing phase for new NPL sites and sites with significant remaining future response work, and the management team can play an important role in determining the appropriate sites to “front load” with those resources.

² The National Prioritization Panel also will consider PRP search information when prioritizing sites proposed for Fund-lead remedial action.

2.1.1

PRP Search Team

Each of EPA's regional offices has its own unique organizational structure and procedures for performing PRP searches, and the titles of persons performing search tasks may vary from region to region. Search and search-related tasks may be performed by persons with one or more of the following job titles: civil investigator; remedial project manager; on-scene coordinator; case developer; attorney; paralegal; enforcement specialist; enforcement officer; enforcement project manager; cost recovery specialist; and environmental protection specialist. Some general descriptions of key players and responsibilities, however, cut across regional variations.

PRP Search Manager

The PRP search manager has the lead for overseeing each site-specific PRP search. He or she is responsible for selecting an appropriate combination of the search personnel listed above to ensure an effective case team to perform the following tasks 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;

- follow up 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;
- gather adequate information for special notice letters;
- perform ATP analysis (ABEL/INDIPAY);
- gather adequate evidence of PRP liability and ability to pay;
- obtain site costs as appropriate for potential cost recovery; and
- afford the universe of PRPs an opportunity to provide input into the completeness of the Agency's PRP search efforts.

Following are general descriptions of several categories of search personnel that comprise the search team, keeping in mind that in some regions similar tasks and certain post-search tasks may be performed by search personnel with one of the other job titles listed above.

Civil Investigator

The civil investigator (CI) typically performs specialized PRP search tasks such as interviews with private parties and specialized investigative work related to, (e.g., waste disposal or PRP identification). CIs may assist PRP search managers or case attorneys in preparing CERCLA Section 104(e) information request letters, reviewing evidence, and conducting interviews. In some regions, CIs are responsible for all PRP search activities; in other regions, contractors may be used to do a portion of the work, such as title searches, and CIs are responsible for all other activities. 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 remedial project managers, on-scene coordinators, or other personnel not experienced in performing enforcement investigations, it is advisable to involve both CIs or other enforcement staff and counsel in planning PRP search activities as well as in reviewing information obtained, contractor deliverables, and conclusions drawn.

Remedial Project Manager

The remedial project manager (RPM) is the Agency official designated to coordinate, monitor, and direct remedial and certain other response activities at NPL sites. RPMs may serve as work assignment managers (WAMs) or contracting officer's representatives (CORs) on a PRP search or assist other Agency personnel performing or overseeing the search. RPMs are responsible for overseeing PRPs' performance of response activities at enforcement-lead sites. Once PRPs have agreed to perform response actions at a site, the RPM is responsible for ensuring that studies and cleanup activities are performed correctly and in accordance with the AOC or CD, CERCLA, the NCP, and relevant policy and guidance. Moreover, RPMs may be involved in RI/FS, engineering evaluation and cost analysis (EE/CA), or RD/RA negotiations. As they work extensively with PRPs, it is essential that RPMs understand Agency policies and procedures for completing a thorough PRP search whether or not they are involved in performing it.

On-Scene Coordinator

The on-scene coordinator (OSC) is the Agency official designated to coordinate, monitor, and direct removal actions. A removal action is conducted to respond to a release or threatened release and must be performed within a short period of time. OSCs need basic information, such as property ownership, very early in the removal action to enable them to get access to the site and identify the source of the release or threat of release. The OSC may ask for a thorough PRP search once the removal is under way or the release or threat has been addressed. The nature and extent of an OSC's involvement in PRP search efforts will depend on the nature of the removal and the urgency of responding to the release or threat of release. Like RPMs, OSCs need to understand the PRP search process whether or not they are actively involved in the search itself. (See subsection 2.2.1 of this manual for other PRP search-related tasks during removal actions.)

Paralegal

Some regions use paralegals to support PRP searches. Paralegals work with case attorneys and other staff to develop the evidence to support a finding of liability. They are generally skilled at researching case law, statutes, rules, and legislative histories using legal research databases such as Lexis/Nexis and Westlaw, which are made available to regional legal staff. Paralegals' research skills often extend to obtaining information regarding corporate filings from secretaries of state, and information regarding PRPs from business, news, and internet sources. Depending on the skills of the paralegal and the organizational structure in a region, paralegals may perform some of the same tasks as CIs or PRP search managers, including interviewing potential witnesses and PRPs. Paralegals also may research property ownership, perform limited title searches, and obtain deeds and maps relating to sites. Paralegals draft CERCLA Section 104(e) information requests and review and summarize PRP responses to those requests.

Paralegals work closely with regional attorneys to trace corporate successors and help determine successor liability and liability of parent or subsidiary corporations. This often involves searching archives and public records for historical information.

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. The case attorney should be involved 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 obtain attorney input regarding sufficiency of evidence questions, title searches, conducting interviews, definition of site, and classification of PRPs (e.g., “de micromis”, insolvent). As most PRPs retain legal counsel to represent them throughout performance of the response action, it is important that the regional case attorney, at a minimum, be involved in identification of critical PRP search planning and implementation milestones. In addition to preparing litigation referrals to and serving as EPA’s main contact with DOJ, EPA attorneys play a major role in all phases of the Superfund process from site discovery through cleanup and post-construction activities.

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, also employ 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. (See Appendix A for a sample “Performance Work Statement for

Enforcement Support Services," including PRP search support.) Contractors may not perform inherently governmental functions. Prohibited activities include making legal or liability determinations and approving and signing CERCLA Section 104(e) information request letters. Contractors may, however, draft and mail Section 104(e) letters and other correspondence. Regions may share enforcement support contracts with one or more other regions or enter into interagency agreements enabling them to access sister agencies' contractors to assist in PRP search efforts. Regional contracting officers (COs) and project officers (POs) should be consulted regarding award, period of performance, scope of work, and suitability of regional enforcement contracts for obtaining PRP search task support.

Financial Analyst

There are situations when specialized expertise is needed to make 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, EPA's National Enforcement Investigations Center (NEIC) staff expertise, or contractors with this expertise. Financial analysts may also help evaluate compliance with the financial assurance provisions of settlement agreements.

SEE Personnel

The Senior Environmental Employment (SEE) program was formally established through the Environmental Programs Assistance Act (June 12, 1984). (See Chapter 2 References, p. 81.) 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, p. 81.) The Act specifies 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.

Although not EPA employees, SEE personnel 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 a general knowledge of criminal and civil provisions of environmental protection statutes, knowledge of investigation principles and techniques, skill in the use of investigative techniques, and the ability to conduct interviews and draft interrogatories. Like other contractors, SEE employees must identify themselves as contractors and may not provide legal advice, make inherently governmental decisions, or sign CERCLA Section 104(e) letters or other EPA correspondence.

Community Involvement

The PRP Search Team should consider establishing communication with the Community Involvement Coordinator early in the search process as community involvement activities may produce many benefits, including information on additional PRPs. Areas adjacent to Superfund sites often contain numerous residents who may have lived in the area for a long time. Many of these residents have

specific knowledge of the site and are usually willing to share their information. The local community should routinely be considered a potential source of information.

2.1.2 Opportunities for PRP Input



As PRPs have an interest in identifying additional parties with whom response costs might be shared – and may have information that could lead to such parties – EPA should provide PRPs the opportunity to participate in or provide input to the search.³ PRP input may speed up the settlement process, help avoid third-party litigation, and facilitate private allocation efforts. In addition, PRPs may be invaluable in identifying witnesses and parties with pertinent information. It is up to EPA to determine whether PRP participation will be beneficial, define the nature and extent of such participation, evaluate information submitted by the PRPs, and maintain oversight of their search activities. It is advisable to make this determination as early in the search process as possible. CERCLA Section 104(e) information request letters and GNLs may be used to invite PRPs to participate in the search and submit information about additional parties.⁴

If PRPs express interest in participating in the search, EPA must determine whether the potential benefits of their participation outweigh the burden of directing and overseeing their activities. Factors that EPA may weigh in making this determination include:

- whether the PRPs have the ability to provide needed information;

³ The case team's planning of response and enforcement actions should allow sufficient time for EPA to issue follow-up CERCLA Section 104(e) information request letters to newly identified parties before EPA makes final PRP determinations.

⁴ Model CERCLA Section 104(e) letters include questions seeking information from PRPs about other PRPs. (See "Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests" (June 30, 1995), Chapter 2 References, p. 81, for sample information request letter questions.)

- whether information obtained by the PRPs may raise confidentiality issues;
- whether PRPs have cooperated with EPA and been responsive to its information requests;
- whether third-party tort issues or contribution litigation exist or may arise among PRPs;
- whether the PRPs have any advantage, bias, or interest that could influence their performance of search-related tasks;
- site-specific factors such as timing or large numbers of known PRPs.

Direction and Oversight

Proper direction and oversight are necessary to maximize the potential benefits of PRP participation in the search and to ensure that PRP-assisted searches are conducted in a manner both effective and consistent with overall Agency responsibility for the search. In some circumstances, EPA may find that channeling PRP input through a steering committee or other organized group of PRPs whose liability has been established facilitates direction and oversight. In addition, the following guidelines are recommended:

- The PRPs should commit themselves to working with EPA in good faith for the duration of the search.
- The PRPs should be in compliance with any CERCLA Section 104(e) information requests issued to them and commit themselves to supplement those responses in a timely manner as additional information becomes available.
- The PRPs must not represent themselves as EPA personnel when performing PRP search-related tasks.

- Do not share with the PRPs any CBI, trade secrets, or other sensitive information obtained from PRPs who are not participating in the search.
- Document the PRPs' tasks, roles, authorities, deadlines, and any tasks they may perform without EPA oversight in writing.
- Advise the PRPs that they must adhere to deadlines in order to avoid delays and ensure that EPA has enough time to consider information for a particular purpose (e.g., issuance of SNLs).⁵
- Advise the PRPs that the work they perform must be fully documented so as to support its completeness and accuracy, and that all supporting records and documentation must be submitted to EPA for possible inclusion in the site's administrative record or for use as evidence in federal court.
- Require that the PRPs explain the legal and factual basis of identified parties' liability and submit documentation supporting their determination.
- Require that the PRPs explain all assumptions made in compiling all waste-in lists they submit.
- Advise the PRPs that information submitted regarding other parties may be used for litigation and negotiation purposes, and ensure that they understand how to treat information containing personal privacy information or claimed as confidential business information (CBI). (Before sharing

⁵ Failure of the PRPs to meet agreed deadlines may result in EPA takeover of a task that a PRP has agreed to perform, which may increase PRPs' costs and result in information being obtained too late to be considered.

any information of this kind with other PRPs, check with your Office of Regional Counsel (ORC) to determine if a confidentiality agreement should be drafted covering this information. (Information disclosure issues are discussed in Section 2.3 of this manual.)

- Explain to the PRPs that although the Agency appreciates receiving information on additional parties, EPA is not obligated to explain or justify its decisions regarding whether or not to pursue those parties.
- Ensure that all PRPs participating in the search have equal access to information.
- Advise the PRPs of EPA's enforcement discretion policies.

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 the PRPs who provided the information should receive some feedback or explanation as to why the newly identified parties were or were not named.⁶

EPA Responsibilities

Just as EPA determines whether PRPs will participate in the search, it determines what tasks they will perform. Regardless of the nature and extent of PRP participation, however, EPA – and specifically the Case Team – is responsible for performing the primary search functions and bringing the search to a successful conclusion. The Agency's prerogatives include:

⁶ EPA personnel are required to document in an enforcement-confidential memorandum 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* OSRE Memorandum, "Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs" (August 2, 1996), Chapter 2 References, p. 82.)

2.2 PRP Search Plan

- determining the timing and extent of the PRP search;
- deciding which parties should receive CERCLA Section 104(e) information request or notice letters;⁷
- evaluating information developed in the course of the search;
- deciding which parties to name as PRPs; and
- determining the terms of settlement with PRPs.

PRP Search Tasks

As part of their efforts to identify additional parties, PRPs may perform associated tasks such as:

- conducting title searches;
- developing waste-in lists;
- preparing volumetric rankings;
- performing corporate and other public document research;
- providing information on industry processes and waste streams;
- identifying and locating witnesses and other knowledgeable parties;
- interviewing witnesses and providing EPA with notes and affidavits;⁸

⁷ 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. The initial enforcement contact under CERCLA is typically a general or special notice letter. (See Chapter 2 References, p. 82, for the memorandum and current “Small Business Information Sheet.”)

⁸ EPA may choose to re-interview witnesses originally interviewed by other PRPs and obtain its own affidavits or witness statements.

- funding neutral ADR professionals to assist in information-gathering efforts;
- establishing and managing document repositories of publicly available, non-privileged, non-CBI site information;
- developing databases to make site information accessible to widely dispersed parties; and
- sharing information from in-house databases.

The site-specific PRP search plan focuses on the “nuts and bolts” of how the search will be conducted; it identifies the goals of the search and the tasks necessary to achieve them. The PRP search plan should be considered iterative in nature since it is not possible to foresee all the types of information that may need to be gathered, the questions and issues that may develop during the baseline phase, or the tasks necessary to complete as part of a follow-up search. PRP search plans should not be confused with PRP search work plans. Work plans are documents prepared by contractors that describe in detail the work to be performed and identify proposed staff in response to a scope of work prepared and issued by EPA or another contracting agency.

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; 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 may require only a baseline effort with few or no follow-up tasks. At a complex site, on the other hand, a baseline search is insufficient and will require follow-up activities. (See Appendix B for a checklist of PRP search tasks.) The plan should have the flexibility to respond to needs identified in any part of the PRP search process. To ensure that the PRP search plan addresses potential legal, technical, and policy issues that may be associated with the search, the PRP search manager should include all EPA staff working on the site (e.g, CI, RPM, OSC,

attorney) in the development of the plan. (See Exhibit 2, "PRP Search Process Flow Chart.") The PRP search plan should be fully implemented before RD/RA negotiations commence.

Despite the differences among sites, PRP search plans generally address the following:

- Defining search tasks and the order in which they should be performed, including follow-up tasks to repair data gaps that appear during the search ;
- Defining resources needed to accomplish search tasks, taking into consideration site factors that may require specialized resources and skills, such as:
 - an unusually large number of generators;
 - PRPs that may qualify for an exemption;
 - area-wide ground water contamination or surface water contamination where sources are not apparent;
 - non-contiguous 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 large watersheds;
- Developing a detailed scope of work to obtain contractor support, if necessary;
- Establishing a schedule for completion of search tasks;
- Managing the search, including:
 - roles and responsibilities of all members of the PRP search team;

- procedures for assessing search progress, conducting evidence reviews, and identifying impediments to progress; and
- describing the PRP Search Team's strategy for encouraging PRP participation in the search.

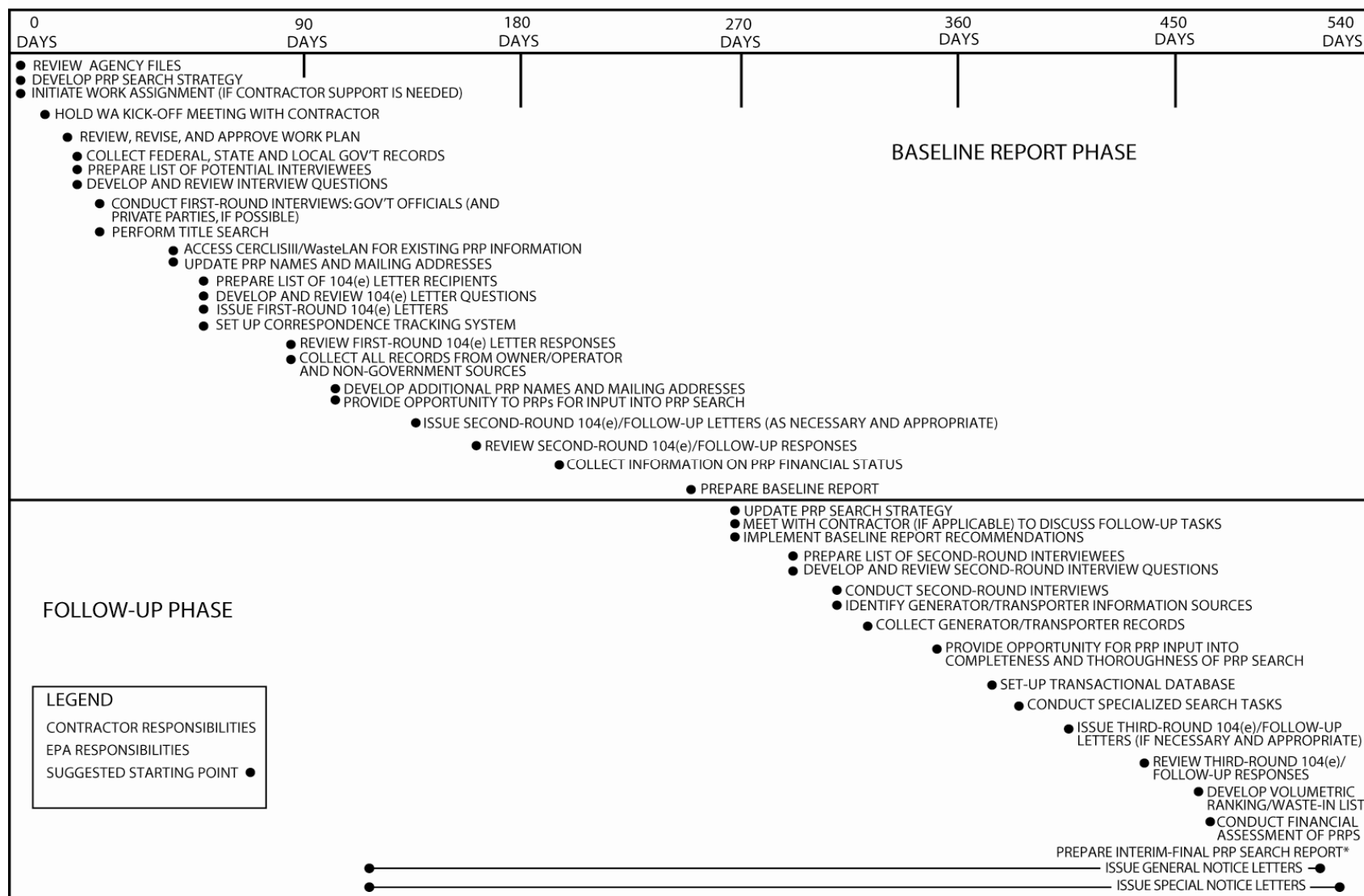
2.2.1 Timing and Duration



The PRP search should be initiated as soon as possible after it becomes reasonably certain that EPA will incur response costs at a site. Searches may be performed in phases. A preliminary search may be initiated during a removal response or during the preliminary assessment/site investigation (PA/SI) if a removal action is anticipated before a site is proposed for listing on the NPL. 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 C contains a checklist for removal and pre-remedial sites that was developed to assist early on-site responders (e.g., CIs, OSCs) in documenting valuable information on PRPs and site conditions. To avoid duplication of these tasks, early on-site responders may 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.

Basic tasks needed at any site, including removal sites, include (1) identifying the current site owner and, if applicable, operator, and (2) gaining access to the site. Identifying the owner/operator is particularly urgent at removal sites as the early responder needs to determine whether the party is capable of or willing to perform actions to stabilize conditions at 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 may be undertaken based on these preliminary tasks. In practice, depending on resources and

Exhibit 2. PRP Search Process Flow Chart



* At sites where no volumetric ranking/waste-in list or financial assessment of PRPs is done, the interim-final PRP search report should be prepared 60 days after review of third-round 104(e)/follow-up responses. At sites where a volumetric ranking/waste-in list or financial assessment of PRPs is done, the interim-final PRP search report should be prepared 120 days after these tasks are completed.

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 discrete, 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.

In conducting the PRP search, regions should consider which of the tasks outlined below are cost-effective and reasonable to meet relative to the anticipated overall cleanup costs at the site.⁹ Regions should document in the site file that they have taken all reasonable, achievable steps to identify PRPs. Task 1 below is mandatory for all PRP searches. Ideally, all reasonable, achievable steps should have been taken prior to completion of cleanup negotiations, but it is recognized that this may not be feasible in all situations.

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

⁹ *Superfund Program Implementation Manual (SPIM)* Fiscal Year 2009/2010, Appendix B-5, OSWER Directive 9200.3-14-1G-T, March 31, 2009; <http://www.epa.gov/superfund/action/process/spim09.htm>.

2. All relevant and material leads from CERCLA Section 104(e) responses, interviews, and other primary or source documents have been pursued.
3. Sufficient information and evidence have been obtained to support the government's liability case or to determine that no viable PRPs exist or can be found.
4. PRPs have been categorized and financial and waste contribution information needed to perform orphan share calculations has been collected.
5. Ability to pay determinations (including but not limited to the investigation and analysis of any applicable insurance coverage) have been made for those PRPs who have asserted inability to pay in good faith.
6. General notice letters have been issued to all PRPs being pursued.

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. EPA's goal is to maximize PRP participation in all aspects of site response, including the removal process, which means PRP searches in the removal context are increasingly important.

A PRP investigation should be part of the removal site evaluation conducted by an OSC. An important reason for initiating a PRP search during the removal site evaluation 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 appropriate level of effort to devote to preliminary 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 need to respond to the release or threatened release, the estimated cost of the removal, and available resources. At a minimum, the current owner and current operator should be identified and, as appropriate, issued notice. This can often be accomplished readily and reliably by consulting witnesses and neighbors, signs and placards, or the local assessor's office.

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, oral inquiries should be made of municipal officials and reasonably available on-site personnel, and reviews of readily available site records should be undertaken.

The OSC should prioritize and expedite certain search activities to support the notice, negotiation, and AOC process before the removal begins. Such activities may include notifying PRPs orally of their potential liability after consulting with the ORC, and following up with a notice letter as soon as possible after the oral

notification. An expedited work assignment under a regional enforcement support contract may be used for this purpose. (See the expedited PRP search support task in the sample "Performance Work Statement for Enforcement Support Services" in Appendix A.) 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 and PRP search personnel should follow procedures that expand upon the PRP search activities discussed for emergency situations. Title searches and on- and off-site interviews also may be conducted. CERCLA Section 104(e) information requests that include questions pertaining to generators, transporters, and financial viability may be used to obtain additional evidence.

3. Non-Time-Critical Removals

Non-time-critical removals (NTRs) 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. NTRs are managed by RPMs in some regions.

PRP searches for NTRs 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, follow-up activities should be completed in time for issuance of GNLs.

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 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), payroll records (former employees who may have information about generators, operators, or on-site waste disposal));
- issuing CERCLA Section 104(e) letters; and
- conducting title searches.

Other Considerations Applicable to All Removal Searches:

- Neighbors and nearby businesses are often rich sources of information about former and current site owners and operators and site activities. These people should be interviewed as soon as possible.
- Visual evidence linking PRPs to the site (e.g., drum labels, shipping records, vehicle registrations) should be documented, photographed, or photocopied, as appropriate.
- The regional attorney should be advised promptly if criminal activity is suspected.



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 would qualify for listing on the NPL and that a long-term response is appropriate.

These are sites that would score 28.5 under the hazard ranking system (HRS) or otherwise meet one or more of the following listing criteria:

- contaminated aquifers used for public drinking water;
- soils in residential areas or schools contaminated with hazardous substances significantly above background levels; and
- sensitive environments, and those 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 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 prior to the issuance of RD/RA SNLs; and

- identify and classify other parties (e.g., “de micromis” and municipal solid waste contributors, parties with ability to pay problems) prior to issuing GNLs.

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.

Follow-up activities to the initial phase of a remedial search will likely be highly site-specific and may be dictated by leads developed from prior activities or sampling and response activities. Relatively straightforward enforcement sites may only require a few interviews as followup to evidence-preservation activities in order to establish PRP liability and determine ability to pay. Complex enforcement sites such as area-wide ground water sites and landfills typically require more comprehensive follow-up activities such as issuing a large number of information request letters, conducting interviews, and developing transactional databases. Old sites with limited documentation also may present complex liability issues calling for site-specific follow-up activities.



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 for specific parcels of land and identify the owner/operator 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. Adhering

to these schedules may be problematic or impractical for ground water and sediment sites as site sampling RI/FS data may be necessary for PRP identification.

Even if a PRP search seems complete for a specific purpose, EPA may undertake additional search activities. This is likely to be the case when follow-up 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 EPA's administrative information-gathering authorities are separate and distinct from the civil discovery process, it is necessary for case teams to carefully consider their available options in the scenario of ongoing litigation.

2.2.2 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:

- a comprehensive enforcement support contract that provides for expedited PRP search support;
- simultaneous submission of reports to all Agency reviewers;
- open procurement authority for enforcement staff; and
- a removal/pre-remedial checklist to avoid duplicating tasks.

Enforcement support contracts may provide for obtaining expedited PRP search support. Under the appropriate contract vehicle, any PRP search-related support could be obtained on an expedited

basis. (See Tasks 1 and 2 of the “Performance Work Statement for Enforcement Support Services” in Appendix A.) Consult your region’s contracting officer (CO) or project officer (PO) to determine whether a contract vehicle is in place that allows for expedited PRP search support.

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.

Enforcement investigative staff typically make repeated small purchases in the performance of their duties, primarily for photocopying. Some regions have successfully streamlined the process for reimbursing Agency employees for such out-of-pocket expenses. Streamlining involves the use of an open procurement request (PR) against which a succession of claims may be made instead of preparing a new PR for each claim. Open PRs are established for each investigator, authorizing the individual to incur expenses up to the amount committed under the PR. Investigators obtain reimbursement by providing receipts and documenting a Standard Form (SF) 1164 referencing the open PR. Enforcement investigative staff should consult the appropriate regional contract and financial personnel about specific procedures for open procurement.

An early on-site responder’s checklist is another useful tool for streamlining the process and reducing duplication of activities. (See Appendix C.)

2.3

Release of Information

Information Disclosure Issues

The Agency must follow EPA guidelines, statutory, and regulatory requirements when determining whether to release information to other PRPs. The Agency emphasizes the importance of a consistent approach when releasing information to PRPs about the identity, source, relative contributions, type, and quantity of wastes at a site. (See "Revised Policy on Discretionary Information Release Under CERCLA" (March 31, 1993) and the "Privacy Policy" (September 27, 2007) issued by the Agency's Chief Information Officer, Chapter 2 References, p. 82.)

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 is identified at a site and a PRP steering committee has been formed, the steering committee could be an effective channel for releasing information to all PRPs. It may prove beneficial for EPA 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)

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 (e.g., the design of an innovative treatment technology). CBI also includes tax returns and other financial data to the extent that they have not already been released by the company, for example, in its annual report. 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. EPA is required to advise PRPs of these requirements when issuing information request letters under CERCLA Section 104(e). EPA does not have to decide whether the information is CBI unless someone requests its release, but EPA must maintain the security of that information as if it were CBI until EPA makes a determination to the contrary. (See 40 C.F.R. 2.201, et seq., Chapter 2 References, p. 82, for information on EPA procedures for making CBI determinations.)

Enforcement-Confidential/Enforcement-Sensitive

Enforcement-confidential and 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 are consistent with applicable law to prevent the unauthorized release of enforcement-confidential and enforcement-sensitive documents. Even though a document has been marked enforcement-confidential or enforcement-sensitive, it must be reviewed for privilege in discovery or in response to a FOIA request

to ensure that the designation remains appropriate. (See Chapter 3 (“Analyze Responses”) for further discussion of reviewing documents for discovery.)

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, p. 82.)

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. New FOIA amendments passed in December 2007 expanded the FOIA definition of record to include any information that would be an agency record maintained for an agency by a government contractor for the purposes of records management. Information maintained by a government contractor may need to be searched in response to a FOIA request.

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, of the anticipated cost to the requesting party, 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. The new FOIA amendments also have a provision which goes into effect on December 31, 2008 that prohibits an agency from collecting fees if the agency does not respond to a request within 20 days, except where "unusual circumstances" or "exceptional circumstances" apply to the processing of the request (existing language in FOIA).

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

Exemption 4 protects trade secrets and commercial or financial information that is obtained from a person that is privileged or confidential. The release of such information would either cause substantial competitive harm to the submitter of the information 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.

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. OGC is responsible for making the final CBI determinations for all headquarters CBI requests and for only the regional CBI requests involving FIFRA and TSCA. All other CBI determinations are made by the applicable ORC.

When Exemption 4 is used to withhold information, the office sends an initial denial letter to the FOIA requester explaining that the information has been claimed as CBI and that EPA is making a final determination regarding whether the information is entitled to confidential treatment. Program offices are also encouraged to

contact the FOIA requester directly (by phone or e-mail) to ask if the requester is willing to narrow the scope of the request to exclude the CBI. In addition, a letter should promptly be sent out to the submitter business asking it to confirm its CBI claims for the information and to substantiate any claim of confidentiality (request for substantiation).

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.

Regional FOIA officers should be consulted on requirements for responding to FOIA requests. OGC or ORC should be consulted whenever a question arises about releasing or withholding records.

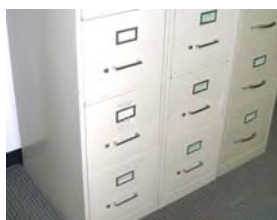
EPA employees risk criminal liability by releasing protected information such as CBI materials or Privacy Act (see Chapter 2 References, p. 82) information.

On January 21, 2009, President Obama signed the “Presidential memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act,” which established a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The president directed all agencies to administer FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and not to withhold information based on “speculative or abstract fears.” In addition, he called on agencies to ensure that requests are responded to in “a spirit of cooperation,” that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made. The memorandum was effective immediately, superseding former Attorney General Ashcroft’s memorandum on FOIA of October 12, 2001. Accordingly, agency personnel should begin to apply the presumption of disclosure to all decisions involving FOIA immediately.

The president directed the attorney general to issue new guidelines governing FOIA to implement these objectives. Once the new guidelines are issued, DOJ’s Office of Information and Privacy (OPI) will conduct training and provide additional advice and guidance on their implementation. Consult your regional FOIA officer for information on issuance of the guidelines and availability of OPI’s training and guidance.

2.4 Document Filing and Retention Issues

2.4.1 Document Management



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 are likely to be voluminous enough that an electronic system for managing them 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 can be valuable in organizing and managing records. A document control system for identifying and tracking documents should also be established.

2.4.2
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 financial and other data across regions. 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. Check with your regional information management coordinator for additional information. 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 D.

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
Entry and Continued Access Under CERCLA (June 5, 1987)	2.0	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cont-access-mem.pdf
Applicable or Relevant and Appropriate Requirements (ARARs)	2.0	http://www.epa.gov/superfund/poliy/remedy/sfremedy/arars.htm
Superfund Program Implementation Manual (SPIM) Fiscal Year 2009/2010	2.0	http://www.epa.gov/superfund/action/process/spim09.htm
Performance Work Statement for Enforcement Support Services	2.1.1	Appendix A
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 (1965)	2.1.1	42 U.S.C. § 3056 et seq. http://www.doleta.gov/seniors/other_docs/owp-106-501.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
Small Business Information Sheet (October 2007)	2.1.2	EPA Publication 300-F-07-003 http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf
Confidentiality of Business Information	2.1.2	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampled- cercla-mem.pdf

Chapter 2 References		
Name	Section	Location
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
Checklist of PRP Search Tasks	2.2	Appendix B
Checklist for Removal/Pre-remedial Sites	2.2.1	Appendix C
Performance Work Statement for Enforcement Support Services	2.2.1	Appendix A
Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993)	2.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-discre-info-rel.pdf
Privacy Policy (September 27, 2007)	2.3	http://www.epa.gov/irmpoli8/ciopolicy/2151.0.pdf
Confidentiality of Business Information	2.3	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Freedom of Information Act (Reference Guide)	2.3	5 U.S.C. § 552 et seq. http://www.epa.gov/foia/guide.html
Privacy Act	2.3	5 U.S.C. § 552 et seq. http://www4.law.cornell.edu/5/552a.html
Quick Reference Guide for Using CERCLIS/WasteLAN	2.4.2	Appendix D



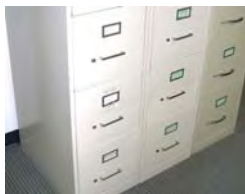
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3.0 Baseline PRP Search

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. Although the exact nature, number, and sequence of search tasks will vary from site to site, 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. Reviewing files and collecting records;
2. Organizing records and tracking correspondence;
3. Issuing information request letters;
4. Conducting interviews;
5. Performing title searches;
6. Conducting business status and financial research;
7. Developing a site summary;
8. Compiling waste-in information;
9. Classifying PRPs; and
10. Preparing a baseline PRP search report.



(See Appendix B 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.

In addition to the sources discussed below, refer to "Potentially Responsible Party Internet Information Sources" (Appendix __), a detailed compendium of links to business, financial, legal, real property, and technical information sources; EPA and other government agency web sites; investigative tools; directories; libraries; maps; and aerial photographs.

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. 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.)

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
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 about sites. A site may be listed on a state registry of contaminated sites, or state-regulated activity or resource use, (e.g., well drilling), may have occurred there, generating applications, permits, or notices to or from owners or operators. Such information may be useful both in identifying PRPs and planning and implementing site response actions. Of particular interest are documents located in the state's Superfund and RCRA program offices as well as records maintained by the secretary of state, attorney general, and tax officials. 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 such information to EPA, the PRP search manager should coordinate 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, enforcement actions
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

Cities and counties regulate and keep records of activities and resource use within their jurisdiction. Local government offices may contain records of building, ground water use, and excavation permits and licenses; applications for repeal or amendment of county zoning ordinances; tax assessments; local disposal guidelines; inspection and violation notices and reports; and memoranda and correspondence between site owners and operators and local officials. In some cases, local officials may

have prepared site history memoranda and lists of hazardous materials. Like its counterpart at the state level, such information may be useful both in identifying PRPs and planning and implementing site response actions. 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 photographs, operations maps, correspondence, applications
Zoning Boards	applications, plat maps and aerial photographs
Police and Fire Departments	accident reports, lists of hazardous materials
City or Township 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., Autotrack XP, Dataquick, LexisNexis, Westlaw, Dun & Bradstreet);
- 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 records in consultation with the records management coordinator in each region. Factors relevant to this decision include cost, accessibility of the facility where the records will be maintained, and current regional records guidance. If any records are to be placed in a public docket, the technology available to the public for accessing them 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 stamping¹ documents as this will help verify that no document has been lost, and allows for accurate re-filing of documents. The regional records management coordinator should be consulted in any matter that affects records management. (See also subsection 3.2.1 of this manual.)

Volume of Records

If the estimated volume of records to be reviewed and copied is large, a contractor may be better suited to the task than EPA. Consult the regional records management coordinator to determine the type and amount of work required, and check with project and contracting officers to make sure that an appropriate contract vehicle is available and that the type of work is within its scope. If use of a contractor² 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.

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

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 completed before the task begins. Coordinate with the regional project officer (PO) 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.

- 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;
- microfilm³ or otherwise image the documents and then produce hard copies from the images;
- 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).

Privileged Documents

The government's documents may be subject to a claim of privilege, the most common privileges being attorney work product, attorney-client, and deliberative process. (See Section 2.3 of this manual for a description of these privileges.) These privileges may be asserted by the government in litigation or in settlement negotiations in order to withhold particular documents. If a document is subject to one of these privileges, the assertion of the privilege is discretionary. Deliberate or inadvertent release of a privileged document, however, may waive the privilege. The determination to produce or withhold a privileged document is made by DOJ and EPA attorneys. When making a claim of

³ Most regional offices have microfilm readers, but use them mainly to view older records. Other imaging technologies (e.g., PDF files, CD-ROM, CD scans) have largely supplanted microfilm, and different regions may rely on different technologies. Check with the regional records manager for preferred methods and procedures.

privilege, the government must prepare a privilege log (a list of all the documents being withheld and the particular privilege(s) that apply), which is sent to the party requesting the document(s). Assertion of deliberative process privilege has special requirements, including an affidavit from the appropriate AA or RA justifying the deliberative process privilege. The designation of privilege may be litigated by the opposing party.

Not all documents subject to a potential claim of privilege may be so marked. Therefore, if there is a possibility that the documents being reviewed are privileged, the reviewer should contact the assigned attorney, who can review the documents and make a determination that there is a privilege claim. Some documents may be marked "Enforcement Sensitive" or "Confidential Settlement Document." These designations do not necessarily support a claim of privilege and must be reviewed by the assigned attorney to determine if there is a claim of privilege or if the documents are releasable.

Keep in mind that privilege designations on a document are not the same as FOIA exemptions. While documents subject to a claim of privilege may also be within one of the FOIA exemptions, these are two different determinations as documents subject to a FOIA exemption must be reviewed in light of the FOIA exemptions at 40 C.F.R. § 2.105. Consult the regional records management coordinator regarding special procedures for managing privileged, enforcement-sensitive, confidential, and FOIA-exempt documents.

Confidential Business Information (CBI)

Files obtained from PRPs may be subject to a CBI claim. Although 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. Consult the regional records management coordinator regarding special procedures for managing documents subject to a CBI claim.

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. 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

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

If documents need to be organized in a more complex fashion (e.g., to permit extensive cross-referencing or keyword indexing), it may be useful to develop an electronic database. All EPA regions now have access to the Superfund Document Management System (SDMS), and some regions use it to store and retrieve PRP search-related documents such as notice letters, demand letters, responses, waste tickets, and invoices. File transfer protocol (FTP) set-ups have been used in some regions for warehousing site-

related information, and may have PRP search applications. Regions differ in what database systems they use and how they use them, however, and you should consult your regional records management coordinator and PRP Search Enhancement Team contact (see Appendix E) for information about database development practices, procedures, and protocols in your region.

Following are basic guidelines for organizing a database. Some regions have developed more technically advanced databases than the guidelines contemplate, but they serve as a useful starting point.

- 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.
- If required, develop a more complex database 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 is discovered after the keywords are selected or the index is created. When planning a PRP search for which complex file organization may be necessary, time and resource

requirements for database maintenance and modifications must be considered 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.

Information to be tracked:

- identity of the recipients;
- delivery status (e.g., accepted, refused receipt, address unknown); and
- response status (e.g., no response, partial response, complete response).

