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2.0 PRP Search Overview



The primary purpose of the PRP search is to identify parties who may be liable under CERCLA. The PRP search is designed to gather information establishing the elements of liability for each PRP.

Effective PRP searches are fundamental to the Agency's "enforcement first" strategy of obtaining increased PRP involvement in conducting response activities, and information obtained in the course of PRP searches serves a variety of other purposes in the remedial site response process. These purposes include:

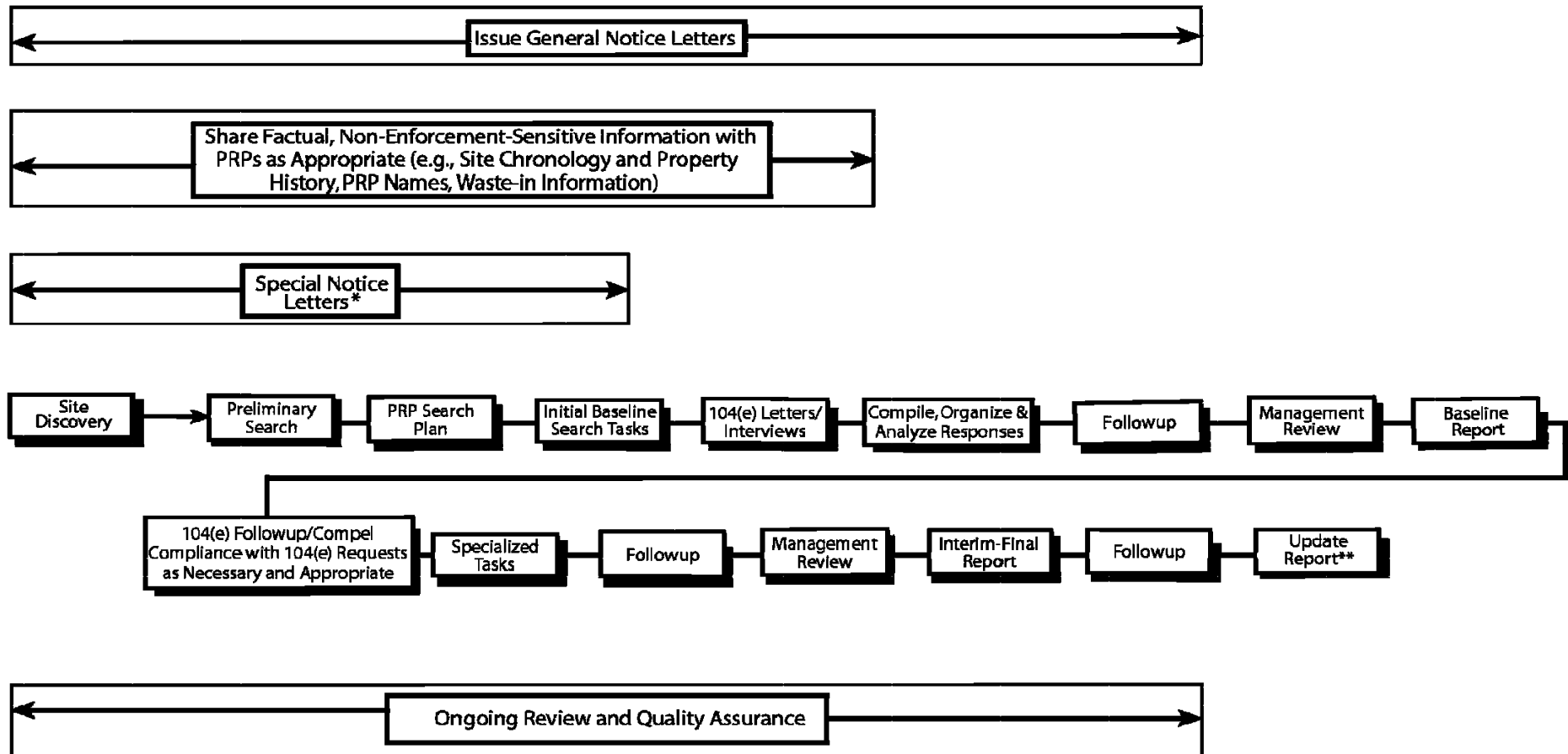
- finding out from whom to obtain site access;¹
- facilitating site characterization by providing information on hazardous substances used, site boundaries, disposal practices, and locations for conducting sampling;
- identifying individuals who may have historical information or historical knowledge of site activities;
- assessing potential applicable or relevant and appropriate requirements (ARARs) (See Chapter 2 References, p. 81.);
- developing waste-in lists and volumetric rankings; and
- assessing settlement prospects and litigation risks.

(See Exhibit 1, "Overview of the PRP Search Process.")

Achieving the Agency's goals of accelerating cleanups, maximizing PRP involvement in response actions, and reaching fair settlements

¹ OECM Memorandum, "Entry and Continued Access Under CERCLA" (June 5, 1987) (See Chapter 2 References, p. 81.)

Exhibit 1. Overview of the PRP Search Process



* Timing of special notice is generally dictated by response planning. The baseline phase of the PRP search should be essentially complete for the purpose of RI/FS Special Notice at least 90 days before the planned RI/FS start date. Improved evidence on liability and ability to pay will be collected during the RI/FS and follow-up phase, if necessary. Collection of such improved evidence will be completed, reviewed, and updated, if necessary, prior to issuance of RD/RA SNLs.

** Completed at least 90 days prior to issuance of RD/RA Special Notice Letters.

NOTE:

This exhibit presents an overview of a typical PRP search. It is not intended as a prescribed process for every PRP search. The appropriate process for a particular site is a matter for the professional judgment of the PRP search team.

with PRPs requires careful and coordinated planning of the PRP search. Planning involves identifying key personnel involved in the PRP search, outlining their roles and responsibilities, determining the timing and duration of PRP search activities, and identifying tasks to be performed. The PRP search planning process should be a team effort.

2.1 Roles and Responsibilities



In recent years, there has been increased planning, coordination, and integration among remedial, site assessment, and removal staff, and increased dedication of resources to the post-construction phase of the Superfund timeline, (e.g., five-year reviews and institutional controls).

Management Team

In some regions, this strategy has been facilitated by a standing management team of regional EPA decision makers. The purpose of such a team is to ensure appropriate and effective coordination, communication, and integration of Superfund responses, and adequate personnel, funds, and decision-making processes to accelerate site responses. The team will generally take PRP search information into consideration when establishing priorities and direction for the site response.² Although the management team is not involved in the day-to-day management of the PRP search, it may request specific information about PRPs to determine, (e.g., the appropriate enforcement response or potential dollar needs for orphan share compensation). Greater emphasis on the post-construction phase does not reduce the need to apply PRP search resources early in the listing phase for new NPL sites and sites with significant remaining future response work, and the management team can play an important role in determining the appropriate sites to “front load” with those resources.

² The National Prioritization Panel also will consider PRP search information when prioritizing sites proposed for Fund-lead remedial action.

2.1.1

PRP Search Team

Each of EPA's regional offices has its own unique organizational structure and procedures for performing PRP searches, and the titles of persons performing search tasks may vary from region to region. Search and search-related tasks may be performed by persons with one or more of the following job titles: civil investigator; remedial project manager; on-scene coordinator; case developer; attorney; paralegal; enforcement specialist; enforcement officer; enforcement project manager; cost recovery specialist; and environmental protection specialist. Some general descriptions of key players and responsibilities, however, cut across regional variations.

