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

JUL 29 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive No. 9832.13

MEMORANDUM

SUBJECT: Transmittal of the Superfund Cost Recovery Strategy

FROM: J. Winston Porter
for Assistant Administrator

TO: Regional Administrators, Regions I-X

Attached is the final Superfund Cost Recovery Strategy. The Strategy sets forth the Agency's priorities and case selection guidelines, emphasizes the advance planning necessary to initiate cost recovery actions within the Agency's preferred time frames, and describes the cost recovery process for removal and remedial actions.

Cost recovery is one of the highest priorities of the Superfund program. This document should assist you in advancing the Agency's objectives.

Attachment

cc: Directors, Waste Management Divisions
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Directors, Hazardous Waste Management Divisions
Regions III, VI
Director, Toxics and Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X
Directors, Environmental Services Divisions
Regions I, VI, VII
Regional Counsel, Regions I-X
Thomas L. Adams, Assistant Administrator for Enforcement and Compliance Monitoring
Charles Grizzle, Assistant Administrator for Administration and Resources Management
Roger J. Marzulla, Assistant Attorney General, Land and Natural Resources Division, Department of Justice

OSWER Directive No. 9832.13

THE SUPERFUND COST RECOVERY STRATEGY

Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency

July 29, 1988

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Purpose of this Guidance

This guidance document is intended to provide a framework for planning and initiating actions to recover Federal funds expended by EPA or a State[1] in CERCLA response actions. Part I discusses general cost recovery program priorities. Part II identifies case selection guidelines to aid managers in setting priorities for case referrals for the most efficient use of cost recovery resources. Parts III and IV identify activities required to support the development of cost recovery actions for each site where the Agency spends Fund monies in response actions: Part III sets out the cost recovery process for removal actions; Part IV sets out the cost recovery process for remedial actions. Part V is a bibliography of guidance documents related to cost recovery.

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[1]/ While a State may be the lead agency for response actions taken at a site, EPA retains responsibility for pursuing recovery of Federal funds expended.

Part I. Program Priorities and Management

The policy of the CERCLA Enforcement program is to obtain response actions in the first instance by responsible parties, rather than by the Environmental Protection Agency (EPA) or a State. However, there have been and will continue to be cases in which the Agency will respond to releases using funds from the Hazardous Substances Superfund (the Fund) for site response actions. The recovery of Fund expenditures through the cost recovery program is one of the highest priorities of the Superfund program. The costs associated with such Fund-financed response actions are recoverable from the party or parties who are liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA, or the Act).[2] CERCLA provides for the recovery of costs through judicial actions under section 107 of the Act, as components of settlements for prospective work under section 106, or 122, and in administrative settlements under section 122.

The priorities and objectives of the cost recovery program are to: 1) maximize return of revenue to the Fund; 2) initiate

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[2]/ Section 107 provides generally that past and present owners and operators of a site, and persons (e.g., generators) who arranged for disposal or treatment of, and transporters who contributed, hazardous substances to a site, shall be liable for all costs incurred in response to a release or threat of release undertaken by the United States government, a State, an Indian tribe, or any other person, for damages to or loss of natural resources and the costs of assessing such damages or loss, and for costs of any health assessment or health effects study carried out under §104(i).

necessary litigation or resolve ripe cases for cost recovery within strategic time frames but no later than the time provided under the statute of limitations; 3) encourage PRP settlement by implementing an effective cost recovery program against non-settlers (i.e., recalcitrants); and, 4) use administrative authorities and dispute resolution procedures effectively to resolve cases without unnecessary recourse to litigation.

In managing the program and achieving these objectives, EPA must ensure that each response action (and supporting case development activities) undertaken using Fund monies proceeds in a manner that will optimize its cost recovery potential. (See Part III, Cost Recovery Process for Removal Actions, and Part IV, Cost Recovery Process for Remedial Sites.) In addition, EPA must evaluate each ripe response action in a manner consistent with this strategy to determine when, whether and how to proceed with cost recovery.

The stage at which a case becomes ripe for cost recovery is an important concept. A conventional removal is ripe when it is completed.[3] A remedial is ripe concurrent with the initiation of on-site construction of the remedial action. (See footnote 5, page 5.)

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[3]/ Although a RI/FS may be considered to be a removal, cost recovery generally is pursued as part of remedial action cost recovery.

Since resources available to the cost recovery program are limited, EPA must set priorities and select and plan actions in a manner and at a time which will provide for the maximum return to the Fund. A major factor in setting priorities is the amount of funds involved. However, statute of limitations may warrant the pursuit of a case of lower dollar value before one of higher value. Priorities are discussed in Part II, Case Selection Guidelines.

Where possible, an attempt should be made to settle cost recovery cases administratively under the authority provided in CERCLA §122(h). Use of this authority should result in cost recovery case resolution for some cases in a shorter time frame and with fewer resources than traditional litigation or settlement through judicial means. Use of the administrative settlement authority for smaller cost recovery cases, especially those with total costs of response less than five hundred thousand dollars, should reduce case resolution time since these may be directly settled by Regional offices without the prior concurrence of either EPA headquarters or the Department of Justice.[4]

Where judicial actions are warranted, referral of cases selected consistent with the guidelines set forth in Part II,

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[4]/ Authority to settle cost recovery cases administratively (CERCLA §122(h) authority) was delegated to Regional Administrators on September 21, 1987, (Delegation 14-14-D). Novel issues should be discussed with EPA Headquarters.

below, within the Agency's preferred time frames[5] will ensure that the best cases will be filed well within the required statute of limitations.

Finally, the realization of the program's objectives depends on the effective management of all aspects of the cost recovery program. Each Region must have a well-defined process in place to ensure coordination among the Superfund program/enforcement office, the financial management office, and the Office of Regional Counsel (and Headquarters, where appropriate). The process should also foster the efficient management of the elements of the cost recovery program including systems to cover the following:

a) the on-going review, selection, and referral of ripe cases;

b) the assembly of cost documentation and the issuance of demand letters;

c) tracking and collection of oversight cost recovery in settlements;

d) the review and documentation to close-out cases for

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[5]/ Cost recovery actions for removals should be referred to the Department of Justice as soon as possible after the action has been completed but in most cases, not later than one year after the completion date. Cost recovery actions for remedials should be referred to the Department of Justice at the time of initiation of physical on-site construction of the remedial action. See the June 12, 1987, Memorandum entitled Cost Recovery Actions/Statute of Limitations, OSWER Directive No. 9832.3-1A.

which cost recovery will not be pursued;

e) the effective use of administrative settlement authority;

f) the tracking and follow-through of active cases (those in litigation); and,

g) the establishment and collection of accounts receivable.