Capacity of the 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 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

Sections 104(e) of CERCLA and 3007(a) of RCRA authorize the Agency to issue information request letters.

Section 104(e) 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:

- 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.
- 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.
- 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."

Section 3007(a) authority is in some ways narrower than Section 104(e) authority. It does not expressly authorize the Agency to seek information about a person's ability to pay for or perform a cleanup, for example, and it is limited to information (1) about hazardous wastes (2) gathered from persons who have generated, stored, treated, transported, disposed of, or otherwise handled

such wastes. On the other hand, information the Agency may seek about hazardous wastes under Section 3007(a) is not expressly restricted to their identity, nature, and quantity. Section 104(e) and 3007(a) authorities may supplement each other usefully in some circumstances.

Section 104(e) letters are used for information-gathering purposes and do not designate an entity as a potentially responsible party. A compilation of sample information request letters, questions, and additional relevant resources can be found on OSRE's internet site.

(See Chapter 3 References, p. 200.) The letters and questions are specifically tailored to the type of site (e.g., chemical plant, dry cleaner), recipient (e.g., individual, small business, large corporation), recipient's involvement with the site (e.g., owner, operator, transporter), and nature of the information sought.

Recipients of information request letters may be requested to produce records or provide information on site ownership, site operation, their financial position, wastes sent to the site, possible generators and transporters, and the existence of records. (See subsection 3.3.1 of this manual for additional information on the nature and content of information request letters.)

The Agency's statutory information-gathering authority is broad enough to allow EPA to seek any information reasonably calculated to lead to information about a release. Although EPA's authority is broad under Section 104, the Agency is sensitive to the substantial burden that may be imposed on parties who receive an information request.

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;
- decide who from the list should receive 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 information request letters, the following factors should generally be considered when drafting them.

Access to 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. The difficulty with this type of research, however, 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. (See “Potentially Responsible Party Internet Information Sources (PRPIIS)” in Appendix F).

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 Chapter 3 References, p. 200.)

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, but 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 that do not have to be explained 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). (See Chapter 3 References, p. 200.)

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 C.F.R. Part 2, Subpart B (40 C.F.R. §§ 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 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.

Where possible, use a corporate address to send a Section 104(e) letter, GNL, or SNL so the letter is releaseable under FOIA. If a home address is used, the letter has to be redacted to omit the home address.

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, p. 200) 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, p. 200) if he transferred property or assets to avoid a federal debt under CERCLA.

When seeking information from a corporation, Section 104(e) letters should be sent by name and title to corporate officials (e.g., president, manager, CEO, registered agent), not to staff members, in order to lay the groundwork for legal action against the corporation in case of non-response. The *Federal Register* should be reviewed annually to see if penalty amounts for non-response have increased. If they have, Section 104(e) letters should be revised accordingly. (See Section 4.2 of this manual for further discussion of penalties under the heading "Judicial Action to Compel Compliance/Referrals to DOJ.")

The PRP search team may also ask the recipient to send copies of requested documents to EPA and 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 PRPs' 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.

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. This authority should be used to request information about insurance coverage, specifically whether a PRP purchased insurance policies for the period in which environmental contamination took place, and to obtain copies of those policies or other evidence of their existence. This information is particularly relevant when a PRP's financial viability is, or could be, an issue (e.g., in ability to pay and bankruptcy situations). (See the discussion of insolvent and defunct determinations in Section 4.6.2 of this manual.) Each case team needs to determine if information regarding insurance coverage should be requested, either in an initial or a follow-up Section 104(e) request.

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:

- establishing an information repository or publicly accessible web site 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 web site is to make available non-confidential information to assist recipients of the information requests in better responding, reduce the number of inquiries or requests to the Agency for information, and provide information to the community at an early point.⁴ The nature and location of a repository or publicly accessible web site 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;

⁴ 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, p. 200.)

- previous site response reports, if applicable (e.g., an OSC report), and
- a copy of CERCLA, the NCP, and relevant guidance;
- initiating 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 requests,
 - 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 U.S. Supreme Court in *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. (See Section 3.6 of this manual for more information on these issues.)

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 and/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 under CERCLA Section 104(e)(5);⁵
- set forth the purpose of the request and its relationship to the overall case;
- indicate that the response must be in writing;
- 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.

⁵ 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.

For Owners

The information request letter should ask and give a relevant timeframe for:

- names and addresses of all known previous owners and current owners, within the relevant time period, if that time period has been established;
- period of ownership;
- copy of the deed or other instrument conveying ownership;
- information related to liens or other encumbrances, including mortgages and copies of those documents;
- identity of lessors, lessees, and the terms of leases, including lease payment amounts, allowable and prohibited activities under the terms of the lease, description of any actions taken to enforce the terms of the lease, and a copy of the lease;
- description of any other contractual agreements affecting the property and copies of such agreements;
- if owned by a trust, a copy of the trust agreement;
- if owned by a corporation, corporate records (e.g., annual reports, meeting minutes) that discuss the property;
- information regarding operations at the property, including disposal practices (amounts, type of substance, location, timeframe), and site conditions, including any Phase I or Phase II investigation, of both present and past owners/operators ;
- surveys, maps, photographs (including aerial photographs) of the property;
- copies of insurance policies covering the property;

- property tax records;
- any permits covering the property (e.g., building, excavation);
- information specific to the type of site (e.g., questions designed to allow EPA to make a determination that a party may be de minimis or “de micromis”);
- Any information relating to exemptions or defenses to liability (e.g., BFPP, acts of a third party).

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 and from owners who were also operators. Operator information requests should seek information needed to identify individuals in charge of past and present operations as well as persons who may be liable as operators under the tests set forth by the U.S. Supreme Court in *United States v. Bestfoods*. The PRP search team should give special attention to corporate/subsidiary and successor liability issues.

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 insurance policies that may provide coverage, such as 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 at, transported to, stored at, or treated at the site, including:
 - dates of shipment or disposal;
 - quantity and nature of the materials;
 - hazardous substances (as defined in 40 C.F.R. § 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 Owners/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 individual or corporation in response to the Agency's request;
- special information for particular classes of sites (e.g., 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 generators/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/transporters should request information regarding their liability. 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.



3.3.2 Mail and Track Information Requests

The PRP search plan should designate the person responsible for tracking and receiving information requests. 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 may 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;"
- Priority mail. The U.S. Postal Service will provide the sender a tracking number to check on line at the www.usps.gov web site. The recipient does not have to sign for the letter. If the recipient is located at the address on the letter, the USPS will deliver the package and post the delivery date and time on line. Priority mail is a good option when the recipient has refused a certified letter.
- Air courier. 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 for in advance of their mailing.

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

Performing an analysis of the responses received is among the most important elements of the PRP search. 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 is involved.

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. The team should 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.

An assertion of a CBI claim on documents or information submitted to EPA (whether pursuant to a 104(e) request or under other circumstances) requires that EPA treat the documents or information as CBI until such time as OGC or ORC determines that the information is not entitled to treatment as CBI.⁶ PRP search managers and others should segregate any materials claimed as CBI in order to assure that such materials are not released. A determination as to whether the submitted materials are entitled to treatment as CBI must be made in accordance with the regulations at 40 C.F.R. Part 2, Subpart B. CBI is a complex issue and a

⁶ 40 C.F.R. § 2.201 *et seq.* (see Chapter 3 References, p. 200) sets out the procedures for making CBI determinations. EPA may determine the confidentiality of business information as soon as it is received. (See 40 C.F.R. § 2.204(a)(2), authorizing EPA to make a CBI determination even though no request for release of the information has been made.)

determination that materials are either CBI or not CBI can only be made by OGC or ORC. The common practice is to maintain materials as CBI when such a claim is made by the submitter unless it is necessary to make a formal determination pursuant to Sections 2.204, 2.205, or 2.207. Generally such a determination becomes necessary when the material is the subject of a request pursuant to FOIA or in discovery. There are procedures for EPA contractors to view CBI materials. It is very important to follow the CBI regulations; there are civil and criminal penalties for improper disclosure of CBI materials.

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.

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 follow-up actions, if needed. These actions may include:

- issuing a follow-up 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 follow-up letter may be appropriate for clarifying the requests or being more explicit in describing the Agency's enforcement authorities. Model follow-up letters that have proven to be effective are available in the regions.



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 for seeking clarification of the response or requesting additional information. When using any of these methods, the resource requirements and time involved for follow-up 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 of this manual. 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, paralegals, 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. 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; 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

EPA encourages conducting interviews early in the information-gathering process whenever possible (e.g., concurrently with the "file review and record collection" search task). Early interviews may enhance the PRP search team's understanding of a site's nature and history, and thereby enable it to plan the remedial investigation and focus the remainder of the PRP search more effectively. Moreover, the passage of time may reduce the availability and cloud the memories of owners/operators and their employees, who are likely to be among the best sources of site information. Site-specific factors may dictate that not all interviews can be conducted as early as might be desirable, however, and some interviews may be so valuable that delaying completion of the PRP search report is justified until they can be conducted. In all cases, however, interviews are intended to complement information request letters, not to replace them.

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 may allow 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 by telephone.

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 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.⁷

3.4.2 Who Performs the Interview

Interviews should be performed by EPA staff members 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 are best conducted by personnel who have been trained in interviewing techniques and who are familiar with issues regarding CERCLA liability. It is also important that the interviewer be cognizant of any ethical rules or state bar rules restricting contact with represented parties. Even though the interviewer may

⁷ 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, p. 200, for more information on use of recordings and signed statements.)

not be an attorney, the ethical and bar rules may be applicable because the interview or contact may be imputed to the attorney. In order to interview represented parties, contact should be made with their attorneys, generally with the assistance of the case attorney. In any case, the PRP search and/or case team should consult before interviews are conducted in order to determine the most effective procedure.



Signed Statements

Interviews are conducted pursuant to the authority of Section 104(e). Face-to-face, in-person interviews conducted by CIs or other EPA staff can be a good source of information that cannot be matched by written questions and answers due to the free-flowing nature of an interview.⁸ An interview can be used to gather initial information or to follow up and substantiate information already gathered. Preparation for the interview is key to obtaining the most useful information from the person being interviewed. Interviews can be recorded on tape (with the consent of the interviewee) or can be reduced to writing in the form of a statement. If a written statement is to be used, the form is usually a summary of the most important information learned during the course of the interview, but the statement can take a different form, suitable to the situation, the facts revealed, or the preference of the interviewee. Having the interviewee sign the statement provides a written record of the recollection of the interviewee at the time of the interview. Such a record could be used later to help the interviewee recall events that due to the passage of time may fade from his or her memory.

⁸ Interviews cannot be compelled; if a potential interviewee does not wish to provide information orally, check with the case attorney who can advise as to the next step if the information is needed from that person. A Section 104(e) information request or an administrative subpoena may be appropriate.

Should the person who signed the statement later change his or her mind about the events recounted in the statement, the signed statements cannot later be used to sustain an allegation of perjury. This is because federal law 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.” 18 U.S.C. § 1621. EPA personnel are not persons authorized by a court to administer oaths. Nonetheless, signed statements have intrinsic value and anyone can ask a person to sign a statement.

It is possible that the interviewee may voluntarily agree to, or suggest, attesting to his statement through the use of an affidavit, signed in front of a notary public. Although EPA personnel are not authorized to administer oaths, notary publics are, and EPA staff can prepare an affidavit for signature by the interviewee and notary public that begins, “I (), being duly sworn on oath, depose and state as follows:” and ends, “subscribed and sworn to before me, the _____ day of _____ (month), ____ (year). Notary public _____ (name). My commission expires _____ (date). [With the notary seal].” An interviewee has no obligation to sign an oath in front of a notary public, and any decision to do so must be completely voluntary, without the receipt of promises or threats of any kind.

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

On-site Visitors

- vendors
- inspectors
- recyclers
- customers

Federal Government Officials

- federal courts
- bankruptcy courts
- national law enforcement agencies

- Securities and Exchange Commission
- Department of Veterans Affairs
- Occupational Safety and Health Administration
- U.S. Postal Service

State Government Officials

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



Local Witnesses

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

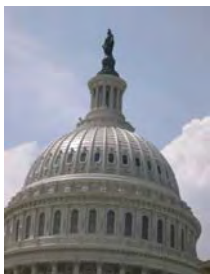
3.4.4
Conducting
Interviews

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;
- 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. It is generally preferable for interviews of government officials to be conducted by CIs instead of contractors as CIs are government employees also and often have more experience conducting interviews. 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. 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 people or organizations knowledgeable about the site.

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.
- Investigators do not have authority to grant anonymity to interviewees.⁹
- 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.
- Never lie to or deceive the interviewee.

⁹ Although there is no specific official who always has authority to grant anonymity, investigators have sometimes relayed requests for anonymity to their superiors. Decisions to grant such requests, however, are entirely ad hoc and depend on the specific facts of each case. Once the interviewee has been so informed, he may choose to discontinue the interview pending disposition of the request.

- 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.
- 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., providing 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 to 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:

- written summaries;
- recorded interviews; or
- sworn statements (affidavits) confirmed by a notary, including a statement to the effect that the declarant/affiant swears under penalty of perjury that the foregoing is true and correct.

Signed statements become "sworn statements" if notarized.

A **written summary** of an interview is a document written by the interviewer that summarizes the facts presented by the interviewee. 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 may be viewed as 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, telephone 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. The written summary of the interview should be in the first person, however, as if the interviewee were writing the notes of the interview herself. The interviewer may choose to summarize the statement immediately after 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. The interviewee will be apprised of and given the opportunity to make changes to the summary before signature. 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. By

signing, the interviewee confirms the information contained in the statement. This does not prevent an interviewee from changing his or her mind later, but a signed statement may be used to refresh the recollection of the interviewee at a later date. Signed statements under oath may subject the signatory to perjury if the interviewee changes his or her mind. Great care must be taken therefore to ensure that any affidavit is taken voluntarily and the interviewee has an opportunity to review and edit any statement before signing the affidavit.

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

A title search is a review of public records for information about past and current ownership of real property. These records may be located at county, township, or parish clerks' and recorders' offices. (Tax information is found at the assessor's office.) For PRP search purposes, the objectives of a title search include:

Primary Objectives

- identifying former and current owners and operators;
- identifying owners and operators at the time of each disposal;
- identifying potential interviewees;
- providing an accurate legal description of affected property;
- identifying any subdivision or replatting of affected property;

- identifying current encumbrances to property, including easements, covenants, restrictions, and any other matters that currently affect or may affect the title or remediation plans; and
- establishing a historical chain of title, which provides historical ownership and may include historical addresses for former owners and current parcel numbers and addresses.

Other Objectives

- obtaining the deed for evidence;
- determining real estate tax amounts paid or unpaid;
- identifying abutting properties and their owners;
- supplying title search documentation;
- assisting in determining site use;
- identifying outstanding liens against the property (e.g., unreleased mortgages, judgments); providing real property parcel information that can be used to evaluate, select, and implement components of the remedy (e.g., engineering and proprietary institutional controls) and determine the various ownership interests that may be affected by them; and
- identifying oil, gas, and mineral rights.

Scoping a Title Search

3.5.1

Determine Ownership Interests

A title search seeks to identify 1) current owners and matters that currently affect the property (e.g., easements, mortgages, taxes), and 2) former owners and leaseholders, if leases were recorded.

The latter is commonly referred to as a “historical chain of title” search. For purposes of identifying PRPs, it is important that the title search cover the period during which contamination is suspected to have occurred up to the present. Guidelines such as going back 50 years or to the end of World War II or the first industrial use of the property can sometimes be useful, but in most cases determining the relevant period for a search is a highly site-specific exercise.

Title searches can be very expensive, especially if a site is comprised of many parcels or if there is a long and complex title history. Therefore title search activities should be tailored to each site's specific needs. For example, if ownership information and legal descriptions are needed solely for purposes of recording deed restrictions or a lien, or for gaining access during a removal action, current title information may suffice. When a search is undertaken to identify PRPs, however, these findings usually need to be supplemented by information about former owners and leaseholders.

Title research may be conducted by an EPA employee (often a civil investigator), a contractor, a title company, or some combination of the foregoing. Regardless of who performs the title search, the researcher will need to obtain information about the site location (including the county, parish, or township), a legal description and address, parcel information, and the period the title search will cover. The “Performance Work Statement for Enforcement Support Services” (Appendix A) addresses title searches as Task 1.9. This statement may provide useful guidance whether or not contractors are used.

It is important to bear in mind that a title search consists solely of the gathering of title documentation, not legal analysis. Some contractors and title companies will provide title “opinions” for title

insurance and other purposes, but any title search Statement of Work should make it clear that such tasks are outside the scope of the title search.

A Superfund site, as described in a removal assessment report or screening inspection report, may be comprised of multiple parcels with one or more owners. Identifying the parcels that make up the site is an important step in the title search process. “Parcel” is the term typically used to refer to a legally described piece of real property. The legal description establishes the boundaries of the parcel. The property may be described in terms of metes and bounds or by section, lot number (in recorded plats), parcel number, or merely a deed reference.

The “assessor parcel number” refers to the parcel number established for the property by the local taxing authority for purposes of assessing taxes. The legal document showing the sale of the property from one party to another, generally called a deed, will usually include the legal description and perhaps the tax assessor’s parcel number and the physical address of the property. In most cases, parcels are assessed separately even if they have the same owner, so a business or company may own a large tract of land consisting of several parcels for tax assessment purposes. This may be so even if the business or company received title to the land by a single deed.

In some jurisdictions, the parcel number may be referred to on the deed or even form part of the legal description of the property. In other jurisdictions, the parcel number is usually not found on the filed deed copy. In such cases, the parcel number, book and page number of the filed deed, and/or a copy of the parcel map can often be obtained from the assessor’s office if the title searcher can provide the address, legal description, or owner’s name. Once the book and page number of the deed are known, a copy of the

current owner's deed can be obtained from the recorder's office. Most county recorders and assessors will not go back in the records any farther than the current owner as they consider that a title search.

Additional title searches may be necessary if contamination has been found migrating off site. A title search also may be conducted for parcels adjacent to the site if, for example, EPA will need to obtain access from owners or ultimately implement institutional controls on properties that abut the site. In addition, a title search of adjacent parcels may disclose names of people familiar with past or present site activities who can be contacted and interviewed. It also may provide information about other activities in the area that may have contributed to contamination at the site.

In some cases, a professional survey may be necessary. If a property's legal description were unclear, for example, a survey might serve to clarify its boundaries. A survey also may be required to identify the portion of a site or other property the use of which is to be restricted by institutional controls if this portion is not coextensive with the boundaries as defined in title documents. In this case, a survey might be needed to establish the location of physical contamination in relation to those boundaries as it may be necessary to consider the entire extent of such contamination and impose the controls on many or all the parcels within the contaminated area, not solely on the parcel where the facility that caused the contamination is located.

The PRP search manager, in consultation with the case attorney, should establish 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 (identified by site parcel legal descriptions, county tax assessor parcel numbers or street addresses, or section, range, and township numbers);
- whether certified copies of title documents and deeds are required;
- the format of the title search results summary; and
- what documents and information should be included in the title search report (e.g., current and historical parcel maps, liens and encumbrances, types of deeds and leases, legal descriptions).

Documentation

Title search documentation may include:

- warranty deeds
- quitclaim deeds
- grant deeds
- indentures
- deeds of trust
- trustees' deeds
- land patents
- executors' (or administrators' or personal representatives') deeds
- sheriffs' deeds
- tax deeds
- mortgages
- easements

- liens (e.g., tax, mechanics, lis pendens, declaration of takings)
- declarations of restrictive and maintenance covenants
- leases
- mineral leases
- oil and gas leases
- parcel maps
- plat and subdivision maps
- tax statements/appraisals
- UCC Article 9 statements
- financing statements
- real estate contracts
- bills of sale
- powers of attorney
- assignments
- affidavits
- wills
- bankruptcy proceedings
- judgments

It is useful to request that the title search provide both signature and recordation dates of documents as documents are not always recorded in a timely manner and recordation dates may affect the priority of liens and encumbrances. It is also useful to obtain both current and historical parcel maps and to note any changes in parcel numbers or dimensions that have occurred.

Note that leases are not always recorded, but may still be found by researching tax records for the property. Lessees may have personal property at facilities on which they pay taxes. Personal property includes structures, portable buildings, or any other physical property that the county has the ability to tax, but does not include the land itself.

The title search may also discover information about the business form of past and present owners (e.g., partnership, corporation). Documents relating to the business form, however, are likely to be found in the office of the Secretary of State or other repository of business records, not in the office where land title records are found. (See subsections 3.6.1 through 3.6.9 and 3.6.11 of this manual for further discussion of business forms and records.)

3.5.2 Develop a Title "Tree" or Chronology

The next major step in the title search process is to develop a title "tree" or chronology that organizes the documents obtained through the title search. It should include a reference list of all recorded documents, including their location by book and page number. Recorded documents may include any of those listed above. Generally, the title "tree" or chronology provides a brief description of each transaction, including whether it affected all or only a portion of the site. This summary of site ownership history may include:

- the terms of the transaction (e.g., a five-year recorded lease);
- whether the transaction transferred all or only some of the rights to the land (e.g., in mining areas it is important to know whether the mineral rights were transferred with the surface rights, and what, if any, rights were retained by the transferor);

- explanations and implications of specific real property, contract, or other specialized terms such as quitclaim deed, conditional sales contract, and partial release of deed of trust and mortgage; and
- charts and maps, if considered useful (e.g., at multi-parcel sites, maps can be a particularly useful tool for organizing site, contamination, ownership/title, and related information).

Upon receipt of the title search, the PRP search manager should review title search work products to determine whether the correct property or properties (i.e., the various parcels that may make up a site) were researched. Making this determination is often difficult and uncertain due to the technical terminology used in property descriptions and the sometimes extensive subdivision and merger that properties undergo. The best practice, whether the title search is performed by contractors or in house, is to use GIS mapping software to plot the legal descriptions obtained from the title documents against a current county parcel map that identifies the parcels of interest to EPA. This plot can be compared with the parcel map to ensure that the legal descriptions match the property of interest.

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

- the correct property or properties (i.e., the various parcels that may make up a site) were researched;
- the correct documents were provided;
- any deeds or other title documents are missing, incomplete, or unreadable;

- 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 ground water or land use.

A title search is complete when the ownership history is complete (i.e., it contains no gaps between owners or provides an explanation of any gaps). A title search report should always end with a statement such as, "As of [date] there had been no further conveyances."

3.5.3 Additional Uses for Title Documents

As noted above, deeds and leases may contain language restricting ground water, surface water, or other land uses. Title documents may also contain information about installation of sanitary sewers, storm drains, historical features, and other easements that may become important later in the investigation. Careful examination of grantor/grantee information in these documents may also help explain relationships within privately held companies, such as changes in officer positions over time.

3.5.4 Updating Title Information

Response actions often involve the use of institutional controls and, in turn, often require that environmental covenants or similar "deed restrictions" be recorded against the property that comprises the site. When institutional controls are being contemplated, the title search can be brought up to date to identify current encumbrances that might affect environmental covenants. It also may be useful to consult U.S. Army Corps of Engineers historical records on rivers and creeks as Corps projects can effect changes in property boundaries that are often not documented in local property records.

It is important to bear in mind that institutional controls cannot be placed on property without the written consent of the property owner, whether the owner is a PRP or not.

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. (Skip tracing is the process of locating someone who has gone missing whether deliberately or not.)
- 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 failure 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. In civil actions, courts may require a partnership to pay damages or perform other remedies; in criminal actions, the individual partners may be fined or imprisoned.

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 sole proprietorships, partnerships, 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 to carry on a business for profit as co-owners. 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 acquire a business name or 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 lend uniformity to 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 an affiliate of another corporation or corporations, such as a parent or subsidiary.

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 statute.

“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 its 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. (See p. 158 for a discussion of Chapter S corporations.)

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 their standing as legal persons. Corporations must also register in the states 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.C of this manual.

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, or Morgan Stanley. 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 and regional staff attorneys 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 them. 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 be only 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 distinct, unrelated companies with the same corporate name to operate in different states. Once a corporation has been identified, it is necessary to confirm its name and the state of incorporation where Superfund liability arose. Once the corporation is correctly identified, it is necessary to determine its current status.

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.F of this manual for exceptions to this general rule.)

3.6.7.D Sale of Stock in a Corporation

Ownership of stock in a corporation may change over time. Exchange of stock in and of itself does not change the corporate person. Accordingly, if the only change in a corporation is the ownership of its 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 all or a majority 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 of this manual.

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 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

Trusts

Other Entities

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 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 Ventures

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 Companies

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." 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 of this manual, 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 of this manual, 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 officers, directors, employees, 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

subparagraph 3.6.10.C of this manual) to corporate officers, directors, shareholders, and employees. Courts have ruled that an officer, director, or shareholder may be "directly liable," (i.e., personally liable) under CERCLA given either of the following fact patterns:

- A corporate officer, employee, shareholder, or director participated personally in the activity leading to the release of hazardous substances; or
- A corporate officer, employee, shareholder, or director exercised direct control over environmental management of the facility, including waste handling or disposal operations.

Direct liability is also 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 U.S. 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

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 (see *United States v. Kayser-Roth Corp.*, 272 F.3d 89 (1st Cir. 2001)), *Kayser's* control over its subsidiary's environmental operations at the facility satisfied *Bestfoods'* requirements for direct operator liability by a 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 director, parent corporation, shareholder, or employee in the corporation, paying particular attention to decisions or activities that resulted in or contributed to the release of hazardous substances. A comparison of a 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 (and also officers, directors, or employees), 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 (federal courts are divided on this issue) whether state law or federal common law should apply to veil-piercing claims in actions to enforce indirect liability under CERCLA.¹⁰ Most courts (federal and state) apply a multi-pronged test to determine if a shareholder is

¹⁰ 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 generally stricter than federal common law requirements.

liable for the wrongdoing of the corporation with which he is affiliated. Factors often considered by courts include whether:

- control over the corporation by those sought 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), where the court found that a shareholder's mere control of a corporation may be sufficient to establish indirect liability and joint liability as an arranger.)

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, or other detriment 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;

sometimes it is state-specific and sometimes it may be federal common law. 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 arm's 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 arm's-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 (asset sale) is entered into fraudulently in order to escape liability.
- The transaction amounts to a de facto merger or consolidation. As discussed in subsection 3.6.7 of this manual, when there is a formal merger between two or more corporations,¹¹ 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 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;

¹¹ Whether a merger has occurred can often be determined by reviewing 10-Ks and other federal and state filings.

- 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 as no one of them is decisive. (If the issue went to trial, the court would determine the outcome by the “preponderance of evidence.”)
- Successor liability is a continually evolving field of law, and federal courts are divided on whether state law or federal common law should apply to determine successor liability under CERCLA. (Sometimes it is beneficial to see if evidence exists that meets both criteria.) 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
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.C
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.D
Corporate
Directories
Summary
- 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 that 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, Moody's Manual of Investments, Moody's Industrial Manual, 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.E
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 _ provides a list of on-line resources that may be useful to a PRP search team.

3.7
Develop Site

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

- 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.
- 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 shows the volume and nature of the 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. (See “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 waste-in lists and volumetric rankings, and “Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A)” (July 30, 1993) for detailed guidance on the use of waste-in information in settlements with small-volume contributors, Chapter 3 References, p. 201.)

3.8.1 Transactional Databases

Sections 3.2 and 3.3 of this manual discuss 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 can 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:

- dates of shipments;
- names of transporters;
- 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 ground water sites, landfills are notoriously difficult sites at which to compile accurate waste-in information, both because of poor recordkeeping 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 at other removal sites. When adequate transaction documentation exists and settlement seems possible, regions should prepare waste-in lists and rankings as described in CERCLA 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 “Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA” (February 22, 1991). (See Chapter 3 References, p. 201.)

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, or orphan.

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 helps 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;
- telephone numbers, if available;
- name of 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 in Section 3.10 of this manual.

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 generators;
- “de micromis” generators;
- municipal solid waste (MSW) generators;
- residential homeowners;
- insolvent or defunct parties;¹² and

¹² 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. Preliminary determinations of a party's status as insolvent or defunct should be attempted during this phase, however, 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.

- parties the quantity of whose waste contribution is 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 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.

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

3.10 Prepare Baseline PRP Search Report

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:

- Site chronology and property history; and
- 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 Exhibit 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 of this manual);
- major reference sources;

- the identities 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 Exhibit 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.

EXHIBIT 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 – 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 brief summaries of the environmental threats posed by site activities and the potential cleanup activities.

EXHIBIT 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 and 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.

EXHIBIT 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-subsidary relationships, PRPs with potential defenses to or exemptions from liability (see subsections 1.2.5 and 1.2.6 of this manual), and defunct/insolvent PRPs.

Special Site Information

Highlight any unique or complex features associated with sites such as municipal landfills, area-wide ground water 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 about 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, telephone 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 B
PRP Search Enhancement Team Members/Contacts	3.2.1	Appendix E
Information Requests – 104(e) Question Categories	3.3	http://www.epa.gov/compliance/resources/publications/cleanup/superfund/104e/index.html
Potentially Responsible Party Internet Information Sources (PRPIIS)	3.3.1	Appendix F
Superfund Enforcement Directory	3.3.1	http://www.epa.gov/compliance/cleanup/superfund/sfed/index.html
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	3.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampled-ccercla-mem.pdf
False Statements Act	3.3.1	http://www4.law.cornell.edu/uscode/18/1001.html
Federal Debt Collection Procedures Act	3.3.1	http://www.uscode.house.gov/download/pls/28C176.txt
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	3.3.3	40 C.F.R. § 2.201-2.215 http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr2_01.html
Federal Rules of Evidence 801-817	3.4.1	http://www.law.cornell.edu/rules/fre/rules.htm
Federal Perjury Statute	3.4.2	18 U.S.C. § 1621 http://www.law.cornell.edu/uscode/html/uscode18/uscode18_usc_sec_18_00001621----000-.html
Performance Work Statement for Enforcement Support Services	3.5.1	Appendix A

CHAPTER 3 REFERENCES		
Name	Section	Location
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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4.0 Follow-up PRP Search



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 follow-up activities are necessary.

Follow-up tasks are often needed to complete the PRP search, although all follow-up tasks may not be necessary for each search. For instance, follow-up 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, follow-up tasks are appropriate, beneficial, and necessary for a particular site.

Follow-up 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. (See the discussion of Rule 27 in Section 4.4 of this manual.);
- waste stream analysis, including industrial surveys, process chemistry analysis, and waste stream inventory;

- miscellaneous tasks, including financial assessments; corporate research; compelling compliance with CERCLA Section 104(e) information requests; and orphan share, insolvent, and defunct determinations;
- insurance analysis; and
- other expert analysis, such as independent cost allocation analysis or mining experts for waste stream analysis.

4.1 Issue Follow-up Information Request Letters

As stated in subsection 3.3.5 of this manual, the PRP search team may issue follow-up requests during the baseline phase.

Alternatively, the team may elect to defer such requests until the follow-up 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).

Follow-up request letters may be necessary if a PRP complied only partially with the initial information request or if 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, follow-up 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 follow-up information request letters to fill information gaps.

CERCLA Section 104(e) questions organized by subject matter are available at <http://www.epa.gov/compliance/resources/publications/cleanup/superfund/104e/index.html>. (See Chapter 4 References, p. 241.)

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
- Financial: Insurance
- 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 of this manual for discussion of information request follow-up 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. 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 in an administrative order or a judicial action.

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, p. 241.)

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 (\$37,500 per day effective January 12, 2009).² These civil penalties 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.

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 CERCLA Section 109(a)(1) penalty is periodically increased pursuant to the Civil Monetary Penalty Inflation Rule, December 31, 1996. See Chapter 4 References, p. 241.

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.
- any significant factor, such as more costs incurred, more time required, or threats increased as a result of non-compliance with this action.

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. (See "Final Model Litigation Report and Complaint for CERCLA Section 104(e) Initiative" (January 1990), Chapter 4 References, p. 241, for more detailed information.)

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, e.g., reaching ability to pay or de minimis settlements under Section 122(g). 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, p. 241.)

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 generally more conducive to expeditious and favorable settlements than administrative subpoenas, but administrative subpoenas are useful for preserving testimony.

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.

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, p. 241. If the subpoena deviates significantly from the model, consultation with EPA's Office of Enforcement and Compliance Assurance is required.

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 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 informational purposes only. If you are considering requesting 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, p. 241) 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. There are likely to be few remaining witnesses to disposals that occurred two or three decades ago. 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. Special permission 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 attorneys 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" (September 30, 1997) (see Chapter 4 References, p. 241) 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 particular, it must consider the value of permitting businesses to continue earning money and employing workers, and demonstrate compassion for individual circumstances.

⁴ *United States v. Bay Area Battery*, 895 F. Supp. 1524 (N.D. Fla. 1995).

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, including available insurance.
- 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.

(See "Model Notice Approving Reduction in Settlement Amount Based on Inability to Pay" (April 30, 2008) and "Model Notice Denying Reduction in Settlement Amount Based on Inability to Pay" (April 30, 2008), Chapter 4 References, p. 241.)

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. (See "Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act" (May 17, 2004), Chapter 4 References, p. 242.)

4.5.2 ATP Information Sources



EPA has developed computer models for analysis of financial issues affecting enforcement actions. The models and information about them are available at <http://www.epa.gov/compliance/civil/econmodels> and http://www.indecon.com/iec_web/econmodels/practice/models. (See Chapter 4 References, p. 242) As the models are updated periodically, it is advisable to consult both web sites to make sure you have the latest versions. Information about them is also available from EPA's Superfund, TRI, EPCRA, RMP & Oil Information Center at (800) 424-9346. These models are screening tools only and their use does not constitute a thorough analysis. 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. Also be aware that your region may have customized one or more of the models to adapt them to regional needs.

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 sources such as financial statements, loan applications, and Dun & Bradstreet reports. 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 (see Appendix G), which can be generated from within the model. INDIPAY provides two types of analysis:

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, which is modified if the individual is retired.

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.

(See Appendices H, I, and J for additional individual financial data forms that may be useful in lieu of or in addition to the INDIPAY Financial Data Request Form or in special situations.)

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.

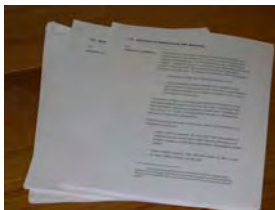
Other Sources of Information

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 about companies for a fee. D&B reports are frequently used to evaluate credit

worthiness as they include information on company finances, payment history, and officers. Information in the reports is submitted to D&B by the companies themselves. D&B company profiles allow comparison of the financial condition of similar companies.

- **AUDITED STATEMENTS.** Audited statements are financial statements made by an independent auditor. Independent auditors are accountants who follow consistent procedures required by generally accepted accounting principles (GAAPs) and generally accepted auditing standards (GAAS). Information included in audited statements is therefore considered verifiable. Audited statements often describe related party transactions and contingencies in footnotes. 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.

- **ANNUAL REPORTS.** Annual reports can be very useful indicators of the health of a corporation and can be used to bring to light inconsistencies in the financial picture the company is reporting to its shareholders and the information it provides to EPA via Section 104(e) responses.
- **FORM 10-K.** Federal securities laws require publicly traded companies to disclose information on an ongoing basis. Domestic issuers other than small businesses must submit annual reports on Form 10-K to the Securities and Exchange Commission. These reports provide a comprehensive overview of companies' business and financial conditions, and include audited financial statements. The annual report on Form 10-K is distinct from the annual report that companies send to their shareholders when they hold annual meetings to elect directors, although companies are required to provide copies of their 10-K reports at shareholder request. In addition, companies with a public float (equity market capitalization) of \$75 million or more must disclose on their 10-K forms whether they make their reports available free of charge on their web sites. Form 10-K filings are available from the EDGAR database on the SEC web site (<http://www.sec.gov.edgar.shtml>).⁵ (See Chapter 4, References, p. 242.)

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;

⁵ "Form 10-K," <http://www.sec.gov/answers/form10k.htm>.

- 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, p. 242.)
- **COURT RECORDS.** These are a potential source of information, but locating them requires someone familiar with courthouse Searches. Many state and local court

records are now available on line. Federal records can be accessed through PACER. (See “Potentially Responsible Party Internet Information Sources (PRPIIS)” in Appendix F.)

- **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 “Potentially Responsible party Internet Information Sources (PRPIIS)” in Appendix F.)
- **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.

[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.]

4.5.3 Performing Property Appraisals



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 as well as imposing a notice of lien under Section 107(i), (l), or (r) of CERCLA and pursuing an in rem action against the property. 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, p. 242.)

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, assess 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. Informal property values can often be easily obtained at the county assessor's office. This information is often available on line. A county assessor's office typically will have properties' tax-assessed values as well as their fair market values.

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 Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals" (June 4, 1996).⁶ (See Chapter 4 References, p. 242.)

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:

- potentially liable;
- insolvent or defunct; and

⁶ 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, p. 242), which provides the regions with direction for addressing potential compromises of CERCLA cost recovery claims due to the existence of a significant orphan share.

- unaffiliated with any party potentially liable for response costs at the site.

The orphan share does not include liability attributable to:

- unallowable 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 not considered insolvent if it has some, even a limited, ability to pay. Available insurance counts as having some 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, p. 241) 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), if the initial screening process indicates further analysis is required; and
3. Services of regional or contractor financial analysts.

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.

If you have reason to suspect that a party filed for bankruptcy, first check with your regional bankruptcy coordinator, usually an attorney in the Office of Regional Counsel. This may save time and prevent duplicative effort. If she does not have any record of having received a bankruptcy notice, consider taking the following steps:

- Call the party and ask if a bankruptcy petition has been filed. Alternatively, this information may be available from D&B or other type of credit reports. Calling the clerk of the nearest bankruptcy court may not be sufficient because the broad venue provision in the Bankruptcy Code often provides debtors with a choice of bankruptcy courts. Once you have identified the court where the case was filed and the bankruptcy docket number, you can obtain access to the bankruptcy court files through PACER, a database available by subscription, and accessed from the bankruptcy court's web page. You can also request copies of documents directly from the bankruptcy court clerk, but this could take time and involve pre-payment of a fee. You can seek assistance from the Office of the United States Trustee for the court where the bankruptcy case is pending. 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 and bankruptcy coordinators for on-line systems that may provide access to federal bankruptcy court records, filing dates, and other relevant information.

