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

JUN 29 [redacted]

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program

FROM: Bruce M. Diamond, Director
Office of Waste Programs Enforcement

TO: Directors, Waste Management Division, Regions I, IV, V, VII, VIII
Director, Emergency & Remedial Response Division, Region II
Directors, Hazardous Waste Management Division, Regions III, VI
Director, Toxics & Waste Management Division, Region IX
Director, Hazardous Waste Division, Region X

The purpose of this memorandum is to transmit to you new PRP Search Guidance entitled, "PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program." This Guidance supplements the PRP Search Manual which was issued in August, 1987. It is intended to assist you in conducting complex PRP searches for the Superfund remedial program and preparing PRP search reports.

The Supplemental Guidance addresses the findings that resulted from an evaluation of the PRP search program which was conducted by the CERCLA Enforcement Division (CED) in FY88. The evaluation focused on PRP searches which were performed for NPL sites in the Superfund remedial program. The evaluation findings and a series of recommendations were first presented to you for comment in a December 30, 1988 memorandum from Lloyd Guerci entitled, "Interim PRP Search Program Evaluation Findings and Improvements." This Guidance builds upon the recommendations which were made in the memorandum and your comments to them.

The major findings of the PRP search evaluation included the following:

- Accuracy and completeness of PRP search data were often inadequate, including identification and location of PRPs.

- Follow-up action to PRP search baseline information was not, in many cases, undertaken in a timely manner, e.g., issuance of Section 104(e) letters.

- Follow-up action to interviews and records collection leads was often insufficient; leading to lack of identification of PRPs in some cases.

The Supplemental Guidance focuses on operational procedures to eliminate these problems and ensure the accuracy and completeness of PRP search information through adequate documentation and timely and effective follow-up actions.

In addition to addressing the findings which resulted from the PRP Search Evaluation, the Supplemental Guidance also focuses on several major PRP search issues which were not given proper emphasis in the PRP Search Manual. The first of these issues is the use of information gained from the PRP search, particularly as it relates to issuance of General and Special Notice Letters and the release of information to PRPs under CERCLA Section 122(e). The PRP Search Guidance stresses the importance of the PRP search as the foundation of these significant site enforcement actions.

The second issue relates to the elements of PRP liability under Section 107 of CERCLA. It is clearly stated in the Guidance that PRP searches must focus on the development of evidentiary information concerning the liability of PRPs to meet the Agency's goals of encouraging and compelling PRP participation in site clean-up and cost recovery. To this end, the Guidance introduces the use of evidence summary sheets to track the status of research into the liability of each PRP.

Lastly, the importance of follow-up action and documentation of such follow-up action is stressed in the Guidance. The most significant addition to the body of PRP Search Guidance is the process description of a follow-up phase to the baseline report, which is not covered in the PRP Search Manual. The focus of this phase is on the development of information on generator and transporter liability for General and Special Notice Letters. This is an important addition to the remedial PRP search process.

The main body of the guidance is divided into three sections: PRP Search Planning, PRP Search Process, and PRP Search Reports Format and Content. The section on PRP Search

Planning is intended to assist you in planning for remedial PRP searches. The PRP Search Process section describes the baseline and follow-up PRP search phases. The PRP Search Reports Format and Content section outlines the content of PRP search reports and their appendices. The enhancements to the PRP search process provided in this guidance are expected to measurably improve the quality of PRP searches and the content and quality of PRP search reports. Application of the Guidance should, therefore, significantly assist the Superfund enforcement program efforts.

As you know, CED will be conducting a national PRP Search Orientation Session for Regional Office and Technical Enforcement Support (TES) contractor personnel with PRP search responsibilities on July 18-20, 1989 in Chicago, Illinois. Information concerning the Orientation Session was communicated to you in mid-June, 1989. The new PRP Search Supplemental Guidance will be the focus of discussion at this Orientation Session. I urge your support and your staff participation in this Orientation Session which will address the many enhancements to the Agency PRP Search program discussed in the Guidance.

If you have any questions or comments concerning the Supplemental Guidance and Orientation Session, please do not hesitate to contact Frank Biros, Chief, Technical Support Branch at FTS 475-7281.

Attachment

cc: CERCLA Enforcement Branch Chiefs, Regions I-X
CERCLA Enforcement Section Chiefs, Regions I-X
Regional Counsel Hazardous Waste Branch Chiefs, Regions I-X
Civil Investigators, Regions I-X

OSWER Directive 9834.3-2a

PRP SEARCH SUPPLEMENTAL GUIDANCE

FOR SITES IN THE SUPERFUND

REMEDIAL PROGRAM

FINAL

June 16, 1989

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.

PRP Search Supplemental Guidance

for Sites in the Superfund Remedial Program

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PRP SEARCH SUPPLEMENTAL GUIDANCE FOR SITES IN THE SUPERFUND REMEDIAL PROGRAM

The purpose of this document is to provide guidance on PRP search planning and management and on the content of PRP search reports. This guidance applies to sites in the remedial program and it supplements the August, 1987 PRP Search Manual.

I. INTRODUCTION

The broad objective of a PRP search is to gather information on the potentially responsible parties (PRPs) that may be liable and necessary evidence for Section 106 and 107 actions under CERCLA. This information is used in numerous contexts including: (1) preparation of General Notice Letters; (2) preparation of Special Notice Letters and attachments; (3) assessment of settlements, including full settlements in light of the litigation risks on liability and ability to pay, and partial settlements, regarding the appropriateness of the settlement, the case remaining against non-settlers, and any special statutory concerns (e.g., de minimis, mixed funding); (4) identification of names for community relations mailing lists; (5) identification of information on the amounts of substances sent to/disposed of at the site and, if available, the location of disposal and consequences of disposal for the remedial investigation and determination of whether RCRA hazardous wastes were sent to /disposed of at the site for assessment of potential ARARs; and, (6) evidence in cost recovery (Section 107), injunctive and access actions (Sections 104, 106), and for other legal actions under CERCLA such as liens.

