



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

9012.10-1

APR 4 1990

MEMORANDUM

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Clarification of Delegations of Authority 14-14-A,
14-14-B and 14-14-C under CERCLA

FROM: Bruce M. Diamond, Director
Office of Waste Programs Enforcement
Henry L. Longest II, Director
Office of Emergency and Remedial Response

TO: Regional Administrators, Regions I-X

This memorandum summarizes our past and future approach to implementing Delegations of Authority 14-14-A, 14-14B and 14-14C under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA).

14-14-A - Determinations of Imminent and Substantial Endangerment

Delegation 14-14-A requires that the Regional Administrators consult with the Director of the Office of Waste Programs Enforcement (OWPE) before making determinations of imminent and substantial endangerment. The Director of the Office of Emergency and Remedial Response (OERR) must be notified when such consultation occurs.

The assessment of imminent and substantial endangerment is generally made during the remedial investigation process and the process leading up to an Action Memorandum, and the finding is made in the decision document itself. The consultation occurs during the decision-making process and is therefore implicit in the delegation process for RODs and Action Memoranda. A separate consultation is not required for the determination of imminent and substantial endangerment. All determinations of imminent and substantial endangerment made prior to this date are deemed to have met the consultation requirements.

In addition, Headquarters issued guidance on endangerment assessments (OSWER Directive #9850.0, November 22, 1985) which has been relied on by the Regions in making determinations of imminent and substantial endangerment. This guidance has been superceded by the Risk Assessment Guidance for Superfund, (EPA/1-89/002, signed October 13, 1989). The new guidance is being relied on for determinations made after October 13, 1989. Use of these guidance documents is sufficient to constitute consultation of OWPE and OERR.

14-14-B - Administrative Actions Through Unilateral Orders

Delegation 14-14-B requires the Regional Administrators to consult with the Director of OWPE on their administrative actions, including, but not limited to, their issuance of unilateral orders. The Director of OERR must be notified when such consultation occurs.

The process for issuing Unilateral Administrative Orders involves coordination with the Regional Coordinators of the Compliance Branch of OWPE's CERCLA Enforcement Division. Issues concerning the issuance of these unilateral orders are brought to the Regional Coordinator's attention, and are elevated when necessary.

This consultation also takes place during monthly phone calls with the Regions in which they discuss negotiations, candidate sites and activities associated with issuing unilateral orders. It also takes place in the yearly strategy consultations which have culminated in a fiscal year 1989 and 1990 written strategy for issuance of Unilateral Administrative Orders for RD/RA.

In the future, we will continue the general process. As in the past, memoranda and conversations on actions at specific sites are not necessary. A separate consultation is required, however, for decisions not to issue a Unilateral Administrative Order for RD/RA (see "Use of CERCLA Section 106 Unilateral Enforcement for Remedial Design and Remedial Action: Strategy for Fiscal Year 1990", OSWER Directive # 9870.1A, February 14, 1990), and for \$2 million exemption requests.

The consultation requirement with OWPE has been met for all Unilateral Administrative Orders for actions issued prior to this date, and is waived for future unilateral orders, except as mentioned above.

14-14-C - Administrative Actions Through Consent Orders

Under delegation 14-14-C, the Regional Administrators must consult with the Director of OWPE on their administrative actions, including but not limited to, the issuance of Administrative Orders on Consent (except for RI/FS orders issued under 104. See memorandum from J. Winston Porter of March 16, 1987). Such advance concurrence can be waived by memorandum. The authority to nonconcur on the issuance of an Administrative Order on Consent, however, is retained by the Assistant Administrator of OSWER.

The process for issuing Administrative Orders on Consent for removal actions has involved general coordination with the Regional coordinators of the Compliance Branch of OWPE 's CERCLA Enforcement Division. Issues concerning the issuance of these Administrative Orders on Consent are brought to the Regional

Coordinator's attention, and are elevated when necessary. End of year summaries are prepared detailing the issuance of Administrative Orders on Consent for removal actions. This method of consultation is sufficient to constitute consultation with the Director of OWPE for concurrence. The consultation requirement with OWPE has been met for all Administrative Orders on Consent for removal actions issued prior to this date, and is waived for all future issuance of Administrative Orders on Consent.

c: Waste Management Division Directors, Region I-X
Environmental Services Division Directors,
Regions I, VI, VII
Lisa Friedman, OGC
Glenn Unterberger, OECM
Russ Wyer, OERR
Hans Crump, OERR