



Responsible Party Search Guide For The Underground Storage Tank Program

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Acronyms

AG	Attorney General
BIA	Bureau of Indian Affairs
CEGAS	Center for Environmental, Geotechnical and Applied Sciences (West Virginia)
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DEP	Department of Environment (West Virginia)
DOJ	Department of Justice
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right to Know Act
IEC	Industrial Economics Incorporated
LUST	Leaking Underground Storage Tank
NOV	Notice of Violation
OSRE	Office of Site Remediation Enforcement
OUST	Office of Underground Storage Tanks
PRP	Potentially Responsible Party
RCRA	Resource Conservation and Recovery Act
RP	Responsible Party
SEC	Securities and Exchange Commission
SPA	State Program Approval
SWDA	Solid Waste Disposal Act
UCC	Uniform Commercial Code
UST	Underground Storage Tank

Preface

The *Responsible Party Search Guide For The Underground Storage Tank Program (RP Search Guide)* provides information to federal, state and tribal underground storage tank (UST) program staff searching for owners and operators of UST systems. Identifying the owners and operators responsible for UST systems is an important aspect to ensuring that systems are in compliance with UST regulatory requirements and leaking USTs are cleaned up. Generally, the implementing agency knows the identity of the UST owners and operators and works with them to ensure they are in compliance with UST regulations, including cleanup. In some cases, however, identifying the responsible owner or operator for a particular UST involves sorting through complicated tank histories or drawing reasonable conclusions where evidence is scarce.

The *RP Search Guide* provides general assistance for RP search work and imposes no new or additional requirements. This document suggests a flexible process that federal, state, and tribal UST staff can follow to identify UST owners and operators, as appropriate, without needing to follow every step laid out in the document. It is designed to support RP search work at all levels of staff expertise.

1.0 Fundamentals: RP Searches In The UST Program

- An RP search in the UST program is defined as looking for the owner and/or operator responsible for an UST system
- Key points about owners and operators with regard to RP searches:
 - The landowner is not always the UST owner
 - State laws, including state property law, may influence the definition of UST owner and operator. State laws vary across the country
 - If EPA or a state uses site-specific Leaking Underground Storage Tank (LUST) Trust Fund money, the determination of owner must be based on the federal statutory definition of owner
- Basic information needed from an RP search in the UST program:
 - Owner name(s)
 - Operator name(s)
 - Street address of site
 - Current mailing address of owner(s) or operator(s)
 - Phone numbers or email addresses of owner(s) or operator(s)
 - Dates of ownership or operation
- You are not required to develop an RP search plan but it may be a good idea if you are new to RP searches. A plan can help organize your efforts and answer key questions such as:
 - Will the search be completed in-house, through a contract, or both?
 - What tasks are necessary to complete the search?
 - What on-line search resources are available (e.g., access to LexisNexis or other on-line subscription resources)? See Appendix E (p. 46) for other on-line resources.
 - Does the process require any review or input from others?
 - What will you do with the owner or operator information – enforcement, inventory, use LUST Trust Fund money, etc.?
- How do you identify and locate the responsible UST owner or operator? Here is a step-by-step example:
 - Determine the applicable definition of owner or operator
 - Compile available information from your agency's files
 - Do you have a name but need updated contact information?
 - Check with EPA or the state UST program for information on the USTs (e.g., enforcement actions, notification information, inspection reports)

- Find information on the taxpayer at the local government assessor's (i.e., tax) offices followed by title information at the recorder's office, as needed
 - Many locales have on-line sources for tax and title information
 - Historical information may require a visit to the local offices
- Check state and local business agencies such as the Secretary of State for business license and incorporation information
 - The names of agencies and their functions may vary state to state; determine the location of the information you need within your state
- Additional resources: (see Section 4, p. 19)
 - State Weights and Measures offices
 - Fire departments
 - Emergency Planning and Community Right to Know Act (EPCRA) notices or databases, available from state or local emergency management offices
 - Sanborn maps
 - Historical city directories
 - Bureau of Indian Affairs (BIA) for USTs in Indian country
 - Death notices - newspaper obituaries, Social Security death index, genealogy sites
- On-line search information (see Appendix E, p. 46). Always do a general internet search on the company, individuals, or site. Additional on-line resources include:
 - On-line phone books for contact or location information
 - Social media sites for contact or location information
 - Corporate business records for business structure, owner and operator identification, contact and location information
- Contact the RP to confirm information
 - Appendix H (p. 65) contains sample information request/discovery letters
- If you find the responsible owner or operator of the UST system, document the information for the record as required by your agency
- Sometimes you don't find a responsible owner or operator. Options to clean up the site may include state lead work, LUST Trust Fund cleanup, petroleum brownfield grants, or a state voluntary cleanup program

2.0 UST Program Background And Definitions

2.1 UST Program Overview

The federal UST program regulates UST systems (i.e., the underground tank and piping connected to it) that store petroleum products or hazardous substances. The UST program is authorized by Subtitle I of the Solid Waste Disposal Act (SWDA).¹ EPA's cleanup programs often reference the Resource Conservation and Recovery Act (RCRA), an amendment to SWDA.² Accordingly, this document refers to the UST program authority as RCRA, particularly with regard to any discussion of enforcement authorities. For more information about the UST program see www.epa.gov/oust.

The Basics: The Environmental Protection Agency (EPA) and state UST programs regulate UST systems. The requirements in 40 CFR 280 are directed to the owners and operators of tank systems (not always the same person as the landowner). States are the primary implementers of the program and may have laws that impact federal UST requirements. EPA works with its tribal partners to implement the program in Indian country.

Federal regulations, effective December 1988, require UST owners and operators to register tanks with the appropriate regulatory program (usually the state UST program) and ensure UST systems meet the requirements set out in the regulations.³ Among other requirements, UST owners and operators must:

- Perform leak prevention activities such as spill, overflow and corrosion protection
- Perform leak detection activities such as periodic tank and piping monitoring, line tightness testing and record keeping
- Maintain financial responsibility
- Report, investigate, and clean up releases of regulated substances from the tank or piping

The UST program is primarily implemented by states and territories. EPA has responsibility for, and authority over, USTs in Indian country. EPA works with its state, territorial, and tribal partners to prevent and clean up releases from UST systems. Many states have received EPA's state program approval (SPA) of their UST program, although some operate without SPA. State UST requirements that receive federal approval are at least as stringent as, and may be more stringent than, federal requirements. In states with SPA, EPA enforces the approved state UST laws and regulations when it takes federal enforcement actions.

¹ [42 U.S.C. § 6991](#) *et seq.*

² [42 U.S.C. § 6901](#) *et seq.*

³ 40 CFR 280.22.

States may have additional regulations applicable to the UST program, as well as environmental liability and property laws that impact who is a legally responsible owner or operator of an UST system and who is legally responsible for cleaning up a release from the UST system. These state laws may impact the federal definition of owner and operator in each state. See Section 2.3 (p. 9) for more information. There also are aspects of state programs that may be broader in scope than the federal program (e.g., regulating aboveground storage tanks). These broader in scope elements are not federally enforceable but are enforced at the state level and would impact a state level RP search.

2.2 Objectives Of The RP Search

The UST program and its associated regulations do not specifically use the term “responsible party” (RP). In the UST program, RP search is a colloquial term referring to the implementing agency’s efforts to identify and locate UST owners and operators who are required by law to manage their USTs in accordance with UST regulations.

The objective of an RP search is to find the owner or operator responsible for ensuring that the UST system is compliant with spill prevention requirements and, if a spill has occurred, clean it up. For most UST systems, the implementing agency knows the identity of the owner and operator. RP searches are needed for the UST systems where the owner or operator is unknown or contact information is out of date.

In 1986, Congress created the LUST Trust Fund to address releases from federally regulated USTs. Statutory language states that, except in emergency situations, LUST Trust Fund money can only be used in cases where the owner or operator is unknown, unwilling or unable to pay for cleanup. RP searches, therefore, are also necessary when the state or EPA is considering using LUST Trust Fund money to directly clean up releases from USTs. Before using the LUST Trust Fund, the state or EPA needs to determine if there is a viable UST owner or operator.

Finally, states and local governments may undertake cleanups on a corridor or area-wide basis which often results in an inventory of sites. RP searches may be useful during this type of initiative to find owners and operators of older tank sites within a cluster.

2.3 Variations On The Definition Of Owner

Cases with complicated UST owner histories and lack of information result in some of the most difficult RP searches for both states and EPA. The definition of owner may depend on whether you are analyzing state or federal laws and regulations, where the USTs are located, and whether LUST Trust Fund money will be used to clean up the release.

2.3.1 State Searches Compared To Federal Searches

States follow their own laws, including any applicable state property laws, when identifying UST owners. In situations where federal UST regulations apply, state property law may also impact the federal definition of owner in that state. For example, states may designate tanks as a fixture under state law where the property owner may be considered the UST owner. See Section 2.4 (p. 11) for a discussion on fixtures. EPA may consider this designation when analyzing the federal definition of owner in the state. States have different real property and fixture laws; therefore, EPA's designation of owner under the federal regulations could vary from state to state.

The Basics: State definitions may vary from the federal definitions. State laws may impact the federal definition.

2.3.2 Definition Of Owner In Indian Country

EPA implements the UST program in Indian country and applies the federal definition of owner. In determining the owner under the federal definition, EPA may consider relevant tribal laws covering the area of Indian country at issue. Tribes may have laws under their own authorities addressing issues such as abandonment of fixtures that may be relevant to determining who is an owner of a tank. See Section 2.4 (p. 11) for a discussion on fixtures. EPA regions should consult their tribal program and legal experts because considerations regarding relevant tribal property and other laws can be complicated. EPA's Office of Underground Storage Tanks (OUST) and Office of Site Remediation Enforcement (OSRE) are available to discuss guidance and policy on EPA's implementation of the program in Indian country.

The Basics: In Indian country, the federal definition of owner applies. Tribal laws may be relevant in applying the federal definition.

2.3.3 Definition Of Owner When Using LUST Trust Fund Money

Federal regulations, which track the statutory definition, divide the definition of owner into two parts depending on whether the UST was *in use* on or after November 8, 1984.⁴ An owner means:

- In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- In the case of any UST system in use before November 8, 1984 but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The Basics: When LUST Trust Fund money is used at an UST site, both EPA and the state must follow the statutory federal definition of owner and operator.

⁴ 42 U.S.C. § 6991.

An UST is considered *in use* if it is used to store or dispense a regulated substance (e.g., product). If an UST contains a regulated substance, it would be *in use* even if the potential owner did not dispense fuel or operate the UST system or cause any suspected contamination.⁵ Whether an UST is storing a regulated substance can be evaluated based on the description of empty in 40 CFR 280.70 as follows: “The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 cm (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.” Thus, there might have been no fuel deliveries to the UST and no dispensing of petroleum from the UST, but if the UST contained product on or after November 8, 1984, the UST is considered to have been *in use* because of product storage.

For USTs *in use* on or after November 8, 1984, there may be multiple owners of the UST.⁶ Under federal law, the definition of owner is not limited to only the most recent owner. There are different approaches to identifying owners of USTs *in use* after November 8, 1984. In cleanup cases, implementing agencies often try to identify the owners (or operators) from the time of a release but there are other factors that an implementing agency may consider. If the UST was taken out of service (i.e., not *in use*) before November 8, 1984, the only owner is the last person who owned it before it was taken out of service.