PRP Search Manager

The PRP search manager has the lead for overseeing each site-specific PRP search. He or she is responsible for selecting an appropriate combination of the search personnel listed above to ensure an effective case team to perform the following tasks as necessary and appropriate:

- establish PRP search priorities;
- establish PRP search strategy;
- develop PRP search work assignments, budgets, and schedules;
- manage contractor-conducted search tasks;
- define the scope of the search;
- review baseline, interim, and final contractor deliverables;
- introduce the contractor to state and local government contacts, as needed;
- issue information request, general notice, and special notice letters;

- follow up on all tasks necessary for conducting a complete search;
- implement quality assurance and quality control (QA/QC) procedures to ensure the accuracy of data gathered during the search;
- gather adequate information for special notice letters;
- perform ATP analysis (ABEL/INDIPAY);
- gather adequate evidence of PRP liability and ability to pay;
- obtain site costs as appropriate for potential cost recovery; and
- afford the universe of PRPs an opportunity to provide input into the completeness of the Agency's PRP search efforts.

Following are general descriptions of several categories of search personnel that comprise the search team, keeping in mind that in some regions similar tasks and certain post-search tasks may be performed by search personnel with one of the other job titles listed above.

Civil Investigator

The civil investigator (CI) typically performs specialized PRP search tasks such as interviews with private parties and specialized investigative work related to, (e.g., waste disposal or PRP identification). CIs may assist PRP search managers or case attorneys in preparing CERCLA Section 104(e) information request letters, reviewing evidence, and conducting interviews. In some regions, CIs are responsible for all PRP search activities; in other regions, contractors may be used to do a portion of the work, such as title searches, and CIs are responsible for all other activities. In some regions, CIs work exclusively on either removal or remedial PRP searches. Potential advantages to this approach are that it

allows the investigator to become familiar with the special types of investigative situations that each presents, prevents conflicts between the remedial and removal programs, and ensures an investigator's availability in cases involving time-critical removals.

PRP searches often involve complex evidentiary and legal issues. If PRP searches are conducted or managed by remedial project managers, on-scene coordinators, or other personnel not experienced in performing enforcement investigations, it is advisable to involve both CIs or other enforcement staff and counsel in planning PRP search activities as well as in reviewing information obtained, contractor deliverables, and conclusions drawn.

Remedial Project Manager

The remedial project manager (RPM) is the Agency official designated to coordinate, monitor, and direct remedial and certain other response activities at NPL sites. RPMs may serve as work assignment managers (WAMs) or contracting officer's representatives (CORs) on a PRP search or assist other Agency personnel performing or overseeing the search. RPMs are responsible for overseeing PRPs' performance of response activities at enforcement-lead sites. Once PRPs have agreed to perform response actions at a site, the RPM is responsible for ensuring that studies and cleanup activities are performed correctly and in accordance with the AOC or CD, CERCLA, the NCP, and relevant policy and guidance. Moreover, RPMs may be involved in RI/FS, engineering evaluation and cost analysis (EE/CA), or RD/RA negotiations. As they work extensively with PRPs, it is essential that RPMs understand Agency policies and procedures for completing a thorough PRP search whether or not they are involved in performing it.

On-Scene Coordinator

The on-scene coordinator (OSC) is the Agency official designated to coordinate, monitor, and direct removal actions. A removal action is conducted to respond to a release or threatened release and must be performed within a short period of time. OSCs need basic information, such as property ownership, very early in the removal action to enable them to get access to the site and identify the source of the release or threat of release. The OSC may ask for a thorough PRP search once the removal is under way or the release or threat has been addressed. The nature and extent of an OSC's involvement in PRP search efforts will depend on the nature of the removal and the urgency of responding to the release or threat of release. Like RPMs, OSCs need to understand the PRP search process whether or not they are actively involved in the search itself. (See subsection 2.2.1 of this manual for other PRP search-related tasks during removal actions.)

Paralegal

Some regions use paralegals to support PRP searches. Paralegals work with case attorneys and other staff to develop the evidence to support a finding of liability. They are generally skilled at researching case law, statutes, rules, and legislative histories using legal research databases such as Lexis/Nexis and Westlaw, which are made available to regional legal staff. Paralegals' research skills often extend to obtaining information regarding corporate filings from secretaries of state, and information regarding PRPs from business, news, and internet sources. Depending on the skills of the paralegal and the organizational structure in a region, paralegals may perform some of the same tasks as CIs or PRP search managers, including interviewing potential witnesses and PRPs. Paralegals also may research property ownership, perform limited title searches, and obtain deeds and maps relating to sites. Paralegals draft CERCLA Section 104(e) information requests and review and summarize PRP responses to those requests.

Paralegals work closely with regional attorneys to trace corporate successors and help determine successor liability and liability of parent or subsidiary corporations. This often involves searching archives and public records for historical information.

EPA Attorney

The level of involvement of the case attorney in the PRP search may vary from region to region, site to site, and with the nature and number of legal issues associated with the site. The case attorney should be involved as early as possible to ensure that collected information meets evidentiary standards and that the scope of the PRP search is appropriate. It is very important to obtain attorney input regarding sufficiency of evidence questions, title searches, conducting interviews, definition of site, and classification of PRPs (e.g., “de micromis”, insolvent). As most PRPs retain legal counsel to represent them throughout performance of the response action, it is important that the regional case attorney, at a minimum, be involved in identification of critical PRP search planning and implementation milestones. In addition to preparing litigation referrals to and serving as EPA's main contact with DOJ, EPA attorneys play a major role in all phases of the Superfund process from site discovery through cleanup and post-construction activities.

Contractor

As mentioned earlier, each region performs PRP searches in a slightly different manner, depending on the organization of the region, availability of staff with PRP search experience, number of PRP searches, and other factors. Most, if not all regions, however, also employ contractors in some capacity when performing PRP searches. Contractor support activities include establishing and maintaining PRP databases, performing title searches, preparing PRP search reports, and reviewing and compiling records. (See Appendix A for a sample “Performance Work Statement for

Enforcement Support Services," including PRP search support.) Contractors may not perform inherently governmental functions. Prohibited activities include making legal or liability determinations and approving and signing CERCLA Section 104(e) information request letters. Contractors may, however, draft and mail Section 104(e) letters and other correspondence. Regions may share enforcement support contracts with one or more other regions or enter into interagency agreements enabling them to access sister agencies' contractors to assist in PRP search efforts. Regional contracting officers (COs) and project officers (POs) should be consulted regarding award, period of performance, scope of work, and suitability of regional enforcement contracts for obtaining PRP search task support.

Financial Analyst

There are situations when specialized expertise is needed to make ability to pay determinations, assess complex PRP financial records or business transactions, and evaluate bankruptcy claims. In these instances, regions may use in-house financial analysts, EPA's National Enforcement Investigations Center (NEIC) staff expertise, or contractors with this expertise. Financial analysts may also help evaluate compliance with the financial assurance provisions of settlement agreements.