Effective information management on the status of each ripe case, coupled with forward planning, is essential. Timely and accurate reporting in information management systems, especially CERCLIS, is essential for management of the above processes and the entire cost recovery program.

The Agency must continue to utilize cost recovery enforcement authorities to create an incentive for settlement and disincentive for refusal to settle. An atmosphere of risk of cost recovery litigation will promote settlement for PRP response actions as well as settlements for cost recovery.

Part II. Case Selection Guidelines

As the Superfund program matures, an increasing number of sites are moving beyond the early stages of the Superfund process and into the remedial design and action phases, where greater amounts of money are spent. The vast majority of potential reimbursement to the Fund in future years depend on recovery of funds associated with these sites.

Regions must make management decisions regarding which sites to refer for judicial action under 107. The following case selection guidelines, when applied to candidates for referral, help ensure that resources are mainly directed towards those cases which have the highest potential for replenishing the Fund. The guidelines are generally based on the amount of money expended at a site and take into account its recoverability (i.e., strength of the case, financial viability of PRP(s)).

Generally, the sites that will generate the largest returns to the Fund are ripe remedials, defined as those where the remedial action has been initiated. These sites should be considered high priority for referral. A cost recovery referral should be scheduled for every site where a federally funded remedial action is planned and there are viable PRPs. The action should be filed no later than the initiation of physical on-site construction of the remedial action. (Note that in order to meet this timing requirement, case preparation activities should begin early. See Part IV, Cost Recovery Process for Remedial Portions

of NPL Sites, for further information.) The Agency will defer the filing of a remedial action beyond this date only in limited circumstances for technical or strategic reasons.[6]

The second category of sites to which resources should be directed are those NPL or non-NPL sites where EPA has completed a removal action (including an expanded removal action or ERA), remedial investigation/feasibility study (RI/FS), or an initial remedial measure (IRM), where the total costs of response are two hundred thousand dollars or greater, and the possible statute of limitations deadline is approaching. Although the Agency's position is that the SARA statute of limitations applies only to those response actions initiated after the effective date of SARA (October 17, 1986), the Regions should refer all cases well within the SARA statute of limitations time frames, whether or not the action was initiated prior to the effective date of SARA. Where a conflict exists between referring a case in the first category and referring a case in the second category, the referral of cases with approaching statute of limitations deadlines and costs greater than two hundred thousand dollars should normally take precedence over the referral of ripe remedial sites. Pre-SARA cases in the second category that are

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[6]/ For example, a Region may desire to delay the initiation of a cost recovery case until after evaluation of the success of implementation of an unproven remedial technology.

beyond the time frame of the SARA statute of limitations should be referred as soon as possible.

A related category of sites to which resources should be directed are those NPL or non-NPL sites where EPA has completed a removal action and the total costs of response are two hundred thousand dollars or greater. Sites in this category are distinguished from the above category because they are not nearing a potential statute of limitations deadline. These cost recovery referrals should be made no later than twelve months after completion of the removal action. In some instances, strategic reasons may warrant that EPA defer filing for cost recovery of a removal action until the remedial action is initiated.

The fourth category of sites are those where there has been a partial settlement providing the government less than full relief and there are viable non-settlers. These actions should be pursued promptly as a disincentive to non-settlers.

The fifth category of sites are those where total costs of response are less than two hundred thousand dollars. Consistent with available resources, cost recovery referrals should be considered for these sites where evidence linking the PRPs to the site is good, and PRPs are recalcitrant, or the case may be used to create good precedent or an example that EPA is willing to pursue costs when the merits of the case warrant it. Each Region should plan to bring some small cost recovery actions each year

primarily to maintain an atmosphere of risk to PRPs associated with sites with total costs of response less than two hundred thousand dollars.

Within each category above, decisions should generally be made on the basis of an evaluation of the factors identified on pages 26 and 43, below, which will provide an indication of the strength of the case. This recognizes that cost recovery may not be pursued for PRP viability and evidentiary reasons as well as the lack of Agency resources for some small cases and bankruptcies.

The guidelines above do not relate directly to bankruptcy referrals because they often present particularly difficult case selection and management issues. The Agency is frequently operating under time constraints with imperfect information. Nonetheless, it is important in bankruptcy cases to make reasoned and informed judgments on whether a bankruptcy action is worth pursuing, given other demands on Agency resources. This requires, at a minimum, an evaluation of the following factors: the amount of funds to be recovered; the case against the PRP and the possibility of full recovery from other PRPs; the likelihood of significant recovery given the assets and liabilities of the PRP (e.g., bankruptcies at multi-generator sites where viable PRPs remain as compared to bankruptcy cases at sites where the owner/operator is bankrupt and no other viable PRPs exist); the claims of secured and unsecured creditors; and, the likely Agency

resources involved. When the likelihood of significant recovery compared to resource utilization in pursuit of the recovery is high, bankruptcy referrals should be prioritized in accordance with the categories above. The Revised Hazardous Waste Bankruptcy Guidance, May 23, 1986, OECM, contains additional information regarding the pursuit of bankrupt parties in hazardous waste cases.

Part III. THE COST RECOVERY PROCESS FOR REMOVAL ACTIONS

Before, during, and following a removal action there are specific steps that the Agency[7] must take to facilitate settlement or maximize the potential for recovery of funds in any future cost recovery action. The extent of each of the steps may vary depending upon the cost, size and duration of the removal action. The timing may vary depending upon the exigencies of the situation. This section identifies and explains each of the steps taken in the removal process to facilitate cost recovery.[8]

A. Pre-Removal Cost Recovery Activities

Pre-removal activities that may be carried out in preparation for future cost recovery actions include the initiation of the potentially responsible party search, the development of the administrative record, notice to identified PRPS and negotiations with those PRPs who are interested, and the issuance of administrative orders. While each of these

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[7]/Throughout Parts III and IV, the terms "Agency" and "Regions" are used frequently in discussions of activities to be conducted. When a State has entered or will enter into a cooperative agreement with EPA to conduct any activities on a site, the Region must ensure that activities identified in Parts III and IV are conducted by either EPA or the State, as appropriate. Refer to the Interim Final Guidance Package on Funding CERCLA State Enforcement Actions at NPL Sites, OSWER Directive No. 9831.6 for additional information on activities that can be undertaken by States.