States do not frequently use the LUST Trust Fund to conduct site-specific cleanups, but when they do, they need to follow the federal statutory definition of owner, including the *in use* provision, when they determine if an owner is unknown, unable, or unwilling. For example, a local government may be considered an owner under the federal statutory definition if they acquired an UST system with product in a tank even if the state has declared the tank abandoned under state law or policy.

2.4 Leases Can Impact Ownership

USTs are generally considered fixtures or trade fixtures, and belong to the landowner. However, in states where USTs are not a fixture to the land, UST ownership may be changed by entering into contracts or leases. For example, if a lessee installs an UST system, state law may determine whether the lessee may treat the UST like any other personal property or if the UST is a fixture that runs with the

The Basics: If an UST is identified as a trade fixture in a lease, then the lessee (and not the landowner) may be the UST owner. In addition, state property law may determine whether fixtures or trade fixtures run with the land.

⁵ Clarification of LUST Eligibility and Grant Implications Memorandum from Carolyn Hoskinson, March 17, 2010, www.epa.gov/oust/oust_eligibility_letter_031710_finalsigned.pdf.

⁶ This document typically uses the terms “owner” or “operator” as opposed to “owners” or “operators” for ease of reading but, depending on the site-specific circumstances, there may be more than one owner or operator responsible for an UST system or cleanup of a release.

land (i.e., is the property of the landowner). The following provides a brief description of property, fixtures, and trade fixtures; there are four different types of property to keep in mind:

- Real property is the land and things that are affixed to the land
- Fixtures are affixed to the land and belong to a landowner (e.g., a house)
- Personal property is tangible or intangible property that is not real property (e.g., a car)
- Trade fixtures are a form of personal property that are affixed to the land. Although they appear to be real property, they are personal property of the lessee (e.g., electronic signs, store shelves) because a lessee has installed them for the purpose of carrying out trade. In determining whether something is a trade fixture (i.e., personal property), a court will usually look at whether the item is affixed to the land or can be moved, is particularly suited to the land, and, most importantly, the intent of the parties and whether the lease or other evidence reflects this intent.

Property laws vary among states as to whether an UST is a fixture or trade fixture. Your regional and state counsel and others familiar with property law or tax issues may be able to help you.

If a lessee abandons the UST, it may become the property of the landowner. In this case, while the lessee remains liable, the landowner may also be liable for closure, site assessment and any necessary cleanup. The landowner may be protected from liability if the lease clearly spells out the ownership of the UST, responsibility for the UST, and requirements of the lessee upon expiration of the lease in terms of closure and/or removal of the UST.

2.5 Variations On The Definition of Operator

As with the definition of owner (see Section 2.3, p. 9), the definition of operator may vary by jurisdiction. Federal regulations at 40 CFR 280.12 define the operator as any person in control of, or having responsibility for, the daily operation of the UST.⁷ You can have more than one operator of an UST, including past operators.^{8,9} In order to identify the operator, look at the daily operations of the UST and determine who has control over those operations and who is responsible for the operations. Daily operations may include:

- Setting prices for gas
- Determining when fuel will be delivered

⁷ See 40 C.F.R. § 280.12. EPA established grant guidelines for operator training provisions of the 2005 Energy Policy Act, 42 U.S.C. § 6991i. The guidelines establish three classes of operators identified as Class A, Class B, and Class C. These three classes of operators are not necessarily an operator as defined in 40 CFR 280.12. The guidelines provide that in no way do they relieve the owner or operator, as defined in 40 CFR 280.12, from any legal responsibility mandated by the federal UST regulations or the requirements of a state UST program approved by EPA under SWDA § 9004.

⁸ For purposes of compliance, the implementing agency will work with the current operator.

⁹ In pursuing former operators, the implementing agency should have clear evidence of violations occurring during that operator's tenure.

- Accounting for the volume of fuel delivered
- Measuring the UST's contents daily
- Computing volume gains and losses
- Maintaining equipment associated with USTs
- Complying with UST release detection and record-keeping regulations

UST Program Liability Differs From Authorities In Other Cleanup Programs

Cleanup liability for the UST program differs from cleanup liability under other programs (e.g., Superfund, petroleum brownfields). This section does not provide an exhaustive description of the differences between these complex programs but does provide a few examples of some key differences.

UST PROGRAM:

UST owners and operators are liable for cleanup of UST releases of regulated substances regardless of whether they caused or contributed to the contamination. The statute provides an exclusion for liability only for secured creditors.¹⁰

CERCLA:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹¹, cleanup liability encompasses anyone who caused or contributed to the hazardous substance contamination at a site, potentially including generators and/or transporters associated with a site. CERCLA includes liability protections for certain types of owners including secured creditors, bona fide prospective purchasers, and state and local governments who acquired property involuntarily. CERCLA provides specific criteria to satisfy these requirements. CERCLA also has an exclusion clause for petroleum from the definition of hazardous substance.¹²

PETROLEUM BROWNFIELDS:

Assessments and cleanups of petroleum brownfields may be funded under CERCLA § 104(k) grants. Applicants seeking petroleum brownfields grants are ineligible for the grants if they are liable under CERCLA or the UST program (except for applicants that acquire properties in the manner discussed below and meet the applicable criteria for brownfields petroleum grants) or the release from the facility is being addressed with LUST Trust Fund money. A petroleum brownfield is eligible for the grant if the site is relatively low risk; there is no viable responsible party; it will be assessed, investigated or cleaned up by a person who is not potentially liable for

¹⁰ SWDA § 9003(h)(9).

¹¹ P.L. 96-510, [42 U.S.C. §§ 9601–9675](#), December 11, 1980.

¹² CERCLA §101(14).

cleaning up the site; and it is not subject to a RCRA corrective action order. In the fiscal year 2013 petroleum brownfields grant guidelines¹³, EPA clarifies eligibility criteria as follows:

- A site for which there is no financially viable responsible party: A site that was acquired through tax foreclosure, abandonment or equivalent government proceeding may be eligible for petroleum brownfields grants, as long as there are no unresolved judgments, enforcement actions or citizen suits. (A site that was acquired in a manner other than the above must also show the current and immediate past owner did not actively use the UST or own the property during the active use of the UST, and did not exacerbate the contamination.)
- Cleaned up by a person not potentially liable: Applicants can qualify for the grant, provided they did not dispense, dispose of, or own the property during the dispensing or disposal of petroleum or petroleum products at the site, and did not exacerbate the contamination and took reasonable steps with regard to the contamination (such as stopping continuing releases, limiting exposure, preventing future releases).

¹³ FY13 Guidelines for Brownfields Assessment Grants, EPA-OSWER-OBLR-12-07 (<http://www.epa.gov/oswer/docs/grants/epa-oswer-oblr-12-07.pdf>).

3.0 Planning For An RP Search In The UST Program

The Basics: A search plan is not required for an RP search in the UST program but it may help you identify the steps and available resources. A plan can cover any anticipated needs such as: staff and funding resources, participants, search activities, search resources (e.g., available on-line resources), process for contacting the owner or operator, documentation, schedule and strategic next steps.

3.1 RP Search Plan Purpose And Overview

A plan outlining the search is not required but it can facilitate the process. A site-specific RP search plan identifies the nuts and bolts of how the search will be conducted. RP search plans can be iterative; sometimes unforeseen issues will require changes to the initial plan. See Appendix B (p. 37) for a tip sheet on developing a search plan. As part of the planning process, you may want to consider what strategy you will pursue once you have the RP search information (e.g., informal enforcement, orders, inventory, LUST Trust Fund).

- Identify search activities such as:
 - Review files and conduct on-line searches
 - Perform title searches
 - Conduct business status research
 - Conduct interviews
 - Document the findings

- Identify the participants and available resources to conduct RP search activities:
 - Who will conduct RP search activities?
 - What can be conducted in-house?
 - Do you have internal staff resources to assist in the RP search (e.g., interns, civil investigator)?

 - Are there external staff resources to help with the RP search?
 - EPA regional or headquarters staff/interns?
 - Other state or local agencies?

 - Are there resources available via a contract?
 - How much funding is available?
 - What contracts are available?

 - Who is involved in the decision making process?
 - Does counsel review or concur with the decision?
 - What management level must approve?

- Identify the process for contacting the owner or operator and requesting information
- Identify the documentation needed
- Establish a schedule
- Determine how you will use the information once you have it (e.g., enforcement, inventory, use LUST Trust Fund)

3.2 Search Activities

An RP search plan usually includes the tasks to be conducted, the order in which they should be performed, and who will do them. Searches typically involve reviewing files from local governments, states, tribes and EPA, as appropriate, for information on owners, operators and UST histories. You may also need to search title records, especially the deeds. For more information on title and deed searches, see Section 4.0 (p. 19) and the tip sheet on record searches in Appendix C (p. 39). Conducting interviews may also provide you with additional information on owners or operators. See Section 4.4 (p. 29) and Appendix D (p. 42) for additional information on interviews.

3.3 Participants And Personnel Resources

An RP search plan may be used to identify who will be involved in each of the major tasks. Depending on funding resources, the work will either be conducted in-house or outsourced. Identifying the personnel involved in the process from the person doing the file reviews to the decision makers may help you streamline the project. Here are some potential resources:

- Local colleges and universities
- Program or legal interns
- In-house staff from the voluntary cleanup or brownfields program
- Superfund staff knowledgeable in PRP searches
- Counsel
- Economists
- Librarians
- Civil investigators

3.4 Potential Contract Support

The RP search plan may include contract information if you plan to use a contractor for any RP search work. EPA regions and headquarters may have access to contracts that can support limited RP search work, depending on funding availability. EPA regional UST programs can access these regional contracts to support their RP search work. States may also benefit from these kinds of contracts through in-kind assistance in their cooperative agreement with the EPA regional UST program.

3.5 Identifying The Process For Contacting The Owner Or Operator And Requesting Information

The RP search plan may include a process for contacting the owner or operator, determining what type of response to the letter or phone call is requested, the timeframe for response and any follow up. RCRA § 9005(a) provides EPA with broad information gathering authorities, including sending information request letters (see Section 4.5 (p. 29) for additional information on information request letters and Appendix H (p. 65) for sample letters). Section 4.4 (p. 29) contains information on interview techniques. Information collected through request letters may provide the basis for making an informed decision on the appropriate next steps.

3.6 Documentation Process

An RP search plan may address the documentation process. All RP searches should have a record of the information used to identify the owner or operator, although certified copies of documents are not a federal requirement to establish ownership or operation in the UST program. If the state conducts the search, check to see what the state documentation requirements are before proceeding. An RP plan may identify the final decision maker on ownership determinations and what process is used (e.g., a memo to the file or consultations with other offices).

3.7 Establish A Schedule

A benefit of developing an RP search plan is defining the schedule for various tasks in the process. One of the biggest impacts on the schedule will be whether the owner and operator information is available on-line. This will also impact the cost of the RP search because if the records are not available on-line, you will have to travel to local offices to research the information. The amount and type of information available on-line varies among states and local governments.

Conducting the work in-house versus outsourcing will also influence the schedule. Establishing a clear schedule with in-house resources can help keep the project on track. If contracts are used, you will have to factor in the time to develop and process the contract.

A schedule should also take into account the length of time anticipated for communication with the owner or operator. In particular, the RP search plan should note the length of time given to the owner or operator to respond to a letter or other communication, particularly in cases where an address is old or suspect.