Even if the party filed for bankruptcy, this does not necessarily indicate that the debtor/PRP is insolvent for purposes of the orphan share reform. You will need to know when the bankruptcy was filed and if the debtor/PRP obtained a discharge of the CERCLA debt.

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.
- Check to determine if a company is publicly traded or privately held. If it is privately held, information about it is usually less immediately available, and the importance of the Section 104(e) information request regarding ownership and company viability is pivotal.

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.

Some states permit lawsuits against corporations within a specified period following their dissolution. It may be important to investigate this possibility if a corporation's assets were never distributed or their distribution has not been completed.

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. Refer to the discussion in subsection 3.3.1 of this manual under the heading “Need for PRP Financial Information,”

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. Due to the complexity of mining issues, a mining expert might need to be retained.

4.8 Interim-Final Report Preparation and Review

Some but not all regions prepare an interim-final report, which is an expanded version of the baseline report that 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
Pursue
Litigation and
Cost Recovery

CERCLA Section 106 and 107 Litigation⁷

In the case of a cost recovery referral, EPA sends a direct cost referral package to DOJ for litigation. 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. As DOJ develops the case, regional staff will likely be called upon to perform litigation support 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 includes (to the extent EPA determines necessary) the entire universe of PRPs, PRP

⁷ If PRPs do not 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.

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;
- perfecting liens;
- 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. It is always advisable to perfect Superfund liens early to strengthen EPA's claims in the event the owner subsequently files for bankruptcy. For more bankruptcy information, regional attorneys should consult *A Bankruptcy Primer for the Regional Attorney* (February 1994) and their regional bankruptcy coordinators.

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.)

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.

When the statute of limitations deadline is near and the claim has not been settled or filed, the case team may consider entering into a tolling agreement with the PRPs. A tolling agreement is an agreement by the parties to extend the statute of limitations either for a specified period or until a specified event occurs. The period or the event is defined in the tolling agreement. A tolling agreement must be signed by DOJ on behalf of the government and must be signed by the PRPs. The effect of the tolling agreement is to provide additional time to work out a settlement in a case by the mutual agreement of the parties. Typically, the PRPs that enter into a tolling agreement do not admit liability, retain all their defenses to liability, do not agree to pay anything to the federal government, and do not compromise any of their existing legal rights. These extended negotiations do not always result in a settlement, but a tolling agreement can be useful when it appears that further discussion among the parties may be productive.

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 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
Information Requests – 104(e) Question Categories	4.1	http://www.epa.gov/compliance/resources/publications/cleanup/superfund/104e/index.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	4.2	40 C.F.R. Part 19 http://ecfr.gpoaccess.gov
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	4.4	28 U.S.C. App. http://www.uscourts.gov/rules/CV2008.pdf
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
Model Notice Approving Reduction in Settlement Amount Based on Inability to Pay (April 30, 2008)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-B-arc.pdf
Model Notice Denying Reduction in Settlement Amount Based on Inability to Pay (April 30, 2008)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-D-arc.pdf

CHAPTER 4 REFERENCES		
Name	Section	Location
Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act (May 17, 2004)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/atp-demin-122g-04.pdf
Enforcement Economic Models	4.5.2	http://www.epa.gov/compliance/civil/econmodels ; http://www.indecon.com/iec_web/econmodels/practice/models
Individual Ability To Pay Claim (INDIPAY) Financial Data Request Form	4.5.2	Appendix G
Ability To Pay Individual Request for Information	4.5.2	Appendix H
Individual Ability To Pay Claim Financial Data Request Form	4.5.2	Appendix I
Financial Disclosure Statement To Be Completed by Individual Defendant	4.5.2	Appendix J
EDGAR	4.5.2	http://www.sec.gov/edgar.shtml
Potentially Responsible Party Internet Information Sources (PRPIIS)	4.5.2	Appendix F
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 Settlers 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

Appendix

<u>Performance Work Statement for Enforcement Support Services</u>	<u>A</u>
<u>Checklist of PRP Search Tasks</u>	<u>B</u>
<u>Checklist for Removal/Pre-Remedial Sites</u>	<u>C</u>
<u>Quick Reference Guide for Using CERCLIS/WasteLAN</u>	<u>D</u>
<u>PRP Search Enhancement Team</u>	<u>E</u>
<u>Potentially Responsible Party Internet Information Sources (PRPIIS)</u>	<u>F</u>
<u>Individual Ability to Pay Claim Financial Data Request Form</u>	<u>G</u>
<u>Ability to Pay Individual Request for Information</u>	<u>H</u>
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**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

PERFORMANCE WORK STATEMENT

for

ENFORCEMENT SUPPORT SERVICES

[Date]

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ACRONYMS

A

AA	Assistant Administrator
ADR	Alternative Dispute Resolution
AO	Administrative Order
AOA	Advice of Allowance
AOC	Administrative Order on Consent
AR	Administrative Record
ARAR	Applicable or Relevant and Appropriate Requirement
ARCS	Alternative Remedial Contracting Strategy
ATP	Ability to Pay
ATSDR	Agency for Toxic Substances and Disease Registry

B

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BODR	Basis of Design Report
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
CB	Case Budget
CIC	Community Involvement Coordinator
CIP	Community Involvement Plan
CBI	Confidential Business Information
CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS 3/ WasteLAN	Comprehensive Environmental Response, Compensation, and Liability Information System/Waste Local Area Network
CFR	Code of Federal Regulations
CI	Civil Investigator
CO	Contracting Officer
COI	Conflict of Interest
COR	Contracting Officer's Representative
CRC	Cost Recovery Coordinator
CRI	Community Relations Implementation
CSA	Chemical Safety Audit
CT	Counter Terrorism
CWA	Clean Water Act

D

DD	Decision Document
DNAPL	Dense Non-Aqueous Phase Liquid
DOI	Department of the Interior
DOJ	Department of Justice
DQO	Data Quality Objective

E

EA	Endangerment Assessment
EAB	Environmental Appeals Board
EE/CA	Engineering Evaluation/Cost Analysis
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
EPA	Environmental Protection Agency
EPM	Enforcement Project Manager
ERCS	Emergency Response Cleanup Services
ERNS	Emergency Response Notification System
ESI	Expanded Site Inspection

F

FCOR	Final Closeout Report
FE	Federal Enforcement
FEMA	Federal Emergency Management Agency
FMD	Financial Management Division
FMO	Financial Management Office
FOIA	Freedom of Information Act
FR	Federal Register
FS	Feasibility Study
FSP	Field Sampling Plan
FY	Fiscal Year
FWS	Fish and Wildlife Service

G

GFO	Good Faith Offer
GNL	General Notice Letter

H

HASP	Health and Safety Plan
HRS	Hazard Ranking System

I

IAG	Interagency Agreement
IEUBK	Integrated Exposure Uptake Bio-Kinetic
IFMS	Integrated Financial Management System
IMC	Information Management Coordinator

L

LDRs	Land Disposal Restrictions
LOE	Level of Effort
LTRA	Long-Term Response Action

M

MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPE	Multi-Phase Extraction
MSW	Municipal Solid Waste

N

NBAR	Non-Binding Preliminary Allocation of Responsibility
NCP	National Contingency Plan (National Oil and Hazardous Substances Pollution Contingency Plan) (Abbreviated as National Contingency Plan in this document)
NEIC	National Enforcement Investigation Center
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOD	Notice of Deletion
NOID	Notice of Intent to Delete
NOIPD	Notice of Intent for Partial Deletion
NOPD	Notice of Partial Deletion
NPL	National Priorities List
NRC	National Response Center
NRT-1	National Response Team Hazardous Material Emergency Planning Guide, 03/87
NRT-1A	National Response Team Criteria for Review of Hazardous Materials Emergency Plans, 05/98
NRRB	National Remedy Review Board
NTC	Non-Time-Critical

O

O&F	Operational and Functional
O&M	Operation and Maintenance
OC	Office of Compliance or Office of the Comptroller
OE	Office of Enforcement
OECA	Office of Enforcement and Compliance Assurance
OERR	Office of Emergency and Remedial Response
OGC	Office of General Counsel
OIRM	Office of Information Resources Management
OLS	Office of Litigation Support
OMB	Office of Management and Budget
OPA	Oil Pollution Act
OSC	On-Scene Coordinator
OSHA	Occupational Safety and Health Administration
OSRE	Office of Site Remediation Enforcement
OSWER	Office of Solid Waste and Emergency Response

OU Operable Unit
OWPE Office of Waste Programs Enforcement

P

P&C Participate and Cooperate
PCOR Preliminary Closeout Report
PDD Pre-Authorization Decision Document
PNRS Preliminary Natural Resource Survey
PO Project Officer
POLREP Pollution Report
PPA Prospective Purchaser Agreement
PPED Policy and Program Evaluation Division
PRN Pre-Referral Negotiation
PRP Potentially Responsible Party
PWS Performance Work Statement

Q

QA Quality Assurance
QA/QC Quality Assurance/Quality Control
QAO Quality Assurance Office
QAPP Quality Assurance Project Plan
QAPP/FSP Quality Assurance Project Plan/Field Sampling Plan
QC Quality Control

R

RA Remedial Action or Regional Administrator
RAC Response Action Contract
RAGS Risk Assessment Guidance for Superfund
RAR Remedial Action Report
RCRA Resource Conservation and Recovery Act
RD Remedial Design
RD/RA Remedial Design/Remedial Action
RSD Regional Support Division
REM Remedial Engineering Management
RI Remedial Investigation
RI/FS Remedial Investigation/Feasibility Study
RO Regional Ombudsman
ROD Record of Decision
RPM Remedial Project Manager
RRT Regional Response Team

S

SAIC Special-Agent-In-Charge
SAP Sampling and Analysis Plan
SARA Superfund Amendments and Reauthorization Act of 1986
SCAP Superfund Comprehensive Accomplishments Plan

SCORPIOS	Superfund Cost Recovery Package Imaging and Online System
SDMS	Superfund Document Management System
SE	State Enforcement
SEP	Supplemental Environmental Project
SIP	Site Inspection Prioritization
SMOA	Superfund Memorandum of Agreement
SMP	Site Management Plan
SNAP	Superfund National Assessment Program
SNL	Special Notice Letter
SPCC	Spill Prevention Controls and Countermeasures
SOL	Statute of Limitations
SOW	Statement of Work
SPIM	Superfund/Oil Program Implementation Manual
SSC	Superfund State Contract
START	Superfund Technical Assistance and Response Team

T

TAG	Technical Assistance Grant
TBC	To Be Considered
TOM	Contract Manager
TRT	Technical Review Team
TSCA	Toxic Substances Control Act
TST	Technical Support Team

U

UAO	Unilateral Administrative Order
USACE	United States Army Corps of Engineers
USC	United States Code
USCG	United States Coast Guard
USGS	United States Geological Survey

V

VCP	Voluntary Cleanup Program
VE	Value Engineering
VOC	Volatile Organic Compound

W

WasteLAN	Waste Local Area Network
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PERFORMANCE WORK STATEMENT

for

ENFORCEMENT SUPPORT SERVICES

INTRODUCTION AND BACKGROUND

For enforcement support services performed pursuant to this Performance Work Statement (PWS), the Contractor shall perform in accordance with all environmental statutes as appropriate [e.g., Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Emergency Planning and Community Right-To-Know Act (EPCRA), Superfund Amendments Reauthorization Act (SARA), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA) and Toxic Substances Control Act (TSCA), or successor statutes.

Successful completion of enforcement activities at Superfund sites requires close coordination of these activities in concert with other site events. The pace of enforcement activities is often dictated by removal actions, mandatory notice to Potentially Responsible Parties (PRPs), public comment periods, and statutes of limitation (SOLs). Each of the enforcement support activities listed in this PWS is interrelated with, and dependent upon, the others. Site complexities such as divisibility of harm, multiple operable units, and both cooperative and recalcitrant PRPs at the same site make it difficult to delineate the end of one enforcement activity and the beginning of another. Enforcement should be considered an ongoing process rather than a discrete event. Each activity has a direct bearing on the others, and successful performance of each activity is essential to the successful completion of all activities. Therefore, in order to provide any of the activities below, the Contractor must be capable of providing them all.

Project planning and managerial support is an essential part of the PRP search planning process and describes potential roles and responsibilities of parties involved and shall be included as an ongoing part of all tasks listed in this PWS. Project planning and support includes all technical and managerial activities required to plan and implement all work required under this Contract. Each time the government issues a Task Order, the Contractor shall submit a Staffing Plan/Cost Estimate (SP/CE), incorporating the proposed personnel that will be working on the project and an itemized estimate of the cost to complete the work.

For the purpose of this PWS, the words “The Contractor” shall mean that the firm that is selected for this procurement. Any and all services or products shall be delivered in compliance with all applicable federal, state, and local laws, regulations, guidance and policies and will be adjusted to reflect those applicable laws, regulations, guidance, and policies which become effective after the effective date of the Contract. A collection of federal environmental laws, regulations, and non-binding guidance documents may be accessed at <http://www.epa.gov/epahome/lawregs.htm>.

Contractors may access web sites for individual states and or/local jurisdictions at their appropriate web sites for relevant laws, regulations, and policy documents.

Analysis and/or recommendations provided to EPA under the Contract, by a Contractor, may be used by the Agency; however, a Contractor shall not make any decisions or assist in the development of

policy documents for the Agency. The Contractor shall explain to outside parties, at the onset of communications, that they are Agency Contractors.

PURPOSE

The purpose of the Contract is to provide legal enforcement support services to the Agency for activities described within this PWS. The purpose of this PWS is to set forth the performance requirements, performance standards, monitoring methods, acceptable quality limits, and incentives/disincentives for work performed under the Contract.

SCOPE

This Contract provides for legal enforcement support activities as defined in the PWS and further identified in specific Task Orders.

Enforcement activities under this PWS include PRP search activities at all site types. These sites include, but are not limited to: sites recently proposed to or finalized on the NPL; sites where PRP search activities are ongoing; and, sites where the PRP search activities are necessary to meet current enforcement needs, (e.g., information needed to support an orphan share determination).

While the PWS is structured by specific technical requirements, enforcement support activities may overlap different technical requirements within this PWS. The Contractor shall submit all analyses, options, recommendations, reports and any other work products in draft form for review by the EPA Contract Officer's Representative (COR) prior to use or distribution. The government will make all final regulatory, policy, and interpretative decisions resulting from Contractor-provided advice and assistance under this PWS, as well as all final decisions regarding compliance determinations, or the existence or violations of, an order, law, regulation, etc.

This PWS contains Performance Requirements, Performance Standards, the Acceptable Quality Level (AQL) for work performed, the Monitoring Methods to be utilized by the government, and Incentives/Disincentives for Contractor performance. The government reserves the right to modify the Performance Standards during the life of this Contract in order to ensure that the right outcomes are being realized and that the Performance Standards are appropriate. Any changes will be accomplished via a bilateral Contract modification. The government reserves the unilateral right to change its monitoring methods specified herein consistent with the inspection rights already provided to the government under the Inspection of Services clause, and may reduce the level of surveillance as a reward, if the Contractor consistently meets the Performance Standards. Technical Requirements under the Contract include the tasks described in detail below.

CONTRACTOR QUALIFICATIONS

- Staff with basic knowledge of the Superfund/CERCLA process.
- Staff skilled in research techniques, including internet searches and public records
- Staff skilled in database management for mailing lists, volumetric rankings, desk-top publishing, graphics for presentations, and fact sheets.
- Staff skilled in producing material for the public that communicates complex technical environmental information in language understandable to the lay reader.

- Staff experienced with meeting planning and logistics.
- Staff skilled in developing communication strategies and planning public involvement activities.
- Office located in Denver metropolitan area.

GENERAL REQUIREMENTS

- Furnish all personnel, services, materials, and equipment to perform the enforcement support activities described in the PWS and as specified in Task Orders by CORs.
- Maintain technical and financial records as specified in the Contract and by the COR.
- Receive Task Orders via individual site-specific Task Orders.
- Track and bill costs site-specifically to facilitate cost recovery efforts.

TECHNICAL REQUIREMENTS

- Expertise in conducting Potentially Responsible Party (PRP) Searches at various types/complexity of sites, including mining sites, multiple generator sites, etc.
- Develop Staffing Plans/Cost Estimates with 10 days of Task Order acceptance, or within 48 hours for expedited enforcement support activities
- Capability to start work on the assigned task, when necessary, under expedited conditions
- Expedited General Enforcement Support Activities
- Negotiation Support
- Litigation Support
- Cost Recovery Support
- Community Involvement Support
- Project Management and Planning

TASK 1 POTENTIALLY RESPONSIBLE PARTY (PRP) SEARCHES

1.1 OVERVIEW

The purpose of a PRP search is to gather evidentiary information on PRPs that may be liable for actions conducted under CERCLA. From the notification of a release through the remedial action, identification of, and communications with, the PRPs are essential in determining the strategy for a cleanup. When appropriate, and as identified in a Task Order, the Contractor shall conduct PRP search activities with the PRPs and/or the PRPs' contractor where the PRPs and EPA are jointly performing PRP search activities.

All Staffing Plans/Cost Estimates for PRP search activities described in this PWS shall be written so as to provide enforcement support and perform all PRP search activities in accordance with the three program guidance documents listed below.

Potentially Responsible Party (PRP) Search Manual, September 2003, 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 PRP Search Manual can be accessed on-line at: <http://www.epa.gov/compliance/resources/publications/cleanup/superfund/prpmanual/index.html>.

Guidance on Preparing and Releasing Waste-in Lists and Volumetric Rankings to 1991 PRPs Under CERCLA, can be found in the PRP Search Manual, September 2003, Chapter 3, Section 3.8. A

direct reference to that particular policy can be found at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/guide-volument-rpt.pdf>.

Elements of Liability Under Section 104, 106, and 107 of CERCLA, U.S. Department of Justice, (Current edition)

In planning and implementing PRP Search support activities, the Contractor shall ensure consistency with EPA-developed plans guiding site enforcement activities which may be in existence, such as a Site Management Plan, PRP Search Plan, etc.

Any deliverable submitted under this Contract shall be of acceptable quality, which means that, the deliverable:

- demonstrates a good command and usage of the English language (e.g., discussion of facts flow in a coherent and organized manner);
- demonstrates use of proper grammar (noun and verb tense correspond, etc.); and,
- is free of incomplete sentences and misspelled words.

All deliverables, unless directed differently in the individual Task Order, shall be printed double-sided. Sensitive information is properly labeled.

The government may order all or parts of a PRP Search and/or corresponding section(s) of a PRP Search. Thus, the Contractor may be required to perform any (or all) of the Baseline Tasks and Specialized Tasks described in the September 2003 PRP Search Manual (chapter 3, Section 3.10 for baseline tasks), which lead to the production of a PRP Search Report. These tasks are consolidated and summarized below:

1.2 INFORMATION GATHERING/RECORDS COLLECTION ACTIVITIES

In accordance with the September 2003 PRP Search Manual, preliminary information gathering tasks of a PRP Search generally include interviewing government officials and private parties, records collection activities, conducting industrial surveys, and developing site histories. The information obtained during this phase will be used to produce a written history of the site. The Contractor may be tasked with performing some or all of the following activities.

Performance Requirements:

The Contractor shall identify Agency, state and local government officials and interview them in order to obtain information on: (1) the existence of relevant documents such as site records, permits, and clean-up orders, hauler's licenses, business licenses, landfill permits, zoning permits, building permits, zoning ordinances, and compliance history; and, (2) the names of individuals who may be knowledgeable about the site (e.g., current and former site employees who may have information regarding site operations). If

directed to do so by EPA, the Contractor shall interview private individuals regarding site history and operations.

The Contractor shall search for and obtain copies of federal, Agency, state and local government documents, and documents located at the site that provide relevant information on the activities that have taken place at the site. The Contractor shall review relevant business records in order to document potential liability in accordance with CERCLA Section 107(a), to document PRPs' volumetric contribution, and the PRPs' ability to pay.

The Contractor shall have the capability to photocopy documents, sometimes at remote locations. The Contractor shall assess and provide a written recommendation as to whether site records to be reviewed are contaminated by hazardous wastes. The Contractor shall have the capability to handle contaminated documents, and to safely transport and/or store such records should the situation arise. The Contractor shall undertake all appropriate measures to protect the health and well-being of its employees in these situations, including training in the proper handling of contaminated records.

The Contractor shall conduct industrial surveys, and incorporate relevant information into the PRP Search Report, or as otherwise directed.

Based on information obtained during the PRP Search activities, the Contractor shall prepare and deliver to the government a written "Site History", including operational and compliance histories, which shall be incorporated into the PRP Search Report.

The Contractor shall report relevant findings to the government as required under the site-specific Task Order and incorporate the information into the PRP Search Report, or as otherwise directed.

The Contractor shall save and manage the copies of relevant documents obtained under this subtask in accordance with the information management requirements detailed in this PWS and the EPA site-specific Task Order.

Performance Standards:

The information gathered demonstrates that the Contractor has conducted interviews in accordance with proper interview standards set forth in applicable Federal and State rules of evidence and relevant interpretive case law concerning collection, chain of custody, credibility, and admissibility. Interviews shall be documented in a Memorandum of Interviews, summarizing information and/or documents acquired.

Each document shall be assigned a unique tracking number, and specific information about the document is recorded, including the document's date, record type, author, recipient, and subject. Information gathered may include: licenses, permits, inspection reports, contamination or environmental studies, sampling data, and memoranda and correspondence between site owners/operators and government officials which would document a PRP's compliance history.

Relevant documents are copied and incorporated into reports in a manner consistent with Agency guidance on reproduction and document record collection activities in PRP Search Reports set forth in the September 2003 PRP Search Manual. Records collected shall be organized in a manner compatible with the Region's Superfund filing structure and, at a minimum, identify each document by its source, location, provider, and legal status (i.e., original, certified copy, true copy, etc.). Documents shall be indexed in

conformance with Regional and national standards, as outlined in EPA Superfund Standard Operating Procedures.

The Contractor shall take all appropriate actions to ensure and protect the health and well being of its employees, and in the safe handling and transport/storage of contaminated records.

The Contractor shall research records such as industrial directories, Chamber(s) of Commerce records, business school libraries, insurance company maps, city directories, aerial photograph collections, urban archives, and the Internet, where deemed necessary.

The report shall conform to the format and content standards for a "Site History" as outlined in the September 2003 PRP Search Manual.

Supporting documents cited in the report (e.g., government documents, title search documents, and interview summaries) shall be correctly identified in accordance with the information management requirements of the site-specific Task Order.

All work shall be performed and draft final reports shall be delivered in accordance with the deadlines outlined in the Task Order. Costs shall be within the amount of the approved budget ceiling.

Acceptable Quality Level (AOL):

The Contractor has contacted and interviewed government officials and other individuals (with prior authorization from the COR) that have information relevant to the site and/or have had direct involvement with the site and knowledge of site operations. The Contractor has included this information in a draft PRP Search Report, or as otherwise specified by the EPA COR.

The Contractor has identified and obtained, or made copies of, all relevant records for the site and has incorporated relevant information into a draft PRP Search Report, or as otherwise directed by the EPA COR. The PRP Search Report adheres to the performance standards listed above.

EPA-approved site-specific Health and Safety Plans are prepared prior to the handling, transport, storage, and/or review of contaminated records.

All errors and corrections noted by the COR on the draft deliverables have been addressed and corrected.

Monitoring Method:

EPA will review the documentation and the Memoranda of Interviews in order to determine whether there are other sources of information that need to be researched.

When necessary, EPA shall review and approve the site-specific Health and Safety Plan prior to the Contractor handling contaminated records. EPA will review the list of records acquired in order to determine whether all appropriate records have been collected.

The EPA COR and Site Attorney will review the Contractor's draft and final reports for use and incorporation of verified facts, and will note progress during the reporting period on the monthly progress reports.

1.3 PRP NAME AND ADDRESS VERIFICATION

The Contractor shall assist the Agency in gathering accurate contact information for PRPs that will facilitate in mailings, settlement negotiations, and cost recovery actions.

Performance Requirements:

The Contractor shall maintain a current, up-to-date list of PRPs' names, addresses, and other contact information (e.g., address, phone number, attorney's name, address, and phone number) which will enable EPA to serve enforcement-related correspondences. The Contractor shall verify the accuracy of the PRPs' addresses prior to the mailing of any correspondence and shall notify the EPA COR of any correspondence that is returned undeliverable.

Performance Standards:

The contact list identifies the name, address, and other contact information for all PRPs and the current CEO/manager, or provides a brief notation explaining why the information is unavailable. For all corporate PRPs, the list identifies the corporate address, registered agent, officers, mergers, name changes, dissolutions, and date of incorporation. The work is performed in accordance with the schedule outlined in the Task Order. Costs are within the approved budget ceiling.

Acceptable Quality Level (AQL):

No more than 5% of enforcement correspondence is returned as undeliverable due to a bad address.

Monitoring Method:

Through self-inspection, the Contractor shall sample up to 10% of the addresses to ensure the accuracy of the information. The EPA COR may perform a random sampling of up to 10% of the PRP Name and Address verification and check for accuracy. The EPA COR will note any unacceptable performance on the Contractor's monthly Performance Evaluation Sheet.

1.4 CORRESPONDENCE TRACKING AND TRANSACTIONAL REPORTS

The Contractor shall assist the Agency in the development of databases that track contact with PRPs and transactional data related to individual PRPs.

Performance Requirements:

When required, the Contractor shall maintain a Correspondence Tracking System (CTS) that contains data extracted from information provided by PRPs in response to inquiries by EPA.

When required, the Contractor shall prepare and deliver to the government a Transactional Report which shall consist of information extracted from written documents such as, but not limited to, waste manifests, invoices and/or witness testimony to establish time frames, wastes or material contaminated, individual and/or facilities involved, and volumetric values.

Performance Standards:

The CTS can produce reports that contain PRP contact information with verified addresses, dates of mailings, receipt dates of responses, depositions, interview summaries, etc.

The Transactional Report contains and summarizes, by generator: document types, manifest number or other identifying number, shipment dates, waste types, volumes, volume conversions, and transporter name(s). The report contains 100% accurate information. The report is submitted in accordance with the Task Order requirements and deadlines. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

Challenges made by PRPs regarding the volume attributed to them do not result in changes to the waste allocation for that PRP due to duplication of entries, transposed numbers, wrong information, etc.

Monitoring Method:

The Contractor, through self-inspection, shall review all of the information submitted on the Transactional Report to ensure that the report contains no grammatical or typographical errors. The EPA COR may perform a random sampling of up to 25% of the information to ensure that the standards have been met.

1.5 ANALYSIS OF PRP SEARCH INFORMATION FOR EVIDENCE OF LIABILITY

The Contractor shall collect and summarize information in support of enforcement actions to be taken by the Agency.

Performance Requirements:

The Contractor shall analyze and organize the information obtained during PRP Search activities in accordance with the rules of evidence, CERCLA elements of liability, and applicable case law. The Contractor shall provide a written summary of the information gathered during the PRP search in the form of evidence summary sheets and shall analyze the information for evidentiary value, strength, and admissibility.

The Contractor shall make written recommendations as to the classification of each “person” [as defined in CERCLA section 101(e)(21)] identified during the research into appropriate PRP categories for EPA consideration an approval based on CERCLA Section 107(a).

Performance Standards:

Deliverables demonstrate that the Contractor performed in accordance with proper investigative standards, given applicable federal and state rules of evidence and relevant interpretive case law concerning collection, chains-of-custody, credibility, and admissibility. Deliverables are submitted in accordance with Contract and Task Order requirements and deadlines. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The draft and final deliverables adhere to the format and content standards as defined in the PWS.

MONITORING METHOD:

The EPA COR and Site Attorney will review the draft and final reports, and shall rate the Contractor’s performance on the monthly Performance Evaluation Sheet.

1.6 DEVELOPMENT OF WASTE-IN LISTS, VOLUMETRIC RANKING REPORTS, AND WASTE-IN TRANSACTIONAL REPORTS FROM PRP SEARCH ACTIVITIES

As required, the Contractor shall provide technical support to EPA in the areas of chemical processes, chemical fate, waste modeling, and the development of transactional databases to support EPA during the PRP search and in the analysis and development of waste-in information.

Performance Requirements:

The Contractor shall develop and submit for the EPA COR's approval, a set of site-specific Protocols to be applied in the review of supporting documents and allocation of waste volume to PRPs.

The Contractor shall develop, operate, and maintain an electronic database which contains information needed to produce Waste-in Lists, Volumetric Ranking Reports, and Waste-in Transactional Reports.

The Contractor shall prepare and deliver to the government an accurate inventory of wastes that were generated at, transported to, stored, or disposed of at a site in the form of a computer-generated listing of the volume and nature of hazardous substances contributed by each PRP identified at a site, noting any weaknesses in data.

The database shall be functional and compatible with EPA software. If requested, the Contractor shall install the database (with edit capability) on the EPA COR's computer or designated laptop computer, and provide training on its use.

Performance Standards:

Protocols are adhered to in all cases where possible. If a particular transaction presents an exception to the protocols, the Contractor brings it to the attention of the EPA COR and Site Attorney for a determination on how to proceed. The protocols incorporate standard unit conversion factors.

The Waste-in List accurately represents the supporting documentation in the file. The report identifies the specific sources of information (e.g., waste stream records, government records, interview reports, etc.) used to attribute volumes of waste to each PRP. The record number assigned to it under the site information management system identifies each document source. All double counts are identified (i.e., waste shipments attributed to both generators and transporters).

The report summarizes analyses performed to estimate volumes of hazardous waste attributable to PRPs including chemical processes, chemical fate, and waste modeling. The report presents stoichiometric calculations, analysis of material balances, and interpretation of process engineering data about manufacturing processes employed by PRP generators.

The Waste-in List states all clarifying assumptions made during compilation in accordance with the "Generally Accepted Waste-in List and Volumetric Ranking Assumptions," in the September 2003 PRP Search Manual. The Waste-in List document summarizes analyses performed to estimate volumes of hazardous waste attributable to PRPs, including stoichiometric calculations, analysis of material balances, and interpretation of process-engineering data about manufacturing processes employed by PRP generators.

The Volumetric Ranking conforms to the Contractor proposed, government-approved report format. The Volumetric Ranking Report created for release to PRPs satisfies 100% of the information-release requirements of CERCLA Section 122(e)(1)(C).

The database is functional and compatible with EPA software. If requested, the Contractor has installed the waste-in database on the EPA COR's computer or designated laptop computer, and provides training on its use, if needed. The database is completed within the proscribed schedule detailed in the Task Order. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

Less than 5% of the data input into the database is incorrect. Challenges to the Waste-in List are defensible, i.e., challenges made by PRPs regarding the volume attributed to them do not result in changes to the waste allocation for that PRP due to duplication of entries, transposed numbers, wrong PRP, etc.

Monitoring Method:

The government may review the Contractor's self-inspection records and may independently verify the accuracy of waste-in data entries against a random sampling of transactional source documents from which the volumes were derived.

The EPA COR may perform a random sampling of up to 10% of the information to ensure that the standards have been met. The EPA COR will review the draft and final reports and the Contractor's monthly progress reports.

1.7 CORPORATE RESEARCH AND FINANCIAL ASSESSMENTS

Financial Assessments. The Contractor will be required to provide support to the Agency, when necessary, in building a case involving parent corporation, subsidiary liability, and ability-to-pay analyses. The estimated twelve-month caseload is six different cases during any given 12-month period of the Contract. Of these six cases, EPA expects that 4 of the cases will be simple or routine cases, 1 case will be of intermediate complexity, and 1 case will be complex. One or more of the complex cases may require Contractor support at pretrial depositions or at trial.

Property Appraisals. The Contractor shall arrange for appraisals of real and personal property, as requested. The estimated 12-month caseload is 1-2 appraisals.

Property Surveys. The Contractor shall arrange for property surveys, as requested. The estimated 12-month caseload is 1.

Performance Requirements:

The Contractor shall perform corporate research and conduct or arrange for a financial analysis when required and, as directed, submit a report to the government assessing each PRP's ability to pay for clean-up activities at a site. [PRPs include individuals, partnerships, corporations ("profit" and "non-profit"), trusts, municipalities, and other legal entities.]

The Contractor may be asked to perform one or more of the tasks described below in support of EPA enforcement activities involving a particular Superfund site. The degree of detail required in any given financial analysis will depend on the circumstances surrounding the case, and may require only a Ben &

Abel analysis, or a more thorough analysis of a PRP's involvement with multiple partnerships, corporations, trusts, etc. The following tasks describe the type of activities that may be assigned.

Financial Analysis of Individuals: The Contractor shall analyze the ability of individual PRPs (including sole proprietors or business partners) to contribute to financing response costs at a Superfund site. The Contractor will use individual tax returns, individual financial statements and other financial information provided by the PRP to EPA, as well as available public documents, to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Financial Analysis of Business PRPs: The Contractor shall analyze the ability of business PRPs to contribute to financing response costs at a Superfund site. The Contractor shall use Federal tax returns, business financial statements, and other financial information provided by the PRP to EPA. In addition, the Contractor shall use available public documents and other sources of business information, as applicable to the business PRPs, to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Financial Analysis of Government Organizations: The Contractor shall analyze the ability of PRPs who are government organizations, such as municipalities, counties, state agencies or universities, to contribute to financing response costs at a Superfund site. The Contractor shall use financial statements and other financial information provided by the PRP to EPA, as well as available public documents, and shall apply principals of government finance to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Financial Analysis of Non-profit Organizations: The Contractor shall analyze the ability of PRPs who are non-profit organizations, either government or non-governmental organizations, such as educational institutions, hospitals, and service organizations, to contribute to financing response costs at a Superfund site. The Contractor shall use financial statements and other financial information provided by the PRP to EPA, as well as available public documents, and shall apply accounting principals applicable to non-profit organizations to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Review and Analyze Financial Assurance Documents: The Contractor shall review and analyze financial assurance documents provided to EPA by PRPs to fulfill financial responsibility obligations under Superfund settlements. The Contractor will advise EPA whether the economic assumptions used to calculate the present value of the cost estimates are acceptable or unrealistic and whether the financial assurance documents satisfy EPA's criteria for acceptability of such financial assurance documents, based on the requirements established by the EPA enforcement attorneys working on the case and EPA CERCLA financial assurance guidance.

The Contractor may be asked to assist EPA in reviewing the following types of financial assurance documents: trust agreements, surety bonds, letters of credit, and corporate guarantees or self-guarantees, using an EPA financial test method or other method of financial assurance as requested by EPA.

Financial Analysis of Complex Corporate Organizations: The Contractor shall research and analyze the history and organizational structure of complex corporate organizations. The Contractor will use corporate Federal tax returns, other available financial statements and other information provided by the PRP to EPA. In addition, the Contractor will use available public documents and other sources of

business information. The Contractor will assist EPA in understanding the relationships among existing corporations and their potential liability for Superfund response costs. The analyses may focus on a variety of issues such as an analysis of the operation and control of a PRP by another person, the ability of a person to undercapitalize a PRP, an evaluation of the fair market value of related-party transactions, the ability of a PRP to limit or reduce its earnings for the benefit of a different person, and the ability of a PRP to transfer an investment or other asset to an entity that may not be subject to CERCLA authority.

Assist with Settlement Negotiations with Superfund PRPs: The Contractor shall assist EPA enforcement teams (including DOJ enforcement attorneys) with negotiations with PRPs regarding financial issues in Superfund enforcement cases. This assistance may include assistance in drafting information requests and interrogatories, reviewing draft settlement documents, participating in conference calls and meetings with PRPs, and providing advice to EPA and DOJ attorneys during depositions.

Provide Expert Witnesses in Administrative Hearings or Judicial Cases: If required, the Contractor shall provide financial analysts qualified to testify as expert witnesses in mediation, administrative hearings, or judicial trials in Superfund enforcement cases. The financial analysts shall assist EPA and DOJ enforcement attorneys to prepare for administrative and civil litigation of financial issues, including preparing expert reports and affidavits, reviewing documents provided by defense counsel and drafting questions for examining defense witnesses.

Review Compliance with Superfund Settlements and Orders: If required, the Contractor shall assist EPA enforcement staff in reviewing compliance with Superfund settlements and orders involving financial issues (including financial assurance issues). Such compliance reviews may include assisting EPA to calculate the economic benefit derived by liable parties from non-compliance with CERCLA requirements.

Develop and Test Financial Analysis Tools: The Contractor may be asked to work with the Office of Site Remediation Enforcement (OSRE) and Regional case teams to develop and test the usefulness of financial analysis tools (such as spreadsheets and databases) in the context of providing financial analysis expert support for Superfund cases.

The Contractor shall submit all work products for review and approval to the COR. The appropriate EPA enforcement case staff person and the COR will review all deliverables in draft form and provide revisions and/or comments to the Contractor. The Contractor shall prepare the final deliverables incorporating EPA's comments. EPA will make all final determinations and decisions after a critical and close review of the Contractor's work product. All work products resulting from the performance of this contract are the property of EPA. The Contractor shall not publish or otherwise release, distribute, or disclose any work product generated under this contract without obtaining EPA's express written approval.

Provide Property Appraisals: The Contractor shall provide property appraisals by a licensed individual that is certified and qualified to perform property appraisals for contaminated properties.

Provide Property Surveys: The Contractor shall provide property surveys by a licensed, certified surveyor.

Reports:

In most cases the Contractor will be asked to provide written reports of the analysis conducted and the Contractor's advice to EPA. The Contractor shall use all available relevant information, including documentation received from the PRP. The Contractor shall document all aspects of any analyses performed under the contract, in order to maintain a clear and complete record that reflects the process by which the Contractor reaches its conclusions.

The Financial Reports shall generally: (a) summarize the substance of the financial issues being addressed; (b) list documents received from EPA or from a third party (such as a PRP) which were reviewed and formed a basis for the financial analysis; (c) describe the methods of financial analysis used to arrive at recommendations; (d) identify relevant EPA guidance documents and how they were applied in the analysis and recommendations; (e) explain policy or action alternatives, if any; and, (f) otherwise make clear the methods and considerations upon which recommendations are based.