SEE Personnel

The Senior Environmental Employment (SEE) program was formally established through the Environmental Programs Assistance Act (June 12, 1984). (See Chapter 2 References, p. 81.) Under this Act, EPA is authorized to enter into cooperative agreements (CAs) with certain private, non-profit organizations designated by the secretary of labor as organizations that are eligible to receive funds under Title V of the Older Americans Act (1965). (See Chapter 2 References, p. 81.) The Act specifies that individuals age 55 and

older in temporary, short-term assignments can provide technical assistance to federal, state, and local environmental agencies for projects on pollution prevention, abatement, and control. Most, if not all, regions participate in the SEE program.

Although not EPA employees, SEE personnel working for EPA in a PRP search investigative role could take on the following tasks:

- assisting in coordinating with other regional PRP search personnel to assure effective implementation of national investigative policy or guidance; and
- providing training or technical assistance on possible techniques and approaches to other personnel who are involved in fact finding or information gathering.

If SEE personnel are used to support PRP searches or investigations, they should have a general knowledge of criminal and civil provisions of environmental protection statutes, knowledge of investigation principles and techniques, skill in the use of investigative techniques, and the ability to conduct interviews and draft interrogatories. Like other contractors, SEE employees must identify themselves as contractors and may not provide legal advice, make inherently governmental decisions, or sign CERCLA Section 104(e) letters or other EPA correspondence.

Community Involvement

The PRP Search Team should consider establishing communication with the Community Involvement Coordinator early in the search process as community involvement activities may produce many benefits, including information on additional PRPs. Areas adjacent to Superfund sites often contain numerous residents who may have lived in the area for a long time. Many of these residents have

specific knowledge of the site and are usually willing to share their information. The local community should routinely be considered a potential source of information.

2.1.2 Opportunities for PRP Input



As PRPs have an interest in identifying additional parties with whom response costs might be shared – and may have information that could lead to such parties – EPA should provide PRPs the opportunity to participate in or provide input to the search.³ PRP input may speed up the settlement process, help avoid third-party litigation, and facilitate private allocation efforts. In addition, PRPs may be invaluable in identifying witnesses and parties with pertinent information. It is up to EPA to determine whether PRP participation will be beneficial, define the nature and extent of such participation, evaluate information submitted by the PRPs, and maintain oversight of their search activities. It is advisable to make this determination as early in the search process as possible. CERCLA Section 104(e) information request letters and GNLs may be used to invite PRPs to participate in the search and submit information about additional parties.⁴

If PRPs express interest in participating in the search, EPA must determine whether the potential benefits of their participation outweigh the burden of directing and overseeing their activities. Factors that EPA may weigh in making this determination include:

- whether the PRPs have the ability to provide needed information;

³ The case team's planning of response and enforcement actions should allow sufficient time for EPA to issue follow-up CERCLA Section 104(e) information request letters to newly identified parties before EPA makes final PRP determinations.

⁴ Model CERCLA Section 104(e) letters include questions seeking information from PRPs about other PRPs. (See "Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests" (June 30, 1995), Chapter 2 References, p. 81, for sample information request letter questions.)

- whether information obtained by the PRPs may raise confidentiality issues;
- whether PRPs have cooperated with EPA and been responsive to its information requests;
- whether third-party tort issues or contribution litigation exist or may arise among PRPs;
- whether the PRPs have any advantage, bias, or interest that could influence their performance of search-related tasks;
- site-specific factors such as timing or large numbers of known PRPs.

Direction and Oversight

Proper direction and oversight are necessary to maximize the potential benefits of PRP participation in the search and to ensure that PRP-assisted searches are conducted in a manner both effective and consistent with overall Agency responsibility for the search. In some circumstances, EPA may find that channeling PRP input through a steering committee or other organized group of PRPs whose liability has been established facilitates direction and oversight. In addition, the following guidelines are recommended:

- The PRPs should commit themselves to working with EPA in good faith for the duration of the search.
- The PRPs should be in compliance with any CERCLA Section 104(e) information requests issued to them and commit themselves to supplement those responses in a timely manner as additional information becomes available.
- The PRPs must not represent themselves as EPA personnel when performing PRP search-related tasks.

- Do not share with the PRPs any CBI, trade secrets, or other sensitive information obtained from PRPs who are not participating in the search.
- Document the PRPs' tasks, roles, authorities, deadlines, and any tasks they may perform without EPA oversight in writing.
- Advise the PRPs that they must adhere to deadlines in order to avoid delays and ensure that EPA has enough time to consider information for a particular purpose (e.g., issuance of SNLs).⁵
- Advise the PRPs that the work they perform must be fully documented so as to support its completeness and accuracy, and that all supporting records and documentation must be submitted to EPA for possible inclusion in the site's administrative record or for use as evidence in federal court.
- Require that the PRPs explain the legal and factual basis of identified parties' liability and submit documentation supporting their determination.
- Require that the PRPs explain all assumptions made in compiling all waste-in lists they submit.
- Advise the PRPs that information submitted regarding other parties may be used for litigation and negotiation purposes, and ensure that they understand how to treat information containing personal privacy information or claimed as confidential business information (CBI). (Before sharing

⁵ Failure of the PRPs to meet agreed deadlines may result in EPA takeover of a task that a PRP has agreed to perform, which may increase PRPs' costs and result in information being obtained too late to be considered.

any information of this kind with other PRPs, check with your Office of Regional Counsel (ORC) to determine if a confidentiality agreement should be drafted covering this information. (Information disclosure issues are discussed in Section 2.3 of this manual.)

- Explain to the PRPs that although the Agency appreciates receiving information on additional parties, EPA is not obligated to explain or justify its decisions regarding whether or not to pursue those parties.
- Ensure that all PRPs participating in the search have equal access to information.
- Advise the PRPs of EPA's enforcement discretion policies.

EPA is under no legal obligation to address information provided by PRPs identifying other PRPs or to advise them whether the new parties were determined to be PRPs, but the PRPs who provided the information should receive some feedback or explanation as to why the newly identified parties were or were not named.⁶

EPA Responsibilities

Just as EPA determines whether PRPs will participate in the search, it determines what tasks they will perform. Regardless of the nature and extent of PRP participation, however, EPA – and specifically the Case Team – is responsible for performing the primary search functions and bringing the search to a successful conclusion. The Agency's prerogatives include:

⁶ EPA personnel are required to document in an enforcement-confidential memorandum their decisions to exclude certain PRPs from any CERCLA Section 106 UAOs that are issued or not to issue UAOs to late-identified PRPs. (*See* OSRE Memorandum, "Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs" (August 2, 1996), Chapter 2 References, p. 82.)

2.2
PRP Search
Plan

- determining the timing and extent of the PRP search;
- deciding which parties should receive CERCLA Section 104(e) information request or notice letters;⁷
- evaluating information developed in the course of the search;
- deciding which parties to name as PRPs; and
- determining the terms of settlement with PRPs.