Does the LUST Trust Fund 90-day window impact the RP search schedule?

EPA or a state may consider using LUST Trust Fund money at a site if it cannot find an owner or operator who is subject to and capable of performing corrective action within 90 days.¹⁴ Although the state or EPA may begin using LUST Trust Fund money to clean up a release after the 90-day time period, the RP search may not be complete. An RP search could take more or less than 90 days. Completing the search is necessary for cost recovery purposes and the implementing agency needs to make a diligent effort to find the owner or operator. Determining when the RP search is over, especially when no owner or operator is found, is a case-by-case matter based upon the potential scope and cost of the cleanup versus the level of effort by the implementing agency.

¹⁴ SWDA § 9003(h)(2)(A).

4.0 Conducting The RP Search

The Basics: Finding information to identify an UST owner or operator may involve searching through records for basic information including:

- **Owner name(s)**
- **Operator name(s)**
- **Current and former names of business(es) at site**
- **Street address of site**
- **Current mailing address of owner(s) or operator(s)**
- **Phone numbers or email addresses of owner(s) or operator(s)**
- **Dates of ownership or operation.**

There are multiple ways to search for owner or operator information. Here are some tips to begin:

- Determine what is currently located at the site:
 - Vacant lot
 - Abandoned gas station
 - New building
 - Other
- Check EPA and state files for information about the site (e.g., inspection, enforcement, notification). See Section 4.1 (p. 21)
- Where can you find the name of the owner or operator? Appendix C (p. 39) has a tip sheet on a title and tax records search
 - If the tank owner is likely to be the same as the landowner, you can start with the tax assessor's office to get the name of the most recent person or entity who paid taxes on the property. See Section 4.2 (p. 24)
 - Cross reference the tax information with the title documents for chain of ownership information
 - You can also start your search through business searches on-line. See Section 4.3 (p. 28). Examples include:
 - Secretary of State
 - On-line resources (See Appendix E, p. 46)

- RP search efforts often involve pulling together clues from multiple sources to build a case. Do you have a potential name but need more information to support your identification of the owner or operator? Here are a few additional sources:
 - States' Weights and Measures databases may have operator or owner information as well as the last date of product purchase
 - Fire departments may have inspection reports or permit information
 - Fuel providers may have distribution records
 - Repository of Emergency Planning and Community Right to Know Act (EPCRA) records may have information on toxic release inventory data, hazardous waste storage, and oil spills

- Available In-house resources may include:
 - Attorneys
 - Librarians
 - Economists
 - Superfund PRP staff

- Where do you look for contact information? See Section 4.1 (p. 21) for more ideas
 - On-line phone books
 - Social media
 - City directories
 - Sheriff's office
 - Death notices

On-line services are a rapidly growing source of owner or operator information and may be the fastest and most effective method of obtaining this information. See Appendix E (p. 46) for a list of on-line search tools. CERCLA's PRP Search Manual also contains good sources of on-line information.¹⁵ Most on-line sources are available nationally, however, budget constraints may affect the accessibility of these resources and limit availability in EPA regions or states. If this is the case, public libraries, universities, colleges, or schools may provide internet access to these resources for minimal fees.

¹⁵ CERCLA's Potentially Responsible Party Internet Information Sources is found on-line at <http://www2.epa.gov/enforcement/report-prp-search-manual-2009-edition-2011-addendum>

4.1 Reviewing Files

The purpose of a file review is to find documents that support the identification of the UST owner or operator and provide the latest contact information. If the information from the UST program office and the deed/tax information are inconclusive, other federal, state and local government files may have useful information.

The Basics: Record searches and file reviews may provide clues to the identification of the UST owner or operator. Start with your agency's files on the site and request information from your EPA or state counterpart for any available information (e.g., enforcement or inspection information). Local government agencies and other state programs that interact with UST owners and operators may also have useful information.

4.1.1 State Files

To begin the search, examine state UST records including information collected through notification requirements and inspections. Federal regulations require owners and operators to notify the implementing agency when an UST system is brought into use and of a suspected release.¹⁶ The Energy Policy Act of 2005 requires inspections of facilities at least every three years. In addition, several states require annual or biannual registration of UST systems, and some have permitting systems. All of these are potential sources of UST owner and operator information. The state programs overseeing these activities are usually overseen by the state's environmental agency although some may be managed by the fire marshal's office or state fund office.

Beyond UST information, state files also contain other information on sites that may be useful. For example, a site may be listed on a state registry of contaminated sites, or the owner or operator may have applied for an application or permit for a state regulated activity or resource use (e.g., well drilling). The Secretary of State or other business licensing offices issue business licenses that may be useful in identifying owners and operators. The attorney general may also have information on the site, owners, and operators. Some agencies, such as a state's Weights and Measures program, collect information on fuel use and enforcement actions. Although this information may not be available publicly, state agencies may be willing to share the information.

Types of information from state files can include:

¹⁶ 40 CFR 280.61

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
UST/LUST Agency (e.g., environmental department, fire marshal's office)	UST information, licenses, permits, studies, inspection reports, sample data, enforcement actions
Weights and Measures	Records of companies with fuel use, enforcement actions
State Fund Agency	Site information on LUST cleanups covered by the fund
Voluntary Cleanup Program	Brownfields site information
Department of Transportation	Motor fuel tax retail license records
Attorney General	Correspondence, lawsuits, orders
Secretary of State	Corporation names and addresses, registered agents, articles of dissolution, annual reports, limited partnership filings
Health Department	Correspondence, reports
Attorney General	Correspondence, lawsuits, orders

4.1.2 Local Files

Useful local records include the deed and tax records, permit information, and licensing information. Local government offices may also contain records of building, groundwater use, and excavation permits and licenses; inspection and violation notices and reports; and memoranda and correspondence between UST owners and operators and local officials. The source of the documents may vary among jurisdictions. For example, tank installation or permit documents may be kept with the fire department in one locality and the building official in another.

Local government information can be found in:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
City or Township Clerk/County Clerk/Recorder's Office/Tax Assessor's Office	Deeds, leases, grants, addresses, mortgages and liens, easements, agreements, legal property descriptions, tax information
Office of the City or County Attorney	Correspondence, permits, licenses, enforcement actions
Fire Department	Fuel storage permits, tank installation documents, tanks removal documentation, EPCRA reports
Building Officials	Tank installation documents and permits
Police and Fire Department	Accident reports
Department of Public Works	Inspection and violation reports
Planning, Land Use, and Engineering Departments	Correspondence, applications

4.1.3 Federal Files

EPA implements the federal UST program in Indian country. EPA regional offices maintain records (e.g., notifications, enforcement actions) for USTs in Indian country. There could be pertinent site information for any UST site from other EPA programs in regional record centers or in files in EPA’s CERCLA, RCRA, EPCRA, air, water, regional counsel, and criminal investigations offices. EPA’s Envirofacts database (www.epa.gov/enviro) collects facility identification information from the other EPA program databases. Documents maintained in these offices may include permits, inspection reports, correspondence, records of violations and enforcement actions, and criminal records. The documents often reference other federal agencies that are or were involved with the site or an owner or operator. Be aware that the landowner is not always the UST owner. Federal sources of information include the following:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
Environmental Protection Agency	UST information at tribal sites, permits, inspections, correspondence, records of violation and enforcement action, criminal records
Department of the Interior, Bureau of Indian Affairs	Lease information in Indian country
Occupational Safety and Health Administration	Inspection reports, health and safety incident information
Coast Guard	Incident response reports

4.1.4 Other Records

Determining current contact information for the owner or operator may be one of the more challenging aspects of the search because people may move or change contact information. On-line phone books or search engines may provide current addresses or phone numbers for individuals or companies. Additional sources of information include:
Public Libraries, University Libraries And Historical Societies

- Local business collections
- Local newspaper, community newsletters, and articles or newsletters published by businesses associated with the site
- Documents and other paper collections donated by individuals in the community

Residents Living Adjacent To The Site

- Identity of owners and operators

Other Sources Of Information¹⁷

- On-line sources of free information
- Subscription on-line information sources (e.g., Autotrack XP, Dataquick, LexisNexis, Westlaw, Dun & Bradstreet)
- On-line death notice searches (e.g., newspaper obituaries, Social Security death index, genealogy sites)¹⁸
- Sanborn Fire Insurance maps
- Polk and Cross directories
- Commercial aerial photograph companies

4.2 Title Searches

A title search is a review of public records for information about past and current ownership of real property.¹⁹ For RP search purposes, the objectives of a title search include:

The Basics: Title searches document the current and past owners of an UST site. This information is useful when the landowner is also the tank owner and may also be needed for site access where the landowner is not the UST owner. Title information is held at the local government recorder office (e.g., county clerk, township records office, etc.) and is also often available on-line.

- Identifying former and current owners and leaseholders, where leases are recorded
- Determining when they owned or operated the UST systems
- Identifying potential interviewees, if needed
- Creating a historical chain of title, which provides past ownership and leasehold interests and may include historical addresses for former owners and operators and the current parcel numbers and addresses

The general purpose of a title search in the UST program is to identify the owners of an UST site.²⁰ Therefore, the focus of the search will be on establishing current and former ownership and leasehold interests, where available, commonly referred to as a historical chain of title. If EPA or state personnel intend on utilizing the title search for purposes beyond landowner identification (e.g., institutional controls, easements) then the scope of the title search should be expanded to include an examination of all matters affecting the title to the UST site (e.g., mortgages, easements, liens).

¹⁷ See Appendix E for a list of on-line search tools.

¹⁸ Some of these references are free and some require a fee (e.g., Social Security Death Index).

¹⁹ See Appendix F for a description of title documents. For UST sites, the deeds and leases will be the most useful information for the RP search. Other documents such as mortgages and financing statements might be needed for an Ability-to-Pay analysis.

²⁰ In cases where the current landowner is not the owner responsible for the UST system and/or the release, you may still need to get contact information for the landowner to gain access to the site.

An UST site’s current ownership and historical chain of title can range from simple (e.g., one current owner and one prior owner) to complex (e.g., foreclosures, tax sales, probates). There are many contractors and title companies with expertise in performing title searches. When preliminary title research raises complex questions regarding current or former ownership interests, then EPA or state personnel may consider whether the title search could be conducted more cost effectively by the state, EPA, contractor, title company, or some combination of the above, depending on access to outside resources.

Before beginning the title search, whether done in-house or through a contractor, you should identify the following parameters to the best of your ability. The scope may need to be adjusted based on information uncovered during the title search.

- Time period the search is to cover
- Area the title search is to cover (identified by parcel ID, legal descriptions, county tax assessor parcel numbers or street addresses, or section, range, and township numbers)
- Format of the title search results (i.e., historical chain of title)
- Documents that should be included in the title search (e.g., deeds, leases, maps, legal descriptions)

4.2.1 Conducting Title Searches

Conducting a title search will often vary from one jurisdiction to another. This section provides some general background and a starting point to begin your research.

