

# **CERCLA Response Actions Handbook**



**BLM Handbook H-1703-1**

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**BLM Handbook H-1703-1  
Release 1-1669**

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# Chapter 1

## *Introduction*

### **Section 1: Authorities and Responsibilities**

It is the mission of the Bureau of Land Management (BLM) to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. Releases of hazardous substances can have a significant impact on the health, diversity, and productivity of the public lands as well as on the health and safety of individuals who utilize and work on those lands. The purpose of this document is to provide policy and guidance to BLM employees in the use of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorities and responsibilities in addressing hazardous substance releases.

This handbook is intended to introduce BLM personnel to the CERCLA process. It cannot be relied on as legal advice, but should be used together with applicable laws and regulations, and in consultation with the Office of the Solicitor.

Department of the Interior (DOI) and BLM authorities and responsibilities under CERCLA can be used when responding to sudden releases of hazardous substances affecting public lands or from historic disposal or release sites that continue to pose a risk. For example, CERCLA authorities and responsibilities delegated to BLM are applicable to the following situations impacting public lands:

**Authorized operations involving the use of hazardous substances.** The use, storage, or transport of hazardous substances on public lands, by the BLM or an authorized user, may lead to the accidental release of a hazardous substance. Some examples include pesticide applications, military

operations, construction activities, concessionaire operations, mining activities, and oil and gas operations.

**Historic sites.** A release of a hazardous substance that occurred in the past may still trigger CERCLA authorities and responsibilities if the release site continues to pose a threat. Some examples include abandoned mine/mill sites, closed landfills, and abandoned airstrips.

**Migration of hazardous substance releases from adjacent property.** BLM, through DOI, may take, or require another party to take, an action to protect public land resources, public land users, and BLM employees from hazardous substances that migrate, or pose a threat of migration, onto public lands. These actions will usually be undertaken in coordination with the Environmental Protection Agency (EPA) and State environmental departments. Some examples include migration of hazardous substances from patented mine sites, military bases, and lands subject to withdrawals.

**Illegal dumping/trespass.** Private parties continue to use public lands as a disposal site for hazardous waste or for unauthorized activities that result in the release or threatened release of hazardous substances. Some examples are illegal drug labs, trash dumps containing hazardous waste, and buried drums containing hazardous substances.

**Acquisition of land.** Congress, the Secretary of the Interior, or BLM may choose to acquire lands to be managed by BLM that have recognized environmental concerns resulting from hazardous substance releases. In this instance, BLM may implement its CERCLA authorities and responsibilities to respond to these releases (refer to DOI Departmental Manual 602 for details on land acquisitions).

Congress enacted CERCLA in 1980, and substantially amended the statute in 1986, primarily to address risks posed to human health and welfare or the environment resulting from releases or potential releases of hazardous substances. Executive Orders 12580 and 13016 delegated to DOI CERCLA authorities and responsibilities for responding to hazardous substance releases. Many of these authorities and responsibilities have been further delegated to the BLM Director by Secretarial Order 3201, and to BLM State Directors by Washington Office Instruction Memorandum 2000-093.

A brief synopsis of the major authorities and responsibilities established by CERCLA that have been delegated to DOI and BLM for responding to hazardous substance releases affecting public lands follows.

### **Authorities and Responsibilities Delegated to State Directors**

**CERCLA Section 104 (a), (b), (c)(4), and (e)** gives the authority to respond to hazardous substance releases. This includes selecting and implementing removal and remedial actions (with the exception of emergency actions and the implementation of remedial actions at sites listed on the National Priorities List (NPL)), and obtaining information from other parties with knowledge of the release. It also includes the responsibility of notifying natural resource trustees of a release.

**Section 113(k)(1)** establishes the responsibility to create and make available to the public administrative records that contain information used to select removal and remedial actions.

**Section 117 (a) and (c)** establishes the responsibility to prepare and submit to the public for review a proposed plan for remedial actions.

**Section 121** establishes the responsibility to select removal and remedial actions that assure protection of human health and welfare or the environment, are cost effective, and are in accordance with the National Contingency Plan (NCP).

### **Authorities Retained by the BLM Director**

**Section 105(d)** gives the authority to initiate and complete an assessment of a release or threatened release based on a petition from a person(s) potentially affected by the release.

**Section 119** gives the authority to indemnify a contractor taking a response action. Such authority can only be exercised with the concurrence of the Solicitor.

**Section 104(j)** gives the authority to acquire real property needed to conduct a remedial action.

### **Authorities Retained by the Secretary of the Interior**

**Section 106 (a)** gives the authority to issue orders to a potentially responsible party (PRP) and take

other actions necessary to abate an “imminent and substantial endangerment” to human health and welfare or the environment caused by an actual or threatened release. Section 106 authority may be used only with the concurrence of the EPA or U.S. Coast Guard.

**Section 122** gives the authority to enter into a variety of different agreements with PRPs (e.g., cleanup agreements, Administrative Orders of Consent (AOCs), de minimis settlements).

### Other Important CERCLA Sections

**Section 103** establishes reporting obligations for releases of hazardous substances in quantities exceeding the substance’s reportable quantity.

**Section 107** imposes liability on four categories of PRPs and gives Federal agencies the responsibility to pursue recovery from such PRPs, which includes the cost of response actions, as well as damages for injury to, destruction of, or loss of natural resources.

**Section 120** provides that all Federal agencies are subject to CERCLA requirements and responsibilities in the same manner, and to the same extent, as private parties. It also states that Federal agencies must not be inconsistent with the NCP when using CERCLA authorities to respond to releases of hazardous substances.

## Section 2: BLM Hazardous Substance Response Program

The primary responsibility for addressing hazardous substance releases under CERCLA on public lands resides with the designated On Scene Coordinator/ Remedial Project Manager (OSC/RPM). The difference between an OSC and an RPM is that an OSC handles removal actions and an RPM handles remedial actions. The position descriptions for these individuals should include the duties of an OSC/RPM as described in the NCP (40 CFR 300.120). Some of the site-specific duties associated with these positions include:

- Collection of pertinent facts about the release (e.g., cause, PRPs, risk, nature, and extent of release)

- Planning and management of site-specific response actions
- Cost tracking and documentation
- Coordination with local, State, and Federal response agencies
- Notification of trustees and the National Response Center (NRC)
- Ensure worker safety
- Development and maintenance of administrative records
- Community relations and notifications
- Ensure compliance with CERCLA, NCP, and BLM policy
- Oversight of PRP response activities

Coordination of response actions on a State or regional basis is the responsibility of the Hazardous Materials State Office Program Lead (SOPL) or the State Abandoned Mine Lands (AML) Coordinator. The major duties associated with these positions include:

- Coordination of response activities for a State/region
- Budget allocation recommendations and requests
- Development of State-specific policy
- Coordination with other BLM programs
- Coordination with State and Federal agencies
- Oversight of Field Office activities to ensure compliance with laws, regulations, and policy
- Technical assistance to Field Offices (function as OSC/RPM on an as needed basis)
- Program guidance and leadership
- Implement Statewide response contract activities
- Report program accomplishments



- Address workload and resource needs consistent with the Annual Work Plan (AWP)

Management of the program on a national basis is the responsibility of the Protection and Response Group (WO-360) under the Assistant Director for Minerals, Realty, and Resource Protection. The Protection and Response Group provides program direction and management and is responsible for budget allocation recommendations to the States and Centers, policy development, national program coordination, coordination with other Federal agencies, and coordination with other BLM programs.

Internal technical assistance regarding site evaluations and characterization, removal and remedial assessments and design, natural resource injury determinations, and cost recovery and enforcement actions is provided by BLM's National Science and Technology Center (NSTC). Contracting support is provided by the Information Technology and Professional Services Acquisition Group (BC-660) within BLM's National Business Center.

### Section 3: Handbook Layout

To use CERCLA effectively, BLM employees must understand the authorities and responsibilities delegated to BLM and implement them consistently with the regulations established in the NCP. The following sections of this handbook describe the processes and procedures established by the NCP, DOI and BLM policy, and other associated guidance used to address hazardous substance releases affecting public lands.

- Chapter 2, Administrative Record, addresses the development, location, content, and maintenance of administrative records required for CERCLA response actions.
- Chapter 3, Removal and Remedial Actions, addresses the NCP processes and procedures used to evaluate a release site, and select and implement removal and remedial actions.
- Chapter 4, Enforcement Actions, addresses the processes and procedures used to avoid or recover costs associated with response actions from PRPs.



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## Chapter 2

# *Administrative Record*

### Section 1: Purpose and Definition

This chapter provides general guidelines specific to BLM in preparation of administrative records (ARs) for CERCLA response actions. Regulations regarding preparation of the administrative record are found in 40 CFR 300 Subpart I. The EPA has produced general guidance on preparing ARs: OSWER Directive #9833.3A - 1, Final Guidance on Administrative Records for Selecting CERCLA Response Actions, December 3, 1990.

An AR is a public record, required by law, of those documents that form the basis for the selection of a response action at a site. It provides the basis for public participation and involvement, and it provides a record for judicial review by documenting the government deliberative process. A strong AR ensures expeditious cost recovery, limits litigation-related information gathering during discovery, and supports BLM's remedy selection decisions.

A BLM case file, in contrast to an AR, contains all records regarding a response action, including materials that were not relied on in selecting the response action. The case file also includes the final decision documents which contain information on construction activities, disposal, monitoring, operation and maintenance, and final reports. The case file serves as BLM's master file for documents which may be lost or removed from the AR. There may be duplication of documents in case files and ARs. Case files and ARs should be clearly marked, however, and kept separate.

## Section 2: Contents of the Administrative Record

### What To Include in the AR

An AR should include:

- All documents that were relied upon in selecting the response action, as well as relevant documents that were considered but ultimately rejected.
- Information gathered in the site verification and all other subsequent information that pertains only to selecting and implementing a cleanup action.
- Internal working documents that contain factual information forming the basis for the selection of the response action, but with only the factual portion extracted and included in the AR.
- A “No Further Action is Required” decision from a BLM site investigation.
- Information or comments submitted by the public or PRPs during a public comment period, even if BLM does not agree with the information or comments.
- Guidance documents and technical literature that were used as a basis for a decision on a response action should be included by reference in the index.
- Final documents generated by BLM or other State and Federal agencies, as well as technical and site-specific information.
- Drafts or internal working documents are included only under special circumstances, such as:
  - If the draft contains information that is the basis for a response decision that was not included in the final version of the document.
  - If a final document didn’t exist at the time the response decision was made.
  - If a draft is circulated by BLM to other entities (e.g., EPA) who then submit comments that the decisionmakers consider or

rely upon when making a response action decision.

- If a draft explains decisions on the procedure for selecting the response action.
- If important information about the selected response action is not found elsewhere.

A list of documents that should go into the AR for a removal action is found in Appendix 1, and a list of documents that should go into the AR for a remedial action is found in Appendix 2.

### What Not to Include in the AR

An AR should not include:

- Internal working documents that are predecisional and deliberative.
- Attorney work products prepared in anticipation of possible litigation.
- Confidential and privileged communications made in connection with legal advice between an attorney and his client.
- Documents of a personal nature such as medical records. If confidential or privileged documents were relied upon as part of the decision process, these documents should be listed in the index, but should be located in the Field Office in a securely locked area, with the reason why the document has been determined to be confidential or privileged noted on the index. The BLM OSC/RPM, in consultation with the Regional Solicitor’s Office, should make the determination as to whether documents are confidential or privileged. All confidential or privileged documents must be stamped “confidential.”
- Confidential business information documents.
- PRP reports or any other documents relating to PRP liability.

## Section 3: Establishment and Location of the Administrative Record

Establishment of an AR depends upon the nature of the response action (40 CFR 300.815 and 820).

For non-time-critical removal actions, the AR must be made available to the public when the Engineering Evaluation/Cost Analysis (EE/CA) is made available to the public. For time-critical removal actions, the AR must be available for public inspection no later than 60 days after the initiation of the removal action. Time-critical and non-time-critical removal actions are addressed in Chapter 3, Section 2.2 of this handbook. For a remedial action, the AR must be available at the commencement of the Remedial Investigation/Feasibility Study (RI/FS). An RI/FS is addressed in Chapter 3, Section 3.3 of this handbook. These records should be established and maintained by the OSC/ RPM. Prior to making the AR available to the public, it is strongly recommended to seek solicitor review of the AR.

To prepare an AR, start with an index. An index should be a separate sheet in the record that lists all the documents contained in the record. Each document must be assigned a document number. The index must list the document number, name of the document, date of the document, and its location in the AR. All drafts should be labeled "draft" until the final decision document is included in the AR. If more than one response action is conducted at a site, there should be a separate index of documents for each action at the site in the AR. The AR files are considered permanent records that must be retained by BLM.