[8]/ See, also, Chapter 5 of the Superfund Removal Procedures Revision Number Three, OSWER Directive No. 9360.0-03B.

activities is an integral part of the broader Superfund program, each has a special significance in light of potential cost recovery actions.

A.1. The Potentially Responsible Party Search. The identification of potentially responsible parties (PRPs) in the potentially responsible party search is central to all cost recovery actions. The search should uncover potentially liable parties with whom EPA may negotiate and from whom EPA may seek recovery of costs in the future, as well as develop the evidence of liability that may be used in a judicial action. While the PRP search initiated following site discovery may continue throughout the Superfund process certain PRP search activities should be conducted prior to the initiation of a removal action. The extent of further activities may depend on the expected costs of the removal.

At the time of discovery of a problem site, a preliminary PRP search is conducted by the Agency to identify the owner/operator of a site and other readily identifiable PRPs. The completed PRP search for a removal action should include the following tasks, as appropriate: history of operations at the site; a title search of the site property; Agency record collection and file review; interviews with government officials; PRP status/PRP history; records compilation; issuance of CERCLA 104(e) letters/RCRA 3007 letters; financial status; PRP name and address updates; appropriate identification of generators and

transporters; and, report preparation. Any or all of these tasks may and should be initiated prior to the initiation of a removal action where time permits. However, since many removals are of an emergency nature, and there is often little time prior to initiation of the action, all PRP search activities will not commonly be initiated prior to the removal. Each PRP search task should be initiated at the earliest possible time during or shortly after completion of the removal action.

Program, enforcement and legal staff, and the Region's civil investigator should work closely together in the development of the PRP search from the initial planning stages through the production of the PRP search report. Regions should rely on the expertise of the Office of Regional Counsel and the civil investigator as well as outside contractors where necessary to conduct the PRP search and prepare and review the PRP search report. More information on the tasks listed above is provided in detail in Chapter 3.1 of the Potentially Responsible Party Search Manual, August 27, 1987, (OSWER Directive No. 9834.6).

If total response costs are not expected to exceed two hundred thousand dollars, the Region may defer implementation of many of the tasks of the PRP search listed above until completion of the removal action. If total costs of the completed removal do not exceed two hundred thousand dollars, the Region should evaluate available resources and competing priorities, and in light of the evaluation, decide whether or not to conduct

additional PRP search activities. At a minimum, a title search of the property should be conducted. If total costs of the completed removal exceed two hundred thousand dollars, additional PRP search tasks should be conducted in anticipation of further enforcement activities.[9]

A.2. Development of the Administrative Record. The development of the administrative record supporting the selection of a response action is central to the Agency's ability to recover costs. If after completion of a removal action, a decision is made to file a §107 judicial action, the administrative record will serve as the basis for judicial review of issues concerning the selection of the response action. See section 113(j) of CERCLA. Prior to the initiation of a removal action, Regions should develop the administrative record consistent with the applicable procedures set forth in the May 29, 1987 memorandum entitled Administrative Records for Decisions on Selection of CERCLA Response Actions (OSWER Directive No. 9833.3).

A.3. Notice, Negotiations and the Issuance of Administrative Orders. Notice, negotiations, and the issuance of administrative orders are activities that should be conducted to obtain an

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9/ Where the removal exceeds two hundred thousand dollars, the property is marketable and of value and it may be sold, the Agency should evaluate, during the PRP Search, the value of filing notice of a lien on the property affected by the removal action. OECM's Guidance on Federal Superfund Liens, September 22, 1987, (OSWER Directive No. 9832.12), provides guidance on the use of Federal liens.

agreement from the PRP(s) to implement a response action, thus eliminating the need for cost recovery of response action costs. There are important cost recovery aspects to each of these activities.

The Interim Guidance on Notice Letters, Negotiations, and Information Exchange, October 19, 1987 (OSWER Directive No. 9834.10) provides information on the content and timing of notice letters for removal actions.

If notice to PRPs leads to negotiations for a PRP removal action, Regions should obtain an agreement from the PRPs for the reimbursement of EPA's oversight costs.[10] This is particularly important for large removals that will involve extensive contractor oversight costs. The administrative order on consent should contain a provision which describes the manner of determining the amount, the documentation to be furnished by EPA, the schedule for billing by EPA, and payment by the PRP of the oversight costs incurred by EPA. Where a consent order for a removal action contains a provision for the reimbursement of EPA's oversight costs, the Regional program office should provide a copy of the order to the Regional Financial Management Officer with a request to establish an account receivable and track receipt of the oversight costs. The Office of Waste Programs

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[10]/ CERCLA §104(a), as amended, requires reimbursement for oversight costs for the RI/FS. See Part IV, page 30.

Enforcement is developing further guidance on collection of oversight reimbursement from PRPs.

Where negotiations for a PRP response action are unsuccessful, or the exigencies of the situation at the site do not allow for extended negotiations, there is a presumption, rebuttable for documented good cause, that Regions should issue a §106 unilateral administrative order to viable PRPs.[11] A unilateral order may encourage PRP response and has the added advantage of setting up treble damages[12] and penalties[13].

B. Cost Recovery Activities During the Removal Action

Cost recovery activities that occur during a removal action depend upon whether the removal is conducted by the Agency (or

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[11]/ See the Issuance of Administrative Orders for Immediate Removal Actions, (OSWER Directive No. 9833.1).

[12]/ Section 107(c)(3) of CERCLA establishes the authority of the United States to collect treble damages for non-compliance with an administrative order: "If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action."

[13]/ Section 106(b) provides that "any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $25,000 for each day in which such violation occurs or such failure to comply continues."

its contractors) or a potentially responsible party, or both.[14] During a fund-financed removal action, all EPA and contractor activities and costs must be carefully recorded and the PRP search should be reviewed and supplemented, as necessary. During a PRP removal action, the Agency must keep track of its oversight costs.

B.1. Documentation of Activities and Cost Accounting. During a removal conducted by EPA or PRPs, the Agency must maintain an accounting of activities and costs associated with the response action. These costs may include: EPA in-house expenditures; contracts; money paid to other federal agencies through interagency agreements (IAG's); and, money paid to States through cooperative agreements. EPA personnel must take care to charge all time and travel associated with a removal action using the site-specific account number (site/spill identifier number, SSID). Contracts, IAG's and cooperative agreements should provide that charges are made site-specifically, also.