PRP Search Tasks

As part of their efforts to identify additional parties, PRPs may perform associated tasks such as:

- conducting title searches;
- developing waste-in lists;
- preparing volumetric rankings;
- performing corporate and other public document research;
- providing information on industry processes and waste streams;
- identifying and locating witnesses and other knowledgeable parties;
- interviewing witnesses and providing EPA with notes and affidavits;⁸

⁷ OSRE Memorandum, “Revised Final Guidance on Disseminating EPA’s SBREFA Information Sheet to Businesses at the Time of Enforcement Activity” (August 31, 1999) ,states that EPA will notify small businesses of their right to comment on regulatory enforcement activities when EPA makes its “initial enforcement contact” with the business. The initial enforcement contact under CERCLA is typically a general or special notice letter. (See Chapter 2 References, p. 82, for the memorandum and current “Small Business Information Sheet.”)

⁸ EPA may choose to re-interview witnesses originally interviewed by other PRPs and obtain its own affidavits or witness statements.

- funding neutral ADR professionals to assist in information-gathering efforts;
- establishing and managing document repositories of publicly available, non-privileged, non-CBI site information;
- developing databases to make site information accessible to widely dispersed parties; and
- sharing information from in-house databases.

The site-specific PRP search plan focuses on the “nuts and bolts” of how the search will be conducted; it identifies the goals of the search and the tasks necessary to achieve them. The PRP search plan should be considered iterative in nature since it is not possible to foresee all the types of information that may need to be gathered, the questions and issues that may develop during the baseline phase, or the tasks necessary to complete as part of a follow-up search. PRP search plans should not be confused with PRP search work plans. Work plans are documents prepared by contractors that describe in detail the work to be performed and identify proposed staff in response to a scope of work prepared and issued by EPA or another contracting agency.

Since each site involves a unique set of legal and technical issues, there is no fixed set of tasks that must be performed during every PRP search; the nature and number of search tasks will vary from site to site. For instance, a PRP search at an industrial plant site with only a few owner/operators may require only a baseline effort with few or no follow-up tasks. At a complex site, on the other hand, a baseline search is insufficient and will require follow-up activities. (See Appendix B for a checklist of PRP search tasks.) The plan should have the flexibility to respond to needs identified in any part of the PRP search process. To ensure that the PRP search plan addresses potential legal, technical, and policy issues that may be associated with the search, the PRP search manager should include all EPA staff working on the site (e.g., CI, RPM, OSC,

attorney) in the development of the plan. (See Exhibit 2, "PRP Search Process Flow Chart.") The PRP search plan should be fully implemented before RD/RA negotiations commence.

Despite the differences among sites, PRP search plans generally address the following:

- Defining search tasks and the order in which they should be performed, including follow-up tasks to repair data gaps that appear during the search ;
- Defining resources needed to accomplish search tasks, taking into consideration site factors that may require specialized resources and skills, such as:
 - an unusually large number of generators;
 - PRPs that may qualify for an exemption;
 - area-wide ground water contamination or surface water contamination where sources are not apparent;
 - non-contiguous sites (e.g., where one company owned or operated multiple sites and transshipped wastes between them); or
 - mining sites, particularly those that are very old or involve large watersheds;
- Developing a detailed scope of work to obtain contractor support, if necessary;
- Establishing a schedule for completion of search tasks;
- Managing the search, including:
 - roles and responsibilities of all members of the PRP search team;

- procedures for assessing search progress, conducting evidence reviews, and identifying impediments to progress; and
- describing the PRP Search Team's strategy for encouraging PRP participation in the search.

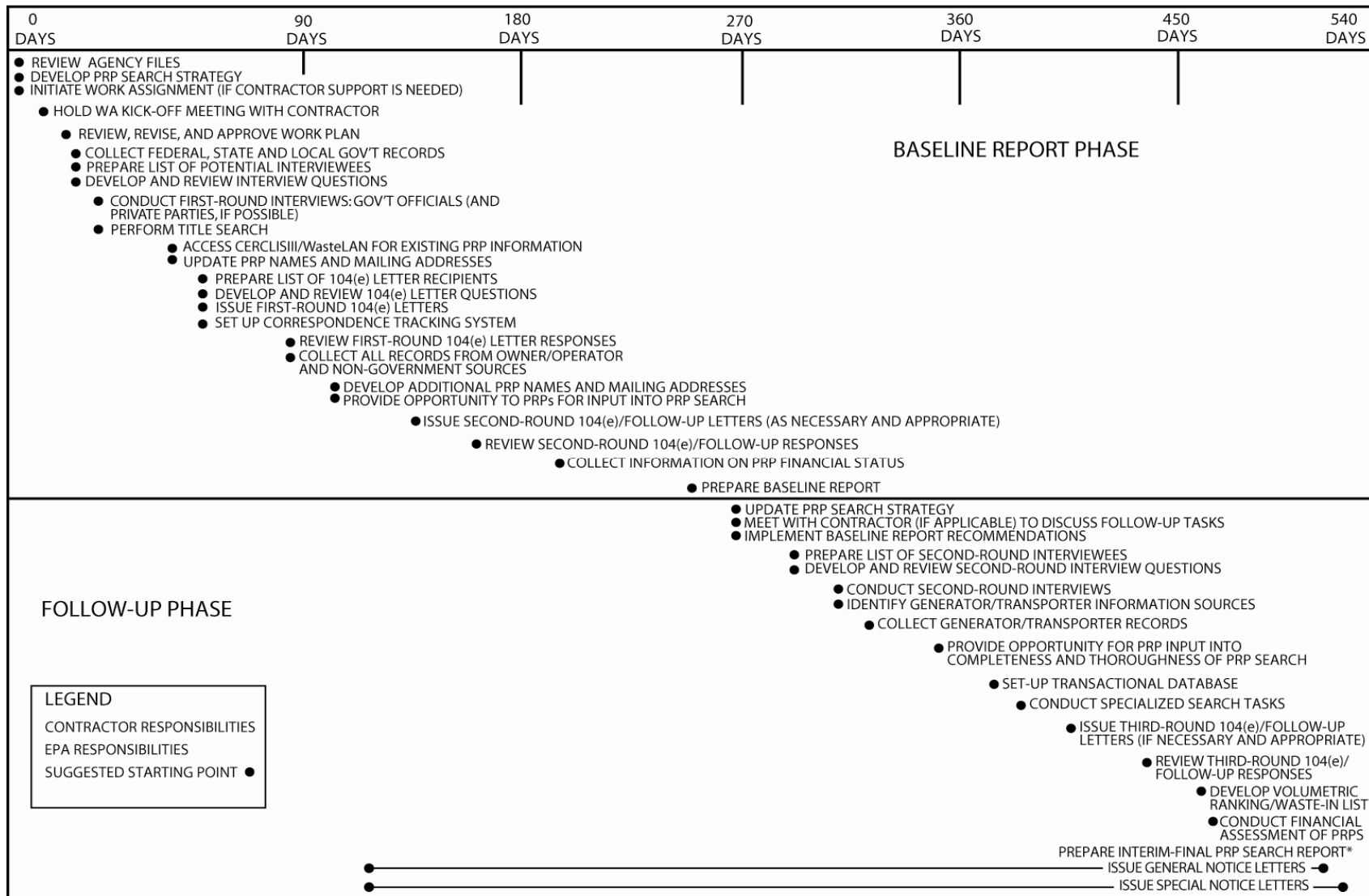
2.2.1 Timing and Duration



The PRP search should be initiated as soon as possible after it becomes reasonably certain that EPA will incur response costs at a site. Searches may be performed in phases. A preliminary search may be initiated during a removal response or during the preliminary assessment/site investigation (PA/SI) if a removal action is anticipated before a site is proposed for listing on the NPL. Many traditional pre-remedial site assessment tasks provide information needed for the PRP search. These tasks need not be duplicated by the PRP search staff. Appendix C contains a checklist for removal and pre-remedial sites that was developed to assist early on-site responders (e.g., CIs, OSCs) in documenting valuable information on PRPs and site conditions. To avoid duplication of these tasks, early on-site responders may fill out the checklist as completely as possible and forward a copy to the regional CI or enforcement staff person conducting the PRP search, put a copy in the site file, and provide a copy to the case attorney.