Performance Standards:

The financial assessment report includes the name, address, and phone number of the entity analyzed, identification of its officers, dates and place of incorporation, corporate status, and Registered Agent, where applicable. If required, the Contractor has provided a financial assessment of each PRP's ability-to-pay based upon standard Accounting and Finance measures of income, solvency, and asset valuation. The financial assessment report cites all sources of financial information used in the assessments. The report discusses all limitations regarding the information used in the assessments and any assumptions made. The report provides a risk assessment and analysis of EPA's risk in accepting payments from the PRPs.

If an appraisal on contaminated property is required, the individual selected to perform such appraisal has knowledge of CERCLA and has experience in the unique considerations necessary for evaluation of contaminated properties.

Property surveys have been conducted by licensed surveyors and reports shall include Plat maps and a narrative legal description of the property. Qualifications of the surveyor are noted in the report.

All schedules and deadlines stated in the Task Order are met. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The draft and final reports adhere to the format and content standards as defined in the PWS. The deliverables provide the analysis and products defined in the Task Order. Work is completed in accordance with the defined schedules and deadlines in the Task Order, and costs are within the approved budget ceiling.

Monitoring Method:

The EPA COR will review the Contractor's draft and final reports and the monthly progress reports.

1.8 INVESTIGATIONS

During the course of PRP searches, it is routinely necessary to obtain and develop information from parties not known at the outset of the search.

Performance Requirements:

The Contractor shall identify and pursue investigative leads, including locating individuals who may be knowledgeable about the site operations and waste-handling practices (e.g., current and former site employees), as well as PRPs (individuals and businesses) and their assets.

The Contractor shall prepare and submit a list of individuals and former employees that may have knowledge relating to the site operations to EPA prior to conducting interviews with them. When directed, the Contractor shall make all reasonable attempts to locate and contact former employees for interviewing. The Contractor shall submit a list of interview questions to the EPA COR for approval prior to conducting the interviews. As required by the individual Task Order, the Contractor shall conduct recorded interviews and transcribe the recording of the interview, and/or provide audio/audio-visual recordings. The Contractor shall prepare a report summarizing each of the interviews conducted, noting any discrepancies in information and what actions were taken to resolve or substantiate the discrepancies. The Contractor, when appropriate, shall have the means to secure the services of a licensed private investigator.

When required, the Contractor shall provide testimony regarding PRP search activities conducted by the Contractor in support of EPA's CERCLA 104(e) enforcement actions.

Performance Standards:

The list of potential individuals and former employees to be interviewed contains names, current or last known addresses and phone numbers, and indicates the relevant knowledge the individual is expected to provide, as well as the questions to be asked of the individual.

The deliverable demonstrates that the Contractor conducted the investigations in accordance with: (a) proper investigative standards set forth in applicable federal and state rules of evidence and relevant interpretive case law concerning collection, chains-of-custody, credibility, and admissibility; and, (b) the scope, application, and specific provisions of CERCLA Section 104(e) relating to the investigative jurisdiction of EPA. The report contains a detailed summary of the information obtained (including all opinions, comments, and statements of the interviewee, whether or not erroneous).

The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the approved budget ceiling.

Acceptable Quality Level (AQL):

The final report adheres to the above standards.

All errors or corrections noted by the EPA COR on the draft report have been addressed and corrected in the final report.

Monitoring Method:

The EPA COR will review the draft and final reports and the Contractor's monthly progress reports.

1.9 TITLE SEARCHES

The purpose of this task is to provide the government with information about owners, lessees, and operators at a site that will assist in the issuance of CERCLA Section 106 Notice Letters.

Performance Requirements:

The Contractor shall conduct a title search in order to identify past and present site owners, as well as owners of properties adjacent to the site which fall within the jurisdiction of EPA, and deliver to the government a Title Search Report summarizing the ownership history of the property(ies) involved. The Contractor shall conduct lessee/operator searches. If requested, the Contractor shall provide a preliminary title report establishing current ownership within the time frame identified in the Task Order.

The Contractor shall analyze the contents of the documents located for information which will aid in identifying and issuing notice letters to owners and operators, as defined in CERCLA Section 107(a).

When required, the Contractor shall prepare and provide site parcel overlays on aerial photography, using such means as GIS software and drafting software.

Performance Standards:

The Title Search Report summarizes the ownership history of the property, identifying current and past owners of the site property, as well as properties located adjacent to the site, as required. The report indicates that the Contractor has reviewed title documents relevant to the site which establish an ownership or possessory interest in the property.

The report presents the site's location on county parcel maps and available aerial photographs, as required, and cites the legal description of the property, including the metes and bounds description. The Contractor has reviewed the metes and bounds description to assure the property falls within the site boundaries.

The report contains a chronological list, title tree and/or organizational chart (presented graphically), and copies of all relevant recorded documents including: the site property(ies) legal description(s); warranty, grant or quitclaim deeds; mortgages or liens; deeds of trust; easements; covenants; leases; trustee's deeds; administrator's and executor's deeds; financing statements; judgments; real estate contracts; subdivision plats; and, other title instruments relating to the site.

The report summarizes research conducted, including document sources researched, information obtained, follow-up actions required and/or recommended, and "dead-end" leads. The report outlines the title history of each parcel.

For mine sites, the report summarizes the history of patented and unpatented mining claims, including an alphabetical list and copies of relevant documents including: (1) Bureau of Land Management Documents (master title plats, use plats, historical indexes, mining claim indexes, serial register pages, case files, survey plats, individual control documents, such as patents, public land orders, secretarial orders, and survey notes); (2) Minerals Management Service Documents; (3) Uniform Commercial Code Filings; and, (4) County Records (deeds, assignments, mortgages, assessment work for unpatented mining claims, land valuation and appraisal data, ownership plats, tract or abstract indexes, grantor/grantee indexes, mortgagor/mortgagee indexes, and miscellaneous indexes that may contain information on leases, judgments, liens, encumbrances, royalty agreements, UCC filings, and zoning).

The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the approved budget ceiling.

Acceptable Quality Level (AQL):

The legal description is accurate. Accurate shall mean that the legal description is free from errors and is

defensible. The Contractor has reviewed the information, and has included this information in a draft Title Search Report, or as otherwise directed by the EPA COR. The draft and final Title Search Reports adhere to the above performance standards.

Monitoring Method:

The EPA COR will review the Contractor's draft and final reports for use and incorporation of verified facts, and the Contractor's monthly progress reports.

1.10 CERCLA SECTION 106 GENERAL/SPECIAL NOTICE AND SECTION 104(e) INFORMATION REQUEST LETTER SUPPORT

The purpose of this task is to provide formal notification to PRPs of their potential liability for a site and to request information from persons with knowledge about site operations and hazardous substance management practices at the site, as well as to the ability of a PRP to pay for or conduct cleanup of the site.

Performance Requirements:

The Contractor shall provide administrative and technical support in the preparation and mailing of CERCLA Section 104(e) Information Request letters and/or General/Special Notice letters, as defined in CERCLA Section 122. Support may include the preparation of routine administrative -type letters (non-decision making) based on a model or template provided by the Agency.

The Contractor shall collect and compile the PRPs' responses to Information Request letters and provide to the government a written summary and analysis of the responses in the PRP Search Report.

As directed, the Contractor shall compile, review, and prepare background summaries supporting enforcement referrals to the Department of Justice.

The Contractor shall develop, maintain, and operate a data base to track the mailing of correspondence to each PRP and receipt of their responses to the 104(e) Information Request letters and Notice letters. PRP information and lists shall be maintained in a format which allows easy electronic transfer to EPA's CERCLIS data base.

Performance Standards:

The CERCLA Section 104(e) Information Request letters and Notice Letters contain accurate information with no typographical errors, and the 104(e) responses are accurately summarized. Mailings are completed within the schedule and deadlines designated by the Task Order.

The correspondence tracking database is kept updated with new information as it becomes available. The Contractor is able to produce correspondence tracking reports on individual PRPs if requested by the EPA COR. The Contractor has conducted research to try to locate the current address for any correspondence returned as undeliverable, and has notified the EPA COR of all dead ends.

The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

Prepared letters are free of grammatical and spelling errors and look professional.
No more than 5% of mailed correspondence is returned as undeliverable due to a bad address.

Monitoring Method:

The EPA COR will review the Contractor's monthly progress reports.

1.11 PRP SEARCH REPORT

The Contractor shall organize the information collected during the course of the tasked PRP search activities described above into a PRP Search Report that conforms to the standards described in the September 2003 PRP Search Manual.

Performance Requirements:

The Contractor shall deliver to the government a PRP Search Report which contains comprehensive evidentiary information on PRPs gathered while performing subtasks 1.2 through 1.10 above.

Performance Standards:

The PRP Search Report conforms to the format and content standards outlined in EPA's PRP Search Manual issued in September of 2003. Supporting documents cited in the report are identified correctly in accordance with the information management requirements of the PWS.

The report demonstrates that the Contractor conducted the PRP search in accordance with proper investigative standards, given applicable Federal and State rules of evidence and relevant interpretive case law concerning collection, chains-of-custody, credibility, and admissibility. The PRP Search Report is delivered within the schedule and deadline specified in the Task Order and is under the approved budget ceiling.

Acceptable Quality Level (AQL):

All due dates/schedules and deadlines specified in the TO have been met. The draft and final reports adhere to the format and content defined in the PWS. No more than 10% of government review comments on the draft deliverable address substantive legal deficiencies. All work has been submitted within the specified deadlines stated in the Task Order and costs are within the approved budget ceiling.

MONITORING METHOD:

The EPA COR and Site Attorney will review the draft and final reports and the Contractor's monthly progress reports.

TASK 2 EXPEDITED PRP SEARCH SUPPORT

Occasionally, EPA requires PRP search support on an expedited basis. Such work may include any of the tasks described under Task 1, but most likely will be limited to, records collection, title searches, interviews, corporate and financial research and assessment of PRPs, the filing of liens, service of documents on PRPs, and other abbreviated PRP search work activities. These assignments are usually of short duration and of lesser monetary value, and require a quick turnaround.

Performance Requirements:

The Contractor shall be capable of providing all PRP search activities described under Task 1 above in an expedited manner, when required. Expedited PRP search support may include, but is not limited to: records collection, title searches, interviews, financial research and the collection and analysis of financial information relating to ability-to-pay assessments of individual and corporations, corporate research and file evidence summary, and notice letter preparation.

Within two (2) days after receiving oral or written notification from the Contract Manager, the Contractor shall initiate the requested expedited PRP search support activity. However, the Contractor shall not proceed until it has provided the EPA COR with an expedited staffing plan, a statement that it can meet the deadlines set forth in the Task Order or has provided a proposed deadline for completion of the work, and an estimate of the cost the Contractor feels will be required to complete the activity. EPA will follow up its direction with written requests/approvals. Occasionally, the Contractor may be asked to initiate the expedited PRP Search Support activity with less than the 2-day notification.

The Contractor shall identify available personnel with Level C health and safety training and necessary equipment, in accordance with OSHA requirements found in 29 CFR 1910.120, in order to respond on a contingency basis.

The Contractor shall have in place streamlined procedures for health and safety planning, conflict of interest certification, and quality assurance.

The Contractor shall have in place administrative and accounting procedures for expedited assignments, which shall be the same for any other Task Order. However, the Contractor shall expedite the application of those procedures in order to ensure the performance is consistent with the established deadlines.

Performance Standards:

The applicable standards for performing expedited PRP Search work are found in Task 1, Sections 1.1 through 1.11 above.

Written deliverables are provided in accordance with the schedule and deadlines stated in the Task Order. Costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

Performance standards for PRP Search work detailed in Sections 1.1 through 1.11 above are met.

No more than 25% of government review comments on the draft deliverable address substantive legal deficiencies. All corrections and errors have been addressed in the final deliverable.

All work is performed and deliverables submitted in within the deadlines stated in the Task Order and costs are within the approved budget ceiling.

Monitoring Method:

The EPA COR and Site Attorney will review the draft and final deliverables and the Contractor's monthly progress reports.

TASK 3 EXPEDITED GENERAL ENFORCEMENT SUPPORT

The Contractor shall provide technical and administrative assistance to EPA in arranging for the service of Information Request Letters, General/Special Notice letters and other documents, and the filing of liens and deed restrictions in an expedited manner. While specific subtasks required under Task 3 are detailed below, each subtask has common requirements.

General Performance Requirements:

Within two days (48 hours) after receiving oral or written notification from the Contracting Officer, the Contractor shall initiate the requested expedited PRP search support activity. However, the Contractor shall not proceed until it has provided the EPA COR with an expedited staffing plan, a statement that it can meet the deadlines set forth in the Task Order or has provided a proposed deadline for completion of the work, and an estimate of the cost the Contractor feels will be required to complete the activity. EPA will follow up its direction with written requests/approvals. In an emergency situation, it is possible that the Contractor may be asked to initiate the expedited Enforcement Support activity, based upon oral notification from the Contracting Officer, within less than the 48-hour timeframe.

The Contractor shall submit a Letter Report, including appropriate supporting documentation, that evidences that the task has been completed.

General Performance Standards:

The Contractor has in place administrative and accounting procedures for expedited assignments, which shall be the same for any other Task Order. The Contractor has expedited the application of those procedures in order to ensure the performance is consistent with the deadlines established in the Task Order.

Acceptable Quality Level (AQL):

The Letter Report contains documentation/representations evidencing that the task has been completed.

The work is performed in accordance with the schedule and deadlines outlined by the Task Order, and costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Letter Report to verify that the task was completed and the Contractor's monthly progress report.

More specifically, when ordered, the Contractor shall perform the following general expedited enforcement support activities.

3.1 SERVICE OF PROCESS AND OTHER DOCUMENTS

Performance Requirements:

The Contractor shall assist in arranging for the legally-correct service of various enforcement-related documents, including information requests, notice letters, demand letters, subpoenas, orders, summons, and complaints on various parties. The Contractor shall locate interested parties and properly serve or deliver to them, or arrange for the service/delivery by the local Sheriff's office or a process server. Service of documents shall be conducted in accordance with Federal Rules of Civil Procedure, local court

rules, and other EPA procedures. If requested, the Contractor shall provide for overnight or same day delivery service.

The Contractor shall be prepared to complete and submit an affidavit, or certificate of service or other document to serve as evidence of service, or obtain such documents from the individual serving the documents, and provide it in a Letter Report to the EPA COR.

Performance Standards:

The Contractor's efforts have met the general performance standards mentioned above.

The Letter Report contains an affidavit, or certificate of service, or other document to serve as evidence of service, in accordance with Federal Rules of Civil procedure and local court rules.

The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Letter Report to verify that the documents were properly served and are documented. The EPA COR will review the Contractor's monthly progress report.

3.2 FILING OF CERCLA LIENS

Performance Requirements:

When requested, the Contractor shall assist the government in preparing Notices of Federal Liens and in developing lien filing records. This effort shall include assisting EPA in determining the correct legal description of the property EPA proposes to lien, and filing the lien for recording in the appropriate jurisdiction in compliance with the particular rules of that jurisdiction.

The Contractor shall furnish EPA with a Letter Report that includes evidence that the lien has been recorded, including a copy (a certified copy, if requested) of the recorded lien. The Contractor shall also assist EPA in the removal of liens, when needed.

Performance Standards:

The Contractor's efforts have met the general performance standards mentioned above.

The Letter Report contains evidence that the lien has been filed and recorded, including a copy (a certified copy, if requested) of the recorded lien.

The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Letter Report and the Contractor's monthly progress reports.

3.3 FILING OF DEED RESTRICTIONS

Performance Requirements:

The Contractor shall assist EPA in the preparation and filing of deed restrictions pursuant to CERCLA

and State laws, including determining the correct legal description of the subject property, filing of the deed restriction for recording, and may be required to monitor PRP compliance with the deed restriction.

The Contractor shall submit a Letter Report confirming the filing of the deed restrictions, including a copy of the recorded deed restriction.

Performance Standards:

The Contractor's efforts meet the general performance standards mentioned above. The Letter Report contains evidence that the deed restriction has been filed and recorded in the appropriate jurisdiction, including a copy (a certified copy, if requested) of the recorded deed restriction.

The work is performed in accordance with the schedule designated by the EPA COR, or as outlined in the EPA-approved work plan, and costs are within the amount of the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Letter Report and the Contractor's monthly progress reports.

3.4 FREEDOM OF INFORMATION ACT SUPPORT

Performance Requirements:

The Contractor shall support the agency in managing the FOIA process by conducting activities such as retrieval of records, preparation of routine, non-judgmental correspondence, duplication/copying of records (microfiche, microfilm, optical disk or other photo or electronic reproduction), and verification of document filing. The Task Order will identify the nature of correspondence to prepare.

The Contractor shall NOT: 1) interpret the FOIA request letter; 2) determine where to look for responsive records, except with respect to those files under the Contractor's control; 3) decide what records are releasable; 4) prepare any correspondence except as directed by EPA; or, 5) sign correspondence.

Performance Standards:

Documents and other information requested are retrieved and provided to the EPA COR within the schedule and deadlines specified in the Task Order, and costs are within the approved budget ceiling.

Acceptable Quality Limit (AQL):

All work efforts conform to the Performance Standard.

Monitoring Method:

The EPA COR will monitor the Contractor's prompt retrieval and delivery of the requested documents and will review the Contractor's monthly progress reports.

TASK 4 NEGOTIATION SUPPORT

The Contractor may be asked to provide technical assistance to the Agency by providing data, for use by program personnel, that will facilitate negotiations relating to: removals (emergency, time critical, and non-time critical); a Remedial Investigation/Feasibility Study (RI/FS); a Remedial Design/Remedial Action (RD/RA); Long Term Remedial Action (LTRA); Operation and Maintenance (O&M); cost

recovery; and, claims defense. The Contractor may be asked to provide case support for liability and viability analyses and cost documentation support. The Contractor will be required to provide technical support to EPA during the development of EPA/DOJ's negotiating strategy and during EPA's negotiations with PRPs. This may include the identification and procurement of expert witnesses and/or expert's opinions in subjects relating to scientific, engineering, financial, and valuation specialties relating to any tasks described in this PWS.

Performance Requirements:

As necessary, the Contractor shall be capable of performing the following negotiation support activities:

- summarizing draft orders, including collecting and analyzing information;
- reviewing and assisting in drafting technical support documents, which may include statements of work to be performed by the PRP, work plans, or data submitted by PRPs;
- evaluating PRP offers and work plans to conduct the proposed response action;
- evaluating technical and financial capabilities of the PRP, the PRP's proposed consultant, and any subcontractor(s) to adequately implement the proposed remedy or remedies;
- reviewing and evaluating financial information to determine completeness of costs and gathering work-performed documentation;
- reviewing settlements, including mixed funding, and de minimis/de micromis settlements;
- publishing public meeting notices, and preparing responses to comments;
- collecting and developing information for the Agency's use in evaluating and preparing Preliminary Non-Binding Allocations of Responsibility (NBARs);
- reviewing settlements involving cost recovery;
- coordinating natural resources damages aspects of settlements;

- verifying the compliance of a PRP's work plan with the requirements and schedules in pertinent legal documents such as orders and decrees; and,
- other negotiation support activities that may be needed.

As required, the Contractor shall identify qualified experts that possess the special qualifications needed by the Agency to support a particular enforcement action and provide the EPA COR with a letter report that contains verified and accurate information on all of the final candidates. The Contractor shall provide a matrix showing a basis for selection of a final candidate. The Contractor shall secure the services of the individual(s) selected by EPA.

Performance Standards:

The Contractor has reviewed relevant documents and adhered to applicable Agency guidance in the drafting of documents, publication requirements, evaluation and preparation of NBARs, and evaluation of PRPs' proposals, staffing plans, and cost recovery settlements.

Experts are identified, located, and secured within the schedule and deadlines specified in the Task Order or as designated by the court. The expert(s) hold the necessary credentials in the area specified. Costs are within the approved budget ceiling.

Acceptable Quality Level (AQL):

Draft and final deliverables adhere to the format and content standards as defined in the PWS and/or Task Order.

All of the identified expert witnesses are fully qualified, hold the necessary credentials, and are available and willing to provide testimony within the required time frame.

Any missing cost documentation has been identified and obtained, or if unobtainable, noted in the Letter Report.

Monitoring Method:

The EPA COR will review the Contractor's draft and final deliverables and the monthly progress reports.

TASK 5 LITIGATION SUPPORT

The purpose of this task is to obtain non-personal professional and other services and products that help attorneys acquire, screen, analyze, and organize evidentiary and other documents that assist in the preparation of litigation reports to establish the prima facie case and serve as the recommended basis for the EPA/DOJ-prepared complaint. Under this task, the Contractor will need to be capable of performing all of the activities listed below.

5.1 REFERRAL SUPPORT

Performance Requirements:

The Contractor will assist in the development of referrals pursuant to CERCLA Sections 103, 104, 106, 107, 109, and 122. The Contractor shall assist in the assembly of all documents which support the referral, including EPA-PRP contacts, sampling data, records collected during the PRP search, and various legal instruments.

The Contractor will assist in the assembly of all documents which support the complaint and all discovery requests. Data collection, management, review, and assessment will continue until the prima facie case is determined by the Agency to be complete and PRP searches have been completed.

The Contractor shall utilize a document indexing system which will manage and track all evidence collected and is compatible with the Regional Records Center's indexing system.

Performance Standards:

The Contractor has contacted and obtained, or made copies of, all relevant records and organized them in the manner instructed by the EPA COR. The Contractor has reviewed the information, and has included this information in a Letter Report or as otherwise directed by the EPA COR.

Acceptable Quality Level (AQL):

The Contractor is able to identify, collect, organize, and index documents required to support the referral within the schedule and deadlines stated in the Task Order. Costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR may review the document index to verify that relevant documents are included. The EPA COR will review the Contractor's monthly progress reports.

5.2 EVALUATION OF COST INFORMATION

Performance Requirements:

In preparation of litigation referrals and during ensuing discovery/litigation, the Contractor shall assist EPA in the compilation of cost packages which document costs expended for a particular site. The Contractor shall conduct audits of information in the cost packages to identify and correct errors (i.e., costs incorrectly charged to a site, missing documentation, etc.), assist EPA in reconciling the cost updates from EPA's current cost documentation packages, and assist in the collection of work-performed documents. The Contractor shall document all discrepancies in the cost package in a Letter Report.

Performance Standards:

All relevant supporting documentation is located and included in the cost package. The Letter Report outlines all mathematical errors and discrepancies identified in the cost package. The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Letter Report and the Contractor's monthly progress reports. The COR may review a random sampling of the cost package to verify accuracy of the Contractor's work.

TASK 6 COST RECOVERY SUPPORT

6.1 COST DOCUMENTATION AND REDACTION

The Contractor will be required to provide technical support to EPA, in conformance with EPA guidance for collecting and securing evidence, in order to aid in cost recovery efforts.

Performance Requirements:

The Contractor shall perform a review and audit of the cost package(s) and provide their findings in a Letter Report to the EPA COR. The Contractor shall produce a documentary audit trail to establish proof of costs incurred using existing systems and other documentation and guidance.

The Contractor shall maintain an organized cost package or cost document file that includes cost summaries for each cost element claimed, together with organized supporting documentation. More specifically, the Contractor shall:

- Review all cost documentation and/or accounting procedures;
- Collect and summarize all available Superfund work-performed documents in support of the costs included in the cost package, including documentation that describes the site specific response actions (e.g., contractual, cooperative, and interagency agreements); and,
- Compare work-performed documents against the financial documents in the cost package to ensure that all documented costs are supported.

In addition, the Contractor shall provide the following assistance to EPA, when requested:

- Provide technical support for data analysis of government-furnished documentation;

- Provide assistance in developing proof to support allocation of non-site-specific charges on a site-specific basis;
- Review and analyze audits or technical reports;
- Provide support in defense of claims for reimbursement under CERCLA, in support of preparation by EPA for civil and administrative settlements, including pre-trial and auxiliary services, leading to formal negotiations/meetings with private parties, and trial; and,
- Scan, OCR, index, input data into a database, and copy cost recovery documents, as requested.

Performance Standards:

The Contractor is knowledgeable with regard to cost packages and their four elements (evidence that: work was tasked; work was performed; costs were incurred; and, costs were paid). The Contractor has accumulated and verified all costs incurred in connection with a site or sites by reconciling all supporting documentation with Agency data. The Contractor has identified to the Agency deficiencies in the cost package and/or potential sources of challenges.

The Contractor has performed the above-mentioned requirements in accordance with EPA guidance documents, including, Superfund Cost Recovery Referrals, September 6, 1983, OSWER Directive No. 9832.0; Superfund Cost Recovery Strategy, July 29, 1988; OSWER Directive No. 9832.13; and Superfund Removal Procedures (Revision No. 3), February 1988, OSWER Directive No. 9360.0-3B (versions may be updated).

The work is performed in accordance with the schedule and deadlines specified in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor's efforts adhere to the above Performance Standards.

The cost package contains no mathematical errors and all relevant documents that evidence work performed and costs incurred are included in the cost package.

The work is performed in accordance with the schedule specified in the Task Order, and costs are within the amount of the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Contractor's Letter Report and the Contractor's monthly progress reports. The EPA COR may review random documents to verify the accuracy of the documentation against the cost summary, and that work-performed documents are present to support the documented costs.

6.2 CLOSEOUT MEMORANDA SUPPORT

A Closeout Memorandum is EPA's cost recovery decision document (CRDD), which summarizes the Agency's decision not to pursue further the recovery of certain costs incurred at a site. EPA will prepare the Closeout Memorandum with technical assistance from the Contractor, where appropriate.

Performance Requirements:

The Contractor shall provide technical and administrative assistance to the Agency in the review of pertinent EPA files and collection of documents necessary to substantiate and support a Closeout Memorandum.

Performance Standards:

The Contractor has reviewed Agency files and provided copies of relevant documents that will support the recommendations in the Closeout Memorandum.

Work was performed and submitted within the schedules and deadlines stated in the Task Order, and costs are within the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's monthly progress reports.

Task 7 COMMUNITY INVOLVEMENT SUPPORT

The Contractor shall assist the agency in community involvement activities, including, but not necessarily limited to: making logistical arrangements for public meetings; development and dissemination of presentation materials; assistance with meeting registration; and, note taking and/or production of recorded documentation of the meeting.

7.1 PUBLIC MEETING SUPPORT

Under this task the Contractor will prepare for and provide support to EPA for public informational meetings, work shops, site tours, and conferences.

Performance Requirements:

Logistical Support for Meetings: EPA community involvement coordinators (CICs) through the Contracting Officer Representative (COR) will provide Contractor with the following information: date of meeting, meeting location, court reporter/translator/speaker/security needs. Contractor will handle all arrangements and report results to EPA. When required, the Contractor shall:

- Reserve and pay for meeting rooms;
- Assist with meeting registration and notes;
- Arrange and pay for audio-video equipment;
- Arrange and pay for court reporters and transcripts. (Assume two transcripts of 100 pages each. Draft transcript to be provided EPA within 15 work days of the meeting. Final transcript to be provided within 5 work days of receipt of EPA's revisions.);
- Arrange and pay for translators with audio equipment;
- Arrange and pay for expert speakers;

- Arrange and pay for security; and,
- Arrange for transportation and other support for site tours.

Presentation Materials: The Contractor shall develop visual materials (slides, PowerPoint presentations, signs, posters and/or other audio-visual materials). EPA's CIC, through the COR, will provide the Contractor with information to be placed on slides, posters, and other audio-visual materials

Performance Standards:

Arrangements for meeting locations are convenient to the public and equipment/translators/ security are available when and where needed. Transcripts/meeting notes are delivered within the proscribed time frame. PowerPoint presentations, posters, and other audio-visual materials are of high quality and easily understood.

Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverables, as well as the monthly progress reports.

7.2 FACT SHEET PRODUCTION

Under this task the Contractor will provide the lay out for fact sheets, produce graphics, maps, and pictures, and provide translation of fact sheets.

Performance Requirements:

Preparation of Fact Sheets: The Contractor shall prepare fact sheets, flyers, brochures, press packets, and other materials as needed, for the public regarding Superfund activities. Written materials may include information regarding the Superfund process, site history, upcoming site activities and opportunities for public involvement, and information regarding the results of studies, as well as plans for remediation at a particular site. The site CIC, through the COR, will furnish the text for the fact sheets. The Contractor shall provide graphics at the direction of EPA. EPA shall approve the Contractor's drafts of fact sheets and other public materials before distribution to the public. Fact sheets shall be produced using EPA's approved format. Final fact sheets shall be provided to EPA in Microsoft Publisher. The Contractor shall arrange to have fact sheets reproduced.

Translation of Fact Sheets: The Contractor shall provide translations of fact sheets, flyers and other public materials (predominately Spanish translations), as requested. When EPA requests only translation services, the site CIC, through the COR, will provide the Contractor with a hard copy, electronic copy, or computer diskette of the fact sheet to be translated. The Contractor shall produce a translated version of the fact sheet and provide EPA with electronic copy.

Generate Maps, Graphics, and Pictures for Publications: The Contractor shall generate maps, graphics, and pictures for publications as requested by EPA

Performance Standards:

Fact Sheets, flyers, brochures, press packets, and other written materials are of high quality, easily understood by the target audience and are accurate. Graphics are colorful, relevant, dynamic, and enhance the overall message presented. Written materials conform to EPA's preferred format, and are provided in Microsoft Publisher. Translations are accurate in fact and grammatically correct. All maps, graphics and pictures for publications are of high quality and relevant to the subject being discussed.

Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverables for quality and acceptability, as well as the monthly progress reports.

7.3 PUBLIC NOTICES

Under this task the Contractor assist EPA in the production of public notices, place them in news papers as display ads, and provide EPA with proof of publication.

Performance Requirements:

Prepare Public Notices: The Contractor shall prepare the public notice layout and graphics and submit the draft notice to EPA for review and approval before publication. The site CIC, through the COR, will provide the text for the notices and sample layout. EPA staff will identify the newspapers in which the notices are to be placed and the date on which the notice must be published. The Contractor will be responsible for sizing the public notice to fit the display ad space. If the Contractor must make extensive layout and/or graphic changes to the public notice, the Contractor shall notify EPA prior to proceeding with placement of the public notice for publication.

Arrange for Publication of Public Notices: The Contractor shall proof read notices prior to publication, arrange with the newspaper for publication and payment of the notices as display ads, and assure that notices are placed in the newspapers on the appropriate date. The Contractor shall submit copies of the public notices to EPA, with proof of publication, for inclusion in the Administrative Record and information repositories as soon as received from newspaper.

On rare occasions there is a potential for short notice (as little as 48 hours) requiring a quick response to the need to place a public notice.

Performance Standards:

Public notices conform to Agency standards, are of high quality, well written, concise, and accurately transmit the information being relayed. Public notices are placed in the specified newspapers and are

published on the date(s) specified by EPA. Letter reports transmitting the Public Notice and Proof of publication are timely submitted to the COR.

Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, as well as the monthly progress reports.

7.4 MAILINGS

Under this task the Contractor will produce and maintain mailing list data bases and provide mailing labels, and prepare large mailings.

Performance Requirements:

Develop, Update, and Maintain Mailing Lists:

The Contractor shall develop, update, and maintain the database for site contact/ mailing lists. The site CIC, through the COR, generally will furnish names, addresses, and phone numbers for mailing lists; however, there may be occasions where EPA will ask the Contractor to locate appropriate addresses and phone numbers. Mailing lists are to be prepared in accordance with Regional format and content requirements.

Provide Printouts of the Mailing List and/or Mailing Labels: The Contractor shall provide, as requested, printouts of, or CDs containing, the mailing list and/or mailing labels within 3 work days of the request

Prepare Large Mailings: The Contractor shall arrange for labeling, folding, stuffing envelopes and bundling, as required by the Post Office.

Performance Standards:

Mailing lists are accurate and up-to-date. No more than 5% of any mailing is returned as undeliverable because of a bad address.

Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, as well as the monthly progress reports.

7.5 COMMUNITY INVOLVEMENT PLANS

The Contractor will assist EPA in developing site Community Involvement Plans (CIP).

Performance Requirements:

Arrange for Community Interviews: The Contractor shall be prepared to arrange for community interviews as requested by the CIC, through the COR and contact interviewees either via telephone or email to request an interview. Upon agreement on an interview time, the Contractor shall follow up with a confirmation letter to the interviewee.

Perform Demographic and Site-History Research: The Contractor shall have the capability to perform demographic and site history research. As requested by CIC for the site, through the COR, the Contractor shall research US Census data and other relevant information to identify demographics of the area near the site and provide a written demographic description of the site. The Contractor shall conduct research and provide a written description of the community's history.

Identification of Media Contacts: The Contractor shall identify local media outlets and provide contact information as needed.

Performance Standards:

Proscribed procedures are followed when contacting individuals for interviews. Reports detailing site history, community history, and demographic information are accurate, clearly written, and produced in a timely manner. Media identification and contact information is timely and accurate.

All due dates/schedules stated in the TO, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, as well as the monthly progress reports.

7.6 CONGRESSIONAL BRIEFING BOOKS

Under this task, the Contractor shall assist the Community Involvement Program in the preparation of Congressional Briefing Books.

Performance Requirements:

As required, EPA staff will generate the text for the fact sheets, graphics, maps, and the cover. The Contractor will produce fact sheet format, graphics, charts, maps and covers for each Congressional Briefing Book. The Contractor will provide draft materials. EPA will review and provide comments on the draft. Based upon EPA's comments, the Contractor will produce the final fact sheets, maps, graphics, and cover. Separate booklets will be produced for Superfund activity in Montana, Colorado, South Dakota, North Dakota and Utah. The Contractor will be responsible for reproducing and binding the briefing books, and also shall provide the information in electronic form on a CD. Briefing books will be produced every two years, following Congressional elections.

Performance Standards:

Congressional Briefing Books are of high quality, accurate, well written, free from spelling and grammatical errors and generally appear professionally done.

Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Methods:

The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, as well as the monthly progress reports.

7.7 GENERAL COMMUNITY INVOLVEMENT ADMINISTRATIVE SUPPORT

Performance Requirements:

The Contractor shall provide general community involvement administrative support to EPA, such as photocopying, acquiring newspaper subscriptions, and other tasks of this nature, to be determined as needed.

Performance Standards:

Photocopying quantities are within the limits set by the contract. Newspaper subscriptions are obtained in a timely manner.

Work is performed within the schedules/deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.

Acceptable Quality Level (AQL):

The Contractor meets all performance standards.

Monitoring Method:

The EPA COR will review the Contractor's monthly progress reports.

TASK 8 PROJECT MANAGEMENT, PLANNING AND SUPPORT

8.1 PROJECT MANAGEMENT, PLANNING, AND SUPPORT

The purpose of this task is to plan for the execution and overall management of Task Order issued under the Contract. The technical and managerial activities required to plan and implement the tasks and their associated costs are detailed in this PWS. Activities required for general project management that will occur throughout the duration of the project are included in this task.

Performance Requirements:

The Contractor may be required to perform some or all of the following activities as part of the project planning and support of individual Task Orders:

- Coordination of, and attendance at, scoping meetings;
- Preparation of meeting minutes;
- Preparation of Staffing Plans and Cost Estimates;
- Preparation of periodic status reports;
- Preparation of Monthly Progress Reports and Financial Reports;
- Attendance at site team meetings when requested;
- Attendance at meetings with PRPs in support of negotiations; and,
- Closeout of completed Task Orders and preparation of the Closeout Memo to the Project Officer and COR.

Conference with EPA Enforcement Teams:

The Contractor will be expected to confer frequently with the EPA and DOJ enforcement case teams with whom they are working on enforcement cases about the issues that arise during the tasks the Contractor is assigned to work on. In addition, the Contractor is expected to explain the economic principals they are applying and the methods of analysis they are using in these assigned cases to the EPA and DOJ enforcement teams with whom they are working.

Notification to Task Order Project Officer (TOPO) of Deliverables: So that the TOPO can accurately track the timeliness of deliverable submittals, the Contractor shall provide the Project Officer with a copy of the transmittal letter to the COR or, lacking a transmittal letter, the contractor shall in some other written manner notify the TOPO when a deliverable has been submitted to a COR.

Task Order Closeout:

The Contractor will perform close out activities for each individual work. The Contractor shall reconcile all charges to the Task Order and provide an Acknowledgement of Completion that accurately reflects the amount of costs incurred and hours spent on the Task Order.

The EPA Contracting Officer will notify the Contractor of project completion and request closeout of the Task Order. Upon closeout request, the Contractor shall:

- Provide an index of all WA documents to the COR for a duplication check;
- Return EPA documents to EPA or other document repositories, as appropriate;
- Provide electronic copies of specified documents to the COR, if requested;
- Duplicate, distribute, and store files, if appropriate;
- Archive files to meet Federal Records Center requirements, if requested;
- Use microfiche, microfilm, CD-ROM or other EPA-approved data storage technology, as appropriate;
- Prepare and submit an Acknowledgement of Completion within 30 work days of request for closeout of the Task Order.

Performance Standards:

If requested, the Contractor will expend their best efforts to coordinate and arrange for a scoping meeting within the time frame designated in the Task Order. If requested, the Contractor shall prepare minutes of the scoping meeting that accurately document the scope of service and any deliverable/schedule changes, and submit them to the COR for review and approval.

If needed, the Contractor shall meet with and brief the EPA Enforcement team of any issues that could affect the outcome of the Region's enforcement efforts at a site.

The Contractor shall meet the schedules and deadlines set forth in the Task Order for submitting the Staffing Plan/Cost Estimate and any interim periodic status reports/deliverables.

Monthly Progress Reports and Financial Reports accurately reflect the work performed and documents costs that were incurred during the reporting period.

Closeout of the Task Order is completed within 30 days of notification, and copies of the Acknowledgement of Completion Closeout Memo are delivered to the COR and Project Officer.

Acceptable Quality Level (AQL):

The Contractor has met the performance standards for this Task. All work is completed within the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.