- **Town or county clerk** - Contact the town or county clerk as they may be able to direct you to any available on-line resources, provide background on the jurisdiction’s indexing system, and advise you as to whether you will need to visit the county or municipality to complete your search.
- **On-Line Real Property Databases** - Many cities, townships, and counties have on-line searchable real property databases. These databases can be used to assess the complexity of the title and may provide sufficient information to complete a simple title search. These databases are often located on the following types of websites:

Website Category	Features
Register of Deeds	Searchable indices and document images
Tax Assessor’s Department	Searchable tax database
Geographic Information Services	Searchable map database where you can create custom maps showing environmental features, zoning, aerial photography, and more

- **Preliminary Research** - Using available on-line resources, obtain as much preliminary information as possible, including the name of the current owner (as listed by the tax assessor), street address, parcel identification numbers, and date of acquisition.
- **Tax Assessor** - If the tax assessor does not provide real property ownership information on-line then contact the tax assessor's office to find out the identity of the current owner. This office will serve as the starting point of your title search. However, tax records may not be updated in real-time and so the current owner, as listed by the tax assessor, may have since transferred the property. These types of recent transfers will be discovered during the process of searching the land record indices as described below.
- **State or EPA Conducted Title Searches** - Most jurisdictions (whether or not they have on-line resources) use one of two systems to index their real estate records. The majority of states index land records based on the names of the grantors and grantees in what is called a grantor/grantee index. Other states index land records by address or parcel ID in what is called a tract index.
 - **Grantor/Grantee Index** - Searching a title in a grantor/grantee index can be complex. The index is separated by grantor (seller) and grantee (buyer) and is used to track and cross-reference grantor and grantee information. The index lists deed information including grantor, grantee, and date of sale. The index is available either on-line or in books. An on-line search is usually based on name whereas books often are organized first by year of the property transfer (i.e., sale) followed by a listing of names alphabetically within that year. Organization of the indices may vary among jurisdictions.
 - Begin your title search with the grantee. Locate the name of your current owner (as identified by tax assessor) in the grantee index to establish the first link in your chain of title. The tax assessor information should include the date of sale to direct you to the appropriate book. The grantee index listing will include the grantee (current owner) and the grantor (most recent seller) and the date of sale.
 - Next, begin searching the grantee index backwards in time based on name and date of sale (usually the year). The grantor from the previous sale becomes the grantee. Continue this process until you have traced the chain of title back to your predetermined date.
 - Finally, cross reference the collected information using the grantor index. It should be organized similarly to the grantee index but is based on the grantor name instead of the grantee. Start with the grantor from the earliest sale you reviewed and move forward in time. Search each owner in the grantor index, checking each owner from the date of the deed when they acquired the property to the date of the deed when they transferred the property (or to the present for your current owner). Using the grantor index allows you to identify any additional grantors

that may not be listed in the grantee index (e.g., a spouse) and also confirms the identity of the current owner.

- In addition to using grantor/grantee indices, many deeds include a recital that references prior deeds and/or transactions. The recital can be used as another means of cross-referencing and tracking ownership information.
- **Tract Index** - Searching a title in a tract index jurisdiction is relatively easy because a search of the property address or parcel ID reveals all of the ownership interests and any leasehold interests (if recorded). In most circumstances, the results of your search will provide you with a historical chain of title.
- **Contractor or Title Company Conducted Title Searches** - When using a contractor or title company, clearly lay out the parameters and scope of the search. Basic parameters discussed at the beginning of the title search section are critical and include time period, area, format and final documents.

A title search may also lead you to lease information. See Section 2.4 (p. 11) for the potential difference between a property owner and an UST owner. Leases are not typically recorded in title documents and will not be written into the deed since the deed is the record of ownership. In some jurisdictions, landowners may record a certificate or memorandum of lease that summarizes the basic terms of the lease. Note that while leases are not always recorded, they may still be found by researching business tax records for the property at the tax assessor's office. Additional business documents are likely to be found in the office of the Secretary of State or other repository of business records, not in the office where land title records are found. See Section 4.3 (p. 28).

4.2.2 Tax Assessor Information

The tax assessor's office provides you with the name of the person paying taxes on the property. As discussed above, this person is not always the current owner of the property. Cross referencing the deed information with the property tax information found at the tax assessor's office may assist with confirming ownership information. This can be a good starting point for the RP search if the title search becomes difficult. The tax assessor's information might also provide you with more recent contact information for the current owner.

The tax assessor's office will need either the property address, parcel number or the location on a tax map. If you are having difficulty locating the deed, the tax assessor's office might be able to assist in getting a current deed reference such as the parcel number, book and page number of the filed deed, and/or a copy of the parcel. Once the book and page number of the deed are known, a copy of the deed can be obtained from the recorder's office.

Opportunity To Collect Ability-To-Pay (ATP) Information

While you are at the tax assessor's office or Secretary of State, you might consider collecting additional information, if you anticipate needing to do an ability-to-pay analysis. Supporting documents include:

- Tax statements or appraisals (5 years)
- Financing statements, real estate contracts, bills of sale
- Notice of bankruptcy

4.3 Business Status Research

When an owner or operator is a business, the type of business (corporation, partnership, etc.) can help determine the business's liability and that of its officers and directors.²¹ For tax purposes, businesses file documents establishing the business with the Secretary of State or other business licensing entity in the state (e.g., state corporation commission). These documents include the company name, articles for the company, and, possibly property listings. Most of the current corporate data are available on-line but may only be available for a limited number of years.²² (Note: check with the data provider to verify the period of time that the data covers and whether full data or only limited portions are provided).

The Basics: Business status information may provide information on property, UST owners or operators, and leases. This information is located on-line through business search engines (see Appendix E) and at state and local government business offices such as the Secretary of State.

Required business filings differ from state to state, both in terms of what information must be provided and where the documents must be filed. In many states, corporations and limited partnerships are required to file documents with the Secretary of State. Accordingly, almost all corporations and partnerships have filed these requisite documents:

- Corporate registration, containing a list of officers and directors, articles of incorporation, and all amendments of the articles
- Partnership agreement, containing a list of all partners and their interests in the partnership, and may include a list of partnership property
- Name changes and mergers

²¹ See Appendix G for a description of business organizations.

²² See Appendix E for a list of on-line search tools.

A business entity can be held liable under RCRA, no matter the legal form of the business. RCRA § 9001 (which references RCRA § 1004) defines a person to include an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body and shall include each department, agency, and instrumentality of the United States.

4.4 Conducting Interviews

If the ownership issues are complex, interviews are useful for collecting or clarifying information on owners and operators. Interviews also may help identify the existence of relevant documents such as business licenses, operating permits, and building permits. Interviews complement the collection of site records and help develop site-specific information that may not be recorded in government documents. Questions to local tax assessors, planners, or city directors can lead to information about owners and operators. A phone interview with family members located through on-line phone books or through social media might provide you with the current owner contact information or point you in the right direction to find this information. For additional information, see Appendix D (p. 42).

The Basics: Interviews are not required but might lead to useful information, especially contact information.

4.5 Contacting The Owner Or Operator

Phone calls and information letters can confirm the identity of an UST owner or operator or may provide additional information for the RP search. Some states send discovery letters to potential UST owners or operators asking them to confirm or deny their affiliation with an UST site.²³ An implementing agency may choose to send letters to multiple potential UST owners and operators when the identity of the correct owner or operator is uncertain. Responses to information letters may also provide additional information leading you to other owners or operators.

The Basics: Communication is a critical step to confirm you have correctly identified the UST owner or operator and have the correct contact information. Letters can also serve to narrow the field of potentially responsible owners and operators.

From the federal perspective, RCRA § 9005 (a) authorizes the implementing agency to request information on an UST from any owner or operator. States have similar information request authorities. The authority is broad and allows the implementing agency to request:

²³ See examples of discovery letters and information request letters in Appendix H.

- Any and all records pertaining to the UST system
- Any testing and/or monitoring information such as certifications of all new UST systems
- Reports of all releases, suspected or confirmed
- Any corrective action planned or taken including initial site characterization and investigation of soil and groundwater cleanup, product removal, and/or a corrective action plan

A typical information request letter to an UST owner or operator includes the following information:

- Identification, citation, and explanation of the request for information
- Name and telephone number of the implementing agency contact person
- Deadline for achieving full compliance with the request (e.g., usually 10 to 15 days)
- Statement indicating that refusal to provide the requested information by the deadline may result in the issuance of an administrative compliance order or initiation of a civil action, which may include an assessment of civil penalties per tank for each day of violation

In general, the request for information may be sent by first class mail unless the owner or operator has not been cooperative with the implementing agency, in which case it may be sent by certified mail, return receipt requested. In addition, a copy of the letter should be placed in the case file. Information letters should be clear and concise and have a specific response due date. Follow up actions may be appropriate after the response due date such as:

- Telephone calls
- Follow-up letter
- Administrative order to compel compliance
- Judicial action asking a court to compel compliance

Sometimes, the potentially responsible owner or operator doesn't respond. In these situations, it may be appropriate to phone the recipient and determine why he or she didn't respond (e.g., more time is needed, clarification is required, contact information is incorrect, or recipient didn't understand that he or she is required to provide information). You may need to search further for different contact information. If the recipient did not understand the requirements, you may want to send a follow-up letter fully explaining the implementing agency's authority.

Occasionally the implementing agency has reason to believe that a recipient may not be cooperating to avoid liability. This may be based on past experience with the party pertaining to previous permit violations, police reports, state investigations or interviews, or other documents. In such cases, you may want to consider including language in the follow up letter that asserts the implementing agency's authority and describes the recipient's responsibilities.

The implementing agency can also include a reference to the False Statements Act²⁴ which provides for criminal penalties for any person who provides unsworn false statements or conceals information from an agency or department of the United States. This Act applies to statements made to civil investigators, any written responses to questions, and signed statements. Alternatively, the False Statements Act provides for civil penalties when a person makes false statements to avoid paying the government.

If the recipient still does not respond, you can use an administrative order to compel compliance with the information request. Administrative orders are issued by the implementing agency and require notice and an opportunity for a hearing. Federal UST administrative orders for information are authorized under RCRA § 9006(a).

If the recipient continues to ignore the request for information, you can refer the case to the state attorney general (AG) or the United States Department of Justice (DOJ) requesting enforcement of the administrative order. You should be prepared to present the facts of the case when seeking AG or DOJ action to compel compliance.

4.6 Documenting The Search

All RP searches should have a record of the information used to identify the owner or operator, although certified copies of documents are not a federal requirement to establish ownership or operation in the UST program; state requirements may vary. See Section 3.6 (p. 17) for additional information.

4.7 When The Search Turns Up Empty

Sometimes you don't find an UST owner or operator, even after a diligent search. If you suspect a release, cleanup options include:

- state lead work either through a state fund or state abandoned site program
- federal funding through the LUST Trust Fund
- engaging with third party cleanup and redevelopment efforts through brownfield petroleum grants
- a state voluntary cleanup program

²⁴ 31 U.S.C. § 3729, *et seq.*

5.0 Case Study: West Virginia RP Search Results In Closing Temporarily Out-Of-Service Tanks

In 2011, West Virginia's Department of Environmental Protection (DEP) began locating responsible owners of underground storage tanks (USTs) that were temporarily out-of-service for several years. At the beginning of 2011, DEP records had 933 temporarily out-of-service underground storage tanks. By October 2012, DEP's RP search contributed significantly to closing 275 USTs at 167 facilities.