B.2. Supplemental PRP Search. During the removal action, the search for potentially responsible parties should continue. Newly identified PRPs should be issued notice letters and administrative orders as appropriate. The Region should consider

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[14]/ In some instances, the EPA conducts initial site stabilization work and then negotiates with PRPs for them to conduct the remainder of the removal action under a consent order. Activities conducted in preparation for potential cost recovery actions would necessarily include those for both fund-financed removal actions and PRP removal actions.

the total expected response costs at a site when conducting a supplemental PRP search. Generally, the higher the total cost of removal, the greater the effort the Agency should make to identify PRPs and develop the information that links them to the site. For all removal actions over two hundred thousand dollars, the tasks identified in Section A.1 must be completed in advance of a final decision to proceed or not with litigation for cost recovery.

C. Post-Removal Cost Recovery Activities

After the completion of a fund-financed removal action, the major components of the potential cost recovery case are collected (administrative record, the PRP search, total costs of response at the site, the demand letter and response to it, and other pertinent information) and the likely success of cost recovery efforts is evaluated. Based on the evaluation, the Region must make a final decision to proceed or not to proceed with further efforts at cost recovery.

C.1. Evaluation and Completion of the Potentially Responsible Party Search. After the removal has been completed, the PRP search should be evaluated for completeness. The Regional Counsel assigned to the case should review the PRP search for evidentiary sufficiency. The decision to conduct any additional PRP search activities not yet initiated should be made on the basis of the sufficiency of the evidence and consistent with the total costs of response and the likelihood of identifying

additional PRPs. The higher the costs of response, the stronger the effort should be to locate PRPs and link them to the site. Some cases with total costs of response less than two hundred thousand dollars will not be litigated. Extensive PRP searches should not be conducted for such smaller cases without prior evaluation of the site expenditures, costs of additional PRP search activities, likelihood of identifying viable PRPs, and likelihood of litigation if PRPs fail to respond satisfactorily to a demand letter.

If the PRP Search has not identified any PRP, the case should be closed out by way of a cost recovery close-out memorandum.[15] This will provide documentation that the cost recovery potential has been evaluated and remove the case from further consideration. The execution of a Cost Recovery Close-Out Memorandum on a site must be reported in the CERCLIS system.

C.2. Cost Documentation. Following the conclusion of the removal, and sometimes earlier, the Region should begin gathering the records which serve to support a demand letter. The threshold of two hundred thousand dollars should be used to determine the initial extent of cost documentation. Initially, documentation for cases less than two hundred thousand dollars should include the total costs of the response activity broken

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15/ See the "Guidance of Documenting Decisions not to Take Cost Recovery Actions", (OSWER Directive No. 9832.11).

down by general categories. These categories include EPA in-house expenditures, contracts, other federal agency costs (through interagency agreements) and Fund monies expended by States through cooperative agreements. Additional documentation may be required later to respond to a Freedom of Information Act request, to respond to PRPs in negotiation, or to prepare for litigation.

For those viable cases with costs greater than two hundred thousand dollars, full cost documentation, including the submittal of the Cost Recovery Checklist to Headquarters should proceed prior to issuance of the demand letter. The checklist, once completed, must be sent to OWPE allowing adequate time (typically twelve weeks or more) for document collection. EPA Headquarters, the Region, the Department of Justice, other federal agencies, and States, each have certain responsibilities in the collection and packaging of cost documentation. The Procedures for Documenting Costs for CERCLA §107 Actions, January 30, 1985 (OSWER Directive No. 9832.0-1a) describes roles and responsibilities of each office in preparing cost documentation for litigation.

C.3. Demand Letters. As soon as the Region has documented costs consistent with the level of expenditures and likelihood of litigation, the Region should issue a demand for payment of all

past costs to PRPs.[16] The demand letter should be sent to all PRPs as soon as practicable after the completion of the removal. A demand letter should be issued in all cases where response costs have been incurred under CERCLA regardless of whether a decision has been made to initiate a judicial proceeding for cost recovery.

Guidance on the content of a demand letter, and a model demand letter can be found in the Cost Recovery Actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, August 26, 1983 (OSWER Directive No. 9832.1). In addition to the items listed in the 1983 Cost Recovery Guidance to be included in a demand letter, all demand letters shall reflect the revisions of the SARA amendments to section 107(a) which provides that the "amounts recoverable in an action under this section shall include interest on all [costs incurred by EPA not inconsistent with the national contingency plan]. Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned."

C.4. Negotiation. When the PRP(s) responds to a demand letter expressing interest in meeting with the Agency to discuss the

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16/ The authority to issue demand letters under SARA has been delegated to Regional Administrators. Program and legal personnel should consult with their supervisors to determine who has redelegated responsibility for preparing and issuing demand letters in their Region.

Agency's claim, negotiations should be initiated and carried out within a limited period of time. The time period should be determined by the Region on the basis of factors affecting the complexity of the negotiations (e.g., the number of potentially responsible parties that will participate, the amount of the claim). Further information on the development of a negotiating team and related issues can be found in 1983 Cost Recovery Guidance.

The Region may also decide to utilize alternative dispute resolution techniques to achieve settlement. Arbitration, for example, is specifically addressed in section 122(h)(2) of CERCLA. Arbitration may be utilized for cases where total response costs (excluding interest) do not exceed $500,000. (At the time of issuance of this guidance, the Office of Enforcement and Compliance Monitoring is drafting a regulation on procedures for resolving small cases through arbitration.) Additional information may be found in Guidance on the Use of Alternative Dispute Resolution in EPA Enforcement Cases, August 14, 1987, issued by the Office of the Administrator.

In those cases where the Region receives no response or an unsatisfactory response to a demand letter, the Region must decide whether to pursue cost recovery efforts further. See section C.6, Consideration of Referral in the Event of No Settlement, below.

C.5. Settlements. If negotiations are successful, agreements will be formalized in an administrative document or a judicial consent decree. The Region may enter a partial settlement with some PRPs and seek to recover unreimbursed costs from non-settlors. Where the Agency does enter into a partial settlement, viable recalcitrant PRPs should be pursued as soon as practicable for the remainder of the costs.