Monitoring Methods:

The EPA COR will review the Contractor's Staffing Plan/Cost Estimate, meeting minutes, status reports, Acknowledgement of Completion, and the Contractor's monthly progress reports.

8.2 QUALITY ASSURANCE

Performance Requirements:

Deliverable/Document Quality: The Contractor shall implement a quality assurance program adequate to ensure that documents, deliverables, and work are of a quality suitable for their intended purpose. Documents (both for program and project purposes) shall be complete, accurate, and delivered on time.

"Complete" means all work products, documents, or other deliverables which are required by statute, regulation, guidance, or terms of the Task Order, are submitted by the Contractor, or that an exception has been granted by the EPA COR, upon satisfactory showing of good cause.

"Accurate" means the content of all work products, documents, or other deliverables submitted have been determined by the Contractor to be true, to the best of the Contractor's knowledge and belief, or to be true and correct original or photocopies of relevant documents whose contents cannot be verified by the Contractor, but which are nevertheless important to the Agency.

"Delivered on time" means all work products, documents, or other deliverables are placed in the custody or control of the designated EPA COR on or before the deadline(s) stated in the Task Order, unless an extension is granted by the COR after a satisfactory showing of good cause by the Contractor.

Quality Assurance Program: The Contractor shall include its quality assurance program as part of the proposal.

Superfund Site-specific Account Charging: The Contractor shall create a database that is capable of maintaining separate billing records for each site that the Contractor works on. Superfund sites will be identified by the site name and Superfund Site Identification/Operable Unit numbers identified in the work tasking document. Monthly Financial Reports will identify charges by name and Superfund Site ID

and OU numbers. Monthly Invoices shall be prepared and submitted in accordance with relevant attachments to the Contract. In addition, the Contractor will provide an Excel Spreadsheet (Site-Specific Charging Sheet) which lists monthly site-specific charges by Superfund site names and Superfund site account numbers with the monthly invoice.

Performance Standards:

Quality assurance is applied to all aspects of each Task Order. The Contractor utilizes methods that ensure that work is performed in a manner that minimizes the need for internal revision and rework by using resources and personnel that are at an appropriate level of experience and ability. Internal review is performed before delivery of documents and deliverables to EPA, by personnel that are experienced in the type of activity but not otherwise involved in the specific project, as well as personnel (other than the document authors) who are familiar with the specific aspects of the project that are the subject of the document.

Costs are tracked and billed site-specifically. Documentation to support all costs incurred by the Contractor are submitted with the monthly invoice.

Acceptable Quality Limit (AQL):

The quality assurance program provides for both auditing and corrective action. The program describes how all deliverables generated will be assessed for accuracy, precision, and completeness. All work efforts conform to the Performance Standards. The quality assurance program plan is submitted with the Contractor's proposal.

Monitoring Methods:

The EPA Contracting Officer will review the quality assurance program plan submitted with the Contractor's proposal. The EPA COR will review the Contractor's Staffing Plan/Cost Estimate, assess deliverables for accuracy, precision, and completeness, and review the Contractor's monthly progress reports.

**INCENTIVES/DISINCENTIVES FOR
ACTIVITIES CONDUCTED UNDER THIS CONTRACT**

Where the contractor's work fails to meet one or more of the performance standards, the government will require the contractor to correct the deficiency(ies) at no additional cost to the government, and the contractor may be subject to a reduction of up to 20% of the costs incurred for that task. When the defect(s) cannot be corrected by re-performance, the government may reduce the costs payable for that task by up to 50%, to reflect the reduced value of the services performed. Performance issues will be noted within the contractor's monthly and annual performance ratings.

If the contractor's performance on the majority of the Task Orders under this contract, meets or exceeds the performance criteria by an average rating score of 4 (Excellent) or higher, then the contractor shall be awarded additional work under this contract for an additional 5-year option period.

GOVERNMENT QUALITY ASSURANCE SURVEILLANCE PLAN

Performance Measures

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
Task 1 - Potentially Responsible Party (PRP) Searches			
1.1 Overview <p>In planning and implementing PRP Search support activities, the Contractor shall ensure consistency with EPA-developed plans guiding site enforcement activities which may be in existence, such as a Site Management Plan, PRP Search Plan, etc.</p> <p>Any deliverable submitted under this Contract shall be of acceptable quality, which means that, the deliverable:</p> <ul style="list-style-type: none"> • demonstrates a good command and usage of the English language (e.g., discussion of facts flow in a coherent and organized manner); • demonstrates use of proper grammar (noun and verb tense correspond, etc.); and, • is free of incomplete sentences and misspelled words. • is printed double-sided, unless directed otherwise; and, • is properly labeled for sensitive information. 	<p>The EPA COR shall review all deliverables for conformance with the performance standards and note any deficiencies.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
1.2 Information Gathering/Records Collection Activities <p>Gathered information demonstrates that interviews have been conducted in accordance standards set forth in applicable Federal and State rules of evidence and relevant interpretive case law concerning collection, chain of custody, credibility, and admissibility. Interviews are documented in a Memorandum of Interviews, summarizing information and/or documents acquired.</p> <p>Documents are assigned unique tracking numbers, and specific information about the document is recorded, including the document's date, record type, author, recipient, and subject.</p> <p>Relevant documents are copied and incorporated into reports in a manner consistent with Agency guidance. Records are organized in a manner compatible with the Region's Superfund filing structure and, at a minimum, identify each document by its source, location, provider, and legal status. Documents shall be indexed in conformance with Regional and national standards.</p>	<p>The EPA COR will review the documentation and the Memoranda of Interviews in order to determine whether there are other sources of information that need to be researched.</p> <p>When necessary, EPA shall review and approve the site-specific Health and Safety Plan prior to the Contractor handling contaminated records.</p> <p>EPA will review the list of records acquired in order to determine whether all appropriate records have been collected.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>The Contractor has taken appropriate actions to ensure and protect the health and well being of its employees, and in the safe handling and transport/storage of contaminated records.</p> <p>The Contractor has researched records such as industrial directories, Chamber(s) of Commerce records, business school libraries, insurance company maps, city directories, aerial photograph collections, urban archives, and the Internet, where deemed necessary.</p> <p>The report conforms to the format and content standards for a "Site History" as outlined in the September 2003 PRP Search Manual.</p> <p>Supporting documents cited in the report are correctly identified in accordance with the information management requirements of the site-specific Task Order.</p> <p>All work was performed and deliverables submitted in accordance with the deadlines outlined in the Task Order. Costs are within the amount of the approved budget ceiling.</p>	<p>The EPA COR and Site Attorney will review the Contractor's draft and final reports for use and incorporation of verified facts, and will note progress during the reporting period on the monthly progress reports.</p>		
<p>1.3 PRP Name and Address Verification</p> <p>The contact list identifies the name, address, and other contact information for all PRPs and the current CEO/manager, or provides a brief notation explaining why the information is unavailable.</p> <p>For corporate PRPs, the list identifies the corporate address, registered agent, officers, mergers, name changes, dissolutions, and date of incorporation.</p> <p>The work is performed in accordance with the schedule outlined in the Task Order. Costs are within the approved budget ceiling.</p>	<p>Through self-inspection, the Contractor shall sample up to 10% of the addresses to ensure the accuracy of the information.</p> <p>The EPA COR may perform a random sampling of up to 10% of the PRP Name and Address verification and check for accuracy.</p> <p>The EPA COR will note any unacceptable performance on the Contractor's monthly Performance Evaluation Sheet.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>Exceptions for documents returned undelivered due to PRP's non-acceptance.</p>
<p>1.4 Correspondence Tracking and Transactional Reports</p> <p>The CTS can produce reports that contain PRP contact information with verified addresses, dates of mailings, receipt dates of responses, depositions, interview summaries, etc.</p> <p>The Transactional Report contains and summarizes, by generator: document types, manifest number or other identifying number, shipment dates, waste types, volumes, volume conversions, and transporter name(s).</p>	<p>The Contractor, through self-inspection, shall review all of the information submitted on the Transactional Report to ensure that the report contains no grammatical or typographical errors.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>Exceptions for new documentation or information submitted by the PRP in negotiations.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>The report contains 100% accurate information.</p> <p>Challenges made by PRPs regarding the volume attributed to them do not result in changes to the waste allocation for that PRP due to duplication of entries, transposed numbers, wrong information, etc.</p> <p>The report is submitted in accordance with the Task Order requirements and deadlines. Costs are within the amount of the approved budget ceiling.</p>	<p>The EPA COR may perform a random sampling of up to 25% of the information to ensure that the standards have been met.</p>		
<p>1.5 <u>Analysis of PRP Search Information for Evidence of Liability</u></p> <p>Deliverables demonstrate that the Contractor performed in accordance with proper investigative standards, concerning collection, chains-of-custody, credibility, and admissibility.</p> <p>The draft and final deliverables adhere to the format and content standards as defined in the PWS.</p> <p>Deliverables are submitted in accordance with Contract and Task Order requirements and deadlines. Costs are within the amount of the approved budget ceiling.</p>	<p>The EPA COR and Site Attorney will review the draft and final reports, and shall rate the Contractor's performance on the monthly Performance Evaluation Sheets.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted</p>
<p>1.6 <u>Development of Waste-In Lists, Volumetric Ranking Reports, and Waste-In Transactional Reports from PRP Search Activities</u></p> <p>Protocols are adhered to in all cases where possible. The protocols incorporate standard unit conversion factors.</p> <p>The Waste-in List accurately represents the supporting documentation in the file. The report identifies the specific sources of information used to attribute volumes of waste to each PRP.</p> <p>The record number assigned to a document identifies each document source. All double counts are identified (i.e., waste shipments attributed to both generators and transporters).</p> <p>The report summarizes analyses performed to estimate volumes of hazardous waste attributable to PRPs including chemical processes, chemical fate, and waste modeling.</p>	<p>The government may review the Contractor's self-inspection records and may independently verify the accuracy of waste-in data entries against a random sampling of transactional source documents from which the volumes were derived.</p> <p>The EPA COR may perform a random sampling of up to 10% of the information to ensure that the standards have been met.</p> <p>The EPA COR and site attorney will review the draft and final reports and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>Exceptions for new documentation or information submitted by the PRP in negotiations.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>The report presents stoichiometric calculations, analysis of material balances, and interpretation of process engineering data about manufacturing processes employed by PRP generators.</p> <p>The Waste-in List document states all clarifying assumptions made during compilation.</p> <p>The Waste-in List document summarizes analyses performed to estimate volumes of hazardous waste attributable to PRPs.</p> <p>The Volumetric Ranking conforms to the Contractor-proposed, government-approved report format.</p> <p>The database is functional and compatible with EPA software, and if requested, has been installed on the EPA COR's computer or designated laptop computer.</p> <p>The database is completed within the proscribed schedule detailed in the Task Order. Costs are within the amount of the approved budget ceiling. Less than 5% of the data input into the database is incorrect.</p> <p>Challenges to the Waste-in List are defensible, i.e., challenges made by PRPs regarding the volume attributed to them do not result in changes to the waste allocation for that PRP due to duplication of entries, transposed numbers, wrong PRP, etc.</p>			
<p>1.7 <u>Corporate Research and Financial Assessments</u></p> <p>Financial assessment reports include the name, address, and phone number of the entity analyzed, identification of its officers, dates and place of incorporation, corporate status, and Registered Agent, where applicable. If required, the Contractor has provided a financial assessment of each PRP's ability-to-pay based upon standard Accounting and Finance measures of income, solvency, and asset valuation.</p> <p>The report cites all sources of financial information used in the assessment and discusses all limitations regarding the information used in the assessment and any assumptions made.</p> <p>The report provides a risk assessment and analysis of EPA's risk in accepting payments from the PRPs.</p>	<p>The EPA COR will review the Contractor's draft and final reports and the monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>Exceptions for new and/or updated documentation submitted by the PRP in negotiations.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>If an appraisal on contaminated property is required, the individual selected to perform such appraisal has knowledge of CERCLA and has experience in the unique considerations necessary for evaluation of contaminated properties.</p> <p>Property surveys have been conducted by licensed surveyors and reports shall include Plat maps and a narrative legal description of the property. Qualifications of the surveyor are noted in the report.</p> <p>All schedules and deadlines stated in the Task Order are met. Costs are within the amount of the approved budget ceiling.</p>			
<p>1.8 Investigations</p> <p>The list of potential individuals and former employees to be interviewed contains names, current or last known addresses and phone numbers, and indicates the relevant knowledge the individual is expected to provide, as well as the questions to be asked of the individual.</p> <p>The deliverable demonstrates that the Contractor conducted the investigations in accordance with proper investigative standards, and the scope, application, and specific provisions of CERCLA Section 104(e) relating to the investigative jurisdiction of EPA. The report contains a detailed summary of the information obtained (including all opinions, comments, and statements of the interviewee, whether or not erroneous).</p> <p>The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the approved budget ceiling.</p>	<p>The EPA COR will review the draft and final reports and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
<p>1.9 Title Searches</p> <p>The purpose of this task is to provide the government with information about owners, lessees, and operators at a site that will assist in the issuance of CERCLA Section 106 Notice Letters.</p> <p>The Title Search Report summarizes the ownership history of the property, identifying current and past owners of the site property, as well as properties located adjacent to the site, as required.</p> <p>The report presents the site's location on county parcel maps and available aerial photographs, as required, and cites the legal</p>	<p>The EPA COR will review the Contractor's draft and final reports for use and incorporation of verified facts, and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>description of the property, including the metes and bounds description. The Contractor has reviewed the metes and bounds description to assure the property falls within the site boundaries.</p> <p>The report contains a chronological list, title tree and/or organizational chart (presented graphically), and copies of all relevant recorded documents including: the site property(ies) legal description(s); warranty, grant or quitclaim deeds; mortgages or liens; deeds of trust; easements; covenants; leases; trustee's deeds; administrator's and executor's deeds; financing statements; judgments; real estate contracts; subdivision plats; and, other title instruments relating to the site.</p> <p>The report summarizes research conducted, including document sources researched, information obtained, follow-up actions required and/or recommended, and "dead-end" leads. The report outlines the title history of each parcel.</p> <p>For mine sites, the report summarizes the history of patented and unpatented mining claims, including an alphabetical list and copies of relevant documents that may contain information on leases, judgments, liens, encumbrances, royalty agreements, UCC filings, and zoning).</p> <p>The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the approved budget ceiling.</p> <p>The legal description is accurate. Accurate shall mean that the legal description is free from errors and is defensible.</p>			
<p><u>1.10 CERCLA Section 106 General/Special Notice and Section 104(e) Information Request Letter Support</u></p> <p>The CERCLA Section 104(e) Information Request letters and Notice Letters contain accurate information with no typographical errors, and the 104(e) responses are accurately summarized.</p> <p>Mailings are completed within the schedule and deadlines designated by the Task Order.</p> <p>The correspondence tracking database is kept updated with new information as it becomes available.</p>	<p>The EPA COR will review the final letters and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>The Contractor is able to produce correspondence tracking reports on individual PRPs if requested by the EPA COR. The Contractor has researched current address for any correspondence returned as undeliverable, notifying the EPA COR of dead ends.</p> <p>Prepared letters are free of grammatical and spelling errors and look professional.</p> <p>No more than 5% of mailed correspondence is returned as undeliverable due to a bad address.</p> <p>The work is performed in accordance with the schedule and deadlines specified in the Task Order. Costs are within the amount of the approved budget ceiling.</p>			
<p>1.11 PRP Search Report</p> <p>The PRP Search Report conforms to the format and content standards outlined in EPA's PRP Search Manual. Supporting documents cited in the report are identified correctly in accordance with the information management requirements of the PWS.</p> <p>The report demonstrates that the Contractor conducted the PRP search in accordance with proper investigative standards.</p> <p>The PRP Search Report is delivered within the schedule and deadline specified in the Task Order and is under the approved budget ceiling.</p> <p>No more than 10% of government review comments on the draft deliverable address substantive legal deficiencies.</p> <p>All work has been submitted within the specified deadlines stated in the Task Order and costs are within the approved budget ceiling.</p>	<p>The EPA COR and Site Attorney will review the draft and final reports for compliance with the Performance Standards and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
<p>Task 2 – Expedited Potentially Responsible Party (PRP) Searches</p>			
<p>All Performance Standards for this Task are identical to those designated for the standard PRP Search activities stated in Task 1 above.</p>	<p>Proposed Monitoring Methods are identical to those designated for the standard PRP Search activities stated in Task 1 above.</p>	<p>Percentage Deduction values are identical to those designated for the standard PRP Search activities stated in Task 1 above.</p>	<p>AQL Deviations are identical to those designated for the standard PRP Search activities stated in Task 1 above.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
Task 3 – Expedited General Enforcement Support			
3.1 <u>Service of Process and Other Documents</u> <p>The Contractor has located the subject parties and has arranged for proper served the documents in accordance with Federal Rules of Civil Procedure, local court rules, and other EPA procedures. If requested, the Contractor shall provide for overnight or same day delivery service.</p> <p>The Contractor has completed and submitted an affidavit, or certificate of service or other document to serve as evidence of service, or has obtained such documents from the individual serving the documents.</p> <p>The Letter Report contains an affidavit, or certificate of service, or other document to serve as evidence of service, in accordance with Federal Rules of Civil procedure and local court rules.</p> <p>The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.</p>	<p>The EPA COR and site attorney will review the Letter Report to verify that the documents were properly served and are documented. The COR will review the Contractor's monthly progress report.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
3.2 <u>Filing of CERCLA Liens</u> <p>The Contractor has determined the correct legal description of the property EPA proposes to lien, and has filed the lien for recording in the appropriate jurisdiction in compliance with the particular rules of that jurisdiction.</p> <p>The Letter Report contains evidence that the lien has been filed and recorded, including a copy (a certified copy, if requested) of the recorded lien.</p> <p>The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.</p>	<p>The EPA COR and site attorney will review the Letter Report and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
3.3 <u>Filing of Deed Restrictions</u> <p>The Contractor has prepared and filled deed restrictions pursuant to CERCLA and State laws, including determining the correct legal description of the subject property, filing of the deed restriction for recording,. If required, the Contractor has/is monitoring PRP compliance with the deed restriction.</p>	<p>The EPA COR and site attorney will review the Letter Report and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>The Letter Report contains evidence that the deed restriction has been filed and recorded in the appropriate jurisdiction, including a copy (a certified copy, if requested) of the recorded deed restriction.</p> <p>The work is performed in accordance with the schedule designated by the EPA COR, or as outlined in the EPA-approved work plan, and costs are within the amount of the approved budget ceiling.</p>			
<p>3.4 <u>Freedom of Information Act Support</u></p> <p>Documents and other information requested are retrieved and provided to the EPA COR within the schedule and deadlines specified in the Task Order, and costs are within the approved budget ceiling.</p>	<p>The EPA COR and site attorney will monitor the Contractor's prompt retrieval and delivery of the requested documents and will review the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
Task 4 – Negotiation Support			
<p>The Contractor has reviewed relevant documents and adhered to applicable Agency guidance in the drafting of documents, publication requirements, evaluation and preparation of NBARs, and evaluation of PRPs' proposals, staffing plans, and cost recovery settlements.</p> <p>All of the identified expert witnesses are fully qualified, hold the necessary credentials, and are available and willing to provide testimony within the required time frame.</p> <p>Missing cost documentation has been identified and obtained, or if unobtainable, noted in the Letter Report.</p> <p>Costs are within the approved budget ceiling.</p>	<p>The EPA COR and site attorney will evaluate the quality of the expert witnesses obtained by the Contractor. They will review the Contractor's draft and final deliverables and the monthly progress reports.</p>	<p>The Contractor shall obtain the services of different expert witnesses, if deemed unacceptable and will redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
Task 5 – Litigation Support			
<p>5.1 <u>Referral Support</u></p> <p>The Contractor has contacted and obtained, or made copies of, all relevant records and organized them in the manner instructed by the EPA COR.</p> <p>The Contractor has reviewed the information, and has included this information in a Letter Report or as otherwise directed by the EPA COR.</p>	<p>The EPA COR and site attorney will review the document index to verify that relevant documents are included. The EPA COR will review the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
Work was within the schedule and deadlines stated in the Task Order. Costs are within the approved budget ceiling.			
5.2 <u>Evaluation of Cost Information</u> All relevant supporting documentation is located and included in the cost package. The Letter Report outlines all mathematical errors and discrepancies identified in the cost package. The work is performed in accordance with the schedule and deadlines stated in the Task Order, and costs are within the approved budget ceiling.	The EPA COR and site attorney will review the Letter Report and the Contractor's monthly progress reports. The COR may review a random sampling of the cost package to verify accuracy of the Contractor's work.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
TASK 6 Cost Recovery Support			
6.1 <u>Cost Documentation and Redaction</u> The Contractor has performed a review and audit of the cost package(s) and provided the findings in a Letter Report. The Contractor has produced a documentary audit trail to establish proof of costs incurred using existing systems and other documentation and guidance. The Contractor has developed and maintained an organized cost package or cost document file that includes cost summaries for each cost element claimed, together with organized supporting documentation. The Contractor has accumulated and verified all costs incurred in connection with a site or sites by reconciling all supporting documentation with Agency data. The Contractor has identified to the Agency deficiencies in the cost package and/or potential sources of challenges. The cost package contains no mathematical errors and all relevant documents that evidence work performed and costs incurred are included in the cost package. The work is performed in accordance with the schedule and deadlines specified in the Task Order, and costs are within the amount of the approved budget ceiling.	The EPA COR will review the Contractor's Letter Report and the Contractor's monthly progress reports. The EPA COR may review random documents to verify the accuracy of the documentation against the cost summary, and that work-performed documents are present to support the documented costs.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
6.2 <u>Closeout Memoranda Support</u> The Contractor has reviewed Agency files and provided copies of relevant documents that will support the recommendations in the Closeout Memorandum.	The EPA COR and site attorney will review all deliverables and the Contractor's monthly progress reports.	The Contractor shall redo unacceptable work at its own expense, with possible	No deviations are permitted.

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
Work was performed and submitted within the schedules and deadlines stated in the Task Order, and costs are within the approved budget ceiling.		reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	
TASK 7 Community Involvement Support			
7.1 <u>Public Meeting Support</u> Arrangements for meeting locations are convenient to the public and equipment/translators/ security are available when and where needed. Transcripts/meeting notes are delivered within the proscribed time frame. PowerPoint presentations, posters, and other audio-visual materials are of high quality and easily understood. Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.	The EPA COR will review the Contractor's arrangements for conformance to the performance standards and any deliverables, as well as the monthly progress reports.		
7.2 <u>Fact Sheet Production</u> Fact Sheets, flyers, brochures, press packets, and other written materials are of high quality, easily understood by the target audience and are accurate. Graphics are colorful, relevant, dynamic, and enhance the overall message presented. Written materials conform to EPA's preferred format, and are provided in Microsoft Publisher. Translations are accurate in fact and grammatically correct. All maps, graphics and pictures for publications are of high quality and relevant to the subject being discussed. Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.	The EPA COR will review the Contractor's deliverables for quality and acceptability, and will review the Contractor's monthly progress reports	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
7.3 <u>Public Notices</u> Public notices conform to Agency standards, are of high quality, well written, concise, and accurately transmit the information being relayed. Public notices are placed in the specified newspapers and are published on the date(s) specified by EPA.	The EPA COR will review the Contractor's deliverable(s) for timeliness, quality, and acceptability, and will review the Contractor's the monthly progress reports	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to.	No deviations are permitted.

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
<p>Letter reports transmitting the Public Notice and Proof of publication are timely submitted to the COR.</p> <p>Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.</p>		50% reduction if mistakes cannot be corrected	
<p>7.4 Mailings</p> <p>Mailing lists are accurate and up-to-date. No more than 5% of any mailing is returned as undeliverable because of a bad address.</p> <p>Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.</p>	The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, and will review the Contractor's monthly progress reports.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
<p>7.5 Community Involvement Plans</p> <p>Proscribed procedures are followed when contacting individuals for interviews. Reports detailing site history, community history, and demographic information are accurate, clearly written, and produced in a timely manner. Media identification and contact information is timely and accurate.</p> <p>All due dates/schedules stated in the TO, and costs are within the amount of the approved budget ceiling.</p>	The EPA COR will review all deliverable(s) for quality and acceptability, and the Contractor's monthly progress reports.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
<p>7.6 Congressional Briefing Books</p> <p>Congressional Briefing Books are of high quality, accurate, well written, free from spelling and grammatical errors and generally appear professionally done</p> <p>Work is performed within the schedules and deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.</p>	The EPA COR will review the Contractor's deliverable(s) for quality and acceptability, and will review the monthly progress reports.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.
<p>7.7 General Community Involvement Administrative Support</p> <p>Photocopying quantities are within the limits set by the contract. Newspaper subscriptions are obtained in a timely manner</p> <p>Work is performed with the schedules/deadlines stated in the Task Order, and costs are within the amount of the approved budget ceiling.</p>	The EPA COR will review the Contractor's monthly progress reports.	The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.	No deviations are permitted.

SOW Performance Standards	Proposed Monitoring Methods	Percentage Deduction*	AQL Deviation**
TASK 8 Project Management, Planning and Support			
8.1 <u>Project Management, Planning, and Support</u> <p>The Contractor used their best efforts to coordinate and arrange for a scoping meeting within the time frame designated in the Task Order.</p> <p>The Contractor prepared minutes of the scoping meeting that accurately document the scope of service and any deliverable/schedule changes, and submitted them to the COR for review and approval.</p> <p>The Contractor met with and briefed the EPA Enforcement team of any issues that could affect the outcome of the Region's enforcement efforts at a site.</p> <p>The Contractor met the schedules and deadlines set forth in the Task Order for submitting the Staffing Plan/Cost Estimate and any interim periodic status reports/deliverables.</p> <p>Monthly Progress Reports and Financial Reports accurately reflect the work performed and documents costs that were incurred during the reporting period.</p> <p>Closeout of the Task Order was completed within 30 days of notification, and copies of the Acknowledgement of Completion and Closeout Memo were delivered to the COR and Project Officer.</p>	<p>The EPA COR will review the Contractor's Staffing Plan/Cost Estimate, meeting minutes, status reports, Acknowledgement of Completion, and the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>
8.2 <u>Quality Assurance</u> <p>Quality assurance is applied to all aspects of each Task Order. The Contractor utilizes methods that ensure that work is performed in a manner that minimizes the need for internal revision and rework.</p> <p>Internal review is performed before delivery of documents and deliverables to EPA.</p> <p>Costs are tracked and billed site-specifically. Documentation to support all costs incurred by the Contractor are submitted with the monthly invoice.</p>	<p>The EPA Contracting Officer will review the quality assurance program plan submitted with the Contractor's proposal. The EPA COR will review the Contractor's Staffing Plans/Cost Estimates, assess deliverables for accuracy, precision, and completeness, and review the Contractor's monthly progress reports.</p>	<p>The Contractor shall redo unacceptable work at its own expense, with possible reduction of costs up to 20%; up to 50% reduction if mistakes cannot be corrected.</p>	<p>No deviations are permitted.</p>

* Amount that can be reduced from monthly invoice charges.

** Acceptable Quality Level – The maximum allowable degree of deviation from the standard for the task which will be permitted by the government before performance is deemed to be unsatisfactory.

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
<input type="checkbox"/> Federal		
<input type="checkbox"/> State		
<input type="checkbox"/> Local		
<input type="checkbox"/> 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.

.....
.....
.....

2. ☐ Title Searches *Note: Guidelines such as going back 50 years or to the end of World War II or the first industrial use of the property can sometimes be useful, but in most cases determining the relevant period for a search is a highly site-specific exercise.*

- 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.

Checklist for Tasking
Continued –

TASK	TASK SELECTION CRITERIA / CONDITIONS
3. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> Individual PRPs	Attach list of names and addresses
B. <input type="checkbox"/> Partnership	Attach list of names and addresses
C. <input type="checkbox"/> Corporation	Attach list of names and addresses
D. <input type="checkbox"/> Exempt Organizations	Attach list of names and addresses
E. <input type="checkbox"/> Other	Attach list of names and addresses
F. <input type="checkbox"/> 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. <input type="checkbox"/> History of Site Operations	<i>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.</i>

Checklist for Tasking
Continued –

TASK	TASK SELECTION CRITERIA / CONDITIONS
11. <input type="checkbox"/> Report Preparation	PRP reports should include sections on the site background, project approach, contracts and sources, site history, PRPs, and conclusions/recommendations.
12. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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.
<p>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.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
17. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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).

Checklist for Tasking
Continued –

TASK	TASK SELECTION CRITERIA / CONDITIONS
20. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> Database(s)	
A. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> Transactional	Site transaction databases are used to rank PRPs based on quantified site usage information. (See also Generator Ranking)
23. <input type="checkbox"/> Financial Assessment	This task provides a more detailed analysis of a PRP's financial situation than the financial status task.
24. <input type="checkbox"/> 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. <input type="checkbox"/> 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: _____

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 #
<input type="checkbox"/> State		
<input type="checkbox"/> National Response Center		
<input type="checkbox"/> 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.

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.
2. 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.

The screenshot shows the 'Party Information' window with the 'Party Details' tab selected. The 'Originating Region' is set to '01'. The form contains several input fields for party details. An arrow points to the 'Address' field with the text 'Fields to enter party address information'. Another arrow points to the 'Country' dropdown menu with the text '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.' A third arrow points to the 'Party Types' list with the text 'Use these fields to indicate the party type'.

Fields to enter party address information

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.

Use these fields to indicate the party type

The screenshot shows the 'Party Information' window with the 'Country' dropdown menu set to 'UNITED KINGDOM'. This selection has triggered the appearance of additional fields: 'Intl Phone', 'Intl Fax', and 'Postal Code'. The 'State' field is now deactivated. An arrow points to the 'Country' dropdown menu with the text '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.'

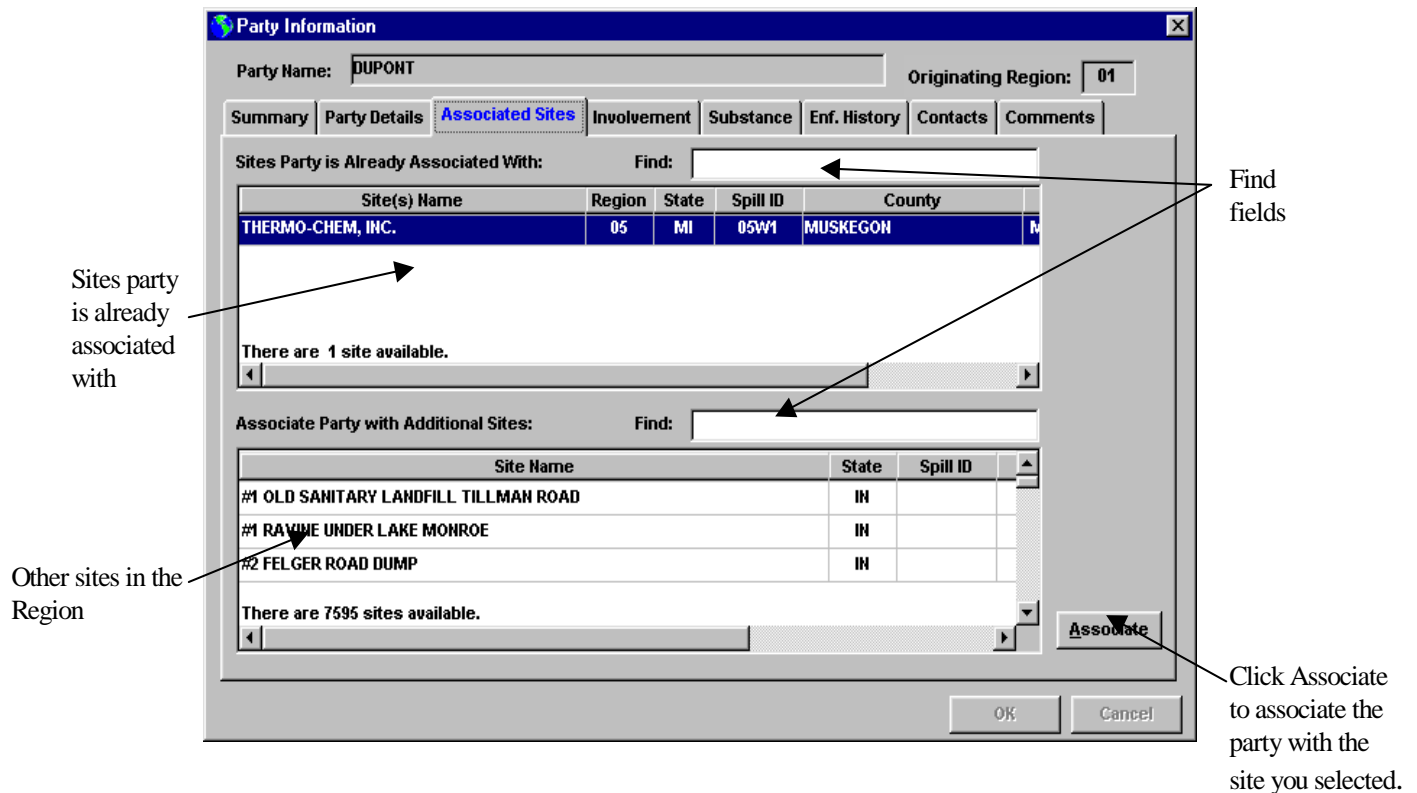
When the Country is selected and set to something other than Blank or "United States", the Phone, Fax, and Zip Code fields are replaced by "Intl Phone", "Intl Fax", and "Postal Code." The "State" field will be deactivated.

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.

The screenshot shows the 'Party Information' window with the 'Involvement' tab selected. The window title is 'Party Information' and the Party Name is 'SEASHELLS INC'. The Originating Region is '01'. The Site is 'MENDENHALL MERCURY SITE'. The Involvement Type section has checkboxes for Owner, Transporter (checked), 104E, Operator, Generator, and Other. Below these are checkboxes for Non-Settlor, Noticed/Enf Action, and Not PRP Determination Made. The Involvement Dates section has Beginning and Ending date fields, both set to '00/00/0000'. The Identification Source is a dropdown menu, and the Identified Date is '00/00/0000'. The Involvement Comments section is a text area. The Other Invol Types section has a list of options: Adjacent Property, Attorney - federal, Attorney - municig, Financial Viability, Bankrupt, Deceased, Defunct, Basis of Liability, Current Owner, De micromis party, and De minimis party. The Selected Types, Selected Viability, and Selected Basis sections are empty. The Financial Viability, Basis of Liability, and Basis of Liability sections have drag and drop arrows. The Basis of Liability section has a 'Delete' button. The OK and Cancel buttons are at the bottom right.

Check one of the Involvement Types

Type the beginning and ending involvement dates in these fields

Select an identification source from the dropdown list

Other Involvement Type drag and drop field

Financial Viability drag and drop box

Basis of Liability drag and drop box

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

- 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.

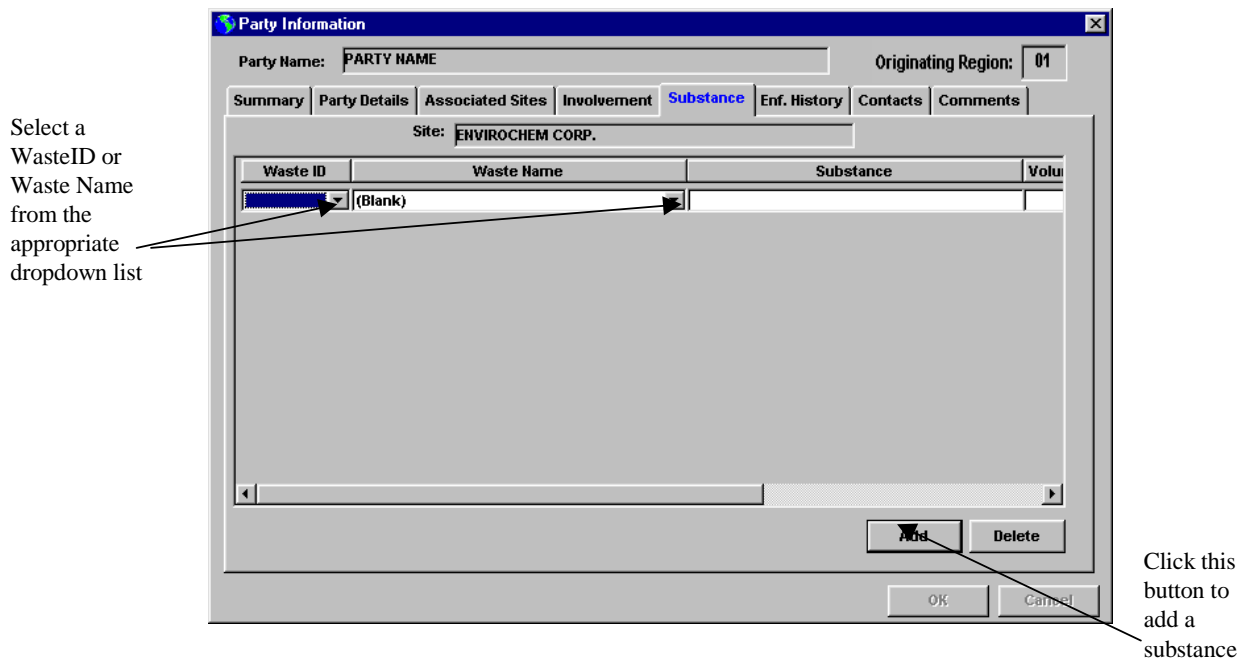
NOTE: Once a party has been snapshot it will always be available in the National database even if you later decide a party should not have received a notice letter or you make a determination that a party is not a PRP and check the Not PRP Determination Made checkbox.

- 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.

- To access the **Substance tab** click on the **Substance** tab.
- 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.

The screenshot shows the 'Party Information' window with the 'Enf. History' tab selected. The window contains the following elements:

- Party Name:** PARTY NAME
- Originating Region:** 01
- Tabs:** Summary, Party Details, Associated Sites, Involvement, Substance, **Enf. History**, Contacts, Comments
- WasteLAN User Information:**
 - Name: Joan Powers
 - Internet: [Empty field]
 - Phone: { } -
 - Fax: { } -
- Confidential Enforcement History (Agency Use Only):**
 - Created Date: 07/20/2000
 - A large text area for entering history.
- History Records:** 1
- Buttons:** Add, Delete, OK, Cancel
- Navigation:** Arrow keys for scrolling through records.