Basic tasks needed at any site, including removal sites, include (1) identifying the current site owner and, if applicable, operator, and (2) gaining access to the site. Identifying the owner/operator is particularly urgent at removal sites as the early responder needs to determine whether the party is capable of or willing to perform actions to stabilize conditions at the site. Once a removal response has been completed or the site has been proposed for listing on the NPL, a more extensive PRP search may be undertaken based on these preliminary tasks. In practice, depending on resources and

Exhibit 2. PRP Search Process Flow Chart



* At sites where no volumetric ranking/waste-in list or financial assessment of PRPs is done, the interim-final PRP search report should be prepared 60 days after review of third-round 104(e)/follow-up responses. At sites where a volumetric ranking/waste-in list or financial assessment of PRPs is done, the interim-final PRP search report should be prepared 120 days after these tasks are completed.

the urgency of site response actions, there may or may not be a break between the preliminary PRP search and the more extensive PRP search.

PRP search activities are generally iterative rather than discrete, especially at more complex sites. For example, at a watershed contaminated by mining activity where there are hundreds of waste piles or discharging mine adits that could be sources, the PRP search team may wait until technical staff have determined which waste piles or adits will require a response before undertaking extensive ownership and operational history research. In such situations, the region may choose to have a contractor conduct research on archive, library, and government agency records for all individual mines and mills within the site, but initiate title searches for individual mine properties only when a response action for the facility is being planned.

In conducting the PRP search, regions should consider which of the tasks outlined below are cost-effective and reasonable to meet relative to the anticipated overall cleanup costs at the site.⁹ Regions should document in the site file that they have taken all reasonable, achievable steps to identify PRPs. Task 1 below is mandatory for all PRP searches. Ideally, all reasonable, achievable steps should have been taken prior to completion of cleanup negotiations, but it is recognized that this may not be feasible in all situations.

1. PRPs have been afforded opportunities to participate in or contribute to the PRP search, and the information contributed has been verified and/or authenticated and incorporated in the PRP search.

⁹ *Superfund Program Implementation Manual (SPIM) Fiscal Year 2009/2010*, Appendix B-5, OSWER Directive 9200.3-14-1G-T, March 31, 2009; <http://www.epa.gov/superfund/action/process/spim09.htm>.

2. All relevant and material leads from CERCLA Section 104(e) responses, interviews, and other primary or source documents have been pursued.
3. Sufficient information and evidence have been obtained to support the government's liability case or to determine that no viable PRPs exist or can be found.
4. PRPs have been categorized and financial and waste contribution information needed to perform orphan share calculations has been collected.
5. Ability to pay determinations (including but not limited to the investigation and analysis of any applicable insurance coverage) have been made for those PRPs who have asserted inability to pay in good faith.
6. General notice letters have been issued to all PRPs being pursued.

The following two sections provide a more detailed discussion of the timing and duration of PRP searches at removal and remedial sites.

Removal Searches

When PRPs are known and are able to perform the removal, EPA prefers that they undertake the response action. EPA's goal is to maximize PRP participation in all aspects of site response, including the removal process, which means PRP searches in the removal context are increasingly important.

A PRP investigation should be part of the removal site evaluation conducted by an OSC. An important reason for initiating a PRP search during the removal site evaluation is to identify and locate the property owner(s) in order to obtain access. To the extent

appropriate under the circumstances, the search should proceed to identify other PRPs and attempt to have them perform the necessary removal action. If the removal is conducted with federal funds from the Superfund, supplemental searches during a stabilization action may be warranted to identify PRPs to take over the action and reimburse EPA's response costs.

The appropriate level of effort to devote to preliminary PRP search tasks in the removal context depends on the amount of time between discovery of the release or threatened release and execution of the action memorandum, the urgency of the need to respond to the release or threatened release, the estimated cost of the removal, and available resources. At a minimum, the current owner and current operator should be identified and, as appropriate, issued notice. This can often be accomplished readily and reliably by consulting witnesses and neighbors, signs and placards, or the local assessor's office.

EPA classifies removals into three categories:

1. Emergency Removals



Emergency removals are initiated in response to a release or threatened release that requires on-site activities within hours of determination that an action is needed. In emergency situations where the PRPs are not immediately known, oral inquiries should be made of municipal officials and reasonably available on-site personnel, and reviews of readily available site records should be undertaken.

The OSC should prioritize and expedite certain search activities to support the notice, negotiation, and AOC process before the removal begins. Such activities may include notifying PRPs orally of their potential liability after consulting with the ORC, and following up with a notice letter as soon as possible after the oral

notification. An expedited work assignment under a regional enforcement support contract may be used for this purpose. (See the expedited PRP search support task in the sample "Performance Work Statement for Enforcement Support Services" in Appendix A.) Once the site is stabilized, a second, more extensive phase of PRP identification should commence.

2. Time-Critical Removals

Time-critical removals are initiated when the lead agency determines, based on a site evaluation, that a removal action is appropriate and on-site activities must be initiated within six months.

In time-critical situations, the OSC and PRP search personnel should follow procedures that expand upon the PRP search activities discussed for emergency situations. Title searches and on- and off-site interviews also may be conducted. CERCLA Section 104(e) information requests that include questions pertaining to generators, transporters, and financial viability may be used to obtain additional evidence.

3. Non-Time-Critical Removals

Non-time-critical removals (NTCRs) are initiated when the lead agency determines, based on a site evaluation, that action is appropriate but a planning period of more than six months is available before on-site activities must begin. NTCRs are managed by RPMs in some regions.

PRP searches for NTCRs are expected, generally, to obtain the same level of PRP information that would be gathered during a PRP search at a remedial site. As in remedial searches, follow-up activities should be completed in time for issuance of GNLs.

Typical NTCR PRP search tasks include:

- reviewing EPA, state, and local agency files for information regarding land use, owners and operators, waste handling, and disposal permits;
- questioning persons on or near the site in greater detail;
- conducting extensive on-site and off-site interviews;
- reviewing documents left on site, (e.g., manifests (generator information), business records (business partners, financial status), payroll records (former employees who may have information about generators, operators, or on-site waste disposal));
- issuing CERCLA Section 104(e) letters; and
- conducting title searches.

Other Considerations Applicable to All Removal Searches:

- Neighbors and nearby businesses are often rich sources of information about former and current site owners and operators and site activities. These people should be interviewed as soon as possible.
- Visual evidence linking PRPs to the site (e.g., drum labels, shipping records, vehicle registrations) should be documented, photographed, or photocopied, as appropriate.
- The regional attorney should be advised promptly if criminal activity is suspected.



