

# Glossary

<b>Adit</b>	A horizontal opening into an underground mine from the side of a hill or mountain.
<b>Administrative Settlement Agreement and Order on Consent:</b>	A legal agreement between EPA and an individual, business, or other entity requiring the other entity to perform or refrain from performing specified actions or to pay specified costs. ASAOCs apply to civil causes of action and can be enforced in court. They describe the required or proscribed actions, and may be subject to a public comment period. ASAOCs are commonly used for removal actions and RI/FSSs, but also may be used for <i>de minimis</i> and cost recovery settlements.
<b>Administrative Record:</b>	The body of documents that "forms the basis" for the selection of a particular response at a site. For example, the AR for remedy selection includes all documents that were "considered or relied upon" to select the response action. An AR must be available at or near every site to permit interested individuals to review the documents and to allow meaningful public participation in the remedy selection process. This requirement does not apply to other ARs, such as those for deletion from the National Priorities List (NPL).
<b>Administrative Subpoena:</b>	A command issued by EPA requiring testimony and, if necessary, the production of documents deemed necessary to the administrative investigation of a site. CERCLA § 122(e)(3)(B) authorizes the issuance of administrative subpoenas as "necessary and appropriate" to gather information to perform a non-binding preliminary allocation of responsibility (NBAR) or "for otherwise implementing" § 122. No legal mandate prohibits use of administrative subpoenas as initial information gathering tools, but EPA prefers using § 104(e) requests before resorting to them.
<b>Alternative Dispute Resolution:</b>	A process that allows parties to resolve their disputes without litigating them in court. ADR involves the use of neutral third parties to aid in the resolution of disputes through methods that include arbitration, mediation, mini-trials, and fact finding.
<b>Arbitrary and Capricious:</b>	Characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. Under CERCLA § 130(j)(2), a court ruling on a challenge to a response action decision will apply the arbitrary and capricious standard of review.
<b>Arbitration:</b>	An alternative dispute resolution technique that involves the use of a neutral third party to hear stipulated issues pursuant to procedures specified by the parties. Depending upon the agreement of the parties and any legal constraints against entering into binding arbitration, the decision of the arbitrator may or may not be binding.

<b>Arranger:</b>	Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by the person or by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances.
<b>Cleanup Activities:</b>	Actions taken to deal with a release or threatened release of a hazardous substance that could affect humans or the environment. The term "cleanup" is sometimes used interchangeably with the terms remedial action, removal action, response, or corrective action.
<b>Co-Disposal Site:</b>	A landfill containing municipal sewage sludge and/or municipal solid waste (collectively referred to as MSW) and other wastes, such as industrial wastes, containing hazardous substances.
<b>Comment Period:</b>	Period provided for the public to review and comment on a proposed EPA action, rulemaking, or settlement.
<b>Community Involvement:</b>	EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns and incorporate them into the Agency decision-making process.
<b>Community Relations Plan:</b>	A document that identifies techniques used by EPA to communicate effectively with the public during the Superfund cleanup process at a specific site. This plan describes the site history, the nature and history of community involvement, and the concerns expressed during community interviews. In addition, the plan outlines methodologies and timing for continued interaction between the Agency and public at the site.
<b>Condemnation:</b>	The legal process by which a governmental body exercises its right of eminent domain to acquire private property for public use. Condemnation includes a resolution of public need and an offer to purchase. If the parties cannot agree on a purchase price, the governmental body brings a condemnation suit, which allows it to take the property if it deposits money with the court in the amount of its appraisal.
<b>Consent Decree:</b>	A legal document, approved by a judge, that formalizes an agreement reached between EPA and one or more PRPs outlining the terms under which the PRPs will conduct all or part of a response action, pay past costs, cease or correct actions or processes that are polluting the environment, or comply with regulations where failure to comply caused EPA to initiate regulatory enforcement actions. The CD describes the actions PRPs will take, is subject to a public comment period prior to its approval by a judge, and is enforceable as a final judgment by a court.

