



DIRECTIVE NUMBER: 9012.10-b

TITLE: Redelelegation of Civil Judicial Settlement
Authorities under Delegation 14-13-B and 14-14-E

APPROVAL DATE: August 18, 1988

EFFECTIVE DATE: August 18, 1988

ORIGINATING OFFICE: OWPE

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

- ☒ A — Signed by AA or DAA
- ☐ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

OSWER Directive 9012.10-a "Revision of CERCLA Civil
Judicial Settlement Authorities Under Delegation
14-13-B and 14-14-E

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OSWER Directive Initiation Request

1. Directive Number

9012.10-b

2. Originator Information

Name of Contact Person

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Mail Code

OS-510

Office

OWPE

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3. Title

Redelegation of Civil Judicial Settlement Authorities under Delegation
14-13-B and 14-14-E

4. Summary of Directive (include brief statement of purpose)

Redelegations consultation and concurrence on judicial settlements and de minimis
settlements to Director, Office of Waste Programs from AA-OSWER

5. Keywords

Judicial Settlement; Consent Decree; DeMinimis

6a. Does This Directive Supersede Previous Directive(s)?

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No

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Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

☐

No

☒

Yes

What directive (number, title) 9012.10a

Revision of CERCLA Civil Judicial
Authorities Under Delegations 14-13-B and 14-13-E

7. Draft Level

☒

A - Signed by AA/DAA

☐

B - Signed by Office Director

☐

C - For Review & Comment

☐

D - In Development

8. Document to be distributed to States by Headquarters?

☐

Yes

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No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Darlene Williams

Date

8/25/88

10. Name and Title of Approving Official

Sharon Frote

Date

8/25/88

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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/E	DIRECTIVE	DIRECTIVE	DIRECTIVE



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

AUG 18 1988

OSWER Directive
9012.10-b

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Redelelegation of Civil Judicial Settlement Authorities
Under Delegation 14-13-B and 14-14-E (OSWER Directive
9012.10a)

FROM: *J. Winston Porter*
J. Winston Porter
Assistant Administrator

TO: Bruce M. Diamond, Director
Office of Waste Programs Enforcement

On September 14 and 21, 1987 the Administrator signed new and revised delegations of authority regarding activities under CERCLA as amended by the Superfund Amendments and Reauthorization Act (SARA). Supplemental delegations for Delegations 14-13-B and 14-14-E (civil judicial settlements & de minimis settlements respectively) were put into effect on June 17, 1988 under OSWER Directive 9012.10a. The purpose of this memorandum is to redelegate to the Director of the Office of Waste Programs Enforcement or his designee selected authorities concerning civil judicial settlements and de minimis settlements.

I want to emphasize the importance of continued cooperative consultation between the offices undertaking these authorities. Consultation between OWPE and OECM prior to civil judicial settlements and de minimis settlements will contribute to careful review of consent decrees.

These revised delegations designate responsibilities to exercise concurrence or to be consulted. The authority to non-concur on specific settlements is retained at the Assistant Administrator level. You may authorize a designee to act on your behalf with regard to concurrence or consultation.

The redelegations contained in this document supersede any and all previous redelegations.

Attachment

The Comprehensive Environmental Response, Compensation,
And Liability Act (CERCLA)

R-14-13-B. Concurrence in Settlement of Civil Judicial Actions

1. Authority. To exercise the Agency's concurrence or be consulted in the settlement of civil judicial enforcement actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, and to request the Attorney General to amend a consent decree issued under CERCLA.

2. TO WHOM DELEGATED.

The following authorities are delegated to the Director, Office of Waste Programs Enforcement.

- A. Consultation Requirement Prior to Signing Settlements Under the Following Conditions

1. §106 RD/RA settlements where response costs are between \$30 and \$60 million (Concurrence is required if the terms outlined in B.4. below exist. This corresponds to D.3 of Directive No. 9012.10a).
2. §107 settlements where total claims are between \$30 and \$60 million (Concurrence is required if the terms outlined in B.4. below exist. This corresponds to D.3 of Directive No. 9012.10-a).
3. Settlements which compromise greater than 25% and less than 50% of the total past and future costs, and mixed funding settlements which require greater than 25% and less than 50% contribution by the U.S., where such compromise or contribution exceeds \$2.0 million (except where concurrence is required by B.4. below. This corresponds to D.3 of Directive No. 9012.10a.)

- B. Concurrence Requirements in Judicial Actions

1. First settlement involving §103 Reportable Quantities. (Additional cases are fully delegated to the Regions)
2. §106 RD/RA settlements where response costs exceed \$60 million.
3. §107 settlements where total past and future costs exceed \$60 million.

4. Settlements which compromise greater than 50% of the total past and future costs, and mixed funding settlements which require a 50% or greater than \$2.0 million contribution by the U.S. Total past and future costs are to be included in the calculation of the contribution by the U.S.
 5. Multi-Regional or nationally-managed cases, including bankruptcies.
 6. Settlements based upon extraordinary circumstances which purport to grant covenants not to sue without limitations as to future liability (§122(f)(6)(B)).
 7. Precedent setting cases (e.g., certain municipalities as generators, dioxin, substantial deviations from Agency policy).
 8. Settlements involving §122(f)(2) special covenants not to sue.
3. Limitations
- The Assistant Administrator for Solid Waste and Emergency Response retains the authority to non-concur in all settlements.
4. Redelegation Authority
- These authorities may be redelegated to the Director, CERCLA Enforcement Division.
5. Additional References
- a. Sections 103, 106, 107 and 122 of CERCLA
 - b. All applicable Agency guidance and directives.
 - c. Authority to recover costs is delegated in 14-14-D, "Cost Recovery Non-Judicial Agreements and Administrative Consent Orders." Authority to enter into De Minimis settlements under CERCLA section 122(g) is delegated in Delegation 14-14-E, "De Minimis Settlements".

The Comprehensive Environmental Response, Compensation, And
Liability Act (CERCLA)

R-14-14-E. De Minimis Settlements

1. AUTHORITY

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act as amended (CERCLA), to enter into or exercise Agency concurrence in de minimis settlements under Section 122(g)

2. To Whom Delegated

Director, Office of Waste Program Enforcement

3. Limitations

- a. After the first cases under §122(g)(1)(a) and §122(g)(1)(B), the authority is delegated to the Regional Administrators. Consultation with the Director of Office of Waste Programs Enforcement is required on these settlements.
- b. The Assistant Administrator for Solid Waste and Emergency Response retains the authority to non-concur on all §122(g)(1)(a) and §122(g)(1)(b) settlements.

4. REDELEGATION AUTHORITY

This authority may be redelegated to the Division Director level.

5. ADDITIONAL REFERENCES

- a. Sections 106, 107 and 122 of CERCLA
- b. All applicable agency guidance and directives.
- c. Authority to recover costs other than de minimis settlements is delegated in 14-14-D, Cost Recovery Non-Judicial Agreements and Administrative Consent Orders," and in 14-13-B "Concurrence in Settlement of Civil Judicial Actions."