



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

JUN 23 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

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

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

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

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

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

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

Attachment

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

Attachment

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

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

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

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

A. Site Location and Property Description

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

B. Current and Past Site Ownership Identification/Notification

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

C. Site Operation Identification/Notification

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

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

emergency response action at the site

D. Site Owner/Operator Liability/Financial Viability Determination

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

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

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

OR

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

Reporting and requirements for documentation of Preliminary PRP Search Completion

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

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

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