<b>Contribution:</b>	A legal principle according to which an entity can seek to recover some of the response costs for which it has already resolved liability with the United States. For example, when several PRPs are liable for a hazardous substance release, EPA is not required to pursue all of them. If EPA settles with or wins its case against a subset of PRPs, the right of contribution enables the settling PRPs or those against whom a judgment is rendered to seek recovery of a proportional share from other PRPs who were not named as defendants in EPA's suit or settlement, but who nonetheless contributed to the release.
<b>Contribution Protection:</b>	A statutory provision that provides that any PRP who resolves its liability to the United States in an administrative or judicially approved settlement is not liable to other PRPs for claims of contribution regarding matters addressed in the settlement.
<b>Cooperative Agreement:</b>	Mechanism used by EPA to provide Fund money to states, political subdivisions, or Indian tribes to conduct or support the conduct of response activities. Subpart O of the NCP, 40 C.F.R. Part 35, outlines specific response actions that may be conducted using CA funds.
<b>Cost Recovery:</b>	The process whereby the United States seeks to recover money previously expended in performing any response action from parties liable under CERCLA § 107(a). Recoverable response costs include both direct and indirect costs.
<b>Covenant Not to Sue:</b>	<p>A contractual agreement, such as those authorized by CERCLA § 122(f) and embodied in a CD or ASAOC, in which the Agency agrees not to sue settling PRPs for matters addressed in the settlement. EPA's covenant not to sue is given in exchange for the PRPs' agreement to perform the response action or pay for cleanup conducted by the Agency, and does not take effect until PRPs have completed all actions required by the CD or ASAOC.</p> <p>Under CERCLA, the use of covenants not to sue is discretionary. In effect, the Agency is authorized to agree to such a release of future liability only if the terms of the covenant include "reopeners."</p>
<b>Declaratory Judgment:</b>	A binding adjudication of rights and status of litigants. Within the context of CERCLA, the United States may file a claim seeking declaratory judgment on liability for past and future response costs at the site. If declaratory judgment on liability is granted, the United States does not have to prove liability in any future action with the defendant.
<b>Defendant:</b>	A person against whom a claim or charge is brought in a court of law.
<b>Demand Letter:</b>	A written demand for recovery of costs incurred under CERCLA. The primary purposes of written demands are to formalize the demand for payment of incurred costs plus future expenditures, inform potential defendants of the dollar amount of those costs, and establish that interest begins to accrue on expenditures. A demand letter may be incorporated into an SNL.

**De Micromis Exemption:**

In general, a party is not liable under CERCLA § 107 if it can demonstrate that the total amount of the material containing hazardous substances that it arranged for disposal at, or accepted for transport to, an NPL site was less than 110 gallons of liquid materials or less than 200 pounds of solid materials, unless (1) those substances contributed significantly to the cost of the response action or natural resource restoration at the facility, (2) the party has been uncooperative with EPA's response actions at the site, or (3) the party has been convicted of a criminal violation for the conduct to which the exemption would apply.

**De minimis Contributor:**

PRPs who are deemed by the settlement agreement to be responsible for only a minor portion of the response costs at a particular facility. A determination of a PRP's responsibility is made based on the volume, toxicity, or other hazardous effects in comparison with other wastes at the facility. CERCLA § 122(g)(1)(A) expressly defines "*de minimis* contributor."

**De minimis Landowner:**

PRPs who are deemed by the settlement agreement to be past or present owners of the real property at which the facility is located who (1) did not conduct or permit the generation, transportation, storage, treatment or disposal of any hazardous substance at the facility, (2) did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission, and (3) had no actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance at the time of purchase. CERCLA § 122(g)(1)(B) expressly defines "*de minimis* landowner."

**De minimis Settlement:**

An agreement, either administrative or judicial, authorized by CERCLA § 122(g), between EPA and PRPs for a minor portion of response costs.

**Discovery:**

A pre-trial procedure that enables parties to learn the relevant facts about the case. The Federal Rules of Evidence provide for extremely broad discovery. The basic tools of discovery are depositions, interrogatories, and requests for production of documents. One of the few limitations on the scope of discovery is that the material sought must be relevant to the subject matter of the pending suit, or likely to lead to the production of relevant material.

