



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

OSWER # 9832.18

MAR 21 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Written Demand for Recovery of Costs Incurred Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

FROM: Bruce Diamond, Director
Office of Waste Programs Enforcement

William A. White
Acting Associate Enforcement Counsel
for Superfund

[Handwritten signature: Jack Winder] for

TO: Regional Administrators, Regions I - X

To maximize cost recovery under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Regions are responsible for documenting costs, issuing written demands¹ for those costs, and pursuing parties that do not reimburse the Environmental Protection Agency (EPA).

¹/ The term "written demand" is used throughout this document in reference to CERCLA § 107(a). A "demand letter" is the form of written demand which is issued where response costs have been incurred under CERCLA but are not contained in a special notice letter. Thus, demand letters as referenced in the "Superfund Cost Recovery Strategy" (July 29, 1988, OSWER Directive No. 9832.13), or any other CERCLA policy or guidance, are considered a type of written demand. Although EPA is not required by CERCLA to issue written demands to accrue interest, use of these written demands, in accordance with this guidance, will help maximize interest recovery. See U.S. v. Bell Petroleum Services, Inc., MO-88-CA-05 (W.D. Texas March 8, 1990) where prior written demand was held not to be strictly required for recovery of prejudgment interest. The court stated that the language in CERCLA 107(a) regarding written demands essentially is a guideline for courts to follow for determining the date from which prejudgment interest begins to accrue.



The primary purposes of written demands are: (1) to formalize the demand for payment of incurred costs plus future expenditures, (2) to inform potential defendants of the dollar amount of those costs, and (3) to establish that interest begins to accrue on expenditures. This guidance is intended to help assure that written demand is made early to maximize recovery of interest, without creating an unduly burdensome process.

This guidance updates those portions of the directive "Cost Recovery Actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)" (August 26, 1983, OSWER Directive No. 9832.1), which address use and issuance of written demand. Additional information about cost recovery activities may be found in the documents listed in Appendix C, Index of Existing Relevant Guidances.

Attachment

cc: Directors, Waste Management Division,
Regions I, IV, V, and VII
Directors, Hazardous Waste Management Division,
Regions III, VI, VIII, and IX
Director, Emergency and Remedial Response Division,
Region II
Director, Hazardous Waste Division,
Region X
Regional Counsel, Regions I-X

Written Demand for Recovery of Costs Incurred
Under the Comprehensive Environmental Response
Compensation and Liability Act (CERCLA)

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I. AUTHORITY TO INCUR INTEREST

CERCLA § 107(a) provides, among other things, that specified classes of responsible parties are liable for all costs incurred by the United States government in response to a release or threat of release of hazardous substances. In addition, PRPs are liable for damages for injury to, destruction of or loss of natural resources, including the costs of assessing such injury, loss, or destruction, and for costs of any health assessment or health effects study carried out under CERCLA § 104(i).

The Superfund Amendments and Reauthorization Act of 1986 (SARA) extends responsible party liability under CERCLA to include interest on recoverable costs. CERCLA § 107(a) states:

[t]he amounts recoverable in an action under this section shall include interest on the amounts recoverable.... Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98, of Title 26² [of the Internal Revenue Code of 1954, as modified in 1986].²

EPA³ intends to use this authority and demand interest on all costs as appropriate.

II. TYPES OF WRITTEN DEMAND

A. Special Notice Letter Containing Demand for Payment

Special notice letters should contain written demand for reimbursement of past and future costs. For example, if a special notice letter includes a demand for payment, interest may begin to

²/ For pre-SARA expenditures, various courts have held that EPA may collect prejudgment interest on recoverable costs. U.S. v. Northernair Plating Co. 685 F. Supp. 1410 (W.D. Mich. 1988), aff'd. 889 F.2d 1497 (6th Cir. 1989); U.S. v. Northeastern Pharmaceutical & Chemical Co., 579 F. Supp. 823 (W.D. Mo. 1984), aff'd in part, rev'd in part, and remanded, 810 F.2d 726 (8th Cir. 1986), cert. denied, 108 S. Ct. 146 (1987).

³/ This document refers to "EPA" rather than "lead-agency." As discussed in part IV E of this guidance, EPA is responsible for issuing a written demand in situations where a state has the lead for enforcement actions.

accrue from the date of the special notice letter for those costs already expended. The special notice is not the only or first time EPA may issue a demand for costs incurred. Therefore, interest may begin accruing at an earlier date than the issuance of the Special notice with demand. Interest begins to accrue for subsequent expenditures upon the date of expenditure.⁴ Once written demand has been sent with the special notice letter, record of demand should be entered into CERCLIS and Regional tracking systems as an issued demand. If a reasonable estimate of past costs cannot be developed prior to issuance of the special notice letter, that information may be provided at a later point.⁵

General notice letters, also, may contain written demand for reimbursement of past and future costs if sufficient evidence of PRP liability is available at the time of issuance and past costs are known.