The results of the PRP search and related activities should provide information to support the elements of liability set forth in Section 107(a) of CERCLA for each designated PRP. The general elements of liability are:

- The site is a facility;
- Releases or threatened releases of hazardous substances occurred at the site;
- The defendant is within one of the classes of parties that are liable;
- For cost recovery cases, the plaintiff incurred response costs as a result of the release.

Some of this information may be obtained from the PA/SI or RI/FS.

Under Section 107(a), liability for response costs is imposed on four classes of persons including:

- Present owners and operators;
  - Present owners or operators of a facility are liable even if they did not contaminate the property.
- Past owners and operators;
  - Past owners or operators are liable if they owned or operated the facility at the time that hazardous substances were disposed of.
- Persons who arranged for either the treatment and/or disposal, or the transportation for treatment or disposal of hazardous substances (e.g., generators). Where a generator is involved, the following elements establish a generator's liability:
  - The generator disposed of or made arrangements for the disposal or treatment of hazardous substances;
  - The generator's hazardous substances or hazardous substances of the same type were present at the site; and,
  - An actual or threatened release of the generator's or any other hazardous substance occurred at the facility.
- Persons who accepted hazardous substances for transport to disposal or treatment facilities that they selected (e.g., transporters).

The PRP search process must focus on the comprehensive development of this information concerning PRPs to meet the Agency's goals of encouraging and compelling PRP participation in site clean-up and cost recovery. The process described in this guidance is intended to provide direction in managing a PRP search including identification of the PRPs associated with a site and collection of sufficient evidence concerning the PRPs. The report format is intended to assure appropriate summaries and documentation.

II. PRP SEARCH PLANNING

A site-specific PRP search plan or strategy should be formulated for each PRP search. PRP search plans should include activities to be conducted, roles and responsibilities, a schedule including interim management review, and a method of managing information. For initial planning purposes, the PRP search schedule may reflect that searches for single owner/operator industrial plant sites take two quarters and multi-generator searches typically are conducted in two phases which usually cover five or more quarters. Particularly complicated PRP searches, such as sites with very large numbers of PRPs, typically take longer. Out year planning should start the search with the listing site inspection and should plan for search completion at least two quarters before the RI/FS start in order to allow time for General and Special Notice Letters to be issued.

To ensure that the plan addresses all reasonably foreseeable legal, technical, and policy issues, the PRP search manager should request that his Section Chief, a Regional Civil Investigator, and an attorney from the Office of Regional Counsel assist in formulating the plan.

A) Activities to be Conducted

The first matter to be considered in formulating the plan is the identification of activities to be conducted. Ordinarily, a search for an industrial plant site with one or a few owner/operators should be based on the baseline report in the PRP Search Manual. The baseline search usually consists of the ten basic tasks which are outlined in the PRP Search Manual and discussed in the process section of this document. For multi-generator or multi-transporter sites PRP searches should typically be conducted in two phases: baseline and follow-up. The follow-up tasks are also described in the PRP Search Manual as well as the process section of this document and, upon completion, are reflected in the interim final report. Those

formulating the PRP search plan should decide upon the sequence in which these tasks are to be performed and the timing of the baseline report. The process section of this document and its accompanying flowchart (Attachment 1) are intended to assist the Regions in formulating PRP search plans. The activities should lead to the preparation of search reports and appendices as described later in this guidance.

The initial plan will be preliminary because it is not possible to predict with certainty what information will be produced, what questions will arise after the initial tasks of the baseline search, or what follow-up action will be required for a complex search until the baseline phase has been completed.

In addition, PRP searches are iterative in nature. Many tasks are performed more than once, particularly interviews and information request mailings. Also, although the PRP search process is divided into phases, these phases are not discrete. Baseline tasks can be conducted during the follow-up phase and specialized tasks can be conducted during the baseline phase. For example, Section 104(e) information requests should be sent during the baseline and follow-up phases, even though information requests are listed as a baseline task.

B) Roles and Responsibilities

The second matter to be considered in formulating the PRP search plan is the definition of roles and responsibilities. A Regional person will be assigned lead responsibility for the search. Regions will generally task contractors, such as Technical Enforcement Support (TES) contractors, to perform the baseline tasks and a small number of specialized tasks. These tasks should be clearly defined in the PRP search work assignment. Long-term tasks with one deliverable at the end should be avoided. Incremental assignments with phased deliverables are often the preferred approach.

Regional Civil Investigators are often responsible for interviews with private parties and PRPs, and for any investigative work that is best performed by a representative of the government. For example, access to State Department of Motor Vehicle information should be left to a Regional Civil Investigator, not a contractor. Regional attorneys often participate in preparation of Section 104(e) letters, evidence review, and analysis of corporate successorship.

At critical stages in the process, PRP search activities and information gained should be reviewed by the PRP search manager, his Section Chief, a Regional Civil Investigator, and an attorney

from the Office of Regional Counsel. PRP searches entail a number of complex issues. The involvement of these individuals in the review of deliverables will ensure that program as well as evidentiary requirements are being met.

C) Scheduling

The PRP search plan should be translated into a schedule which begins with the initiation of the search, includes Special Notice, and concludes with the satisfaction of evidentiary concerns. Resolution of evidentiary concerns will often follow the RI/FS Special Notice. For planning purposes, PRP searches should be scheduled over two to five quarters with more time allowed for complex multi-generator sites. Some sites, such as sites with complex area-wide groundwater contamination with multiple sources of hazardous substance releases or stream sediment contamination, may require specialized tasks during the remedial investigation. In general, the baseline report should be delivered 180 days after post-strategy tasking of a contractor, and the interim final report should be delivered at the end of the fifth or sixth quarter.

D) Information Management

As part of planning, the search manager should establish a file structure and a system for documenting work performed and follow-up required. The file structure (a) should be consistent with the appendices to be prepared for the search report, (b) should facilitate General and Special Notice and provisions of appropriate information to PRPs as part of information exchange and in response to FOIA requests (e.g., responses to Section 104(e)) and, (c) should organize and secure other information, such as analyses of liability, in enforcement confidential files. Evidentiary concerns [e.g., authenticity, exemptions from hearsay (e.g., business records)] should be anticipated with regard to the ultimate introduction of documents received into evidence. Moreover, document control systems (e.g., numbers) should be established. Finally, the number of document copies to be provided by the contractor should be determined.