**Easement:**

A right to make limited use of someone else's real property. Utility companies, for example, commonly have easements that allow them access to real property they do not own for purposes of installing, inspecting, maintaining, or repairing equipment. Easements are one form of institutional control that may be required at Superfund sites if hazardous substances remain there after remedial action is complete as they can be used to limit access or control surface activities.

**Eminent Domain:**

The power to take private property for public use. Under the U.S. Constitution, there must be just compensation paid to the owners of such property. EPA exercises its power of eminent domain through the process of condemnation.

<b>Enforcement Actions:</b>	EPA, state, or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements, or to obtain penalties or criminal sanctions for violations.
<b>Escheat:</b>	Reversion of property to the state when the owner dies without leaving a will or relatives who are entitled to inherit the property in the absence of a will.
<b>Federal Lien:</b>	A lien in favor of the United States authorized by CERCLA § 107(I) that may be imposed on a PRP's property subject to a response action. The lien arises when the PRP receives written notice of its potential liability for response costs under CERCLA, or the Agency actually incurs response costs at a particular site. The lien continues until the PRP's liability is fully satisfied or the claim becomes unenforceable by operation of the statute of limitations.
<b>Federal Register:</b>	A federal government publication that includes proposed regulations, responses to public comments received regarding proposed regulations, and final regulations. The Federal Register is published every working day by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408. The Federal Register publishes regulations and legal notices issued by federal agencies. These include presidential proclamations and executive orders, federal agency documents required by Congress to be published, and other federal agency documents of public interest. The Federal Register is available to the public on line and through public libraries that are federal depositories, law libraries, and large university libraries.
<b>Force Majeure:</b>	A clause common to construction contracts which protects the parties in the event that a portion of the contract cannot be performed due to causes that are outside the parties' control (i.e., problems that could not be avoided by the exercise of due care, such as war). These causes are known as <i>force majeure</i> events. <i>Force majeure</i> provisions are included in CDs and ASAOs. These provisions stipulate that the PRPs shall notify EPA of any event that occurs that may delay or prevent work and that is due to <i>force majeure</i> . Two types of <i>force majeure</i> may be raised as defenses to liability. CERCLA § 107(b) releases from liability any person who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance was caused solely by an act of God or an act of war.
<b>Fund (Hazardous Substance Superfund or Superfund Trust Fund):</b>	A fund set up under CERCLA to help pay for cleanup of hazardous waste sites and for legal action to force cleanup actions on those responsible for the sites.
<b>General Notice Letter:</b>	A notice to inform PRPs of their potential liability for past and future response costs and the possible future use of CERCLA § 122(e) special notice procedures and the subsequent moratorium and formal negotiation period.

**Hazard Ranking System:**

The principal screening tool used by EPA to evaluate risks to public health and the environment associated with abandoned or uncontrolled hazardous waste sites. The HRS calculates a score based on the potential for hazardous substances spreading from the site through the air, surface water, or ground water, and on other factors such as nearby population. This score is the primary factor in deciding if the site should be on the NPL and, if so, what rank it should have compared to other sites on the list. A site must score 28.5 or higher to be placed on the NPL.

**Indian Tribe:**

As defined by CERCLA § 101(36), any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Information Repository:**

Where the AR, current information, technical reports, and reference materials regarding a Superfund site are stored. EPA or the state establishes the repository in the community as soon as a site is discovered. It provides the public with easily accessible information. Repositories are established for all sites where cleanup activities are expected to last for more than 45 days. Typical community repository locations include public libraries and municipal offices.

**Information Request Letter:**

Formal written request for information, authorized by CERCLA § 104(e)(2)(A) through (C), issued during an administrative investigation. EPA is authorized to request information from any person who has or may have information relevant to any of the following:

- the kind and quantity of materials that have been or are being generated, treated, disposed of, stored at, or transported to a vessel or facility;
- the nature or extent of a release or threatened release of a hazardous substance, pollutant, or contaminant at or from a vessel or facility; and
- the ability of a person to pay for or perform a cleanup.