DEP received assistance from EPA's Office of Enforcement and Compliance Assurance to research difficult ownership issues. EPA used a contract with Industrial Economics Incorporated (IEC) to perform ownership searches for 59 facilities. In 2012, DEP used state funds to enter into an Interagency Agreement with West Virginia's Center for Environmental, Geotechnical and Applied Sciences (CEGAS) at Marshall University for the remaining 108 facilities. CEGAS also runs West Virginia's Brownfields Assistance Center at Marshall University which provided beneficial experience interacting with local governments to find UST owners. In 2013, DEP used funds from EPA's Office of Underground Storage Tanks to finish the project.

To identify owners as well as their current contact information, IEC and CEGAS researched deeds, leases, and tax records at local courthouses to confirm tank ownership and current contact information for both the properties and tank owners. In their work, CEGAS conducted interviews with property and tank owners when possible, confirmed contact information, and visited certain sites to determine if USTs had been removed.

In cases where the identity of the responsible owner was uncertain, DEP inspection staff further developed the leads generated by IEC and CEGAS to determine ownership. In some instances, DEP contacted former property owners, former leaseholders, and even fuel providers known to have operated in the area. In cases where a property was for sale or rumored to be for sale, staff contacted local real estate agents who were sometimes able to provide additional information on the current property owner, previous owners, and/or history on the site. Using the contact information from the Secretary of State business searches, DEP staff sent out letters to anyone associated with the company such as members, organizers, and officers. At times, DEP contacted local post offices and businesses in an area to see if they could provide information or provide a contact for someone who might have knowledge about the site. Although DEP was not always successful in these endeavors, some very useful information was generated by following the leads provided by the contractors. Utilizing the information provided by IEC, CEGAS, and DEP inspectors, DEP officially notified owners via letters of their responsibilities as UST owners.

One lesson DEP learned was the need to look for information in many different ways and use multiple resources to find correct information, especially for older sites. DEP found on-line internet people searches, social media sites, digital courthouse tax information, city directories,

Sanborn maps, Secretary of State's business websites, and Google Earth helpful in locating and establishing ownership. Other state offices can provide useful information. For example, Weights and Measure's inspection information helped DEP determine if an UST was in use after November 8, 1984. In some cases, the city director or sheriff's office provided current contact information for people.

A major difficulty encountered by DEP has been the issue of receiving responses from out-of-state owners. Identifying them, especially if they are the property owner, has not been nearly as difficult as getting them to accept DEP certified mail and phone calls. However, DEP has learned that persistence pays big dividends on getting owners to properly close USTs.

6.0 Additional References

You may need to use multiple sources and approaches to find the UST owner or operator, especially for the older or complex sites. There are additional resources available for help. The CERCLA PRP Search Manual is located on-line at <http://www2.epa.gov/enforcement/report-prp-search-manual-2009-edition-2011-addendum>. CERCLA also has PRP Search training courses and conferences.

Appendices

Appendix A**Glossary**

Deed reference: book, page and date of information in local or county records.

Grantee: the buyer in a property transaction.

Grantor: the seller in a property transaction.

In Use: presence of regulated substance in an UST. To determine whether regulated substance is present, states may use the definition of empty as described in 40 CFR 280.70 as follows: “The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 cm (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.” A tank that contains regulated substance would be *in use* even if the tank was not dispensing fuel or a potential owner did not operate the UST system or cause any suspected contamination.²⁵

Legal description: a description of real property conveyed during a sale (see the description of deed documents in Appendix F, p. 54).

LUST Trust Fund: in 1986, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to address releases from federally regulated USTs by amending Subtitle I of the Solid Waste Disposal Act. In 2005, the Energy Policy Act expanded eligible uses of the Trust Fund to include certain leak prevention activities. The LUST Trust Fund provides money to:

- Oversee cleanups by responsible parties
- Enforce cleanup by recalcitrant parties
- Pay for cleanups at sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action
- Conduct inspections and other release prevention activities.²⁶

Operator – 40 CFR 280.12: “...any person in control of, or having responsibility for, the daily operation of the UST system. See Section 2.5 (p. 12) for more information.”

Owner – 40 CFR 280.12: “...(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and (b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.” See Section 2.3 (p. 9) for more information.

²⁵ Clarification of LUST eligibility and Grant Implications memo from Carolyn Hoskinson, March 17, 2010, www.epa.gov/oust/oust_eligibility_letter_031710_finalsigned.pdf.

²⁶ Excerpt from EPA’s Office of Underground Storage Tank’s website on the LUST Trust Fund at www.epa.gov/oust/ltffacts.htm.

Parcel: refers to a legally described piece of real property. The legal description establishes the boundaries of the parcel. It can vary in size according to the division of land.

Person – 40 CFR 280.12: "...an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government."

The definition of owner does not include any person who, without participating in the management of an UST and otherwise not engaging in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in the tank.²⁷ For example, if there is a mortgage on the property, the lending bank is typically not considered an owner of the UST system prior to foreclosure.

Regulated substance – 40 CFR 280.12: "...(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processing of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils."

Responsible party (RP): not an official term in the UST program. Owners and operators are responsible for following the regulations in 40 CFR 280.

Title search: a review of ownership documents over time.

Underground storage tank (UST) system – 40 CFR 280.12: "...an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any."

Underground storage tank (UST) – 40 CFR 280.12: "...any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground." This definition applies to all USTs except for the tanks exempted from the definition of an UST in RCRA § 9001(10) and 40 CFR 280.12.

²⁷ 60 FR 46711, Sept. 7, 1995. www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=451db4016f6afbc846d4b8e6ecd58d35&rgn=div6&view=text&node=40:28.0.1.1.10.9&idno=40..

Appendix B

RP Search Plan Tip Sheet

This document helps you plan the UST RP search.

Site Name: _____

Address: _____

County: _____

Case lead/ email/phone: _____

1. Age of site _____.

- Was the tank *in use* after November 8, 1984? _____.

2. Matrix of Search Activities

Search Activities	Lead	Information Available on Internet (Y/N)	Cost	Resources (in-house or external)
State UST files search				
On-line search				
Title search				
Tax record search				
Interviews				
Contacting RP/ Information Request				

3. **Potential Interviews** – Identify potential people to interview. This section may evolve over time. For example, you might start with the county clerk or tax assessor and then as the case evolves, add relatives or business partners, as necessary.

4. **Documentation** – What information is needed in the file? Any approvals required?

5. Schedule

Search Activities	Start Date	End Date
State UST files search		
On-line search		
Title search		
Tax record search		
Interviews		
Contacting RP/ Information Request		

Appendix C

Records Search Tip Sheet

This document helps you conduct the UST RP search.

Site Name: _____

Address: _____

County: _____

Case lead/ email/phone: _____

Record Locations

- 1. Are deed records available on-line? Y / N
- 2. Can you get historical records on-line? _____
- 3. If on-line, is there a cost? _____ How much? _____
- 4. If not on-line, title documents are located at the following address:

- 5. Are tax records available on-line? Y/N
- 6. If not on-line, tax records are located at the following address:

- 7. Is business licensing information available on-line? Y / N
- 8. If not on-line, business licensing information is located at the following address:

Information from Deed

Owner name(s):

Contact information:

Parcel number:

Assessor parcel number:

Lease information:

Information from Tax Records (cross-reference to deed)

Owner name(s):

Contact information (could be more current than deed information):

Additional Information from Tax Records to Support an Ability-to-Pay Analysis

Tax statements/appraisals (5 years)

Financing statements, real estate contracts, bill of sales

Notice of bankruptcy

Deed Search Assistance from Tax Assessors Office

Parcel number:

Assessor parcel number:

Book and page number of filed deed:

Business Licensing Search

Owner or operator name(s):

Contact information:

Type of businesses:

Appendix D

Interview Tip Sheet

The following interview information is summarized from the CERCLA PRP Search Manual and provides background on the interview process.

Overview

Balance the use of interviews wisely. In-person interviews can be resource intensive and the benefits might not outweigh the cost for every site. In some cases, interviews can be more effective than a letter in gathering information. An interviewer can follow up immediately on important statements, rather than needing to send follow-up letters. People generally give broader and more valuable answers when being interviewed in person. Eye-to-eye contact allows the interviewer to better judge whether an interviewee is forthcoming and truthful.

Compared to letters, interviews with persons who are cooperative but elderly, ill, or illiterate often generate useful information. Interviews do not have to be conducted in person, especially when collecting information from other government agencies. Phone interviews are more economical. Depending on the type of information needed from an owner, operator, or other resource and their level of cooperation, a phone call might suffice.

Preparation

Preparing for the interview is key to obtaining the most useful information from the person interviewed. Before conducting interviews, the interviewer should become familiar with the site and information needed by:

- Reviewing background information on the site
- Obtaining names of state or local government agencies and officials involved with the site
- Generating a list of specific questions

Preparing for and conducting the interview may involve:

- Preparing a general outline of discussion points
- Determining whether the interviewee is represented by an attorney
- Knowing the elements of liability and the case
- Preparing specific questions beforehand to ensure that all topics are covered
- Having two persons present at the interview, if possible, one serving as the note taker, the other as the primary interviewer

- Considering whether an attorney should attend the interview if the interviewee's attorney is going to attend
- Determining the interviewee's association with the site

Interviewing federal, state, or local government officials can be very productive because these people, especially state and local officials, often have detailed knowledge of the site. Contact with government officials is generally made by telephone, by letter, or in person. It is preferable for agency staff, rather than contractors, to interview government officials. If a contractor is conducting the interview, the contractor should identify himself as an EPA or state contractor conducting background research on the site or have a letter of introduction from the implementing agency, if interviewing in person. Topics to cover with government officials include:

- Availability of relevant documents in the government's files
- Whether and how copies can be obtained
- Owners and operators associated with the site
- Site enforcement history, including any notices of violation (NOVs)
- Administrative or legal actions involving the site and the RPs and the location of relevant documents
- Relevant state or local regulatory requirements
- Any news media articles about the site
- Other people or organizations knowledgeable about the site

Interview Facts And Tips

At the beginning of the interview, the interviewer should properly identify himself and others, the authority under which he is conducting the interview, and the purpose of the interview. The following list contains basic tips for conducting interviews from the CERCLA PRP Search Manual; many are relevant for UST RP searches.

- Attempt to obtain information from more than one source
- Obtain factual information regarding the background of the interviewee
- Investigators do not have authority to grant anonymity to interviewees
- Consider hiring a private investigator who is skilled in interview techniques to conduct interviews
- Never lie to or deceive the interviewee
- Obtain background information about records. This is important for determining the credibility of the interviewee and the reliability of records. Find out who prepared the records, and how, why, when and from what source they were prepared
- Verify the accuracy of information from other sources (e.g., use one interview to support another). Use documents to confirm information whenever possible
- Conduct interviews in a businesslike manner with professional demeanor

- Use language that is understandable to the interviewee; avoid acronyms and technical or legal jargon
- Do not assume that you know what the interviewee is saying; clarify when in doubt
- When arranging the interview environment, consider individual or cultural zones of comfort regarding seating and privacy
- Ask the same question in a variety of ways
- Paraphrase and repeat to the interviewee to ensure a mutual understanding of what is being said
- Let the interviewee get through his/her story once before challenging or asking detailed questions
- Attempt to resolve inconsistencies in the interviewee's responses before leaving the interview
- Conclude the interview by summarizing important information, asking if the interviewee can think of anything else that was not covered, establishing a way to keep in touch (e.g., providing a business card), and attempting to obtain any documents identified during the interview

Documentation

In the UST program, a written summary of the information learned during the interview should suffice. In the CERCLA program, interviews are documented more rigorously with: written summaries, recorded interviews; or sworn statements (affidavits) confirmed by a notary.