III. PRP SEARCH PROCESS

Except at owner/operator sites, PRP searches should be conducted in two phases: baseline and follow-up (Attachment 1). The purpose of the baseline report phase is to gather information about the site and the owner/operators associated with it as well as information that the owner/operator may have about generators and transporters. The follow-up phase builds upon the

information contained in the baseline report through additional research and specialized tasks. Although this phase continues through the completion of the interim final report, it may be necessary to continue the search after the report has been delivered, particularly for multi-party sites.

A) Baseline Report Phase

The baseline phase should yield information about the site and the parties associated with it as well as establish the liability of all owner/operator PRPs. The baseline phase usually entails the use of all or most of the 10 baseline tasks outlined in the PRP Search Manual:

BASELINE TASKS

- Agency Records Collection
- Records Compilation
- Interviews with Government Officials
- Title Search
- History of Site Operations
- PRP Name and Address Update
- PRP Status/History
- Financial Status
- CERCLA Section 104(e)/RCRA Section 3007 letters
- Report Preparation

For the baseline process discussion, these tasks will be broken into five categories: Records Collection, Interviews with Government Officials, and Title Searches; Section 104(e) Information Requests; Analysis, Follow-up, and Additional Research; Updating PRP Status; and Baseline Report Preparation and Review. On a site-by-site basis, some specialized tasks may be included in the baseline search.

1) Records Collection, Interviews with Government Officials, and Title Searches

Generally, the first step in the baseline PRP search is to initiate the information gathering tasks. The information gathering tasks are Agency Records Collection, Interviews with Government Officials, and the Title Search. These tasks should be conducted concurrently. Consistent with the search plan, a contractor work assignment may be prepared. The contractor work plan should be focused so as to not provide for extensive efforts on searches for non-existent or largely irrelevant documents.

First, offices with relevant records at the Federal, State, and local government levels should be identified and copies of

their records should be obtained. Interviews with government officials should be conducted concurrent with government records collection to develop information about on-site operations and operators that may not be readily apparent in site-related documents.

A title search should be initiated concurrent with the other information gathering tasks to identify past and present site owners. Approximately 60-90 days into the PRP search, the results of the title search should be available for analysis. At this time, information request letters should be formulated and issued to the past and present owners of the site as well as any identified operators.

a) Records Collection

Relevant Federal records may be found in the CERCLA, RCRA, Air, and Water program offices of EPA as well as the Office of Regional Counsel. EPA program offices may contain permits, inspection reports, and correspondence that provide information on the activities which have taken place at the site. In addition, other federal agencies and departments, such as the Department of Interior, Bureaus of Mines and Reclamation, and USGS, may be in possession of pertinent site records, particularly in the case of mining sites.

Several State offices may contain relevant PRP search documents. Among these offices are the appropriate State Departments of Health and Natural Resources, the Superfund and RCRA program offices, and the Offices of the Attorney General. The Environmental, Water Conservation, and Soil Conservation Boards may also contain pertinent site records. State government offices may be in possession of licenses and permits, inspection reports, contamination or environmental studies, sampling data, and memoranda and correspondence between site owner/operators and State officials.

Relevant local government records can be found in the Office of the City or County Attorney, the Health Department, and the Department of Public Works. Additional document sources include the Wastewater Management or Pollution Control Departments, and the Planning, Land Use, and Engineering Departments. Other possible sources include zoning boards and police and fire departments. Local government offices generally contain accident reports, permits and licenses, local disposal guidelines, inspection and violation reports, and memoranda and correspondence between site owner/operators and local officials. In some cases, local offices may contain site history memos and lists of hazardous materials prepared by local officials.

b) Interviews with Government Officials

Interviewing complements the collection of relevant site records and aids in the development of site-specific information that may not be recorded in government or PRP documents. Interviews may identify relevant site records, permits, and clean-up orders. Interviews may also help to identify the existence of relevant documents such as hauler licenses, business licenses, landfill permits, zoning permits, building permits, and zoning ordinances.

State and local officials can be particularly helpful in identifying knowledgeable people for interviews. They may know the names of the operators. Further, they may be able to direct the investigator to other government officials or persons with knowledge of the site and operations. They may also know of current or former site employees who may be willing to be interviewed. Finally, State and local officials may know of citizens groups and site neighbors who may have information about the site or know of persons who do.

c) Title Searches

Title searches are performed to identify past and present site owners. In addition, based upon potential access needs, the search may extend beyond the site to present nearby owners. In general, past owners are liable if they were owners at the time of disposal (Section 107(a)(2) CERCLA). The title search area and time period should be clearly defined. A legal description of the site is best; however, county tax assessors parcel numbers and the street address are also helpful. In developing as precise a description of the title search area as possible, the PRP search manager ensures that the title search will be accurate.

In general, title search companies only provide a summary of the chain-of-title. Accordingly, their review of title records does not focus on environmental conditions at the site. EPA or the PRP search contractor should, therefore, assure review of leases and deeds for restrictive language concerning groundwater or land use.

2) Section 104(e) Information Requests

CERCLA Section 104(e)/RCRA Section 3007 information requests should be issued to the owner/operators identified in the title search, documents, or interviews during the baseline phase of the PRP search. In some cases, it may be prudent to conduct an interview with the party prior to issuing the information

request. This helps to establish the availability of records and focuses the process of formulating the information request.

The information request letter should identify the site. It should cite EPA's statutory authority, and indicate that the Agency plans to enforce this authority. Specific reference should be made to the enforcement provisions in Section 104(e)(5) of CERCLA.

