

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

STD. 72 (REV. 3-84)

DEPARTMENT, BOARD OR COMMISSION	Department of Health Services	BILLING CODE	82000
DIVISION, BUREAU OR OTHER UNIT	Toxic Substances Control Program - Cost Recovery Unit		
ADDRESS	400 P Street, 4th Floor	Sacramento, CA	(38 ea. pt)
SCHEDULE NUMBER	185	PAGE NUMBER(S)	1 thru 3
		SCHEDULE DATE	October 17, 1989
IF THIS IS A REVISION OF AN EXISTING SCHEDULE (including addition or deletion of pages), enter the following information from the EXISTING schedule:			
SCHEDULE NUMBER		PAGE NUMBER(S)	
SCHEDULE NUMBER		SCHEDULE DATE	
APPROVAL NUMBER		APPROVAL DATE	

Submit three copies with three copies of the Records Retention Schedule, STD. 73.

TO: (1) DEPARTMENT OF GENERAL SERVICES
OFFICE OF RECORDS MANAGEMENT

(2) CHIEF, STATE ARCHIVES
1020 O Street, Room 130
Sacramento, CA 95814
445-4293 or ATSS 485-4293

PART I—AGENCY STATEMENTS

As the person directly responsible for maintenance of the records listed on the attached schedule, I certify that I have reviewed the need for the records and that each retention period is necessary and correct as scheduled.

SIGNATURE—PERSON DIRECTLY RESPONSIBLE FOR THE RECORDS	<i>Charles A. Mann</i>	TITLE	Chief, Financial Operations	DATE	10-17-89
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In accordance with Government Code 14755, approval of the attached Records Retention Schedule by the Department of General Services is hereby requested. Retention periods have been established by this agency after a careful evaluation of all the factors listed in Section 1667 of the State Administration Manual.

I hereby certify that I am authorized to act for the head of this agency in matters pertaining to the retention and disposal of records. (Per Section 1611 of the State Administrative Manual.)

SIGNATURE—RECORDS MANAGEMENT COORDINATOR	<i>Jim Bilings</i>	TITLE	Staff Services Analyst	DATE	November 2, 1989	TELEPHONE	323-9268
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PART II—DEPARTMENT OF GENERAL SERVICES APPROVAL (Per Government Code Section 14755)

The Department of General Services has no jurisdiction over entries made in Column 14 of STD. Form 73. Our approval covers Columns 1-13 and 15 only.

SIGNATURE	<i>Jenida Stark</i>	APPROVAL NUMBER	89-168
TITLE	<i>RMA</i>	DATE	11-22-89

PART III—ARCHIVAL SELECTION (Per Government Code Section 14755)

THE ATTACHED RECORDS RETENTION SCHEDULE:

Contains no material subject to further review by the California State Archives.

Contains material subject to archival review. Items stamped "Hold/Notify Archives" may not be destroyed without clearance by the Secretary of State. (State Administrative Manual Section 1614)

SIGNATURE—CHIEF OF ARCHIVES	<i>John F. Barnes</i>	DATE	DEC 7 1989
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RECORDS RETENTION SCHEDULE

STD. 73 (REV. 5-85)

See instructions on reverse
and in SAM 1600

DEPARTMENT (1) Department of Health Services GS# 82000	SCHEDULE NUMBER (2) 185	DATE (3) October 17, 1989
ORGANIZATIONAL UNIT Toxic Substances Control Prog.-Cost Recovery Unit	PAGE OF Page 2 of 3	PAGES (4)
ADDRESS (number, street, city) 400 P Street Sacramento	DEPARTMENT OF GENERAL SERVICES APPROVAL NUMBER (5)	

