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3.0 Baseline PRP Search

This initial phase of the PRP search is focused on collecting evidence that establishes the liability of owner/operator PRPs and identifies generator/transporter PRPs. The exact nature, number, and sequence of search tasks will vary from site to site. However, this chapter describes 10 tasks that are often completed as part of the baseline PRP search. Keep in mind that the specific activities undertaken at a given site will depend on what is needed to achieve the Agency's PRP search goals for that site. The 10 baseline PRP search tasks are:

1. Review files and collect records;
2. Organize records and track correspondence;
3. Issue information request letters;
4. Conduct interviews;
5. Perform title searches;
6. Conduct business status and financial research;
7. Develop site summary;
8. Compile waste-in information;
9. Classify PRPs; and
10. Prepare baseline PRP search report.

See Appendix G for a checklist of PRP search tasks.

3.1 Review Files and Collect Records

The objective of this task is to locate and obtain copies of all records pertinent to the site and relevant to the PRP search. Relevant records may include correspondence, photographs, sound or magnetic recordings, computer tapes, drawings, hazardous waste manifests, technical data and reports, permits, notices of



violations (NOVs), complaints, investigations, site owner records, fire department chemical reports, litigation files, bankruptcy files, local newspaper accounts and records, and information available on line. These records are potential sources of information on site history, identity of PRPs, and additional contacts. Before an effective file review can take place, it is critical to become familiar with the site and all background information. This task generally starts with a review of EPA files to determine the volume, content, and nature of existing information. As a starting point, the PRP search manager should coordinate with the region's record center to determine what information is available within the region. Because state and local offices can be a valuable resource in the search process, their records should be reviewed concurrently with EPA's files or soon thereafter. A thorough search for records in other federal agencies, local offices, and other sources should be performed. This task can be conducted at the same time as the title search and interviews.

3.1.1

Federal Files

Federal records may be found in EPA's regional record centers or in files in the CERCLA, RCRA, Emergency Planning and Community Right to Know Act (EPCRA), air, water, regional counsel, and criminal investigations offices. Documents maintained in these offices may include permits, inspection reports, correspondence, records of violations and enforcement actions, and criminal records. These documents often reference other federal agencies that are, or were, involved with the site or a PRP. Taking full advantage of intra-Agency communications and databases, such as the CERCLIS/WastelAN database and the On-Line Targeting Information System (OTIS), can also yield information on a site or PRP within the region. Federal sources of information can include the following:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
• Department of the Interior	maps and aerial photographs
• Nuclear Regulatory Commission	licenses, permits, studies
• U.S. Geological Survey	studies and ground water data
• Environmental Photographic Interpretation Center	aerial photographs
• National Oceanic and Atmospheric Administration	meteorological data
• U.S. Army Corps of Engineers	studies, permits, records at federally owned sites
• Occupational Safety and Health Administration	inspection reports, health and safety incident information
• Securities and Exchange Commission	current and archival PRP documents, including financial statements, corporate business publications, quarterly and annual reports
• Coast Guard	incident response reports
• Food and Drug Administration	inspection reports (the FDA had records of facility inspections from the 1970s at one Region 2 site)
• Federal Emergency Management Agency	relocation information
• Federal Records Center	retired federal record files
• U.S. Forest Service	maps, title searches, studies
• Bureau of Land Management	mining information

3.1.2

State Files



State offices may maintain valuable technical information pertaining to a site. This information may prove useful in planning and implementing site response actions. Of particular interest are documents located in the state's Superfund & RCRA program offices as well as records located in the secretary of state and attorney general's offices. It is a good idea to familiarize yourself with the organizational history of state offices in order to determine the possible location of all needed records. When offices are reorganized, they sometimes retain files that address subjects for which the office is no longer responsible. The region may want to consider including language in State Multi-Site Cooperative Agreements providing that the state will compile information that it has on file for each site (e.g., spills, permits issued, compliance history, orders, citizen complaints). This should result in preservation of PRP-related information and more timely identification of PRPs. If states provide information to EPA in this manner, the PRP search manager should coordinate this in advance with the state and include this activity in the PRP search plan. Types of information collected from state files can include the following:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
<ul style="list-style-type: none"> • Environmental Agency 	licenses, permits, studies, inspection reports, sample data
<ul style="list-style-type: none"> • Water and Soil Conservation 	studies
<ul style="list-style-type: none"> • Attorney General 	correspondence, lawsuits, orders
<ul style="list-style-type: none"> • Secretary of State 	corporation names and addresses, registered agents, articles of dissolution, annual reports, limited partnership filings

3.1.3

**Local Government
Files**

Local government offices may contain accident reports, permits and licenses, local disposal guidelines, inspection and violation notices and reports, and memoranda and correspondence between site owner/operators and local officials. In some cases, local officials may have prepared site history memoranda and lists of hazardous materials. Relevant local government records can be found in:

POTENTIAL SOURCES:	POTENTIAL INFORMATION OBTAINED:
<ul style="list-style-type: none"> • Office of the City or County Attorney 	correspondence, permits, licenses, enforcement actions
<ul style="list-style-type: none"> • Health Department 	accident reports, lists of hazardous materials
<ul style="list-style-type: none"> • Department of Public Works 	operation maps, applications, inspection and violation reports
<ul style="list-style-type: none"> • Wastewater Management or Pollution Department 	permits and licenses, correspondence, control department's inspection and violation reports
<ul style="list-style-type: none"> • Planning, Land Use, and Engineering Departments 	plat maps, aerial photos, operations maps, correspondence, applications
<ul style="list-style-type: none"> • Zoning Boards 	applications, plat maps and aerial photos
<ul style="list-style-type: none"> • Police and Fire Departments 	accident reports, lists of hazardous materials
<ul style="list-style-type: none"> • City Clerk/County Clerk/Recorder's Office/Tax Assessor's Office 	deeds, leases, grants, addresses, mortgages and liens, easements, agreements, legal property descriptions
<ul style="list-style-type: none"> • Historical Society 	past business at the site

3.1.4

Other Records

Other good sources of information can include:

The PRPs

- PRP management;
- employees;
- suppliers;
- independent contractors; and
- customers.

Sources of information commonly in PRPs' possession are:

- information on other PRPs (including those not previously identified);
- hazardous materials listings;
- shipment manifests;
- transporter records;
- Material Safety Data Sheets (MSDSs) for substances used by PRPs;
- correspondence; and
- corporate records such as board meeting minutes.



Public Libraries, University Libraries, and Historical Societies

- local business collections;
- local newspapers, community newsletters, and articles or newsletters published by businesses associated with the site;

- documents and other paper collections donated by well-known individuals in the community; and
- specialized collections (e.g., mining, collections of aerial photographs).

Residents Living Adjacent to the Superfund Site

- identity of PRPs (particularly leads early in the PRP search);
- location of waste disposal areas; and
- information about other activities at the site relevant to the PRP search.

Other Sources of Information

- on-line sources of free information;
- subscription on-line information sources (e.g., Choicepoint, Dataquick);
- Sanborn Fire Insurance maps;
- Polk/Cross directories; and
- commercial aerial photograph companies.

Early contact with the community may provide important site and PRP information, establish an EPA and community dialogue, and encourage productive community involvement throughout the life of the project.

3.1.5

Special Planning Considerations

Performing file reviews and collecting records may involve some special planning considerations such as:

Document Production and Retention

It is important to determine the best method for reproducing the records. Factors relevant to this decision include cost, accessibility of the facility that will be maintaining the records, and the current regional records guidance. If any of the records are to be placed in a public docket, the technology available to the public for accessing those records at the chosen facility (e.g., microfilm readers, computer terminals) should be taken into account.

In many instances the integrity of records and chain of custody issues need to be considered to ensure that the evidentiary value of documents is not compromised. Also consider Bates stamping¹ documents, as this will help verify that no document has been lost and allows for accurate refiling of documents. (See also subsection 3.2.1)

Volume of Records

If the estimated volume of records to be reviewed and copied is large, a contractor may be better suited than EPA to perform this baseline task. If use of a contractor² is a feasible option, EPA may want to initially accompany the contractor in reviewing the records to determine which documents are relevant and need to be copied.

¹Bates stamping, which is done by hand with a specially-designed mechanical stamp, is often used in the legal industry to number or date/time mark images as they are processed. In recent years, more high-tech marking technologies have been developed that can create images with copyrights by putting a company name, logo, or legal copyright mark on documents as they are scanned or filmed. These imaging technologies can also automatically add sequential numbering to the images.

²When contractor support is being contemplated for any PRP search task, make certain that all conflict of interest (COI) checks have been done before the task begins. Coordinate with the regional project officer (RPO) or contracting officer (CO) to confirm that all necessary contract documentation is in place. Only the CO can make the final determination about the possible existence of a COI.

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

- copy the records at the agency with the help of a rental copier or temporary help;
- send the records to a local vendor for copying under the supervision of the contractor staff;
- microfilm the documents and then produce hard copies from the microfilm;
- procure or rent portable, hand-held scanners as an alternative to removing, handling, and copying hard copies; or
- scan documents onto a CD-ROM and provide a database on line (this method was used successfully for site records in Region 4 during an allocation pilot).

Confidential Information

EPA frequently encounters records that someone claims are confidential. Confidentiality claims generally fall into two categories, government privileged documents and confidential business information.

Government Privileged Documents

Enforcement-sensitive intra-agency memoranda are among the most common privileged federal government documents. Privileged memoranda often concern permit actions, inspections,

and regulatory violations. These confidential records often provide valuable PRP and site information, such as degree of cooperation with the state at the time of disposal. **Government privilege is discretionary.** [Note: As a general rule, an agency's ability to make a discretionary disclosure of exempt information will vary according to the nature of the FOIA exemption and the underlying interests involved. FOIA exemptions 2 and 5 protect a type of information that is not subject to any such disclosure prohibition. (See FOIA discussion in section 2.4 of this manual.)]

Consequently, it is important to work closely with the PRP search managers and regional counsel when deciding how to handle potentially privileged records. In some cases, records remain marked as confidential when there is no longer any reason to treat them as confidential. Regional and state counsel should work together to resolve confidentiality issues concerning state records. Such coordination could also be addressed in the State Multi-Site Cooperative Agreement discussed previously.

Confidential Business Information

Files obtained from PRPs may be subject to a CBI claim. While government privilege is discretionary, CBI is a matter of law. Consult with your PRP search manager and case attorney if CBI is an issue. Generally, enforcement contracts include a CBI clause, and contractor personnel sign CBI agreements at the time the contract is awarded. The PRP search manager, PO, and CO, however, can verify that fact and provide procedures for CBI claims. State records and records from other federal agencies may be subject to such claims as well. If a contractor is performing the file review and records collection task for EPA, and the PRP makes a CBI claim, the contractor should immediately inform the PRP

search manager. The PRP search manager should then consult with the EPA PO and CO responsible for the contract under which the file review is being conducted. The Agency will then determine whether it is appropriate for the contractor to review the records and whether the records in question are CBI.

Health and Safety

The health and safety of the personnel conducting the file review and record search are an important concern. Documents or records encountered during this task may be contaminated with hazardous substances. While not common, this problem does arise on occasion. If document contamination is suspected (e.g., because records were found in a contaminated warehouse, documents are stained), the PRP search manager should be notified immediately and the Agency should attempt to determine the probable degree of contamination and its associated health effects, whether the documents should be tested, and possible methods to obtain clean copies. If a contractor is performing the task, the contractor's health and safety plan (in accordance with procedures outlined in the PRP search work plan) must be current before the contractor begins work with contaminated records.

Access Refusal

If EPA or EPA's contractor is refused access to records or other sources of pertinent information, EPA or the contractor should document the circumstances of refusal and identify when, where, and by whom access was denied. This information should be provided to the EPA case attorney. Often, parties refusing access have little or no knowledge of EPA's information gathering

authority under CERCLA, and access can often be obtained subsequently through informal dialogue between the case attorney and the property owner or the owner's counsel, if one has been retained. If a contractor is conducting a records search, the Agency should provide the contractor with a letter of introduction that explains access rights. This should be a standard operating procedure when a contractor is responsible for records collection and file review.

3.2 Organize Records and Track Correspondence

A good system for organizing, storing, and tracking site files and tracking correspondence is imperative for case development, litigation, and cost recovery efforts. Check with your region's records manager and other case teams to assess what file structures are already in place and effective. Chapter 15 of the Enforcement Project Management Handbook (see Chapter 3 references, page 215) can be consulted for information on organizing site records. Effective tracking of the status of information request letters and other correspondence greatly enhances the Agency's ability to share information with PRPs and other parties and saves time and resources.

3.2.1 Organization

For large, complex sites that have recently entered the Superfund "pipeline," it may be beneficial to create a document identification form to assist in organizing, documenting, and tracking site records. A document identification form should contain basic identifying information for each site document, such as the document's source, date, title, and author and may also be tailored to include other information relevant to a specific site. This form can help avoid later duplication of effort and provides a good

audit trail. The PRP search team should weigh the benefits derived from the use of a document identification form against the effort required to use it before deciding to use this records management tool.

Records compilation and tracking may involve a fairly simple file organization; but, some sites, especially large sites with many PRPs and a large volume of records spanning a number of years, may require a more complex file organization. To choose the best method of organizing documents, the following factors should be considered:

- types of information needed from the documents;
- volume of documents;
- regional file structure;
- capabilities of the organizer;
- ease of document retrieval;
- long-term tracking needs and capabilities;
- potential document security issues (especially since databases are often shared);
- unique site-specific needs;
- nature and number of potential users; and
- time required to organize documents.

Manual Arrangement of Documents

If a simple organization will meet the records management objectives for a site, a manual arrangement may be utilized. Documents may be organized by chronological order, subject matter, PRP, or author. The documents are then assigned an index number (e.g., using a Bates stamp, microfilm frame number),

and an index for the entire document set is developed. To be user friendly, multiple indexes should be developed based on index number, document title, author, and date of document, or other characteristics as decided by the case team.

Use of a Database



[Note that the following consists of very basic suggestions for organizing the content of a database. At the time of finalizing this manual, several regions had developed or were in the process of developing databases that are far more advanced technically than these basic suggestions. Please check with your regional PRP search enhancement team member/contact (see Appendix H) for information specific to your region.]

If a more complex organization is required, such as an organization with extensive cross-referencing or keyword indexing, creating a database, as outlined below, may be advisable:

- Group documents of similar content, such as scientific research, environmental studies, or legal documents.
- Assign an index number to each of the documents.
- Decide what information to use in the database index. Examples of information from each document might include the index number, document title, date, author, and addressee.
- Develop a more complex database, if required, using a coded designation for particular subject matter, a database index to refer to a particular subject, and/or keyword indexing.