Failure to respond to an information request or providing an incomplete response is subject to statutory penalties.

**Innocent Landowner:**

A person who purchased or acquired real property without actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substances. PRPs may assert this claim as part of their defense, but only the court may make this determination based on CERCLA §§ 107(b) and 101(35).

<b>Institutional Controls:</b>	Non-engineered instruments, such as administrative and legal controls, that help minimize the potential for exposure to contamination and/or protect the integrity of a response action. ICs typically are designed to work by limiting land and/or resource use or by providing information that helps modify or guide human behavior at a site.
<b>Joint and Several Liability:</b>	A legal doctrine defining the scope of a defendant's liability. When more than one PRP is involved at a site and the harm is indivisible, the court may impose joint and several liability upon all parties involved at the site. In this instance, each PRP involved at the site may be held individually liable for the cost of the entire response action.
<b>Judicial Review:</b>	Review by a court of a decision rendered by a federal agency or department or of an appeal challenging either a finding of fact or finding of law. Under CERCLA, for example, courts provide judicial review prior to entry of CDs. In addition, federal appellate courts will provide judicial review of EPA decisions if PRPs submit a "petition to review." Courts' jurisdiction and the scope of their review are defined by CERCLA § 113(h) and the Judicial Review Act, 28 U.S.C. §§ 2341-2351.
<b>Lead Agency:</b>	The agency that primarily plans and implements cleanup actions. This could be EPA, a state or political subdivision of a state, another federal agency, or Indian tribe. Other agencies may be extensively involved in the process, but the lead agency directs and facilitates activities related to a site, often including enforcement actions.
<b>Lien:</b>	The legal claim of a creditor to the property of a debtor. When a lien is "executed" or "perfected," it becomes the legal right of the creditor to sell the debtor's property to satisfy the debt. CERCLA §107(l), (m), and (r) create liens in favor of the United States on real property, marine vessels, and "windfall" increases in property value, respectively, as a result of EPA response action.
<b>Moratorium:</b>	The period of time after special notice letters are issued during which the Fund will not be used to begin work on the RI/FS or RA. EPA also will not seek to compel PRP action at the site during the moratorium.
<b>Municipal Solid Waste:</b>	Waste material generated by a household and waste material generated by a commercial, industrial, or institutional entity, to the extent that the waste material: <ul style="list-style-type: none"> <li>• is essentially the same as waste normally generated by a household;</li> <li>• is collected and disposed of with other MSW as part of normal MSW collection; and</li> <li>• contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste generated by a typical single family household.</li> </ul>

<b>National Oil and Hazardous Substances Pollution Contingency Plan:</b>	The NCP is the major framework regulation for the federal hazardous substances response program. The NCP sets forth procedures and standards for how EPA, other federal agencies, states, and private parties respond under CERCLA to releases or threats of releases of hazardous substances, and under Section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990, to discharges of oil.
<b>National Priorities List:</b>	The list compiled by EPA pursuant to CERCLA § 105 of uncontrolled hazardous substance releases that are priorities for long-term remedial evaluation and response.
<b>Natural Resources:</b>	Land, fish, wildlife, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, or controlled by the United States, a state or local government, any foreign government, any Indian tribe, or any member of an Indian tribe.
<b>Natural Resource Damages:</b>	Damages for injury or loss of natural resources as set forth in CERCLA §§ 107(1) and 111(b) and NCP § 300.615.
<b>Non-Binding Preliminary Allocation of Responsibility:</b>	An allocation of the total cost of response among PRPs at a facility. CERCLA § 122(e)(3) allows EPA to provide NBARs to PRPs to facilitate settlement. An NBAR is not binding on the United States or the PRPs and cannot be admitted as evidence in court.
<b>Orphan Share:</b>	A portion of cleanup costs that cannot be assessed to PRPs as a result of either the PRP's being insolvent or defunct or EPA's inability to identify PRPs.
<b>Owner or Operator:</b>	Any person owning or operating a vessel or facility, or in the case of a hazardous substance being accepted for transportation, the common or contract carrier. It does not include a unit of state or local government that acquired ownership or control involuntarily through bankruptcy, tax delinquency, or abandonment.
<b>Performance Bond:</b>	A guarantee given by a contractor that a work assignment will be completed according to its terms and within the agreed time.
<b>Performance Standards:</b>	Provisions in consent decrees and administrative orders specifying levels of performance that site activities must achieve; often incorporated by reference into the ROD. The inclusion of such performance standards enables EPA to assure measurable levels of cleanup that provide the protection desired.
<b>Person:</b>	An individual, firm, corporation, association, partnership, joint venture, commercial entity, U.S. government, state, municipality, or any interstate body.