Remedial Searches

Remedial sites typically require comprehensive PRP searches that may be performed in two or more phases. Search activities should begin as soon as the region believes that the site would qualify for listing on the NPL and that a long-term response is appropriate.

These are sites that would score 28.5 under the hazard ranking system (HRS) or otherwise meet one or more of the following listing criteria:

- contaminated aquifers used for public drinking water;
- soils in residential areas or schools contaminated with hazardous substances significantly above background levels; and
- sensitive environments, and those with threatened or endangered species, containing hazardous substances significantly above background levels.

Timing and duration goals for remedial searches should be to:

- identify a sufficient number of viable PRPs concurrently with the NPL listing of a site to negotiate performance of the RI/FS;
- identify and classify PRPs such that EPA can offer de minimis parties a settlement prior to conclusion of the RI/FS (pre-ROD);
- identify the insolvent and defunct parties so that an orphan share can be calculated, if appropriate, and the number of viable PRPs for negotiations can be established prior to the issuance of RD/RA SNLs; and

- identify and classify other parties (e.g., “de micromis” and municipal solid waste contributors, parties with ability to pay problems) prior to issuing GNLs.

With potentially numerous and complex legal and technical issues to address at remedial sites, a phased approach to the PRP search should be considered. A phased approach may initially yield a core group of financially viable, capable, and cooperative PRPs with whom EPA can negotiate performance of the RI/FS. EPA may then continue PRP search efforts, perhaps with assistance from the PRPs, while the core group of PRPs is performing the RI/FS.

Follow-up activities to the initial phase of a remedial search will likely be highly site-specific and may be dictated by leads developed from prior activities or sampling and response activities. Relatively straightforward enforcement sites may only require a few interviews as followup to evidence-preservation activities in order to establish PRP liability and determine ability to pay. Complex enforcement sites such as area-wide ground water sites and landfills typically require more comprehensive follow-up activities such as issuing a large number of information request letters, conducting interviews, and developing transactional databases. Old sites with limited documentation also may present complex liability issues calling for site-specific follow-up activities.



For planning purposes, regions should identify a general period of two to five quarters for conducting PRP searches, with more time allowed for complex, multi-generator sites. Some complex sites, such as those with area-wide ground water contamination with multiple sources of hazardous substance releases or stream sediment contamination, may require specialized tasks that extend through the RI. Where enforcement staff and resources allow, a baseline PRP search report should be completed for specific parcels of land and identify the owner/operator 90 days before the start of the RI/FS, and the interim-final PRP search report should be completed at least 90 days prior to issuing RD/RA SNLs. Adhering

to these schedules may be problematic or impractical for ground water and sediment sites as site sampling RI/FS data may be necessary for PRP identification.

Even if a PRP search seems complete for a specific purpose, EPA may undertake additional search activities. This is likely to be the case when follow-up search activities are needed to support the Agency's cost recovery efforts against non-settlors or at sites with Trust Fund-financed cleanups. For instance, additional information request letters can be sent to a facility's suppliers during cost recovery litigation in an effort to obtain more evidence about the facility's waste. If EPA is engaged in ongoing litigation (e.g., cost recovery), PRP search personnel should coordinate closely with the assigned attorney in issuing any such information requests.

Although strong precedents support the claim that EPA's administrative information-gathering authorities are separate and distinct from the civil discovery process, it is necessary for case teams to carefully consider their available options in the scenario of ongoing litigation.

2.2.2 Streamlining Considerations

Due to constrained resources and an increased focus on gathering more PRP search information earlier, possible ways to increase the efficiency of a PRP search include:

- a comprehensive enforcement support contract that provides for expedited PRP search support;
- simultaneous submission of reports to all Agency reviewers;
- open procurement authority for enforcement staff; and
- a removal/pre-remedial checklist to avoid duplicating tasks.

Enforcement support contracts may provide for obtaining expedited PRP search support. Under the appropriate contract vehicle, any PRP search-related support could be obtained on an expedited

basis. (See Tasks 1 and 2 of the “Performance Work Statement for Enforcement Support Services” in Appendix A.) Consult your region’s contracting officer (CO) or project officer (PO) to determine whether a contract vehicle is in place that allows for expedited PRP search support.

Some regions are reducing PRP search deliverable review times by requiring the PRP search contractor to submit copies of the draft baseline and interim-final PRP search reports simultaneously to the program and ORC offices. Regions are also encouraged to require phased deliverables instead of one or two deliverables over the life of the PRP search. Phasing can reduce the risk of contractors conducting searches that are entirely off track, increase product quality, and provide opportunities to modify the PRP search approach incrementally.

Enforcement investigative staff typically make repeated small purchases in the performance of their duties, primarily for photocopying. Some regions have successfully streamlined the process for reimbursing Agency employees for such out-of-pocket expenses. Streamlining involves the use of an open procurement request (PR) against which a succession of claims may be made instead of preparing a new PR for each claim. Open PRs are established for each investigator, authorizing the individual to incur expenses up to the amount committed under the PR. Investigators obtain reimbursement by providing receipts and documenting a Standard Form (SF) 1164 referencing the open PR. Enforcement investigative staff should consult the appropriate regional contract and financial personnel about specific procedures for open procurement.

An early on-site responder’s checklist is another useful tool for streamlining the process and reducing duplication of activities. (See Appendix C.)

2.3

Information Disclosure Issues

Release of Information

The Agency must follow EPA guidelines, statutory, and regulatory requirements when determining whether to release information to other PRPs. The Agency emphasizes the importance of a consistent approach when releasing information to PRPs about the identity, source, relative contributions, type, and quantity of wastes at a site. (See "Revised Policy on Discretionary Information Release Under CERCLA" (March 31, 1993) and the "Privacy Policy" (September 27, 2007) issued by the Agency's Chief Information Officer, Chapter 2 References, p. 82.)

Information may be released through direct contact with PRPs, in conjunction with issuance of general notice letters or special notice letters, or by other means. For example, if a large number of PRPs is identified at a site and a PRP steering committee has been formed, the steering committee could be an effective channel for releasing information to all PRPs. It may prove beneficial for EPA to convene a meeting of PRPs at either the EPA regional office, state office, or a location central to the PRP community. The goal here is for EPA and state staff involved with the site to provide information, answer questions, and receive input from the PRPs. Convening a meeting of PRPs can result in the identification of additional PRPs and facilitate formation of a PRP steering committee.

Information release also may occur when the region invokes special notice procedures under Section 122(e)(1) of CERCLA. When invoking CERCLA Section 122 special notice procedures, EPA must provide PRPs with waste-in lists, volumetric rankings, and a list of PRPs' names and addresses "to the extent such information is available." Documents may include manifests, logbooks, waste tickets, receipts, and CERCLA Section 104(e) responses.

Handling Sensitive Records

Confidential Business Information (CBI)

CBI is commercial or financial information obtained from a person that is privileged or confidential. Protection of CBI keeps others from deriving a business advantage from information to which a specific party has exclusive rights. CBI includes such items as trade secrets and other proprietary information (e.g., the design of an innovative treatment technology). CBI also includes tax returns and other financial data to the extent that they have not already been released by the company, for example, in its annual report. When a company submits information that it thinks should be treated as CBI, it should label the data as such and explain why the information is considered confidential. EPA is required to advise PRPs of these requirements when issuing information request letters under CERCLA Section 104(e). EPA does not have to decide whether the information is CBI unless someone requests its release, but EPA must maintain the security of that information as if it were CBI until EPA makes a determination to the contrary. (See 40 C.F.R. 2.201, et seq., Chapter 2 References, p. 82, for information on EPA procedures for making CBI determinations.)