The original AR should be located in the State Office or the Field Office having jurisdiction over the site. For non-time-critical removal and remedial actions, a copy of the AR should be made available to the public for inspection at or near the site.





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## Chapter 3

# *Removal and Remedial Actions*

### Section 1: Introduction

The National Contingency Plan (NCP) establishes the processes and procedures used by lead agencies to respond to releases of hazardous substances pursuant to CERCLA. The NCP is published in the Code of Federal Regulations (CFR) under 40 CFR 300. The NCP defines the term “lead agency” as the agency that provides the OSC/RPM to plan and implement response actions under the NCP. As the lead agency responsible for releases on public lands, BLM must ensure that any investigatory or cleanup action taken pursuant to CERCLA, either by BLM or a PRP, in response to a release of a hazardous substance affecting public lands, is in accordance with the NCP. The delegation of lead agency responsibility for BLM under E.O. 12580 does not include emergency actions or remedial actions for sites listed on the National Priorities List (NPL). Selection and implementation of remedial actions at NPL sites requires the approval of the EPA.

CERCLA defines response as removal, remedial, and enforcement actions. The purpose of this chapter is to provide guidance and convey BLM policy regarding NCP removal and remedial actions. Enforcement actions are addressed in Chapter 4. All BLM employees who function as OSC/RPMs are responsible for implementing NCP processes and procedures in response to a release of a hazardous substance affecting public lands. These individuals must have a detailed knowledge of the regulations and requirements covered under 40 CFR part 300 (the NCP) and 302 (Designation, Reportable Quantities, and Notification) as well as State and local regulations and requirements associated with the cleanup of a hazardous substance release.

When implementing the NCP removal or remedial processes, the focus should be on sound decisions that result in effective and efficient solutions.

Three basic questions need to be answered when responding to a suspected release of a hazardous substance:

1. Has there been a release of a hazardous substance that is associated with public lands?
2. Does the release warrant a cleanup based on current or potential risk?
3. What is the best cleanup action(s) that will minimize or eliminate the threat(s) from the release?

### 1.1 Site Discovery/Verification

Discovery of a site occurs when there is an identification that a hazardous substance release has occurred, a release is suspected, or the threat of a release exists (40 CFR 300.405). Discovery of a site may occur through one of the following means:

- Report to the National Response Center (NRC) (CERCLA 103(a)) (see Chapter 3, Section 1.2 of this handbook)
- Agency Report to EPA of a site (CERCLA 103 (c))
- Response to an inquiry under CERCLA 104(e) (see Chapter 4, Section 4 of this handbook)
- Notification from a State or Federal permit holder when required by the permit
- Inventory, survey, or incidental observation and report by agencies or the public
- Citizen petition requesting a preliminary assessment of a site (CERCLA 105(d))
- A report submitted in accordance with section 311(b)(5) of the Clean Water Act (this requires the person in charge of a facility to notify the appropriate Federal agency of a discharge of a hazardous substance to navigable waters of the United States)
- Other sources

It is BLM policy to conduct a site verification prior to initiating actions under the NCP. The purpose of the verification is to determine and document:

- Evidence supporting the suspicion of a release, or evidence supporting that a release did not occur.
- Confirmation that the suspected release is affecting public lands or other properties under the jurisdiction, custody, or control of BLM.
- Information as to whether the situation does or does not require an emergency response.

At a minimum, the verification should include an inspection of existing information pertinent to the site, interviews with individuals who have knowledge of the site, and a physical examination of the site. Site verification should not take more than 2 days. It will usually not include sampling and analysis or an extensive evaluation of the release site.

When conducting a field examination and any other subsequent activities on the site, the inspectors must follow all safety precautions, policies, and regulations pertaining to the evaluation of hazardous waste sites, specifically BLM Manual 1703.06I and the hazardous waste operations and emergency response requirements identified in 29 CFR 1910.120.

If the conclusion of the site verification is that there is no evidence of a release affecting public lands, these conclusions must be documented in a case file. If the site verification reveals a suspected release that does not affect public land, the site examiner should notify those entities that have jurisdiction over the site, and document this notification in a case file.

If a release has occurred affecting public lands, a determination must be made of whether the situation requires an emergency response. An emergency response is required if the situation poses an imminent threat to human health and welfare or the environment that requires immediate action. Examples of potential situations that may require immediate actions are the breaching of a cyanide heap leach pond that may impact a municipal water supply, a train derailment resulting in the release of a hazardous substance into a fishery, or discovery of a drug lab close to a recreation site. If, in the judgment of the examiner, the situation requires an emergency response, then the examiner should initiate the procedures outlined in the Field or State Office hazardous materials

contingency plan as soon as possible. In many emergency situations, BLM may function as a support agency.

After completion of emergency actions, the site should be reexamined to determine if all released hazardous substances have been eliminated from the site. If the examiner suspects that hazardous substances remain at the site after completion of emergency actions, a removal site evaluation (see Section 2.1 in this chapter) should be initiated. If the examiner has evidence that all hazardous substances have been eliminated from the site, then the determination that no further response actions are necessary should be documented and placed in a case file.

If a release has occurred or is suspected that affects public lands, the following information should be documented if the information can be readily obtained:

1. Date and time of release
2. Names and addresses of known PRPs
3. Location of the release site
4. Land status of the release site
5. Source or cause of the release
6. Description of the materials released such as color, odor, chemical information on labels, media (i.e., liquid, gas, solid)
7. Quantity released and extent of contamination (probably will be visual estimate)
8. Medium (i.e., soil, water, air) affected by the release
9. Potential threat(s) posed by the release
10. Number and types of injuries or fatalities (if any), and if any evacuations have occurred
11. Weather conditions at the release site
12. If an emergency response is required, any other information that may help emergency personnel respond to the release

## **1.2 Notification (40 CFR 300.125, 300.135(j), 300.170(c), 300.405, 302.7)**

All Federal agencies are responsible for releases of hazardous substances from facilities (sites) under their jurisdiction. When a site verification indicates that a release of a hazardous substance in a

quantity equal to or exceeding the reportable quantity in any 24-hour period (as defined in 40 CFR 302.6(a)) has occurred, the National Response Center (NRC) must be notified by BLM or a PRP under BLM supervision. This notification can be made by calling the NRC at 1-800-424-8802. In addition to Federal notification requirements, there may be State and local hazardous substance release reporting requirements.

### **Liability for Failure to Report**

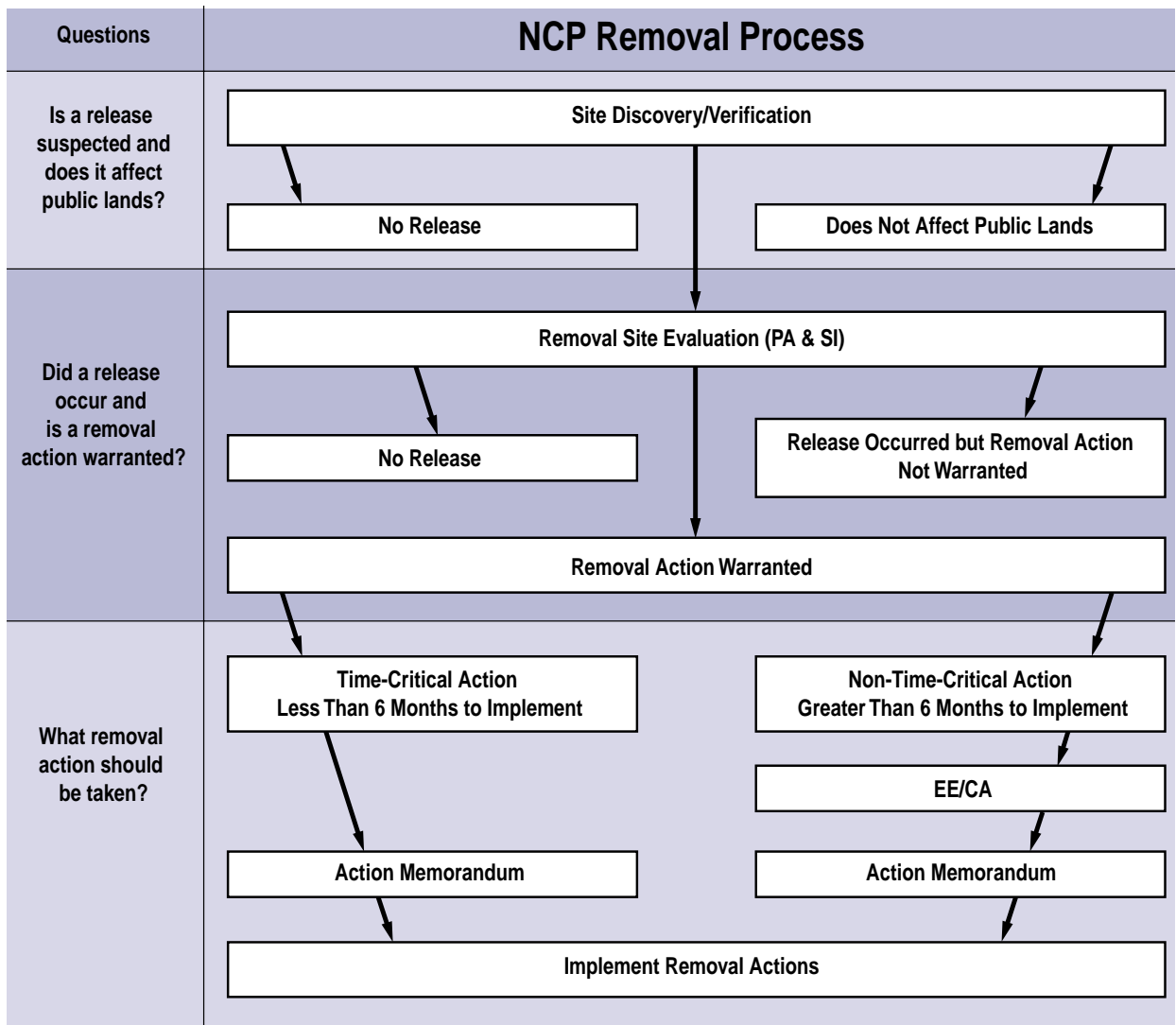
*40 CFR 302.7(a)(3) states that any person in charge of a facility from which a hazardous substance is released, in a quantity equal to or greater than the reportable quantity, who fails to notify immediately the NRC as soon as he has knowledge of such a release, shall be subject to all of the sanctions, including criminal penalties, set forth in section 103 of CERCLA with respect to such failure to notify.*

As stated in 40 CFR 300.135(j), BLM is responsible for promptly notifying the natural resource trustees who have jurisdiction over the resources potentially affected by the release. This notification must be made to regional representatives of the Federal departments and to States that coordinate trustee activities. For BLM, this notification can be accomplished by contacting the DOI, Office of Environmental Policy and Compliance (OEPC), Regional Environmental Officer (REO), representing the region in which the release occurred.

## **Section 2: Removal Process**

As discussed in the introduction of this handbook, BLM has been delegated authority, under CERCLA, to take removal actions that are consistent with the NCP for releases of hazardous substances affecting public lands. It is BLM's preference that the removal process be used to address hazardous substances releases under CERCLA whenever possible. There are three types of removal actions: time-critical, non-time-critical, and emergency. Under E.O. 12580, BLM has been delegated authority to respond as lead agency for time-critical and non-time-critical removal actions. For emergency actions, BLM can only function as a support agency. The general process used to implement time-critical and non-time-critical removal actions is depicted in Figure 1. The remaining segments of this section provide a written description of the removal process.





**Figure 1.** NCP Removal Process

**2.1 Removal Site Evaluations** (40 CFR 300.410, 415)

A removal site evaluation should be initiated as soon as possible after a site verification indicates that a hazardous substance release is suspected and emergency actions have been completed, if emergency actions were required. The objectives of a removal site evaluation are to collect, evaluate, and document information to:

- Confirm whether a release of a hazardous substance has occurred or if the threat of a release exists.

- Identify potential constituents of concern.
- Identify potential targets that may be impacted by the site and the pathways by which they may be impacted.
- Identify the need for removal actions.
- Estimate whether the removal action is time critical or non-time critical (see Section 2.2 of this chapter).

NCP removal site evaluations consist of two phases: a Removal Preliminary Assessment (Removal PA) and a Removal Site Inspection (Removal SI).