Annotations with arrows point to the following areas:

- WasteLAN User information:** Points to the user information fields.
- Enter Enforcement History Information in this free form text field:** Points to the large text area for entering history.
- Use scroll bars to scroll through records:** Points to the arrow keys for navigating between records.

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.

The screenshot shows a software window titled "Party Information" with a standard Windows-style title bar. Inside, there's a tabbed interface with tabs for "Summary", "Party Details", "Associated Sites", "Involvement", "Substance", "Enf. History", "Contacts" (which is currently selected and highlighted in blue), and "Comments". At the top, there are two input fields: "Party Name:" containing "PARTY NAME" and "Originating Region:" containing "01". Below the tabs, there's a "Site:" field containing "ENVIROCHEM CORP.". The main area is divided into two columns. The left column contains several input fields: "First Name:", "Last Name:", "Title:", "Company:", "Address:", "City, ST, ZIP:" (with a dropdown for the state), "Phone #1:", "Phone #2:", "Fax:", and "Internet:". The right column contains a large "Comment:" text area. At the bottom of the form, there are four small arrow buttons (left, right, double-left, double-right) for navigating through a list of contacts. To the right of these are two buttons labeled "Add" and "Delete". At the very bottom of the window are "OK" and "Cancel" buttons. An arrow points from the text "Use the scroll bars to scroll through the Contacts" to the navigation arrow buttons. Another arrow points from the text "Click the Add or Delete buttons to add or delete a Contact" to the "Add" and "Delete" buttons.

Use the scroll bars
to scroll through the
Contacts

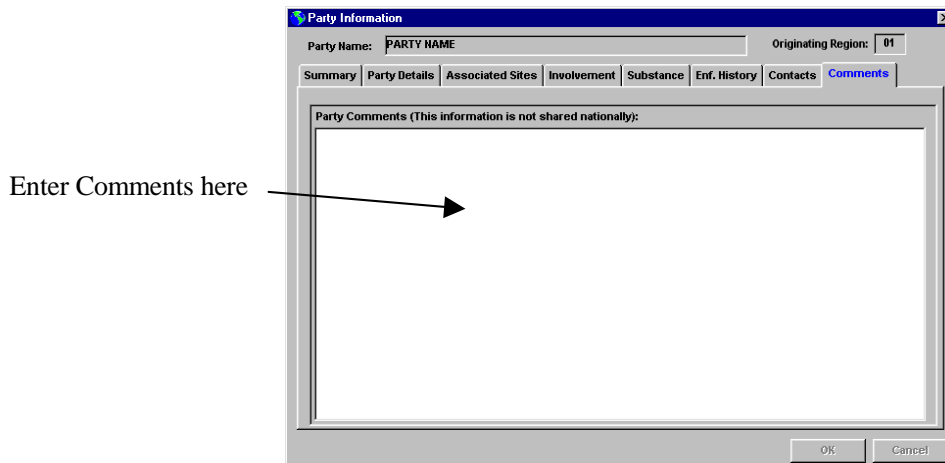
Click the Add or
Delete buttons to
add or delete a
Contact

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.



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.

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September 28, 2009

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Potentially Responsible Party Internet Information Sources (PRPIIS)

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Business Information

Annual Reports and SEC filings	Annual Report Service*	http://www.annualreportservice.com/	Free directory of online annual reports.
	10K Wizard*	http://www.10KWizard.com	Search for company SEC filings. Subscription required.
	U.S. Securities and Exchange Commission	http://www.sec.gov/edgar/searchedgar/webusers.htm	Company information, shareholder information, and SEC filings including annual reports.
Bankruptcy	American Bankruptcy Institute*	http://www.abiworld.org/	Numerous online resources including headlines, news, meeting information, court opinions and other bankruptcy info. Subscription is required.
	Public Access to Court Electronic Records (PACER)*	http://pacer.psc.uscourts.gov/	Access to federal court documents. Registration is required. Fees are generally \$.08 a page.
Compliance Information	Occu. Safety and Health Admin. (OSHA)	http://www.osha.gov/pls/imis/establishment.html	Search for information on OSHA inspections and violations.

* Denotes a fee for service

Potentially Responsible Party Internet Information Sources (PRPIIS)

Company Profiles and Information	American Business Directory	http://library.dialog.com/bluesheets/html/bl0531.html	Contains company contact, SIC, financial, and linkages on over 12 million U.S. business establishments.
	Corporate Information	http://www.corporateinformation.com/	Information on companies in 55 different countries. Free snapshots reports as well as more comprehensive reports for a fee.
	Dun and Bradstreet*	http://www.dnb.com	Search for business and financial information on companies. Certain D & B information is available through Lexis. Your region may already have a subscription to access D & B reports.
	Hoovers Online	http://www.hoovers.com	Excellent source of company information, including financials and links to websites. Free snapshot reports and more comprehensive reports available for a fee.
Corporate Affiliates	Dun and Bradstreet*	http://www.dnb.com	Financial information on many companies.
	Lexis Corporate Affiliations*	http://www.corporateaffiliations.com/	Database of relationships between companies.
Corporate Financial Information	Hoovers Online	http://www.hoovers.com	Financial information on many companies.
	Motley Fool	http://www.fool.com/	A variety of financial information.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

	Mergent	http://www.mergentonline.com	A variety of tools available.
	Yahoo! Finance	http://finance.yahoo.com/	Financial news and information.
Corporate Records	Government Files Online*	http://www.governmentfilesonline.com/search/	This site provides links to Secretary of State's Offices. It offers a "free one day membership" but otherwise charges a hefty fee.
	National Association of Secretaries of State	http://nass.org/index.php?option=com_content&task=view&id=89&Itemid=1	National SOS organization. Provides links to every State.
	Search Systems	http://www.searchsystems.net/list.php?nid=11	Free link to public records by state, county, or city.
	Coordinated Legal.com	http://www.coordinatedlegal.com/SecretaryOfState.html	Similar to NASS, provides a link to the Secretary of State in each State as well as information about the cost.
International Business	British Columbia Assessment	http://www.bcassessment.bc.ca/	Property ownership in British Columbia.
	Canadian government	http://www.canada.gc.ca/main_e.html	Information on the Canadian government.
	Canadian Stock Exchange	http://www.sedar.com/	Access to most public securities documents and information filed by public companies in Canada.
	Corporate Information	http://www.corporateinformation.com/	Search for information about companies in 55 different countries.

* Denotes a fee for service

Potentially Responsible Party Internet Information Sources (PRPIIS)

	Industry Canada	http://strategis.ic.gc.ca/cgi-bin/sc_mrksv/corpcdir/dataOnline/search.cgi?lang=e	Search for information about Canadian companies.
	Canadian Business	http://www.ic.gc.ca/app/ccc/srch/cccBscSrch.do?lang=eng&prtl=1 .	Similar to Hoovers.com for Canadian companies.
	Kompass	http://www.kompass.com	Search for information about companies from 70 different countries.
	Mergent Online*	http://www.mergentonline.com/	Obtain information on international companies, including annual reports.
	Ministry of Mining	http://www.em.gov.bc.ca/Mining/Geolsurv/Publications/catalog/cat_arpts.htm	Mining reports from the British Columbia Ministry of Mining.
	Oncorp Direct	http://www.oncorp.com/	Search for information about Canadian companies.
	UK Business and Finance	http://www.news-review.co.uk/	Information on British based companies. Registration is required but free.
Manufacturing information	Industry guide	http://www.thomasregister.com/	Search by product service, company name, brand name or industry.
News	Business Week	http://www.businessweek.com	A weekly business news magazine that has an online issue with the information more frequently updated.
	Journal of Business	http://www.bizjournals.com/	This is nation's largest publisher of metropolitan business journals and updates websites for 41 print business journals.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

	Local business news	http://www.dbusiness.com/	Covers business news and information for 50 local markets nationally.
	TheStreet	http://www.thestreet.com	Investment news.
	Wall Street Journal	http://www.wsj.com	International market and economic news.

Potentially Responsible Party Internet Information Sources (PRPIIS)

EPA Resources - Public

Administrative Record on the Web	http://loggerhead.epa.gov/arweb/public/advanced_search.jsp	EPA's Superfund Administrative Record Database.
Compliance and Enforcement	http://www.epa.gov/compliance/	EPA's Compliance and Enforcement website.
Economic Models	http://www.epa.gov/compliance/civil/econmodels/	EPA's link to all financial computer models, which evaluate a PRP's ability to pay clean up costs.
Environmental Response Team	http://www.ert.org/	EPA's Environmental Response Team's website.
Environmental Terms and Acronyms	http://www.epa.gov/OCEPAterms/	A glossary of environmental terms, abbreviations and acronyms.
EPA Libraries	http://www.epa.gov/natlibra/ols.htm	Provides the ability to search EPA libraries for specific information and/or publications.
Finding Potentially Responsible Parties	http://www.epa.gov/compliance/cleanup/superfund/find.html	Search for parties that have received General or Special Notice of liability at Superfund Sites. This resource uses its information from CERCLIS.
Hazardous Waste Clean Up Information	http://www.clu-in.org/	Provides information about innovative treatment and site characterization technologies to the hazardous waste remediation community.
Links to State Environmental Agencies	http://www.epa.gov/epahome/state.htm	EPA's web link to state environmental Agencies.
National Enforcement	http://www.netionline.com/	Listing of classes that are provided by EPA's

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Training Institute (NETI)		enforcement training institute.
National Locator	http://cfpub.epa.gov/locator/index.cfm	EPA's electronic phone book.
National Priority List	http://www.epa.gov/superfund/sites/npl/frlist.htm	Provides information concerning sites that are proposed, listed and/or deleted from the National Priorities List.
OSC website	http://www.epaosc.org	EPA's web site for Removal Actions.
PRP Search Manual	http://www.epa.gov/compliance/cleanup/superfund/prpmanual.html	Link to EPA's PRP Search Manual.
Superfund Enforcement Directory (SFED)	http://cfpub.epa.gov/compliance/sfed/	EPA Superfund Enforcement Directory. It can be searched by Region or by area of expertise.
Superfund Enforcement Documents	http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/	Link to Superfund guidance documents.
Superfund Information System (CERCLIS)	http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm	Publicly available access to EPA's Superfund Information System.
Where You Live Site	http://www.epa.gov/epahome/whereyoulive.htm	Link to various web locations that provide information concerning the location of hazardous substances within a community.

Potentially Responsible Party Internet Information Sources (PRPIIS)

EPA Resources - Internal

Office of Site Remediation Enforcement	http://intranet.epa.gov/oeca/osre/index.html	Internal list of Superfund Enforcement subject matter contacts.
Office of Site Remediation Enforcement	http://intranet.epa.gov/oeca/osre/	Primary link to EPA's Office of Site Remediation Enforcement.
Office of Superfund Remediation and Technology Innovation	http://intranet.epa.gov/oerrinet/	Office of Superfund Remediation and Technology Innovation main website.
CERCLA Enforcement Project Manager Handbook	http://intranet.epa.gov/oeca/osre/documents/hbk-pdf/	The link provides an overview of the roles and responsibilities of the remedial project manager and the on-scene coordinator (RPM/OSC) in identifying and communicating with PRPs; coordinating with communities, states, tribes, and natural resource trustees; negotiating agreements for site cleanup; initiating administrative and judicial enforcement actions; selecting site remedies; recovering EPA's response costs; and overseeing PRP-lead response actions.
Office of Site Remediation Enforcement	http://intranet.epa.gov/oeca/osre/documents/internal.html#104	Links to EPA Information request letters and standard questions.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Directories

All-purpose directories	Bigfoot	http://www.bigfoot.com/	Email, white pages, yellow pages and reverse searches are available.
	Freeality	http://www.freeality.com/findc.htm	Search public records by category or state or nationwide.
	Infobel	http://www.infobel.com/teldir/	Find anyone anywhere in the world.
	Search Systems	http://www.searchsystems.net/	General Information Search (i.e. zip code, area code).
	Starting Page	http://www.startingpage.com/html/lookup.html	Lists categories of searches, then it lists websites of where to conduct those types of searches. Lists links to search websites for various types of information.
	Superpages	http://yp10.superpages.com/	Business Directory
	Switchboard	http://www.switchboard.com	Personal and Business Directory.
	Whowhere	http://www.whowhere.com	White and yellow pages.
Credit Reports	Experian	https://www.infolookup.experian.com/metronet *	Credit Reports, business searches, and personal searches.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Email addresses Search Tips		http://my.email.address.is/	Searches Yahoo!, Switchboard, W.E.D, InfoSpace, and Look4U, as well as reverse email address search and tips on finding email addresses.
Directory Environmental Enforcement Resources		https://rain.alacop.gov/downloadfiles/files/cybersch.htm	Directory of EPA, law enforcement, and other Sites.
Find people-general	Yahoo	http://www.yahoo.com/search/people/email.html	Search for people and businesses information.
	Semaphore	http://www.semaphorecorp.com/default.html	Software development company with a few free search programs.
	Searchbug	http://www.searchbug.com/peoplefinder/	Personal and Business directory with additional services if you submit an email address in which the information can be sent.
Find people comprehensive	Westlaw*	http://www.westlaw.com	Search for legal information, as well as parties to lawsuits. Your legal office may have an account.
	AutoTrak XP*	http://atxp.choicepoint.com/	Search for business or personal information with an address or name. This service was previously known as ChoicePoint.
	Dialog*	http://www.dialog.com	Search for business information.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

	Public Data*	http://www.publicdata.com	Search criminal, motor vehicle, drivers' license, sex offenders, voter, property tax, federal, Secretary of State, and professional license from select states.
Reverse Directories	Anywho	http://www.anywho.com/rl.html	Reverse phone.
	Reverse address directory	http://www.reverseaddressdirectory.com	Reverse address, phone.
	Reverse phone directory	http://www.reversephonedirectory.com/	Reverse address, phone.
Search Engines		http://searchengine.com	Register and receive weekly updates on search engine changes and new search techniques.
Toll free numbers	A & T	http://www.tollfree.att.net/tf.html	Toll free number directory.
Zip codes	USPS	http://www.usps.com/zip4/	Find zip code for an address.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Financial Information

Calculators	Commerce Bank	http://www.commerceonline.com/financial_calculators.cfm	A variety of financial calculators.
Financial Models	EPA Enforcement Models	http://www.epa.gov/compliance/civil/econmodels/index.html	Download BEN, ABLE, INDIPAY, MUNIPAY, and PROJECT.
Interest rates; industry discount rates	Federal Reserve	http://www.federalreserve.gov/releases	Current and historical information on interest rates, industry discount rate, etc.
Investment Information	MorningStar*	http://www.morningstar.com/?pgid=hetahome	Investment news, information, tools and calculators. Registration (free regular membership required to use portfolio feature. Premium (fee) membership for access to analyst research and stock reports.
Loan rates	Bankrate.com	http://www.bankrate.com/brm/default.asp	Current mortgage and other loan rates.
	Bestrate.com	http://www.bestrates.com/	Current mortgage and other loan rates.
	Quicken loans	http://www.quickenloans.com	Current mortgage and other loan rates.
Salary.com		http://www.salary.com	Salary comparisons by profession and location.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Government Agencies

Bureau of Economic Analysis	http://www.bea.gov/	Link to various economic indicators.
Bureau of Prisons	http://bop.gov/	Link to the Bureau of Prisons. It includes the ability to search for inmates who have been located in federal prisons.
Census Bureau	http://www.factfinder.census.gov	Link to United States census information.
Census Bureau (Pre-set profiles of communities)	http://censtats.census.gov/pub/Profiles.shtml	Link to pre-established sets of census information for communities in the United States.
County Courthouses	http://www.genealogy.com/00000229.html?Welcome=1085073621	Link to county websites.
Courts (district, appeals, bankruptcy)	http://www.uscourts.gov/links.html	Link to federal court information.
Department of Justice (attorneys)	http://www.usdoj.gov/usao/	Link to information on the United States Attorney's Office.
Department of Labor	http://www.bls.gov/	Link to the Department of Labor. Provides information concerning various economic indicators.
Federal Election Commission	http://www.fec.gov/finance/disclosure/norindsea.shtml	Individual contributions.
Federal Reserve Board	http://www.federalreserve.gov/rnd.htm	Link to the Federal Reserve Board's economic research information.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Financial Crimes Enforcement Network		http://www.fincen.gov	Main web link to the Department of Treasury's Financial Crimes Enforcement Network.
Government Phone Numbers		http://www.info.gov/phone.htm	Listing of federal state and local government phone numbers.
Government Printing Office		http://www.gpoaccess.gov	Main link to the Government Printing Office. Useful access portal to all U.S. government publications.
Internal Revenue Service		http://www.irs.gov	Main access point for information provided by the Internal Revenue Service.
Money Service Business		http://www.msb.gov	Money Services Business link from the Financial Crimes Enforcement Network.
National Archives		http://archives.gov/	Main link to the National Archives.
Occupational Safety & Health Administration	Index to site	http://www.osha.gov	Main link to the Office of Safety and Health Administration.
	Inspection Information	http://www.osha.gov/oshstats/index.html	Link to OSHA inspection and accident investigation information.
Office of Patents & Trademarks		http://www.uspto.gov/main/trademarks.htm	Main link to information concerning patents and trademarks.
Securities and Exchange Commission (EDGAR)		http://www.sec.gov/edgar/searchedgar/companysearch.html	Link to the Securities and Exchange Commission's ("SEC") Electronic Data Gathering, Analysis, and Retrieval System (EDGAR). This database allows the ability to research company filings with the SEC.
US, State & Local Government		http://www.usa.gov/Topics/Reference_Shelf.shtml	Link to federal, state and local websites.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

U.S. Bureau of Prisons	http://www.bop.gov/iloc2/LocateInmate.jsp	Locate PRP or witness who may be in a Federal Prison
U.S. Marshals Service	http://www.usdoj.gov/marshals/	The U.S. Marshals Office can assist EPA by serving notices and may accompany EPA staff in questionable locations. Find out whether an individual is a fugitive/wanted by the U.S. Marshals using the search tool.

Potentially Responsible Party Internet Information Sources (PRPIIS)

Government Directories

Federal Government	FedStats	http://www.fedstats.gov/	Statistics from 100 government agencies.
	Louisiana State University Libraries	http://www.lib.lsu.edu/gov/fedgov.html	Federal agency directory.
State and local government	GovEngine.com	http://www.govengine.com/	Federal, state and local government information.
	State and Local Government on the Net	http://www.statelocalgov.net/index.cfm	Directory of state, county, city government websites.
	USA.gov	http://www.firstgov.gov	“Government made easy.”

Potentially Responsible Party Internet Information Sources (PRPIIS)

Investigative Tools

Bureau of Justice Statistics		http://www.ojp.usdoj.gov/bjs/welcome.html	Crime statistics and court statistic information; no individual or company information.
Investigators Guide to Sources of Information (GAO)		http://www.fas.org/irp/gao/osi-97-2/soi_ch4.htm	Lists and describes investigator and law enforcement databases; no links to databases; can be found by using Google.
National Criminal Justice Reference Service		http://www.ncjrs.gov	Federally funded resource offering justice and substance abuse information.
Personal Property	Collect.com	http://www.collect.com/	Antiques, collectibles values. Registration required.
	EBay	http://www.ebay.com/	Online auction.
	Kelley Blue Book	http://www.kbb.com/	Car values.
	Kovels.com	http://www.kovels.com/	Antiques, collectibles values. Registration required.
	Nada Guides	http://www.nadaguides.com/	Car, boat, RV, motorcycle, mobile home values.
Public records directory	Search Systems*	http://www.searchsystems.net	Lists 38,541 searchable public record databases; no direct link unless a paying member, but will show which databases are free or charge.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Regional Information Sharing Systems*	http://www.iir.com/riss/	National program of regionally oriented services designed to enhance the ability of criminal justice agencies to share information; membership required.
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Potentially Responsible Party Internet Information Sources (PRPIIS)

Law, Legal Sites

Code of Federal Regulations		http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	Searchable CFR database from 1996.
Code of Federal Regulations, Federal Register, and more		http://www.heinonline.org/HOL/Welcome?collection=fedreg	ABA journals, most cited journals, criminal justice journals, intellectual property library, CFR from 1938, FR from 1936, U.S. Attorney General opinions, legislative history, Presidential and Supreme Court libraries, statutes.
Federal Acquisition Regulation		http://www.arnet.gov/far	FAR regulations and GSA forms library.
Federal Register		http://www.gpoaccess.gov/fr/index.html	Federal Register from 1994 with links to libraries for FRs prior to 1994.
Lawyers	Martindale locator	http://www.martindale.com	Find a lawyer.
	Find a lawyer	http://www.findlaw.com	Find a lawyer.
	Bar associations	http://www.bestcase.com/statebar.htm	State bar association links.
Legal research pages	Westlaw	http://www.westlaw.com	Online legal research service for legal and law related materials and services.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

	Lexis	http://www.lexis.com	Comprehensive databases of law, business, public records and news. Your legal office may already have an account.*
Legislation pending in Congress; votes, bills, laws	Senate	http://www.senate.gov	U.S. Senate.
	House	http://www.house.gov	U.S. House of Representatives.
Legislative information		http://thomas.loc.gov	Bills, resolutions, congressional record, committee reports, searchable by bill text.
Supreme Court Decisions		http://supct.law.cornell.edu/supct/index.html	Supreme Court decisions, briefs, links to briefs, oral argument recordings 1990 – present.
U.S. Code	U.S. House	http://uscode.house.gov	U.S. House of Rep.; searchable code from 1988; link to Federal Register.
	Cornell University	http://www.law.cornell.edu/uscode/	Searchable U.S. Code.
U.S. Courts		http://www.uscourts.gov/courtlinks/	Links to all U.S. Courts. Documents are available using PACER.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

Libraries and Public Information

Almanacs		http://www.infoplease.com/index.html	Miscellaneous information.
Environmental News		http://www.earthvision.net/	Contains information resources on environmental news, innovative environmental technologies, government environmental technology programs, contracting opportunities, market assessments, market information, current events and other material of interest to the environmental technology community.
Environmental Research Foundation		http://www.rachel.org/home_eng.htm	Web site under repair as of 5/15/07.
Library of Congress		http://lcweb.loc.gov	Largest library in the work; services include Ask a Librarian, photo duplication; see FAQs.
Linda Hall Library		http://www.lindahall.org	Library of science, engineering and technology; document delivery services; searchable catalog; reference and search services.
News-papers	News Choice	http://www.newschoice.com	Selected newspaper links in selected states.
	Newspaper Link	http://www.newspaperlinks.com	Links to all major newspapers; search by state, no logins.

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Potentially Responsible Party Internet Information Sources (PRPIIS)

National Archives		http://www.nara.gov	Searchable databases of historical information.
Non-Profit Entities		http://www.guidestar.org/	Web link that provides information concerning non-profit entities.
Public Records Search		http://www.brbpub.com/pubrecsites.asp	Public records databases by state; links to free databases (similar to Search Systems before it became a pay service).
U.S. Geological Survey	Earth Sciences Library	http://library.usgs.gov/	The largest earth science library in the world.

Potentially Responsible Party Internet Information Sources (PRPIIS)

Maps and Aerial Photos

Enviromapper		http://www.epa.gov/enviro/emef/	U.S. EPA's interactive maps and aerial photography to display facility-based information from the Envirofacts Warehouse.
Freeality.com		http://www.freeality.com/maps.htm	Directory of map-related sites.
Geography network		http://www.geographynetwork.com/maps/index.html	Static, browser and GIS-access maps.
Google Earth		http://earth.google.com/	Satellite imagery, maps, terrain and 3D buildings. Free service but requires a software download.
Google Maps		http://maps.google.com/maps	Maps and directions. Limited aerial photos.
Mapquest		http://www.mapquest.com/	Maps and directions.
Microsoft Maps Live		http://maps.live.com/	Similar to Google Earth. View 3d aerial photos, maps, and more. Free service but requires a software download.
NationalAtlas.gov		http://nationalatlas.gov/	Maps of North America.
Terraserver.com		http://terraserver.microsoft.com/	Aerial photos - Search by address or longitude & latitude.
U.S. Geological Survey	National Geologic Map Database.	http://ngmdb.usgs.gov/ngmdb/ngm_catalog.ora.html	National Geologic Map Database. Search USGS maps.

* Denotes a fee for service

Potentially Responsible Party Internet Information Sources (PRPIIS)

	National Map	http://nationalmap.gov/	Information on the USGS National Map.
	USGS national map viewer -	http://nmviewogc.cr.usgs.gov/viewer.htm	View the USGS National Map.

Potentially Responsible Party Internet Information Sources (PRPIIS)

Real Property

ABC's of Real Estate	http://www.realestateabc.com/	Real estate and mortgage resources.
DataQuick*	http://www.dataquick.com/	Real property ownership, appraisal information.
HomeSeekers.com	http://www.homesekers.com/	Residential property sales and value information.
Netronline.com	http://www.netronline.com/	Real estate information and public records search.
RealEstate.com	http://dowjones.homepricecheck.com/	Residential property sales and value information.
Rent-O-Meter	http://www.rentometer.com	Residential rental comparison.
ZWillow	http://www.zillow.com/?kwg=zwillow	Real estate information and property values. The information available varies by region searched.

*** Denotes a fee for service**

Potentially Responsible Party Internet Information Sources (PRPIIS)

Technical Information

Agency for Toxic Substances and Disease Registry (ATSDR)	CERCLA Hazardous Substances	http://www.atsdr.cdc.gov/cercla/	Hazardous substance and toxicological information.
	Hazardous Substances	http://www.atsdr.cdc.gov/toxfaq.html	ToxFaqs: Frequently asked questions about contaminants found at hazardous waste sites.
Cleaner Solutions Database		http://www.cleansolutions.org/?action=vendor_search&page=0&submit=Submit&sortby=product&sortasc=1	Search for products based on vendor-recommended contaminant, substrate and equipment information.
Efunda (Engineering Fundamentals)		http://www.efunda.com/processes/processes_home/process.cfm	Descriptions of industrial processes.
Envirofacts Master Chemical Integrator		http://www.epa.gov/enviro/html/emci/chemref/	Search the EMCI Chemical References Web Pages.
Material Safety Data Sheets (MSDS)	Product Name	http://www.setonresourcecenter.com/MSDS/search.html	MSDS search by chemical, product name.
	Manufacturer	http://www.setonresourcecenter.com/msds/docs/wcd00000/wcd00014.htm	MSDS search by manufacturer name.
Military specification lubricant products		http://www.mtpinc-exporter.com/chemicals/chem_mil_spec.htm	Listing by specification number and title of specification.

* Denotes a fee for service

Potentially Responsible Party Internet Information Sources (PRPIIS)

National Library of Medicine	http://sis.nlm.nih.gov/enviro.html	Environmental health and toxicology information. Also, access to TOXNET, a collection of databases on hazardous chemicals, toxic releases, and environmental health.
Radiochemistry Society	http://www.radiochemistry.org/periodictable/	Periodic table.
Toxnet- Toxicology Data Network	http://toxnet.nlm.nih.gov/	Data on toxicology, hazardous chemicals, environmental health, toxic releases.
US Metric Association	http://lamar.colostate.edu/~hillger/everyday.htm	Metric conversions.

INDIVIDUAL ABILITY TO PAY CLAIM**Financial Data Request Form**

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental cleanup or penalties. If you need more space for your answers, please attach additional sheets of paper. Note that further documentation may be requested of any of your responses. Any other information you wish to provide supporting your case is welcome, particularly if you feel your situation is not adequately described through the information requested here.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the U.S. Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature:

Date:

Name:

Spouse's Name:

Names of Additional Household Members:

Street Address:

City:

State:

Zip:

County:

Household Living Expenses

List household living expenses typical of last year, indicating if any are likely to change significantly in the current year. If you own an operating business, exclude any business expenses; instead, attach any available financial statements for your business.

<u>Expense</u>	<u>Amount</u>	<u>Period</u>			
		W	M	Q	Y
Rent					
Home maintenance					
Transportation (inc. auto maint.)					
Home heating oil, gas, etc.					
Electricity					
Water & sewer					
Telephone					
Food					
Clothing, personal care					
Medical (other than premiums)					
Mortgage payments (principal and interest only)					
Car payments					
Credit card interest					
Educational loan payments					
Other debt payments					
Home insurance					
Life insurance					
Auto insurance					
Medical insurance					
Property taxes					
Federal income taxes (net of any refunds)					
State & local income taxes (net of any refunds)					
FICA					
Other taxes					
Childcare					
Tuition					
Legal or professional fees					
Other (attach description)					

Net Worth

Provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E". If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Mark these entries with a "B" to identify them as business assets and liabilities.

	Assets	Liabilities	Comments
<u>Bank Accounts</u>	<u>Balance</u>		
<i>Checking, NOW, Savings, Money Market, CDs etc.</i>			
<u>Financial Investments (stocks, bonds, etc.)</u>	<u>Market Value</u>		
<u>Retirement Funds and Accounts</u>	<u>Market Value</u>		
<i>IRA, 401(k), Keogh, vested interest in company retirement fund, etc.</i>			
<u>Life Insurance Policies (with cash value)</u>	<u>Cash Value</u>		
<i>Whole life, universal life, etc.</i>			
<u>Vehicles Used for Commuting</u>	<u>Market Value</u>	<u>Loan Balance</u>	
<i>Cars, trucks, motorcycles, etc.: list up to two vehicles used for commuting purposes.</i>			
<u>Vehicles (other than for commuting)</u>	<u>Market Value</u>	<u>Loan Balance</u>	
<i>Cars, trucks, motorcycles, recreational vehicles, motor homes, boats, airplanes.</i>			
<u>Primary Residence</u>	<u>Market Value</u>	<u>Mortgage Balance</u>	
<u>Real Estate (other than primary residence)</u>	<u>Market Value</u>	<u>Mortgage Balance</u>	
<i>Lands, buildings, land with buildings.</i>			

<u>Personal Property</u>	<u>Market Value</u>	<u>Debt Balance</u>	
<i>Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc.; list only items with a value greater than \$500.</i>			
<u>Credit Cards and Lines of Credit</u>		<u>Balance Due</u>	
<u>Other Debts and/or Assets</u>	<u>Market Value</u>	<u>Debt Balance</u>	
<i>Any other assets and any debts on those assets, plus any other debts owed to individuals, fixed obligations, taxes owed, overdue alimony or child support, etc.</i>			

Additional Information	
<i>For any question that you check off as applicable, provide additional information below or on separate pages.</i>	
Reason to believe financial situation will change during the next year?	
Currently selling or purchasing any real estate?	
Property held by other person/entity on applicant's behalf?	
Party in pending lawsuit (other than this enforcement action)?	
Any belongings repossessed in last three years?	
Is applicant a Trustee, Executor, or Administrator?	
Participant or beneficiary of estate or profit-sharing plan?	
Declared bankruptcy in last seven years?	
Receive any type of federal aid or public assistance?	

Ability To Pay Individual Request for Information

1. Please complete and sign the following forms.
 - IRS Form 8821
 - INDIPAY Data Request Form
2. Please provide the following:
 - a. A substantive statement with supporting information which explains the specific reason(s) why you are claiming an inability to pay the proposed penalty. If supporting information is being provided as part of EPA's request (items 2.b. - 2.j.), please indicate.

b. **Federal Tax Returns** True, complete and signed copies of your federal tax returns for the years ____, ____, ____ - the review period.

c. **Annual Financial Statements** If you own a business, provide true and complete copies of annual financial statements, including but not limited to, an Income Statement and Balance Sheet. If available, also provide Cash Flow and Expense Statements. The fiscal years provided should coincide with the tax year returns requested above.

If an outside CPA prepares the financial statements, please provide, in order of preference, audited, reviewed, or compiled financial statements, and include any attached notes. If an outside CPA does not prepare these statements, then your internally generated annual financial statements for your business activities should be provided. In the event that final financial statements are not yet ready for a recently completed fiscal year, then provide a draft copy.

d. **Year To Date Financial Statement** If more than three months have elapsed from the end of your business' most recently completed fiscal year, please provide year-to-date financial statements for your business through the end of the most recent prior month; at a minimum, provide the income statement and balance sheet. If no tax return has been completed for the most recent tax year, financial statements for that year should also be included.

e. **Litigation** Provide a statement (with relevant details) as to whether you or your business currently is, or anticipates being a party to, any litigation which has not been noted in the most recent financial statement and which could impact your financial situation.

f. **Financial Settlements** Provide a statement with relevant details as to whether you or your business currently is, or anticipates, receiving or paying a financial settlement which has not been noted elsewhere or in the most recent financial statement.

Ability To Pay Individual Request for Information

- g. **Company Control and Affiliations** For the period under review, to the present, provide a statement to indicate whether you controlled, or are affiliated with, any other entity, domestic or foreign. For each entity named, provide the names of senior officers and board of directors, type of control or affiliation (e.g., provides administrative/financial/marketing services), and describe the percentage of ownership and means of control.
- h. **Insurance** Provide a statement as to whether you or your business had any liability insurance in effect during the review period which provided or would provide coverage for this specific environmental issue. If 'Yes', provide a true and complete copy of each policy.
- i. **Market Conditions** If you or your business claims that market conditions are a factor in your inability to pay claim, provide supporting information to substantiate any such claim(s).
- j. **Other Assets** Do you have a financial or beneficial interest in, or control of, any asset, domestic or foreign, that has not been identified in your federal tax returns or other financial information to be presented to the EPA.? If 'yes', please identify each asset by type of asset, estimated value, and location.
- k. **Additional Information** The EPA encourages you to provide any additional information which substantiates your inability to pay claim. This can include an explanation of economic events that are not reflected in the above questions and that may have a material impact on the your ability to pay.

Also, please be aware that the EPA may request additional information as part of its review of this case material.

INDIVIDUAL ABILITY TO PAY CLAIM

Financial Data Request Form

This form requests information regarding your current financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly if you feel your situation is not adequately described through the information requested here.

Financial data should be entered for the last day of the month preceding this month.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

	Name:		
	Spouse's Name:		
	Address:		
	County of Residence:		

PART I. BACKGROUND INFORMATION

1. MEMBERS OF HOUSEHOLD (List the head of the household and all persons living with you)			
Name	Age	Relationship to Head of Household	Currently Employed?

2. EMPLOYMENT (List all jobs held by persons in household)			
Name	Employer	Length of Employment	Annual Salary

3. INCOME (List all income earned by persons in household. If members of the household other than you and your spouse earn income, please itemize on separate page.)

Source	Gross (Pre-Tax)		Period of Payment (check one)			
			Weekly	Monthly	Quarterly	Yearly
Wages/Salaries						
Sales Commissions						
Investment Income (interest, dividends, capital gains, etc.)						
Net Business Income						
Rental Income						
Retirement Income (Pension, Social Security, etc.)						
Child Support						
Alimony						
Other Income (please itemize)						

PART II. CURRENT LIVING EXPENSES

Please list *personal* living expenses which were typical during the last year and indicate if any of these values are likely to change significantly in the current year. **Please do not include business expenses.** If you are the owner of an operating business, please attach any available financial statements.

Expense	Amount	Period of Payment (check one)				For Agency Use Only
		Weekly	Monthly	Quarterly	Yearly	
A. Living Expenses						
1. Rent						
2. Home maintenance						
3. Auto fuel, maintenance, other transp.						
4. Utilities						
a. Fuel (gas, oil, wood, propane)						
b. Electric						
c. Water/sewer						
d. Telephone						
5. Food						
6. Clothing, personal care						
7. Medical costs						
B. Debt Payments						
1. Mortgage payments						
2. Car payments						
3. Credit card payments						
4. Educational loan payments						
C. Insurance						
1. Household insurance						
2. Life insurance						
3. Automobile insurance						
4. Medical insurance						
D. Taxes						
1. Property taxes						
2. Federal income taxes						
3. State income taxes						
4. FICA						
E. Other Expenses						
1. Childcare						
2. Current School tuition/expenses						
3. Legal or professional services						

4. Other (itemize on separate page)						
Total Current Expenses						

PART III. NET WORTH

Please provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable. Note estimated items with an "E".

If you are the sole proprietor of a business, list business assets and liabilities in addition to personal assets and liabilities, and mark these business entries with a "B".

1. BANK ACCOUNTS (Checking, NOW, Savings, Money Market, CDs, etc.)		
Name of Bank or Financial Institution	Type of Account	Current Balance
For Agency Use Only - Total Current Balance in Bank Accounts		

2. INVESTMENTS {Stock, Bonds, Mutual Funds, Options, Futures, Real Estate Investment Trusts (REITs), etc.}		
Investment	Number of Shares or Units	Current Market Value
For Agency Use Only - Total Current Market Value of Investments		

3. RETIREMENT FUNDS AND ACCOUNTS {IRA, 401(k), Keogh, vested interest in company retirement fund, etc.}	
Description of Account	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Retirement Funds and Accounts	

4. LIFE INSURANCE POLICIES (Whole Life, Universal Life, etc.)			
Policy Holder	Issuing Company	Policy Value	Cash Value

For Agency Use Only - Total Value of Life Insurance Policies			

5a. VEHICLES USED FOR COMMUTING PURPOSES (Cars, Trucks, Motorcycles, etc. Only list up to two vehicles used for commuting purposes.)		
Model	Year	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Vehicles		

5b. OTHER VEHICLES (Cars, Trucks, Motorcycles, Recreational Vehicles, Motor Homes, Boats, Airplanes etc.)		
Model	Year	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Vehicles		

6. PERSONAL PROPERTY (Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc. Only list items with a value greater than \$500.00)	
Type of Property	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Personal Property	

7a. REAL ESTATE — PRIMARY RESIDENCE (Home — List only one such residence.)			
Location	Description of Property	Balance Owed on Mortgage	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Real Estate			

7b. OTHER REAL ESTATE (Land, Buildings, Land with Buildings)		
Location	Description of Property	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Real Estate		

8. OTHER ASSETS	
Type of Asset	Estimated Market Value
For Agency Use Only - Total Other Assets	

9. CREDIT CARDS AND LINES OF CREDIT			
Credit Card/Line of Credit (Type)	Owed To	Monthly Payment	Balance Due
For Agency Use Only - Total Balance Due on Credit Cards and Lines of Credit			

10. VEHICLE LOANS (Cars, Trucks, Motorcycles, Recreation Vehicles, Motor Homes, Boats, Airplanes, etc.)					
Vehicle (Model and Year)	Owed To	Balance Due	Monthly Payment	Start Date	End Date
For Agency Use Only - Total Balance Due on Vehicle Loans					

11. FURNITURE AND HOUSEHOLD GOODS LOANS:					
List Item	Owed To	Balance Due	Monthly Payment	Start Date	End Date
For Agency Use Only - Total Balance Due on Furniture and Household Goods Loans					

12. MORTGAGES AND REAL ESTATE LOANS						
Type of Loan	Owed To	Property Secured Against	Balance Due	Monthly Payment	Start Date	End Date
For Agency Use Only - Total Balance Due on Mortgages and Real Estate Loans						

13. OTHER DEBT (Amounts due to individuals, fixed obligations, Taxes Owed, Overdue Alimony, Child Support, etc.)					
Type of Debt	Owed To	Balance Due	Monthly Payment	Start Date	End Date
For Agency Use Only - Total Balance Due on Other Debt					

PART IV. ADDITIONAL INFORMATION

Please respond to the following questions. For any question that you answer "Yes", please provide additional information on separate pages or at the bottom of this page.