Enforcement-Confidential/Enforcement-Sensitive

Enforcement-confidential and enforcement-sensitive records are documents such as plans for enforcement actions, case-specific enforcement strategies, and draft PRP search reports, that might damage EPA's enforcement case if they were released. Therefore regions should establish records management processes and procedures that are consistent with applicable law to prevent the unauthorized release of enforcement-confidential and enforcement-sensitive documents. Even though a document has been marked enforcement-confidential or enforcement-sensitive, it must be reviewed for privilege in discovery or in response to a FOIA request

to ensure that the designation remains appropriate. (See Chapter 3 (“Analyze Responses”) for further discussion of reviewing documents for discovery.)

Information Requested Pursuant to FOIA

The Freedom of Information Act (FOIA) imposes two basic requirements:

- a duty to publish or otherwise make publicly available certain classes of agency records, 5 U.S.C. § 552(a); and
- a duty to make all other agency records publicly available upon written request, unless specifically exempt by statute, 5 U.S.C. § 552(b). (See Chapter 2 References, p. 82.)

Under FOIA, a record includes any information currently maintained by the agency in any format. An “agency record” is a record that was created by or is under the control of an agency. FOIA does not require an agency to create a record in response to a request for information, nor require an agency to provide future records. New FOIA amendments passed in December 2007 expanded the FOIA definition of record to include any information that would be an agency record maintained for an agency by a government contractor for the purposes of records management. Information maintained by a government contractor may need to be searched in response to a FOIA request.

A FOIA search requires review by manual or automated means of agency records for the purpose of locating responsive records. The agency needs to make “reasonable efforts” to search for records in electronic form, except when the search would “significantly interfere” with the operation of the agency’s computer systems. The search need only be reasonable; it need not uncover every responsive document in existence, but an agency employee must not avoid searching for records known to exist.

The initial response should inform the requester of the agency's decision to release or deny records, when it will release records, of the anticipated cost to the requesting party, and that the requester may appeal the agency's decision. The initial response is due 20 working days after receipt of the request. The agency may obtain a 10-day extension by informing the requester in writing of "unusual circumstances" that will cause delay, such as the need to search separate office and field locations, search voluminous records, or consult another agency. Failure of the agency to respond within deadlines may constitute an exhaustion of administrative remedies, allowing the requester to go to court immediately. The new FOIA amendments also have a provision which goes into effect on December 31, 2008 that prohibits an agency from collecting fees if the agency does not respond to a request within 20 days, except where "unusual circumstances" or "exceptional circumstances" apply to the processing of the request (existing language in FOIA).

Title 5 U.S.C. § 552(b) defines nine categories of records that are exempt from release under FOIA.

Exemption 1 - National security

This exemption protects from disclosure national security information concerning national defense or foreign policy that has been properly classified in accordance with procedural requirements of an executive order. EPA received classification authority in 2002.

Exemption 2 - Internal rules and practices of an agency

This exemption applies to two kinds of records: (1) records the disclosure of which may lead to the subversion of an agency rule or policy, and (2) technically responsive yet purely inconsequential records that contain little information of value in comparison to the burden of having to provide it to the requester.

Exemption 3 - Records specifically exempted by statute

Congress often exempts specific kinds of records through an “Exemption 3 statute” instead of a FOIA amendment. Laws that exempt specific records include the Federal Rules of Criminal Procedure (grand jury information), the Patent Act (unfiled patent application materials), Procurement Integrity Act (site selection information), and certain statutes dealing with the location of endangered species. Critical infrastructure statutes many contain FOIA exemption provisions.

Exemption 4 - CBI/Trade secrets

Exemption 4 protects trade secrets and commercial or financial information that is obtained from a person that is privileged or confidential. The release of such information would either cause substantial competitive harm to the submitter of the information or impair the government’s ability to obtain such information in the future. Information that is voluntarily submitted to the agency has only to meet the lower standard of not being otherwise publicly available. Information must involve a formula or production process to be granted trade secret status. Most business information is not a trade secret under that definition.

Information that is claimed as CBI or a trade secret by a submitter may initially be withheld from a FOIA requester pending a confidentiality determination by the Office of General Counsel (OGC) or ORC. OGC is responsible for making the final CBI determinations for all headquarters CBI requests and for only the regional CBI requests involving FIFRA and TSCA. All other CBI determinations are made by the applicable ORC.

When Exemption 4 is used to withhold information, the office sends an initial denial letter to the FOIA requester explaining that the information has been claimed as CBI and that EPA is making a final determination regarding whether the information is entitled to confidential treatment. Program offices are also encouraged to

contact the FOIA requester directly (by phone or e-mail) to ask if the requester is willing to narrow the scope of the request to exclude the CBI. In addition, a letter should promptly be sent out to the submitter business asking it to confirm its CBI claims for the information and to substantiate any claim of confidentiality (request for substantiation).

Exemption 5 - Privileged communications

A record must satisfy two criteria to qualify for this exemption. First, the record must be inter- or intra-agency, meaning it cannot have been shared outside the executive branch. Records or information that originated outside the executive branch may nonetheless be considered intra-agency if the source is a “consultant.” A “consultant” is one who assisted the agency’s decision-making process by advising the agency on a matter in which the consultant has no stake in the outcome and is not otherwise advancing an interest or agenda that may benefit it over other parties. Settlement records often must be released because they are not inter- or intra-agency records. Second, the record must be protected by a civil discovery privilege. Common privileges include:

Deliberative process privilege

The record must be pre-decisional and deliberative. The purpose of the privilege is to promote frank and honest discussion of options prior to a decision and to avoid public confusion about the rationale behind an agency decision. Indicators of the privilege include the management level of the author, the point in the decision-making process when the record was created, and how the record was used. The privilege does not lapse after a decision is made, and generally does not cover facts.

Attorney-client privilege

The record must have been drafted by or at the direction of an attorney and contain advice regarding a client's legal issue and must have been generated and maintained in confidence. The purpose of the privilege is to facilitate effective representation by promoting frank and open discussion between attorney and client. The agency - not an individual employee or program office - is the client. Privilege may protect opinions and facts. Privilege does not attach unless the attorney is actually employed or acting in a legal capacity. Privilege can protect communications with any EPA employee, not just members of management.

Attorney work product privilege

The record must have been drafted by or at the direction of an attorney in anticipation of litigation, and generated and maintained in confidence. The purpose of the privilege is to protect the mental impressions and work product generated by an attorney while representing a client in litigation. Litigation need not have commenced; the work product only needs to identify specific claims that may reasonably lead to litigation. A record that was generated as a normal part of an agency's functions that later may be relevant to litigation is not covered. The privilege may also apply to factual materials.