**Removal Preliminary Assessment** (40 CFR 300.410)

The Removal PA is the first evaluation of a site in the NCP process. The Removal PA is based on readily available data, such as site management practices, information from generators, aerial photos, and personal interviews. Sampling and analysis may be associated with a Removal PA, but should be limited to only those non-intrusive samples necessary to meet the objectives of a removal site evaluation (such as sampling of existing wells, but not the construction of new wells for sampling purposes). The Removal PA should include, but is not limited to, the following:

- The location of the site, including a legal description and the latitude and longitude. This description should identify any property not under the jurisdiction of BLM that may be impacted by the release.
- A description of the source and nature of the release. This description should include the type of facility or site (e.g., abandoned mine, landfill, mill site, illegal dump), the type of release (e.g., spill, abandoned containers, leaching from pit), and the estimated areal extent of the contaminated area.
- A review of existing information and data pertaining to the release.
- Identification of the substance(s) of concern, the characteristics of the substance(s) (e.g., toxic, flammable, corrosive), the quantity (if known or can be easily obtained) of each substance released, the form of the hazardous substance (i.e., liquid, solid, or gas), and the estimated or determined extent of contamination.
- Identification of existing or potential targets threatened by the release and the pathway by which they may be impacted (i.e., air, surface water, ground water, or soil exposure).
- Determination if a removal action(s) is warranted.
- If information is insufficient to determine the need for a removal action, identify the additional information needed to determine if a removal action is warranted and make a recommendation for a Removal SI.

- If a removal action is not warranted, provide a detailed rationale as to why no further actions are required.

*Examples of Removal PAs can be found at the following Web site:*

<http://web.id.blm.gov/WashOffice/ect/>

**Removal Site Inspection** (40 CFR 300.410)

The purpose of a Removal SI is to augment the data collected during the Removal PA through an on-site investigation that includes sampling and analysis. A Removal SI is initiated when the information gathered during the Removal PA is insufficient to meet the removal site evaluation objectives, or it is determined in the site verification that extensive sampling and analysis will be required. In the latter situation, the Removal PA should be combined with the Removal SI and initiated directly after the site verification.

A Removal SI should incorporate and build upon the Removal PA completed for the site. The Removal SI should include an expanded sampling program to complete the evaluation design. This sampling program should be based on the information gathered in the site verification and Removal PA. Since a removal SI will involve sampling and analysis, it is BLM policy that a Removal SI include a quality assurance plan and a field sampling plan.

*Examples of Removal SIs can be found at the following Web site:*

<http://web.id.blm.gov/WashOffice/ect/>

**Determining the Appropriateness of Removal Actions**

The need for a removal action is based on eight criteria established in the NCP (40 CFR 300.415). Information gathered during removal evaluations of a site should be checked against these eight criteria to determine the need for a removal action. The following criteria shall be considered in determining the appropriateness of a removal action:

- Actual or potential exposure to nearby populations, animals, or the food chain
- Actual or potential contamination of drinking water supplies or sensitive ecosystems

- Hazardous substances in bulk containers that may pose a threat of release
- High levels of hazardous substances in soils that may migrate
- Weather conditions (e.g., flooding) that may promote migration of hazardous substances
- Threat of fire or explosion
- Availability of other appropriate Federal or State response mechanisms to respond to the release (if another Federal, State, or local entity has taken or is taking an action that eliminates the threat from a release of a hazardous substance, then a removal action, pursuant to CERCLA, may not be warranted)
- Other situations that may pose threats to human health and welfare or the environment.

### Termination of a Removal Site Evaluation

Determinations resulting in the termination of a removal site evaluation (either a Removal PA or a Removal SI) should be based on the following factors (40 CFR 300.410 (f)):

- A release did not occur.
- The release does not involve a hazardous substance (see Glossary for definition of hazardous substance).
- The release involves a naturally occurring substance in an unaltered state (see CERCLA 104(a)(3)(A)).
- The quantity or concentration released does not pose a threat to human health and welfare or the environment.
- The need for a removal action has been determined.
- Another person or agency is taking or has taken appropriate action.
- The Removal Site Evaluation is complete.

The determination to terminate a removal site evaluation (either a Removal PA or Removal SI) must be documented in the Final Report (see Section 2.4, Final Report, in this chapter).

## 2.2 Selecting and Implementing Removal Actions Including Community Relations Requirements (40 CFR 300.400 (g), 415)

If the need for a removal action is identified in a removal site evaluation, the next phase in the NCP removal process is the selection and implementation of removal actions. The NCP (40 CFR 415) divides removal actions into two categories based on the urgency to initiate a removal action. The EPA designated these NCP categories as either time-critical removal actions or non-time-critical removal actions. The description and requirements for each category are described in the following two segments of this section. The actual selection of removal actions, whether they are time-critical or non-time-critical, is based primarily on the action's protectiveness of human health and welfare or the environment, ability to meet applicable or relevant, and appropriate requirements (ARARs), and cost. ARARs are addressed in the last segment of this section.

### Time-Critical Removal Actions

Time-critical removal actions are actions where the lead agency has determined in a removal evaluation that a removal action is necessary and that the action must be initiated within 6 months of this determination. Initiation of time-critical removal actions involves the development of an action memorandum (AM), described in Section 2.3 of this chapter, and the following community relations requirements.

Community relations requirements for time-critical actions requiring less than 120 days to complete (40 CFR 300.415(n)(2)) include:

1. Publish a notice of availability of the AR, the comment period, and the location of the AR, in a major local newspaper within 60 days after initiating the removal action.

*Note: You can implement a time-critical removal action prior to receiving public comments.*

*A model notice of public availability of the AR can be found at the following Web site: <http://web.id.blm.gov/WashOffice/ect/> (Models can also be found in Appendix 3.)*

2. Designate a community spokesperson

3. Provide a public comment period of not less than 30 days from the time that the public has been notified of the availability of the AR.
4. Prepare a response that addresses all significant comments submitted to BLM and place in the AR.

Community relations requirements for time-critical actions requiring more than 120 days to complete (40 CFR 300.415(n)(3)) include those described above for actions that take less than 120 days to complete, plus:

1. Conduct community interviews to solicit concerns and information needs.
2. Prepare a Community Relations Plan that is based on the community interviews and describes the community relations activities that the lead agency will undertake during the response.

*Examples of community relations plans can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/>

3. A copy of the AR should be placed in an easily accessible location, such as a library or municipal building near the site.

### Non-Time-Critical Removal Actions

Non-time-critical removal actions are actions that may be initiated 6 months after the determination that a removal action is necessary. If a non-time-critical removal action is justified in any site evaluation, the NCP (40 CFR 300.415(b)(4)(i)) requires the preparation of an Engineering Evaluation/Cost Analysis (EE/CA), and under BLM policy, an AM. AMs are described in Section 2.3 of this chapter.

The EE/CA establishes the removal action objectives and provides the documentation for identified ARARs, analyzes cost-effective removal alternatives, and recommends a preferred removal alternative that best meets the removal objectives. Analysis of removal alternatives is based on the following criteria:

#### Effectiveness

- Overall protection of human health and welfare or the environment

- Compliance with ARARs and other criteria, advisories, and guidance
- Long-term effectiveness and performance
- Reduction of toxicity, mobility, or volume through treatment
- Short-term effectiveness

#### Implementability

- Technical feasibility
- Administrative feasibility
- Availability of services and materials
- State acceptance

#### Cost

- Long-term cost for operation and maintenance
- Reasonable cost (elimination of alternatives with grossly excessive costs)

The EE/CA must include, or reference, all information used to select the removal alternatives. In most situations, an EE/CA will require sampling and analysis. For these situations, a quality assurance plan and a field sampling plan are required.

*Examples of quality assurance and field sampling plans can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/>

The EPA has issued guidance for performing EE/CAs (see EPA/540-R-93-057). The format of the EE/CA document is as follows:

1. Introduction
2. Site Characterization
3. Identification of Removal Action Objectives and Documentation of ARARs (see Section 2.4 in this chapter)
4. Identification and Analysis of Removal Action Alternatives
5. Comparative Analysis of Removal Action Alternatives
6. Recommended Removal Action Alternative

Examples of EE/CAs can be found at the following Web site: <http://web.id.blm.gov/WashOffice/ect/>

The following community relations activities are required to implement non-time-critical removal actions (40 CFR 300.415(n)(4)).

Community relations requirements prior to completing the EE/CA include:

1. Conduct community interviews to solicit concerns and information needs.
2. Prepare a Community Relations Plan that is based on the community interviews and describes the community relations activities that will be undertaken during the response.
3. Designate a community relations spokesperson.

Examples of community relations plans can be found at the following Web site: <http://web.id.blm.gov/WashOffice/ect/>

Community relations requirements after completion of the EE/CA and before the signing of the AM include:

1. Publish a notice of availability of the AR, a brief description of the EE/CA, the location of the AR and the repository, and the comment period in a major local newspaper.

*Note: You must receive and respond to public comments before implementing a non-time-critical removal action.*

*A model notice of public availability of the AR can be found at the following Web site: <http://web.id.blm.gov/WashOffice/ect/> (Models can also be found in Appendix 3.)*

2. Provide a public comment period of not less than 30 days from the time that the public has been notified of the availability of the AR.
3. Prepare a written response to comments and place in the AR.
4. A copy of the AR should be placed in an easily accessible location, such as a library or municipal building near the site.

### **Applicable or Relevant, and Appropriate Requirements (ARARs)**

CERCLA adopted an approach to attain existing standards established by other Federal and State laws and regulations when such standards are

determined to be “applicable or relevant, and appropriate” (ARAR). An ARAR may be either a Federal requirement or state promulgated requirement that is legally applicable, or relevant and appropriate to the contaminant, location, or other site circumstances. In accordance with the NCP (40 CFR 300.400(g)), lead agencies are required to identify ARARs for a release. The lead agency should give primary consideration to identified ARARs, together with protectiveness, effectiveness, and cost when selecting a removal action. Some examples of sources of ARARs are the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act (RCRA), and State environmental laws and regulations that are more stringent than Federal standards and requirements.

ARARs have been divided into three groups:

1. Chemical-specific: Requirements are based on the substance released. An example of this type of ARAR would be surface water quality standards.
2. Location-specific: Requirements are based on where the release occurred. An example of this type of ARAR would be requirements because the site is located within a 100-year floodplain.
3. Action-specific: Requirements are based on the proposed actions being considered to clean up the site. An example of this type of ARAR would be Department of Transportation (DOT) regulations pertaining to the transport of hazardous wastes.

ARARs are identified by the lead agency through consultation with support agencies. The main support agencies for releases on public lands are the EPA (specifically the EPA regional office having jurisdiction over the location of the release) and State environmental agencies (usually the State department of environmental quality). If the release affects other lands or resources not under the jurisdiction of BLM, those entities having jurisdiction over those lands or resources must be consulted. In addition to the ARARs identified by the support agencies mentioned above, BLM may also have ARARs associated with the release.

Due to the urgency to implement time-critical removal actions, formal consultation with support agencies is not required. The lead agency is responsible for evaluating the relevance and appropriateness of the requirements submitted by

support agencies pertaining to the circumstances related to the release, and for consulting with support agencies regarding requirements deemed irrelevant or inappropriate. To the extent practicable, the lead agency must comply with requirements determined to be relevant and appropriate when selecting and implementing removal actions.

Formal consultation by the lead agency for non-time-critical removal actions is initiated through a written request for a list of potential ARARs from support agencies.

*A model letter for requesting ARARs can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/> (Models can also be found in Appendix 3.)

At a minimum, the request should contain the following information:

- General description of the site
- Site location
- Impacts on human health and welfare or the environment
- Volume and type of hazardous substance released
- A description of proposed removal actions

It is recommended that formal consultation with support agencies about chemical- and location-specific ARARs be initiated as soon as possible after it is determined in a removal site evaluation that a removal action is warranted. Consultation regarding action-specific ARARs should commence during the analysis of removal action alternatives.

The support agency must provide a list of ARARs to the lead agency in a timely manner, which is described as a period of 30 working days after the support agency has received the written request. The NCP (40 CFR 300.515 (h)(2) addresses remedial actions, but this standard is also applicable to removal actions. When providing a list of ARARs, the support agency must provide the appropriate citation for the statute or regulation that is the basis for the requirement.

## 2.3 Action Memorandum

It is BLM policy to complete an Action Memorandum (AM) prior to initiating any removal action on public lands. The AM serves as the primary decision document communicating to the public why a removal action is necessary, what the proposed action is, and the rationale for selecting a specific action. The AM usually does not require further sampling and analysis, with the exception of sampling and analysis required for action-specific ARARs. The AM must also include sufficient documentation to comply with other environmental laws, regulations, and BLM policy that would apply to the release site.

At a minimum, the AM must include:

- Summary of the need for a removal action and removal action objectives
- Justification of the urgency for a removal action (whether it is time-critical or non-time-critical in nature)
- Documentation of ARARs for time-critical removal actions (ARARs for non-time-critical removal actions are addressed in the EE/CA)
- Recommended removal action alternatives (must include at least two alternatives, with one being a “no action” alternative)
- Estimated cost for each alternative
- Identification and detailed description of the selected alternative
- Documentation showing compliance with other environmental laws and regulations

*Examples of Action Memorandums can be found at the following Web site:*

<http://web.id.blm.gov/WashOffice/ect/>

## 2.4 Final Report

After the completion of a removal action, the OSC should prepare a final report that describes the actual removal actions taken, and documents the costs associated with taking the actions. The report should be signed by the OSC having jurisdiction over the site and placed in the case file. Copies of the report may be requested by the Regional Response Team. Submittal of the final report to the Regional Response Team should be made through the DOI OEPC REO.

