



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

September 20, 2002

MEMORANDUM

SUBJECT: Enforcement First for Remedial Action at Superfund Sites

FROM: John Peter Suarez, Assistant Administrator /s/
Office of Enforcement and Compliance Assurance

Marianne Lamont Horinko, Assistant Administrator /s/
Office of Solid Waste and Emergency Response

TO: Regional Administrators

EPA has a longstanding policy to pursue “enforcement first” throughout the Superfund cleanup process. We write to request your re-doubled attention to ensure the continued implementation of this policy at Superfund sites in your Region. This policy promotes the “polluter pays” principle and helps to conserve the resources of the Hazardous Substance Trust Fund (Fund) for the cleanup of those sites where viable responsible parties do not exist.

Existing EPA guidance emphasizes that a major component of the “enforcement first” policy is that potentially responsible parties (PRPs) should conduct remedial actions (RA) whenever possible.^{1/} See “Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of Remedial Design/Remedial Action at Superfund Sites,” OSRE (June 17, 1999)(“Strategies Memo”); “Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions,” OSWER Dir. #9833.0-1a (Mar. 7, 1990). EPA prefers to achieve PRP-lead cleanups through settlements rather than unilateral administrative orders (UAOs).

^{1/}PRPs should conduct removal actions whenever possible, as well. While this memorandum addresses RAs, your re-doubled attention to pursuing enforcement opportunities throughout the Superfund process would be appropriate.

If, however, a Region cannot negotiate a timely settlement with PRPs to perform the RA at the site, then the Region should issue UAOs to all appropriate parties to compel cleanup expeditiously before a Region proceeds with a Fund-financed RA.^{2/} Any decision to exclude certain PRPs from issuance of a UAO should be documented, as called for in existing guidance.

After careful consideration of the statutory criteria and case-specific issues, on some occasions there may not be a liable, viable party at a site, and on rare occasions it may be appropriate to provide Superfund funding for RA without first issuing a UAO. The Region should complete its PRP search early in the process and should consult with the Office of Site Remediation Enforcement (OSRE) as soon as it appears that no PRPs are available or that it may otherwise not be appropriate to issue a UAO at a site. Ordinarily, the National Prioritization Panel will not rank a site unless the required consultation with OSRE has finished, or OSRE has determined that the consultation has progressed sufficiently to make ranking worthwhile while the consultation is finished.

Our continuing commitment to “enforcement first” and, in particular, issuance of UAOs at all appropriate sites will greatly assist in our effort to use Fund monies most efficiently. If you or your staff would like assistance in evaluating the appropriate enforcement strategy at a particular site, please do not hesitate to contact Mike Northridge in OSRE at (202) 564-4263, or John Smith in OERR at (703) 603-8802.

Use of this Memorandum

This memorandum is intended solely for the guidance of employees of EPA and it creates no substantive rights for any persons. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts.

cc: Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Office of Environmental Cleanup, Region X

^{2/}As the Strategies Memo reiterates, the Region should be prepared to issue a UAO at the conclusion of the 120-day negotiation moratorium provided by CERCLA section 122(e) unless an extension of the negotiation process has been approved.

Director, Office of Environmental Stewardship, Region I
Director, Environmental Accountability Division, Region IV
Regional Counsel, Regions II, III, V, VI, VII, IX, and X
Assistant Regional Administrator, Office of Enforcement, Compliance, and
Environmental Justice, Region VIII
Mike Cook, OERR
Barry Breen, OSRE
Earl Salo, OGC