B. Demand Letters

Demand letters should be issued:

- o following completion of individual response actions. If response actions are taken at operable units, demand letters should be issued following completion of actions at each unit,
- o for oversight costs,

⁴/ However, see the discussion in footnote 1 concerning U.S. v. Bell Petroleum Products, Inc.

⁵/ As stated in the October 19, 1987, "Interim Guidance on Notice Letters, Negotiations, and Information Exchange" (OSWER Directive number 9834.10):

The [special notice] letter should include a demand that PRPs reimburse EPA for the costs the Agency has incurred in conducting response activities at the site pursuant to §107(a). The letter should identify the action EPA undertook and the cost of conducting the action. The letter should also indicate that the Agency anticipates expending additional funds on activities covered by this notice and other specified future activities. Finally, the letter should demand payment of interest for past and future response costs incurred by EPA pursuant to §107(a).

The model notice letters in OSWER directive number 9834.10 contain a sample paragraph for demand in special notice letters, which is included in Appendix A of this guidance.

- o to non-settlers when less than 100% of EPA's costs are, or will be, obtained under a settlement, and
- o prior to referral to the Department of Justice (DOJ).

Depending on how a PRP responds to a demand letter, including whether it settles and how it complies with settlement terms, a PRP may receive more than one demand letter for the same costs.

To promote cost recovery and maximize recovery of interest, EPA will transmit written demand as early as practicable following expenditures associated with a response action. The letter should also indicate that the Agency anticipates that additional funds may be expended on activities covered by this notice and other specified future actions.

1. Following Removal or Remedial Activities: Demand letters should be issued after:

- o completion of a removal action,
- o completion of a Remedial Investigation/Feasibility Study (RI/FS) (i.e., at issuance of a ROD) for a site or, if applicable, an individual operable unit, and
- o an award of a contract for a Remedial Action (RA) for a site or, if applicable, an individual operable unit. (The demand should include Remedial Design (RD) costs and estimated RA costs).

To expedite cost recovery, demand letters should be issued as soon as possible following an appropriate response action, but generally no later than twelve months after completion of each distinct phase of a response action. For example, for a non-CERCLA 104(b) removal, when removal activities are done; for a funded RI/FS, at the time the Region issues a § 122(a) letter related to RD/RA negotiations. (If the Region does not issue a § 122(a) letter, but issues a special notice letter, the special notice should contain a demand for RI/FS costs and a separate demand letter is not necessary.) In accordance with the "Superfund Cost Recovery Strategy" (OSWER Directive No. 9832.13), written demand for RD and RA should be made no later than the initiation of physical on-site construction of the remedial action.

Regions should periodically review disbursements of costs and estimates of future costs and issue a subsequent demand for payment of costs to PRPs when these costs or estimates have significantly accumulated or increased. Demand letters should always reflect EPA's most current costs. An updated accounting of costs in a

demand letter will help avoid possible delays in negotiations by minimizing lag time while PRPs negotiate allocation issues among themselves.

2. Oversight Reimbursement: EPA seeks reimbursement of oversight costs pursuant to either administrative consent orders, judicial consent decrees, or demand letters issued independently of a consent order or decree (for example, for oversight of a unilateral administrative order). Typical administrative consent orders provide that EPA will seek reimbursement from PRPs by a bill or accounting, rather than a "demand letter," at the end of each one-year period throughout the period of the order for all oversight costs incurred during that year.

Where there is a settlement embodied in a consent order or decree, bills should specifically reference the provision in the order or decree which provides for oversight reimbursement, and the section which specifies the schedule for reimbursement. Bills for reimbursement of negotiated oversight costs should include a statement that:

"[t]he cost of EPA's oversight of the PRP's cleanup for the period of [insert time period] at the [insert name] facility, including related administrative expenses, is \$. In accordance with [insert consent decree or administrative order on consent provision number] demand is hereby made upon [insert name] for payment of the above stated sum."

If PRPs are operating under an administrative order or judicial decree which does not include a provision for oversight reimbursement, a demand letter should normally be issued which demands reimbursement for costs related to oversight. An oversight reimbursement demand is covered by the reservation of rights clause in an order or decree.

Demand letters for oversight reimbursement, where the work was performed outside the framework of a settlement for such costs, should include a statement that:

"[t]he cost of EPA's oversight of the PRP's cleanup for the period of [insert time period] at the [insert name] facility, including related administrative expenses, is \$. In accordance with CERCLA § 107, demand is hereby made upon [insert name] for payment of the above stated sum."