Recipients should be requested to provide information as indicated in the Final Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas, (OECM, August 1988). This includes the following categories of information:

- Owners;
  - Names and addresses, including updated information;
  - Periods of ownership and type of ownership;
  - Corporate successorship;
  - Site history during ownership including;
    - Activities;
    - Operations;
    - Disposal [information on disposal and the substances disposed of at the facility during periods of past ownership and operation (for liability) and amounts, nature, and locations (for the remedial investigation)];
    - Site conditions;
  - Information on whether wastes were RCRA hazardous wastes (for evaluation of potential ARARs);
  - Lessors/lessees and the above information;
  - Information related to defenses; de minimis status;
  - For small businesses, individuals with control.
- Operators;

- Similar to owner information, except for operations;
- Individuals in charge.

o Financial Information;

- Ability to pay;
- Insurance (PRP's comprehensive general liability and environmental impairment insurance: general questions about the insurance coverage and copies of the policies).

o Information that the owner/operator has concerning wastes sent to the site and possible generators and transporters;

- Periods, names/addresses of generators and transporters, quantities, and substances;
- Any arrangements made with regard to materials sent to or from the site;
- A description of information that the owner/operator has on the total amount and each shipment of materials transported to, or stored, treated, or disposed at the site including:
  - o Dates of shipment or disposal;
  - o Quantity and nature of the materials;
  - o Hazardous substances (as defined in 40 CFR Section 302.4) contained in the materials. This includes information on the waste and waste stream as possible RCRA hazardous wastes to enable the Agency to determine if the RCRA regulated waste may be an ARAR (e.g., land ban)
- Updated names and addresses.

o Documents;

- Copies of all business records relating to activities at the site, including customer lists, gate logs, ledgers, invoices, accounts receivable,

and back-up income records for taxes, correspondence.

- Names and addresses of individuals who have information regarding the above;
- Any data or studies resulting from environmental investigations at the site;
- A description of the files searched by the person, or corporation, in response to the Agency's request;
- Special information for particular classes of sites, such as municipal landfills;
- A description of the recipient person's or corporation's relationship to the site.

The letter should indicate that it is the PRP's responsibility to inform the Agency if any of the material provided in their response is confidential and subject to protection under Section 104(e)(7) of CERCLA. In those cases where the recipient is unable to provide the agency with the information sought, the recipient should provide EPA with an affidavit describing the scope of the investigation conducted by the recipient in response to the Section 104(e) letter.

3) Enforcement of Non-Compliance with Information Requests Issued Under Section 104(e)

The Agency may compel compliance with a request for information by Administrative Orders and Judicial Actions. If a response to an information request is not received within the specified time period, usually 30 days, the program and Regional Counsel offices must consider taking appropriate enforcement action.

a) Administrative Orders

Under Section 104(e)(5), the Agency can issue administrative orders, subject to notice and opportunity for consultation, to compel compliance with information requests. These should be sent promptly to a recipient who has not responded to the request for information. If the recipient, after receiving the order, continues to ignore the request for information, the Agency may petition a Federal District Court to enforce the order.

b) Judicial Actions

Section 104(e)(5) of CERCLA provides the Agency with the authority to initiate a civil lawsuit with penalties to compel a person to respond to a request for information. These penalties are based upon strict liability, and the Agency does not have to prove that the recipient intended to violate the law by not responding in a timely manner.

Judicial actions are referred to the Department of Justice for enforcement. When the Agency refers a case to DOJ, the referral should be handled in accordance with the procedures set forth in Expansion of Direct Referral of Cases to the Department of Justice, (OECM, January 1988). In time-critical situations, the region should refer to Procedures for Processing Oral and Other Expedited Referrals, (OECM, December 1987), and Waste Procedures for Processing Oral and Other Expedited Referrals, (OECM, April 1988).

c) Criminal Proceedings

It is a criminal offense to mislead the government as to the absence of information or the content of information. Such matters should be discussed with Regional Counsel.

d) Administrative Subpoenas

In addition, administrative subpoenas are authorized under Section 122(e)(3)(B) of CERCLA. A subpoena compels an individual to answer questions under oath, and when requested, to produce documents. Regional Counsel may secure issuance of the subpoena and select the location for the hearing. If the individual ignores the subpoena, Regional Counsel will prepare a judicial referral to compel the witness to respond.

Administrative subpoenas are not generally used for initial information gathering. The Agency has stated a preference for using information request letters, under Section 104(e)(2), to obtain initial information about a person's involvement at a site.

4) Updating PRP Status

At many sites, disposal took place years ago. Since that time the companies that owned and operated the site may have moved, been sold, or have gone out of business. For these reasons, information on owners and operators must be updated and followed-up. The current address of the company should be determined, if possible. It should be determined if a company is

defunct and not dissolved, dissolved, or been through bankruptcy. If the company has been sold or merged with another company, corporate successor liability should be considered. The search manager should consult with the Office of Regional Counsel and Liability of Corporate Shareholders and Successor Corporations for Abandoned Sites Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (OECM, June 13, 1984).

If the company has gone out of business or lacks resources, several avenues should be considered. First, the company may have had insurance. Second, if the company was the subsidiary of a larger company, the parent corporation may be liable. Third, individuals who controlled operations may be liable. The search manager should consult with the Assistant Regional Counsel on these matters.

5) Analysis, Follow-up, and Additional Research

Documents, interview summaries, and responses to information requests should be organized consistent with the information management provisions of the PRP search plan. They should be analyzed for information that links a party to the site, the sufficiency of evidence that establishes the liability of a PRP, financial viability, and leads that may provide the Region with additional information about a PRP's and other PRPs involvement with the site.

The information contained in the documents, interview summaries, and information request responses should be used to develop a history of site activities and the involvement of various parties in the treatment or disposal of hazardous substances. The history should begin with the events immediately preceding the first industrial use/disposal at the site and continue through the present. The focus should be activities and the involvement/association of owners and operators, with leads on generators and transporters and not reconstruction of site history. Therefore, lengthy historical narratives should be avoided.

A list of parties associated with the site who may be PRPs should be developed. The information in the documents, interview summaries, and information request responses which pertain to their liability should be evaluated on evidence evaluation sheets created expressly for this purpose. A separate sheet should be kept for each PRP. These evaluation sheets serve to indicate the status of searches into the liability of each PRP from a completeness, legally admissable evidence, and financial viability perspective. Where a key item of information is

provided by a party other than that PRP, a tailored information request may be used to ascertain the PRP's view of these facts. Also, hearsay information should be verified by admissable evidence. Interviews to verify past and present owner/operator liability may be conducted during this phase or in the follow-up phase.