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

Interviews can be recorded on tape if the interviewee consents, or written as a statement. If a written statement is used, it should include a sentence saying the interview and statement are completely voluntary and no threats or promises have been made. The interviewee's signature on the statement provides a written record of the recollection at the time of the interview. This record can be used later to help the interviewee recall events that may fade from memory.

Additional Information

Interviews are best conducted by personnel trained in interviewing techniques. However, at a minimum, the interviewer should be familiar with UST owner and operator definitions and state laws that affect those definitions, in addition to the specifics of the case. The interviewer should be cognizant of ethical rules or state bar rules restricting contact with represented parties. Even though an interviewer might not be an attorney, ethical and bar rules may be applicable because the interview or contact may be imputed to the attorney. In order to

interview represented parties, contact their attorneys, generally with the assistance of the agency case attorney.

Notice to Attorneys

If you decide to conduct interviews with a business, before interviewing employees you will need to ascertain what the state bar rules are for providing notice to the attorney representing a business entity. Rules of conduct vary from state to state, so it is important to determine what rules apply in each case. These rules often consider employees to be part of the corporation or business, meaning the corporate attorney may have a right to be notified of the interview and be present for it. These considerations may apply even if the government attorney is not present, as civil investigators, paralegals, contractors, or private investigators can be said to be working at the direction of the government attorney. Violations of these rules could subject the supervising case attorney to a range of sanctions.

Appendix E

On-Line Information Sources

Business and Corporation Resources

Annual Reports and SEC filings	Public Register Online*	www.annualreportservice.com	Free directory of online annual reports.
	Morningstar Document Research*	www.10KWizard.com	Search for company SEC filings.
	U.S. Securities and Exchange Commission	www.annualreportservice.com	Company information, shareholder information, and SEC filings including annual reports.
	Mergent*	www.mergentonline.com	A variety of national and international tools available.
	Yahoo! Finance	http://finance.yahoo.com	Financial news & information.
Bankruptcy	American Bankruptcy Institute*	www.abiworld.org	Numerous online resources including news, meeting information, court opinions and other bankruptcy information.
	Public Access to Court Electronic Records (PACER)*	www.pacer.gov	Access to federal court documents. Fees are generally \$.10 a page.
Company Profiles and	American Business	http://library.dialog.com/bluesheets	Contains company contact, SIC, financial, and linkages on over

Information	Directory		12 million U.S. business establishments.
	Corporate Information*	www.corporateinformation.com	Information on companies in 55 different countries. Free snapshot reports as well as more comprehensive reports for a fee.
	Corporation Wiki	www.corporationwiki.com	Summarizes information on over 20 million companies.
	Dun & Bradstreet*	www.dnb.com	Search for business and financial information on companies. Certain D & B information is available through Lexis. Your region may already have a subscription to access D & B reports.
	Lexis Corporate Affiliations*	www.corporateaffiliations.com	Database of relationships between companies.
	Motley Fool	www.fool.com	A variety of financial information.
	Mergent*	www.mergentonline.com	A variety of national and international tools available.
	Yahoo! Finance	http://finance.yahoo.com	http://finance.yahoo.com
Corporate Records	National Association of Secretaries of State	www.nass.org	National SOS organization. Provides links to every State under Business Services section. Free although registration is required.

	Search Systems	http://publicrecords.searchsystems.net/United States Free Public Records by State	Free link to public records by state, county, or city.
	Coordinated Legal Tech	www.coordinatedlegal.com/SecretaryOfState.html	Similar to NASS, provides a link to the Secretary of State in each State as well as information about the cost.
	LexisNexis*	www.lexis.com	Provides one-stop access to corporate records for most states (Delaware and NJ not covered).
International Business	Corporate Information	www.corporateinformation.com	Search for information about companies in 55 different countries.
	Industry Canada	www.ic.gc.ca/app/scr/cc/CorporationsCanada/fdrICrpSrch.html?locale=en_CA and www.ic.gc.ca/eic/site/icgc.nsf/eng/home	Search for information about Canadian companies.
	Kompass	www.kompass.com	Search for information about companies from 70 different countries.
	EuroPages	www.europages.co.uk	A Business to Business search engine with information on more than 500,000 businesses.
	GBR Direct	www.gbrdirect.eu/companySearch.aspx	Search for information on companies in 18 Eastern and Western European countries.

EPA Resources - Public

Compliance and Enforcement	www2.epa.gov/enforcement	EPA Compliance and Enforcement
Economic Models	www2.epa.gov/enforcement/penalty-and-financial-models	Financial modeling software, which evaluate a PRP's ability to pay clean up costs and penalties.
Finding Potentially Responsible Parties	www.epa.gov/enviro/facts/cerclis/search.html	Search for parties that have received General or Special Notice of liability at Superfund Sites. This resource obtains its information from CERCLIS, the CERCLA database.**
Links to State Environmental Agencies	www.epa.gov/epahome/state.htm	EPA's web link to state environmental agencies.
EPA PRP Search Manual with Addendum (2011)	www2.epa.gov/enforcement/report-prp-search-manual-2009-edition-2011-addendum	EPA handbook prepared for personnel performing PRP searches; released in 2009 with a focus on CERCLA PRP Searches. EPA PRP Internet Information Sources: Pages 357 to 384.
Community Right to Know (EPCRA)	www.epa.gov/oem/information.htm	Variety of information related to response actions and emergency planning.

Investigative Resources

General	Accurint*	www.accurint.com	Lexis product, provides comprehensive information on individuals.
	Anywho	www.anywho.com/reverse-lookup	Reverse phone number directory.
	AT&T	www.corp.att.com/directory	Find a business or person using AT&T's Directory Assistance.

Black Book Online (public records)	www.blackbookonline.info	Central list of databases covering arrest warrants through zip codes including corporations, court records, people searches, and state/local public records.
Bigfoot	http://search.bigfoot.com/en	Email, white and yellow pages, and reverse searches.
Bureau of Indian Affairs	www.bia.gov	Information related to tribal issues including tribal contacts and leases.
Central Contractor (Federal) Registration (CCR)	https://www.bpn.gov/ccr	The official, free on-line registrant database for the U.S. Federal Government.
Clear*	https://clear.thomsonreuters.com	Search for business or personal information with an address or name. This service was previously known as ChoicePoint, Autotrack, and CP Clear.
Coast Guard	http://cgmix.uscg.mil/iir/IIRSearch.aspx	Incident reports.
Email addresses	www.my.email.address.is	Searches Yahoo!, Switchboard, W.E.D, InfoSpace, and Look4U, as well as reverse email address search and tips on finding email addresses.
Experian/ MetroNet*	www.infolookup.experian.com/metronet	Credit Reports, business searches, and personal searches.
Freeality	www.freeality.com	Search public records by category or state or nationwide.
GeoCommunity	http://data.geocomm.com	GIS data depot. GIS and Geospatial data including wetlands, flood maps, and USGS data.
Infobel	www.infobel.com/en/world	Find anyone anywhere in the world. Available in multiple languages.
Internet Resources for Environmental	www.astswmo.org/Files/Meetings/2011/2011-Hazardous_Waste/PIZZINO-Cybersch.pdf	From ASTSWMO's website; Created & Managed by Western States Project (R@IN)

	Enforcement		
	National Response Center Data - Oil & Chemical Spills	www.nrc.uscg.mil/foia	The primary function of the National Response Center is to serve as the sole national point of contact for reporting all <i>oil, chemical, radiological, biological, and etiological discharges</i> into the environment anywhere in the United States and its territories.
	OSHA	www.osha.gov/pls/imis/establishment www.osha.gov/oshstats	OSHA Inspections & Violations Query by Establishment. OSHA labor statistics and Inspection / enforcement data.
	Public Data*	www.publicdata.com	Search criminal, motor vehicle, drivers' license, sex offenders, voter, property tax, federal, Secretary of State, and professional license from select states.
	R@IN (Regional Associations Information Network)*	PUBLIC Section www.regionalassociations.org/wsp-public/wsp-public.aspx Midwest Environmental Enforcement Association MEEA@regionalassociations.org Northeast Environmental Enforcement Project NEEP@regionalassociations.org Southern Environmental Enforcement Network SEEN@regionalassociations.org Western States Project (WSP) WSP@regionalassociations.org	R@IN are alliances of regulatory and law enforcement agencies from 45 States, 4 Canadian Provinces, and several municipal, regional and federal agencies. Membership for federal and state environmental regulatory agencies, attorneys general offices, law enforcement agencies and local prosecutor organizations ONLY. R@IN promotes the effective enforcement of state and local environmental statutes and regulations, with a strong emphasis on criminal enforcement. Members pay annual dues.
	Reverse Address Directory	www.reverseaddressdirectory.com	Reverse address, phone.

	Sanborn Fire Insurance Maps	www.loc.gov/rr/geogmap/sanborn	Originally created for assessing fire insurance liability in urbanized areas in the United States; now; frequently used for preservation and restoration efforts.
	Search Systems	http://publicrecords.searchsystems.net/index.php	General Information Search (i.e., zip code, area code).
	Searchbug	www.searchbug.com/peoplefinder	Personal and Business directory with additional services if you submit an email address in which the information can be sent.
	Superpages	www.superpages.com	Business Directory.
	Toll Free Numbers	www.inter800.com	Toll free number directory.
	USGS	http://webgis.wr.usgs.gov/globalgis/	World atlas.
	Westlaw*	www.westlaw.com	Online legal research service for legal and law related materials and services.
	Whowhere	www.whowhere.com	White and yellow pages.
	Yahoo	http://search.yahoo.com/people/email.html	Search for people and businesses information.
Guides	Government Accountability Office Investigator's Guide to Sources of Information (Chapter 4, Electronic Databases)	www.fas.org/irp/gao/osi-97-2/soi_ch4.htm	List of investigative databases.
Municipalities	BRB Publication	www.brbpub.com/free-public-records	Public records databases by state; links to free databases (similar to Search Systems before it became a pay service).

	City Data	www.city-data.com	Includes photos, statistics, maps, home values, crime data, etc.
Newspapers – Business or Obituary sections	News Choice	www.newschoice.com	Selected newspaper links in selected states.
	Newspaper Link	www.newspaperlinks.com	Links to all major newspapers; search by state, no log ins.
Public Records Directories	Institute for Intergovernmental Research	www.iir.com/Information_Sharing/riss	National program of regionally oriented services designed to enhance the ability of criminal justice agencies to share information; membership required.
		www.govengine.com	Federal, state, and local government information.
Federal, State and Local Government Directories	State and Local Government on the Net	www.statelocalgov.net	Directory of state, county, city government websites.
	USPS	https://tools.usps.com/go/ZipLookupAction!input.action	Find zip code for an address.