### Section 3: Remedial Process

BLM has been delegated the authority, under CERCLA, to take remedial actions for hazardous substance release sites affecting public lands, except for remedial actions at sites that have been placed on the NPL. For BLM sites on the NPL, BLM will perform the duties of the lead agency but must have approval from the EPA and DOI before implementing a remedial action. The remedial process is depicted in Figure 2. The remaining segments of this section briefly describe the remedial process.

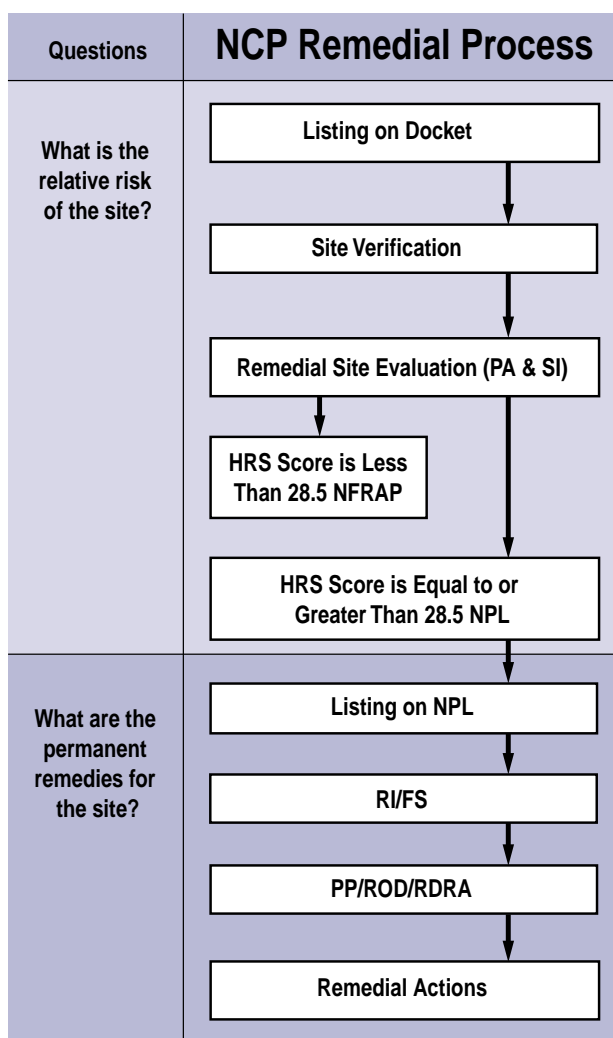


Figure 2. NCP Remedial Process

#### 3.1 Federal Agency Hazardous Waste Compliance Docket

It is BLM’s preference that remedial actions not be initiated for a site unless the site is listed on the Federal Agency Hazardous Waste Compliance Docket (Docket). The Docket is an EPA list of Federal sites that require remedial evaluation. The Docket was created by section 120(c) of CERCLA and is compiled from a variety of sources including the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), the Emergency Release Notification System (ERNS), and RCRA databases (RCRA 3005, 3010, and 3016). However, site listings on these databases do not guarantee that a site will be placed on the Docket. In addition to these databases, sites on public lands can be listed on the Docket at the request of BLM.

The Docket is updated on a periodic basis and the updates are published in the Federal Register. The current Docket update can be viewed on the Internet at the following Web site: <http://es.epa.gov/oeca/fedfac/oversight/oversight.html>. BLM is given the opportunity to review and comment on each Docket update prior to its publication in the Federal Register. This review is coordinated by WO-360, the Protection and Response Group. If the Field Office hazardous materials coordinator is unaware of a site that has been placed on the Docket, he/she should initiate a site verification as described in Section 1.1 of this chapter. A comprehensive list of Docket sites for a specific EPA region can be obtained by contacting the EPA Regional Federal Facilities Coordinator.

The Federal Register states that it is EPA policy that a Remedial PA, and if appropriate, a Remedial SI, be completed for a site within 18 months after it is listed on the Docket and published in the Federal Register, unless EPA agrees to waive this requirement or extend the time period. In addition, a site verification, as discussed in Section 1.1 of this chapter, should be completed for the site prior to initiation of a Remedial PA, if a site verification has not already been completed. Remedial evaluations for a hazardous substance release site are addressed in the following sections.

#### 3.2 Remedial Site Evaluations (40 CFR 300.420)

NCP remedial site evaluations have two phases, a Remedial Preliminary Assessment (Remedial

PA) and a Remedial Site Inspection (Remedial SI). The primary objective of a remedial site evaluation is to determine the relative significance of the site in terms of risk to targets.

Remedial site evaluations generally involve more complex situations that require long-term response actions compared to those resolved through the removal process. It is BLM policy that if a remedial site evaluation is initiated for a site that has had no removal evaluation completed, the remedial evaluation should include an analysis to determine if a removal action is warranted. This analysis should be based on the criteria for determining the appropriateness of a removal action addressed in Section 2.1 of this chapter. If at any time a removal action is determined to be warranted and is documented in the AR, it should be implemented in accordance with the guidance provided in Section 2 of this chapter.

### **Remedial Preliminary Assessment** (40 CFR 300.420 (b))

A Remedial PA is a limited-scope investigation performed on all sites listed on the Docket. The Remedial PA is designed to determine which sites require a remedial site inspection. The Remedial PA relies on a review of existing information pertaining to the site, including pathways, targets, sources, and waste characteristics. A Remedial PA may involve an on-site and off-site reconnaissance, including sampling if appropriate. Guidance for conducting a Remedial PA is provided in the EPA publication, *Guidance for Performing Preliminary Assessments Under CERCLA*, Publication Number EPA/540/G-91/013. The objectives of a Remedial PA include:

- Identifying those sites that pose little or no threat to human health and welfare or the environment.
- Identifying any removal actions for sites where a removal evaluation has not been completed.
- Providing an information base for developing strategies to evaluate those sites requiring additional remedial evaluation.

The content of a Remedial PA consists of two separate documents, the Site Narrative and the Remedial PA Scoresheet Package. Both documents should be autonomous and only the narrative report should be submitted to the EPA.

**Site Narrative** - The fundamental purpose of the site narrative is to describe the site both physically and in terms of its operational history. Conclusions expressed in the narrative focus on releases of hazardous substances (potential and observed) from the site and the possible current and future impacts to human health and welfare or the environment. Specifically, the narrative must include the following sections:

1. Introduction
2. Site description, operational history, and waste characteristics
3. Pathways and environmental hazards
4. Analysis of the appropriateness of a removal action (if a removal evaluation has not been completed for the site)
5. Summary and conclusions
6. Photo documentation log
7. References
8. Remedial PA data and site characteristics form (OMB-2050-0095)

**Remedial PA Scoresheet Package** - The Remedial PA Scoresheet Package functions as a self-contained workbook that provides all information necessary to calculate a Remedial PA score. The package consists of the following scoresheets:

- General information
- Source evaluation
- Waste characteristics
- Ground water pathway
- Surface water pathway
- Soil exposure pathway
- Air pathway
- Site score calculations

### **Remedial Site Inspection** (40 CFR 300.420 (c))

The objective of the Remedial Site Inspection (Remedial SI) is to gather information to support a site decision regarding the need for further evaluation or remedial actions. The Remedial SI is not an



extent-of-contamination study or a full-risk-assessment study. Guidance for conducting a Remedial SI is provided in *Guidance for Performing Site Inspections Under CERCLA-Interim Version*, EPA publication number EPA 540-R-92-021.

A primary purpose of the Remedial SI is to test the Remedial PA hypothesis that the site poses a significant threat to human health and welfare or the environment based on the PA score and to collect information to score the site using the Hazard Ranking System (HRS) if the Remedial PA hypothesis is shown to be accurate. Guidance for producing an HRS score is provided in 40 CFR 300, Appendix A. The HRS is the principal mechanism used by the EPA to place sites on the NPL. The HRS score provides a measure of relative rather than absolute risk associated with the release of an uncontrolled hazardous substance.

Three types of SIs are described in the EPA guidance as follows.

**Focused Site Inspection** - The goal of the FSI is to obtain analytical data to test Remedial PA hypotheses that result in a site score of greater than or equal to 28.5. Since the Remedial PA score may be based on professional judgement rather than analytical data, the FSI emphasizes sampling to obtain critical analytical data not available or used to determine a PA score. The FSI should reflect the importance the HRS attaches to the migration of hazardous substances from sources at the site and their presence at targets. The data collected in the FSI is used to refine the site score developed during the Remedial PA. This can be accomplished through the prescore computer program available from EPA Regional Offices.

If the FSI confirms the Remedial PA score, additional remedial evaluation of the site may be required. At a minimum, information necessary to complete an HRS score for the site will have to be collected.

If the FSI indicates that the site does not pose a significant threat to human health and welfare or the environment (prescore is less than 28.5) and the EPA concurs with this conclusion, then the site should receive a “no further remedial actions planned” (NFRAP) status from the EPA. Once a site has received this status, it is usually referred to the State by the EPA.

An FSI should consist of two separate documents including the FSI narrative report and the prescore package (for internal use only).

**Expanded Site Inspection** - The objective of the ESI is to collect all data necessary to prepare an HRS scoring package. In addition, the ESI should accomplish the following:

- Investigate Remedial PA assumptions not adequately tested during the FSI.
- Verify sources of contamination and extent of migration.
- Establish representative background levels.
- Collect any other missing HRS data for pathways of concern.

The ESI will usually require extensive sampling (more than 25 samples). Sampling during the ESI is designed to support and document observed releases, observed contamination, and levels of contamination as required by the HRS. Thus, an ESI will require a complete Quality Assurance/Quality Control (QA/QC) program for sampling and analysis.

The EPA has 12 months to evaluate SI documents and complete an HRS score. If the EPA HRS score remains equal to or greater than 28.5, EPA may nominate the site for the National Priority List. If the score is less than 28.5, the EPA may assign a NFRAP status and refer the site to the State.

**Single Site Inspection** - An SSI should be considered only if all data necessary to complete an accurate HRS score exists. This situation will usually exist for sites having significant amounts of analytical data previously collected by municipal, county, State, or other Federal authorities. The SSI should emphasize the evaluation of data quality and relevance to the site. The collection of additional analytical data should be limited to the accomplishment of the tasks outlined for the FSI. Documents to be prepared by BLM are the same as those for the FSI.

### HRS Scoring

A Remedial PA or prescore package should be completed by a BLM RPM or a contractor under BLM oversight for all Remedial PAs or SIs

completed for BLM Docket sites. The purpose for BLM completing a Remedial PA or prescore package for a site is to gain an understanding of the pathways and targets of concern and the relative significance of these concerns. This knowledge will be essential for discussions with the EPA and other regulatory agencies regarding the significance of the site. These packages are also the primary tool for developing strategies for future required remedial evaluations of the site. Most EPA regions will not accept Remedial PA or prescore packages from other agencies, but will prepare their own HRS score for the site. BLM Remedial PA and prescore packages are for internal use only.

### 3.3 Remedial Investigation/Feasibility Study (40 CFR 300.430)

A Remedial Investigation/Feasibility Study (RI/FS) is conducted for sites having HRS scores greater than or equal to 28.5 that have been placed on the NPL by the EPA. An RI/FS may also be conducted if a court or administrative order requires this level of investigation or if BLM chooses to initiate an RI/FS for a non-NPL site. The RI/FS must be started within 6 months of the NPL listing in accordance with Section 120 of CERCLA. The following provides a general description of the RI/FS process; however, because of the complexity of these investigations and their potential costs, Field Office RPMs should work closely with a DOI solicitor and seek assistance from BLM senior technical specialists with experience in conducting an RI/FS. The RI/FS process includes the following:

#### Remedial Investigation

The RI consists of two phases. The first phase of an RI is a project scoping phase, which defines the type and sequence of site activities. Completion of this phase should result in four plans:

- **Work Plan** - documents the decisions made and describes the steps required to conduct the RI and FS.
- **Sampling and Analysis Plan (SAP)** - specifies how sample collection activities are to be conducted in accordance with technically accepted protocols and includes a quality assurance project plan (QAPP).
- **Health and Safety Plan (HASP)** - identifies potentially hazardous operations and prescribes protective measures for on-site workers, surrounding communities, and the environment.
- **Community Relations Plan** - documents the community concerns at a site, identifies the community relations objectives, and specifies how the objectives will be met.