QUESTION	YES	NO
1. Do you have any reason to believe that your financial situation will change during the next year?		
2. Are you currently selling or purchasing any real estate?		
3. Is anyone (or any entity) holding real or personal property on your behalf (e.g., a trust)?		
4. Are you a party in any pending lawsuit?		
5. Have any of your belongings been repossessed in the last three years?		
6. Are you a Trustee, Executor, or Administrator?		
7. Are you a participant or beneficiary of an estate or profit-sharing plan?		
8. Have you been denied a loan or new credit card within the last six months?		
9. Have you declared bankruptcy in the last seven years?		
10. Do you receive any type of federal aid or public assistance?		

Explanations for any of the above questions with a "Yes" answer.

Question
Number _____ Explanation _____

Explanations for any of the above questions with a "Yes" answer - (continued)

Question
Number _____ Explanation _____

**FINANCIAL DISCLOSURE STATEMENT
TO BE COMPLETED BY INDIVIDUAL DEFENDANT**

A. GENERAL INSTRUCTIONS - READ CAREFULLY

The information requested in the following form is to be submitted concerning a current case in connection with an asset investigation. Prior to completing and submitting this form, you should discuss this matter and this form thoroughly with your own attorney.

The purpose of this form is to determine what assets you may have or are in control of. If you are married or have a live-in companion, you must list assets held by your spouse or companion, as well as yourself, and show whether each asset is owned individually or jointly. By completing and signing this financial disclosure statement, you acknowledge that the information provided will affect action by the United States Department of Justice and further understand that any false answers can lead to the termination or nullification of any plea agreement ultimately reached and/or prosecution for false statements as provided under Title 18, United States Code, Section 1001 (maximum prison sentence of five (5) years and/or a fine of not more than \$250,000).

Each separate question must be answered completely. If the answer is "none" you must state "none." Do not leave any question unanswered.

You must date and initial each page, and sign the last page and accompanying Release. If there is insufficient space on the form, please attach additional sheets as necessary, and date and initial each additional page.

ACKNOWLEDGMENT, IF REPRESENTED BY COUNSEL

I _____ am _____ am not (check one) represented by counsel in the collection of this debt. If I am represented by retained or appointed counsel, I acknowledge having reviewed the foregoing instructions with my counsel. My counsel's name is _____.

Date: _____ Name: _____
Last First Middle

Signature _____

Authority for the solicitation of the requested information includes one or more of the following: 5 U.S.C. § 301, 901 (see Note, Executive Order 6166, June 10, 1933); 28 U.S.C. § 501 -530A; 28 U.S.C. § 1651, 3201 -3206; 31 U.S.C. § 3701 -3731; 44 U.S.C. § 3101; 4 C.F.R. § 101 -101.8; 28 C.F.R. § 0.180, 0.171 and Appendix to Subpart Y; 18 U.S.C. § 3684(d)(3).

The principal purpose for gathering this information is to evaluate your ability to pay the government's claim or judgment against you. Routine uses of the information are established in the following U.S. Department of Justice Case File Systems published in Vol. 42 of the Federal Register, Justice/CIV-001 at page 5332; Justice/TAX-001 at page 15347; Justice/USA-005 at pages 53406-53407; Justice/USA-007 at pages 53408-53410; Justice/CRIM-016 at pages 12774. Disclosure of the information is voluntary. If the requested information is not furnished, the United States may seek disclosure through other means.

FINANCIAL DISCLOSURE STATEMENT

A. PERSONAL IDENTIFYING DATA

FULL

NAME:

(Last)

(First)

(Middle)

Circle appropriate title: Mr. Ms. Mrs. Dr. Jr. III

2. STATE ALL OTHER NAMES BY WHICH YOU HAVE EVER BEEN KNOWN.

a.

b.

c.

3. YOUR DATE OF BIRTH
MONTH/DAY/YEAR

4. YOUR DRIVER'S LICENSE
NO. AND STATE OF ISSUANCE.

5. YOUR SOCIAL
SECURITY NO.

6. YOUR HOME
TELEPHONE
NUMBER

7. YOUR CELLULAR
TELEPHONE
NUMBER

_____/_____/19____

No. _____
State _____

_____/_____/____

() _____

() _____

8. PRESENT HOME ADDRESS

9. DATES OF RESIDENCE

10. YOUR EMAIL ADDRESS

Address

_____/_____/19____
to Present

@

State

Zip Code

EDUCATION

Check all that apply

Location of School

11. PROVIDE YOUR EDUCATIONAL
BACKGROUND.

Less Than 12 years

High School Diploma or equivalent

Vocational School

College (provide degree or no. of years
attended)

Post Graduate (provide degree or no. of years
attended)

Vocational School

12. PROFESSIONAL LICENSES:

Type:

Expiration Date:

B. EMPLOYMENT INFORMATION

13. FULL NAME OF PRESENT EMPLOYER:

14. OCCUPATION:

15. DATES OF EMPLOYMENT: From: ____/____/19____ to Present

16. BUSINESS ADDRESS: _____ State _____ Zip _____ Tel. No. (____) _____

PREVIOUS EMPLOYER (List all previous employers for past five (5) years.) Please include addresses and dates of employment.

17. COMPANY NAME: _____ Dates Employed: From: ____/____/19____ to ____/____/19____

OCCUPATION:

ADDRESS: _____ STATE _____ ZIP _____ Telephone No. (____) _____

18. COMPANY NAME: _____ Dates Employed: From: ____/____/19__ to ____/____/19__
 OCCUPATION: _____
 ADDRESS: _____ STATE ____ ZIP _____ Telephone No.(____) _____

19. COMPANY NAME: _____ Dates Employed: From: ____/____/19__ to ____/____/19__
 OCCUPATION: _____
 ADDRESS: _____ STATE ____ ZIP _____ Telephone No.(____) _____

20. COMPANY NAME: _____ Dates Employed: From: ____/____/19__ to ____/____/19__
 OCCUPATION: _____
 ADDRESS: _____ STATE ____ ZIP _____ Telephone No.(____) _____

C. EARNINGS (SALARY, WAGES, COMMISSIONS, ETC.) AND BACKGROUND INFORMATION

21. YOUR GROSS SALARY FROM YOUR PRESENT EMPLOYER.

MARK ONE: a. Weekly ☐ b. Bi-Weekly ☐ c. Monthly ☐

\$

d. YOUR
TAKE
HOME
PAY.

\$

22. ARE YOU CURRENTLY AN ACTIVE MEMBER OF THE ARMED FORCES, INCLUDING NATIONAL GUARD AND RESERVES?

Yes

No

a. IF YES, PLEASE GIVE THE NAME, ADDRESS AND TELEPHONE NUMBER OF YOUR UNIT AND HOW MANY YEARS REMINING IN YOUR ENLISTMENT.

b. Unit

c. Term

23. DO YOU HAVE ANY OTHER EARNED INCOME FROM ANY OTHER SOURCE OR BUSINESS?

Yes

No

a. IF YES, PLEASE IDENTIFY EACH SOURCE AND STATE YOUR MONTHLY GROSS EARNINGS (SALARY, WAGES, COMMISSIONS, ETC.) FROM EACH SOURCE.

b. Source

c. Income

24. GARNISHMENT: Are you or your spouse/companion's wages under garnishment at this time?		Yes	
		No	
IF YES, PROVIDE SPECIFIC DETAILS.			
25. LIST EACH PREVIOUS HOME ADDRESS (Include all permanent or temporary residences and dates of occupancy for the last five (5) years.)			
a. Dates of residence:	Address	City	State
			Zip Code
b. Dates of residence:	Address	City	State
			Zip Code
c. Dates of residence:	Address	City	State
			Zip Code
d. Dates of residence:	Address	City	State
			Zip Code
26. RENTAL AGREEMENT. Do you or your spouse/companion rent the premises on which you live? If YES, please complete the following:			Yes
			No
Name of Landlord	b. Address/telephone number of Landlord	c. Payment Schedule (weekly, monthly, annually)	d. Rent Payment
			\$
			\$
27. MARITAL STATUS (Mark one box to show your current marital status and provide information about your spouse(s) below.).			
a. Never Married: <input type="checkbox"/> b. Married <input type="checkbox"/> c. Separated: <input type="checkbox"/> d. Legally Separated <input type="checkbox"/> e. Divorced <input type="checkbox"/> f. Widowed <input type="checkbox"/>			
28. NAME OF SPOUSE/COMPANION _____			
(Last)		(First)	(Middle)
a. SPOUSE/COMPANION'S DATE OF BIRTH Month/Day/Year	b. SPOUSE/COMPANION'S HOME TELEPHONE NUMBER	c. SPOUSE/COMPANION'S CELLULAR TELEPHONE NUMBER	
_____/_____/19____	()	()	
c. SPOUSE/COMPANION'S OCCUPATION	d. BUSINESS TELEPHONE NUMBER		
	()		
29. SPOUSE/COMPANION'S EMPLOYER			
a. NAME			
b. ADDRESS _____ STATE _____ ZIP _____ Telephone No. _____			

30. LIST NAME OF EACH FORMER SPOUSE AND DATES OF MARRIAGE(S)		DATES OF MARRIAGE	
a. Name		From: ___/___/19__ to ___/___/19__	
b. Name		From: ___/___/19__ to ___/___/19__	
c. Name		From: ___/___/19__ to ___/___/19__	
d. Name		From: ___/___/19__ to ___/___/19__	

31. DEPENDENT CHILDREN/RELATIVES (List type of relationship and date of birth of each person listed.)				
a. Complete Name(s)	b. Relationship	c. Date of Birth	d. Cellular telephone number	e. Do these relatives reside with you. (Circle one)
				YES NO
				YES NO
				YES NO
				YES NO
				YES NO
				YES NO

32. CHILD SUPPORT PAYMENTS RECEIVED - Do you or your spouse/companion receive child support payments? If yes, complete the following:				Yes	
				No	
Name of dependent	Dependent's Date of Birth	Name of non-custodial parent	Name of Custodial Parent	List arrearage (if any)	

CHILD SUPPORT PAYMENTS MADE - Do you or your spouse/companion make child support payments? If yes, answer the following:				Yes	
				No	
Name of dependent	Dependent's Date of Birth	Name of non-custodial parent	Name of Custodial Parent	List arrearage (if any)	

33. Do you receive or expect to receive aid to families with dependent children, unemployment compensation or any other type of assistance from the United States, your own state, any other governmental agency or any other person? If yes, list the source and amount.

a. Source of Payment (name of person, state, etc.)	b. Program	c. Payment Amount	d. Payment schedule

34. Name of each bank, credit union and any other financial institution or company with which you, your spouse/companion, or any other person or entity associated with you have or have ever had any account at any time during the past five (5) years.

a. Name of Financial Institution and Address	b. Name(s) on Account	c. Account No. and Type	d. Current Balance in Account

35. SAVINGS BONDS: Do you, your spouse/companion or your defendants own U.S. Savings Bonds?

a. Demonination of Bond	b. Name(s) on Bond	c. Purchase Date	d. Value

36. INDIVIDUAL RETIREMENT ACCOUNT. Do you or your spouse have any Individual Retirement Account ("IRA"), Keogh Account, other retirement account or savings, or any interest in any profit-sharing or pension plan?
If YES, please identify each account by name of financial institution, address, account number and name on account.

Yes

No

a. Name of Financial Institution and address	b. Name(s) on Account	c. Account No. And Type	d. Current Balance In Account

37. SAFETY DEPOSIT BOXES: Do you, or your spouse, or any other person maintain or rent a safety deposit box in your name(s) or in any other name? If YES, give name and address of banks(s) and name(s) utilized to open or maintain the safety deposit box(es).

Yes

No

a. Name of Financial Institution and Address	b. Safety Deposit Box No.	c. Account No.	d. Type of Account

D. ASSETS AND LIABILITIES

38. Do you or your spouse/companion have any interest in any real estate anywhere in the world? (This includes any real estate currently being sold under contract.) If YES, identify each real estate interest as stated below.

Yes

No

a. Complete Address (Include State and County)	b. Name on Deed	c. Purchase Price	d. Fair Market Value	e. Balance Due on Mortgage	f. Monthly Payment	g. Date Mtg. Paid Off
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$	\$	\$	

g. LEASEHOLD INTERESTS. If any real estate holdings are income producing properties, identify tenants name and address and current lease terms. Provide income statements and/or tax returns for the last two years for each rental property.

Name on lease: _____
Address: _____
City: _____ State _____
Zip: _____ TERM: _____

Name on lease: _____
Address: _____
City: _____ State _____
Zip: _____ TERM: _____

Name on lease: _____
Address: _____
City: _____ State _____
Zip: _____ TERM: _____

39. Do you or your spouse/companion or dependents own or have possession of any automobiles, boats, aircrafts, other vehicles or mobile homes? If YES, specify as stated below.

a. Description: Include Year, Make and Model	b. Do you own the vehicle or property?		c. Purchase Price	d. Loan Balance
	Yes	No		
Automobile			\$	\$
Automobile (2nd)			\$	\$
Automobile (3rd)			\$	\$
Boat			\$	\$
Truck			\$	\$
Recreational Vehicles (campers, Motor homes)			\$	\$
Utility Trailer			\$	\$
Any other vehicles (Including ATVs, Jet-Skis, snowmobiles)			\$	\$
Aircraft			\$	\$
Mobile Home			\$	\$
Motorcycle			\$	\$

40. Do you or your spouse/companion or dependents own or have possession of any sporting goods? If YES, specify as stated below.

a. Description: Include Year, Make and Model	b. Do you own the property?		c. Purchase Price	d. Loan Balance
	Yes	No		
Guns			\$	\$
Hunting Gear			\$	\$
Recreational Equipment (pool table, pinball machine)			\$	\$
Swimming Pool			\$	\$
Jacuzzi/Hot Tub			\$	\$
Sauna			\$	\$
Any other equipment			\$	\$

41. Do you or your spouse/companion or dependents own or have possession of any miscellaneous assets? If YES, specify as stated below.

a. Description:	b. Do you own the asset?		c. Purchase Price	d. Loan Balance
	Yes	No		
Animals			\$	\$
Season Tickets			\$	\$
Time Shares			\$	
E-Trade Accounts			\$	\$
Miners/Deposits/Advance Payments			\$	\$
Mineral Interests			\$	\$
Other (describe)			\$	\$

42. SECURITIES: Do you or your spouse own any Securities (bonds, stocks, mutual funds, etc.)?
If YES, please furnish the following information for each such asset.

				Yes	No
a. Name of Issuing Company	b. Number of Units or Shares	c. Fair Market Value	d. Amount of Indebtedness		
e. Are you a member of any investment or barter trading clubs? If yes, provide account statements for the last two years showing investments and current club value.				Yes	
				No	

43. GIFTS/TRANSFERS. Have you or your spouse transferred, sold, gifted, or in any other way disposed of any assets or property with a cost or fair market value of \$300 or more at any time in the past three (3) years? If YES, please furnish the following information for each such asset.				Yes	
				No	

a. Description of Asset	b. Date of Transfer	c. Fair Market Value When Transferred	d. Amount Received	e. Name and Relationship of Transferee to Defendant
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

44. RECEIVABLES Do you or your spouse or your companion have any accounts receivable or notes owed to you? If YES, specify as stated below.				Yes	
				No	

a. Account Name	b. Book Value	c. Liquidation Value	d. Amount of Indebtedness	e. Date, if Pledged
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

45. JUDGMENTS Do you or your spouse have any judgments owed to you? If YES, specify as stated below.				Yes	
				No	

a. Amount of Judgment	b. Full Name of Debtor

46. List all other forms of compensation which you or your spouse receive and which you have not already disclosed (including insurance annuity, disability benefits, lottery winnings, pensions, etc.)		
a. Identify Source of Compensation	b. Schedule for Receipt (e.g., Weekly, Monthly)	c. Amount
		\$
		\$
		\$
		\$

47. Does anyone or any entity owe any money to you or your spouse not previously disclosed? If yes, please state specific information listed below.				Yes	
				No	

a. Name of Person/Entity	b. Their Address	c. Date of Loan	d. Amount Owed

48. Do you or your spouse have any life insurance policy now in force with right to change beneficiary reserved? If YES, state specific information listed below.	Yes	
	No	

Company Name	b. Policy Number	c. Amount of Policy	d. Present Cash Surrender Value Plus Accumulated Dividends	e. Policy Loan	f. Date Made	g. Premium Date	h. Amount of Payments Made

49. Do you or your spouse have any life insurance policy assigned or pledged on any indebtedness?	Yes	
	No	

If any of the policies listed in Item 49, above, are assigned or pledged on indebtedness, except with insurance companies, give the following information about each policy:

a. Policy Number	b. Name and Address of Pledge or Assignee	c. Amount of Indebtedness	d. Date, if Pledged

50. Do you or your spouse/companion or dependents own or have any ownership interest in any jewelry, antiques, precious metals, art objects, stamp or coin collections or other assets of any kind with a total value in excess of \$500? If YES, state specific information listed below.	Yes	
	No	

a. Asset	b. Date Acquired	c. Value at Acquisition	d. Present Value

51. Do you or your spouse/companion or dependents own any furniture and fixtures, including machinery or equipment? If YES, state specific information listed below.	Yes	
	No	

a. Description	b. Purchase Price	c. Current Value	d. Amount of Indebtedness	e. Date, if Pledged
1. Furniture and Fixtures (business)	\$	\$	\$	
2. Furniture (household/residence)	\$	\$	\$	
3. Machinery (specify type)	\$	\$	\$	
4. Equipment (specify type)	\$	\$	\$	
Total	\$	\$	\$	

52. STATEMENT OF YOUR INCOME	Per Pay Period	This Year to Date	Last Year Total
a. Gross Income	\$	\$	\$
b. Salaries, Wages, Commissions	\$	\$	\$
c. Dividends	\$	\$	\$
d. Interest	\$	\$	\$
e. Income from business or profession	\$	\$	\$
f. Partnership income	\$	\$	\$
g. Capital Gains or Losses (from Schedule D, Form 1040)	\$	\$	\$
h. Annuities and pensions	\$	\$	\$
i. Rents and royalties	\$	\$	\$
j. Income from estates and trusts	\$	\$	\$
k. Total Gross Income	\$	\$	\$
l. Federal Income Tax Itemized Deductions	\$	\$	\$
m. Contributions	\$	\$	\$
n. Interest Paid	\$	\$	\$
o. Taxes Paid	\$	\$	\$
p. Casualty Losses (by fire, storm, etc.)	\$	\$	\$
q. Bad Debts	\$	\$	\$
r. Depreciation			
s. Total Deductions	\$	\$	
t. Net Income (loss)	\$	\$	
u. Nontaxable income	\$	\$	\$
v. Total Net Income	\$	\$	\$

53. Have you any inheritance, life interest or remainder interest, either vested or contingent, in any trust or estate, or are you a beneficiary of any trust or estate? If YES, please furnish a copy of the instrument creating the trust or estate and also, give the following information.

Yes

No

a. Name of Trust or Estate	b. Present Value of Assets	c. Value of Your Interest	d. Annual Income Received from this Source
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

54. Are you the grantor or donor of any trust, or the trustee or fiduciary for any trust? If YES, please furnish a copy of the instrument creating the trust and give present value of corpus of trust, and any other pertinent information.	Yes	
	No	
Trust _____	b. Value of Trust	

55. Have you any other assets or any interest in assets, either actual or contingent, other than those previously identified here? If YES, please describe each such asset including present value.	Yes	
	No	
a. Description	b. Present Value	

56. Are foreclosure proceedings pending on any real estate which you own or have an interest in?	Yes	
	No	

If YES, please give location of real estate, court caption and case number of foreclosure proceedings.

a. Court Caption: _____ Case No. _____ Location: _____	
b. Court Caption: _____ Case No. _____ Location: _____	
Court Caption: _____ Case No. _____ Location: _____	

Was the Government made a party to any such foreclosure suit? If YES, please describe.	Yes	
	No	

57. Do you have any bankruptcy or receivership proceedings pending? Have you filed any bankruptcy proceeding in the last 7 years? If YES, list court caption and case number of all pending cases.	Yes	
	No	
a. Court Caption: _____ Case No. _____ Location: _____ Date Closed (if applicable) _____		
b. Court Caption: _____ Case No. _____ Location: _____ Date Closed (if applicable) _____		
c. Court Caption: _____ Case No. _____ Location: _____ Date Closed (if applicable) _____		

58. What is the prospect of an increase in value of your assets or your present income? (Please give a general statement.)

59. Are you a party to any civil lawsuit now pending? If YES, please describe each such lawsuit by court name and case number.	Yes	
	No	
a. Court Caption: _____ Case No. _____ Location: _____		
b. Court Caption: _____ Case No. _____ Location: _____		
c. Court Caption: _____ Case No. _____ Location: _____		

60. Is anyone holding any money or other property of any kind on your behalf or for you?	Yes	
	No	

If YES, please identify each person by name and address and amount of money or other property being held for you.

a. Name	b. Address	c. Amount of Money/or Value of Property Being Held For You.
		\$
		\$
		\$
		\$
		\$

61. Do you receive, or under any circumstances expect to receive, any benefits from a claim for compensation or damages? If YES, please identify in specific detail.	Yes	
	No	

62. Did you file a federal income tax return last year?	Yes		Joint	
	No		Individual	

Please attach complete copies of each federal income tax return you filed for the last three (3) years. Mark yes or no to indicate whether copies of your tax returns are attached as required.	Yes	
	No	
63. Has the IRS audited any of your tax returns?	Yes	
	No	
64. Are your federal taxes current?	Yes	
	No	
65. Do you anticipate receiving or have received within the last six (6) months a tax refund from any entity?	Yes	
	No	

a. If YES, list from whom and the amount of each refund.	b. Amount of Refund
	\$
	\$
	\$

66. CREDIT CARDS: Do you have any credit card, charge account or line of credit?	Yes	
	No	

If yes, please identify each type of account or credit/charge card, the name and address of the issuer, the credit limit, amount owed and the minimum monthly payment.

a. Type of Account or Card	b. Name and Address of Issuer	c. Credit Limit	d. Amount Owed	e. Minimum Monthly Payments

67. OUTSTANDING LOANS: Do you have any outstanding loans payable to banks, finance companies, etc?	Yes	
	No	

If yes, please identify each type of account, the name and address of the issuer, the credit limit, amount owed and the minimum monthly payment.

a. Type of Account	b. Name and Address of Institution	c. Credit Limit	d. Amount Owed	e. Minimum Monthly Payments

68. JUDGMENTS Do you or your spouse have any judgments against you? If YES, specify as stated below.	Yes	
	No	

a. Amount of Judgment	b. Full Name of Creditor

69. OTHER ASSETS: Do you own or control any asset or thing of value, including cash or any certificate of deposit or other instrument or account, not previously disclosed with a value in excess of \$300?	Yes	
	No	

If yes, please identify each such asset or thing of value and state the worth of each and its present location.

a. Asset	b. Current Value	c. Location

70. PRESENT FINANCIAL NEEDS

In order to help determine your financial needs as well as those of your dependents, provide the following information as to present monthly income and expenses.

EARNINGS/OTHER INCOME	Yours	Spouse	Total	MONTHLY EXPENSES	
a. Net salary				a. Home Rent or Mortgage	
b. Overtime				b. Utilities: Electric	
c. Part-time job				Heating Oil/Gas/Wood	
d. Commission				Water/Sewer	
e. Net profit from business				Telephone	
f. Net rental income				Cell Phones	
g. Pension				c. Groceries	
h. Social Security				d. Insurance:	
i. Interest				Auto	
j. Dividends				Health	
k. Alimony/Child support				Life	
l. Income of other dependents				Homeowners/renters	
m. Social Services				e. Minimum installment payments	
n. Food Stamps				f. Transportation	
o. Benefits from the U.S.				g. Medical	
p. Disability Compensation				h. Clothing	
q. Military Pay				i. Alimony	
r. Income from relatives				j. Daycare/Babysitting	
s. Other (lottery winnings, royalties, user fees, tax refunds, etc.)				k. Cable TV/Satellite System	
				l. Tuition (college/private)	
				m. Child Support	
				n. Entertainment	
				o. Personal Care/Hygiene	
				p. Dry Cleaning/Laundromat	
				q. Gifts	
				r. Newspaper/Magazines	
				s. Tobacco	
				t. Internet Access	
				u. Organization/Health Club	
				v. Veterinary Fees	
				w. Charitable contributions	
				x. Other	
				y. Other	
				z. Other	
L TOTAL					

*Explain fully here any unusual, recurring monthly expenses you have for yourself or any dependent.

71. Criminal Activity

How long were you engaged in the criminal activity to which you pled guilty?

Did you make any gains or profits from the criminal activity? If no, why not?

Where did you deposit and/or spend the illegal gains and profits? List specifically what property you purchased (i.e., cars, jewelry, guns).

Name the bank(s), account name(s), and account number(s) where illegal gains and profits were deposited and from which they were spent.

Specifically, identify the location of other gains and profits which were made.

How much did you win gambling with your illegal profits?

72. Pursuant to the instructions to this Financial Disclosure Statement, I have attached additional pages to complete this document,

Yes

No

If YES, there are ____ (insert number) of supplemental pages attached to this Financial Disclosure Statement.

73. Declaration Under Penalties of Perjury

With knowledge of the maximum penalties for false statements provided by Title 18 U.S.C. § 1001 {five (5) years imprisonment and/or a fine of not more than \$250,000} and with the knowledge that this financial disclosure statement is submitted by me to affect action by the United States Department of Justice, I certify that the above responses are all true and correct and represent that this is a complete statement of all my income, assets and liabilities, real and personal, either held in my name or by any others, as well as expenses as of this date.

Date: _____ Signature: _____

74. AUTHORITY TO RELEASE INFORMATION

I hereby authorize the United States Attorney's Office to speak to the following individuals regarding this debt. If this release is not provided, the United States Attorney will not answer questions nor provide any information to any other party in this matter.

a. FULL
NAME: _____
(Last) (First) (Middle)

Date Signature

75. AUTHORITY TO OBTAIN CREDIT REPORT

I hereby authorize the United States Attorney's Office to obtain a credit report at any time. I understand that my signature below allows the United States to use a credit report for identifying information as well as for collection of any debt. This permission is given to the United States pursuant to 15 U.S.C. § 1681b. That statute provides authority for a credit reporting agency to furnish my consumer report with my written permission.

NAME: _____
(Last) (First) (Middle)

Date Signature

76. SPOUSE/COMPANION AUTHORITY TO RELEASE INFORMATION

I certify that I am the spouse/companion of the debtor in this case. By signature below, I am granting the United States the permission to obtain a copy of my credit report to verify financial information and assist in the collection of the debt of this case.

a. FULL
NAME: _____
(Last) (First) (Middle)

b. SIGNATURE OF
SPOUSE/COMPANION _____

c. DATE OF BIRTH _____ / _____ / _____

d. ADDRESS: _____		STATE _____	ZIP _____
e. SOCIAL SECURITY NO. ____ / ____ / ____		f. TELEPHONE NUMBER () _____	

77. AUTHORITY TO RELEASE INFORMATION

TO WHOM IT MAY CONCERN:

In connection with the financial investigation being conducted by the UNITED STATES ATTORNEY, I hereby authorize any authorized representative or agent of the UNITED STATES ATTORNEY bearing this release, or copy thereof, within five years of its date, to obtain any information in your files pertaining to my employment, military, credit or educational records, including, but not limited to, academic achievement, attendance, athletic, personal history, and disciplinary records, medical records, credit records, financial records, city, state, and federal tax records, returns and supporting documentation; bank records or records of any financial institution or entity; and records maintained by any city, county, state, or federal agency. I hereby direct you to release such information upon request of the bearer.

This release is executed with full knowledge and understanding that the information will be used in connection with the consideration of my liability on a debt claimed by the UNITED STATES and my financial ability to pay said debt and/or to determine what income and assets I may have available to contribute toward restitution, fines and forfeitures of any nature, and that the information will be disseminated only to those individuals or agencies directly involved in this determination or to fulfill other obligations imposed by law, regulation or presidential directive or executive order.

I hereby release you, as the custodian of such records, and school, college, university or other educational institution, financial institution, hospital, or other repository of medical records, credit bureau, lending institution, consumer reporting agency, retail business establishment, or public agency, including its officers, employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at any time result to me, my heirs, family or associates because of compliance with this authorization and request to release information, or any attempt to comply with it. Should there be any question as to the validity of this release, you may contact me as indicated below.

a. FULL NAME: _____
(Last) (First) (Middle)

Date Signature

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	<i>Federal Register</i>
FRC	Federal Records Center
FS	Feasibility Study
FSAP	Field Sampling and Analysis Plan

F *continued*

FTE	Full-Time Equivalent
FTP	File Transfer Protocol
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

M *continued*

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 (formerly known as OECM)
OECM	Office of Enforcement and Compliance Monitoring (now known as OECA)
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)

O *continued*

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
RMP	Risk Management Program
ROD	Record of Decision
RODS	Record of Decision System
RP	Responsible Party
RPM	Remedial Project Manager

R *continued*

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
SDMS	Superfund Document Management System
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)

T *continued*

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
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

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 (<i>cont'd</i>):	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 <i>de novo</i> 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 <i>de novo</i> 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 <i>de novo</i> 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 statute of limitations.
Federal Register:	A federal government publication that includes proposed regulations, responses to public comments received regarding proposed regulations, and final regulations. The <i>Federal Register</i> is published every working day by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408. The <i>Federal Register</i> 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 <i>Federal Register</i> 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 <i>force majeure</i> events. <i>Force majeure</i> 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 <i>force majeure</i> . Two examples of <i>force majeure</i> 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., <i>force majeure</i> .)

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 than 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:	<p>Waste material generated by a household; and waste material generated by a commercial, industrial, or institutional entity, to the extent that the waste material:</p> <ul style="list-style-type: none"> • 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://www.epa.gov/emergencies/lawsregs.htm#laws
National Oil and Hazardous Substances Pollution Contingency Plan	1.1.1	40 C.F.R. Part 300 http://www.epa.gov/emergencies/lawsregs.htm#laws
Oil Pollution Act of 1990	1.1.1	33 U.S.C. § 2701 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Interim Guidance on the Ability to Pay and De minimis Revisions to CERCLA Section 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act (May 17, 2004)	1.1.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/atp-demin-122g-04.pdf
Clean Air Act	1.2.2	42 U.S.C. § 7401 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Clean Water Act	1.2.2	33 U.S.C. § 1251 et seq. http://www.epa.gov/emergencies/lawsregs.htm#laws
Toxic Substances Control Act	1.2.2	15 U.S.C. § 2601 et seq. http://www.epa.gov/agriculture/lasca.html
Resource Conservation and Recovery Act	1.2.2	42 U.S.C. § 6901 et seq. http://www.epa.gov/epawaste/index.htm
CERCLA Hazardous Substances	1.2.2	40 C.F.R. Part 302 http://www.epa.gov/emergencies/lawsregs.htm#laws
Comptroller Policy Announcement 87-17, Interest Rates for Debts Recoverable Under the Superfund Amendments and Reauthorization Act of 1986 (September 30, 1986)	1.2.3	http://www.epa.gov/ocfo/finstatement/superfund/int_rate.htm

Chapter 1 References

Name	Section	Location
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
Standards and Practices for All Appropriate Inquiries, 40 C.F.R. Part 312 (November 1, 2005)	1.2.5	http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr312_main_02.tpl
Fact Sheet on All Appropriate Inquiries Final Rule (October 2005)	1.2.5	http://www.epa.gov/brownfields/aai/aai_final_factsheet.pdf
Internal Revenue Code of 1986	1.2.6	http://www.irs.gov/taxpros/article/0,,id=98137,00.html
Contiguous Property Owner Guidance Reference Sheet (February 5, 2004)	1.2.6	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contig-prop-faq.pdf
Superfund Recycling Equity Act (CERCLA Section 127)	1.2.6	42 U.S.C. § 9627 http://www.epa.gov/emergencies/lawsregs.htm#laws
Standards for the Management of Used Oil	1.2.6	40 C.F.R. Part 279 http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr279_08.html
Federal Insecticide, Fungicide, and Rodenticide Act	1.2.6	7 U.S.C. § 136 et seq. http://www.epa.gov/agriculture/lfra.html
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 6, 1989)	1.2.7	TBD
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

Chapter 1 References

Name	Section	Location
Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA Section 107(p) (August 20, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.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
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
Windfall Lien Administrative Procedures (January 8, 2008)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wf-admin-mem.pdf
Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA (July 16, 2003)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf
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
Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans (June 6, 2007)	1.2.7	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cercla-goodsam-principles-mem.pdf
Sample General Notice Letter (April 30, 2008)	1.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/gnl-mod-08.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
Small Business Information Sheet (October 2007)	1.3.1	http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/sm-allbusresources.pdf

Chapter 1 References

Name	Section	Location
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	OSWER Directive 9360.3-06; NTIS Product Code PB92963409 http://www.ntis/search/index.aspx
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

Name	Section	Location
Entry and Continued Access Under CERCLA (June 5, 1987)	2.0	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cont-access-mem.pdf
Applicable or Relevant and Appropriate Requirements (ARARs)	2.0	http://www.epa.gov/superfund/poliy/remedy/sfremedy/arars.htm
Superfund Program Implementation Manual (SPIM) Fiscal Year 2009/2010	2.0	http://www.epa.gov/superfund/action/process/spim09.htm
Performance Work Statement for Enforcement Support Services	2.1.1	Appendix A
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 (1965)	2.1.1	42 U.S.C. § 3056 et seq. http://www.doleta.gov/seniors/other_docs/owp-106-501.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
Small Business Information Sheet (October 2007)	2.1.2	EPA Publication 300-F-07-003 http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf
Confidentiality of Business Information	2.1.2	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampldoc-cercla-mem.pdf
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
Checklist of PRP Search Tasks	2.2	Appendix B

Chapter 2 References

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Checklist for Removal/Pre-remedial Sites	2.2.1	Appendix C
Performance Work Statement for Enforcement Support Services	2.2.1	Appendix A
Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993)	2.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-discre-info-rel.pdf
Privacy Policy (September 27, 2007)	2.3	http://www.epa.gov/irmpoli8/ciopolicy/2151.0.pdf
Confidentiality of Business Information	2.3	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Freedom of Information Act (Reference Guide)	2.3	5 U.S.C. § 552 et seq. http://www.epa.gov/foia/guide.html
Privacy Act	2.3	5 U.S.C. § 552 et seq. http://www4.law.cornell.edu/5/552a.html
Quick Reference Guide for Using CERCLIS/WasteLAN	2.4.2	Appendix D

Chapter 3 References

Name	Section	Location
Checklist of PRP Search Tasks	3.0	Appendix B
PRP Search Enhancement Team Members/Contacts	3.2.1	Appendix E
Information Requests – 104(e) Question Categories	3.3	http://www.epa.gov/compliance/resources/publications/cleanup/superfund/104e/index.html
Potentially Responsible Party Internet Information Sources (PRPIIS)	3.3.1	Appendix F
Superfund Enforcement Directory	3.3.1	http://www.epa.gov/compliance/cleanup/superfund/sfed/index.html
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	3.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampled-cercla-mem.pdf
False Statements Act	3.3.1	http://www4.law.cornell.edu/uscode/18/1001.html
Federal Debt Collection Procedures Act	3.3.1	http://www.uscode.house.gov/download/pls/28C176.txt
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	3.3.3	40 C.F.R. § 2.201-2.215 http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr2_01.html
Federal Rules of Evidence 801-817	3.4.1	http://www.law.cornell.edu/rules/fre/rules.htm
Federal Perjury Statute	3.4.2	18 U.S.C. § 1621 http://www.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001621----000-.html
Performance Work Statement for Enforcement Support Services	3.5.1	Appendix A

Chapter 3 References

Name	Section	Location
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
Information Requests – 104(e) Question Categories	4.1	http://www.epa.gov/compliance/resources/publications/cleanup/superfund/104e/index.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	4.2	40 C.F.R. Part 19 http://ecfr.gpoaccess.gov
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	4.4	28 U.S.C. App. http://www.uscourts.gov/rules/CV2008.pdf
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
Model Notice Approving Reduction in Settlement Amount Based on Inability to Pay (April 30, 2008)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-B-arc.pdf
Model Notice Denying Reduction in Settlement Amount Based on Inability to Pay (April 30, 2008)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-D-arc.pdf
Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act (May 17, 2004)	4.5.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/atp-demin-122g-04.pdf

Chapter 4 References

Name	Section	Location
Enforcement Economic Models	4.5.2	http://www.epa.gov/compliance/civil/econmodels ; http://www.indecon.com/iec_web/econmodels/practice/models
Individual Ability To Pay Claim (INDIPAY) Financial Data Request Form	4.5.2	Appendix G
Ability To Pay Individual Request for Information	4.5.2	Appendix H
Individual Ability To Pay Claim Financial Data Request Form	4.5.2	Appendix I
Financial Disclosure Statement To Be Completed by Individual Defendant	4.5.2	Appendix J
EDGAR	4.5.2	http://www.sec.gov/edgar.shtml
Potentially Responsible Party Internet Information Sources (PRPIIS)	4.5.2	Appendix F
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 Settlers 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

Addendum to the *EPA PRP Search Manual* November 2011

The purpose of this addendum is to inform users of the *EPA PRP Search Manual* (September 2009) of three recent guidance documents that address Superfund potentially responsible party (PRP) search issues. These documents were developed by EPA's Office of Site Remediation Enforcement in response to recommendations made by EPA's Office of Inspector General in the report *EPA Needs to Improve Internal Controls to Increase Cost Recovery* (October 7, 2009), which is available at <http://www.epa.gov/oig/reports/2009/20090427-09-P-0144.pdf>. These documents supplement, but do not supersede, the existing contents of the *PRP Search Manual*.