For a more complete list of electronic resources please visit: <http://www2.epa.gov/enforcement/superfund-enforcement>

* Fee charged

** CERCLIS will be replaced by the Superfund Enterprise Management System (SEMS).

Appendix F

Types Of Deed Documents

- Warranty deeds - seller warrants that he has clear title to convey
- Quitclaim deed - seller conveys whatever interest he has; there may be other interest holders
- Tax deeds, sheriff deeds - issued by county after tax sale for delinquent taxes
- Deed of trust - legal title is transferred to a trustee, who holds it as security for a loan between a borrower and lender
- Mortgages
- Easements - a right of use over the property of another, such as a right of way
- Leases
- Financing statements, judgments and lis pendens (a suit pending in court that concerns title to property)
- Real estate contracts
- Agreements
- Mineral leases
- Gas and oil leases
- Plat maps of subdivisions - a map, drawn to scale, showing the divisions of a piece of land
- Property plats
- Legal description - describes what is being conveyed (sold) through:
 - metes and bounds
 - reference to lots in recorded plat
 - fractions of sections
 - parcel number
 - deed reference
 - a combination of any of above

Appendix G**Description Of Business Organizations****Introduction**

The following is a general introduction to the forms in which a business may be organized. It includes a definition of each form, a brief description of the formalities required to begin the form, and a simplified description of who is liable for the acts, omissions, and debts of a business organized in that form. Formation and liability of a business or commercial entity are governed primarily by the law of the state in which the entity operates or is headquartered. Identifying the specific business entity (or form) is useful if it becomes necessary to hold the officers and directors of a business liable. The formation and liability of businesses are dependent upon state law. It is recommended that you consult with the appropriate attorney in your region or state when assessing the potential liability of responsible parties associated with a particular site.

- **Person**

RCRA § 1004(15) defines a person as "an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States." RCRA § 9001(5) further defines person as a "consortium, a joint venture, and a commercial entity, and the United States Government." Persons, and thus businesses, can be liable, under both civil and criminal statutes, for the consequences of their acts or failure to act. For instance, a partnership can be held liable for damages caused by an employee of the partnership performing an act within the scope of its employment who injures another person. In civil actions, courts may require a partnership to perform corrective action.

- **Governing Law**

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

Sole Proprietorships

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

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

Ownership and Liability: All the assets of the business are owned by the individual, the individual controls the activities and direction of the business and the individual is liable for all the debts and obligations of the business. Accordingly, any asset owned solely by the individual could be reached to satisfy any debt of the sole proprietorship. For assets owned by the individual jointly with another individual(s), it may be necessary to research the laws of the state where the asset is located or the individual resides. This is especially true for non-business assets owned jointly with a spouse.

Registration: A sole proprietorship is not generally required to formally register to establish a business but may be regulated by a variety of state and local agencies, often for reasons related to health and safety, professional standards, or tax revenue. Accordingly, a sole proprietor may need to file appropriate documents in order to use a fictitious business name (i.e., the official company name is ABC Corp but is “doing business as” (d/b/a) Joe’s Bikes).

Partnerships

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

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

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

- **General Partnership**

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

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

Registration: A general partnership usually does not require any formal registration to establish the business, but may be regulated by a variety of state and local agencies, often for purposes related to health and safety, professional standards, or tax revenue. Accordingly, a partnership may need to file appropriate documents in order to acquire a business name or obtain a business license.

- **Limited Partnership**

Definition: A limited partnership is a business association of at least two legal persons, one or more of whom are general or managing partners, and the rest of whom are limited partners.

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

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

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

Corporations

Most states adopted the Model Business Corporation Act or the Revised Model Business Corporation Act which lend uniformity to requirements for incorporation. Nearly every state, however, has adopted different filing requirements, the jurisdiction for filing those documents, the amount of disclosure required, and regulations governing the sale of stock, among other items. These differences make it necessary to become familiar with the requirements of requirements of the state in which you conduct the RP search.

Definition: The Corpus Juris Secundum (18 C.J.S. § 2) explains that a corporation is an artificial entity created by the law of its state of incorporation. A corporation is made up of a body of individuals (shareholders) “united as a single separate entity under a common name” with a perpetual existence. For legal purposes, a corporation’s status under the law is that of an individual, even though one corporation may be an affiliate of another corporation or corporations, such as a parent or subsidiary. Although an artificial person, a corporation “is entitled to rights under the law, and must enforce its own rights and privileges.” The “essential attribute of a corporation is the capacity to exist and to act, within the powers granted, as a legal entity,” separate and distinct from its shareholders. The characteristics of a corporation generally include:

- Capacity of perpetual existence
- Power to sue or be sued in the corporation’s name
- Ability to purchase, own, and sell property and real estate
- Ability to engage in specified business as set forth in its articles of incorporation
- Any other characteristics and powers as provided by statute

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

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

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

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

- **Public vs. Private Corporations**

In a public corporation, stocks or shares are listed on a stock exchange (e.g., New York Stock Exchange or NASDAQ) and are available for purchase or sale either directly from the corporation or via a stock brokerage. In order to offer securities for sale to the general public, a corporation must provide a very high level of disclosure, including disclosure of specified financial statements, matters that are material to the economic existence or well-being of the business, the identity of the corporation's major shareholders, and the identity of entities seeking to acquire major stock interests. Such disclosures are filed with the SEC and are required as long as the corporation remains publicly traded. In privately held corporations, stock or shares are sold or issued only to selected private parties, and are not offered or sold publicly. Shares are often held by one person, a family, or those who incorporate the business; shareholders are often directors or officers of the corporation as well. Such a corporation is generally known as a close or closely held corporation.

- **C vs. S Corporations**

In C corporations, both the corporation and its shareholders are subject to income tax. The corporation is taxed on its net income, and shareholders must report any dividends received from the corporation as well as gains (or losses) on the sale of stock. There are no limits to the number of shareholders in C corporations, and C corporations may be either publicly or privately held. An S corporation is a corporation that elects to be taxed like a partnership such that the income of the corporation is allocated or passed through to the shareholders. S corporations avoid the double taxation of C corporations because only the shareholders report taxable income in the form of dividends or distributions. S corporations are limited by law to 35 or fewer shareholders and are normally privately held corporations.

- **Limited Liability Companies**

Many states have adopted provisions under either their Uniform Commercial Code or Business Corporation Act to allow for the creation of a business entity known as a limited liability company. The member(s) or company enjoy(s) the limited liability protection generally afforded to shareholders of corporations. Requirements include public notice or registration of the entity as a limited liability company and, in some cases, use of the term limited liability in the company name.

- **Domestic vs. Foreign And Alien Corporations**

A corporation is a domestic corporation in the state in which it incorporates. It is a foreign corporation in all other states in which it qualifies to do business. An alien corporation is a corporation qualified to do business in a state in this country, but incorporated in a country other than the United States. Consult attorneys regarding the feasibility of imposing RCRA liability on foreign corporations, alien corporations, or holding companies owned or capitalized by alien corporations.

- **Profit vs. Non-Profit Corporations**

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

Business Evolutions

- **Name Changes**

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

Sometimes a corporation decides to change its name or merges with another corporation and as a result of the merger assumes a new corporate name. Upon assuming the new

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

As a result of name changes, more than one corporation may at different times conduct business under the same corporate name. Also, because corporations must be authorized to conduct business on a state-by-state basis, it is possible for distinct, unrelated companies with the same corporate name to operate in different states. Once a corporation has been identified, it is necessary to confirm its name and the state of incorporation where RCRA liability arose. Once the corporation is correctly identified, it is necessary to determine its current status. A corporation cannot escape liability simply by changing its name. If investigation reveals that ABC Corporation was incorporated in 1999 and had an UST release in 2000, it is still liable today even if it changed its name to XYZ Corporation in 2005.

- **Mergers**

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

- Articles of incorporation and amendments
- Resolutions of the board of directors
- Merger agreements
- Proxy statements

- **Asset Sales**

A corporation may sell part of its business operations, facilities, or other assets (e.g., real property, equipment) to another corporation, but it cannot avoid RCRA liability simply by divesting itself of an asset. For example, a corporation may sell a facility where an UST release occurred, but doing so will not relieve it of liability under RCRA Subtitle I if it owned the facility at the time of the release (see RCRA § 9003(h)(6)(C)). Therefore the RP search should continue to investigate the selling corporation with particular attention to the proceeds of the asset sale.

- **Indemnification Agreements**

An indemnification agreement is a contract between two or more parties in which one party agrees to be obligated to pay for or reimburse another party upon the occurrence of specific events as set forth in the contract. A responsible party may seek to transfer its

liability to another party through such an indemnification agreement. However, RCRA § 9003(h)(6)(C) prohibits this: “No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.” Thus a prevention of liability transfer does not prevent entities from insuring each other, such as a lease where a service station dealer must indemnify its supplier.²⁸ Moreover, since the implementing agency is not typically a party to such agreements, it is not bound by their terms and conditions.

- **Sale of Stock In A Corporation**

Ownership of stock in a corporation may change over time. Exchange of stock in and of itself does not change the corporate person. Accordingly, if the only change in a corporation is the ownership of its stock, then there is no change in the identity of the liable party. If the facts developed during an RP search identify a situation where either all or a majority of the stock of a liable corporation is sold to a different person, it may be appropriate to conduct a more thorough investigation to confirm that the exchange of stock was the only change that took place. In some circumstances, ownership of all or a majority of the stock of a corporation by one person may signal the existence of additional responsible parties.

- **Holding Companies**

A holding company typically does nothing more than own the stock of corporations that actually create goods or provide services.

- **Shell Corporations**

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

- **Bankruptcy Or Receivership**

Bankruptcy is an organized legal process by which a person or business entity (the debtor) sheds its debts in federal court. For a business entity, the outcome may be either liquidation (a sale of all assets) or reorganization. The debtor may be able to shed its environmental liabilities or not, depending on the nature of the liability and the statute

²⁸H.R. REP. NO. 99-253 at 78, reprinted in 1986 U.S.C.C.A. N. at 3201.

under which it is regulated. Examples of environmental liabilities include penalties, regulatory compliance, cleanup obligations, and orders. Generally, regulatory compliance is required despite the fact of the bankruptcy. Receiverships are akin to bankruptcy, in that the entity's assets are placed under the custody of an appointed receiver and the entity's assets and liabilities are handled by the receiver.

Other Entities

- **Joint Ventures**

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

- **Trusts**

Trusts are legal creations, often created to hold property so that assets may be transferred to another person without expensive and lengthy probate court proceedings, or to avoid inheritance taxes. There are typically three parties identified in a trust agreement. The grantor or trustor bequeaths or transfers property to the trust. The trustee is the manager or executive for the trust, with an obligation to follow the trust documents in managing and distributing trust assets. The beneficiary or beneficiaries are the persons who are to receive or inherit the property. Trusts are created pursuant to state law, and the forms, purposes, and limitations of trusts vary from state to state. Because a trust may have legal standing as a "person" under state law, it may be liable as a responsible party under RCRA. It is therefore essential to understand the law of trusts of the state in which the trust was created and of the state in which the assets of the trust are located.

A trust is created by a trust document or instrument, which may or may not be recorded, but must be in writing. The document identifies the parties and describes the property (personal or real) that is to become the trust estate. The document also lists the duties of the trustee, provides for successor trustees, and enumerates the conditions under which trust assets may be distributed to the beneficiaries. Some trusts are irrevocable, which means that the property is transferred without the possibility of the grantor changing her mind. Other trusts are revocable, which means that the grantor retains the right to revoke the trust and recover the trust property. In cases where a responsible party grantor continues to enjoy the use or benefit of the trust property, the trust may be a sham and one can take legal action to void or set aside the transfer of the trust property. Trusts are

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

6. If you sold the UST(s) after they were registered with the DNREC-TMB, provide a copy of the registration form transferring tank ownership to the new owner.