The second phase of the RI is the site characterization phase. This phase builds on the scoping phase and includes implementation of the project plans. Typical activities include:

- Conducting field investigations to define the site's physical characteristics
- Analyzing samples to support remedy selection and cost recovery or other legal actions
- Defining the nature and extent of the threat
- Conducting a baseline risk assessment
- Evaluating additional data needs
- Identifying ARARs

#### Feasibility Study

The FS may be conducted concurrently with the RI and consists of two phases. The first phase of the FS identifies remedial action alternatives for the site. These alternatives, including a no-action alternative, must undergo a detailed analysis based on nine criteria. These criteria include:

- Overall protection of human health and welfare or the environment
- Compliance with ARARs
- Long-term effectiveness and permanence
- Reduction of toxicity, mobility, or volume through treatment
- Short-term effectiveness
- Implementability
- Cost
- State acceptance
- Community acceptance

The second phase of an FS is a treatability study. A treatability study is conducted if a preferred remedial action alternative cannot be adequately evaluated based on the available information. For example, if a new technology is proposed that does not have a proven track record, it must be tested to ensure it is appropriate for the contamination at a particular site.

### **Proposed Plan**

The PP identifies the alternative that provides the best balance of trade-offs in light of the nine FS evaluation criteria. The PP should describe the remedial alternatives analyzed, identify the preferred alternative, summarize the information relied upon to select the remedy, and solicit public comment. To solicit public comment, a notice and brief analysis of the PP are published in a major local newspaper of general circulation. The PP, along with all other information, is also made available to the public in a repository located near the site, such as an Area or District Office. The public is allowed 30 days (which may be extended to 60 days upon a timely request) to comment on the PP. Community relations requirements for remedial actions are detailed in 40 CFR 300.430.

Following receipt of public comments on the PP, a Responsiveness Summary containing all questions and comments raised by the public, including the agency's responses to the comments and questions, must be completed. Based on the FS, PP, and the Responsiveness Summary, a final remedy is selected and a Record of Decision (ROD) is prepared.

### **Record of Decision**

The ROD documents the remedial action selected for the site, the design of the selected action, and provides a plan for implementation. The ROD also provides the rationale supporting the remedy selection and establishes the performance goals and standards for the project.

### **Remedial Design/Remedial Action**

Once the remedy is selected, the RD/RA phase follows. The RD is an engineering phase which develops technical drawings and specifications for the selected remedy. The RA implements the designed action, and includes implementation plans and requirements for construction activities.

### **Operation and Maintenance**

The last stage of the remedial implementation process is O&M. The major purpose of O&M is to maintain and measure the effectiveness of the selected remedy. Such activities may include ground water monitoring, air monitoring, or maintenance of security measures. For sites where hazardous substances will remain at the site, BLM must review the performance of the remedy no less than every 5 years to ensure that the remedy remains protective of human health and welfare or the environment.

Detailed guidance for conducting investigations of NPL-listed sites is provided in *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, EPA publication number EPA 540 G-89 004.



## Chapter 4

# *Enforcement Actions*

### Section 1: Introduction

This chapter provides a set of procedures for BLM to follow in pursuing cost recovery or cost avoidance cases under CERCLA. The procedures should be followed for all site response actions involving expenditure of BLM-appropriated funds. The procedures are consistent with CERCLA as amended by the Super-fund Amendments and Reauthorization Act of 1986 (SARA). These laws allow BLM to hold PRPs, as responsible parties, liable for all costs of removal or remedial actions incurred by BLM (CERCLA Section 107).

BLM is the lead agency on BLM-managed lands to implement CERCLA authorities under Executive Orders 12580 and 13016. Cost recovery or civil enforcement actions should be taken simultaneously with a response action in order to maximize BLM resources. You must involve BLM law enforcement if you have reason to believe that criminal activity has taken place. BLM law enforcement will take the lead at a site for criminal investigation. The following sections describe a timeline for cost recovery and civil enforcement actions, necessary decision documents, solicitor involvement, and developing strategies for pursuing a cost recovery or enforcement case.

#### 1.1 BLM Policy

The NCP and CERCLA authorizes the lead agency to pursue recovery of funds spent for the study or clean up of a site involving a release or threat of a release of a hazardous substance. It is BLM policy that where BLM has expended such costs, and where a viable PRP exists, BLM shall pursue recovery of the costs spent by BLM from the viable PRP. It is also BLM policy that where a viable PRP is identified prior to BLM incurring

costs for study or clean up of a site with a release or threat of release of a hazardous substance under CERCLA, that the PRP be provided the opportunity to complete the site studies and cleanup actions, if in BLM's estimation that PRP is technically and financially capable of performing those actions.

Any person who qualifies as a PRP may be held liable for the government's costs for response actions not inconsistent with the NCP, which include the costs for investigations, site monitoring, sampling, alternatives evaluation, legal work, contractors, personnel time, and equipment. In order to implement DOI policy to aggressively pursue PRPs to correct their contamination of public lands and facilities, and/or to recover the full costs associated with a cleanup, it is necessary to conduct a PRP search to ascertain whether any viable PRPs exist from whom to pursue cost recovery. This search will determine the identity and status of PRPs, as well as develop the evidence of liability that may be used in a judicial and an administrative action.

PRPs may assert defenses to liability, which can include acts of God, war, or of a third party. Liability under CERCLA is strict (regardless of fault); joint and several (the PRP is responsible for all of the environmental contamination, unless that PRP can show that the harm is divisible, i.e., can be divided among the parties); and retroactive (the PRP is liable for activities occurring before the enactment of CERCLA in 1980).

## Section 2: Potentially Responsible Parties (PRPs)

In order to prove a cost recovery case, the necessary elements of liability must be present:

1. There must be a hazardous substance (broadly defined - see list at 40 CFR Part 302) released or a substantial threat of a release.
2. The release or threat of release is from a facility (see Glossary).
3. Such release has caused response costs.
4. The party against whom liability is asserted qualifies as a PRP.

A PRP, according to CERCLA, is any "person" who may be held liable for the costs of cleaning up hazardous substances released into the environment. A "person" includes individuals,

corporations, partnerships, municipalities, and State or Federal agencies that are a:

- **Current Owner/Operator** - a person who currently owns the land or operates the facility where hazardous substances are located (regardless of whether the activity has occurred during the current owner or operator's involvement at the site).
- **Past Owner/Operator** - a person who owned or operated the land or facility at the time hazardous substances were disposed of at the site (requires proof that disposal occurred during that person's ownership or operation).
- **Arranger/Generator** - a person who arranged for the disposal or treatment of the hazardous substances at the site.
- **Transporter** - a person who accepted substances for transport to a disposal or treatment facility.

### 2.1 Overview of PRP Searches

It is BLM policy that a PRP search should be completed at every site where BLM conducts a response action, except when the response action is being handled as part of a criminal enforcement measure, when the PRPs are already known, or when there are clearly no identifiable PRPs. The latter case must be documented according to the guidelines that follow. A PRP search should be initiated, once the decision is made by BLM that a response action should be taken and none of the aforementioned criteria apply. However, the PRP search process may continue throughout the cleanup stages.

### 2.2 PRP Searches

In general, BLM uses a two-step process in conducting PRP searches. An initial evaluation of the situation and then, if necessary, a more thorough, in-depth research of the applicable records should be conducted. For example, if there are readily identifiable PRPs at a site, then a PRP Evaluation Search will be undertaken which consists primarily of data collection and an initial title search of the records. This PRP Evaluation Search is a relatively inexpensive effort to identify PRPs at a site. PRP Evaluation Searches generally consist of the following activities (but are often site dependent):

- Identifying the site with a legal description/name.
- Determining the history of operations at the site.
- Collecting and compiling records, including an initial title search of the site.
- Referencing likely contaminants of concern and the time frames in which they were generated or disposed of at the site identified during the site evaluation.
- Identifying current/past site operators/owners at the time when contaminants of concern were used. Also, identifying any arrangers/generators or transporters of the hazardous substances.
- Preparation of a PRP Evaluation Search Report. A checklist for conducting a PRP Search Evaluation can be found in Appendix 4.

After the PRP Evaluation Search Report is completed, you and your team should review the information and decide whether additional work needs to be performed. For instance, if there are significant data gaps that should be addressed and/or if PRPs are identified, but their financial viability and their legal liability needs to be ascertained, then a more thorough search needs to be completed. If no further work needs to be done, then this decision should be documented in a Decision Memo (see Section 6). If, however, a more thorough search needs to be undertaken to address the data gaps, such a search should include the following activities:

- Collecting and compiling additional records for review and inclusion in the files
- Issuing CERCLA 104(e) Information Request Letters
- Interviewing persons who have knowledge of the site
- Obtaining PRP name and address updates
- Developing a PRP status/PRP history
- Determining the financial status of PRPs
- Preparing a PRP Baseline Search report

## 2.3 Qualifications to Conduct PRP Searches

It is important to ensure that the person or persons conducting PRP searches have sufficient qualifications for meeting BLM's needs. When a contractor is used, resumes should be provided that demonstrate the contractor has had previous experience in conducting PRP searches. Any individual (whether BLM staff or contractor) who conducts a PRP search should at least have the ability to search title, review financial records, and assess mining claims and patent records. These persons should also have sufficient background in CERCLA and other environmental laws to make assessments of whether parties are PRPs at a site and to determine if waste is a hazardous substance. Additionally, if a contractor is used, a statement of work (SOW) should be prepared. Prior to writing the SOW, the objectives of the PRP search report should be scoped by BLM. In scoping the objectives, the following should be considered:

1. Are PRPs already identified from in-house records?
2. If so, then what further information is needed to determine whether the PRPs are viable?
3. If not, what other sources might be best for a contractor to search?
4. Will travel to search those resources be necessary?
5. If PRPs are identified from in-house records, are those records sufficient to identify all PRPs?
6. What further information will be needed to determine whether a PRP is financially viable?
7. Should a contractor provide direct advice on whether a PRP might be financially viable and recommend further information be collected regarding a PRP?

*A model Statement of Work for a PRP search can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/>

BLM staff should first research in-house records to determine if there is sufficient information on PRPs available to bypass a more formal search by a contractor. Persons conducting research of in-house records should have experience with title searches and assessments of claims and patents. BLM staff should also have attended the BLM training course, CERCLA Cost Recovery and

Enforcement, 1703-19. NSTC currently has an environmental consulting firm under contract that can be contacted to prepare PRP searches. Other contractors who are qualified to prepare PRP searches are available through the GSA Schedule. Field offices can consult with NSTC to determine if an environmental consultant is qualified to perform a PRP search.

#### 2.4 Costs/Scheduling for PRP Searches

Based on past experience, PRP Evaluation Searches, if performed by a contractor, can take up to 3 months to complete at costs between \$1500 and \$3000. More complex and thorough PRP search can take several more months and cost upwards of \$10,000 or more to complete if performed by a contractor. The cost of a PRP search may vary significantly, depending on the complexity of the site history, the number of PRPs identified, and the complexity of corporate issues. It is the OSC/RPM's responsibility to schedule time accordingly and to plan the budget they will require currently, as well as for the future.

### Section 3: Actions to Be Taken Once a PRP Search Is Completed

Once a PRP search is completed, a copy of the Evaluation or Baseline Search Report should be sent to the Solicitor's Office for review and comment. After this review, it is BLM policy that the OSC/RPM prepare a draft Cost Recovery Plan (CRP) for submittal to the Solicitor. The OSC/RPM must be qualified to prepare draft CRPs by taking BLM training course 1703-19, as amended.

#### 3.1 Overview of a Cost Recovery Plan

A CRP is prepared from either the PRP Evaluation Search Report or the PRP Baseline Search Report. The CRP should be prepared by the OSC/RPM, with the assistance of NSTC staff (when requested), for the Solicitor's review. This is the planning document that identifies what steps will be taken, how, and by whom, for the purpose of developing and proving the case against each identified PRP. The CRP identifies assignments and the process necessary to develop the evidence. It enables BLM to develop an enforcement strategy and helps to prepare for successful negotiations.

#### 3.2 Contents of a Cost Recovery Plan

A CRP must identify whether the elements of liability are present and what the existing or missing evidence is, identify the PRPs, and incorporate technical information about the site. Legal questions may also be posed, and management needs should be addressed. Finally, the next steps in the process should be detailed. These steps may include:

- Additional contractor support for further PRP research
- Administrative record and/or cost documentation file maintenance
- Community relations requirements completed
- Preparation of CERCLA 104(e) Information Request Letters
- Site entry/access requests
- Notice letters
- Demand letters
- Communications with PRPs
- Preparation for settlement discussions and/or case referral

*A model Cost Recovery Plan can be found at the following Web site:*

<http://web.id.blm.gov/WashOffice/ect/>

It is not necessary to prepare a CRP in cases where a PRP Evaluation or Baseline Search indicates definitively that there are no viable PRPs, and after consultation with the Solicitor's Office that no further information inquiries are deemed worthwhile. However, the reason for not pursuing PRPs must be documented in a Decision Memo described in Section 6 of this chapter.