ITEM NUMBER (6)	CUBIC FEET (7)	CALIFORNIA STATE ARCHIVES USE ONLY (8)	TITLE AND DESCRIPTION OF RECORDS (Triple-space between items) (9)	Media (10)	Vital (11)	RETENTION				PRA (Exempt) & IPA (16)	REMARKS (17)
						OFFICE (12)	DEPT. (13)	SRC (14)	TOTAL (15)		
1.	30		<u>COST RECOVERY RECORDS</u> <u>Site Mitigation Expenditure Files (Project Files)</u> (Site files for billing for removal or remedial actions on specific sites.)	P		Active +3		3	Active +6	XI	Becomes inactive when all fines/costs are recovered. CERCLA 42 USC Sect. 9613 (g) (2) PRA 6254; IPA 1798.40
2.	3.5		<u>Civil/Criminal Case Files</u> (Fines received from municipal and superior courts per H&S Code, Section 25192 for hazardous waste law violations.)	P		Active +3		2	Active +5	XI	Becomes inactive when all fines/costs are recovered. PRA 6254; IPA 1798.40
3.	.5		<u>Corrective Action Orders</u> (Administrative fines issued by TSCP per H&S Code Section 25189.)	P		Active +3		2	Active +5	XI	Becomes inactive when all fines/costs are recovered. PRA 6254; IPA 1798.40
4.	2.2		<u>Correspondence</u> Chron	P				5			<u>Active</u> - Required For Cost Recovery Functions

RECORDS RETENTION SCHEDULE

STD. 73 (REV. 8-88)

See instructions on reverse
and in SAM 1600

DEPARTMENT (1) Department of Health Services GS# 82000		SCHEDULE NUMBER (2) 185	DATE (3) October 17, 1989
ORGANIZATIONAL UNIT Toxic Substances Control Prog.-Cost Recovery Unit		PAGE Page 3 of 3	OF PAGES (4)
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						OFFICE (12)	DEPT. (13)	SRC (14)	TOTAL (15)		
			<u>COST RECOVERY RECORDS (continued)</u>								
5.	2		<u>Emergency Response Files</u> (Site files for emergency remedial or removal actions of hazardous waste posing a hazard to the general public.)	P		Active +3		3	Active +6	XI	Becomes inactive when all fines/costs are recovered. CERCLA 42 USC Sect. 9613 (g) (2) PRA 6254; IPA 1798.40
38.2		Total Cubic Feet									

ENVIRONMENTAL STATUTES

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

(f) **DOUBLE RECOVERY PROHIBITED.**—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c) (1) or (2), no other claim may be paid out of the Fund for the same costs.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e) **NATIONWIDE SERVICE OF PROCESS.**—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) CONTRIBUTION.—

(1) **CONTRIBUTION.**—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in ac-

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cordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

(2) **SETTLEMENT.**—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) **PERSONS NOT PARTY TO SETTLEMENT.**—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

(1) **ACTIONS FOR NATURAL RESOURCE DAMAGES.**—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and

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the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(2) **ACTIONS FOR RECOVERY OF COSTS.**—An initial action for recovery of the costs referred to in section 107 must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, 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 response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

(3) **CONTRIBUTION.**—No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) **SUBROGATION.**—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

(5) **ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.**—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at

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any time before the expiration of 3 years from the date on which such payment is made.

(6) **MINORS AND INCOMPETENTS.**—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) **TIMING OF REVIEW.**—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution.

(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

(5) An action under section 106 in which the United States has moved to compel a remedial action.

(i) **INTERVENTION.**—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) **JUDICIAL REVIEW.**—

(1) **LIMITATION.**—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) **STANDARD.**—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

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(3) **REMEDY.**—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) **PROCEDURAL ERRORS.**—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) **ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.**—

(1) **ADMINISTRATIVE RECORD.**—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) **PARTICIPATION PROCEDURES.**—

(A) **REMOVAL ACTION.**—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) **REMEDIAL ACTION.**—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2) (relating to public participation).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5

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of the United States Code to carry out the requirements of this subparagraph.

(C) **INTERIM RECORD.**—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

(D) **POTENTIALLY RESPONSIBLE PARTIES.**—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(1) **NOTICE OF ACTIONS.**—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

RELATIONSHIP TO OTHER LAW

42 USC 9614

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

(c) **RECYCLED OIL.**—

(1) **SERVICE STATION DEALERS, ETC.**—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened re-