Oversight costs should be accurately recorded as an oversight activity in CERCLIS to ensure proper tracking and follow-up of this cost recovery category.

3. Partial Settlement: If a settlement has been reached with fewer than 100% of the PRPs for only a portion of costs incurred by EPA, a demand letter may be issued to the remaining non-settling responsible parties, if sufficient liability evidence is available to the Region. This may be followed by appropriate enforcement action seeking recovery of remaining costs. The demand letter should request reimbursement of the total cost of remediation, oversight, and operation and maintenance, less the amount settled, plus interest. If appropriate, the demand letter should indicate that a portion of the response and/or costs have already been settled and note the settled amount. For purposes of negotiations and subsequent litigation with non-settling PRPs, when pursued, the Region may wish to attribute specific costs to the appropriate operable unit. If there are no remaining PRPs, the remaining PRPs are not financially viable, or the evidence of their liability is too weak, the Region should close-out costs in accordance with OSWER Directive No. 9832.11.

4. Prior to Referral to DOJ: Demand letters should be issued to all defendants prior to referral of a cost recovery case to the Department of Justice (DOJ). In limited instances, however, EPA may choose to issue the demand letter concurrently with referring the cost recovery case to DOJ. This latter approach may be taken, for example, where the statute of limitations deadline is rapidly approaching and when negotiations have broken off and it is apparent to the Region that the PRP will not reimburse EPA after follow-up contact has been attempted. Regions should take particular care that demand letters issued prior to CERCLA §107 cost recovery referral should reflect EPA's most current costs.

III. CONTENT OF WRITTEN DEMAND

Many of the following items (except numbers 7-10) are included in a special notice letter regardless of whether the letter includes a written demand. However, when a special notice letter includes a written demand, numbers 7-10 will need to be included in the special notice letter. In addition to the items on the following list, Regions may also choose to include § 104(e) information request letters with the special notice and demand letters. Model written demands are provided in Appendix A. At a minimum, demand letters should include:

1. The name, location and spill identification number, if appropriate, of the site.
2. Reference to EPA's authority to administer CERCLA and the Fund established under CERCLA (or reference to authority to recover costs where the response activities for which reimbursement is sought occurred prior to CERCLA).

3. Statement describing the release or threatened release of a hazardous substance from a facility which causes the incurrence of response costs.
4. A specification of the dates and types of response actions undertaken by EPA at the site.
5. A statement that EPA believes that the recipient is a responsible party as defined in CERCLA § 107(a) and liable for the sum set forth in the demand letter.
6. Reference to any notice given to the recipient prior to or during the response action which allowed the recipient an opportunity to undertake the work or pay the expense of response.
7. The total cost of the response action. When the Region expects that future costs will be incurred, the demand letter should clearly state that in addition to sums already expended, EPA plans to expend additional sums on the site for which the responsible party is liable. Costs previously demanded, but not paid, should again be demanded. Previously demanded, unpaid costs should also reflect appropriate interest which has accrued. [This is also included in special notice demand].
8. A demand for payment which includes the Superfund lock box address. [This is also included in special notice demand.]
9. A statement that, pursuant to CERCLA § 107(a), "interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the actual expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under [CERCLA § 107] shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98, Title 26 of the Internal Revenue Code of 1954," [as modified in 1986]. The demand letter should specify the current interest rate. Also, the demand should note that EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. The written demand serves as a guideline for determining the date from which prejudgement interest begins to accrue. [This is also included in special notice demand.]
10. A statement that specifies in the event the recipient files for protection in the Bankruptcy Court, EPA reserves its right to file a Proof of Claim or Application for Reimbursement of

Administrative Expenses against the bankrupt's estate. [This is also included in special notice demand.]

11. A general statement giving the names of other PRPs to which the written demand is sent. If a PRP steering committee has been formed by previously identified PRPs, the steering committee's contact should be provided. [This information will already be in special notice letters but will be needed in demand letters that follow special notice.]
12. A statement that the recipient of the demand letter should contact EPA within a specified period (normally thirty days) to discuss the recipient's liability.
13. The name, address, and telephone number of a representative of EPA whom the recipient should contact.
14. A warning that if the recipient fails to contact EPA within the specified time, a suit may be filed in the appropriate U.S. District Court for recovery of the costs incurred.
15. For small administrative cost recovery actions, a draft of EPA's proposed consent order for the cost recovery claim should be enclosed with the demand for payment.