<b>Plaintiff:</b>	A party who brings a legal action; the party who complains or sues in a civil action and is so named on the record.
<b>Potentially Responsible Party:</b>	Any individual or entity including owners, operators, transporters, or generators who may be liable under CERCLA Section 107(a).
<b>Record of Decision:</b>	The official Agency document that explains which remedial cleanup alternatives have been considered, the selected remedy, technical background relative to the decision, and how the decision complies with the law.
<b>Recalcitrant:</b>	A PRP that is persistently uninterested in or refuses to reach settlement or that fails to comply with a settlement or order.
<b>Remedial Action:</b>	A remedial action is one that is "consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment." Generally, response actions that take longer than a non-time-critical removal and are more complex than removals.
<b>Removal:</b>	A removal is "the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release...[and] such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances..." Such evaluations include the RI/FS. Removals are classified according to urgency as "emergency," for those requiring immediate response; "time-critical," for those that take no more than six months; and "non-time-critical" for removals that need up to a year or more.
<b>Reopeners:</b>	Contractual provisions that preserve the Agency's right to compel the PRPs to undertake additional response actions or to pay costs for Agency response actions in addition to those agreed to in the settlement. Reopeners to liability are triggered when previously unknown conditions at the site are discovered, or information previously unknown to EPA is received, that indicates the remedial action is not sufficiently protective. Reopener provisions restrict the covenant not to sue by defining the conditions under which the settlement may be re-examined.
<b>Remedial Investigation/Feasibility Study:</b>	Activities conducted at an NPL site by EPA or a PRP acting under an ASAOC or (rarely) a UAO to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be described in the ROD and clean up the site in accordance with CERCLA § 121.
<b>Remedial Design/Remedial Action:</b>	Response actions performed at an NPL site by EPA or a PRP under a CD approved and entered by a federal court. RD is the engineered design of the remedy selected by the RI/FS; RA is the construction and continuing operation and maintenance of the remedy.

<b>Settlement:</b>	Resolution of a claim. Settlement occurs when a federal or state agency enters into a written agreement with PRPs requiring them to pay for or perform specified response actions. Settlements may be achieved administratively through an ASAOC or judicially through a CD.
<b>Special Notice Letter:</b>	A written notice to a PRP providing information on potential liability, conditions of the negotiation moratorium, future response actions, and demand for past costs. The SNL is authorized under CERCLA § 122(e)(1) and triggers the start of a negotiation moratorium.
<b>Statute of Limitations:</b>	The statutorily defined period of time within which the United States, on behalf of EPA, must file a claim for cost recovery. If the United States does not file a case within the SOL, it may not be able to recover its costs from the PRPs.
<b>Strict Liability:</b>	Legal responsibility for damages without regard to fault or diligence. The strict liability concept in CERCLA means that the federal government can hold PRPs liable without regard to a PRP's fault, diligence, negligence, or motive.
<b>Transporter:</b>	A person who "accepts or accepted any hazardous substances for transport for disposal" to any site selected by such person, "from which there is a release or threatened release which causes the incurrence of response costs, of a hazardous substance.
<b>Unilateral Administrative Order:</b>	An order issued by EPA under the authority of CERCLA § 106(a) requiring a person to perform or refrain from performing specified actions in order "to protect public health and welfare and the environment" once EPA has determined that there may be "an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility." UAOs are typically issued when settlement negotiations have failed or an emergency situation exists.