In addition to developing a site history and extracting evidence on the liability of owners and operators, the documents, interview summaries, and information request responses should be analyzed for leads which may provide additional information about PRPs associated with the site. These leads, in addition to any other leads which may be obtained through interviews and information requests, should be documented and appropriate follow-up action should be taken.

Through a combination of interviews, records collection, and information requests, additional information on owners and operators and the names of possible generators and transporters should be gathered. Generator liability is further developed in the second phase of the PRP search. Care should be taken that all follow-up work is documented and an indication is clearly provided as to the source of the information. If sufficient evidence on the liability of owner/operators has been developed through the title search and information requests, General Notice Letters should be issued before the baseline report is prepared.

6) Baseline Report Preparation and Review

The baseline report contains a concise summary of information obtained to date from the baseline search activities. The report provides information on owner/operators and leads on generators and transporters which enable the search manager and Regional management to assess the extent and nature of gaps in PRP liability data. References and back-up information are set forth in a series of appendices. The format and content for a PRP search report is presented in the PRP search reports section of this document. The report should be stamped: "Enforcement Confidential, FOIA Exempt, Prepared in Anticipation of Litigation."

Information in the report should be carefully reviewed by the PRP search manager, Regional Civil Investigator, Office of Regional Counsel, and Regional management. This review should take into consideration whether all possible owners and operators associated with the site have been identified, the completeness of waste-in information, the sufficiency of the evidence documenting a PRP's liability and financial viability, and the appropriate work to be performed in the follow-up phase.

B) Follow-up Phase

The follow-up phase builds upon the information presented in the baseline report through additional inquiries and the use of the baseline information gathering tasks and some of the 18 specialized tasks identified in the PRP Search Manual:

SPECIALIZED TASKS

- Sources of Information
  - PRP File Review
  - Private Party/PRP Interview
  - Field Survey
  - Site Sampling
  - Site Enforcement Tracking System (SETS)
  - Aerial Photographs
  - CERCLA Subpoenas
  - Private Investigator
- Waste Stream Analysis
  - Industrial Surveys
  - Process Chemistry Analysis
  - Waste Stream Inventory
- Databases
  - Transactional Databases
  - Correspondence Tracking Databases
  - Document Inventory Databases
- Miscellaneous Tasks
  - Compliance History
  - Financial Assessment
  - Generator Ranking
  - Property Appraisal

This phase should supplement the baseline search to produce a report which identifies owner/operators, persons who arranged for treatment or disposal (e.g., generators), and transporters. It provides information for General and Special Notice Letters, evidence of liability, and information on financial resources. The PRP search plan should be updated to focus on follow-up efforts. For the follow-up phase discussion, the process will be broken into five categories: Section 104(e) Information Requests; Supplemental Information Gathering; Analysis, Follow-up, and Additional Research; Interim Final Report Preparation;

and Interim Report Follow-up. The particular steps to be taken at any site are based upon the likely universe of PRPs and the availability of information, as set forth in the updated plan.

1) Section 104(e) Information Requests

Usually, the first step in the interim final phase is to issue Section 104(e) information requests to potential generators and transporters who were identified in the baseline report. Additional generators and transporters are likely to be identified during the follow-up phase. Information requests should be sent to them as they are identified. The Section 104(e) information request section in the baseline phase of this document discusses information request content and non-compliance enforcement strategies. Information requests should focus on the hazardous substances in the wastes (CERCLA Section 101(14) and 40 CFR Section 302.4), the volumes or quantities sent to the site, the dates or time periods of the shipments, and the generator's financial viability. The information request letter should also elicit any information the PRP has or contends to have which establishes that its waste was never sent to the site or was removed before EPA, the State, or someone else undertook a response. For transporters, a critical issue is whether the transporter selected the site. It is extremely important to obtain all potentially relevant documents. The potential for evasive and incomplete responses is substantial.

While generator and transporter information requests are being issued, it may be appropriate to send a follow-up information request to one or more of the owner/operators who were issued a request during the baseline phase. If a request is sent, it should be targeted at obtaining more specific information regarding site operations, record keeping, or liability.

2) Supplemental Information Gathering

Often, the second step in the follow-up phase is to gather further information about the site and the PRPs through information gathering tools similar to or expanding upon those which were used in the baseline search. While some activities, such as obtaining aerial photographs, may be focused primarily on past owners and operators or site conditions, the primary focus will be generators and transporters. The supplemental information gathering tools include Private Party/PRP Interviews. In most cases, they are performed by the Regional Civil Investigators.

Throughout the follow-up phase, inquiries should be focused on contacting and interviewing private individuals to supplement information about waste disposal practices at the site and owner/operator involvement, as well as the contributions of generators and transporters. Relevant documents may include bills of lading, ledgers, accounts payable records, correspondence, and invoices. Interviews and subpoenas may supplement information requests. Particularly in those cases where there are issues as to the hazardous nature of wastes, process engineering information may need to be obtained and analyzed. Where there is a dearth of documents, private investigators may be hired to flesh-out details through private party interviews. In addition to providing information on the liability of PRPs, these sources may provide leads which may point to further avenues of investigation.

3) Analysis, Follow-up, and Additional Research

As information request responses are received, records are collected, and interview summaries are written, they should be managed in accordance with the information management component of the PRP search plan. These new references should be analyzed for information that links a party to the site, liability, and as necessary, financial viability and successor liability. This information should be entered onto the evidence evaluation sheets for the particular class of party. If new PRPs are discovered, evidence evaluation sheets should be created for them.

As with the original references collected during the baseline search, these new references should be reviewed for additional leads. These leads should be documented and appropriate follow-up action should be taken. Before the interim final report, or a preliminary version of the interim final report, is submitted, all references should be reviewed to assure that all leads have been documented and followed.

Gaps in generator and transporter information as well as leads identified during the reference analysis and review should be followed-up. Adequate information to satisfy Special Notice (names and addresses of PRPs, volume and nature of substances contributed by each PRP, and ranking by volume of the substances at the facility) should be secured. Follow-up should also focus on evidence of liability (e.g., hazardous substances) and financial viability. If sufficient evidence of liability has been collected for a generator or transporter, General Notice Letters, when appropriate, should be issued before the interim final report is prepared.