IV. ROLES AND RESPONSIBILITIES OF REGIONS

A. Pre-Demand Activities

When Regions are planning enforcement work at a site, full consideration should be given to ensuring that activities supporting the cost recovery action be incorporated in the litigation strategy. This includes consideration of sufficiency of resources, timing of written demands, compilation of documentation and cost summaries on a periodic basis, etc. Regions are expected to incorporate issuance of written demand into CERCLIS or other case tracking systems a Region uses for cost recovery purposes. For timing of issuance of demand, Regional Branch Chiefs should track the sites for which they are responsible.

B. Documentation/Interest Calculation

1. Documentation: EPA Headquarters, the Region, DOJ, other federal agencies, and states each have certain responsibilities in organizing cost documentation information. Cost documentation responsibilities have been delegated to the Regions such that Regions now document all costs for sites in their respective areas. The "Procedures for Documenting Costs for CERCLA § 107 Actions" (January 30, 1985, OSWER Directive No. 9832.4) describes the roles and responsibilities of each office in preparing cost documentation

for litigation (this guidance is being updated). Roles and responsibilities for developing demand letters are inter- and intra-office and as such need to be coordinated.

For most demands, a current automated transaction report (e.g., Software Package of Unique Reports (SPUR) or CDMS reports) will adequately document direct costs, including pre-1986 contractor expenditures. CDMS reports may also calculate interest. As discussed below, amounts in automated reports should be checked for completeness and supplemented by indirect costs, interest, and other Agency costs.

The following information should be available prior to issuance of a demand:

- o A current automated transaction report for the site,
- o An indirect cost calculation, and
- o An interest calculation (if not in the automated report).

This information forms the basis of a good faith cost estimate that can be used to begin settlement negotiations for costs. Accuracy of the estimates should be verified before good faith negotiations commence. The specified amount for written demand in special notice letters may be based on a reasonable estimate at the Region's discretion. Estimates may include the following items: intramural costs, extramural costs, indirect cost calculation, historic and annual cost allocations, oversight costs, and interest. The Regional Financial Management Office may be of assistance in answering questions about billing.

Demands based on automated transaction reports must be made with recognition that there may be delays in billings and payments which therefore are not posted in the system, and that only expenditures incurred through the last day of the preceding month are included. In addition, costs incurred by other Agencies such as DOJ and ATSDR (for health studies) are not included. To ensure the accuracy of automated transaction reports, OSCs and RPMs should review the automated transaction report data prior to issuance of demand. For viable cases⁶ where the Region has reason to believe that the report does not contain all data, the Region should locate and review all cost recovery documents. Thus, care must be exercised not to forego potential reimbursement by submitting incomplete demands for payment. Demands are the Agency's best

⁶/ Viability of cases and factors for determination of viability are discussed in the "Cost Recovery Strategy" (July 29, 1988 OSWER Directive number 9832.13).

approximation of costs incurred by EPA to date, and therefore, should not be assumed to be the final statement of incurred costs for reasons explained above.

If an Administrative Record⁷ file is available to the public, the location of the file may be included in the demand. PRPs may be interested in the specific breakout of costs that may be available in the file. Quick and easy access to the file may help expedite negotiations.

2. Interest: The interest rate is tied to 52-week U.S. Treasury MK-Bills (MK-bills) that mature in early September of each year. Like the securities from which the interest rate is derived, interest will be compounded annually. On October 1 of each year, outstanding receivables, which include interest accrued during the previous fiscal year, will begin accruing interest at the new rate. For additional information about interest rates and calculating interest, see:

- o "Interest Rates for Debts Recoverable Under the Superfund Amendments and Reauthorization Act of 1986" (September 30, 1987, Comptroller Policy Announcement 87-17) or
- o Comptroller Directive "Financial Management of the Superfund Program" (July 25, 1988, Directive No. 2550.D);

or contact your Financial Management Office.

C. Preparing and Issuing the Demand

Roles and responsibilities for developing demand letters involve full coordination among all Regional offices with responsibilities for cost recovery, including the Waste Management Division, Financial Management Office, and Office of Regional Counsel. Regions may develop an internal written agreement to assure implementation of roles and responsibilities for cost recovery, including issuance of demands.

The demand should be sent certified mail, return receipt requested. The return receipt should be included with a copy of the demand in the site file.

^{7/} The Administrative Record is the body of documents upon which the Agency based its selection of a response action. For additional information about administrative records, see the "Guidance on Administrative Records for Selecting CERCLA Response Actions," December 3, 1990, OSWER Directive No. 9833.3A-1.