Exemption 6 - Personal privacy

This exemption protects personal information whose disclosure would constitute a "clearly unwarranted" invasion of personal privacy. The purpose of FOIA is to allow public inspection of information that is relevant to the workings of government, not necessarily every piece of information the government possesses. This exemption requires a constant balancing of the public interest in the requested information and the individual's right to privacy.

Exemption 7 - Law enforcement

This exemption applies to documents that are compiled for civil or criminal law enforcement purposes. The exemption applies to documents the disclosure of which:

- could reasonably be expected to interfere with law enforcement proceedings (open investigations only; documents relating to closed investigations must be released);
- would deprive a person of his right to a fair trial;
- could reasonably be expected to constitute an “unwarranted” invasion of personal privacy (lower threshold than Exemption 6);
- could reasonably be expected to disclose a confidential source;
- would disclose law enforcement techniques and procedures and could reasonably be expected to risk circumvention of the law; or
- could reasonably be expected to endanger the life or physical safety of an individual.

Exemption 8 - Banking information

This exemption applies to records used by agencies responsible for the regulation or supervision of financial institutions.

Exemption 9 - Well data

This exemption applies to geological and geophysical information and data, including maps, concerning wells.

Regional FOIA officers should be consulted on requirements for responding to FOIA requests. OGC or ORC should be consulted whenever a question arises about releasing or withholding records.

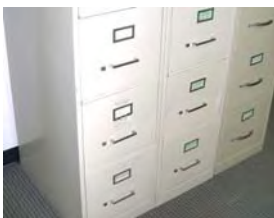
EPA employees risk criminal liability by releasing protected information such as CBI materials or Privacy Act (see Chapter 2 References, p. 82) information.

On January 21, 2009, President Obama signed the “Presidential memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act,” which established a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The president directed all agencies to administer FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and not to withhold information based on “speculative or abstract fears.” In addition, he called on agencies to ensure that requests are responded to in “a spirit of cooperation,” that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made. The memorandum was effective immediately, superseding former Attorney General Ashcroft’s memorandum on FOIA of October 12, 2001. Accordingly, agency personnel should begin to apply the presumption of disclosure to all decisions involving FOIA immediately.

The president directed the attorney general to issue new guidelines governing FOIA to implement these objectives. Once the new guidelines are issued, DOJ’s Office of Information and Privacy (OPI) will conduct training and provide additional advice and guidance on their implementation. Consult your regional FOIA officer for information on issuance of the guidelines and availability of OPI’s training and guidance.

2.4 Document Filing and Retention Issues

2.4.1 Document Management



During the planning process, the search manager should establish a file structure for the search, considering factors such as regional file structure, anticipated volume of information, nature of PRP interaction with EPA on the PRP search, anticipated information exchange, FOIA response requirements, and evidentiary concerns; ascertain whether the accumulated data are likely to be voluminous enough that an electronic system for managing them will be needed; and develop or obtain such a system. The PRP search manager should utilize the expertise of the records manager in each region. This person can be valuable in organizing and managing records. A document control system for identifying and tracking documents should also be established.

2.4.2 CERCLIS/ WasteLAN



The Comprehensive Environmental Response, Compensation, and Liability Information System/Waste Local Area Network (CERCLIS/WasteLAN), is an information management system made available to EPA's regional offices and headquarters. It incorporates numerous site-related subjects.

CERCLIS/WasteLAN includes a number of features intended to facilitate PRP searches and the sharing of PRP financial and other data across regions. These features are particularly important when interstate or multi-state PRPs are concerned. Data entered into CERCLIS/WasteLAN about parties that are associated with a general notice letter, special notice letter, enforcement instrument, or filed litigation referral are available to all regions the following Monday. This data-sharing capability, combined with features that make it easy to find out if a particular individual or firm is already in the database, is intended to reduce the need to repeat preliminary work that has already been done by others.

In addition to basic information (name, address, phone number) on all parties associated with a site, CERCLIS/WasteLAN also stores information describing the involvement of the identified PRPs at the site, a history of any enforcement actions taken, what response actions the PRPs have undertaken or committed themselves to perform, and information about correspondence issued by the Superfund program. CERCLIS/WasteLAN is available at most work stations in regional offices, and training is available. Check with your regional information management coordinator for additional information. A summary of CERCLIS/ WasteLAN's capacity and the type of PRP-related data gathered, along with examples of screens used when entering data, can be found in Appendix D.

Information Management

Factual information gathered during a PRP search can be grouped by its source and within each source by PRP. Information request letters and responses should be organized and maintained for use by Agency personnel. Government documents, title search documents, PRP documents, interview summaries, and information request letters and responses may be grouped separately. Index numbers should be assigned to all documents to ease referencing of the evidence summary sheets and the PRP search report. Section 3.2 of this manual discusses some factors involved in database creation and the storage and special handling of documents.

Chapter 2 References		
Name	Section	Location
Entry and Continued Access Under CERCLA (June 5, 1987)	2.0	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cont-access-mem.pdf
Applicable or Relevant and Appropriate Requirements (ARARs)	2.0	http://www.epa.gov/superfund/poliy/remedy/sfremedy/arars.htm
Superfund Program Implementation Manual (SPIM) Fiscal Year 2009/2010	2.0	http://www.epa.gov/superfund/action/process/spim09.htm
Performance Work Statement for Enforcement Support Services	2.1.1	Appendix A
Environmental Programs Assistance Act (June 12, 1984)	2.1.1	http://www.epa.gov/epahrist/see/brochure/law.htm
Title V of the Older Americans Act (1965)	2.1.1	42 U.S.C. § 3056 et seq. http://www.doleta.gov/seniors/other_docs/owp-106-501.pdf
Revised Final Guidance on Disseminating EPA's SBREFA Information Sheet to Businesses at the Time of Enforcement Activity (August 31, 1999)	2.1.2	http://www.epa.gov/compliance/resources/policies/civil/sbrefa
Small Business Information Sheet (October 2007)	2.1.2	EPA Publication 300-F-07-003 http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf
Confidentiality of Business Information	2.1.2	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Transmittal of Sample Documents for More Effective Communication in CERCLA Section 104(e)(2) Information Requests (June 30, 1995)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sampledoc-cercla-mem.pdf

Chapter 2 References		
Name	Section	Location
Documentation of Reason(s) for Not Issuing CERCLA §106 UAOs to All Identified PRPs (August 2, 1996)	2.1.2	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/reason-cer106-rpt.pdf
Checklist of PRP Search Tasks	2.2	Appendix B
Checklist for Removal/Pre-remedial Sites	2.2.1	Appendix C
Performance Work Statement for Enforcement Support Services	2.2.1	Appendix A
Revised Policy on Discretionary Information Release Under CERCLA (March 31, 1993)	2.3	http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-discre-info-rel.pdf
Privacy Policy (September 27, 2007)	2.3	http://www.epa.gov/irmpoli8/ciopolicy/2151.0.pdf
Confidentiality of Business Information	2.3	40 C.F.R. Part 2, Subpart B http://ecfr.gpoaccess.gov
Freedom of Information Act (Reference Guide)	2.3	5 U.S.C. § 552 et seq. http://www.epa.gov/foia/guide.html
Privacy Act	2.3	5 U.S.C. § 552 et seq. http://www4.law.cornell.edu/5/552a.html
Quick Reference Guide for Using CERCLIS/WasteLAN	2.4.2	Appendix D