



DIRECTIVE NUMBER: 9940.0

TITLE: MEMO -- Use of RCRA §3008(g) Independently of §3008(a)

APPROVAL DATE:

EFFECTIVE DATE: 7/28/81

ORIGINATING OFFICE: OWPE

FINAL

DRAFT

STATUS:

REFERENCE (other documents):

OSWER OSWER OSWER
VE DIRECTIVE DIRECTIVE DI



OSWER Directive Initiation Request

Interim Directive Number

9940.0

Originator Information

Name of Contact Person <i>Virginia Steiner</i>	Mail Code <i>WH-527</i>	Telephone Number <i>475-9329</i>
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Lead Office <input type="checkbox"/> OERR <input type="checkbox"/> OSW <input type="checkbox"/> OUST <input checked="" type="checkbox"/> OWPE <input type="checkbox"/> AA-OSWER	Approved for Review Signature of Office Director <i>M. G. Kelly</i>	Date <i>5-30-86</i>
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Title

Use of RCRA §3008(g) independently of §3008(a)

Summary of Directive

The use of RCRA's Civil Penalty Authority for Subtitle C Violations where no administrative order authorized by §3008(a) has been issued.

Penalty Policy
monitory violations category

Type of Directive (Manual, Policy Directive, Announcement, etc.) <i>Policy</i>	Status <input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final <input type="checkbox"/> New <input type="checkbox"/> Revision
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Does this Directive Supersede Previous Directive(s)? Yes No Does It Supplement Previous Directive(s)? Yes No

If "Yes" to Either Question, What Directive (number, title)

Review Plan

<input type="checkbox"/> AA-OSWER	<input type="checkbox"/> OUST	<input type="checkbox"/> OECM	<input type="checkbox"/> Other (Specify)
<input type="checkbox"/> OERR	<input type="checkbox"/> OWPE	<input type="checkbox"/> OGC	
<input type="checkbox"/> OSW	<input type="checkbox"/> Regions	<input type="checkbox"/> OPPE	

This Request Meets OSWER Directives System Format

Signature of Lead Office Directives Officer <i>M. G. Kelly</i>	Date <i>5-30-86</i>
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Signature of OSWER Directives Officer	Date
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

11 23 1981

MEMORANDUM

SUBJECT: Use of RCRA §3008(g) Independently of §3008(a)

FROM: Douglas MacMillan, Director *DM*
Office of Waste Programs Enforcement

TO: Enforcement Division Directors
Regions I-X

In discussions with Regional enforcement personnel the question has frequently arisen of whether the civil penalty authorized by §3008(g) of RCRA may be sought for a violation of the requirements of Subtitle C in cases in which no administrative order authorized by §3008(a) has been issued. We interpret the Act as clearly authorizing the imposition of civil penalties, regardless of whether an administrative order has been issued or violated, when otherwise appropriate. The Office of General Counsel concurs in this interpretation. This memorandum sets forth the basis for this conclusion.

Both the language and structure of §3008 indicate that subsection (g) was intended to operate independently of subsection (a). First, the fact that civil penalties and administrative orders are provided for in separate subsections indicates that they are to be treated as separate means of enforcing Subtitle C. (See 2A SUTHERLAND, STATUTES AND STATUTORY INTERPRETATION §47.02 (4th ed. 1964) "...if the meaning of any particular phrase or section standing alone is clear no other section or part of the act may be applied to create doubt.") Subsection (g) makes no mention of administrative orders. In addition, subsection (a)(3) provides for a penalty specifically applicable to failure to comply with an administrative order. Were issuance and non-compliance with an administrative order a prerequisite for the imposition of a civil penalty subsection (g) would be superfluous. In general, a statute, "...should be construed so that effect is given to all its provisions." (Sutherland § 46.06).

Furthermore, the legislative history of §3008(g) leaves little doubt that civil penalties may be imposed for violations of Subtitle C regardless of whether an order has been issued requiring compliance. Subsection (g) was added by the 1980 Amendments. The language adopted with regard to civil penalties was contained in Senate Bill 1156. (H. Rep. No. 96-1444, 96th Cong., 1st Sess. 36 (1980)).

According to the Report of the Committee on Environment and Public Works the relevant section of S.1156:

...amends the enforcement provisions of subtitle C to bring them into line with those in the Clean Air and Clean Water Acts. First, it provides a civil penalty of up to \$25,000 per day for dumping of hazardous wastes regardless of whether the dumping party has been served with an order to stop dumping.

Under existing law, only persons actually ordered to halt dumping are liable for a civil penalty. S.Rep. No. 96-172, 96th Cong., 1st Sess. 3-4 (1979).

Although the Report speaks only in terms of dumping, given the broad language of §3008(g), the reference clearly is intended to provide an illustration of how the penalty provision would operate in the context of a violation of a particular requirement of Subtitle C. The civil penalty provisions of the Clean Air and Clean Water Acts, after which §3008(g) is explicitly modelled, both provide for the imposition of civil penalties for the violation of regulatory requirements promulgated pursuant to those Acts, regardless of whether an administrative order has been issued. (See §113(b) CAA and §309(d) CWA).

In conclusion, it is the policy of the Office of Waste Programs Enforcement that, §3008(g) provides discretionary authority for the imposition of civil penalties regardless of whether an administrative order has been issued pursuant to §3008(a) and that such penalties should be sought for violations of Subtitle C of RCRA when otherwise deemed appropriate. If you have any questions or problems relating to the relationship of civil penalties to administrative orders please contact Doug Farnsworth at FTS 382-3058.