Administrative settlements[17] may be entered into by the Agency for cost recovery pursuant to Section 122(h) of SARA[18]. Administrative settlements in cases where total costs of response at a facility, excluding interest but including all future costs, do not exceed five hundred thousand dollars may be signed by the Regional Administrator without Department of Justice concurrence. Pursuant to §122(i), the Agency must solicit public comment on proposed 122(h) administrative settlements by placing a notice of the settlement in the Federal Register. The comment period is thirty days. Administrative settlements for cost recovery for cases where the total cost of response on a site are expected to exceed five hundred thousand dollars may only be entered into

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17/ The Office of Enforcement and Compliance Monitoring is drafting guidance on the procedures to be followed for administrative cost recovery settlements.

18/ Section 122(h) of CERCLA gives the Agency the authority to settle cost claims administratively. Such settlements require the prior written approval of the Department of Justice if total costs of response at a facility exceed five hundred thousand dollars (excluding interest).

with the advance concurrence of EPA Headquarters and the Department of Justice. Administrative settlements are fully enforceable pursuant to CERCLA §122(h)(3).[19]

Judicial consent decrees may require consultation or concurrence with EPA's Office of Waste Programs Enforcement and Office of Enforcement and Compliance Monitoring in addition to the approval of the Department of Justice. See the Revision of CERCLA Civil Judicial Settlement Authorities Under Delegations 14-13-B and 14-14-E, June 17, 1988, (OSWER Directive No. 9012.10-a), for information on settlement authorities and their requirements.

C.7. Consideration of Referral in the Event of No Settlement. In each case where the Agency has conducted a response action under the authority of section 104 of CERCLA, the Agency must make an affirmative decision to proceed or not to proceed with a judicial cost recovery action. This applies to those sites where no response or an unsatisfactory response to a demand letter was received as well as to those sites for which negotiations occurred but were unsuccessful. The Region should have gathered all the information necessary to decide the final disposition of

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[19]/ CERCLA section 122(h)(3), Recovery of Claims, states "If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of settlement. In such actions, the terms of the settlement shall not be subject to review."

the case. The relevant factors to be considered include:

(a) the amount of costs at issue;

(b) the strength of evidence connecting the potential defendant(s) to the site;

(c) the availability and merit of any defense, (See CERCLA §107);

(d) the quality of release, remedy, and expenditure documentation by the Agency, a State or third party;

(e) the financial ability of the potential defendant(s) to satisfy a judgment for the amount of the claim or to pay a substantial portion of the claim in settlement;

(f) the statute of limitations; and

(g) other cases competing for resources.

If upon review of the case on the basis of the above factors, the Region decides not to pursue a cost recovery action, the decision must be documented in a cost recovery close-out memorandum.[20] A close-out memorandum will provide documentation for why EPA has not pursued cost recovery in a particular case, and provide the Agency with information necessary for selecting referrals and predicting revenues to the Fund in future years.

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[20]/ See the Guidance on Documenting Decisions not to Take Cost Recovery Actions, (OSWER Directive No. 9832.11).

Generally, the Regions should anticipate developing cases for litigation for all sites where total costs of response exceed two hundred thousand dollars and negotiations for settlement were unsuccessful. Sites where total costs of response do not exceed two hundred thousand dollars, and negotiations were unsuccessful, are also candidates for referral consistent with the case selection criteria discussed in Part II, above. The cases selected for litigation involving sites where total costs of response are less than two hundred thousand dollars should be those where PRPs are recalcitrant, evidence linking PRPs to the site is good, the case may be used to create good precedent (such as a site where EPA issued a unilateral order, PRPs did not comply, and EPA is likely to obtain a favorable ruling for treble damages or penalties), or the case is otherwise meritorious.

A decision to proceed with a judicial action for cost recovery requires the assembly of all documents associated with the case including those necessary to substantiate that:

1) there is a release or the threat of a release of a hazardous substance;

2) the release or threat of release is from a facility;

3) the release or threat of release caused the United States to incur response costs;

4) the Defendant is in one or more of those categories of liable parties in CERCLA section 107(a).

These elements are discussed in Cost Recovery Actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (OSWER Directive No. 9832.1) and Procedures for Documenting Costs for CERCLA §107 Actions, (OSWER Directive No. 9832.0-1a). In addition, the referral should anticipate the defense that the response was inconsistent with the national contingency plan. The referral should comport with the applicable guidance and include or reference the administrative record, PRP search, and activity and cost documentation. Evidence substantiating each element of proof must be discussed in a referral package submitted to the Department of Justice when proceeding with a judicial action.

Generally, referrals seeking the recovery of costs expended in a removal action should occur no later than twelve months after completion of the removal, whether or not the site is on the National Priorities List[21] and regardless of whether further response action is to be taken. Exceptions to this policy may be possible in certain instances for legitimate litigation strategy reasons. For instance, where a remedial action is to be initiated within three years of the completion of the removal, it

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[21]/ Although sites on the National Priorities List will have further costs, e.g., costs of a remedial investigation and feasibility study, the action for the recovery of removal costs should be brought within a year of completion of the removal to assure that we litigate the case while the evidence is most readily available. See Cost Recovery Actions/Statute of Limitations, June 12, 1987 (OSWER Directive No. 9832.3-1A).

may be appropriate to combine an action for the recovery of the removal costs with the action for the recovery of RD/RA costs.[22] However, in no event should filing be delayed beyond the statute of limitations.

22/ Where further response action is contemplated, the Agency ordinarily seeks a declaratory judgment for future response costs. See CERCLA section 113(g)(2).

Part IV. COST RECOVERY PROCESS FOR REMEDIAL SITES

The remedial process in the Superfund program includes the remedial investigation and feasibility study, remedial design, and remedial action. Activities related to cost recovery must be conducted in each phase of the remedial process in order to maximize the potential for recovery of funds.

The cost recovery process for remedial sites[23] includes the following elements: the search for potentially responsible parties (PRPs); the opportunity for PRPs to conduct the work; the development of the administrative record; cost documentation; and the timely issuance of demand letters. While the process for remedial sites is similar to the previously described process for removal sites, the level of effort of each element must be increased over that for removal actions because of the greater amount of money involved. Sites that proceed through a remedial investigation and feasibility study and remedial design and action will generally exceed the threshold level of two hundred thousand dollars used in the removal cost recovery process. Described below are the activities required for each of the elements in the remedial cost recovery process and the timing of each of the activities.

23/ Where a site has more than one operable unit, cost recovery activities described in the remedial process should be conducted for each operable unit, where appropriate, since operable units may be held to be separate actions for purposes of cost recovery statute of limitations.