D. Use of Recipient List

Written demand should be issued to all known, viable PRPs. When the list of recipients of special notice letters as provided in the "Interim Guidance on Notice Letters, Negotiations and Information Exchange" (February 23, 1988, OSWER Directive No. 9834.10) is up-to-date, the special notice list may be used. When not complete, it should be updated. At sites where special notice letters are not sent, prior to referral to DOJ, separate demand letters should be sent to PRPs. Before issuing a demand letter to a PRP who has received only a general notice (without a demand), the Region should determine whether it has sufficient evidence of liability to make a demand.

E. States and State-lead Sites

EPA will be responsible for issuing written demand at state-lead sites where Fund money was expended. Where EPA spends money at a site, EPA will pursue cost recovery for that money. EPA intends to coordinate all cost recovery action with states to avoid split claims.

F. Payment

When payment is rendered in response to a written demand, remittance should be made payable to the "EPA Hazardous Substance Superfund" and sent to the Regional Superfund Lock Box, in accordance with the EPA Office of the Comptroller Directive "Financial Management of the Superfund Program" (July 25, 1988, Directive No. 2550.D).

Inclusion in a formal legal document (e.g., an administrative consent order issued by the Agency or a consent decree entered by a court) of a requirement for payment of costs to EPA requires the establishment of an "Accounts Receivable" in the Agency's Integrated Financial Management System (IFMS), pursuant to Office of the Comptroller Directive No. 2540, October 24, 1990. If, however, a payment is received on demand, and no formal legal document has been issued, an accounts receivable will be established upon receipt of payment and entered as received.

G. Negotiation and Settlement

When a PRP responds to a written demand by expressing a desire to negotiate EPA's claim, negotiations pursuant to CERCLA § 122(h) may be appropriate and settlement discussions should be initiated and carried out within a limited period of time. For negotiation purposes only, Regions may wish to develop a breakout of costs incurred (see Appendix B for an example). Additional information on development of a negotiation team and redelegation issues may

be found on pages 22-25, 33-35, and 38-41, in "Superfund Cost Recovery Strategy" (July 29, 1988, OSWER Directive No. 9832.13) and pages 23-27 in "Cost Recovery Actions Under CERCLA" (August 26, 1983, OSWER Directive No. 9832.1).

H. Procedure in Event of No Response or No Settlement

When settlement negotiations fail, Regional management must decide which sites to refer for judicial action under CERCLA § 107. The "Superfund Cost Recovery Strategy" (July 29, 1988, OSWER Directive No. 9832.13) lists the relevant factors to be considered in determining whether to refer a case for cost recovery. If the Region decides not to pursue a cost recovery action, the decision must be documented in a cost recovery close-out memorandum.⁸

If no response is received to a demand letter, a follow-up phone call or letter should be sent. If there is still no response, a determination must be made whether the facts of the case justify EPA's taking further steps to pursue the cost recovery claim. As stated in the "Superfund Cost Recovery Strategy," Regions should generally anticipate developing cases for litigation for all sites in which total costs of response exceeded two hundred thousand dollars and negotiations for settlement were unsuccessful. Sites in which total costs of response do not exceed two hundred thousand dollars are also candidates for referral consistent with the case selection criteria. The "Superfund Cost Recovery Strategy" and the "Guidance on Documenting Decisions not to Take Cost Recovery Actions" (June 7, 1988, OSWER Directive No. 9832.11) further describe the case selection criteria.

When reimbursement of oversight costs is not made upon demand or issuance of a bill (under a consent order or decree), the enforcement approach is dependent upon the underlying enforcement document, if one exists. If a consent decree provides for reimbursement, a demand for stipulated penalties should be made in accordance with the terms of the consent decree, and a motion should be filed to enforce the decree. If work was performed pursuant to a decree that did not provide for and did not release defendants from oversight and other costs (past, for example), the original action should be amended or a new action should be filed. Stipulated penalties and, if necessary, a judicial referral should be pursued in the case of non-payment for EPA costs, including those for oversight activities, under an administrative order.

⁸/ "Guidance on Documenting Decisions not to Take Cost Recovery Actions," (June 7, 1988, OSWER Directive number 9832.11).

V. DISCLAIMER AND FURTHER INFORMATION

The policies and procedures established in this document are intended solely for the guidance of employees of the U.S. Environmental Protection Agency. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation against the United States. EPA reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

For further information concerning this guidance, please contact the Guidance and Evaluation Branch in the Office of Waste Programs Enforcement at FTS (202) 475-6770.

APPENDIX A

MODEL DEMAND LETTER

[Date]
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Addressee Name
Addressee Title and Corporation
Address
Address

Re: [Insert site name and mailing address]

Dear [Insert name]:

Pursuant to authority contained in § 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9604, [insert "in cooperation with" state agency if appropriate] the United States Environmental Protection Agency ("EPA") determined on [insert date, if available] that there was a release or substantial threat of a release of hazardous substances (as defined by § 101(14) of CERCLA) from a facility known as: [insert facility name and address] ("facility").