4) Interim Final Report Preparation and Review

The interim final report is an expanded version of the baseline report. It includes substantial information on generators and transporters and focuses specifically on establishing liability and financial viability. It should satisfy Special Notice requirements. The evidence evaluation sheets, by now, should contain satisfactory evidence on liability for most PRPs. The format for the interim final report is the same as that for the baseline report. The reports preparation section of this document contains a fuller discussion of reports format.

In general, the Interim Final PRP Search Report should be completed in time for the issuance of Special Notice Letters and the release of information under Section 122(e) of CERCLA, which includes PRP names and addresses and the volume and nature of substances at the site. When possible, this takes place approximately six months before the issuance of RI/FS Special Notice Letters. In some cases, particularly large multi-party sites, it may be necessary to prepare preliminary information in order to release information to the PRPs as well as to issue Special Notice Letters. Updated versions of the report can then be prepared for the RD/RA Special Notice, and possibly, for CERCLA Sections 107 and 106 actions.

5) Interim Final Report Follow-up

Information on new PRPs, as well as additional evidence on the liability of existing PRPs, is likely to be uncovered after the completion of the interim final report. For this reason a PRP search is an on-going investigation. Unless there is a full settlement, the search does 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. A PRP search continues until all reasonable leads concerning a persons involvement with the site have been exhausted through interviews, records collection, or Section 104(e) information requests.

IV. PRP SEARCH REPORTS FORMAT AND CONTENT

The baseline and interim final PRP search reports include summary search information with a series of appendices containing back-up documentation. The reports should contain a concise site history, information on the PRPs within the four classes of liable parties, an indication of a PRP's financial position, if needed, special site information, and a section containing the

names of other possible PRPs. In placing a party into one of the four classes, a preliminary determination of potential liability should be made; a final determination will be made at a later date. The appendices to the PRP search reports should contain evidence evaluation sheets for each PRP, a summary of work performed during the search, supporting documentation, and the location of supporting files. An outline for the reports and their appendices is set forth in Attachment 2.

A) PRP Search Reports

1) Site History

The site history should include general background information about the site as well as a history of the facility. The history of the facility as a hazardous substances site should begin with the first industrial use/disposal at the site and continue through the present. It should describe operations by the particular kinds of activities with an identification of owner/operators during each period including principal individuals. It should summarize the amounts and types of wastes brought in (for generator sites), and amounts and location of disposal. It should also include by reference any data on substances at the site (e.g., in drums).

2) Identification of Owner/Operators

The owner/operator section of the reports should describe the time period during which a person owned or operated the facility and explain what, if any, hazardous substances were disposed of and by whom during each period. It should be based upon the title search results for owners, and other information for operators. A current name and address should be provided for the owner/operators as well as their registered agent.

The owner/operator section should 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 chain-of-title should be provided. Any restrictive language in the title concerning use due to wastes deposited at the site or past industrial practices should be noted.

3) Generators

The generator section of the reports should identify persons who, there is a reasonable basis to believe, arranged for the treatment or disposal of hazardous substances. Information about these persons should be provided in both a PRP summary and a

volumetric ranking list format. The summaries are developed primarily for General and Special Notice Letter mailings. The PRP list should contain the current name and address for each PRP and the volume and nature of substances sent to the site. The ranking lists PRPs by volume. This information is developed from the evidence summary sheets in the search reports appendix.

Depending on the complexity of the site, the Region may develop an enforcement confidential listing by PRP of information that expands upon the chemical nature of the substances (40 CFR Section 302.4), and links shipment/volumetric conclusions to particular transporters and documents. In some cases, the Region may also wish to develop additional information for the litigation referral on ignitability, corrosivity, reactivity, and EP toxicity. In these instances, there should also be an assessment of whether the wastes were RCRA hazardous wastes for ARAR purposes.

4) Transporters

The transporter section of the reports should identify persons who accepted hazardous substances for transport and selected the treatment or disposal facility to which the shipment was sent. Information about these persons should be provided in both a PRP summary and a volumetric format. The summaries, which are developed for General and Special Notice Letter mailings, should be similar to the generator lists in content.

5) Special PRP Information

This section of the reports is for special information which may have a bearing on whether a party is ultimately designated by EPA as a PRP. For example, where in question, an assessment should be made of a PRP's financial viability. Similarly, entities that have been or are in bankruptcy should be identified. Individuals who are deceased should be identified and the status of their estates should be described. And, successor corporations, situations in which individuals may be liable, and parent-subsidiary relationships should be discussed.

6) Special Site Information

This section should be used to present information on special sites only. These sites include municipal landfills, area-wide groundwater or stream contamination, where the source of contamination is not clear, and sites where wastes were sent to satellite facilities. Municipal landfill PRP searches involve a number of complex issues. The Agency will soon be issuing a municipal policy.

Special surveys and remedial investigations data, which will be used to determine the source of a hazardous substance release for area-wide groundwater contamination and stream contamination sites, should be presented in this section. Data on remote sites, where a company with multiple sites shipped wastes between sites, should also be presented here.

7) Other Possible PRPs

This section of the reports should include parties who, due to a lack of sufficient information on liability, cannot be categorized in one of the four classes of potentially responsible persons in Section 107(a) of CERCLA. It should be organized in the same fashion as the owner/operator section for owner/operators, and the PRP summary and volumetric ranking formats of the generator and transporter sections for generators and transporters. The missing information on liability should be clearly identified. This information is developed from the evidence summary sheets contained in the PRP search report appendix.

B) PRP Search Report Appendices

Evidence summary sheets, a summary of all work conducted during the search, and all documentation supporting the information contained in the evidence summary sheets and the PRP search reports should be compiled and presented in one or more appendices to the PRP search reports.