A. Pre-Remedial Cost Recovery Activities

Activities that may be carried out in preparation for future cost recovery actions prior to the initiation of a remedial investigation and feasibility study (RI/FS) include the potentially responsible party search, general notice, special notice, negotiations, and the issuance of an administrative order on consent for a PRP RI/FS. While each of these activities is an integral part of the broader Superfund program, each has a special significance in light of potential cost recovery actions.

A.1. The Potentially Responsible Party Search The identification and location of potentially responsible parties is central to all future enforcement activities, including cost recovery actions. The PRP search will generate names of potentially responsible parties as well as the information to link the PRPs to the site. This information is likely to serve as evidence in future judicial actions to prove the liability of the defendants.

Concurrent with the NPL listing process, the Region should initiate a PRP search in accordance with the guidelines set out in the Potentially Responsible Party Search Manual, August 27, 1987, (OSWER Directive No. 9834.6). Fund-lead, enforcement, civil investigators, and Office of Regional Counsel staff should work closely together in the development of the PRP search from the initial planning stages through the production of the PRP search report. Ideally, the following activities should

be conducted prior to the initiation of the RI/FS to ensure that all PRPs may be given general notice of their potential liability well before they are given special notice of the opportunity to conduct the RI/FS: history of operations at the site; a title search of the site property; Agency record collection and file review; interviews with government officials; PRP status/PRP history; records compilation; issuance of CERCLA 104(e) letters/RCRA 3007(c) letters; financial status; PRP name and address updates; identification of generators and transporters; report preparation; and, an evaluation of the value of filing notice of a lien on the site property. (The Guidance on Federal Superfund Liens, September 22, 1987, (OSWER Directive No. 9832.12), provides guidance on the use of Federal liens to enhance Superfund cost recovery.) The Region should rely on the expertise of the civil investigator and the Office of Regional Counsel and utilize available contract resources to conduct the PRP search and prepare the PRP search report.

Sufficient information should be collected on all PRPs to satisfy the special notice requirements of section 122 of CERCLA.[24] If possible, the PRP search should be completed prior to the initiation of the RI/FS. In some instances, completion of

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[24]/ CERCLA §122(e)(1) identifies information that should be included, to the extent it is available, in a special notice letter. This information includes the names and addresses of other PRPs, the volume and nature of the hazardous substances contributed by each PRP, and a ranking by volume of the substances at the facility.

all PRP search activities prior to the initiation of the RI/FS will not be possible. For example, it may be necessary to undertake an RI to determine the source of contamination. In other instances, the search for generators may be complicated or "new" information may be discovered late in the process.

A.2. General and Special Notice Letters and Negotiations for a PRP Remedial Investigation and Feasibility Study. Once PRPs have been identified, the Region should issue General Notice Letters to apprise PRPs of their potential liability. This should be done as soon as possible after they have been identified. In addition, information relating to names and addresses of other PRPs, volumetric rankings and nature of substances should be provided as soon as possible.

Special notice letters will provide PRPs with a specific opportunity to negotiate terms of agreement concerning their participation in the conduct of the RI/FS. Special notice letters should also include a demand for payment of past costs if a Fund-financed removal action was conducted at the site and a demand letter has not already been sent. Information regarding the content and timing of general notice letters, special notice letters, and negotiations for PRP RI/FS can be found in the Interim Guidance on Notice Letters, Negotiation, and Information Exchange, October 19, 1987 (OSWER Directive No. 9834.10).

A.3. Settlement for PRP Remedial Investigation/Feasibility Study. A settlement for PRP conduct of the RI/FS must include the requirement that PRPs pay for cost incurred by EPA in obtaining assistance from third parties in the oversight of the RI/FS and may also involve the recovery of past costs incurred by the Agency.

Where negotiations result in a settlement for a PRP RI/FS, EPA will require the settling PRPs to commit in the settlement agreement to pay the costs of oversight of the RI/FS including extramural costs (contracts and interagency agreements) and intramural costs (EPA payroll, travel, and other costs) on a specified schedule. The Region should track reimbursement in CERCLIS and contact the Regional Financial Management Officer to set up an accounts receivable in the Financial Management System (FMS) for the receipt of oversight costs.

In the case of those sites where removal actions have occurred prior to the negotiation, and the cost recovery is not being pursued on a separate track, additional provisions for recovery of past costs or a reservation of EPA's rights to pursue those costs should be included in the administrative order. If some but not all past costs are recovered in the settlement, and a reservation of the Agency's right to pursue all of the remaining costs is included, the advance concurrence of the Department of Justice under section 122(h)(1) of CERCLA will not be necessary. Of course, if the settling PRPs agree to pay all

past costs, a claim is not being compromised and DOJ's prior concurrence is not necessary.

Where negotiations do not result in settlement, the Agency will proceed with a Fund-financed RI/FS.

B. Cost Recovery Activities During the Remedial Investigation/ Feasibility Study

The activities that occur during the remedial investigation and feasibility study in support of future cost recovery actions may include a supplemental PRP search, the development of the administrative record, the documentation of activities and costs, notice and demand letters, and negotiation for PRP remedial design and action.

B.1. Documentation of Activities and Cost Accounting. The documentation of activities and accounting of costs must occur whether the remedial investigation and feasibility study are being conducted by the Agency, a State, or the PRPs.

During a Fund-financed RI/FS, each organization involved (e.g., EPA, a State, other Federal agencies, EPA's contractors) is responsible for keeping an accounting of its activities and the costs corresponding to those activities/items. Cooperative agreements with States for State-lead, Fund-financed RI/FS's must include requirements that States maintain documentation according to standard EPA procedures for cost recovery. These records will be assembled later during the RI/FS in preparation for negotiations with PRPs for private-party remedial design and

action and may serve as evidence of costs incurred in future judicial actions to substantiate cost recovery claims.[25]

When the RI/FS is being conducted by the PRP(s), the lead agency must carefully record the costs of all Fund-financed activities associated with the oversight of that action. The settlement agreement should specify the schedule for payment of oversight costs throughout the RI/FS. Normally, the Agency will issue a demand for payment at the end of a one year period throughout the course of the PRP RI/FS for all costs incurred during that year. Quality record keeping using CERCLIS is essential since the Agency must be able to substantiate the amount of money demanded and what activities were performed for that amount. The Regional Financial Management Officer should set up an accounts receivable in FMS for the receipt of oversight costs.