Beginning on [insert date], EPA undertook response actions pursuant to § 104 of CERCLA, 42 U.S.C. § 9604. The response actions taken include the following: [Insert brief description including dates of activities as lettered items below.]

- a.
- b.

[If notice has not been previously provided, insert the following two paragraphs.] Under § 107(a) of CERCLA, 42 U.S.C. § 9607(a), responsible parties may be held liable for all costs incurred by the Government (including interest) in responding to any release or threatened release of hazardous substances at the facility. Such costs may include, but are not limited to, expenditures for investigation, planning, response, enforcement activities, oversight of response actions that are performed by parties other than EPA or its contractors, and operation and maintenance of monitoring systems.

Responsible parties under CERCLA include current and former owners or operators of the facility, persons who arranged for treatment and/or disposal of any hazardous substances found at the facility, and

persons who accepted hazardous substances for transport and selected the site or facility to which the hazardous substances were delivered. EPA has evaluated evidence in connection with its investigation of the [insert name] Facility and determined that you, as a [insert addressee's relationship to the site], are a potentially responsible party.

[If notice has been previously provided, insert all or part of the following paragraph, consistent with the operative facts]. On [insert date] EPA provided [insert either "oral notice followed by written confirmation dated _____" or "written notice"] to you that [insert name of addressee] is a party who may be liable for money expended by EPA to take response action at the facility. At that time, EPA also offered [insert name of addressee] and other potentially responsible parties the opportunity to voluntarily take the action necessary to abate any releases or threats of release of hazardous substances from the facility or to reimburse EPA for actions taken. Because you did not undertake the necessary actions, EPA expended funds provided under the authority of CERCLA to clean up the facility.

The cost to date of the response actions related to the site through EPA funding is approximately \$ [state direct and indirect costs as specifically as possible]. This statement of expenditures is preliminary, and does not limit EPA from providing a revised figure if additional costs are identified.

[Note: In a judicial proceeding for cost recovery, the Agency will be required to prove the actual amounts expended. If a previous demand letter was issued, or if a request for payment was included in the notice letter, costs previously demanded, but not paid, should again be demanded. These costs should also reflect interest that has accrued.]

In accordance with § 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under § 107 or any other provisions of law.

EPA anticipates that additional funds may be expended on the site. Whether EPA funds the entire response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for the expenditures plus interest.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whichever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to CERCLA § 107(a), 42 U.S.C § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the

Hazardous Substance Superfund which is determined by the Department of the Treasury. The current annual rate of interest on unpaid costs is [x.xx%].

EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

For your information, we have enclosed a list of persons who are receiving a letter seeking reimbursement of the costs identified herein. While your liability is joint and several, you and other parties may allocate among yourselves the costs to be paid to EPA.

Remittance must be made payable to the "U.S. EPA Hazardous Substance Superfund" established pursuant to CERCLA in Title 26, Chapter 98 of the Internal Revenue Code, and must reference the [insert name] facility. Please send your remittance to:

EPA - Region _____
Attn: Superfund Accounting
P.O. Box [insert Superfund Lock Box]
Pittsburgh, PA 15251

[Note: for Region 4 and 5 the mailing address is slightly different.]

If you desire to discuss your liability⁹ with EPA, please contact [insert name and title] in writing, not later than thirty (30) calendar days after the date of this letter. [Insert name] may be contacted at [insert phone number].

In the event that you file for protection in the Bankruptcy Court, EPA reserves its right to file a proof of Claim or application for Reimbursement of Administrative Expenses against the bankrupt's estate.

If you fail to respond to this demand within thirty (30) calendar days, EPA will conclude that you have declined to reimburse the Hazardous Substance Superfund for site expenditures. Consequently, EPA may pursue civil litigation against you, pursuant to CERCLA §§ 106(a) and 107(a), 42 U.S.C. §§ 9606(a) and 9607(a).

⁹ For small administrative cost recovery actions, a draft of the proposed settlement document should be enclosed with the demand for payment.

OSWER # 9832.18

Sincerely,

[insert title]

United States Environmental Protection Agency

Attachment

List of Other Potentially Responsible Parties

1. Steering Committee Chairman
 Name of the Committee
 Corporation
 Address
2. Name
 Address
3. Name
 Address
4. Name
 Address

**DEMAND PARAGRAPHS FOR INCLUSION IN SPECIAL NOTICE LETTERS FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS) OR REMEDIAL
DESIGN/REMEDIAL ACTION (RD/RA).***

DEMAND FOR PAYMENT

With this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate a [consent order (not available for RD/RA)] [consent decree] in which you and other PRPs agree to perform the [RI/FS] [RD/RA].

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the site. The cost to date of the response actions related to the site through EPA funding is approximately \$ [state direct and indirect costs to date as specifically as possible]. In accordance with § 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under § 107 or under any other provisions of law.

As indicated above, EPA anticipates expending additional funds for the [RI/FS] [RD/RA]. Whether EPA funds the entire [RI/FS] [RD/RA], or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for all expenditures plus interest.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whatever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to CERCLA § 107(a), 42 U.S.C § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury. The current annual rate of interest on unpaid costs is [x.xx%].

EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

In the event that you file for protection in the Bankruptcy Court, EPA reserves its right to file a Proof of Claim or Application for Reimbursement of Administrative Expenses against the bankrupt's estate.

Remittance must be made payable to the "U.S. EPA Hazardous Substance Superfund" established pursuant to CERCLA in Title 26, Chapter 98 of

OSWER # 9832.18

the Internal Revenue Code, and must reference the [insert name] facility. Please send your remittance to:

EPA - Region _____

Attn: Superfund Accounting

P.O. Box [insert Superfund Lock Box]

Pittsburgh, PA 15251

[Note: for Region 4 and 5 the mailing address is slightly different.]

* Excerpted with modifications from "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," Appendix C (October 17, 1987, OSWER Directive No. 9834.10)

**DEMAND PARAGRAPHS FOR INCLUSION IN NOTICE OF POTENTIAL LIABILITY
AND EPA CONDUCT OF REMOVAL ACTION.***

DEMAND FOR PAYMENT

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the site. These response actions include [describe response actions at the site]. The cost to date of the response actions related to the site through EPA funding is approximately \$ [state direct and indirect costs to date as specifically as possible]. In accordance with § 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under § 107 or under any other provisions of law. You are potentially liable for additional costs plus interest if EPA conducts additional activities at the site.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whatever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to CERCLA § 107(a), 42 U.S.C § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury. The current annual rate of interest on unpaid costs is [x.xx%].

EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

In the event that you file for protection in the Bankruptcy Court, EPA reserves its right to file a Proof of Claim or Application for Reimbursement of Administrative Expenses against the bankrupt's estate.

Remittance must be made payable to the "U.S. EPA Hazardous Substance Superfund" established pursuant to CERCLA in Title 26, Chapter 98 of the Internal Revenue Code, and must reference the [insert name] facility. Please send your remittance to:

EPA - Region _____
Attn: Superfund Accounting
P.O. Box [insert Superfund Lock Box]
Pittsburgh, PA 15251

[Note: for Region 4 and 5 the mailing address is slightly different.]

OSWER # 9832.18

* Excerpted with modifications from "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," Appendix C (October 17, 1987, OSWER Directive No. 9834.10).

**DEMAND PARAGRAPHS FOR INCLUSION IN NOTICE OF POTENTIAL LIABILITY
AND OFFER TO NEGOTIATE FOR REMOVAL ACTION OR NOTICE OF POTENTIAL
LIABILITY FOR REMOVAL AND USE OF SPECIAL NOTICE NEGOTIATION
PROCEDURES.***

DEMAND FOR PAYMENT

With this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate a consent order or decree in which you and other PRPs agree to perform the response action.

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the site. These response actions include [describe response actions at the site]. The cost to date of the response actions related to the site through EPA funding is approximately \$[state direct or indirect costs to date as specifically as possible]. In accordance with § 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under § 107 or under any other provisions of law. You are potentially liable for additional costs plus interest if EPA conducts additional activities at the site.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whichever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to CERCLA § 107(a), 42 U.S.C § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury. The current annual rate of interest on unpaid costs is [x.xx%].

EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

In the event that you file for protection in the Bankruptcy Court, EPA reserves its right to file a Proof of Claim or Application for Reimbursement of Administrative Expenses against the bankrupt's estate.

Remittance must be made payable to the "U.S. EPA Hazardous Substance Superfund" established pursuant to CERCLA in Title 26, Chapter 98 of

OSWER # 9832.18

the Internal Revenue Code, and must reference the [insert name] facility. Please send your remittance to:

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* Excerpted with modifications from "Interim Guidance on Notice Letters, Negotiations, and Information Exchange, "Appendix C (October 17, 1987, OSWER Directive No. 9834.10).

APPENDIX B

SAMPLE SUMMARY OF COSTS

U.S. EPA Headquarters	
Payroll	\$XX.XX
Travel	\$XX.XX
U.S. EPA Region	
Payroll (CDMS)	\$XX.XX
Travel	\$XX.XX
Indirect Costs	\$XX.XX
Cooperative Agreement	
(letter of credit documentation) [state]*	\$XX.XX
EPA Contracts	
Field Investigation Team	\$XX.XX
Technical Assistance Team	\$XX.XX
Enforcement Support	\$XX.XX
CLP	\$XX.XX
Interest as of (date)	\$XX.XX

*Be sure to reconcile differences with states before issuance.

**APPENDIX C
INDEX OF EXISTING RELEVANT GUIDANCE**

Guidance on Administrative Records for Selecting CERCLA Response Actions, December 3, 1990, OSWER Directive No. 9833.3A-1. This guidance addresses the procedures to ensure that EPA's administrative records meet the following purposes: 1) to ensure that the basis for the response selection is set forth in the record and that judicial review concerning the adequacy of a response selection is limited to the record; and 2) to serve as a vehicle for public participation in the selection of the response action.

Superfund Cost Recovery Strategy, July 29, 1988, OSWER Directive No. 9832.13. This document sets forth EPA's case selection guidelines and priorities; it emphasizes the advance planning necessary to initiate cost recovery actions and describes the cost recovery process for removal and remedial actions.

Financial Management of the Superfund Program, July 25, 1988. This document establishes financial management policies unique to the Superfund program which require accounting for costs by site and activity for purposes of cost recovery and external reporting.

Revision of CERCLA Civil Judicial Settlement Authorities under Delegations 14-13-B and 14-13-E, June 17, 1988, OSWER Directive No. 9012.10-A. Delegation 14-13-B allows a Regional Administrator to exercise EPA's concurrence authority in settlement of certain Regionally initiated CERCLA civil judicial actions and to request the Attorney General to amend a consent decree. Delegation 14-14-E allows Regional Administrators to exercise EPA's concurrence on de minimis settlements under CERCLA § 122(g) with advance concurrence.

Guidance on Documenting Decisions Not to Take Cost Recovery Action, June 7, 1988, OSWER Directive No. 9832.11. EPA has the discretion to decide whether or not to pursue an action for recovery of any unreimbursed Superfund monies; if the decision is not to pursue a case, EPA must prepare a close-out memorandum. This guidance discusses the contents of this close-out memorandum.

Removal Cost Management Manual, April 1988, OSWER Directive No. 9360.0-02B. EPA has developed this manual to provide comprehensive cost management procedures for use by the On-Scene Coordinator and other on-site personnel at Superfund removal actions.

Superfund Removal Procedures (Revision No. 3), February 1988, OSWER Directive No 9360.0-03B. Revision Number Three contains detailed explanations of cost control, cost documentation, use of the Removal Cost Management Manual, and further guidance on the importance of cost documentation as it relates to Superfund removal procedures.

Expansion of Direct Referral of Cases to the Department of Justice, January 14, 1988, OSWER Directive No. 9891. 5A. In an effort to streamline the enforcement of CERCLA and non-CERCLA cases, EPA has prepared this guidance of updated policy and procedures expanding its direct referral of cases to the Department of Justice.

State Superfund Financial Management and Recordkeeping Guidance, November 1987, Office of the Comptroller, Financial Management Division.

Guidance on Federal Superfund Liens, September 22, 1987, OSWER Directive No. 9832.12. This guidance provides analysis of statutory issues regarding the nature and scope of federal liens under § 107(l) of CERCLA, EPA policy on filing a federal lien to support a cost recovery action, and procedures for filing a notice of lien, which includes an example of a notice of a Superfund lien.

Potentially Responsible Party Search Manual, August 27, 1987, OSWER Directive No. 9834.3-1A. This manual provides guidance to EPA and state personnel in identifying potentially responsible parties (PRPs), recognizing the elements of a completed PRP search, and describing in detail 28 tasks which may be completed during a PRP search.

PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program, June 16, 1989, OSWER Directive No. 9834.3 2a. This supplemental guidance describes PRP search planning and management and the content of PRP search reports.

Cost Recovery Actions/Statute of Limitations, June 12, 1987, OSWER Directive No. 9832.9 This memorandum updates EPA's policy on the timely filing of cost recovery actions and clarifies the Agency's position on priorities for removal cost recovery referrals.

Financial Management Procedures for Documenting Superfund Costs, September 1986. This handbook establishes EPA's Agency-wide procedures to ensure that accurate and adequate controls exist for documenting EPA's Superfund cleanup costs so that they fully reconcile with EPA's Financial Management System.

Policy on Recovering Indirect Costs in CERCLA Cost Recovery Actions, June 27, 1986, OSWER Directive No. 9832.5. This memorandum clarifies EPA's policy on the recovery of indirect costs in CERCLA cost recovery actions and provides guidance on deciding whether or not to seek indirect costs.