1. "EPA's Continued Efforts to Enhance CERCLA Cost Recovery" (July 2, 2010).

This guidance document addresses a number of CERCLA cost recovery issues, one of which relates to documentation of the results of PRP searches. Section VI. ("Appropriately Document All Costs") discusses close-out memoranda that memorialize decisions not to pursue cost recovery for removal or remedial costs under CERCLA. The guidance notes that, in addition to the decision document itself, "the Region should also place in the permanent site file all supporting documentation, such as an index of all PRP search documents . . . used in making the decision not to pursue further cost recovery" and the index should include "the physical or electronic location of the supporting documents."

2. "PRP Search Documentation Summary Requirements for Decision Documents to Not Pursue Cost Recovery Where Unaddressed Past Costs Are Greater Than \$200,000" (March 8, 2011).

- **Attachment A: "PRP Search Reference Summary"**
- **Attachment B: "PRP Search Activities Verification Form"**

This guidance document "establishes standard and mandatory PRP search documentation requirements to be included in Decision Documents . . . memorializing the Agency's determination to not pursue cost recovery, where total unaddressed past costs are greater than \$200,000." The guidance identifies minimum PRP search documentation requirements and provides as attachments: (a) the "PRP Search Reference Summary," which can be used to document PRP search tasks that were completed and where the results are located; and (b) the "PRP Search Activities Verification Form," which can be used to attest that all reasonable PRP search tasks have been completed to support the decision not to pursue cost recovery. The guidance also provides that the regions may use alternative methods of documenting a PRP search and its results, provided that they meet key requirements identified in the guidance.

3. **“Transmittal of „Preliminary Potentially Responsible Party Search Completion’ Measure Definition for Incorporation into the Superfund Program Implementation Manual for FY2012” (June 23, 2011).**

- **Attachment: “Preliminary Potentially Responsible Party Search Completion Definition and Documentation/Reporting Requirements”**

This memorandum transmitted the final text of a new “Preliminary PRP Search Completion” Superfund enforcement program measure to be included in the *Superfund Program Implementation Manual*. The measure identifies preliminary PRP search activities “taken to make an initial identification of PRPs at a site in order to determine if there are PRP(s) that are able to perform or finance all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site.” A preliminary PRP search is complete when the following tasks, as described in the measure and where applicable, have been completed and properly documented: (a) site location and property description; (b) current and past site ownership identification/notification; (c) site operation identification/notification; (d) site owner/operator liability/financial viability determination; and (e) arranger/transporter identification/notification. Alternatively, a preliminary PRP search is deemed complete if the region has “entered into a settlement with or issued orders to compel the identified PRPs to perform the initial non-emergency response action at the site” after completing some of the preliminary PRP search tasks. The measure also defines CERCLIS reporting requirements for preliminary PRP search completions and requirements for documenting the results of preliminary PRP searches in the site file, which can be satisfied using the “PRP Search Reference Summary” format described in the March 8, 2011, “PRP Search Documentation Summary Requirements” guidance document (which is discussed above).



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

JUL - 2 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: EPA's Continued Efforts to Enhance CERCLA Cost Recovery

FROM: Elliott J. Gilberg, Director
Office of Site Remediation Enforcement

TO: Regional Counsel, Regions I-X
Superfund Division Directors, Regions I-X

Over twenty years ago EPA issued the Superfund Cost Recovery Strategy ("Strategy"),¹ which noted that "cost recovery is one of the highest priorities of the Superfund program." This is as true today as it was in 1988. Many of the practices set forth in that Strategy and other relevant guidance are still in use today, and OSRE encourages the continued and enhanced use of these practices. In addition, we encourage the Regions to look for new ways to increase the effectiveness of EPA's cost recovery efforts. The purpose of this memorandum is to highlight some important cost recovery practices, and to encourage Regions to reevaluate their Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as "Superfund") cost recovery programs with an eye toward looking for areas of potential improvement.²

Currently, OSRE is taking steps to reinforce and evaluate areas of the cost recovery program. We have begun to evaluate Regional cost recovery documentation practices when EPA decides not to pursue cost recovery and we are examining the types of write-off or close-out documents (e.g., "Ten Point" summaries) prepared by Regions.³ Our evaluation focuses on the Regions' justifications for preparing write-off or close-out documents and how the Regions memorialize their write-off or close-out decisions in these documents. OSRE is also determining how and where the Regions maintain their decision documents and other related correspondence. Additionally, OSRE is surveying the Regions for enhanced cost recovery practices that can be

1 Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, OSWER Dir. No. 9832.13.

2 This memorandum is intended solely for the guidance of employees of EPA. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts. Nothing in this memorandum supersedes existing guidance and, as always, the Regions have the discretion to use an approach that has the greatest likelihood of success and will maximize the amount of recovery.

3 See EPA Needs to Improve Internal Controls to Increase Cost Recovery (October 7, 2009) (This OIG Report evaluated cost recovery activities at non-NPL removal sites to determine the Agency's internal controls to monitor cost recovery, document PRP searches and removal milestones, and ensure accurate cost recovery data.).

shared with other Regions. OSRE will also work with the Regions on developing sample or model documents to aid EPA's cost recovery, focusing on areas such as potentially responsible party (PRP) search documentation, field letters for removal actions, and compromises in administrative settlements.

I. Appropriate and Aggressive Use of Demand Letters

We encourage the aggressive use of demand letters in all appropriate cases. Often an initial demand for remedial costs is incorporated in a Special Notice Letter notifying the recipient of its potential liability as well as providing the recipient with the government's incurred costs to date and anticipated future costs. As noted in guidance, however, EPA may issue a written demand letter anytime after costs (removal or remedial) have been incurred under CERCLA.⁴ In some instances, it might be appropriate for EPA to issue a "stand-alone" written demand letter. The most common example is issuing a written demand letter at the conclusion of a removal action. Not only does a written demand letter create a formal mechanism for the Agency to recover its costs, but it also initiates the accrual of interest on expended costs.⁵

In addition, it is not necessary for a Region to anticipate referring a matter to the Department of Justice (DOJ) in order to issue a written demand letter. The Strategy states, "a demand letter should be issued . . . where response costs have been incurred under CERCLA *regardless of whether a decision has been made to initiate a judicial proceeding for cost recovery*"⁶ (emphasis added). It is not a prerequisite that the Region must contemplate referring a matter to DOJ if payment is not received in order to issue a demand letter.⁷ Issuing a written demand letter does not negatively impact the cost recovery program if, at some later date, the Region decides that it would not be appropriate to refer the matter to DOJ or that it is not an appropriate use of the Agency's limited resources to negotiate a settlement.⁸ Nevertheless, if EPA elects to issue a written demand letter, it must have a reasonable basis for believing the recipient is a PRP under section 107 and is therefore responsible for EPA's costs under the statute.

II. Continued Use of CERCLA Section 107(l) Liens

We recommend that Regions routinely use section 107(l) liens to preserve cost recovery opportunities. Under section 107(l) of CERCLA, a lien exists by operation of law in favor of the United States at any site at which EPA has spent Superfund monies. The Superfund lien arises on property subject to or affected by Superfund removal or remedial response actions when EPA incurs costs for such action and provides written notice of potential liability to the owner of the property. To perfect the lien, the Region should send the property owner a Notice of Intent to

4 See Written Demand for Recovery of Costs Incurred Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Bruce Diamond, March 21, 1991.

5 See 42 U.S.C. § 9607(a). Demand letters should explicitly state that interest begins to accrue on expended costs at the time of demand.

6 Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, page 22.

7 In many cases, however, failure to respond to a demand or failure to provide a good-faith offer will result in enforcement action by the Agency.

8 In fact, in low dollar cases the Region might know early on that it will not refer the matter to the Department of Justice. Nevertheless issuing a demand might still be appropriate.

Perfect Federal Lien and provide an opportunity for a hearing before a neutral official. If a hearing is requested, the Region may wait to record the lien after the neutral official has concluded that the statutory elements for recording the lien have been satisfied. Section 107(l)(3) of CERCLA provides that if the State has not by law designated an office for receipt of the notice of the lien, then the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located.

EPA has encouraged the use of CERCLA section 107(l) liens in various guidance documents.⁹ Although the Regions expend resources perfecting and maintaining liens, in many instances a lien is an effective cost recovery tool.¹⁰ For example, in one case a bankruptcy court approved a Stipulation and Order that reimbursed EPA approximately \$2.6 million in response costs from the filing of a lien. The money was disbursed from the proceeds of the sale of the source property at a Superfund site. EPA received 75% of the property sale proceeds by advancing an argument that the vast majority of its CERCLA lien took priority over the next largest claim, a county's real property tax lien, which was filed after EPA's lien arose. EPA argued its lien had priority because a plain reading of section 107(l)(3) of CERCLA made it clear that a CERCLA lien is subject only to the rights of purchasers, holders of security interests, or judgment lien creditors whose interests are filed under applicable State law before notice of the CERCLA lien has been filed.

Liens provide EPA the opportunity to recover CERCLA section 104(b) investigation and monitoring costs incurred by EPA regardless of whether an enforcement document is in place. In addition, filing a lien and demonstrating a willingness to proceed to a lien hearing can sometimes encourage an uncooperative party to move toward settlement. Finally, at some sites the only asset is the property and the lien allows the Agency to recover some of its costs once the property is sold.

III. Using Section 106(a) Unilateral Orders to Preserve Cost Recovery Resources

It is not unusual with a time-critical removal action to initiate the response as a Fund-lead activity. With a time-critical removal, the necessity to address the release, or threat of release, initially takes precedence over conducting a PRP search to find a liable party that can perform the response. Regardless, Regions should initiate a PRP search as early as practicable because it is vital to identify any viable PRPs that will be able to complete the removal action as a PRP-lead activity. Regions should routinely assess the possibility of converting Fund-lead removal actions into enforcement-lead. We encourage the Regions to develop a formal evaluation process for removal actions that will allow the Regions to reassess the status of liable parties and explore the option of issuing a section 106(a) order to a liable party to complete the removal action.¹¹ Such an approach fulfills the "enforcement first" policy of the Agency and allows Regional removal

9 See Guidance on Federal Superfund Liens, Thomas L. Adams Jr., September 22, 1987; Supplemental Guidance on Federal Superfund Liens, William A. White, July 29, 1993; Use of Federal Superfund Liens to Secure Response Costs, Barry Breen, May 28, 2002.

10 We recognize that in cases where the value of the site property is extremely low and is not likely to appreciate it might not be appropriate to expend resources perfecting a 107(l) lien.

11 For more on issuing UAOs for time-critical removal actions, see Issuance of Administrative Orders for Immediate Removal Actions, Lee M. Thomas, Feb. 21, 1984. It should be noted that issuing a UAO is not the only possible option for the Agency. Time permitting, Regions might find it more beneficial to negotiate an Administrative Order on Consent rather than issue a UAO.

resources to be preserved for other Sites where a viable, liable party is not available to perform the response.¹²

IV. Consider Pursuing Costs Where the Total Site Costs are Less Than \$200,000

In 1995, EPA issued guidance stating that Regions may prepare an abbreviated Decision Document for cases where total response costs are less than \$200,000.¹³ Unfortunately, this brief guidance may have inadvertently given the impression that it is generally not appropriate for EPA to pursue claims under \$200,000. The intent was not to discourage the pursuit of these smaller dollar claims, but rather to provide the Regions with flexibility to decide how best to manage smaller dollar claims by using an informal cost-benefit analysis. With very small dollar claims it will rarely make sound financial sense to perform an extensive and costly PRP search or to issue numerous demands or information requests. However, considering the numerous and varied cleanup cases EPA manages, it is very likely that Agency enforcement action would be appropriate in some cases.¹⁴

Additionally, the Agency has become more adept at recovering CERCLA costs due to a standardized cost recovery approach, and it is now possible to pursue some of these smaller dollar claims more efficiently. While it is true that the Agency has historically placed, and continues to place, a higher priority on cost recovery cases over \$200,000, there may be other reasons besides the dollar value of the case to pursue enforcement.¹⁵

Since the inception of the Superfund program EPA has recovered nearly \$138 million at sites where total costs were less than \$200,000, and we strongly encourage the Regions to continue pursuing smaller dollar claims whenever appropriate. The standard for pursuing these smaller dollar claims is the same for any other claim for response costs -- the Regions should weigh the resources needed to recover the costs against the amount that may be recovered, while considering the likelihood of recovery.¹⁶

V. Anticipate and Pre-empt Bankruptcy's Impact on Cost Recovery

Although EPA settlements often allow for "periodic" billing of future response costs, the Agency strives to bill its costs annually.¹⁷ The importance of annual billing has been highlighted recently by a number of bankruptcy filings involving companies that were historically considered highly solvent that have extensive environmental liabilities at Superfund sites nationwide.¹⁸

12 See Enforcement First for Remedial Action at Superfund Sites, John Peter Suarez and Marianne Lamont Horinko, September 20, 2002 (PRPs should conduct removal actions whenever possible, and EPA should pursue enforcement opportunities throughout the Superfund process).

13 See Cost Recovery Cases Where Site Costs Total Less Than \$200,000.00, Bruce M. Diamond, May 12, 1995.

14 For example, when the PRP is known; where the evidence is straightforward and uncontested; and where the PRP is viable.

15 There are some cases, where, even if the enforcement costs to the Agency potentially exceed the estimated recovery, EPA might decide that it is appropriate to pursue its claim because of an important legal or policy issue or the party's recalcitrance.

16 Interim CERCLA Settlement Policy, Lee M. Thomas, Courtney M. Price, F. Henry Habicht, December 5, 1984.

17 See CERCLA Future Response Costs: Settlement, Billing and Collection, Kenneth Patterson, June 20, 2002.

18 Within the last few years, many companies, including Chrysler, General Motors, ASARCO and W.R. Grace, have filed for protection under Chapter 11 of the United States Bankruptcy Code.

Sending annual bills in the years prior to a company's bankruptcy filing increases the probability that the Agency's annually incurred costs would be paid in full by the party before a potential bankruptcy filing. Once a PRP files for bankruptcy, all of EPA's unpaid response costs are lumped together in its proof of claim, with the potential that EPA will not recover all of its costs. As a way of maximizing our recovery of incurred costs, Regions should continue to strive to bill future response costs annually, recognizing the potential impact any subsequent bankruptcy filing would have on our recovery.

VI. Appropriately Document All Costs

As noted in the 1988 Cost Recovery Strategy, if a Region decides not to pursue a cost recovery action for either removal or remedial costs, a decision must be documented in a close-out memorandum.¹⁹ The Region should prepare a similar document in cases where the Agency has settled either administratively or judicially for less than 100% of costs and does not contemplate pursuing non-settling parties for the balance of the Agency's unrecovered costs. In the judicial context, this is typically done in the Ten Point Settlement Analysis that accompanies the referral to DOJ for entry of the consent decree.²⁰

In the administrative context, it is equally important to perform a similar analysis and generate a final decision document.²¹ It is essential for EPA's final decision document to identify total costs incurred by EPA, noting the amount of costs recovered, and any compromise of costs, including a justification for the compromise. The final decision document memorializes the Region's evaluation of the remaining cost recovery potential at the site and its decision to remove the case from further consideration by the Agency. This documentation should be retained in the site file so that a Region can easily provide justification for the decision not to pursue costs in response to any internal or external audit or cost recovery review.²² In addition to the final decision document, the Region should also place in the permanent site file all supporting documentation, such as an index of all PRP search documents and financial analyses used in making the decision not to pursue further cost recovery. The index should include the title of the final decision document, the date the document was created/finalized and the physical or electronic location of the supporting documents. The final decision document is enforcement confidential and should not be included in the administrative record.

Along with preparing the appropriate decision document, the Regions should continue to enter decision document information in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS).²³ When entering this information, the Region

19 See Guidance on Documenting Decisions Not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988.

20 If the decision not to pursue unrecovered costs is made after the Ten Point is finalized the Region should create a close-out memorandum that documents the basis of the decision not to pursue unrecovered costs. See Transmittal of the Superfund Cost Recovery Strategy, J. Winston Porter, July 29, 1988, page 39-40.

21 The name of the final decision document may vary by Region, for example, the "close-out" Memorandum, a "write-off" memorandum or a "decision not to take cost recovery action."

22 Creation of a final decision document to not pursue cost recovery does not bar the Agency from re-opening the case in the event additional parties or evidence is discovered at a later date. Any subsequent action, however, might be barred by the statute of limitations in section 113(g).

23 For consistency the CERCLIS justification should be explicitly stated in the closeout document.

will include the appropriate basis for not pursuing costs.²⁴ CERCLIS provides seven possible justifications for the decision not to pursue costs.²⁵ These are:

- (1) No PRPs identified;
- (2) No viable PRPs;
- (3) Insufficient evidence;
- (4) Questionable case;
- (5) Insufficient Resources;
- (6) Consideration of Response Work; and
- (7) Other.

As a point of clarification, “insufficient resources” refers to Regional resources, not PRP resources, and can only be used in cases where the total costs of response do not exceed \$200,000.²⁶ If a PRP is defunct, bankrupt, or insolvent, the proper category is “no viable PRPs.” “Questionable case” generally refers to a legal impediment to filing a cost recovery action (*e.g.*, the statute of limitations has run). “Consideration of Response Work” is for cases where costs are written off due to consideration of response work that the party has performed at the Site.

The “Other” category should be used sparingly to represent cases that truly do not fall within one of the other specific categories. When the “Other” category is selected, Regions are strongly encouraged to use the comment field in CERCLIS to provide additional details of the decision and avoid the necessity of any additional follow-up to determine the basis of the decision.

The following CERCLIS data pull shows the approximate use of each category for not pursuing cost recovery since the inception of the Program:

Justification	Percentage of Write-offs
No Viable PRP	29%
No PRPs Identified	11%
Questionable Case	3%
Insufficient Evidence	2%
Insufficient Resources	2%
Other	20%
Two or more justifications provided	13%
No justification provided	20%

Based on the data, approximately twenty percent of the time, the Regions failed to select a category or use the comment field in CERCLIS to justify the write-off. Another twenty percent of the time, the Region selected the “Other” category, but failed to provide a reason in

²⁴ CERCLIS refers to the decision not to pursue costs as a “write-off.”

²⁵ Six of the justifications are taken directly from Guidance on Documenting Decisions not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988.

²⁶ See Guidance on Documenting Decisions not to Take Cost Recovery Actions, Jonathan Z. Cannon, June 7, 1988, page 5. If a Region needs additional resources for a cost recovery case over \$200,000 it should contact OSRE for assistance.

CERCLIS for the write off.²⁷ Thus, in roughly forty percent of the cases where costs were written off, CERCLIS provides no assistance in determining why costs were not pursued.

OSRE recognizes that there are final decision documents for these cases, but without the additional details as to why the cases fit into the “Other” category, CERCLIS does not provide a quick and easy way to report why the costs were not pursued. It is important for the Regions to accurately identify the bases of the decisions not to pursue costs in CERCLIS, as accurate data entry is critical to a more robust review and analysis of these write-off cases.

VII. Conclusion

This memorandum is the first step in a continuing dialogue with the Regions on maintaining and improving CERCLA cost recovery. OSRE encourages Regions to revisit current cost recovery practices and adopt suggestions from this memorandum where appropriate. In addition, we look forward to working with the Regions to identify opportunities to improve the efficiency and effectiveness of the cost recovery program. Questions or comments regarding this document may be directed to David Dowton (dowton.david@epa.gov) 202-564-4228, Carolyn Lane-Wenner (lane-wenner.carolyn@epa.gov) 202-564-5129 or Ruth Broome (broome.ruth@epa.gov) 202-564-6077.

cc: Superfund Removal Managers, Regions I-X
Superfund Regional Counsel Branch Chiefs, Regions I-X
Information Management Coordinators, Regions I-X
Stefan Silzer, Director, Office of Financial Management (OFM), OCFO
Rafael Stein, Director, Financial Services Division, OCFO
Ianthe Gilmore, Director, Program Costing Staff, OFM, OCFO
Meshell Jones-Peeler, Deputy Director, Program Costing Staff, OFM, OCFO

²⁷ Although many of the “Other” or “no reason given” selections in CERCLIS occurred early in the Program, Regions are still selecting “Other” often enough that it poses a concern.



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

MAR 8 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: PRP Search Documentation Summary Requirements for Decision Documents to Not Pursue Cost Recovery Where Unaddressed Past Costs are Greater Than \$200,000

FROM: Elliott J. Gilberg, Director
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers, Regions I – X
Regional Counsel, Regions I - X

I. Background/Purpose

In 2009, the Environmental Protection Agency's (EPA) Office of Inspector General (IG) evaluated cost recovery activities at removal sites not on the National Priorities List (NPL) to identify EPA's internal controls for monitoring cost recovery, documenting potentially responsible party (PRP) searches, documenting removal milestones, and ensuring accurate cost recovery data.¹ As a result of the evaluation, the IG recommended that EPA's Office of Enforcement and Compliance Assurance (OECA) develop standard and mandatory PRP search documentation requirements that Regions would complete as part of the cost recovery decision document (closeout memo).

OECA agreed with the IG's recommendation. As such, this guidance establishes standard and mandatory PRP search documentation requirements to be included with Decision Documents (DD) memorializing the Agency's determination to not pursue cost recovery, where total unaddressed past costs are greater than \$200,000. This will ensure that standard and consistent PRP search information is available and easily locatable for all situations where EPA issues such decision documents. Based on this guidance, in the future these decision documents should:

- describe the PRP search activities undertaken for the site,
- summarize the results from those activities,
- include references for all PRP search documents used to make the decision to not pursue the unaddressed costs, and
- identify where those PRP search documents are located.

¹ See *EPA Needs to Improve Internal Controls to Increase Cost Recovery* (October 7, 2009) available at <http://www.epa.gov/oig/reports/2009/20090427-09-P-0144.pdf>.

The attached documentation tool is intended as a standard format for documenting the PRP search activities a Region has completed prior to issuing a decision to not pursue cost recovery.

II. Minimum Documentation Requirements

The PRP Search Documentation Reference Summary (hereafter referred to as the Reference Summary (Attachment A) should include, at a minimum, the following information in order to sufficiently document the site-specific PRP search activities that were conducted by the Region. The reference summary should be attached to the PRP Search Activities Verification Form identified under Section III and/or the cost recovery Decision Document. The minimum PRP search documentation requirements include:

A. Site name/identifiers

This section includes the official site name, aliases, operable units, and the site-spill identifier (SSID) from the Integrated Financial Management System (IFMS).

B. Point of Contact

This section includes the name of the individual(s) responsible for the site-specific PRP search activities at the time the Reference Summary or Regional Alternative, provided for in Section VII, is completed and verified. The Region should provide the individual's contact information for follow-up.

C. PRP Search Activities Accomplished

This section includes the title/description of the PRP Search activities completed. The Reference Summary divides PRP search activities into several major categories based on those essential tasks defined in Chapter 2 of the PRP Search Manual². Those categories are further detailed in the Reference Summary and include several mandatory activities relating to the property owners, site operational history, and liability/viability³ determinations for identified responsible parties.

D. Activity Completion Date

This section includes the date on which each specific PRP search activity was completed. This may be the date on which a specific reference document was created or reviewed by the PRP Search staff person referred to in paragraph B, above.

² <http://www.epa.gov/oecaerth/resources/publications/cleanup/superfund/prpmanual/prp-search-man-cmp-09.pdf>

³ In this context, viability relates to the continued existence of a PRP in some form. It does not necessarily include a formal ability to pay determination.

E. Reference Document Location

This section includes the specific location in the site file, including, but not limited to Superfund Document Management System (SDMS) index information, folder locations, and Bates stamping numbers, for documents supporting each PRP search activity listed in the Reference Summary.

III. PRP Search Activities Verification

The Reference Summary should be attached to either (1) the PRP Search Activities Verification form or (2) the Decision Document. The subject PRP Search Activities Verification form or associated Decision Document should contain the site name and the SSID, a synopsis/summary of the results of the PRP search efforts for the site, or portion of the site in question. If this information is included in the Decision Document in lieu of a separate PRP Search Activities Verification form, it should also include the amount of past costs being addressed through the action. If the PRP Search Activities Verification form is for a portion(s) of a defined site, the Region should indicate the unique SSID for the subject portion(s), or assign another unique site identifier to the portion(s) in question.

The PRP Search Activities Verification form should contain a signed statement by the individual in the Region (e.g., investigator or the investigator's supervisor), responsible for overseeing PRP search activities at the site (or portion thereof), attesting that sufficient PRP search tasks have been completed at the site to support the decision to not pursue unaddressed past costs. The document should be addressed to the person responsible for oversight of PRP search activities in the Region, as well as to the site file. An example/sample is attached (Attachment B). Once the PRP Search Activities Verification form is signed, the date of the final signature should be entered into CERCLIS as the PRP search completion date. After entry into CERCLIS, the signed document should be added to the official site file.

IV. Scope

The Reference Summary is only required for sites where the Region decides to not pursue cost recovery and unaddressed past costs are greater than \$200,000. Regions may, at their discretion, choose to use the associated Reference Summary and PRP Search Activities Verification form as a supporting document when proceeding with Fund-lead remedial action sites, certain Fund-lead removal actions, as determined by the Regions, and at sites where EPA issues a Decision Document to not pursue cost recovery less than \$200,000.

V. Alternative Methods for Satisfying Guidance Requirements

As an alternative to completing and attaching the "PRP Search Reference Summary" and associated PRP Search Activities Verification form, Regions may include a formal PRP Search Report to satisfy the requirements of this guidance, provided that the report contains a detailed summary/bibliography of the documents cited in the report. If the documents cited in the formal

PRP Search Report are included in the report or its appendices, this shall be deemed sufficient to satisfy the requirements of this guidance. The PRP Search Report should be annotated to identify the physical or electronic location of the documents referenced in the report.

In addition, should the Region have an alternative mechanism that meets the key requirements of the Reference Summary and associated PRP Search Activities Verification form, such as the 10-point settlement analysis, it may use that mechanism as an alternative to the examples provided in this guidance. Questions concerning whether the alternative mechanism meets the requirements of this guidance should be directed to the OSRE Leader, National PRP Search Enhancement Team.

VI. Prior Applicable Guidance

EPA has previously issued the following guidance and policy memoranda that address Superfund cost recovery and what is required of EPA when it makes a decision to not pursue cost recovery which remain pertinent and relevant today.

- Superfund Cost Recovery Strategy (J. Winston Porter, July 29, 1988) available at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cost-recover-mem.pdf>;
- Guidance on Decisions not to Take Cost Recovery Action (Jonathan Z. Cannon, June 7, 1988) (attached); and
- Cost Recovery Cases Where Site Costs Total Less Than \$200,000 (Bruce M. Diamond, May12, 1995) <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/costrecovcase-mem.pdf>.

These three guidance documents address, among other subjects: (1) when it is appropriate to make a decision to no longer pursue cost recovery; (2) what types of PRP search activities should generally be performed prior to making a decision to not pursue cost recovery; (3) how to document the basis for decisions to not pursue cost recovery; and (4) the universe of sites/cases that are subject to PRP search and documentation requirements. This guidance document supplements the above referenced documents. This guidance does not supersede the above referenced documents or affect existing requirements related to preparation of 10-point settlement analyses for CERCLA judicial enforcement actions.

VII. Enforcement Confidentiality

The attached Reference Summary and any associated documents (or alternative documents used to meet these requirements), once completed and submitted to the site file, should be evaluated by the Region on a case by case basis to determine if they should be treated as “enforcement confidential” and therefore not to be released under FOIA.

VIII. Contact Information

If you have any questions, please contact Bruce Pumphrey or Nancy Deck of the Program Evaluation and Coordination Branch, at 202-564-4222 or 202-564-6039, respectively.

Attachments

cc: National PRP Search Enhancement Team
Superfund Regional Counsel Branch Chiefs
Monica Gardner
Kenneth Patterson
Benjamin Lammie
Helena Healy
Reference Summary Guidance Development Team

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Site/Case Identification Information

Site Name:

Operable Unit (Where appropriate):

Site Spill Identifier:

Enforcement/Cost Recovery Contact Name:

Site Attorney Name:

Prior Site Enforcement/Cost Recovery Contact:

Amount Covered by Decision Document (direct and Indirect Costs):

Basis for not pursuing cost recovery:

- ☐ No PRPs Identified at the site
- ☐ PRPs Identified in Search Not Financially Viable
- ☐ Available evidence does not support one or more elements of a prospective case
- ☐ Pursuit of costs is not justified. Cost of pursuing cost recovery will exceed likely cost recovery and/or documented response costs
- ☐ Legal case is so questionable that cost recovery should not be pursued
- ☐ Limited Agency resources are being directed at higher priorities.
- ☐ Other Reasons (please describe)

PRPs Investigated:

Name	Current Owner/ Operator	Owner/ Operator at Disposal	Arranger	Transporter

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

A. Information Collection/Associated Party ID	Applicable (Y/N?)	Completed (FY/Q)
A1 - Property Ownership (Mandatory)		
<Supporting Document Name, Date, and Location>		
A2 - Operational History (Mandatory)		
<Supporting Document Name, Date, and Location>		
A3 - Waste Contribution/Other Party ID		
<Supporting Document Name, Date, and Location>		
A4 – Transporter Identification		
<Supporting Document Name, Date, and Location>		
A5 - Other Investigative Information		
<Supporting Document Name, Date, and Location>		
A6 - Ground Water-Specific Party Information		
<Supporting Document Name, Date, and Location>		
A7 - Mining-Specific Party Information		
<Supporting Document Name, Date, and Location>		
B. Liability Evaluation (Mandatory)		
<Supporting Document Name, Date, and Location>		
C. PRP Contribution Evaluation (as appropriate)		
<Supporting Document Name, Date, and Location>		
D. PRP Financial Viability/ATP/Insurance		
<Supporting Document Name, Date, and Location>		
E. PRP Notification		
<Supporting Document Name, Date, and Location>		
F. Other Site Specific PRP Analysis (as determined necessary by Region)		
<Supporting Document Name, Date, and Location>		

**PRP Search Activities Verification Form
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Date:

Subject: Verification of PRP Completion for Site Name/SSID site located in (City/State).

From: Site Enforcement/Cost Recovery Specialist (or other Regional designee)

To: Designated Regional Official/Site File

The purpose of this memorandum is to verify that as of (Date) attesting that all reasonable PRP search tasks have been completed at the site in support of the Regional decision not to pursue cost recovery, heretofore referred to as the "Decision Document," in the amount of \$ (Decision Document Amount Addressed) dated (Date Decision Document signed by designated Regional Official).

Attached is the PRP Search Reference Summary or Regional Alternative which list all PRP search documents that were used in making this determination and their respective location. Questions regarding this verification or the contents of the attached reference summary should be address to the Site Enforcement/Cost Recovery specialist for this site.



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

JUN 23 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transmittal of "Preliminary Potentially Responsible Party Search Completion" Measure Definition for Incorporation into the Superfund Program Implementation Manual for FY2012

FROM: Elliott J. Gilberg, Director *Elliott J. Gilberg*
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers, Regions I – X
Superfund Regional Counsel Branch Chiefs, Regions I – X

Attached is the "Preliminary Potentially Responsible Party (PRP) Search Completion" guidance document which describes preliminary search activities for identifying PRPs related to a site. This document also provides guidance on how to properly document the activities conducted in order to determine if there are PRPs to perform, or finance, all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site. The guidance contained in this document will be incorporated as a reporting measure into the Superfund Program Implementation Manual (SPIM) for implementation beginning in FY2012.

The "Preliminary PRP Search Completion" measure was developed in response to the Office of Inspector General(OIG) Evaluation Report titled "EPA Needs to Improve Internal Controls to Increase Cost Recovery," Report Number: 09-P-0144, dated April 27, 2009. The OIG recommended that the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) develop and implement a control to "monitor the status and timeliness of PRP searches at non NPL sites." OECA agreed with the recommendation and worked with the Regions, via the National PRP Search Enhancement Team, Superfund Policy Managers and Office of Regional Counsel Superfund Branch Chiefs to develop the measure. "Preliminary PRP Search Completions" will be tracked in CERCLIS to help EPA determine if basic PRP search activities have been completed and if they led to timely PRP response and/or cost recovery actions. When developing the measure, our focus was to ensure that the completion of the activities outlined in the guidance would maximize the opportunity for PRP response while not causing undue delays in initiating a timely Fund or PRP-lead initial "non-emergency" response action at a site.

Regions are expected to begin reporting "Preliminary PRP Search Completions" beginning in FY2012 for NPL and non-NPL sites where a non-emergency removal or remedial response action is expected at a site. The Preliminary PRP Search enforcement action is being added to CERCLIS and will be available for update beginning in FY2012. Should you have any questions or concerns, please contact Bruce Pumphrey of my staff at 202-564-4222 or via e-mail at pumphrey.bruce@epa.gov.

Attachment

cc: National PRP Search Enhancement Team
Monica Gardner
Karin Leff
Benjamin Lammie
Helena Healy

Attachment

Preliminary Potentially Responsible Party Search Completion Definition and Documentation/Reporting Requirements

Definition: “Preliminary PRP Search Completion:” the completion of certain activities taken to make an initial identification of PRPs at a site in order to determine if there are PRP(s) that are able to perform or finance all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site.

The Preliminary PRP Search will be considered complete when the Regions perform the PRP Search tasks steps outlined in section 1 or 2 below.

1. Regions have completed and properly documented PRP Search tasks A-E, below, as appropriate and practicable.

A. Site Location and Property Description

The Region has, as thoroughly as possible, identified the site location (*including one or more of the following: street address; parcel ID#; legal description from current deed of ownership; and/or tax map*) as necessary to complete requirement 1.B. below.

B. Current and Past Site Ownership Identification/Notification

The Region has, using the tools most appropriate for the site, conducted activities to identify current site owners as well as past site owners at the time of disposal of hazardous substances and where those site owner PRPs exist and can be located within a reasonable time, considering the exigencies of the situation, the Region has provided verbal notice and/or issued General Notice Letters to those parties the Region determines to be liable and capable of performing the initial response action at the site¹. In addition, as a part of this task, Regions have obtained information necessary to secure site access in order to allow for performance of the initial non-emergency response action at the site.

C. Site Operation Identification/Notification

If the operator(s) of the site/facility that caused the release or threat of release of hazardous substances are different from the site/facility owner(s) at the time of disposal, the Region has undertaken PRP Search activities necessary to identify site/facility operators and where those site operator PRPs exist and can be located within a reasonable time, considering the exigencies of the situation, the Region has provided verbal notice and/or issued General Notice Letters to those parties the Region determines to be liable and capable of performing the initial non-

¹ Regions may decide not to provide notice to certain liable and capable parties identified under tasks 1B, 1C, and 1E, , but should document the basis for such decisions to the site file through such mechanisms as the Removal Action Memo Enforcement Addendum or the RI/FS Enforcement Decision Document.

emergency response action at the site

D. Site Owner/Operator Liability/Financial Viability Determination

For each party identified under A., B. or C. of this section, the Region has determined, based on publicly available information whether: (1) the party may be liable under Section 107(a) of CERCLA; and (2) the party may be financially capable of performing or paying for all, or a portion of, the initial non-emergency response action at the site.

E. Arranger/Transporter(A/T) Identification/Notification

The Region has determined, based on readily available information such as site records, that either (1) no A/T PRPs appear to exist at the site or (2) there are A/T PRPs at the site, and the Region has provided verbal notice and/or issued General Notice Letters to those A/T PRPs initially identified through such information who the Region determines to be liable and capable of performing the initial non-emergency response action at the site and determined that, to the extent that A/T PRPs exist, additional PRP search efforts may be required.

OR

2. The Region has completed all, or a portion of, the above PRP Search tasks and entered into a settlement with or issued orders to compel the identified PRPs to perform the initial non-emergency response action at the site.

Reporting and requirements for documentation of Preliminary PRP Search Completion

If the Region has satisfied the Preliminary PRP Search Completion requirement by satisfying the tasks identified in Section 1, above, the Region should document this accomplishment in CERCLIS and in the site file. The documentation of the Preliminary PRP Search Completion for the site file should include a summary of the PRP Search tasks completed for each site. Such documentation can follow the format referenced in the January 2011 PRP Search Reference Summary guidance document, or the Region can follow a format already established, as long as it documents the Preliminary PRP Search Completion tasks performed and results (e.g., Removal Action Memorandum Enforcement Addendum, RI/FS Enforcement Decision Document as outlined in the 2005 RI/FS Guidance, OSWER Directive 9355.2.21(August 9, 2005)). The date that the documentation summarizing the PRP search tasks is created should be recorded as the completion date of the Preliminary PRP Search Completion milestone in CERCLIS.

If the Region has satisfied the Preliminary PRP Search Completion requirement by performing the tasks identified in Section 2., above, the date of the enforcement action/settlement to compel the initial non-emergency response action at the site should be recorded in CERCLIS. That date should also be used as the completion date of the

Preliminary PRP Search Completion milestone in CERCLIS, while not required, Regions may also want to document the PRP search activities accomplished prior to meeting the requirements in section 2 in the site file, through the use of the PRP Search Documentation Summary or other Regional mechanism.