7. Are the UST(s) still in use? If yes, who has been your distributor and who is the current operator? If no, when were the UST(s) last used, and by whom?

8. What do the UST(s) contain today? (i.e., product, sand, concrete, water, etc.) Provide the date the UST(s) were filled with sand, concrete, etc.

9. What was the purpose of the UST(s)? (i.e., to dispense gasoline, to dispense kerosene, to dispense diesel, to dispense aviation fuel, to store used oil, and/or to store heating fuel).

10. Are you aware of a release from the UST(s)? If yes, provide release date, amount and type of product released, and any analytical data.

11. Provide any documentation you have which supports that you do not currently own the UST(s).

12. Are you the owner of the property? If yes, provide a copy of the following: bill of sale, current deed, latest tax bill. If no, provide any information you have regarding the identity of the current property owner. (i.e., bill of sale)

13. If you have inherited the aforementioned property and/or UST(s) please provide a copy of the property deed and will.

I, the undersigned, hereby certify that to the best of my knowledge and belief, that all answers provided above regarding UST Facility # [proj officer add ID number] are factual.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Please respond to the above questions within thirty (30) days following receipt of this letter. You may request additional time if needed but a response is required and failure to respond could subject you to penalties. Non-compliance with this request may subject you to civil penalties of up to \$25,000.00 for each day of non-compliance pursuant to 7 Del.C. Section 7411. This letter shall serve notice that the DNREC-TMB considers you a possible owner of the USTs located at the above referenced facility based on the information available to us at this time. Please provide any additional information you have regarding the USTs at this facility to help further the State’s investigation of this matter

Your efforts toward protecting our environment are appreciated.

Ownership Statement

Please check the appropriate statement, sign and date the form and return to the Delaware Department of Natural Resources and Environmental Control, Tank Management Branch.

RE: [project officer fill in]

Facility ID: [project officer fill in]

File Code: 77

I, the undersigned, hereby certify that to the best of my knowledge and belief that:

() I have never owned and/or operated a petroleum underground storage tank at the above-referenced facility in Delaware.

() I have owned and/or operated a petroleum underground storage tank at the above-referenced facility in Delaware.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Title (if any)

H.2 State: Business Discovery Letter Template (Delaware)

RE: Facility Name Facility ID: To be Determined
 Address Address File Code: 77
 Address

SUBJECT: Project Officer Decides – since this form may be for more than one purpose

UST OWNERSHIP QUESTIONS

The Delaware Department of Natural Resources and Environmental Control, Tank Management Section (DNREC-TMS) is currently investigating the ownership and current status of underground storage tank(s) (USTs) located at the above referenced property. Pursuant to the *Delaware Underground Storage Tank Act, 7 Del.C. Chapter 74*, (the “Act”), the DNREC-TMS is authorized to request information for the purpose of enforcing the Act. You are requested to provide responses to the following questions within thirty (30) days of receipt of this letter:

1. Are there, or were there ever, USTs present at the above location? If yes, how many UST(s) are present and what are the sizes of each (i.e., 2,000 gallons)? If no, when were the UST(s) removed ?
2. Have you, or any business entity you have or any business entity you have ever had any interest in, **ever been** the **owner**, whether by full ownership or partial ownership (i.e., partnership, joint venture, etc.) of the aforementioned UST(s)? If yes, but you do not consider yourself the current owner, then when and how did you dispose of your interest in the UST(s)? Provide the bill of sale, dissolution agreement or other evidence of the transfer.
3. Have you or any business entity you have or any business entity you have ever had any interest in, **ever been** the **operator**, or caused the operation of the aforementioned UST(s)? If yes, provide dates of operation.
4. Provide the date the UST(s) were installed and the relationship between the person or business entity who paid for the UST(s) installation and the owner of the land into which the UST(s) were installed. If a business entity or business arrangement existed, then submit a copy of this contract or other evidence of the business entity or business arrangement.
5. Have you or any business entity you have or any business entity you have ever had any interest in, ever paid the \$50.00 per tank per year registration fee to the State of Delaware? If yes, for what years?
6. If you or any business entity you have or any business entity you have ever had any interest in, sold any and/or all of the UST(s) after they were registered with the DNREC-TMB, provide a copy of the registration form transferring tank ownership to the new owner.
7. Are any or all of the UST(s) still in use? If yes, who has been the distributor and who is the current operator? If no, when was each of the UST(s) last used, and by whom?
8. What do the UST(s) contain today? (i.e., product, sand, concrete, water, etc.) Provide the date the UST(s) were filled with sand, concrete, etc.

9. What was the purpose of the UST(s)? (i.e., to dispense gasoline, to dispense kerosene, to dispense diesel, to dispense aviation fuel, to store used oil, and/or to store heating fuel).

10. Are you or any business entity you have or any business entity you have ever had any interest in, aware of a release from the UST(s)? If yes, provide release date, amount and type of product released, and any analytical data.

11. Provide any documentation that you or any business entity you have or any business entity you have ever had any interest in, have which supports that you do not currently own the UST(s).

12. Are you or any business entity you have or any business entity you have ever had any interest in, the owner of the property? If yes, provide a copy of the following: bill of sale, current deed, latest tax bill, etc. If no, provide any information you or any business entity you have or any business entity you have ever had any interest in, have regarding the identity of the current property owner (i.e., bill of sale, dissolution agreement or any other evidence).

13. If you or any business entity you have or any business entity you have ever had any interest in, have inherited the aforementioned property and/or UST(s) please provide a copy of the property deed and will.

I, the undersigned, hereby certify that to the best of my knowledge and belief, that all answers provided above regarding UST Facility # [proj officer add ID number] are factual.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Please respond to the above questions within thirty (30) days following receipt of this letter. You may request additional time if needed but a response is required and failure to respond could subject you to penalties. Non-compliance with this request may subject you to civil penalties of up to \$25,000.00 for each day of non-compliance pursuant to 7 Del. C. Section 7411. This letter shall serve notice that the DNREC-TMB considers you a possible owner of the USTs located at the above referenced facility based on the information available to us at this time. Please provide any additional information you have regarding the USTs at this facility to help further the State’s investigation of this matter

Your efforts toward protecting our environment are appreciated.

Ownership Statement

Please check the appropriate statement, sign and date the form and return to the Delaware Department of Natural Resources and Environmental Control, Tank Management Branch.

RE: [project officer fill in]

Facility ID: [project officer fill in]

File Code: 77

I, the undersigned, hereby certify that to the best of my knowledge and belief that:

() I, or any business entity that I have, or any business entity I have ever had any interest in, have never owned/operated or caused to be operated a petroleum underground storage tank at the above-referenced facility in Delaware.

() I, or any business entity that I have, or any business entity that I have ever had any interest in, have owned/operated or caused to be operated a petroleum underground storage tank at the above-referenced facility in Delaware.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Title (if any)

H.3 State: Simplified Discovery Letter Template (Delaware)

DATE

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Name
Address
Address

FACILITY:	Site	Facility ID:	X-XXXXXX
	Address	Project:	XXXXXXX
	Address	File Code:	77

SUBJECT: Request for Information

Dear Mr./Mrs. Name:

The Delaware Department of Natural Resources and Environmental Control, Tank Management Section (DNREC-TMS) is investigating the historical use of the above-mentioned property in [****]. Records indicate that [NAME] owned the property from [DATES OWNED].

Background

[Project Officer add details as needed]

An underground storage tank (UST) was discovered in [DATE] during a Phase II investigation at the above-mentioned location.

In an effort to complete our review of this property, the DNREC-TMS requests your assistance. Please fill out the attached questionnaire and return it to the DNREC-TMS in the envelope provided. Feel free to contact either [project officer] or [your name] at (xxx) xxx-xxxx with any questions or concerns. Your participation is greatly appreciated.

Sincerely,

Project Officer
Hydrologist
Tank Management Section

Name
Paralegal
Tank Management Section

DATE

FACILITY: ***
Address
Address
Town, DE **

Facility ID: ***
File Code: 77

SUBJECT: Request for Information

Were you ever an owner of the above-mentioned location?

Are you aware of the presence of underground storage tanks at the above-mentioned property?
If so, how many tanks and what petroleum product(s) did they store (i.e. gasoline, heating fuel, etc...)?

Did you ever own or use an underground storage tank as a [add what purpose] at the above-mentioned property?

Signature

Date

Name (please print)

Title (if any)

H.4 EPA Region: Information Request Letter

Certified Mail -Return Receipt Requested

Address

Re: Status of Leaking Underground Storage Tank Site
Facility Name
EPA UST Facility ID No. XXXX

Dear Name:

This letter is being sent to you as an owner and/or operator of underground storage tanks (USTs) located at site (the site). The site is currently listed as an active leaking underground storage tank (LUST) site and a petroleum contaminated property in the U.S. Environmental Protection Agency's (EPA's) database and files. As a result of your ownership and/or operation of this facility, the EPA has determined that you may be responsible for the remediation of the contamination at this site. Please notify us within 14 days of your receipt of this letter regarding your intention to either perform the work required at the site or your intention to submit information regarding your ability to pay for that work, as explained in more detail below. If you disagree that you are responsible as an owner or operator of the USTs at the site, please explain your reasons in the notification response.

As described in further detail below, [X amount] of known releases of petroleum have occurred at the site and site assessments previously conducted on the property indicate that petroleum contaminants remain in site soils and groundwater. You, as the owner and operator of the UST systems at the site, are responsible for both conducting an assessment of the site to determine the extent of petroleum contamination and remediating that contamination. *See* 40 CFR Part 280 Subpart F.

The following sections provide background on the site and discuss the tasks that you must undertake to address the assessment and ultimate cleanup of this site.

Site History and Current Status of the Site

Details

Regulatory Requirements for Corrective Action

As indicated above, 40 CFR Part 280 Subpart F describes the site assessment and corrective action requirements following the release of petroleum products from an UST system. Since previous site investigations indicate that petroleum contamination is present at this site, the EPA is requiring that you do the following:

Within 14 days of your receipt of this letter, please submit a notification to the EPA indicating whether you intend to perform the work required by this letter or, if you cannot afford to pay for

this work, indicating your intention to submit ability to pay information, as explained below. If you disagree that you are either an owner or operator of the USTs at this site, please explain your reasons in the notification.

Within 45 days of your receipt of this letter, submit a work plan to investigate (A) the vertical and lateral extent of soil contamination; and (B) the extent of groundwater contamination and the leading edge of the contaminant plume.

Submittal of Information Regarding an Inability to Pay for Clean Up

If you believe you are unable to pay the cost of assessment and remediation of the contamination at the site, you may, within 30 days of your receipt of this letter, submit the information listed in the document “Individual Ability to Pay Claim Initial Data Request.” You must also submit a completed and signed “Individual Ability to Pay Claim” form, “Disclosure Form – Individual” as well as the Internal Revenue Service (IRS) Form 8821. All four of these documents are enclosed.

If you do not either submit the information requested above in accordance with the time frames indicated, or otherwise contact the EPA, the EPA may begin the process of preparing an enforcement action against you for violations of 40 CFR Part 280 Subpart F. You may be liable for penalties of up to \$16,000 per day for your failure to comply with the 40 CFR Part 280 Subpart F requirements. If you have any questions regarding this letter, please contact staff name, phone number and email address. You may also contact legal staff name, phone number and email address, with any legal questions concerning this matter.

Sincerely,

Name, Manager
Unit Name

Enclosures

cc:

