

US EPA ARCHIVE DOCUMENT



**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, May 12, 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.

US EPA ARCHIVE DOCUMENT

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.