B.2. Supplemental PRP Search. As the RI/FS proceeds, the Agency should continue to develop the PRP search as necessary. Additional PRPs found since the start of the RI/FS who did not receive notice letters should be issued general notice letters as soon as they are identified. This will give them an opportunity to participate, to the extent feasible, in on-going work. The evidence linking each PRP to the site should be fully reviewed by the Office of Regional Counsel in anticipation of pursuing

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[25]/ Cost documents are not part of the administrative record for a site.

litigation against the PRP, and supplemented as necessary. Again, the Region should ensure that all activities identified in the Potentially Responsible Party Search Manual, (OSWER Directive No. 9834.3) have been conducted or are planned. All sources of information identified by the Region's civil investigator should be thoroughly pursued.

If the PRP search indicates that there are no PRPs at the site, the Region should prepare a close-out memorandum to document the basis for a decision not to proceed with cost recovery. If the PRPs are not financially viable, the Region should review the merits of proceeding with cost recovery. See the discussion of bankruptcy referrals in the Case Selection Guidelines section for factors to consider in such cases.

B.3. Development of the Administrative Record. As in removal actions, the development of an administrative record which will support the selection of e of the remedial alternatives is critical to the cost recovery potential of a case. Section 113(j) of CERCLA limits judicial review of issues concerning the adequacy of a response action to the administrative record. An accurate and complete record, therefore, should simplify future cost recovery actions. Section 113(k) requires that interested persons be given the opportunity to participate in the development of the administrative record. During the RI/FS, whether conducted by a PRP, a State, or EPA, Regions should develop the administrative record consistent with the applicable

procedures. (See Administrative Records for Decisions on Selection of CERCLA Response Actions, May 29, 1987, OSWER Directive #9833.3.)

B.4. Special Notice Letters and Negotiation for PRP Remedial Design and Remedial Action. As the proposed plan and draft RI/FS are made available for public comment, the Regions should again send special notice letters to all identified PRPs to provide them with an opportunity to negotiate regarding conduct of the remedial design and remedial action (RD/RA).

The special notice letters for RD/RA should include a demand for payment of past costs not yet reimbursed, e.g., the costs of a Fund-financed RI/FS. The Region should determine total past costs (to the extent possible), and subtract from those costs any costs already reimbursed. The Region must ensure that the amount of past costs demanded is qualified to account for costs incurred but not yet paid by the Agency. Interest which has accrued on amounts previously demanded should be included in the demand as appropriate (see page 22).

C. Settlement for PRP Remedial Design and Action.

As mentioned above, past costs will be one of the subjects of negotiation for PRP remedial design and action. The negotiations will result in one of three outcomes: full settlement, partial settlement, or no settlement. See the Interim CERCLA Settlement Policy, OSWER Directive No. 9835.0. for a complete discussion of the factors to consider when settling an

action under CERCLA. The cost recovery consequences of each of these are discussed below.

C.1. Full Settlement. Where negotiations result in a full settlement, the settling PRPs agree to conduct the work and reimburse the Agency for past costs. In addition, the settling PRPs will have agreed to reimburse EPA for future oversight costs. The agreement will be formalized in a consent decree which must specify the manner and timing of billings and payments and be filed in the appropriate United States District Court. For future oversight costs, EPA may be required to send demand letters at regular intervals according to the schedule set forth in the consent decree. The schedule for payment should be recorded in the appropriate CERCLIS file. The Regional Financial Management Officer must be advised that an account for receipt of the recovered money should be established.

C.2. Partial Settlement. Where negotiations result in a partial settlement, unrecovered costs should be sought from non-settlors in a §107 judicial action. The referral of a case against non-settlors should occur concurrent with referral of the consent decree with settlors, or as soon as possible thereafter. This will serve to highlight enforcement against the non-settling PRPs.[26] If the Region will not pursue the costs waived in the settlement with the PRPs, the ten point analysis justifying the

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[26]/ Of course, this should take into account accrual of a cause of action.

settlement for less than one hundred per cent should document the basis for not pursuing the unrecovered costs. If a decision not to pursue the unrecovered costs is made after the settlement analysis has been prepared in final form, a close-out memorandum should be prepared to document the basis for that decision.[27]

C.3. No Settlement. Where negotiations do not result in any settlement, the site classification will determine the next step.

For Fund-lead sites, unless a statute of limitations problem is anticipated for the recovery of RI/FS costs, the Region should proceed with Fund-financed remedial design and remedial action before initiating an action for the recovery of RI/FS costs. Consistent with applicable and relevant guidance, consideration should be given to issuing unilateral §106(a) orders to recalcitrant parties in order to encourage PRP response and set up claims for treble damages and penalties.

For Federal enforcement-lead sites, where the remedial action is not funded and the case is not settled, the Region generally should issue a unilateral section 106 administrative order and, where compliance is not forthcoming, immediately thereafter (taking into account whether there is a funded RD) refer the case for injunctive relief and past costs (combined CERCLA §§106/107 judicial actions). The cost documentation must be completed by the time of the referral to support the section

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[27]/ See footnote 15, page 20.

107 claim. Again, see the 1983 Cost Recovery Guidance and the 1985 Cost Documentation Procedures Manual for details of preparing the cost recovery portions of a case.

D. Cost Recovery Activities during the Remedial Design and Remedial Action

By the time a site has reached the remedial design and remedial action phases, much of the work for assembling a cost recovery case has already been completed. Additional activities, which will mainly consist of updating information collected earlier, will depend upon the outcome of settlement negotiations, and the viability of the remaining case. Where the Agency has agreed to a partial settlement, cost recovery activities to be conducted may include those necessary in overseeing the PRP work as well as those necessary for pursuing a judicial action against non-settlors.

D.1. PRP RD/RA. Cost recovery activities required during a PRP RD/RA depend upon the type of settlement (i.e., full or partial) and the specific provisions included in the settlement for reimbursement of past costs and oversight costs. Any settlement that includes reimbursement of EPA's oversight costs throughout the course of the remedial design and action will require the Agency to regularly document all costs associated with the oversight function. Demand letters for oversight costs should be sent according to the schedule set forth in the consent decree and tracked in CERCLIS. The Regional Financial Management

Officer must be provided with a copy of the consent decree so that an accounts receivable can be established in FMS and payments tracked.

The Agency should continue to account separately for all other EPA site-specific costs not attributable to oversight (e.g., costs associated with a separate operable unit which the PRPs are not implementing) in the event that a judicial action against non-settlors (or settlors) occurs.