### Section 4: Sending CERCLA Section 104(e) Information Request Letters and General Notice Letters

CERCLA 104(e) allows BLM to send letters requesting information about a site to any person who might have information about that site. The OSC/RPM, with the assistance of NSTC staff

(when requested), should draft the CERCLA 104(e) Information Request Letters and General Notice Letters. These draft letters must be reviewed and approved by the Solicitor's Office prior to being sent to PRPs under the signature of the State Director, or if delegated the authority, by the State Director's designee.

#### 4.1 Information Request Letters

A person receiving a 104(e) Information Request Letter is most often a PRP at the site, but can also be a person who may have information about the site. For example, employees of a company that operated at the site or shareholders of the company can be requested to provide information.

CERCLA 104(e) Information Request Letters should be sent immediately upon identification of data gaps or financial information needs from a PRP. Data gaps and the need for further financial information on a PRP are generally identified in a PRP Baseline Search or developed through further research upon completion of the PRP Baseline Search.

If a response to a 104(e) Information Request Letter is overdue by 14 working days, the OSC/RPM should refer the matter in writing to the Solicitor's Office for action. If a PRP does not respond to the request within the specified time period, the PRP may be subject to civil penalties of up to \$25,000 per day. The Solicitor may recommend that an Administrative Order to Compel Compliance with the Information Request Letter be issued.

*A model 104(e) Information Request Letter can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/>

#### 4.2 General Notice Letters (Notification of Potential Liability)

The purpose of the General Notice Letter is to inform PRPs of their potential liability for future response costs, to begin or continue the process of information exchange, and to initiate the process of negotiations.

General Notice Letters should be sent to PRPs for response actions immediately after a PRP is identified through the PRP Baseline Search or in a Supplement to the PRP Baseline Search. If PRPs are already known prior to conducting a PRP

search, then General Notice Letters should be sent without further delay. Early receipt of a General Notice Letter will ensure that PRPs have adequate knowledge of their potential liability, as well as a realistic opportunity to participate in settlement negotiations.

When it is necessary to send a separate 104(e) Information Request Letter to a PRP prior to the General Notice Letter, then the information request should be sent without delay so that a General Notice Letter can follow in a timely manner.

*A model General Notice Letter can be found at the following Web site:*  
<http://web.id.blm.gov/WashOffice/ect/>

### Section 5: Setting Priorities for Cost Recovery Cases

It is BLM policy to pursue a cost recovery action whenever BLM spends money to clean up a site, where there are viable PRPs available to pay the cost, and where it's cost effective to do so. In setting priorities among sites for cost recovery action, those sites that have incurred or are expected to incur the most costs to BLM and where there are clearly viable PRPs should be pursued first. Sites where there are pending bankruptcies should be a high priority as certain decisions and court filings may be needed on an immediate basis.

Other high priority cases are:

- Criminal cases being pursued by law enforcement
- Where known viable PRP(s) are recalcitrant, such as in an adverse occupancy trespass situation
- Cases where pursuit of cost recovery will set a good precedent
- When the statute of limitations might be exceeded if a cost recovery action is not taken immediately.

### Section 6: Documenting Decisions on PRPs

All decisions on liability and economic viability regarding PRPs must be documented by BLM in a



Decision Memo. In all cases, the final decision on pursuing an enforcement case against a PRP must be recommended by the Regional Solicitor's Office. The Decision Memo should be placed in the case file, not in the AR. Decision Memos should be completed to document the following:

- The reason a PRP Evaluation Search was not conducted.
- If a PRP Evaluation Search was completed but a PRP Baseline Search was not, then the specific reasons for not doing the PRP Baseline Search must be provided.
- A PRP Baseline Search was completed, but no financially viable PRPs were found as recommended by the Solicitor's Office (solicitor documentation must be attached).
- PRPs were found, but a decision was made based on a Solicitor's opinion (must be attached) that it would not be worthwhile to pursue the PRPs.
- Viable PRPs were found and are being pursued under a Cost Recovery Plan.

Decision Memos must be signed by the OSC/RPM, the hazardous materials State Office program lead, or the AML State coordinator, and concurred upon by the Solicitor's Office. The State Director is ultimately responsible for implementing CERCLA authorities as delegated by IM 2000-093, unless that authority is re delegated by the State Director to the Field Office.

The Decision Memo should include the following four sections:

1. Site Description should identify the site and its location, provide a BLM identification number, and briefly describe the problem at the site.
2. Work Conducted and Associated Costs should briefly describe the action(s) taken by BLM, BLM's contractor, or other government agencies; the initiation and completion date of the action(s) taken; and an estimate of the amount of money spent or expected to be spent.
3. Discussion of the basis to pursue/not to pursue Cost Recovery/Cost Avoidance should include the information that led to the recommendation

by the Solicitor's Office to pursue/not to pursue, or the reason a PRP Evaluation Search or PRP Baseline Search was not conducted.

4. Conclusion should restate the amount of the total response costs expended or projected for the site not previously recovered and the reason for not pursuing Cost Recovery/Cost Avoidance at the site.

In all cases, BLM should request from the Solicitor's Office a legal analysis in writing of the basis for any determination of why PRPs should or shouldn't be pursued. Some examples of reasons the Solicitor might provide in determining if PRPs should not be pursued could include:

- No PRPs were identified at the site
- The identified PRPs are not financially viable
- Evidence does not support one or more essential elements of a prospective cost recovery case and there is no reason to believe that such evidence can be discovered or developed in the future
- The case is legally questionable
- Cost recovery procedures would be prohibitively expensive compared to the costs that would be recovered.

## Section 7: Statute of Limitations

CERCLA Section 113 requires that an initial action for cost recovery must commence as follows:

- For a removal action, within 3 years after completion of the removal action.
- For removal actions where remedial action is initiated within 3 years after the completion of the removal action, the cost incurred in the removal action may be recovered according to the remedial action statute of limitations (see next bullet).
- For a remedial action, within 6 years after initiation of physical on-site construction of the remedial action.

## Section 8: Cost Avoidance vs. Cost Recovery

It is BLM policy to consider cost avoidance activities such as negotiating an agreement under CERCLA sections 122 and 104 with a PRP prior to spending any taxpayer monies on site cleanup. If there exists an “imminent and substantial endangerment,” then a Unilateral Administrative Order (UAO) may be necessary. These documents must be drafted by the Solicitor. These agreements should be a consideration at the beginning of the analysis, especially where there are cooperative PRPs capable of performing the response action or study.

If cost avoidance is not practical, BLM will pursue cost recovery actions. This strategy might be necessary where it is BLM’s opinion that PRPs are not considered competent to perform a study or response action. All PRPs must be considered, since at a single site, there may be some PRPs who are considered competent and others who may not be considered competent. BLM must outline a negotiating strategy for each PRP in a Cost Recovery Plan.

Other reasons to pursue cost recovery include:

- An uncooperative PRP, where the quality of work on a study or response action may suffer if the PRP is allowed to do the cleanup work.
- Where PRPs have not yet been identified through a PRP Evaluation or Baseline Search and response actions are immediately necessary to prevent a re-lease or threat of release of a hazardous substance.
- If a site must be cleaned up in order to meet BLM’s Land Use Planning goals and PRPs have not yet been identified through a PRP Evaluation or Baseline Search.

## Section 9: Contact and Negotiations with PRPs

### 9.1 Negotiated Agreements for Removal and Remedial Actions (Cost Avoidance)

CERCLA authorizes the use of AOCs under CERCLA Sections 104 and 122. An AOC is an agreement that is negotiated between BLM and the PRPs. CERCLA 122 authorizes BLM to enter

into an AOC with PRPs to perform an EE/CA and non-time-critical removal action. CERCLA 104 and 122 authorizes the use of AOCs for performing Remedial Investigation/Feasibility Studies (RI/FS) and remedial design in support of a remedial action.

An AOC presents numerous advantages to both BLM and the PRP. The terms of the AOC are negotiated between BLM and the PRP and both BLM and the PRP sign the agreement. The agreement describes requirements for the response action or study ensuring that both BLM and the PRP know the specific requirements for the study or response action to be undertaken. The agreement establishes schedules for completion of the study or response action, while allowing for delays due to force majeure (see Glossary). The agreement is enforceable and allows for the collection of stipulated penalties, but at the same time allows for dispute resolution so that issues can be worked out early and equitably.

The Solicitor’s Office should draft all AOCs; however, the OSC/RPM and the hazardous materials State Office program lead should coordinate with the Solicitor’s Office to ensure that the AOC meets BLM requirements. The hazardous materials Field Office OSC/RPM is responsible for drafting the SOW that is attached to these types of agreements. The SOW describes the specific requirements for the study or response action. BLM should participate on negotiating teams for AOCs; however, BLM staff negotiating with PRPs must be qualified by taking BLM training course 1703-19.

### 9.2 Unilateral Administrative Orders (Cost Avoidance)

UAOs issued under CERCLA Section 106 can be used to require PRPs to take a response action. The authority to issue UAOs has not been delegated to BLM by DOI. Any recommendation to issue this order must be referred from the State Director to the Secretary of the Interior through the BLM Director. Through consultation with the Solicitor’s Office, BLM Field and State Offices should provide input as to the ability of the PRP to perform the work, the cooperativeness of the PRP, and the impact of delays on human health and welfare or the environment.

UAOs should not be used unless an “imminent and substantial endangerment” to human health

and welfare of the environment is determined by BLM. “Imminent and substantial endangerment” is defined (CERCLA section 106) in the following manner:

1. Endangerment is a threatened or potential harm, not an actual harm.
2. Conditions of endangerment are imminent if the conditions that gave rise to it are present, even though the harm might not be realized for years.
3. Substantial endangerment is a cause to believe that someone or something may be exposed to a risk of harm from a release or threatened release.
4. Endangerment need not be immediate (emergency) to be imminent.
5. While the risk of harm must be imminent, the harm itself need not be.
6. Imminence must be considered in light of the time it may take to prepare orders, file and complete litigation, issue and implement permits, or take other actions and enforce orders.

### 9.3 Demand Letters

Demand Letters are written and sent to PRPs in order to formalize the demand for payment of BLM’s incurred costs plus future expenditures. Demand Letters should be issued for both operational costs and oversight costs. Demand Letters also inform PRPs of the dollar amount of those costs and establish that interest begins to accrue on expenditures. They can be issued separately or may be included as part of a General Notice Letter or when doing a remedial action as part of a Special Notice Letter (see Glossary).

Demand Letters are only to be sent to viable PRPs who have been identified or documented in a Cost Recovery Plan and recommended by the Solicitor’s Office. Demand Letters should be drafted by the OSC/RPM with the assistance of the NSTC staff (when requested). Letters must be reviewed and approved by the Solicitor’s Office prior to being sent to PRPs under the signature of the State Director or as delegated to their designee.

Demand Letters should be issued immediately following completion of individual response actions, and be sent certified mail, return receipt requested. The return receipt should be included

with a copy of the Demand Letter in the case file. If a large site cleanup is being conducted and there is more than one response action per site, or if the site has been broken into operable units, then Demand Letters should be issued following completion of actions after each response action or after an action at each operable unit. When more than one response action or action at more than one operable unit is being taken at a site, letters should indicate that BLM anticipates additional funds may be expended on activities covered by the notice and any other specified future actions.

Where there is no response to a demand letter from a PRP within 30 days of the date of the certified mail letter, the OSC/RPM should refer the matter to the Solicitor’s Office for action. The Solicitor may recommend taking judicial action.

In many cases, a PRP may want to negotiate BLM’s claim. Such negotiations may be appropriate, and should be handled by BLM with the assistance of the Solicitor’s Office. BLM should serve on the negotiation team. BLM team members are required to successfully complete BLM training course 1703-19 prior to serving as a team member or participating in negotiations.

## Section 10: Integrating Enforcement Actions with Removal and Remedial Actions

Integration of enforcement actions with removal and remedial actions are highly variable and depend upon site-specific circumstances. The following guidance is a general description of the integration process.

### 10.1 Time-Critical Removal Actions

If a release has been verified and if viable PRPs are identified in the PRP Evaluation or Baseline Search, or if there are known existing PRPs, the PRPs should be immediately verbally contacted either by the Solicitor’s Office, by the OSC/RPM, or by law enforcement. Law enforcement only becomes involved when there is a criminal act such as illegal dumping. General Notice Letters should be sent to the PRPs. If the PRPs are unwilling to perform the time-critical removal action, BLM must handle the removal action and seek cost recovery from the PRPs.

## 10.2 Non-Time-Critical Removal Actions

If a release has been verified and if viable PRPs are identified in the PRP Search, PRPs should be notified in writing through a General Notice Letter of their potential liability. The General Notice Letter can invite PRPs to conduct an EE/CA and/or a non-time-critical removal action if the PRP is financially and technically capable of performing the response action.

Negotiations should be conducted before the EE/CA is begun. If negotiations are successful, an agreement should be signed by BLM and the PRPs. The agreement will define the rights and responsibilities of each party, provide for and allow reimbursement of government oversight costs, provide for dispute resolution procedures, stipulate penalties, and include a work plan with a schedule of time frames for completion of the work. If the PRPs are unwilling to perform the non-time-critical removal, BLM should consult with the Solicitor's Office to determine the best course of action. In rare cases, the Solicitor may recommend that a UAO be issued. If the Solicitor does not recommend a UAO, then BLM must handle the removal action and seek cost recovery from the PRPs.

## 10.3 Remedial Actions

Once a PRP Evaluation or Baseline Search has identified PRPs, and General Notice Letters notifying PRPs of their potential liability have been

sent, then Special Notice Letters need to be drafted by the OSC/RPM. Assistance from NSTC staff is available (when requested). All letters must be reviewed by the Solicitor prior to being sent. These letters will be signed by the State Director or their authorized designee.

*A model Special Notice Letter can be found at the following Web site:*

<http://web.id.blm.gov/WashOffice/ect/>

Special Notice Letters invite PRPs to conduct the Remedial Investigation/Feasibility Study (RI/FS). Negotiations should be conducted before the RI/FS is begun. If negotiations are successful, an AOC should be signed by BLM and the PRPs. If the PRPs are unwilling to perform the RI/FS, BLM should immediately begin the studies and seek cost recovery.

Once an ROD is signed, PRPs should again be sent Special Notice Letters to invite PRPs to conduct the Remedial Design/Remedial Action (RD/RA). Sending this letter triggers a 120-day moratorium on any action by BLM while the PRP considers the offer. Solicitor participation is critical at this stage. Special Notice Letters should be drafted by the OSC/RPM in consultation with the Solicitor's Office. They may also recommend to BLM whether a Consent Decree (see Glossary) should be initiated, a UAO drafted, or if BLM should pursue the RD/RA.

## Acronyms/Abbreviations

|  |   |
|--|---|
| AM - Action Memorandum   | NRDA - Natural Resource Damage Assessment                   |
| AML - Abandoned mine lands   | NSTC - National Science and Technology Center (BLM)         |
| AOC - Administrative Orders on Consent   | OEPC - Office of Environmental Policy and Compliance        |
| AR - Administrative Record   | O&M - Operation and Maintenance                             |
| ARAR - Applicable or relevant, and appropriate requirement                                     | OSC/RPM - On Scene Coordinator/Remedial Project Manager     |
| ATSDR - Agency for Toxic Substances and Disease Registry                                       | PP - Proposed Plan  |
| CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act                 | PRP - Potentially Responsible Party                         |
| CERCLIS - Comprehensive Environmental Response, Compensation, and Liability Information System | QAPP - Quality Assurance Project Plan                       |
| CFR - Code of Federal Regulations  | QA/QC - Quality Assurance/Quality Control                   |
| CRP - Cost Recovery Plan   | RCRA - Resource Conservation and Recovery Act               |
| DOI - Department of the Interior   | RD/RA - Remedial Design/Remedial Action                     |
| DOT - Department of Transportation   | Remedial PA - Remedial Preliminary Assessment               |
| EE/CA - Engineering Evaluation/Cost Analysis   | Remedial SI - Remedial Site Inspection                      |
| EPA - Environmental Protection Agency  | Removal PA - Removal Preliminary Assessment                 |
| ERNS - Emergency Release Notification System   | Removal SI - Removal Site Inspection                        |
| ESI - Expanded Site Inspection   | REO - Regional Environmental Officer                        |
| FS - Feasibility Study   | RI/FS - Remedial Investigation/Feasibility Study            |
| FSI - Focused Site Inspection  | ROD - Record of Decision                                    |
| HASP - Health and Safety Plan  | SAP - Sampling and Analysis Plan                            |
| HRS - Hazard Ranking System  | SARA - Superfund Amendments and Reauthorization Act of 1986 |
| MOU - Memorandum of Understanding  | SOPL - State Office Program Lead                            |
| NCP - National Contingency Plan  | SOW - Statement of Work                                     |
| NFRAP - No further remedial actions planned  | SSI - Single Site Inspection                                |
| NPL - National Priorities List   | UAO - Unilateral Administrative Order                       |
| NRC - National Response Center   |   |

## Glossary of Terms

**Action Memorandum (AM):** The primary decision document communicating to the public why removal actions are necessary, what the proposed removal actions are, and the rationale for selecting specific actions.

**Administrative Order on Consent (AOC):** A legal agreement signed by the EPA and an individual, business, or other entity, through which the entity agrees to take an action, refrain from an activity, or pay certain costs.

**Administrative Record (AR):** A public record, required by law, of those documents that form the basis for the selection of a response action at a site. The AR establishes a record of decisionmaking on a response action and is critical for purposes of cost recovery.

**Applicable or Relevant, and Appropriate Requirements (ARARs):** Cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under Federal or State environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or circumstance found at a CERCLA site.

**BLM Case File:** A working file which contains all BLM records for a specific site.

**Consent Decree:** A judgment entered on consent of the parties; it is in the nature of a contract.

**Cost Recovery:** A process by which the U.S. government 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.

**Cost Recovery Plan:** A plan developed by BLM in conjunction with the Solicitor's Office based on the PRP Baseline Search. The plan explains why each identified entity is a PRP, what data gaps need to be filled to determine if a PRP is viable, how those data gaps will be filled, and a strategy for recovering costs or conducting enforcement.

**Demand Letter:** A written demand for recovery of BLM costs incurred under CERCLA. Demand letters should be issued for both operational costs and oversight costs.

**Engineering Evaluation/Cost Analysis (EE/CA):** Whenever a planning period of at least 6 months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate, the lead agency shall conduct an EE/CA. The EE/CA is an analysis of removal alternatives for the site, including the development of a sampling and analysis plan for obtaining the appropriate data quality and quantity; a field sampling plan which locates sampling locations, number and analysis types; and a Quality Assurance/Quality Control (QA/QC) plan.

**Emergency:** Those releases or threats of release requiring immediate on-site actions to eliminate or reduce an imminent and substantial threat to human health and welfare or the environment.

**Facility:** According to CERCLA (101), any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but, does not include any consumer product in consumer use or any vessel.

According to the Federal Agency Hazardous Waste Compliance Docket (53 FR 4280): A site (facility) for BLM that is potentially contaminated. It does not include contiguous public land, only the area of contamination; however, it does include private lands proven to be contaminated from a source on public lands. (53 FR 4280)

**Final Report:** A report prepared by the OSC/RPM that describes the removal actions taken. The report also documents the costs incurred for the actions taken.

**Force Majeure:** 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 of the parties' control (i.e., problems that could not be avoided by the exercise of due care, such as an act of God).

**General Notice Letter:** The purpose of the General Notice Letter is to inform PRPs of their potential liability for future response costs, to begin or continue the process of information exchange, and to initiate the process of negotiations.

**Generator:** 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 such a person, 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.

**Hazardous Substance:** As defined by Section 101(14) of CERCLA, hazardous substance means any substance designated pursuant to Section 311(b)(2)(A) of the [Clean Water Act] CWA; any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA (tabulated in 40 CFR 302.4); any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under Section 307(a) of the CWA; any hazardous air pollutant listed under Section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas). (40 CFR 300.5)

**Hazard Ranking System (HRS):** A scoring system used by EPA to assess the relative threat associated with actual or potential releases of hazardous substances. The HRS is the primary screening tool for determining whether a site is to be included on the NPL. An HRS score for a site is determined by evaluating the four pathways of ground water, surface water, soil exposure, and air.

**Imminent Threat:** An impending hazard that significantly endangers the human health and welfare or safety or impacts sensitive environments.

**Information Request Letter:** Formal written requests for information, authorized by CERCLA 104(e)(2)(A) through (C), issued during an administrative investigation.

**Innocent Landowner:** A person who purchased or acquired 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; however, only the court may make this determination based on CERCLA 107(b) and 101(35).

**National Contingency Plan (NCP):** Establishes the processes and procedures used by lead agencies to respond to releases of hazardous substances pursuant to CERCLA. The NCP is published in the Code of Federal Regulations (CFR) under 40 CFR 300.

**National Priorities List (NPL):** An EPA list of the most serious uncontrolled hazardous waste sites identified for possible long-term remedial action. The list is based primarily on the score a site receives from the HRS.

**Natural Resource Trustee:** An official of a Federal natural resource management agency designated in subpart G of the NCP, or a designated State official or Indian tribe who may pursue claims for damages under section 107(f) of CERCLA.

**National Response Center (NRC):** The Federal operations center that receives notifications of all releases into the environment of a hazardous substance in a quantity equal to or greater than the substance's reportable quantity.

**Non-Time-Critical Removal Action:** An action taken when a removal evaluation (PA or SI) concludes that a removal action is necessary but is not required within 6 months of that determination.

**No Further Remedial Actions Planned (NFRAP):** The designation given to a site on the Federal Agency Hazardous Waste Compliance Docket by an EPA Regional Office once no further remedial actions are proposed.

**On Scene Coordinator/Remedial Project**

**Manager (OSC/RPM):** The official designated by the lead agency to coordinate and direct removal and remedial actions under the NCP.

**Pathway:** The environmental medium through which a hazardous substance may threaten targets. Pathways include ground water, surface water, air, and soil exposure. (EPA/540/G-91/013)

**Potentially Responsible Party (PRP):** Any individual or entity including owners, operators, transporters, or generators who may be liable under CERCLA 107(a).

**Proposed Plan (PP):** Identifies the alternatives from the RI/FS that provide the best balance of tradeoffs that meet the nine feasibility criteria.

**PRP Baseline Search:** A report based on intensive research conducted by qualified individuals that determines the identity and status of all PRPs at a specific site.

**PRP Evaluation Search:** The initial file/record search to determine if a viable PRP exists. Involves reviewing appropriate BLM records (e.g., LR 2000, Mining claims) and county mining claim data.

**Public Lands:** Surface lands administered by the Bureau of Land Management.

**Record of Decision (ROD):** The ROD documents the remedial action selected for the site and provides a plan for remedy design and implementation. The ROD also provides the rationale supporting the remedy selection and establishes the performance goals and standards for the project.

**Release:** Any spill, leak, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance). For purposes of the NCP, release also means the threat of release. (40 CFR 300.5) (CERCLA 101(22))

A release under the NCP does not include releases within a workplace or contained within a building; emissions from engine exhaust associated with a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; nuclear material

released from a nuclear incident; nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act (UMTRCA); application of fertilizer in accordance with label specifications and State and local regulations; and Federally permitted releases.

**Remedial Design/Remedial Action (RD/RA):** An engineering analysis that documents the technical drawing and specifications for the selected remedial action and the implementation plan for the construction of the selected remedial action.

**Remedial Investigation/Feasibility Study (RI/FS):** Used to analyze and identify remedial action alternatives for a site. An RI/FS includes site characterization, baseline risk assessment, and treatability studies of specific remedies. An RI/FS is required for all sites listed on the NPL or on sites where BLM has determined that remedial cleanup actions are required.

**Remedial Preliminary Assessment:** A limited-scope investigation performed on all sites listed on the Federal Facilities Docket that determines which sites require further investigation.

**Remedial Site Inspection:** An inspection to gather information to support a decision regarding nominating a site for the National Priorities List.

**Removal Preliminary Assessment:** The first evaluation of a site in the NCP process that documents whether a release or threat of release of a hazardous substance has occurred, identification of constituents of concern, potential targets, need for removal, and recommendations for further evaluations.

**Removal Site Inspection:** An inspection to augment the data collected during the removal PA phase. Initiated when information gathered during the Removal PA is insufficient to meet the removal site evaluation objectives, or it is determined that extensive sampling and analysis is required.

**Reportable Quantity (RQ):** The quantity of a hazardous substance (40 CFR 302.4), that if released in any 24-hour period (as defined in 40 CFR 302.6(a)), triggers the NCP reporting requirement to the NRC.



**Special Notice Letter:** A written notice to a PRP providing information on potential liability, conditions of the negotiation moratorium, future response actions, and demand for past costs. Authorized under CERCLA 122(e)(1), it triggers the start of the negotiation moratorium.