- Program the database to access information in various ways, e.g., chronological order, author, keyword, subject matter.

When establishing a database for site documents, keep in mind that new documents will be added periodically. The database index may require significant revisions if a large number of new documents are discovered after the keywords are selected or the index is created. When planning a PRP search for which a complex file organization may be necessary, time and resource requirements for database maintenance and modifications must be part of the planning in order to assure the continued usefulness of the database.

3.2.2 Correspondence Tracking

Tracking correspondence with PRPs and other parties often requires use of a database due to the large number of parties involved. If a database is necessary, the following factors should be considered prior to database development:

- the information that should be tracked for information request letters, including;
 - identity of the recipients of information request letters,
 - delivery status (e.g., accepted, refused receipt, address unknown),
 - response status (e.g., no response, partial response, complete response),
- capacity of database system;

- procedures for entry and retrieval of information (keeping the database user-friendly);
- types of summaries and reports needed;
- number of waste types that may need to be tracked;
- nature and number of database users;
- resource requirements for database development and maintenance;
- contractor support requirements;
- period of performance of the contract;
- expected period of database use;
- compatibility of contractor hardware/software with the Agency's hardware/software; and
- ease with which the database system can be taken over by another contractor or agency.

Care should be taken not to clutter printouts with any information not required, or with unprofessional comments. A voluminous printout of information will likely negate the desired benefits of tracking, which are to promote information sharing and increase time and cost savings. As with any database system development, a quality assurance program should be incorporated for data entry and edits.

Maintain a Backup

A manual system for correspondence tracking should also be in place in the event that the primary information retrieval system fails. Responses to information requests should be organized alphabetically by party or in a similar system. Index numbers should be assigned to all documents and an index of the correspondence should be created.

3.3

Issue Information Requests



Section 104(e) of CERCLA and section 3007(a) of RCRA authorize the Agency to issue information request letters. These letters are used for information gathering purposes and do not designate an entity as a potentially responsible party. Most regions have model information request letters. See the Agency guidance Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995), Chapter 3 references, page 215. In addition, the Office of Site Remediation Enforcement (OSRE) has provided the regions with a compilation of sample information request letter questions that have historically produced good responses. The letters and questions are specifically tailored to the type of site (e.g., chemical plants, dry cleaners), the sophistication of the recipient (e.g., individual, small business, large corporation), the recipient's involvement with the site (e.g., owner, operator, transporter), and the nature of the information sought.

Recipients of information request letters may be requested to produce records or to provide information on site ownership, site operation, their financial position, wastes sent to the site, possible generators and transporters, and the existence of records.

Subsection 3.3.1 of this manual provides additional information on the nature and content of information request letters.

Section 104(e) of CERCLA authorizes the Agency to issue information request letters to any person (including business entities and government agencies) who may have information about a site, not just to persons who may be PRPs. The authority to issue letters under section 104(e) is delegated to specific individuals within each region. Issuing information request letters is a basic component of nearly all PRP searches. Under section 104(e)(2) of CERCLA, "[a]ny officer, employee, or representative [of the President]...may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documentation relating to such matter:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- (C) Information relating to the ability of a person to pay for or to perform a cleanup."

RCRA section 3007(a) provides that "[f]or purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has

handled hazardous wastes shall, upon request . . . furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes."



The Agency's statutory information gathering authority is broad enough to allow EPA to seek any information that is reasonably calculated to lead to information about the release. Although EPA's authority is broad under section 104, the Agency is sensitive to the substantial burden that may be imposed upon parties who receive an information request. Most regions have model 104(e) letters. Additionally, OSRE has compiled a repository of sample questions to help streamline the information gathering process. (See Chapter 3 references, page 215.) These questions were compiled from the regions and are tailored to specific kinds of parties (e.g., small entities, transporters, individuals). Use of these samples is at the region's discretion.

3.3.1

Identify Recipients/Draft Information Requests

Records obtained through the review of files may contain a number of potential sources of information and names of PRPs. Before drafting the information request letter, the PRP search team should:

- develop and maintain a list of potential recipients of information request letters;
- select who from the list should receive information request letters;
- verify the current addresses of recipients; and

- make decisions on the tone, content, and format of each letter, depending on the individual recipient or category of recipient.

Although site-specific needs will ultimately determine what to include in an information request, the following factors should generally be considered when drafting information request letters:

On-Line Information Sources

On-line services are a rapidly growing source of PRP information. Obtaining information through on-line research is, in some cases, the fastest and most effective method of obtaining PRP information; however, the difficulty with this type of research is knowing what is available and how to access it.

Most on-line sources are available nationally and can be accessed through the internet, but some are not available in every EPA region or state. If this is the case, public libraries, universities, colleges, or schools can be contacted to determine their capabilities and use requirements. These institutions frequently provide services for minimal fees. In addition, contractors typically have numerous on-line capabilities.

A list of potential PRP-related on-line information sources is provided in Appendix I. Contact numbers and fee schedules, where available, are listed, but PRP search staff should start by contacting their regional LAN administrator, information support staff, or EPA librarian to determine what subscription on-line sources are currently available in the region and if any use

restrictions apply to them. EPA's Superfund Enforcement Directory (SFED) is a nationwide on-line directory of Superfund Enforcement personnel and resources. (See Appendix J for more information concerning the directory.)

Nature of Recipient

The nature of the recipient (e.g., individual, corporation, municipality) significantly affects the content of the information request. Where feasible, information requests should be tailored to each PRP or information source. Tailoring the request can greatly improve the quality of the response, reduce the need for follow-up requests, and reduce the burden on the recipient of the request. The types of information typically requested from each kind of PRP (e.g., owner, operator, transporter, generator) are presented later in this section.

Recipient's Understanding of CERCLA

The PRP search team should consider the degree to which an information request recipient is likely to understand CERCLA. It is not always feasible to ascertain a recipient's degree of understanding of CERCLA; however, the PRP search team can usually make some assumptions. For instance, it can assume that "ABC Corporation," which has been involved as a PRP at a number of Superfund sites, has a good understanding of CERCLA. Thus, the information request letter can use technical and legal terms which do not have to be described in detail. Similarly the team can generally assume that a "Mrs. Joyce Smith" at a residential address likely has little or no knowledge of CERCLA or legal terminology. In this situation, the request should contain clear, non-legal language and be as concise as possible. A sample initial

information request letter for individuals or small businesses is provided in Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995).

Confidentiality Considerations

If there is reason to believe that the recipient will be concerned with the confidentiality of its response, the PRP search team should insert confidentiality language into the information request letter that is consistent with 40 CFR Part 2, Subpart B (40 CFR sections 2.201-2.311). From a practical standpoint, it makes sense to include this language with each request as it serves two purposes. First, it defines the boundaries of a confidentiality claim, reducing the likelihood of a general assertion of confidentiality. Second, it makes clear to the recipient that EPA may have to release information provided in a response. Also, the presence of such language will reassure the recipient that the response will be handled in an appropriate manner. Similarly, if EPA plans to use contractors to review and organize responses, inserting language in the letter identifying the contractor and explaining its duties may help to reduce recipients' concerns.

Pursuant to EPA's CBI regulations, the PRP search team should request that recipients segregate information being claimed as CBI from non-CBI information. Segregation of this information can improve future information sharing with other parties by allowing for the quick release of information for which no claim of confidentiality has been asserted.

Recipient's Willingness to Cooperate

Occasionally EPA has reason to believe that a recipient of an information request may not be cooperative in responding to the request or may take actions to avoid liability. This belief can be based on past experience with the party, or on correspondence pertaining to previous permit violations, police reports, state investigations or interviews, or other documents. In such cases, the PRP search team should consider including language in the information request letter that asserts EPA's authority and describes the recipient's responsibilities. For instance, the False Statements Act (see Chapter 3 references, page 215) provides for criminal penalties for any person who provides unsworn false statements or conceals information from an agency or department of the United States. This Act clearly applies to statements made to civil investigators, any written responses to questions, and signed statements. The letter might also note that a party would be in violation of the Federal Debt Collection Procedures Act (see Chapter 3 references, page 215) if he transferred property or assets to avoid a federal debt under CERCLA.

The PRP search team may also ask the recipient to send copies of requested documents to EPA and to maintain the original documents for a specified period of time. The primary benefit of requesting the preservation of records is notifying parties of their legal duty to preserve relevant evidence. The region should consider these factors when deciding on inclusion of preservation language.

Site/PRP Information Needed

The PRP search team should determine:

- what information is needed to identify PRPs (e.g., manifest data, names, addresses);
- what information is needed to determine PRP's liability (including possible defenses to liability); and
- what site information is needed for future investigations or response actions (e.g., physical characteristics of the site, historical data, sample data).

Once this information has been gathered, the PRP search team can draft the letters to ensure that the responses will contain information that will advance the PRP search and the site cleanup. The repository of sample CERCLA 104(e) questions cited in footnote 3 includes questions grouped according to site type, such as mining site questions, PCB site questions, and lead battery site questions.

Need for PRP Financial Information

Under CERCLA section 104, the Agency has the right to collect financial information in order to determine a PRP's ability to pay response costs or perform response work. Although it is important to assess a PRP's ability to pay response costs, the PRP search team needs to evaluate the best time for seeking such information. The team may choose not to request this information in the first round of information requests unless the liability of the recipient as a PRP has been reasonably established. Some regions

have found that seeking information such as tax returns and checking account statements during the first round of questions has been counterproductive. Recipients of information requests who are asked to provide financial information about the site in their first contact with EPA are often reluctant to do so because they feel it is an unnecessary burden or intrusion on them and may seek legal counsel to prepare a response or protest to the Agency. Such actions can lead to delay in getting information needed to coalesce PRPs and initiate a site response. Therefore, EPA may wait until it issues general notice letters and ask recipients to contact EPA if they believe they may have an ability to pay problem. EPA can then send appropriate financial questions to the PRP. In this way, recipients without ability to pay problems avoid having to answer financial questions and submit voluminous financial records.

When an information request letter concerns a removal action, it may be necessary to solicit financial information from PRPs so that the region can decide whether to issue a CERCLA section 106 administrative order requiring the PRPs to conduct the removal.

Desired Format and Due Date for Response

When developing the information request, the PRP search team should select an appropriate format for the response. There are several options, including:

- a written response for each question;
- a fill-in-the-blank checklist; and
- a written response, signed by the recipient of the letter or a corporate officer, describing their efforts to locate documents or knowledgeable persons.

The format will likely vary from site to site or party to party. In addition to the format, consideration should be given to how much time the recipient may need to adequately respond to the request. Time is often of the essence; information requests typically provide 30 days from the receipt of the letter for a response. Methods for facilitating timely, complete responses include:

- Establish an information repository or publicly accessible website related to PRP search activities before or immediately after issuance of the first round of information requests. The purpose of such a repository or publicly accessible website is to make available non-confidential information to assist recipients of the information requests in better responding to the request, reduce the number of inquiries or requests to the Agency for information, and provide information to the community at an early point.³ The nature and location of a repository or publicly accessible website may vary from site to site. One region, with assistance from a contractor, developed a database for the repository. Physical locations have included regional offices, state and county facilities, and rental space at facilities that manage records and provide chain of custody services. Contents of the repository could include;
 - site history,
 - environmental studies, reports, and sample data,
 - copies of notice letters/information request letters;
 - previous site response reports, if applicable (e.g., an OSC report), and
 - a copy of CERCLA, the NCP, and relevant guidance,

³For more information on sharing information with PRPs, consult Releasing Information to Potentially Responsible Parties at CERCLA Sites (March 1, 1990). *See* Chapter 3 references, page 215.

- Initiate a dialogue with information request recipients immediately after issuing the information requests. Such a dialogue could be in the form of a "town meeting" at which the PRP search team;
 - explains the information-gathering process,
 - explains why information request recipients received their information request,
 - presents factual site information,
 - identifies the location and purpose of the repository,
 - explains the Agency's authorities and the recipients' responsibilities, and
 - provides copies of site summaries.

Where the information requests are issued concurrently with a notice letter to perform the RI/FS or some other response action, this dialogue provides an excellent opportunity for PRPs to coalesce as a group, exchange information with each other, and assure that better and more timely information is provided in their responses.

Potential Burden of Responding to Request

Responding to an information request letter imposes a burden on the recipient. Therefore the PRP search team should review the generic list of questions to narrow or eliminate questions that are not appropriate for the individual recipient.

Type of Information Needed

Information that is collected generally can be classified as either quantitative or qualitative:

Quantitative Data. This is typical waste-in information -- gallons, drums, cubic yards, and other numerical descriptions of the materials contributed by the parties.

For most sites, the information of interest will likely be quantitative. It can include either waste volumes (including waste-in, waste-out, or waste remaining, depending on the circumstances), or narrative descriptions that can be converted into waste volumes.

Qualitative Data. This includes all other information that describes a party, its waste material, or its relationship to a site, and can range from a substance name (e.g., waste oil, trash), to the nature of a transaction (e.g., sale, manifested disposal), to information relevant to PRP status (e.g., a contract confirming that a party conveyed property with knowledge of contamination).

For owner/operator sites, specific kinds of information may be required when certain liability issues are raised. For instance, when the Agency seeks to establish successor liability, it is important to gather as much factual information as possible regarding the relationship of the alleged successor to the prior owner/operator. Consequently, if a corporation may be the legal successor in interest to a PRP business/corporation, questions seeking information about that relationship should be included in the information request sent to that corporation. Similarly, when a parent corporation may be liable for the acts of its subsidiary under the legal standard set by the United States Supreme Court in the case *United States v. Bestfoods*, 524 U.S. 51 (1998), information requests should seek factual information about the relationship between the parent and its subsidiary. The case

attorney should provide the questions appropriate to either a Bestfoods or successor liability inquiry. More information on these issues is provided in section 3.6.

Regulatory agencies often have relatively little information concerning older sites, illegal disposal sites, and owner/operator sites because the acts resulting in the release of hazardous substances at these sites were not subject to a regulator's authority or were not closely monitored by a regulator. The absence of detailed government documentation about such sites makes the use of information requests all the more important. Similarly, chemical formulator cases (i.e., generator cases based on an Aceto theory of liability, where the Agency argues that waste generation is inherent in a facility's chemical formulation operations) frequently cannot be built around information found in regulatory files. When preparing information request letters for such sites, the PRP search team should be particularly careful to evaluate information about the site that is available from other sources, and include questions in its information requests that solicit the remaining information needed to establish liability.

Components of Information Request Letters

Although information request letters should be tailored to individual recipients, listed below are some elements that are commonly included and types of information that are commonly requested from the various categories of parties:

For All Recipients

The information request letter should:

- identify the site and briefly describe it;
- explain why the Agency thinks the recipient may have information about the site;
- cite EPA's statutory authority under section 104(e) of CERCLA or section 3007(a) of RCRA to request information (When determining the statutory authority under which to request information, make sure that the official who has signed the letter has been delegated the information gathering authority for each statute identified in the letter. For example, a letter that requires the production of information pursuant to both CERCLA section 104(e) and RCRA section 3007 may be challenged if the EPA official who signs the letter has been delegated only CERCLA section 104(e) authority);
- indicate that the Agency plans to enforce its information gathering authority in CERCLA section 104(e)(5);⁴
- set forth the purpose of the request and its relationship to the overall case;
- indicate that the response must be in writing;

⁴As previously discussed, EPA should consider the recipient's level of legal sophistication and degree of familiarity with CERCLA when determining the content and tone of the information request letter. It may not be desirable in every instance to cite the enforcement provisions of CERCLA in the first round of letters.

- indicate that the recipient is responsible for informing the Agency if any information contained in the PRP's response is confidential and subject to protection under section 104(e) of CERCLA;
- advise the recipient that it must supplement its response if new information comes to light;
- inform the recipient that he may contact the Agency if he has questions or needs clarification about what is being requested; and
- clearly identify when the response is due.

For Owners

The information request letter should ask for:

- names and addresses of all known previous owners and current owners;
- periods of ownership and type of ownership;
- a synopsis or analysis of the contractual agreements and relationships currently existing or which existed in the past between the parties;
- site history during their ownership, including activities, operations, disposal practices, and site conditions, as well as information on amounts, nature, and locations of disposal;

- known disposal practices, substances, and location of disposal under previous owners and operators of the facility;
- information on whether wastes were RCRA hazardous wastes;
- identity of lessors, lessees, and terms of any leases, including lease payment amounts, allowable and prohibited activities under the terms of the lease, and whether there have been attempts to enforce the provisions of the lease (it is recommended that copies of leases be obtained);
- information related to exemption, defenses, and de minimis status; and
- the names of individuals with control.

For Operators

The information requested from operators is similar to that requested from owners, except that detailed descriptions of the operations should be requested from operators. Operator information requests should always request information to identify present and past individuals in charge in order to identify persons with more complete information regarding facility operations, as well as persons who may be liable as operators of the facility under the tests set forth by the United States Supreme Court in *United States v. Bestfoods*.

For Owners and Operators

- Questions about financial information generally seek to determine a PRP's ability to pay for or perform a cleanup, and may include questions about comprehensive general liability and environmental impairment insurance.
- When an owner/operator's financial records survive, they often contain the amounts and dates of customer invoices and payments, and serve both as a primary source of information and a secondary source of conversion rates, which allow a customer's "one load at \$ 5.00" record to be translated to an appropriate volume.
- Site financial records may be in the form of accounts payable and receivable ledgers, copies of incoming and outgoing invoices and checks, deposit slips, and customer account statements.
- One of the most important categories of information to seek from the owner/operator is the identity of possible off-site generators or transporters associated with the site. Such information may include:
 - names and addresses, quantities, and materials sent to or from the site; and
 - any arrangements made with regard to materials.
- **Materials Handling Information.** Ask the owner/operator to provide a description of information it has on each shipment of materials disposed of, transported to, stored, or treated at the site, including:

- dates of shipment or disposal;
 - quantity and nature of the materials;
 - hazardous substances (as defined in 40 CFR section 302.4) contained in the materials, including information on the waste and waste stream as possible RCRA hazardous wastes (this information will help the Agency determine if RCRA is an applicable or relevant and appropriate requirement for future response actions, or may be used later in an allocation of PRP responsibility); and
 - what was done with the material after it reached the facility (e.g., further processing).
- **Documentation.** Request copies of all business records relating to activities at the site, including customer lists, gate logs, batch reports and analytical test records, worker notebooks, laboratory reports on samples of materials, storage locations for handled items, ledgers, invoices, accounts receivable and back-up income records for taxes, correspondence, permit applications, operation reports, deeds and leases, and spill notifications. Also, consider asking for correspondence that addresses shipments that were discontinued because the material was not accepted or correspondence that threatens to discontinue shipments if material does not meet standards. This information may be very useful in distinguishing the hazards and threats posed by materials associated with various PRPs.

Additional Items to Request from Owner/Operators

- names and addresses of individuals who have information regarding the items listed above;
- any data or studies resulting from environmental investigations at the site;
- a description of the files searched by the person (or corporation) in response to the Agency's request;
- special information for particular classes of sites, such as municipal landfills; and
- a description of the recipient's personal or corporate relationship to the site.

In some cases, the recipient will be unable to provide EPA with the information sought. In these cases, the PRP search manager may determine that it is necessary to require the recipient of the letter, or a corporate officer responding for a corporation, to describe the efforts made to locate information or knowledgeable persons, and to sign the entire response under penalty of perjury.

For Generators/Transporters

Generator/transporter information requests are often issued in the follow-up phase of the PRP search based on information received from the initial round of information requests. The PRP search team is encouraged, however, to identify and issue requests to generator/transporters as early as possible in order to establish a core group of PRPs to work with and facilitate determining which parties are exempt, de minimis, insolvent, or defunct.

Information request letters to persons who arranged for disposal (generators) and transporters are typically similar in scope to the letters issued to owners/operators. Information request letters issued to generators should request information regarding their liability. The PRP search team should give special attention to corporate/subsidiary and successor liability issues. In addition, the information request should seek information that will establish whether the substance was a listed or characteristic hazardous waste as defined by EPA. Generator/transporter information requests are discussed in further detail in subsection 3.3.1.

3.3.2

Mail and Track Information Requests For Generators/ Transporters



To the extent possible, PRP search managers should arrange for the verification of the address, and identify an appropriate point of contact (e.g., registered agent, corporate counsel) for each recipient prior to mailing information request letters. While confirming this information may be burdensome at sites with hundreds of recipients, it can greatly reduce the number of letters that are returned due to an incorrect address.

Information request letters should be sent via certified mail, return receipt requested. Delivery may also be accomplished through Federal Express. Use of post office box addresses should be avoided because there may be no signature to indicate receipt of the letter. Date stamp the "green cards" (i.e., the returned receipts) as they are received by EPA; returned receipt cards often do not show the date on which the letter was received, and it is difficult to take enforcement action for late responses without proof of when the information request letter was received. The information on the return receipt provides the Agency with proof that a representative of the recipient received the letter. Within a week of the mailing, there will likely be some letters returned to

EPA due to reasons such as "address unknown," "no forwarding address," or "refused receipt." Information request letters may also be sent via air courier if the courier provides documentation of the delivery attempt and of the receipt of the delivery. For letters with address problems, the PRP search manager should attempt to obtain a valid address for the intended recipient and re-send the information request. Although this requires some effort, any effect on the schedule will likely be relatively minor and the rewards from successful delivery could be significant. Tracking information request letters should be planned in advance of their mailing (See subsection 3.3.2).

Performing an analysis of the responses received is among the most important elements of the PRP search. The PRP search plan should designate the person responsible for tracking and receiving information requests. Information request letters are a basic component of most PRP searches, and responses may be the only source of information. Consequently, it is very important that the responses are reviewed by appropriate personnel in a timely manner. Summaries of responses, which are often created with contractor support, can be quite useful when a large number of parties or requests are involved.

For those letters that are unclaimed or refused, the PRP search manager should work with the case attorney to identify options for successful delivery. If you are confident that you have the correct address of a PRP and the letter is continually being refused, the letter can be delivered by the CI or search manager. When parties fail to comply or only partially comply with information requests, the Agency will consider its options for encouraging or compelling compliance, which are discussed in detail in sections 4.1 and 4.2 of this manual.

3.3.3

Analyze Responses

Responses to information requests should be analyzed for:

- information that links a party to the site;
- information establishing liability;
- information that establishes a PRP's financial viability, if necessary; and
- leads that may provide the region with additional information about a particular PRP, other parties, or site characteristics.

Information request responses may help the PRP search team develop a history of site activities and describe the involvement of various parties in the treatment or disposal of hazardous materials. The PRP search team should take care when extracting information on site history for the baseline PRP search report, especially when responses are from hostile, uncooperative parties or those with significant liability concerns; there are often conflicting interpretations of a site's chronology of events. Responses can be compared to aerial photographs, state permits, correspondence, and other information in an attempt to verify site history. The team member who reviews a response should note if the response appears incomplete or false. In these situations, the PRP search manager and case attorney should determine the appropriate enforcement action.

After analyzing the responses, the PRP search team can begin to develop a list of parties associated with the site who may be PRPs. It is suggested that the team present PRP liability information in evidence summary sheets created expressly for documenting the liability of each PRP. A separate evidence sheet for each PRP is advisable.

A PRP's assertion of a CBI claim on information that it provides to EPA necessitates treatment of it as CBI unless and until such time as OGC or ORC determines that the information is not entitled to confidential treatment.⁵ PRP search managers should segregate any materials respondents claim as CBI from non-CBI materials upon receipt of the information if the respondent has not already segregated the materials. CBI is a complex issue and it is important to follow in making CBI determinations, as the improper release of CBI can result in civil and criminal penalties. The materials for which a CBI claim has been asserted can then be forwarded to OGC or ORC for a CBI determination. See 40 CFR section 2.201, 2.204(a) and (b), and 2.310.

3.3.4

Develop Response Summaries

After analyzing the responses to the information request, it may be helpful to develop summaries of all the responses received. Response summaries aid the development of site history and encourage PRP involvement. Summaries can be very useful for decision makers or other parties involved in the PRP search, who can review the summaries rather than each individual response. Contractors can be called upon to assist the Agency in developing response summaries for cases with numerous information requests. Care should be taken, however, to avoid having contractors perform legal analyses or reach conclusions about PRPs' liability, as these functions must be performed by EPA personnel.

⁵40 CFR section 2.201 et seq. (*see* Chapter 3 references, page 215) sets out the procedures for making CBI determinations. EPA may determine the confidentiality of business information as soon as it is received. (*See* 40 CFR section 2.204(a)(2), authorizing EPA to make a CBI determination even though no request for release of the information has been made.)

3.3.5

Information Request Followup

Once the due date for a response has expired and the responses have been reviewed, the PRP search manager should coordinate with the case attorney on appropriate followup actions, if needed. These actions may include:

- issuing a followup letter;
- using alternative means to seek a response or clarify the request;
- issuing an administrative order to compel compliance; and
- initiating a judicial action asking a court to compel compliance.

During the review of information request responses, it sometimes becomes apparent that the recipient simply did not understand what was being requested, or the recipient did not fully appreciate the Agency's authority to obtain information or the recipient's responsibilities in this regard. A followup letter may be appropriate for clarifying the requests or being more explicit in describing the Agency's enforcement authorities. There are a number of model followup letters available in the regions that have proven to be effective.



Alternative means of seeking responses to information requests are routinely employed in the regions. In some situations, it may be appropriate to place a telephone call to the recipient in order to determine the basis for a lack of response (e.g., more time is needed, clarification is required). A telephone call should be followed up in writing to document the nature and content of the call. In other situations, a personal visit to a recipient to discuss the information request has been effective in obtaining requested information. Consider using a less time-consuming approach than

the previous two methods by developing a "speedy type memo", such as a generic pre-formatted "post-it"-type memo that is filled in and mailed to the recipient for a response along with the original information request. This could serve as a simple follow-up method of seeking clarification of the response or requesting additional information. When using any of these methods, the resource requirements and time involved for followup actions must be weighed against the potential gain to the Agency and other PRPs.

Administrative subpoenas, penalties, and administrative and judicial actions to compel compliance with information requests are discussed in sections 4.2 and 4.3. Due to the time-intensive nature of these actions, they are usually reserved for the follow-up phase of the PRP search.

3.4

Conduct

Interviews

Interviews complement the collection of relevant site records and aid in the development of site-specific information that may not be recorded in government and PRP documents. They are another tool for collecting or clarifying information on PRPs, other parties who may have information, site history, disposal operations, locations of disposal, or other issues relevant to the PRP search. Interviews also may help identify the existence of relevant documents such as business and hauler licenses, landfill permits, zoning permits, and building permits.

The PRP search team should ascertain what the state bar rules are for providing notice to the attorney representing a business entity before current employees, and in some cases former employees, are interviewed. The rules of professional conduct for attorneys vary from state to state, so it is important to determine what rules

apply in each case. These rules often consider employees to be part of the corporation or business, with the result that the corporate attorney may have a right to be notified of the interview and to be present for it. These considerations may apply even if the EPA attorney is not present, as CIs, contractors, or private investigators can be said to be working "at the direction of the EPA attorney." Violations of these rules could subject the supervising attorney to a range of sanctions.

3.4.1

Interview

Considerations

Interviews are generally performed to identify additional PRPs or gather evidence for liability determinations. If site documents do not exist, interviews may be the only method available to obtain the information needed to complete the search. The interview questions, therefore, should generally focus on whether the interviewee:

- may have participated in the activity being investigated; or
- may have witnessed the activity.

If site documents do exist, interviews may help clarify the content of the documents or identify additional leads. The interviewer may also attempt to determine how the documents were prepared, how to gain access to documents not already in the Agency's possession, and how to authenticate documents, if necessary.

Interview questions should focus on whether the interviewee:

- has knowledge of how the documents were compiled and who compiled them;
- is in possession of the documents; or
- may have additional information.

Factors to consider when deciding whether to conduct interviews include:

- nature and volume of information already obtained;
- nature and volume of information potentially to be gained from interviews;
- time required to plan, coordinate, and conduct interviews;
- timing considerations (how interviews fit into scheduled site activities);
- capabilities and availability of interviewer;
- location and availability of interviewees;
- sources of interviewees;
- documentation or admissibility requirements (i.e., are written summaries, taped interviews, or signed statements admissible?); and
- canons of ethics and disciplinary rules.

Nature and Volume Considerations

If the nature and volume of information already obtained is sufficient to meet the PRP search objectives, conducting interviews may not be necessary. Although interviews generally provide useful information, the nature and volume of information

potentially to be gained from an interviewee should be weighed against the time and effort necessary to plan, coordinate, and conduct the interview.

Timing Considerations

Interviews require time, money, and personnel skilled in conducting interviews. Timing considerations may dictate that only a few interviews be conducted during the initial phase of the PRP search, and further interviews be postponed until the follow-up phase. In some circumstances, however, the value of an interview to the PRP search may be great enough to justify delaying completion of the PRP search report. EPA encourages conducting interviews early in the information gathering process whenever possible (e.g., concurrent with the "file review and record collection" search task) rather than issuing many rounds of information request letters. This is particularly true when gathering information from owner/operators and employees of owner/operators. Often, the persons most knowledgeable about a site are those who worked there. As time passes, their memories become less clear and they are less likely to be available, so it is best to gather information from them early in the PRP search. Interviews, however, should complement information request letters, not be used in lieu of them.

At PRP search pilot sites, early use of interviews in place of multiple rounds of 104(e) information request letters was found to be particularly helpful. A number of PRP search teams reported that early interviews were a considerable aid in understanding the nature and history of the site. Getting this information early allowed them to focus the remainder of the PRP search more effectively, and also helped them plan a better investigation of the contamination at the site.

Capabilities of the Interviewer

When deciding to conduct interviews, the capabilities and availability of qualified Agency personnel are an important consideration. Interviews should be planned far enough in advance to allow the interviewer to become familiar with the site, PRP search strategy, and pertinent questions.

Participants in the PRP search pilot program reported that much of the success of early interviews can be attributed to the personal contact between the interviewer and the persons being interviewed. PRP search personnel noted that interviews are often a more effective information-gathering tool than 104(e) letters. Interviews may have several advantages over written contacts:

- An interviewer can follow up immediately on important statements, rather than send another letter.
- People generally give broader and more valuable answers when being interviewed in person.
- Eye-to-eye contact allows the interviewer to better judge whether an interviewee is forthcoming and truthful.
- Interviews with persons who are cooperative but elderly, ill, or illiterate often generate useful information that a 104(e) letter would not.

It is helpful to have access to civil investigators early in the PRP search process to assist with interviews. Individuals who will not consent to be interviewed should be sent a 104(e) letter or subpoena if the potential testimony is determined to be relevant.

Location and Availability of Interviewees

Another important consideration when evaluating use of interviews is the location and availability of potential interviewees. Ideally, all interviewees would live in close proximity to one another and relatively close to the regional office. Interviewees, however, are often scattered across the country, located in another country, or unwilling to be interviewed. The PRP search team should balance the value of each potential interview against its cost in time and money and then prioritize the interviews. The age and potential disabilities of an interviewee should be taken into account when balancing the value of an interview against available resources. As discussed above, sometimes an interviewer can obtain information that would not be provided in a 104(e) response. If resources are not sufficient to conduct face-to-face interviews, interviews can be conducted on the phone.

Documentation and Admissibility Requirements

When considering the use of interviews as an information gathering tool, it is important to determine the intended use of the interviews. An Agency employee's notes from an interview generally have less evidentiary value than a 104(e) response signed by a PRP, and may not be admissible at trial. Concerns about the evidentiary value of information obtained in an interview may determine who should perform the interview, when the interview should be conducted, or whether the interview should be conducted. If the Agency desires to produce evidence that will be admissible in court, then a route other than interviews typically should be pursued.⁶

⁶There are caveats to this statement. In general, recorded or signed statements gained from interviews can be useful in litigation, even though not admissible at trial as evidence. *See* Federal Rules of Evidence 801 through 817, Chapter 3 references, page 216 for more information on the use of recordings and signed statements.

3.4.2

Who Performs the Interview

Interviews should be performed by EPA staff who have experience or specialized training in how to conduct interviews. They are usually performed by CIs, but in some instances case attorneys, paralegals, and RPMs have performed or participated in interviews.

Interviews should only be conducted by personnel who have been trained in interviewing techniques and evidentiary collection processes. It is important that the interviewer be familiar with any state due process requirements that may apply at the site in question and with ethics rules or local bar rules concerning the admissibility of evidence. Consultation with all case team members is strongly advised before interviews are conducted.



Sworn Statements

Civil investigators play a critical role in exercising the Agency's authority under CERCLA sections 104(e) and 122 (e)(3)(b). They and other trained personnel generally collect information from individuals by conducting interviews pursuant to section 104(e). Typically, the CI will record the interview on tape or in writing. These records do not constitute "sworn statements" because CIs are not authorized to administer oaths subject to the penalties of perjury. Federal law, 18 U.S.C. §1621, provides that to commit perjury, a declarant must "[have] taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered." (See Chapter 3 references, page 216.) Thus, to administer oaths, a person must be an officer of the court. Short of an amendment to CERCLA, CIs cannot, by themselves, obtain sworn statements. There is no legal impediment, however, to CIs obtaining signed

statements. Signed statements can be quite valuable in court proceedings. See subsection 3.4.5 for more information on signed statements.

3.4.3

Identifying Interviewees

Interviewees are typically persons who may be able to identify or locate PRP and site documents. After a thorough review of collected site information, the PRP search team should develop a list of potential interviewees by name and address. Once the list is developed, the PRP search manager should prioritize the interviewees based on factors such as age or condition, plans to move out of the area, or one of the factors listed above in subsection 3.4.1. The PRP search manager should also review the prioritized list of interviewees in light of resources available (time, staff, and money) to conduct the interviews.

Potential interviewees include:

Site Operators and Employees (Present and Past)

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

On-site Visitors

- vendors
- recyclers
- inspectors
- customers

Federal Government Officials

- federal courts
- national law enforcement agencies
- Department of Veterans Affairs
- U.S. Postal Service
- bankruptcy courts
- Securities and Exchange Commission
- Occupational Safety and Health Administration

State Government Officials

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



Local Witnesses

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

3.4.4

Conducting Interviews

Before conducting interviews, the interviewer should become familiar with the site and the information needed by:

- reviewing EPA background information on the site;
- obtaining names of state or local government agencies and officials involved with the site; and
- generating a list of site-specific questions.

Preparing for and conducting the interview may involve:

- preparing a general outline of discussion points;
- determining whether the interviewee is represented by an attorney;
- knowing the elements of liability and the Agency's case;
- understanding the industry in question, thereby establishing the interviewer's credibility;
- using visual aids to aid the memory of interviewees;
- preparing specific questions beforehand to ensure that all topics consistent with the PRP search strategy are covered;
- having two persons present at the interview, if possible, one serving as the note taker, the other as the primary interviewer (another potential benefit of having two persons present is that any charge of intentionally making false oral statements needs to be corroborated by two persons in order to gain a conviction);
- considering whether an EPA attorney should attend the interview if the interviewee's attorney is going to attend; and
- determining the interviewee's association with the site and the basis of her knowledge (e.g., first-hand information, rumors).



Government Officials

Interviewing federal, state, or local government officials can be very productive because these officials, especially state and local officials, often have an intimate knowledge of the site. Contact with government officials is generally made by telephone or, if necessary, by letter or in person. Because of the civil investigator's experience in conducting interviews, and their peer relationship as government employees, it is highly recommended that regional CIs, rather than contractors, conduct interviews of other government personnel. Telephone calls will suffice in most cases. If a contractor is conducting the interview, the contractor should identify himself as an EPA contractor conducting background research on the site or have a letter of introduction from EPA if the interview is being done in person. The most important criteria for selecting the interviewer are experience and knowledgeability. Government officials should be asked about:

- the availability of relevant documents in the government's files;
- whether and how copies can be obtained;
- activities on the site before, during, and after the site's suspected use for waste disposal;
- PRPs associated with the site;
- site enforcement history, including any notices of violation (NOVs);
- administrative or legal actions involving the site and the PRPs, and the location of relevant documents;

- relevant state or local regulatory requirements and the location of pertinent documents such as landfill permits, building permits, and zoning ordinances;
- any news media articles about the site; and
- other possible knowledgeable people or organizations.

Former government employees are also a potential source of information. Attempt to work out an acceptable arrangement with officials or attorneys for the relevant agency, even if the scope of the interview is limited. After obtaining the approval of the former employee's agency, the former employee should be contacted to request an interview, just as with other private parties. As always, contractors performing interviews should be required to obtain approval from the PRP search team before contacting interviewees.

Interview Facts and Tips

Although the CI and other regional staff conducting interviews should take advantage of training in interview techniques available from a variety of sources, the following list contains basic tips to keep in mind when conducting interviews:

- Attempt to obtain information from more than one source.
- Obtain factual information regarding the background of the interviewee.

- If an interviewee requests anonymity, investigators do not have the authority to grant anonymity and, depending on the type of statement made during the interview, even the DOJ trial attorney may not have that authority.⁷
- Consider hiring a private investigator who is skilled in interview techniques to conduct interviews.
- Obtain the cooperation of the interviewee; the interview may be a precursor to a deposition. Cultivate the interviewee, establish a relationship of trust, and never lie or deceive.
- Obtain background information about records. This is important for determining the credibility of the interviewee and the reliability of records. Find out who prepared the records and, how, why, when, and from what source they were prepared.
- Verify the accuracy of information from other sources (e.g., use one interview to support another). Use documents to confirm information whenever possible.
- Attempt to pin down numbers (e.g., "How many drums were there? More than 10? More than 50?").
- Conduct interviews in a businesslike manner with professional demeanor.

⁷ Many investigators advise the interviewee that they (the EPA investigators) will forward a request for anonymity to an official who has authority to grant the request, then offer the party the following options: (1) to discontinue the interview until assurance can be given, or (2) to go through with the interview even though anonymity has not been granted.

- Use language that is understandable to the interviewee; avoid acronyms and technical or legal jargon.
- Do not assume that you know what the interviewee is saying; clarify when in doubt.
- When arranging the interview environment, consider individual or cultural "zones of comfort" regarding seating and privacy.
- Ask the same question a variety of ways.
- Paraphrase and repeat to the interviewee to ensure a mutual understanding of what is being said.
- Let the interviewee get through his story once before challenging or asking detailed questions.
- Attempt to resolve inconsistencies in the interviewee's responses before leaving the interview.
- Conclude the interview by summarizing important information, asking if the interviewee can think of anything else that was not covered, establishing a way to keep in touch (e.g., provide a business card), and attempting to obtain any documents identified during the interview.
- Early interviews can sometimes advance the PRP search process more quickly than sending 104(e) letters to the same individuals. For example, an early interview of an owner/operator helped the PRP search team in one region

better understand the business practices leading to contamination of the site. The general manager was able to show PRP search personnel how business records were kept at a treatment and storage facility and how to read those records. The region was then able to identify other PRPs and use its enhanced understanding of how the site had operated to write more specific 104(e) letters for those PRPs.

It is suggested that the interviewer indicate in her interview notes what can be substantiated and what is speculation.

3.4.5

Interview

Documentation

Interviews are generally documented in one of three ways:

1. Written summaries;
2. Recorded interviews; or
3. Sworn statements (affidavits) confirmed by a notary (should include a statement to the effect that the declarant/affiant swears under penalty of perjury that the foregoing is true and correct).

Signed statements become "sworn statements" if notarized.



A **written summary** of an interview is a document summarizing the facts presented by the interviewee, which are then organized and summarized in the interviewer's own words. Although the summary should be written in the third person, it may be helpful to include direct quotes from the interviewee within the text, especially when the quotes are particularly incriminating, descriptive, or inflammatory. Setting aside such language in quotes allows the information to be conveyed to the reader without bringing the interviewer's neutrality into question.

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

A **recorded interview** can only be obtained with the permission of the interviewee. When recording an interview, the interviewer should begin by recording an introduction that includes the interviewer's name, the date and time of the interview, the location, and the interviewee's name. The interviewer should ask the interviewee if he understands that the interview is being recorded, and verify that it is being done with his permission. Ask the interviewee to spell his name, provide his address, and state his date of birth. The interviewer also may ask the interviewee for his social security or driver's license number, but cannot compel the interviewee to provide them. The interviewer can proceed with the questions after concluding this introduction.

After the interview is over, verify with the interviewee that he understood that the conversation was being recorded and that it was done with his permission. The interviewer should provide a closing that includes her name, the name of the interviewee, and the date and time the interview ended. A transcription of the recorded interview serves as the written record of the conversation. After the transcription is completed, the original tape should be secured in a safe location and the location of the original tape and identity of the transcriber referenced in the transcript.

In some instances the interviewee cannot appear in person and the interview takes place by telephone and is tape-recorded. If the interviewee agrees to the telephone conversation being taped, the telephone conversation can be taped on a recorder containing a beep tone warning. Before taped interviews are conducted over the telephone, state laws pertaining to recording telephone conversations should be thoroughly reviewed.

Signed statements are summaries of an interview that are written in the first person and signed by the interviewee. The interviewer should conduct the interview and take notes as usual. However, the written summary of the interview should be in the first person, as if the interviewee were writing the notes of the interview herself. The interviewer may choose to summarize the statement directly following the interview, or return with the statement on another occasion. In either case, the interviewee will read the summary and confirm that it represents the information that she conveyed in the interview. She will then sign the statement.

Although a written summary or recorded interview is useful and in most instances adequate for the purpose of gathering information, a signed statement can have a higher degree of credibility as evidence. However, interviewees are sometimes not comfortable signing a statement, and may ultimately choose not to sign the statement after the interviewer has gone to the effort of preparing it. Consequently, the purpose of the interview and the need for a signed statement should be carefully evaluated before such a statement is created and an interviewee is asked to sign it.

The same database used to organize and track files and other records may be used to store information concerning completed interviews. All interview documentation should be assigned an index number for easy retrieval.

3.5

Perform Title Search

Objectives of the title search include:

Primary Objectives

- identify past and present owners and operators;
- identify owners and operators at the time of disposal; and
- provide a chain of title.

Other Objectives

- obtain the deed for evidence;
- identify abutting properties and their owners;
- supply title search documentation;
- identify knowledgeable persons;
- determine site use; and
- identify outstanding liens against the property and types of liens.

3.5.1

Determine Ownership Interests

Scoping a Title Search

The scoping process should focus on the history of both ownership and site activities. Before beginning the title search, the researcher will need to obtain information on the site location (including the county in which it is located), a site description, and specific Agency requirements for the title search. The researcher

may be an EPA employee, a contractor, or a title company subcontracted to the contractor. A survey of the site may be required if the legal description or exact location of the site is unknown. A survey may also be necessary if the site consists of several parcels and the relationship between the parcel boundaries and the site boundaries is unclear. A title search may also be conducted for parcels adjacent to the site if the Agency needs to obtain access from owners whose properties abut the site. In addition, a title search for adjacent parcels may provide names of people who are familiar with past or present site activities; these people can then be contacted and interviewed. It also may provide information about other activities in the area that may have contributed to contamination at the site.

The PRP search manager, in consultation with the case attorney, should specify site-specific title search requirements. Site-specific determinations should include:

- the time period the title search is to cover;
- the area the title search is to cover (a legal description of the site is best; however, county tax assessor parcel numbers and the street address are useful in the absence of a legal description);
- whether certified copies of the title documents are required; and
- the format of the title search results summary.

Documentation

Types of documentation that should be reviewed and, where relevant, copied may include:

- warranty deeds
- quitclaim deeds
- deeds of trust
- leases
- administrator's and uniform executor's deeds
- judgments
- mineral leases
- real estate contracts
- grant deeds
- mortgages
- easements
- trustee's deeds
- Article 9 statements (part of the UCC)
- financing statements
- plat maps
- liens (e.g., tax, mechanics)

In general, title search companies provide a summary of the chain of title and may also provide corporate information about the owner of the facility. The review of title records usually will not focus on additional information relevant to environmental conditions at the site unless such information is specifically requested.

3.5.2

Develop a "Title Tree"

The next major step in the title search process is to develop a "title tree." A reference list of all recorded documents, including their location (by book number and page number), should be developed and added to the PRP search database. Recorded documentation may include those documents outlined above. Generally, a brief description of each transaction is provided, including an indication whether the transaction affected all or a portion of the site. This summary of site ownership history may include:

- the terms of the transaction (e.g., a 5-year recorded lease);
- whether the transaction transferred all rights to the land (e.g., in mining areas it is important to know whether the mineral rights were transferred with the surface rights);
- explanations of specific terms like quitclaim deed, conditional sales contract, partial release of deed of trust and mortgage; and
- charts and maps, if considered useful.

In addition, information should be obtained about past and present owners if they are partnerships, corporations, or trusts. If the property is owned by a partnership, obtain a copy of the partnership agreement or the dissolution of partnership. If the owner is a corporation, obtain the certificate of incorporation. If the property is owned in trust, obtain a copy of the declaration of trust, the trustee certificate, and the schedule of beneficiaries. These documents are generally located in the office of the secretary of state, not in the office where land title information is located (typically the county clerk's office).

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

- the correct property was researched;
- the correct documents were provided;
- missing or unreadable documents exist;
- documents are incomplete;
- the property descriptions in the documents relate to site property;

- the chain of title is continuous (i.e., no gaps appear in the chain); and
- leases and deeds were reviewed for restrictive language concerning groundwater or land use.

A title search is usually considered complete when the ownership history or "title tree" is clear and complete for each of the site parcels.

3.6

Business Status and Financial Research

3.6.1

Introduction

- CERCLA section 107(a) identifies four classes of "persons" who may be liable for costs incurred by the United States, a state, or an Indian tribe and who may be liable to perform future response actions at a site. (See discussion in section 1.2 of this manual.)
- Individuals and a variety of commercial and governmental entities may qualify as a person because of their own acts and omissions or because of the acts or omissions of others. (See CERCLA section 101(21) for the definition of "person.")
- The PRP search should determine, for each PRP identified, whether the person still exists, if the person is still viable, and the exact name used by the person today.

- In many cases, records gathered, such as manifests or trip tickets, may identify a PRP as the PRP was known years ago. During the time that has elapsed since the records were created, the name of the entity may have changed and a different business may be operating under the same name. Therefore, it is crucial to trace each person from the time of liability to the present so that EPA can correctly identify who is liable to perform or pay for the cleanup.
- For individuals, a portion of this research is completed by performing skip tracing and asset searches.
- Liability may extend beyond the assets and the earnings of the person, depending on the type of person (e.g., sole proprietor, partnership, corporation) and as provided by the laws of the state in which the entity operates.
- Liability of a person may continue long after the original person or business has ceased to exist. As a result, more than one existing person may be liable.

3.6.2

Forms of Business

Organization

The following is a general introduction to the forms in which a business may be organized. It includes a definition of each form, a brief description of the formalities required to begin the form, and a simplified description of who is liable for the acts, omissions, and debts of a business organized in that form. Formation and liability of a business or commercial entity are governed primarily by the law of the state in which the entity operates or is headquartered. Identifying the specific business entity (or form) is necessary in order to accurately identify the PRP, as well as collaterally liable parties.

[Note: This section presents a general overview of the formation and liability of businesses and may not be applicable to every case. It is recommended that you consult with the appropriate attorney in your region when assessing the potential liability of PRPs associated with a particular site.]

3.6.3

Person

In order to understand the significance of various business forms as they relate to the CERCLA liability scheme, it is helpful to review the definition of "person" in the statute. CERCLA section 101(22) defines a "person" as "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of a state, or any interstate body."

As defined, each person can perform commercial acts, such as opening bank accounts, buying or leasing property, selling merchandise, borrowing money, and providing services. As a consequence of these commercial acts, persons can be liable, under both civil and criminal statutes, for the consequences of their acts or failures to act. For instance, a partnership can be held liable for damages caused by an employee of the partnership, performing an act within the scope of his employment, who injures another person. Obviously, the partnership could not be imprisoned for criminal violations, but it could be assessed fines. For civil actions, the partnership may be required to pay damages or perform any other remedy required by a court judgment.

3.6.4

Business Organization

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

The three most common business organizations are:

1. Sole proprietorships;
2. Partnerships; and
3. Corporations.

3.6.5

Sole Proprietorships

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

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

Ownership and Liability: All the assets of the business are owned by the individual, the individual controls the activities and direction of the business, and the individual is liable for all the debts and obligations of the business. Accordingly, any asset owned solely by the individual could be reached to satisfy any debt of the sole proprietorship. For assets owned by the individual

jointly with another individual(s), it may be necessary to research the laws of the state where the asset is located or the individual resides. This is especially true for non-business assets owned jointly with a spouse.

Registration: A sole proprietorship is not generally required to formally register to establish a business but may be regulated by a variety of state and local agencies, often for reasons related to health and safety, professional standards, or tax revenue. Accordingly, a sole proprietor may need to file appropriate documents in order to use a fictitious business name or to obtain a business license.

3.6.6

Partnerships:

General

Partnerships and

Limited

Partnerships

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

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

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

partner. Although debts of a partner may not directly attach to the assets of a partnership, the debts of the partnership may attach directly to the assets of general partners.

3.6.6.A
Elements Specific
to a General
Partnership

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

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

Registration: A general partnership usually does not require any formal registration to establish the business, but may be regulated by a variety of state and local agencies, often for purposes related to health and safety, professional standards, or tax revenue.

Accordingly, a partnership may need to file appropriate documents in order to use a fictitious business name or to obtain a business license.

3.6.6.B
Elements Specific
to a Limited
Partnership

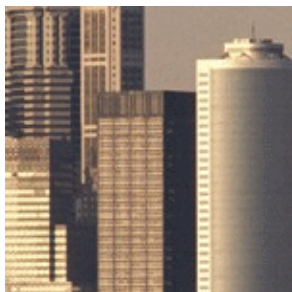
Definition: A limited partnership is a business association of at least two legal persons, one or more of whom are general or managing partners, and the rest of whom are limited partners. Limited partners invest capital in the partnership, but do not participate in its management. They are investors,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

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

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

3.6.7

Corporations



Most states have adopted the Model Business Corporation Act or the Revised Model Business Corporation Act, which lends uniformity to the requirements for incorporation. Nearly every state, however, has adopted different requirements for documents that need to be filed, the jurisdiction for filing those documents, the amount of disclosure required, and regulations governing the sale of stock, among other items. These differences make it necessary to become familiar with the requirements of each state.

Definition: The *Corpus Juris Secundum* (18 C.J.S. §2) explains that a corporation is an artificial entity created by the law of its state of incorporation. A corporation is made up of a body of individuals (shareholders) “united as a single separate entity under a common name” with a perpetual existence. For legal purposes, a corporation’s status under the law is that of an individual, even though one corporation may be a subsidiary or affiliate of another corporation or corporations.

Although an artificial person, a corporation “is entitled to rights under the law, and must enforce its own rights and privileges.”

The “essential attribute of a corporation is the capacity to exist and to act, within the powers granted, as a legal entity” separate and distinct from its shareholders.

The characteristics of a corporation generally include:

- the capacity of perpetual existence;
- the power to sue or be sued in the corporation’s name;
- the ability to purchase, own, and sell property and real estate;
- the ability to engage in specified business as set forth in its articles of incorporation; and
- any other characteristics and powers as provided by statute.

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

Taxation: Unless the corporation is a Chapter S corporation, it files its own tax return and is responsible for paying the income tax on the corporation's 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 the corporation's standing as a person. Corporations must also register in the state in which they conduct business. In some states, a corporation that has had its corporate charter revoked no longer operates as a corporate person and may instead be operating as some other type of entity (e.g., partnership, sole proprietorship). In addition, corporations seeking to sell stock or other securities to the general public are regulated by the Securities and Exchange Commission (SEC), and must provide substantial disclosure to the public, as noted in subsection 3.6.11.

3.6.7.A

Elements Unique to Corporations



- **Continuity.** A corporation is established in perpetuity, and can continue to operate even in the event of death, disability, or withdrawal by shareholders, directors, or officers.
- **Transferability of equity interest.** Equity interest in a corporation is evidenced by shares of stock, which can generally be freely sold or transferred, subject to applicable regulations.
- **Constitutional rights similar to, but more restricted than, those of a natural person.** Constitutional rights granted to corporations include protection from unreasonable search and seizure, freedom of speech, and the right to trial by jury. Constitutional rights not granted to corporations include the privilege against self-incrimination and privacy rights.

- **Separate existence as a legal person.** A corporation exists as a person at law, separate and distinct from its shareholders, directors, officers, and employees.
- **Claims of creditors.** When a corporation is dissolved or winds up its affairs, assets of the corporation must be used to satisfy creditors first. Creditors must be notified and given an opportunity to present a claim for payment. After all creditors are paid, then stockholders are entitled to a pro rata distribution of remaining assets, if any.

3.6.7.B

Classification of Corporations

Public vs. Private Corporations

In a public corporation, stocks or shares are listed on a stock exchange such as the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and are available for purchase or sale either directly from the corporation or via a stock brokerage firm such as Charles Schwab, Merrill Lynch, PaineWebber, or Morgan Stanley Dean Witter. In order to offer securities for sale to the general public, a corporation must provide a very high level of disclosure, including disclosure of specified financial statements, matters that are material to the economic existence or well-being of the business, the identity of the corporation's major shareholders, and the identity of entities seeking to acquire major stock interests. Such disclosures are filed with the SEC and are required as long as the corporation remains publicly traded.

In privately held corporations, stock or shares are sold or issued only to selected private parties, and are not offered or sold publicly. Shares are often held by one person, a family, or those

who incorporate the business, and shareholders are often directors or officers of the corporation as well. Such a corporation is generally known as a "close" or "closely held" corporation.

C vs. S Corporations

In C corporations, both the corporation and its shareholders are subject to income tax. (The corporation is taxed on its net income, and shareholders must report any dividends received from the corporation as well as gains (or losses) on the sale of stock.) There are no limits to the number of shareholders in C corporations, and C corporations may be either publicly or privately held.

An S corporation is a corporation that elects to be taxed like a partnership, such that the income of the corporation is allocated or passed through to the shareholders. S corporations avoid the double taxation of C corporations, since only the shareholders report taxable income in the form of dividends or distributions. S corporations are limited by law to 35 or fewer shareholders and are normally privately held corporations.

Domestic vs. Foreign and Alien Corporations

A corporation is a domestic corporation in the state in which it incorporates. It is a foreign corporation in all other states in which it qualifies to do business. An alien corporation is a corporation qualified to do business in a state in this country, but incorporated in a different country, such as Great Britain or the Netherlands. Consult OGC regarding the feasibility of imposing CERCLA liability on foreign corporations, alien corporations, or holding companies owned or capitalized by alien corporations.

Profit vs. Non-Profit Corporations

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

3.6.7.C

Evolution of Corporations

Name Changes

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

Sometimes a corporation decides to change its name or merges with another corporation and as a result of the merger assumes a new corporate name. Upon assuming the new corporate name, the old corporate name may become available for use by another

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

As a result of name changes, more than one corporation may at different times conduct business under the same corporate name. Also, because corporations must be authorized to conduct business on a state-by-state basis, it is possible for two distinct, unrelated companies with the same corporate name to operate in adjoining states. Once a corporation has been identified, it is necessary to confirm its name and the state of incorporation where Superfund liability arose. Once this specific corporate entity is identified, it is then necessary to determine the current status of this corporation.

A corporation cannot escape liability simply by changing its name. If investigation reveals that ABC Corporation was incorporated in 1970 and sent hazardous substances to a Superfund site in 1975, it is still liable today even if it changed its name to XYZ Corporation in 1995.

Mergers

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

- articles of incorporation and amendments;
- resolutions of the board of directors;
- merger agreements; and
- proxy statements.

Asset Sales

A corporation may sell part of its business operations, facilities, or other assets (e.g., real property, equipment) to another corporation, but it cannot avoid CERCLA liability simply by divesting itself of an asset. For example, a corporation may sell a facility where hazardous substances were deposited, but doing so will not relieve it of liability under CERCLA section 107(a)(2) if it owned the facility at the time of disposal. Therefore the PRP search should continue to investigate the selling corporation with particular attention to the proceeds of the asset sale. (See subsection 3.6.10 for exceptions to this general rule.)

3.6.7.D

Sale of Stock in a Corporation

The ownership of stock in a corporation may change over time. The exchange of stock in and of itself does not change the corporate person. Accordingly, if the only change in a corporation is the ownership in stock, then there is no change in the identity of the liable party.

If the facts developed during a PRP search identify a situation where either a majority or all of the stock of a liable corporation is sold to a different "person," it may be appropriate to conduct a more thorough investigation to confirm that the exchange of stock was the only change that took place. In some circumstances, ownership of all or a majority of the stock of a corporation by one person may signal the existence of additional PRPs. These issues are discussed in subsection 3.6.10.

3.6.8

Indemnification Agreements

An indemnification agreement is a contract between two or more parties in which one party agrees to be obligated to pay for or reimburse another party upon the occurrence of specific events as set forth in the contract. A PRP may seek to transfer its liability to another party through such an indemnification agreement. Since the United States is not typically a party to such agreements, it is not necessarily bound by their terms and conditions. Moreover, resolution of disputes and alleged failures to perform arising from such contracts requires recourse to a court of competent jurisdiction. In some instances, it may turn out that the indemnifying party is incapable of fulfilling its obligations due to a lack of financial resources.

When a PRP search identifies the existence of an indemnification agreement, ORC and possibly DOJ should be consulted to determine how best to proceed. Generally, it is the responsibility of the parties to the indemnification agreement to assure compliance with the agreement. Although an indemnifying party may agree to perform or pay for work, it is important that the United States retain enforcement authority over the PRP who is being indemnified. Under appropriate circumstances, EPA may seek an agreement from the indemnifying party not to contest its obligation to indemnify the PRP. If the indemnifying party agrees, it is essential that its agreement not be obtained in a way that inadvertently effects a waiver of the United States' enforcement authority over the PRP who is being indemnified.

3.6.9

Other Entities

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. One type of trust, often known as a spendthrift trust, provides for the distribution of property or income according to a fixed schedule or at the direction of a trustee to one or more beneficiaries in order to prevent the beneficiary from squandering it all at once. Trusts may also be established to provide for the long-term care of an incompetent or disabled individual, particularly when the beneficiary is younger than the grantor. Trusts are created pursuant to state law, and the forms, purposes, and limitations of trusts vary from state to state. Because a trust may have legal standing as a "person" under state law, it may be liable as a PRP under CERCLA. It is therefore essential to understand the law of trusts of the state in which the trust was created and of the state in which the assets of the trust are located.

A trust is created by a trust document or instrument, which may or may not be recorded, but must be in writing. The document identifies the parties and describes the property, which may be personal or real property, that is to become the trust estate. The document also lists the duties of the trustee, provides for successor trustees, and enumerates the conditions under which trust assets may be distributed to the beneficiaries. Some trusts

are irrevocable, which means that the property is transferred without the possibility of the grantor changing her mind. Other trusts are revocable, which means that the grantor retains the right to revoke the trust and recover the trust property. In cases where a PRP grantor continues to enjoy the use or benefit of the trust property, EPA may conclude that the trust is a sham and take legal action to void or set aside the transfer of the trust property.

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

Holding Companies

A holding company is a corporation formed to own the stock of one or more subsidiary corporations. It is a subcategory of a parent corporation, in that it typically does nothing more than own the stock of corporations that actually create goods or provide services.

Shell Corporations

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

Joint Venture

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

Municipalities

Counties, cities, and municipalities are creations and subdivisions of state governments, established by charter or other act of the state legislature. They are legal entities, much like corporations, but have the power to require investments by the public through taxes in addition to offering voluntary investment opportunities through municipal bonds.

Limited Liability Company

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." This can be organized as either a sole proprietorship or a general partnership, but the member(s) or company enjoy(s) the limited liability protection generally afforded to shareholders of

corporations. Requirements include public notice or registration of the entity as a limited liability company and, in some cases, use of the term limited liability in the company name.

3.6.10

Additional Liability Theories

As a PRP search progresses, information gathered may suggest that the investigation be expanded to include additional "persons." This section supplements the discussion of CERCLA liability in Chapter 1 by outlining theories of extended potential liability under CERCLA. This information is intended to assist regional attorneys and others participating in or performing the PRP search in developing appropriate liability recommendations. Because the interpretation and validity of these liability theories may be viewed or applied differently in each federal judicial district and from state to state, it is strongly recommended that ORC and DOJ be consulted to ascertain the current applicable judicial interpretation given the facts of each specific case.

3.6.10.A

Direct Liability of a Person as an Operator or as a Person Who Arranged for Disposal or Treatment of Hazardous Substances

Subject to the appropriate legal defenses and exemptions outlined in subsections 1.2.5 and 1.2.6, the owner of real property constituting a Superfund site is a responsible party. CERCLA, however, does not limit liability solely to the owner of the real property. Instead, as discussed in subsection 1.2.4, liability may also be imposed upon operators and on "persons" who arranged for treatment or disposal of hazardous substances (generators) and transporters. As the PRP search proceeds, many additional "persons" are often identified who played more or less extensive roles in directing or managing the activities of the business entities whose acts in turn created the hazardous conditions found at the Superfund site. Based on case-specific information developed

during the PRP search, the Agency may establish that the actions and involvement of these "persons" were so extensive that liability should be imposed upon them, notwithstanding such traditional shields against liability as the corporate shield or a person's status as a limited partner. Federal courts have held that these actively involved persons may be named PRPs based upon the definition of "person" in CERCLA sections 101(21) and 107(a) under a liability theory known as direct liability.

3.6.10.B
Corporate Officers,
Directors,
Shareholders, or
Employees

In addition to holding a corporation liable, the United States has brought CERCLA actions against individual officers or shareholders of corporations. In general, corporate officers, directors, shareholders, and employees have limited individual liability for unlawful or tortious acts of a corporation. Courts, however, have applied by analogy the standard of direct CERCLA liability established in *United States v. Bestfoods* (discussed in paragraph 3.6.10.C) to corporate officers, directors, shareholders, and employees. Courts have ruled that an officer or director may be "directly liable," i.e., personally liable, under CERCLA given any of the following fact patterns:

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

- A corporate officer, employee, shareholder, or director exercised control over facility operations and could have prevented or significantly abated the release of hazardous substances.

Direct liability is imposed when the actions of an officer, employee, shareholder, or director of a corporation exceed the normal limits and accepted behavior, practices, or duties of his position. Evidence that shows that an individual's activities exceeded the scope of his normal duties and responsibilities with respect to site operations, particularly in directing activities that relate to the disposal of hazardous substances, is crucial to a finding of direct liability. For example, a treasurer of a corporation is usually given responsibility for the corporation's financial affairs, as set forth in the articles of incorporation or the corporate bylaws. If the treasurer directs corporate employees to drain liquid waste containing trichloroethylene (TCE) into a disposal trench, he may be held directly liable as an operator just as the corporation is liable. Direct liability may also apply to related or affiliated corporations.

3.6.10.C

Liability of Parent and Affiliated Corporations

In *United States v. Bestfoods*, 524 U.S. 51 (1998), the United States Supreme Court established a standard of direct liability under CERCLA section 107(a)(2) for parent corporations as operators of facilities owned or operated by subsidiary corporations. In *Bestfoods*, the court held that a parent corporation that jointly operates or exercises control over the environmental operations of its subsidiary's facility may be held directly liable as an operator of the facility under CERCLA section 107(a)(2). The court also stated that the question is not whether

the parent operated the subsidiary, but whether the parent directly operated the subsidiary's facility. This may be demonstrated by showing that the parent corporation managed, directed, or conducted operations specifically related to the release or disposal of hazardous substances, or made decisions affecting compliance with environmental regulations at the facility. The court also stated that a parent's control over a subsidiary, although not giving rise to direct liability, if extensive enough, may establish indirect liability. (See the discussion below on piercing the corporate veil.)

The court in Bestfoods also held that a parent corporation cannot be held directly liable merely because directors and officers hold positions in both the parent and the subsidiary corporations. To impose direct liability in situations with common officers or directors, it must also be shown that the officers and directors were acting in a manner (1) advantageous to the parent; and (2) obviously contrary to the interests of the subsidiary. The direct liability of a parent corporation arising from the actions of shared officers or directors may only be imposed after an analysis of the specific facts of each case using traditional corporate law tests or principles. As a fundamental part of this analysis, the Court emphasized the importance of corporate decisions that are not made in the best interests of the subsidiary.

3.6.10.D

Elements of Direct Liability

The investigation to determine whether corporate officers or parent corporations may have direct operator liability should be focused on the degree and extent of involvement of each person. Were the actions of a corporate officer or parent sufficiently beyond the scope of a normal relationship to show that the corporate officer or parent directly operated the corporation? Did the actions of the corporate officer or parent qualify as an

arrangement to treat or dispose of hazardous substances?

Evidence that merely describes the basic elements of ordinary and customary management or supervision is not sufficient to meet the standard of direct liability. Instead, the PRP search should seek to document the actions of a person participating in the activities of corporation at a level of involvement much greater than the customary role of an officer or parent corporation.



In a potential direct liability case, documentation should include information reflecting specific actions taken and directions and orders issued by a potentially liable person. Documentation should also show the extent and nature of the involvement of the person in the corporation, paying particular attention to decisions or activities that resulted in or contributed to the release of hazardous substances. A comparison of the person's job description and duties with the duties and activities actually performed as demonstrated by documents and testimony can be particularly helpful and telling.

Documentation relevant to supporting a direct liability case includes:

- corporate minutes;
- records of stock;
- corporate checks, signature cards, and bank statements;
- leases, rental agreements, purchase agreements, and all other documents reflecting transactions between the corporation and a related or affiliated party;
- list of officers (shared officers?);

- list of directors (shared directors?);
- shareholders (does one person or entity own a controlling interest?);
- affiliation schedules;
- corporate financial statements;
- statements of employees or other knowledgeable individuals;
- position descriptions;
- employment agreements; and
- travel records.

3.6.10.E

Piercing the Corporate Veil

Piercing the corporate veil is a legal doctrine through which a corporation's shareholders, who generally are shielded from liability for the corporation's activities, can be held personally liable for those activities. This is in contrast to traditional corporate liability schemes, in which shareholder liability is limited to the money a shareholder has invested.

In *Bestfoods*, the Supreme Court left open the question (and federal courts are divided on this issue by appellate circuit) whether state common law or federal common law should apply to veil-piercing claims in actions to enforce CERCLA's indirect

liability.⁸ Most courts (federal and state) apply a multi-pronged test to determine if a shareholder is liable for the wrongdoing of the corporation of which he is an owner. Factors often considered by courts include whether:

- control over the corporation by those to be held liable was so complete that the corporation had no separate mind, will, or existence of its own;
- control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; or
- injury or unjust loss resulted to the plaintiff from such control and wrongdoing.

Generally, the doctrine of piercing the corporate veil is invoked to prevent fraud or achieve equity, particularly in the treatment of creditors of the corporation. Accordingly, as a prerequisite to piercing the corporate veil, courts generally require the corporate entity to demonstrate that it is unable to pay its liabilities or debts, whether these are Superfund cleanup costs, salaries, debts to suppliers, or taxes. (See *Carter-Jones Lumber Co. v. LTV Steel Co.*, 237 F.3d 745 (6th Cir. 2001) (Shareholder's mere control of a corporation may be sufficient to establish indirect liability and joint liability as an arranger..))

⁸Because the federal courts of appeals are divided on this issue, it is necessary to determine what the controlling law is for the circuit in which a specific case may be litigated because state veil-piercing requirements are stricter than federal common law requirements.

In order to pierce the corporate veil successfully, the party seeking to pierce the veil has the burden of showing why the veil should be pierced and what injustice, fraud, inequity, etc. will occur if the veil is not pierced (e.g., the taxpayers will be required to pay for the costs of a CERCLA cleanup instead of the wrongdoers who are trying to hide behind a corporate shield). The type and amount of evidence needed to pierce a corporate veil so as to impose CERCLA liability on corporate officers, directors, shareholders, or employees is not the same in all federal or state courts. The law governing the standards to be applied varies. It is very important, therefore, to consult ORC and, when appropriate, DOJ as soon as information is obtained suggesting that piercing the corporate veil might be warranted or required.

Corporate acts or omissions that support piercing the corporate veil include:

- failure to observe corporate formalities, including failure to;
 - properly incorporate (articles of incorporation) or file appropriate documents with the state,
 - hold meetings of the board of directors,
 - hold meetings of stockholders,
 - issue or account for stock, and
 - approve or ratify major actions of officers,
- failure to treat corporate property as the corporation's property;
- failure to properly capitalize the corporation;
- commingling of assets (e.g., combining corporate funds with personal funds); and

- related-party transactions that are not at arms length or do not involve reasonably adequate consideration.

The creditor must show that the corporation is a sham by accumulating as much evidence as possible to support the indicators listed above. Documentation that may be important includes:

- corporate minutes (including evidence that such minutes were not kept);
- records of stock;
- corporate checks, signature cards, and bank statements;
- leases, rental agreements, purchase agreements, and all other documents reflecting transactions between the corporation and a related or affiliated party;
- lists of officers (shared officers?);
- lists of directors (shared directors?);
- shareholders (does one person or entity own a controlling interest?);
- affiliation schedules;
- corporation financial statements; and
- statements of employees or other knowledgeable individuals.

3.6.10.F

Successor Liability

As a general rule, a person who purchases some or even all of the assets of a business from another person during the course of an arms-length transaction is not liable for the debts or other obligations of the seller. There are exceptions to this rule, however, depending on the facts and circumstances of the sale and on relevant case law in the judicial circuit in which jurisdiction lies. Circumstances under which liability may pass to the purchaser of business assets include:

- The buyer expressly or impliedly agrees to assume the seller's liabilities. Because EPA was not a party to this transaction or contract, it is essential to seek advice from regional counsel to determine whether EPA may independently move against the buyer to enforce such an agreement or if it is necessary to proceed against the seller to enforce this portion of the contract.

- The transaction amounts to a de facto merger or consolidation. As discussed in subsection 3.6.7, when there is a formal merger between two or more corporations, liabilities of the merging corporations are automatically assumed by the surviving corporation. A de facto merger describes an asset purchase agreement that, for all practical purposes, amounts to a merger. Most states have standards that define a de facto merger. These standards typically include the following elements:
 - there is a common relationship between the buyer and seller;
 - the buyer acquires essentially all the assets of the seller; and

- the seller is dissolved soon after the sale.
- The transaction (asset sale) is fraudulently entered into to escape liability.
- The buyer is a mere or "substantial" continuation of the seller. Factors that some courts have relied upon in identifying "mere continuation" asset purchases include:
 - retention of the same employees;
 - retention of the same supervisory personnel;
 - use of the same production facilities in the same location;
 - production of the same product;
 - use of the same name;
 - continuity of assets, i.e., the buyer uses the same machinery, sells to the same customers, buys from the same suppliers;
 - continuity of general business operations;
 - holding out as a successor to the former enterprise; and
 - holding out as identical to the former enterprise (e.g., using the same name, letterhead, business cards).

Documentation that may help determine whether the standards for successor liability enumerated above have been satisfied includes:

- the asset purchase agreement with all attachments, schedules, or exhibits;
- corporate resolutions;
- employment contracts;
- customer lists;
- supplier lists;
- invoices and stationery;
- advertising;
- bulk transfer notices (notices mailed to creditors of the seller and published in newspapers of general circulation in the area where the sale occurred);
- business escrow documents reflecting the asset sale; and
- property appraisals.

Key points to remember when reviewing and evaluating asset purchase agreements include:

- The person selling the business assets is normally referred to as a predecessor. The court may require that EPA first look to the remaining assets of the predecessor to satisfy a liability before EPA is allowed to look to the assets of the

successor. Accordingly, the PRP search must identify the current operational status, viability, and ability to pay of the predecessor. Some states require, as a precondition to imposing successor liability, a demonstration that the predecessor is insolvent or defunct.

- Because EPA is not normally a party to indemnification agreements or an indemnification clause within asset purchase agreements, EPA generally is not bound by the terms and conditions of indemnification agreements. Normally, only the parties to an indemnification agreement can enforce its terms. Accordingly, providing EPA a copy of an indemnification agreement may not relieve a party of CERCLA liability.
- In attempting to evaluate the potential successor liability of a purchaser, the objective is to gather evidence of as many of the liability factors discussed above as possible. The standard of proof is the preponderance of evidence, and no one factor makes the case in the appropriate court jurisdiction.
- Successor liability is a continually evolving field of law. Consequently, it is critical to consult with ORC and DOJ when making a liability determination based on successor liability.

3.6.11

Financial Research

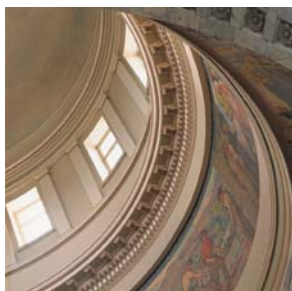
Effective financial research starts with a knowledge of the regulatory requirements and record-keeping policies for the location where the transaction took place. On-line databases and credit reporting services are very useful aids to understanding prior events, but the information obtained using these services

may not be sufficiently reliable to be used as evidence. This is especially true when researching the sale and acquisition of companies. The various sources of financial information about businesses are discussed below.

3.6.11.A
Corporation and
Partnership Filings
Required by States

Required business filings differ from state to state, both in terms of what information must be provided and where documents must be filed. In many states, corporations and limited partnerships are required to file documents with the secretary of state in order to defend any action in a state court. Accordingly, almost all corporations and partnerships have filed the requisite documents.

- For corporations, required filings include the corporate registration, which contains a list of officers and directors, articles of incorporation, and all amendments of the articles.
- For partnerships, required filings include the partnership agreement, which contains a list of all partners and their interests in the partnership, and may include a list of partnership property.
- Documents evidencing corporate name changes and mergers are also filed with state agencies.



When reviewing corporate filings make sure that the available information is consistent with the span of time of potential liability. Some state offices archive older records. In those offices, it is typically necessary to make a specific request to review older filings.

3.6.11.B

**County Filings and
Other State
Regulatory Agency
Filings**

Depending on the location and the type of company, documents may exist that identify the person and the address used by the person at the time of filing. County deed offices are very useful in establishing a sequence of owners of real property, particularly when the name of a purchaser on a deed is different from the eventual seller named on the deed.

3.6.11.C

Court Filings

Federal and state courts are often good sources of information that is useful for establishing corporate liability. Sometimes financial issues relevant to a CERCLA investigation have been addressed under a labor grievance or a property dispute. A review of prior legal actions and an examination of the evidence introduced in those actions can be helpful.

3.6.11.D

Federal Sources

The SEC has large amounts of information relevant to purchases, sales, mergers, and divestitures of publicly held companies. The more current information is available on line. In addition, publicly available paper documents describe activities as far back as the 1930s. Other federal agencies may have information such as contracts and contract amendments that may help establish liability.

3.6.11.E

**Corporate
Directories**

Corporate directories provide summaries of useful financial information for a variety of businesses. Older editions of these directories often are helpful in tracking name changes and the acquisition and sale of plants. These directories can also be used to establish the state of incorporation, as well as the fate of inactive, dissolved, or defunct corporations, or corporations which have merged, been acquired, or have otherwise disappeared.

Useful corporate directories include the Dun & Bradstreet Million Dollar Directories, Directory of Obsolete Securities, Standard & Poor's Industrial Manuals, and Walker's Manual of Western Corporations. Corporate directories can be found in the business section of most public libraries and are updated at least annually. In addition, industrial directories are compiled annually for most states, and larger libraries may maintain a historical collection of such directories, particularly for their state.

3.6.11.F

Credit Reporting and On-Line Services

On-line services often provide corporate information for a limited number of years or provide information that is not current. Check with the data provider to verify the period of time that the data cover and whether full data or only limited portions are being provided. These systems are very useful for gathering information quickly, but additional effort is often needed to fully understand or verify the information. Appendix I provides a list of on-line resources that may be useful to a PRP search team.

3.7

Site Summary Development

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

1. It focuses the PRP search team on any information gaps or incomplete baseline tasks prior to preparation of the baseline PRP search report. If information gaps or incomplete tasks are identified, the PRP search team can take steps either to complete or re-do tasks or to defer decisions to a later date when more complete information is available.

2. It consolidates and facilitates sharing of information. A site summary assembles pertinent, non-confidential site chronology and property history information in one place. This summary can be shared with PRPs if it does not contain confidential or privileged information. The summary can also be used by Agency and state decision makers as a quick reference to assist in making decisions.

At this point in the PRP search process, site documents have been organized consistent with the information management provisions of the PRP search plan and reviewed for pertinent site data, information that links a party to the site, sufficiency of evidence establishing the liability of the PRP, financial viability, and potential leads about other parties involved with the site. This review should result in a history of activities and parties involved in the treatment or disposal of hazardous substances at the site, and a compilation of other factual site information.

Site History

Factual background information about the site as well as a history of the facility should be presented here. This history of the facility as a hazardous substance site should begin with the first industrial use or disposal at the site and continue through to current activities. It should identify in detail the kinds of activities conducted at the facility and the owners/operators during each period, including principal individuals. It should also identify by reference any data on substances at the site (e.g., in drums, containers) and, to the extent that the information is available, include a discussion of the environmental risks that the site presents. This will allow enforcement efforts to focus more closely on site activities that are linked to EPA response actions.

Factual Site Information



Factual site information that should be contained in a site summary includes:

- site location and size;
- adjoining properties;
- brief description of site history to include;
 - site owner/operator(s),
 - when operations began,
 - type of operations at the site, and
 - types of substances manufactured, treated, stored, or disposed of,
- permits applied for or granted; and
- warnings or notices of violations issued by regulatory agencies.

All information contained in this subsection should be based on factual records, and each piece of factual information cited should reference where the source record can be found. Following the brief description, a detailed description of site history should be presented in chronological order.

The owner/operator discussion should identify the period of each person's ownership or operation of the facility, and describe what hazardous substances were disposed of and by whom during each such period. The owner/operator section should also include a title abstract or narrative provided by the title search company or title researcher. To aid the reader in reviewing title search results, a

title tree or graphs depicting the chain of title may be useful. Any language in the title restricting the use of the property due to wastes deposited at the site or past industrial practices should be noted.

3.8

Compile Waste-In Information

In addition to developing evidence for CERCLA section 106 and 107 actions, a PRP search should develop waste-in information for waste-in lists and volumetric rankings wherever practicable.

- A waste-in list provides the volume and nature of substances contributed by each PRP at a facility.
- A volumetric ranking is a ranking by volume of the hazardous substances at a facility.

If EPA invokes special notice procedures under CERCLA section 122(e)(1), the Agency is required to provide PRPs, to the extent that such information is available, with waste-in lists, volumetric rankings, and a list of PRP names and addresses. Aside from the statutory provisions for development and release of such information, experience has demonstrated that waste-in lists and volumetric rankings are a valuable tool in bringing about settlements at Superfund sites. When presented with an estimate of the nature and volume of hazardous substances contributed to a site, PRPs are better able to coalesce into committees and determine allocations among themselves, and often are more willing to participate in settlement negotiations with EPA. While not every site is a logical candidate for a waste-in list or volumetric ranking, development of such lists and rankings is generally beneficial whenever practicable.

In the past, owner/operator transactional records were the only waste-in information developed during the baseline phase of the PRP search. The follow-up phase focused on generator and transporter liability and volumetric rankings. Since current Agency policy calls for early settlement with small-volume waste contributors, however, generator-specific waste-in information should be developed during the baseline phase so that de minimis and de micromis determinations can be made as soon as possible. For detailed guidance on waste-in lists and volumetric rankings, consult the Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991); for detailed guidance on the use of waste-in information in settlements with small-volume contributors, consult the Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A) (July 30, 1993). (See Chapter 3 references, page 216.)

3.8.1

Transactional Databases

Sections 3.2 and 3.3 discussed the value of databases for tracking correspondence and information requests. Similarly, large amounts of information on generator and transporter waste types and volume gathered from previous baseline tasks can best be managed with a transactional database. Transactional databases are used at recycling sites, landfills, and other such sites with large numbers of generators. Information contained in transactional databases is generally derived from evidence summary sheets and waste stream analyses. Waste stream analyses are discussed in section 4.7 of this manual.

Evidence Summary Sheets - Generators

A separate evidence summary sheet generally is prepared for each shipment or group of shipments of a hazardous substance sent by a generator to a site for treatment or disposal. The evidence summary sheet for the generator should contain the following information pertaining to the hazardous substance(s) at the site:

- relationship of substances to the threat;
- volume;
- identification by name of the hazardous substances;
- EPA's determination of any RCRA hazardous wastes codes; and
- substances found at the site that the generator is known to produce.

Information on hazardous substances presented in the evidence summary sheets should be referenced to supporting documents in the correspondence tracking databases, if developed, or in the site file database. This information should be verified during the RI at the site.

Evidence Summary Sheets - Transporters

Evidence summary sheets should be kept for all transporters who accepted hazardous substances for transport and selected the treatment or disposal facility to which the shipment was sent. It is useful to identify all transporters, not just those who selected the site, since they will identify the generators. Although the transporters may not have selected the site, and consequently

may not be liable, the transporter's customer may be liable as a generator. By identifying all transporter volume, the database can ensure that each transporter volume is linked to a generator, thereby making sure all generators are identified. A transporter evidence summary sheet should include the volume and nature of the hazardous substances and describe any evidence that the transporter selected the treatment or disposal site. Again, all the information on the evidence summary sheets should be referenced to supporting documents in the correspondence tracking and site file databases.

As with the site file, correspondence, and information request tracking databases, the information contained in the transactional database should be screened for relevance to the PRP search. If a contractor is responsible for developing the database, the contractor must work with EPA to determine the document criteria. The QA/QC process should screen for duplicative documents and either eliminate them or enter the documents into the database as duplicates. The QA/QC process should also be applied to document codes and field definitions, which may include: document location, document number, document type, originator, author(s), origination date, title, subject(s) or key words, addressee, number of pages, document condition, method of obtaining the document sources (e.g., PRP, EPA), recipients, and attachments.

3.8.2
Waste-In Lists and
Volumetric
Rankings

At some point during the baseline phase of the PRP search, the PRP search team should assess the quality and completeness of the waste-in information and determine whether waste-in lists and volumetric rankings will be developed, and by whom. CERCLA gives EPA considerable discretion whether to develop a waste-in list or volumetric ranking. Whether the records at a site constitute

sufficient evidence to produce waste-in lists and volumetric rankings is a highly site-specific determination. Regions should develop an approach for assessing waste-in information that is internally consistent and based on a common set of considerations. Where waste-in lists and volumetric rankings are developed by EPA, the following three rules should be followed when making assumptions about waste-in information:

- **Assumptions should be defensible.** Established conversion standards (converting to common units of measurement such as gallons or cubic yards) should be used and assumptions should be based on patterns established in the data in order to avoid charges that an assumption is arbitrary or capricious.
- **State assumptions openly.** When interpreting illegible numbers on a manifest, or assuming a disposal destination from an unclear hauling ticket, it is preferable to let PRPs know where EPA made assumptions and to identify where ambiguity still exists. Clearly stated assumptions contribute to the credibility of a waste-in list and give PRPs the opportunity to make their own corrections. Assumptions should be reviewed by the case attorney to ensure that they are legally supportable.
- **Be consistent.** PRPs involved at more than one site within a region will be aware of any discrepancies in the kinds of assumptions made for waste-in lists at these sites. Disputes over inconsistent assumptions only slow down the settlement process.

Whom To Include on Waste-in Lists

Generators are usually included on a waste-in list when evidence indicates they contributed hazardous substances to a Superfund site. Transporters should be included on waste-in lists when the transporter, not the generator, determined where the hazardous substances were to be taken for treatment or disposal. As a policy matter, EPA implements CERCLA sections 107(a), 101(20)(B), and 101(20)(C) by not including transporters on a waste-in list if they did not select the site or facility to which hazardous substances were delivered. Thus, while all transporters should be sent 104(e) information request letters, only those transporters who appear to have selected the site for hazardous substance disposal should be sent notice letters.

Format and Content of Waste-in Information

Waste-in Lists

Waste-in lists contain the volume and nature of substances contributed by each PRP identified at a facility. At a minimum, the lists should contain columns for the names and addresses of PRPs as well as the types and volumes of hazardous substances.

Although EPA is under no statutory obligation to release information beyond the waste-in list, regions should consider releasing supplemental waste-in list information unless there are countervailing legal, policy, or strategy reasons not to do so. Supplemental waste-in information can include, but is not limited to:

- the dates of shipments;
- the names of transporters;

- the types of evidence from which the waste-in lists were derived; and
- comments to clarify assumptions, ambiguities, and double-counts.

When most PRPs at a site are generators, waste-in lists should be organized by generator, with a column provided for listing the transporter of each shipment in order to link the generator to the site. When there are multiple transporter PRPs, it may be advisable to prepare separate waste-in lists for generators and transporters.



Volumetric Rankings of Substances at a Facility

To the extent such information is available, CERCLA requires that special notice recipients be provided with a volumetric ranking of hazardous substances at the facility. This ranking lists hazardous substances and their respective volumes in descending volumetric order. It can be developed from waste-in list information.

Volumetric Rankings of PRPs

Volumetric PRP rankings (sometimes referred to as generator rankings) rank PRPs in descending order by volume and express their contributions as a percentage of the total volume of hazardous substances at the facility. Although CERCLA section 122(e)(1)(B) requires EPA to provide special notice recipients with "the volume and nature of substances contributed by each potentially responsible party identified at the facility," to the extent such information is available, CERCLA does not require that this information be aggregated into a volumetric PRP ranking. A number of regions release information in this format, however, because they feel it provides a logical starting point for negotiations. Regions should bear in mind and convey to the PRPs

that waste-in information provided with special notice is intended as an estimate of individual PRP contributions, and is neither definitive nor binding in any way. It is intended solely as information to facilitate settlement agreements between PRPs and the Agency.

When there is insufficient information to convert volumes into a single unit of measurement, regions may provide a volumetric ranking using raw data from records in an unconverted form. PRPs can then choose to clarify ambiguities concerning volumes or substances in order to produce a better list upon which to negotiate.

Special Considerations

Commonly Contributed Volumes

When hazardous substances are contributed both by a generator and a transporter that designated the treatment or disposal site, regions are advised to:

- attribute the volumes to both parties when compiling waste-in information;
- not try to apportion responsibility for a hazardous substance shipment generated by one PRP and transported by another among the two PRPs in a volumetric ranking or waste-in list; and
- let the PRPs, or the independent neutral, allocate commonly contributed volumes during the site allocation process.

Because this approach may result in double-counting shipments, regions should provide PRPs with an explanation of why shipments have been double-counted and clearly identify, by means of a comment field or other notation, which shipment volumes have been attributed to both generators and transporters.



Municipal Landfills

Like mining and area-wide groundwater sites, landfills are notoriously difficult sites at which to compile accurate waste-in information, both because of poor record-keeping practices and because of the mixture of different wastes disposed of at landfills. In many instances, most of the wastes in a municipal landfill are not hazardous substances and do not belong in a waste-in list or volumetric ranking.

Non-exempt generators and transporters of municipal solid waste or sewage sludge generally will not be notified as PRPs unless evidence shows that:

- the waste or sludge contains a hazardous substance; and
- the hazardous substance came from a commercial, industrial, or institutional process or activity.

Generators and transporters of commercial trash, however, are generally notified as PRPs unless they can demonstrate that:

- none of the hazardous substances contained in the trash are derived from a commercial, institutional, or industrial process or activity; and

- the amount and toxicity of the hazardous substances do not exceed the amount normally found in common household trash.



Removal Sites

Some removal sites are not good candidates for compiling waste-in information because they require cleanup action sooner than the time it would take to produce waste-in lists. Even after the work has been started, however, there may be a need to prepare the waste-in list, especially if cost recovery litigation is likely. Even if a waste-in list cannot be prepared because of time constraints, it is important to notice as many parties as possible to limit due process issues that may be raised by PRPs. At non-time-critical removal sites, the creation of waste-in lists and volumetric rankings should be seriously considered as there is more time available to prepare them at these sites than other removal sites. When adequate transaction documentation exists and settlement seems possible, regions should prepare waste-in lists and rankings as described in section 122(e)(1) for release to PRPs. Because removals may proceed at an accelerated rate, it is important to start the waste-in preparation early, spend less time fine-tuning lists and rankings, and release the information to PRPs as early as possible.

For more general information on preparing waste-in lists and volumetric rankings; specific considerations for solvent recycling and transshipment sites, lead battery sites, and mining sites; and releasing waste-in information, consult the Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991).

3.9

Classify PRPs

The objective of this task is to classify identified parties into the broad categories of owner, operator, transporter, or generator, and then more specifically into other categories, such as de minimis, de micromis, insolvent, or defunct.

3.9.1

Identify PRPs

Throughout the PRP search process, information should be analyzed with the following questions in mind:

- Is the information sufficient to establish PRP liability?
- What volume of waste was disposed of or treated at the site?
- Can the PRP(s) contribute toward cleanup efforts?
- Are there additional leads which should be pursued?
- Have past and present owners/operators been identified?
- Does the information presented resolve liability inquiries?
- Is the waste-in information complete?
- Are recommended follow-up activities documented?

The PRP search team should routinely perform such analyses in order to collectively identify any weaknesses in the existing PRP search efforts, identify any next steps, and determine the timing of these steps.

These analyses are particularly important to ensure effective collection of:

- information about owner/operator liability and financial viability;
- updated PRP names and addresses;
- information about the volume and nature of substances sent to the site;

- information on the contributing parties;
- information that can be used to determine whether a person should receive a notice letter; and
- evidence of each PRP's liability.

A list of parties identified as PRPs should be developed with complete names, addresses, and contacts. This list should contain:

- names of contact persons;
- addresses;
- phone numbers, if available;
- name of the legal contact, if the parties have representation;
- date of list preparation; and
- contact person for all correspondence.

It is very important that the addresses of PRPs or their contacts be verified for accuracy. Verification prior to preparation of the baseline PRP search report reduces the need for additional or subsequent re-mailings of general or special notice letters and helps ensure that PRPs receive adequate notice and due process rights. Failure to satisfy these procedural requirements may lead to significant problems later in the Superfund process. PRP lists can be included as an appendix to the site summary section of the baseline PRP search report and are considered non-confidential. PRP search reports are more fully discussed below in section 3.10.

3.9.2
Define PRP
Category

PRP classification initially involves grouping PRPs into one of the following CERCLA categories:

- owners (past or present);
- operators (past or present);

- generators;or
- transporters.

Further classification of PRPs into sub-categories of the above categories may be appropriate depending on site-specific needs and the nature and volume of information available. The following are examples of sub-categories:

- ability to pay (ATP) parties;
- de minimis;
- de micromis;
- MSW;
- residential homeowner;
- insolvent or defunct;⁹
- status known, but quantity of waste unknown.

It may be beneficial to classify non-PRPs into such categories as:

- status unknown;
- residential homeowner;
- knowledgeable witness;
- adjacent landowner.

If corporate information is available, the list should include the date of incorporation, whether corporate PRPs currently exist, the fate of inactive companies, current mailing addresses (including facility, headquarters, and registered agent), and parent or

⁹During the baseline phase of the PRP search, it may not be possible to conclusively determine if a party is insolvent or defunct due to the time-consuming nature of this determination. However, preliminary determinations on a party's status as insolvent or defunct should be attempted during this phase, with follow-up information requests or other information gathering techniques used during the follow-up phase to make the final determination. Insolvent and defunct determinations are discussed in section 4.6 of this manual.

successor companies. Information about individuals and unincorporated companies should include their current locations, their associations with other PRPs, and their relationships to the site.

In most instances PRP classifications are pre-decisional and subject to review during the PRP search, and consequently are considered confidential. Nonetheless, they can help the PRP search team and other Agency staff in corresponding with PRPs, conducting financial assessments, directing follow-up activities, and many other tasks.

3.10

Prepare Baseline PRP Search Report

The baseline PRP search report is a preliminary report that contains available information on the owners/operators, generators, and transporters. This report provides a chronological summary of site history and the facts pertaining to PRPs' liability. Information supporting conclusions within the report is generally included in appendices. The baseline report is generally followed by the interim final PRP search report except in simple owner/operator situations where the baseline report will usually suffice. See section 4.8 of this manual for further discussion of the interim final PRP search report.

3.10.1

Report Format and Content

Prompted by the Agency's emphasis on earlier information exchange with PRPs and other stakeholders, more efficient information gathering, and concern over whether PRP search reports were subject to discovery production demands and FOIA requests, several EPA regions have been using a revised format for the report. Traditionally, the PRP search report format consisted of the following sections: introduction, site history, PRP identification, and conclusions and recommendations. The problems that resulted from this format included:

- Time needed to prepare the entire baseline report delayed receipt of factual site summary information that could be used for early information sharing with other parties.
- Disputes over releasability of the PRP search report were common.
- Reports could not be updated easily to reflect development of additional or new information.
- Interpretations and conclusions were not clearly distinguished from established fact.

A revised PRP search report format (for both the baseline and interim-final reports) consists of two sections treated as separate deliverables, namely:

1. Site chronology and property history; and
2. PRP synopsis.

3.10.1.A

Deliverable 1: Site Chronology and Property History

The known facts about the site and its PRPs are summarized without interpretation in the first section of the baseline report. The site chronology and property history and back-up information are included in supplemental appendices. This section contains no conclusions, interpretations, or inferences regarding liability. A separate site chronology and property history:

- highlights the source of information being used to establish facts;
- helps identify periods of time for which there is little or no conflicting information;

- facilitates updates during a phased PRP search; and
- may be released to PRPs and other members of the public.

Suggested contents and format of the site chronology and property history section of the PRP search report are shown in Figure 1.

3.10.1.B

Deliverable 2: PRP Synopsis

The remainder of the baseline report is contained in the PRP synopsis section. This section of the PRP search report should be stamped "Privileged Work Product -- Deliberative/Attorney Work Product - Do Not Release Under FOIA". The PRP synopsis should include:

- PRPs identified during the research;
- PRP names, addresses, and telephone numbers;
- the basis for inclusion of each PRP;
- PRPs with potential defenses to or exemptions from liability (See subsections 1.2.5 and 1.2.6);
- major reference sources;
- the identity of other parties associated with the site and the nature of the association;
- conclusions and recommendations; and
- appendices.

A suggested outline for the PRP synopsis section of the PRP search report is presented in Figure 1.

3.10.2

Report Review and Distribution

A site chronology and property history created as an interim deliverable segregated from the PRP synopsis section of the baseline PRP search report allows EPA to review the information contained in it earlier in the PRP search process than if combined in the traditional report format. It is suggested that the PRP search manager and case attorney review the interim deliverable simultaneously to save more time in the internal review and approval process. Once approved, this information can be shared with interested stakeholders and placed in the site repository.

**FIGURE 1: SUGGESTED PRP
SEARCH REPORT FORMAT**

DELIVERABLE 1: SITE CHRONOLOGY AND PROPERTY HISTORY

Introduction

- project background -- a brief "snapshot" of the site
- project approach, - who performed the research and under whose direction
- list of contacts -- public agencies that were contacted to collect information
- overview of report -- presents the basic layout of the report

DISCUSSION OF THE SITE

Site History -- factual background information about the site, including:

- site location and size
- adjoining properties
- brief description of site history, including:
 - site owners/operators
 - when operations began
 - type of operations
 - types of substances manufactured, treated, stored, or disposed of
 - whether the substances found on-site are in drums, containers, etc.
 - permits applied for or granted
 - warnings or notices of violations issued by regulatory agencies

Property History:

- summarizes the review of all title documents
- documents ownership of the property for the period of time relevant to the site
- presents a title tree or chain of title (including corporate name changes of property owners, conveyances, quitclaims, deeds, and liens)
- contains corresponding references to the relevant documentation
- includes a brief summary of the environmental threats posed by site activities and the potential cleanup activities.

**FIGURE 1: SUGGESTED PRP
SEARCH REPORT FORMAT (*cont'd*)**

DELIVERABLE 2: PRP SYNOPSIS

Introduction

Discussion of the Site – Refer the reader to the first section of the report

PRPs – Cite statutory provisions and relevant policy/guidance as basis for inclusion as PRPs

PRPs -- Owners/Operators

- PRP name
- status (current owner, successor, etc.)
- current address
- headquarters address, if applicable
- registered agent
- President
- current status
- corporate information
- narrative description of basis for inclusion
- references
- nature and volume of hazardous substances associated with PRP
- reference to appendices or attachments for additional information, rankings, or groupings
- financial information, ability to pay issues

PRPs -- Generators (same information as for owner/operators)

Provide information in both a PRP summary and a volumetric ranking list format, to the extent this information is available. Depending on the complexity of the site, the region may develop a list by PRP of information that describes the chemical nature of the substances and links shipment/volumetric conclusions to particular transporters and documents. In these instances, there should also be an assessment of whether the wastes were RCRA hazardous wastes for ARAR purposes.

PRPs -- Transporters (same information as for owner/operators)

Provide information in both a PRP summary and a volumetric format similar to the generator lists as described above.

**FIGURE 1: SUGGESTED PRP
SEARCH REPORT FORMAT (*cont'd*)**

Special PRP Information

Include any special information that may have a bearing on whether a party is ultimately designated by EPA as a PRP. Examples include entities that have been or are in bankruptcy; individuals who are deceased and a description of the status of their estates; successor corporations; parent-subsidiary relationships; PRPs with potential defenses to or exemptions from liability (see sections 1.2.5 and 1.2.6); and defunct/insolvent PRPs.

Special Site Information

Highlight any unique or complex features associated with sites such as municipal landfills, area-wide groundwater or stream contamination sites, sites where the source of contamination is not clear, and sites from which wastes were sent to satellite facilities.

Other Parties Associated with the Site

Identify parties who may possess additional information on the site (e.g., witnesses, previous employees not yet located) and parties about whom information is currently not available to characterize them as a PRP. Present all relevant information here, such as names, addresses, phone numbers, basis for inclusion of this party in this subsection, and references.

Conclusions and Recommendations

Summarize the identified PRPs and parties associated with the site. Include recommendations for additional actions and an estimate of the time and resources needed to perform those actions. This type of information will allow the decision makers to make an informed decision when balancing the need for information with available resources and timing constraints.

Appendices

Include interview summaries, evidence sheets, potential questions for additional information request letters, and other documents referenced throughout the report.

CHAPTER 3 REFERENCES		
Name	Section	Location
Checklist of PRP Search Tasks	3.0	Appendix G
Enforcement Project Management Handbook	3.2	http://intranet.epa.gov/oeca/osre/hbk-pdf/index.html
PRP Search Enhancement Team Members/Contacts	3.2.1	Appendix H
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	3.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampledoc-cercla-mem.pdf
Disk Repository of Current CERCLA Section 104(e) Questions	3.3	http://intranet.epa.gov/oeca/osre/doc/960229.html
On-Line Sources of PRP Information	3.3.1	Appendix I
Superfund Enforcement Directory	3.3.1	Appendix J
False Statements Act	3.3.1	http://www.access.gpo.gov/uscode/title18/parti_chapter47_.html
Federal Debt Collection Procedures Act	3.3.1	http://www.access.gpo.gov/uscode/title28/partvi_chapter176_.html
Releasing Information to Potentially Responsible Parties at CERCLA Sites (March 1, 1990)	3.3.1	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/release-prp-rpt.pdf
EPA Regulations Governing Business Confidentiality Claims, 40 C.F.R. § 2.201-2.215	3.3.3	http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr2_01.html

CHAPTER 3 REFERENCES		
Name	Section	Location
Federal Rules of Evidence 801-817	3.4.1	http://www.access.gpo.gov/uscode/title28a/28a_5_.html
Federal Perjury Statute, 18 U.S.C. § 1621	3.4.2	http://www.access.gpo.gov/uscode/title18/parti_chapter79_.html
Final Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA (February 22, 1991)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/guide-volumet-rpt.pdf
Streamlined Approach for Settlements With De Minimis Waste Contributors Under CERCLA Section 122(g)(1)(A) (July 30, 1993)	3.8	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/app-deminimis-rpt.pdf