1) Evidence Summary Sheets

During the PRP search, information on liability will be extracted from government and PRP documents, interview summaries, title documents, and Section 104(e) letter responses and entered onto evidence summary sheets. There will be three different types of sheets: owner/operator, generator, and transporter. The information on these sheets will be used to prepare the PRP search reports. These sheets are enforcement confidential, and should be secured. They should be stamped: "Enforcement Confidential, FOIA Exempt, Prepared in Anticipation of Litigation."

a) Owner/Operators

A single evidence summary sheet should be kept for each owner/operator (Attachment 3). These summary sheets contain the back-up information for the owner/operator section of the PRP search reports: current PRP name and address, the time period during which a person owned or operated the facility, and an

indication of what hazardous substances were disposed of during the period of ownership or operation. All of the information on the summary sheets should be referenced to supporting documents within the appendix.

b) Generators

For each generator, a separate evidence summary sheet will be prepared for each shipment or group of shipments of a hazardous substance which was shipped to the site for treatment or disposal (Attachment 4). The volumetric listing by generator in the PRP search report and the PRP summaries are both derived from the information contained in the evidence summary sheets.

The generator evidence summary sheet should contain the following information: current PRP name and address, the name and address of the PRP's registered agent, the time period during which the hazardous substances were sent to the site, the volume and identification by name of the hazardous substances and EPA's determination of any RCRA waste codes and information that substances like that of the generator were found at the site (this may be verified in the RI). All of the information on the summary sheets should be referenced to supporting documents within the appendix.

c) Transporters

Evidence evaluation 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 (Attachment 5). As with the generator volumetric listing, the transporter shipment list in the PRP search reports is a summary derived from the evidence summary sheets.

The transporter evidence summary sheets should contain a current name and address for the PRP, the name and address of the PRP's registered agent, the time period during which the shipment was sent to the site, the volume and nature of the hazardous substances, and an indication of the type of evidence suggesting that the transporter selected the treatment or disposal site. All of the information on the summary sheets should be referenced to supporting documents within the appendix.

2) Summary of Work

This section of the appendix should summarize all of the research conducted by the PRP search contractor and EPA personnel during the PRP search. The summary should begin with a brief description of the tasks performed under the PRP search work

assignment by the contractor. The work assignment tasks should be followed by a listing of the name, address, and telephone number of all contacts made during the collection of records from government offices and PRPs. This listing should indicate whether any information was obtained, any follow-up action was planned, and the status of any planned follow-up action. All "dead-end" leads should be noted.

The appendix should also list the name, address, and telephone number of all interviewees and all persons to whom Section 104(e) information request letters were sent. For interviews, the listing should include the date of the interview(s), whether any follow-up action was planned, and the status of any planned follow-up action. For Section 104(e) letters, this listing should include the date(s) on which letters were sent and responses were received, and whether any follow-up action was taken.

A section should be devoted to any leads which could still be pursued.

3) Supporting Documentation

Documents supporting the factual information gathered during the PRP search should be grouped by source and within source by PRP. Section 104(e) letters and responses should be organized alphabetically and maintained for ready production to PRPs as provided by law. Government documents, title search documents, PRP documents, interview summaries, and Section 104(e) letters and responses should be grouped separately. While reorganization by PRP may be done by copying, evidentiary concerns regarding proof of authenticity and business records must be satisfied. One solution is copying and refiling the copies in PRP files. Index numbers should be assigned to all documents to ease referencing of the evidence summary sheets and the PRP search report. Consult the PRP Search Manual specialized tasks on database creation if key-word or cross-referencing systems are desired.

An index of the documents should be created. Standard bibliographic form, which includes document title, date, author, and addressee, is recommended.

Attachments

PRP SEARCH PROCESS FLOWCHART

LEGEND
CONTRACTOR RESPONSIBILITIES
EPA RESPONSIBILITIES
SUGGESTED STARTING POINT ●

0 DAYS | 90 DAYS | 180 DAYS | 270 DAYS | 360 DAYS | 450 DAYS

BASELINE REPORT PHASE

- *COMPLETE PRELIMINARY PRP SEARCH PLAN*
- *SCOPE-OUT WORK ASSIGNMENT*
- *INITIATE WORK ASSIGNMENT*
- *HOLD WA KICK-OFF MEETING WITH CONTRACTOR*
- *REVIEW WORK PLAN*
- *ACCEPT WORK PLAN*
- *REVIEW CONTRACTOR'S GOV'T RECORDS CONTACTS*
- *PREPARE LIST OF POTENTIAL GOV'T INTERVIEWEES*
- *DEVELOP AND REVIEW INTERVIEW QUESTIONS*
- COLLECT FEDERAL, STATE, AND LOCAL GOV'T RECORDS
- INTERVIEW GOV'T OFFICIALS
- PERFORM TITLE SEARCH
- *PREPARE LIST OF OWNER/OPERATOR 104(E) LETTER RECIPIENTS*
- ACCESS SETS FOR EXISTING PRP INFORMATION
- UPDATE OWNER/OPERATOR PRP NAMES AND MAILING ADDRESSES
- *DEVELOP AND REVIEW 104(E) LETTER QUESTIONS*
- SET-UP CORRESPONDENCE TRACKING SYSTEM
- ISSUE 104(E) LETTERS TO OWNER/OPERATORS
- COLLECT INFORMATION ON PRP FINANCIAL STATUS
- REVIEW OWNER/OPERATOR 104(E) LETTER RESPONSES
- PREPARE BASELINE REPORT