**Target:** A physical or environmental receptor that is within the target distance limit (maximum distance over which targets are evaluated). Distances are set by the hazard ranking system for a particular pathway. Targets may include wells and surface water intakes supplying drinking water, populations, human food chain organisms, sensitive environments, wellhead protection areas, and other resources. (EPA/540-R-92-021)

**Time-Critical Removal Action:** An action taken when a removal evaluation (PA or SI) concludes that a removal action is necessary and is required within 6 months of that determination.

**Unilateral Administrative Order (UAO):** Order issued by the Department of Justice (DOJ) under CERCLA 106 that requires the PRP to take a response action.

## Appendix 1

### Contents of Administrative Record for Removal Actions

Documents to be included in the Administrative Record for Removal Actions should be those documents that were considered or relied upon to select the removal action and documents that demonstrate the public's opportunity to participate in and comment on the selection of the removal action when required by regulation (40 CFR Sections 300.810 and 300.820).

The following are a list of documents often generated during a removal action that should be considered for inclusion in the administrative record (not all documents are generated for every response action). These documents include, but are not limited to, the following:

- Removal Preliminary Assessment (Removal PA)
- Removal Site Inspection (Removal SI)
- Engineering Evaluation/Cost Analysis (EE/CA) (for a non-time-critical removal)
- Sampling plan
- Validated sampling data
- Chain of custody forms
- Inspection reports
- Site-specific technical studies
- Data submitted by the public or PRPs
- Site-specific memos regarding policy or guidance
- Guidance documents (by reference in the administrative record index\*)
- Technical literature (by reference in the administrative record index\*)
- Public involvement plans
- Newspaper articles indicating general community awareness of the response action
- Any documents sent to persons on the community relations mailing list
- Public notices
- Public meeting documentation
- Public comments (including PRP comments)
- BLM responses to significant comments
- Administrative Order on Consent
- Consent Decrees
- Affidavits containing relevant factual information
- Notice letters to PRPs
- Responses to notice letters
- Section 104 (e) Information Request Letters and Section 122 (e) subpoenas
- Response to Section 104(e) Information Request Letters and Section 122(e) subpoenas
- Health assessments through Agency for Toxic Substances and Disease Registry (ATSDR)
- Records of local or State participation
- Natural Resource Damage Assessments and records of NRDA notifications
- Action Memorandum
- Amended Action Memorandum
- Other documents considered in selecting a removal action

\* Guidance documents, as well as technical literature, do not need to be physically included in the administrative record; however, they should be included by reference in the index. General guidance and policy documents should be located in the State Office in case of a request by the public. Generally available technical literature does not have to be made available to the public. Technical literature not generally available must be included in the administrative record.

## Appendix 2

### Contents of Administrative Record for Remedial Actions

In general, BLM will conduct very few remedial actions; however, guidance is provided for those few remedial actions that are conducted. Documents to be included in the Administrative Record for Remedial Actions should be those documents that were considered or relied upon to select the remedial action and documents that demonstrate the public's opportunity to participate in and comment on the selection of the remedial action when required by regulation.

The following are a list of documents often generated during a remedial action that should be considered for inclusion in the administrative record (not all documents are generated for every response action). These documents include, but are not limited to, the following:

- Remedial Preliminary Assessment (PA)
- Remedial Site Inspection (SI)
- Remedial Investigation/Feasibility Study (RI/FS) work plan
- Amendments to RI/FS work plan
- Sampling and Analysis Plan (SAP), including the Quality Assurance Project Plan (QAPP)
- Verified sampling data
- Chain of custody forms
- Inspection reports
- Data summary sheets
- Site-specific technical studies
- Public comment RI/FS and final RI/FS if different
- Data submitted by public and PRPs
- Site-specific policy or guidance
- Guidance documents (by reference in the administrative record index\*)
- Technical literature (by reference in the administrative record index\*)
- Public participation plan
- Newspaper articles that show community awareness of the remedial action
- Proposed Plan
- Fact sheets and other documents sent to interested members of the public
- Public notices
- Documentation of informal public meetings, including summaries of significant information
- Public comments (including PRPs)
- Transcripts of formal public meetings, including meetings held during the public comment period on the RI/FS, proposed plan, and any waiver of ARARs under Section 121(d)(4) of CERCLA
- Responses to significant comments
- Administrative Order on Consent
- Consent Decrees
- Affidavits containing relevant factual information
- Notice letters to PRPs
- Responses to notice letters
- Section 104 (e) Information Request Letters and Section 122 (e) subpoenas
- Health assessments through ATSDR
- Records of local or State participation
- Natural Resource Damage Assessments and records of NRDA notifications
- Record of Decision (ROD), including responsiveness summary
- Explanations of significant differences (ESD)
- Amended ROD

\* Guidance documents, as well as technical literature, do not need to be physically included in the administrative record; however, they should be included by reference in the index. General guidance and policy documents should be located in the State Office in case of a

request by the public. Generally available technical literature does not have to be made available to the public. Technical literature not generally available must be included in the administrative record.

## Appendix 3 Model Documents

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### Model Certification

IN THE [NAME OF COURT]

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

[NAMES OF DEFENDANTS]  
DEFENDANTS,

vs.

[NAMES OF THIRD PARTY  
DEFENDANTS]

Third Party Defendants

#### CERTIFICATION OF DOCUMENTS COMPRISING THE ADMINISTRATIVE RECORD

The Bureau of Land Management (BLM) hereby certifies that the attached documents constitute the administrative record for selection of response actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, for the [name of site] in [city or county], [state].

By the Bureau of Land Management:

In witness whereof I have subscribed my name this \_\_\_\_ day of \_\_\_\_\_, 200\_  
in [city].

[Signature]  
[typed name]

## **Appendix 3 Model Documents**

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### **Model Notice of Public Availability of the Administrative Record**

The Bureau of Land Management (BLM) announces the availability for public review of the administrative record on the \_\_\_\_ Site, Location, State. The administrative record is the file containing the documents BLM has used in deciding on a cleanup action at the \_\_\_\_ Site. This notice is to inform interested members of the public of the availability of the administrative record for their review. The administrative record is available for review during normal business hours at:

BLM Field Office  
[Address and Phone Number]

and

[Local Community Building near Response Action Location]  
[Address and Phone Number]

Documents currently contained in the administrative record are \_\_\_\_\_. Other documents will be added to the record as cleanup work progresses.

BLM encourages interested members of the public to comment in writing on documents as they are placed in the administrative record. Written comments can be sent to:

OSC/RPM  
BLM Field Office  
[Address and Phone Number]

Comments must be sent to the above address on or before  (Date of last day of comment period) .

## Appendix 3 Model Documents

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### Model Letter for Requesting ARARs From Support Agencies

United States  
Department of  
Interior

Bureau of  
Land Management

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File Code:

Date:

Send to State and EPA Regional Office

Dear

The Bureau of Land Management (BLM) is contemplating a removal action under CERCLA at the (site) located in (site location). To perform this action, BLM will attempt to comply to the extent practicable with all Applicable or Relevant, and Appropriate Requirements (ARARs) of the (specify Federal or State) environmental laws. We request you provide any statutes or regulations which you believe are potential ARARs by (specify date). Information on the site conditions and proposed actions are provided below to help you in identifying potential ARARs.

*(Provide details on the site location, background, impact on human health and welfare or the environment, volume and type of contaminants, and the proposed actions. An example is provided below.)*

BLM specifically denies and disclaims any liability or responsibility under any Federal or State law for the above incident. However, to fulfill its role in protecting the environment, and pursuant to its authority under Section 104 of CERCLA, 42 USC 9604 and Federal Executive Order 12580, BLM plans to invoke its discretionary authority as lead agency and initiate a CERCLA removal action for the (site name). This removal action and any future response actions on lands managed by BLM will be conducted consistent with the National Oil and Hazardous Substance Pollution Contingency Plan (NCP; 40 CFR 300 et seq., 1993). As required in 40 CFR 300.400(g), this removal action shall, to the extent practical considering the exigencies of the situation, attain applicable or relevant and appropriate requirements. I request that you identify in writing all (State or Federal) ARARs. (For State ARARs, request the name of the agencies that BLM should contact with regard to the applicable ARARs). Please send the ARARs to the attention of (BLM point of contact for evaluating the potential ARARs). Please direct questions regarding the removal action at the (site name) to (OSC/RPM name) at (phone number).

Sincerely,

(BLM Manager)

## Appendix 4

### Checklist for Conducting a PRP Evaluation Search

#### Initiate Data Searches

- Generally it is more cost effective to research several sites at the same time.
- Expect searches to take, on average, 5-10 days each.

#### Determine the Name/Location/Land Status of the Site

- A search is difficult to complete if you don't know the name of the site when it was operating.
- Many records, in particular State records, are filed by the county.
- Determine the location of the site (UTM, Latitude and Longitude, or Township, Range, and Section).
- Use existing maps to determine land status.
- Conduct a cadastral survey or use GPS if land ownership status is in question.

#### Review and Collect All Applicable Records/Maps/Photos

- Records for historic or current claim holders (BLM)
- Master title plat/historical index (BLM)
- Notice of Intent to Operate and Plan of Operations (BLM)
- Mining plats (BLM)
- Survey records (BLM)
- Mining contest file documents (BLM)
- Maps: topographic maps, geologic maps, historic maps. OSM has a mine map repository, call (412) 938-3001
- Aerial photos—obtain copies of current and historic aerial photos (BLM)
- State operating plans

- State mine inspector reports
- State Bureau of Mines annual reports or equivalent
- State well permits
- State Department of Health records
- State mine production reports
- U.S. Bureau of Mines Minerals Yearbooks, Information Circulars, Reports of Investigations, and Bulletins
- USGS reports, papers, and bulletins
- Industry journals and mining directories
- Review patented and unpatented claim records (County Courthouse)
- Review county tax records.
- Review any special indices for mill sites, R.R., toll roads or tram ways, etc. (County Courthouse).

#### Contact Secretary of State

- Determine the State in which the corporation was incorporated.
- The Secretary of State may be able to provide information on the articles of incorporation, status, officers, and addresses.

#### Conduct Internet Searches

- Check Internet phone directories for addresses and phone numbers of individuals and companies.

#### Check with Local Historical Society, Library, or Newspaper

#### Conduct Interviews

- Prior to conducting interviews, contact the appropriate solicitor for guidance on who to interview and questions to ask.



- Interview knowledgeable people (including BLM employees, landowners, past employees of the site, historians, and any other person with knowledge of the site).

#### **Prepare a History of Site Activities**

- Prepare a list of significant site activities in chronological order.
- Identify persons involved at the site such as owners, operators, generators, and/or transporters.

#### **Prepare a Summary Evaluation Search Report**

- This report should summarize all data collected during the search.

#### **Establish a General Case File**

- The general case file includes ALL documents reviewed and collected for a specific site, including the History of Site Activities, and the Summary Evaluation Search Report.
- A confidential folder for confidential materials should be maintained separate from the general case file.
- Prepare an index of the files.

- Include a record of hours spent and other costs incurred at the site; use Form 1323-1, Reimbursable Project log.

#### **Establish an Administrative Record File**

- The administrative record file includes all documents considered or relied on in making decisions about the final site remedy—all decision documents, analytical data, guidance, and other documents.

#### **Possible Additional Steps**

- Draft 104(e) Information Request Letters.
- Seek solicitors' assistance in reviewing 104(e) Information Request Letters and in analyzing responses to such letters.
- A title search (use a local title company).
- Corporate genealogy including successors/transfers (solicitor assistance).
- Negotiations with PRPs (solicitor assistance).

#### **Request Solicitor Review/Concurrence of the General Case File/Summary Search Evaluation Report**

## **Appendix 5**

### **Web Sites**

Docket Updates: <http://es.epa.gov/oeca/fedfac/oversight/oversight.html>

BLM examples of Health and Safety Plans, Removal PAs, Removal SIs, Quality Assurance Plans, Field Sampling Plans, EE/CAs, Community Relations Plans, and Action Memorandums:

<http://web.id.blm.gov/WashOffice/ect/>

Copy of CERCLA, NCP, EO 12580, EO 13016, Secretarial Order 3201, and BLM WO IM 2000-093:

<http://web.id.blm.gov/WashOffice/ect/>

Model Documents: <http://web.id.blm.gov/WashOffice/ect/>

- Model Notice of Public Availability of an AR
- Model Certification of Documents Comprising the AR
- Model Letter Requesting ARARs from Support Agencies
- Model Statement of Work for a PRP Search
- Model Cost Recovery Plan
- Model 104(e) Information Request Letter
- Model PRP General Notice Letter

EPA guidance on reporting releases:

<http://www.epa.gov/oerrpage/superfund/programs/er/triggers/index.htm>

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The Bureau of Land Management's National Science and Technology Center supports other BLM offices by providing a broad spectrum of services in areas such as physical, biological, and social science assessments; architecture and engineering support; library assistance; mapping science; photo imaging; geographic information systems applications; and publications support.

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