



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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: PRP Search Documentation Summary Requirements for Decision Documents to Not Pursue Cost Recovery Where Unaddressed Past Costs are Greater Than \$200,000

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

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

I. Background/Purpose

In 2009, the Environmental Protection Agency's (EPA) Office of Inspector General (IG) evaluated cost recovery activities at removal sites not on the National Priorities List (NPL) to identify EPA's internal controls for monitoring cost recovery, documenting potentially responsible party (PRP) searches, documenting removal milestones, and ensuring accurate cost recovery data.¹ As a result of the evaluation, the IG recommended that EPA's Office of Enforcement and Compliance Assurance (OECA) develop standard and mandatory PRP search documentation requirements that Regions would complete as part of the cost recovery decision document (closeout memo).

OECA agreed with the IG's recommendation. As such, this guidance establishes standard and mandatory PRP search documentation requirements to be included with Decision Documents (DD) memorializing the Agency's determination to not pursue cost recovery, where total unaddressed past costs are greater than \$200,000. This will ensure that standard and consistent PRP search information is available and easily locatable for all situations where EPA issues such decision documents. Based on this guidance, in the future these decision documents should:

- describe the PRP search activities undertaken for the site,
- summarize the results from those activities,
- include references for all PRP search documents used to make the decision to not pursue the unaddressed costs, and
- identify where those PRP search documents are located.

¹ See *EPA Needs to Improve Internal Controls to Increase Cost Recovery* (October 7, 2009) available at <http://www.epa.gov/oig/reports/2009/20090427-09-P-0144.pdf>.

The attached documentation tool is intended as a standard format for documenting the PRP search activities a Region has completed prior to issuing a decision to not pursue cost recovery.

II. Minimum Documentation Requirements

The PRP Search Documentation Reference Summary (hereafter referred to as the Reference Summary (Attachment A) should include, at a minimum, the following information in order to sufficiently document the site-specific PRP search activities that were conducted by the Region. The reference summary should be attached to the PRP Search Activities Verification Form identified under Section III and/or the cost recovery Decision Document. The minimum PRP search documentation requirements include:

A. Site name/identifiers

This section includes the official site name, aliases, operable units, and the site-spill identifier (SSID) from the Integrated Financial Management System (IFMS).

B. Point of Contact

This section includes the name of the individual(s) responsible for the site-specific PRP search activities at the time the Reference Summary or Regional Alternative, provided for in Section VII, is completed and verified. The Region should provide the individual's contact information for follow-up.

C. PRP Search Activities Accomplished

This section includes the title/description of the PRP Search activities completed. The Reference Summary divides PRP search activities into several major categories based on those essential tasks defined in Chapter 2 of the PRP Search Manual². Those categories are further detailed in the Reference Summary and include several mandatory activities relating to the property owners, site operational history, and liability/viability³ determinations for identified responsible parties.

D. Activity Completion Date

This section includes the date on which each specific PRP search activity was completed. This may be the date on which a specific reference document was created or reviewed by the PRP Search staff person referred to in paragraph B, above.

² <http://www.epa.gov/oecaerth/resources/publications/cleanup/superfund/prpmanual/prp-search-man-cmp-09.pdf>

³ In this context, viability relates to the continued existence of a PRP in some form. It does not necessarily include a formal ability to pay determination.

E. Reference Document Location

This section includes the specific location in the site file, including, but not limited to Superfund Document Management System (SDMS) index information, folder locations, and Bates stamping numbers, for documents supporting each PRP search activity listed in the Reference Summary.

III. PRP Search Activities Verification

The Reference Summary should be attached to either (1) the PRP Search Activities Verification form or (2) the Decision Document. The subject PRP Search Activities Verification form or associated Decision Document should contain the site name and the SSID, a synopsis/summary of the results of the PRP search efforts for the site, or portion of the site in question. If this information is included in the Decision Document in lieu of a separate PRP Search Activities Verification form, it should also include the amount of past costs being addressed through the action. If the PRP Search Activities Verification form is for a portion(s) of a defined site, the Region should indicate the unique SSID for the subject portion(s), or assign another unique site identifier to the portion(s) in question.

The PRP Search Activities Verification form should contain a signed statement by the individual in the Region (e.g., investigator or the investigator's supervisor), responsible for overseeing PRP search activities at the site (or portion thereof), attesting that sufficient PRP search tasks have been completed at the site to support the decision to not pursue unaddressed past costs. The document should be addressed to the person responsible for oversight of PRP search activities in the Region, as well as to the site file. An example/sample is attached (Attachment B). Once the PRP Search Activities Verification form is signed, the date of the final signature should be entered into CERCLIS as the PRP search completion date. After entry into CERCLIS, the signed document should be added to the official site file.

IV. Scope

The Reference Summary is only required for sites where the Region decides to not pursue cost recovery and unaddressed past costs are greater than \$200,000. Regions may, at their discretion, choose to use the associated Reference Summary and PRP Search Activities Verification form as a supporting document when proceeding with Fund-lead remedial action sites, certain Fund-lead removal actions, as determined by the Regions, and at sites where EPA issues a Decision Document to not pursue cost recovery less than \$200,000.

V. Alternative Methods for Satisfying Guidance Requirements

As an alternative to completing and attaching the "PRP Search Reference Summary" and associated PRP Search Activities Verification form, Regions may include a formal PRP Search Report to satisfy the requirements of this guidance, provided that the report contains a detailed summary/bibliography of the documents cited in the report. If the documents cited in the formal

PRP Search Report are included in the report or its appendices, this shall be deemed sufficient to satisfy the requirements of this guidance. The PRP Search Report should be annotated to identify the physical or electronic location of the documents referenced in the report.

In addition, should the Region have an alternative mechanism that meets the key requirements of the Reference Summary and associated PRP Search Activities Verification form, such as the 10-point settlement analysis, it may use that mechanism as an alternative to the examples provided in this guidance. Questions concerning whether the alternative mechanism meets the requirements of this guidance should be directed to the OSRE Leader, National PRP Search Enhancement Team.

VI. Prior Applicable Guidance

EPA has previously issued the following guidance and policy memoranda that address Superfund cost recovery and what is required of EPA when it makes a decision to not pursue cost recovery which remain pertinent and relevant today.

- Superfund Cost Recovery Strategy (J. Winston Porter, July 29, 1988) available at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cost-recover-mem.pdf>;
- Guidance on Decisions not to Take Cost Recovery Action (Jonathan Z. Cannon, June 7, 1988) (attached); and
- Cost Recovery Cases Where Site Costs Total Less Than \$200,000 (Bruce M. Diamond, May 12, 1995) <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/costrecovcase-mem.pdf>.

These three guidance documents address, among other subjects: (1) when it is appropriate to make a decision to no longer pursue cost recovery; (2) what types of PRP search activities should generally be performed prior to making a decision to not pursue cost recovery; (3) how to document the basis for decisions to not pursue cost recovery; and (4) the universe of sites/cases that are subject to PRP search and documentation requirements. This guidance document supplements the above referenced documents. This guidance does not supersede the above referenced documents or affect existing requirements related to preparation of 10-point settlement analyses for CERCLA judicial enforcement actions.

VII. Enforcement Confidentiality

The attached Reference Summary and any associated documents (or alternative documents used to meet these requirements), once completed and submitted to the site file, should be evaluated by the Region on a case by case basis to determine if they should be treated as “enforcement confidential” and therefore not to be released under FOIA.

VIII. Contact Information

If you have any questions, please contact Bruce Pumphrey or Nancy Deck of the Program Evaluation and Coordination Branch, at 202-564-4222 or 202-564-6039, respectively.

Attachments

cc: National PRP Search Enhancement Team
Superfund Regional Counsel Branch Chiefs
Monica Gardner
Kenneth Patterson
Benjamin Lammie
Helena Healy
Reference Summary Guidance Development Team

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Site/Case Identification Information

Site Name:

Operable Unit (Where appropriate):

Site Spill Identifier:

Enforcement/Cost Recovery Contact Name:

Site Attorney Name:

Prior Site Enforcement/Cost Recovery Contact:

Amount Covered by Decision Document (direct and Indirect Costs):

Basis for not pursuing cost recovery:

- No PRPs Identified at the site
- PRPs Identified in Search Not Financially Viable
- Available evidence does not support one or more elements of a prospective case
- Pursuit of costs is not justified. Cost of pursuing cost recovery will exceed likely cost recovery and/or documented response costs
- Legal case is so questionable that cost recovery should not be pursued
- Limited Agency resources are being directed at higher priorities.
- Other Reasons (please describe)

PRPs Investigated:

Name	Current Owner/ Operator	Owner/ Operator at Disposal	Arranger	Transporter

**PRP Search Documentation Reference Summary
for Decision Documents to Not Pursue CERCLA Cost Recovery**

A. Information Collection/Associated Party ID	Applicable (Y/N?)	Completed (FY/Q)
A1 - Property Ownership (Mandatory)		
<Supporting Document Name, Date, and Location>		
A2 - Operational History (Mandatory)		
<Supporting Document Name, Date, and Location>		
A3 - Waste Contribution/Other Party ID		
<Supporting Document Name, Date, and Location>		
A4 – Transporter Identification		
<Supporting Document Name, Date, and Location>		
A5 - Other Investigative Information		
<Supporting Document Name, Date, and Location>		
A6 - Ground Water-Specific Party Information		
<Supporting Document Name, Date, and Location>		
A7 - Mining-Specific Party Information		
<Supporting Document Name, Date, and Location>		
B. Liability Evaluation (Mandatory)		
<Supporting Document Name, Date, and Location>		
C. PRP Contribution Evaluation (as appropriate)		
<Supporting Document Name, Date, and Location>		
D. PRP Financial Viability/ATP/Insurance		
<Supporting Document Name, Date, and Location>		
E. PRP Notification		
<Supporting Document Name, Date, and Location>		
F. Other Site Specific PRP Analysis (as determined necessary by Region)		
<Supporting Document Name, Date, and Location>		

**PRP Search Activities Verification Form
for Decision Documents to Not Pursue CERCLA Cost Recovery**

Date:

Subject: Verification of PRP Completion for Site Name/SSID site located in (City/State).

From: Site Enforcement/Cost Recovery Specialist (or other Regional designee)

To: Designated Regional Official/Site File

The purpose of this memorandum is to verify that as of (Date) attesting that all reasonable PRP search tasks have been completed at the site in support of the Regional decision not to pursue cost recovery, heretofore referred to as the "Decision Document," in the amount of \$ (Decision Document Amount Addressed) dated (Date Decision Document signed by designated Regional Official).

Attached is the PRP Search Reference Summary or Regional Alternative which list all PRP search documents that were used in making this determination and their respective location. Questions regarding this verification or the contents of the attached reference summary should be address to the Site Enforcement/Cost Recovery specialist for this site.