FOLLOW-UP PHASE

- *MEET WITH CONTRACTOR TO DISCUSS BASELINE REPORT*
- *IMPLEMENT BASELINE REPORT RECOMMENDATIONS*
- *UPDATE PRP SEARCH PLAN*
- *PREPARE LIST OF GENERATOR/TRANSPORTER/PRIVATE PARTY 104(E) LETTER RECIPIENTS*
- *DEVELOP AND REVIEW 104(E) LETTER QUESTIONS*
- UPDATE GENERATOR/TRANSPORTER PRP NAMES AND MAILING ADDRESSES
- ISSUE 104(E) LETTERS TO GENERATORS/TRANSPORTERS/PRIVATE PARTIES
- *PREPARE LIST OF PRIVATE PARTY/PRP INTERVIEWEES*
- *DEVELOP AND REVIEW INTERVIEW QUESTIONS*
- *REVIEW PRIVATE PARTY/PRP RECORD SOURCES*
- CONDUCT PRP/PRIVATE PARTY INTERVIEWS
- COLLECT RECORDS FROM PRPS AND NON-GOVERNMENT SOURCES
- SET-UP TRANSACTIONAL DATABASE
- REVIEW 104(E) RESPONSES FROM GENERATORS/TRANSPORTERS/PRIVATE PARTIES
- CONDUCT SPECIALIZED PRP SEARCH TASKS
- CREATE GENERATOR RANKING
- CONDUCT FINANCIAL ASSESSMENT OF PRPS
- PREPARE INTERIM FINAL REPORT
- *ISSUE GENERAL NOTICE LETTERS*
- *ISSUE GENERAL NOTICE LETTERS*
- *ISSUE SPECIAL NOTICE LETTERS*

Attachment 2

PRP SEARCH REPORTS FORMAT

I. PRP SEARCH REPORTS

A. Concise site history including nature of activities during specified time periods and any sampling results

B. Identification of owners and operators

1. Describe the time periods during which the person owned and/or operated the facility and state whether the disposal of hazardous substances occurred during that period

2. Describe title search results

3. Provide copies of complex title analysis narrative plus a title tree and graphs representing title search results

4. Describe activities of various operators

5. Current address and corporate status

C. Identification of persons who arranged for either the treatment or disposal of the hazardous substances, e.g., generators

1. Summarize each PRP's name and current address, volume and nature of the substances, and volumetric ranking (This is for Special Notice)

2. Develop by PRP, as necessary, a complete waste-in list with information on the period when the substances were sent to the site, volume and identity of the hazardous substances (40 CFR § 304.2) and EPA's determination of any RCRA waste codes. Ensure that there are references to underlying documents and transporters in this list or in the evidence sheets in the Appendix. (This is a summary of evidence and is for internal purposes; it is based on the evidence sheets.)

D. Identification of transporters

1. Summarize each transporters' name and current address, volume and nature of the substances, and volumetric ranking (This is for Special Notice.)

2. Develop by each transporter, as necessary, a list that:

   a. Links transporters to generators (and therefore hazardous substances) to the site, and

   b. Addresses whether the transporter selected the site for disposal and treatment.

E. For owners, operators, generators, and transporters, assess the identified PRPs' financial viability (where in question). Identify entities that have been or are in bankruptcy, corporations that are defunct (no longer in business but not dissolved) and corporations that are dissolved, and individuals who have died, with a description of the status of their estate. Describe the facts in corporate successorships, parent-subsidiary situations, and possible individual liability.

F. Information for Special sites:

   1. Municipal Landfills

   2. Area wide groundwater contamination or stream contamination where sources are not clear (relies on special surveys and the Remedial Investigation)

   3. Remote sites (company with multiple sites and transshipments).

   4. Special financial and capacity issues

G. Other possible PRPs (list PRPs not in parts B,C, or D above due to substantial evidentiary issues).

II. PRP SEARCH REPORT APPENDICES

A. Evidence evaluation sheets for each owner, operator, generator, and transporter (include source of evaluation)

B. Summary of all work conducted during the PRP search

   1. Document investigatory steps during the search, including "dead end" leads

2. Identify persons interviewed and corporations and individuals to whom information request letters were sent. In addition, identify each response to the information request letters and any follow-up actions that were taken. Clearly identify the dates of each of the above activities.

3. Identify leads that could still be pursued

C. Supporting documentation consistent with information management plan. For each source of documents assign document control numbers.

1. Certified copies of Title documents

2. Government documents

3. Interview summaries

4. Manifests, contracts, invoices, etc.

5. Section 104(e) letters and responses (keep separate for FOIA purposes).

6. Other

D. Location of supporting files.

Attachment 3

ENFORCEMENT CONFIDENTIAL, FOIA EXEMPT, PREPARED IN ANTICIPATION OF LITIGATION

OWNER/OPERATOR EVIDENCE SUMMARY SHEET

	REFERENCES
Current Name, Mailing Address, and Telephone	
_____	_____
_____	_____
_____	_____
_____	_____
Status (owner, operator, etc.)	
_____	_____
Period(s) of Ownership/Operation	
_____	_____
_____	_____
What Hazardous Substances were Disposed During Period of Ownership/Operation (40 CFR Section 302.4)	
_____	_____
_____	_____
_____	_____
RCRA Waste Codes	
_____	_____

Name, Mailing Address and Telephone of Registered Agent

Attachment 4

ENFORCEMENT CONFIDENTIAL, FOIA EXEMPT, PREPARED IN ANTICIPATION OF LITIGATION

GENERATOR
EVIDENCE SUMMARY SHEET
(By shipment or collective group(s) of shipments)

	REFERENCES
Current Name, Mailing Address, and Telephone	
_____	_____
_____	_____
_____	_____
_____	_____
Date or Time Period of Shipment	
_____	_____
Transporter	
_____	_____
Volume or Quantity	
_____	_____
Name of Hazardous Substance (See 40 CFR Section 302.4)	
_____	_____
RCRA Waste Codes that are established (if not established mark "?")	
_____	_____
Substances like the generators that were found at the site	
_____	_____

Other Issues (e.g., not an arrangement for disposal or treatment)

_____ _____

Name, Mailing Address and Telephone of Registered Agent

_____ _____

_____ _____

_____ _____

_____ _____

ENFORCEMENT CONFIDENTIAL, FOIA EXEMPT, PREPARED IN ANTICIPATION OF LITIGATION

TRANSPORTER EVIDENCE SUMMARY SHEET

Current Name, Mailing Address, and Telephone	**REFERENCES**
_____	_____
_____	_____
_____	_____
_____	_____
Date or Time Period of Transport	
_____	_____
Volume or Quantity	
_____	_____
Name of Hazardous Substance (See 40 CFR Section 302.4)	
_____	_____
Transporter Selected Treatment or Disposal Site	
_____	_____
Name, Mailing Address, and Telephone of Registered Agent	
_____	_____
_____	_____
_____	_____
_____	_____