D.2. Fund-Financed RD/RA. Fund-financed remedial design and action will normally account for the largest site-specific expenditures attributable to a site. Therefore, remedial design and action costs provide the largest potential for return of site-specific expenditures. This fact makes it essential that the Agency devote significant resources to the prompt development of cost recovery actions for remedial design and action costs.

a) Cost Documentation. There is a presumption that absent full resolution, the Agency will proceed with judicial cost recovery actions for all Fund-financed remedial actions and/or unreimbursed costs unless a decision has been made not to pursue cost recovery. In preparation for a referral, the Agency must continue maintaining an accounting of all costs incurred on the site, including costs incurred by Agency personnel and contractors, and costs incurred through cooperative agreements with States and interagency agreements with other Federal agencies. The Cost Documentation Procedures Manual (1985)

provides details on cost documentation preparation for section 107 actions.

b) Demand Letters. As soon as practicable after the completion of the remedial design, the Region should send demand letters to all identified PRPs. The amount of money demanded should include total past costs not yet recovered, and applicable interest, plus a projection of the costs expected to be spent in remedial action. While the demand letter should include the projected costs, it should also state that the amount is an estimate and is subject to change. Demand letters at this point should not invite discussion on any subject but costs, i.e., negotiation on the selected remedial action will not be reopened at this point.

c) Consideration of Referral in the Event of No Settlement. Assuming that attempts at negotiation at this point are fruitless, the Region must make a final determination of the disposition of the case. The relevant factors to be considered are the same as those for removal action cases:

(a) the strength of evidence connecting the potential defendant(s) to the site;[28]

(b) the availability and merit of any defense. (See CERCLA §107);

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[28]/ In the case of large remedial actions with PRP searches done early in the program, the PRP search should be reviewed and, as appropriate, upgraded, before a decision is made to close-out the case.

(c) the quality of release, remedy, and expenditure documentation by the Agency, a State or third party;

(d) the financial ability of the potential defendant(s) to satisfy a judgment for the amount of the claim or to pay a substantial portion of the claim in settlement; and

(e) the statute of limitations.

If upon review of the above factors, the Region believes that a judicial cost recovery action will not be fruitful, a cost recovery close-out memorandum should be prepared and its issuance documented in the appropriate CERCLIS field.

A decision to proceed with a judicial action for cost recovery requires the assembly of all documents associated with the case including those necessary to substantiate that:

1) there is a release or the threat of a release of a hazardous substance;

2) the release or threat of release is from a facility;

3) the release or threat of release caused the United States to incur response costs.

4) the Defendant is in one of those categories of liable parties in CERCLA section 107(a).

These elements are discussed in Cost Recovery Actions under

the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (OSWER Directive No. 9832.1) and Procedures for Documenting Costs for CERCLA §107 Actions, (OSWER Directive No. 9832.0-1a). In addition, the referral should anticipate the defense that the response was inconsistent with the national contingency plan. The referral should comport with the applicable guidance and include or reference the administrative record, PRP search, and activity and cost documentation. Evidence substantiating each element of proof must be discussed in a litigation report included in the referral package submitted to the Department of Justice when proceeding with a judicial action. At this point, the assembly of evidence should merely require updating information previously assembled, e.g., the administrative record, cost documentation, the PRP search report.

Referrals seeking the recovery of costs expended in a remedial design and remedial action should occur concurrently with the initiation of on-site construction of the remedial action. RD/RA referrals should not affect the schedule of design or construction. Where remedial design and remedial action are divided into operable units, referrals should occur concurrent with the initiation of each remedial action operable unit.[29] The

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[29]/ Section 113(g) of CERCLA provides that in cost recovery actions under section 107 "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further

Agency will defer beyond this date the filing of a remedial case only in limited circumstances for technical or strategic reasons.

Once a case for the recovery of remedial action costs has been referred to the Department of Justice, the Region must periodically document on-going costs incurred and submit these costs to DOJ. The litigation team should discuss the frequency and timing of the periodic cost up-dates.

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response costs or damages."

Part V. **Existing Cost Recovery Guidance**

Administrative Records for Decisions on Selection of CERCLA Response Actions, May 29, 1987, OSWER Directive No. 9833.3.

Coordination of EPA and State Actions in Cost Recovery, August 29, 1983, OSWER Directive No. 9832.2.

Cost Recovery Actions/Statute of Limitations, June 12, 1987, OSWER Directive No. 9832.3-1A.

Cost Recovery Actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), August 26, 1983, OSWER Directive No. 9832.1. Also known as the 1983 Cost Recovery Guidance.

Cost Recovery Referrals, August 3, 1983, OSWER Directive No. 9832.0.

Guidance of Documenting Decisions not to Take Cost Recovery Actions, June 7, 1988, OSWER Directive No. 9832.11.

Guidance on Federal Superfund Liens, September 22, 1987, OSWER Directive No. 9832.12.

Interim CERCLA Settlement Policy, December 5, 1984, OSWER Directive No. 9835.0.

Interim Final Guidance Package on Funding CERCLA State Enforcement Actions at NPL Sites, April 7, 1988, OSWER Directive No. 9831.6.

Interim Guidance on Notice Letters, Negotiations, and Information Exchange, November 19, 1987, OSWER Directive No. 9834.10.

Interim Guidance on Settlements with de Minimis Waste Contributors under Section 122(g) of SARA, June 19, 1987, OSWER Directive No. 9834.7.

Interim Guidance: Streamlining the CERCLA Settlement Decision Process, February 12, 1987, OSWER Directive No. 9835.4.

Policy on Recovering Indirect Costs in CERCLA §107 Cost Recovery Actions, June 27, 1986, OSWER Directive No. 9832.5.

Potentially Responsible Party Search Manual, August 27, 1987, OSWER Directive No. 9834.3-1A.

Procedures for Documenting Costs for CERCLA §107 Actions, January 30, 1985, OSWER Directive No. 9832.0-1A. Also known as the Cost Documentation Procedures Manual.

Revised Hazardous Waste Bankruptcy Guidance, May 23, 1986, OECM.

Small Cost Recovery Referrals, July 12, 1985, OSWER Directive No. 9832.6.

State Superfund Financial Management and Recordkeeping Guidance, November 1987, Office of the Comptroller, Financial Management Division.

Superfund Removal Procedures Revision Number Three, February 1988, OSWER Directive No. 9360.0-03B. See Chapter 5, "Potentially Responsible Parties".