



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

SEP 30 1994

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Model Administrative Order for CERCLA Information Requests

FROM: Sandra L. Connors *Sandra L. Connors*
Director, Regional Support Division
Office of Site Remediation Enforcement

TO: Addressees

The purpose of this memorandum is to transmit the model CERCLA section 104(e)(5)(A) administrative order for information requests. The document largely reflects the model prepared by Region I for its own use several years ago, with a few minor modifications by Headquarters staff. I want to thank Greg Kennan and his colleagues in Region I for their work on the model.

The model order is designed to produce increased compliance with our information gathering efforts without consuming significant Regional enforcement resources. The order's formal appearance, its implicit message that the Respondent has become a target of EPA's individual attention (rather than perhaps being ignored for some time among numerous recipients of CERCLA section 104(e)(2) requests), and its explicit threat to pursue penalties for noncompliance should result in speedy compliance.

Delegation 14-6 currently requires consultation with the Office of Enforcement and Compliance Assurance before issuance of such an order. By separate memorandum on this date, I am formally waiving this requirement as well as a similar OECA consultation requirement for issuance of administrative subpoenas under CERCLA section 122(e)(3)(B) so long as the specific order or subpoena does not deviate significantly from the models.

Feel free to contact myself or Mike Northridge of my staff (202-260-3586) if you have any questions, comments or suggestions regarding this model.

Attachment

Addressees: ORC Superfund Branch Chief, Regions I-X
Superfund Program Branch Chief, Regions I-X
Bruce M. Diamond, Director, OSRE
Lisa K. Friedman, Office of General Counsel
John Cruden, Department of Justice



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SEP 30 1994

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ENFORCEMENT AND
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MEMORANDUM

SUBJECT: Consultation with OECA under CERCLA Delegation 14-6

FROM: Sandra L. Connors *Sandra L. Connors*
Director, Regional Support Division
Office of Site Remediation Enforcement

TO: Regional Counsel, Regions I-X
Waste Management Division Director, Regions I-X
Henry Longest, Director, Office of Emergency and
Remedial Response

CERCLA delegation 14-6 (revised May 11, 1994) requires that Regional Administrators and the Assistant Administrator for Solid Waste and Emergency Response, or their delegates, consult with the Assistant Administrator for Enforcement and Compliance Assurance, or his designee, prior to issuing subpoenas, administrative warrants, and certain orders, including compliance orders for information gathering. The requirement for such consultation may be waived by memorandum from myself.

By this memorandum, and effective immediately, I hereby conditionally waive a portion of this consultation requirement. As to administrative subpoenas under CERCLA section 122(e)(3)(B), consultation with OECA is no longer required so long as the subpoena does not deviate significantly from the Agency's model subpoena. (The model subpoena issued in 1988 has not been revised and thus remains the most recent version. See "Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas," August 25, 1988, OSWER Directive 9834.04A.) Similarly, such consultation is also not needed for unilateral administrative orders under CERCLA section 104(e)(5)(A) to compel compliance with an information request, so long as such orders do not deviate significantly from the Agency's model order. (The model UAO is being transmitted by separate memorandum today, entitled, "Model Administrative Order for CERCLA Information Requests.")

Please be advised that this memorandum does not affect Delegation 14-6's consultation requirements for either administrative warrants or UAOs under CERCLA section 104(e)(5)(A) to compel compliance with a request for access to a site or facility.



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**Model Cover Letter for CERCLA § 104(e)(5)(A) Administrative
Order to Compel Compliance with Information Request**

URGENT LEGAL MATTER - PROMPT REPLY NECESSARY

BY FACSIMILE [insert facsimile number] AND BY FEDERAL EXPRESS

[DATE]
[NAME]
[ADDRESS]

Re: Administrative Order to Compel Compliance with Information
Request - [SITE NAME, LOCATION]

Dear [NAME]:

Enclosed is an Administrative Order to Compel Compliance with An Information Request and Access to Documents issued by the EPA Regional Administrator today. The order requires [NAME] (the Respondent) to submit a complete response, including the provision of documents, to the Information Request letter dated [DATE]. EPA is issuing this Order pursuant to Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A).

[OPTIONAL--To ensure that the Respondent receives early notice of this Order, I am faxing this letter and the Order to you as well as sending it by overnight delivery.]

This Order becomes effective on [DATE]. Under paragraph [23] of the Order, the Respondent may request a conference with or submit written comments to EPA regarding any matter pertinent to the Order. That paragraph sets forth the time period during which the Respondent may request such a conference or submit comments prior to the effective date of the Order.

Violation of the Order may subject the Respondent to further legal proceedings, including the imposition of penalties up to \$25,000 for each day of non-compliance with the Information Request and violation of this Order [OPTIONAL - INCLUDE THE FOLLOWING IF RESPONDENT IS A LIABLE PARTY UNDER §107(a): , plus punitive damages]. EPA is prepared to take all actions necessary to enforce this Order and its rights to gather information.

Sincerely,

[NAME], [APPROPRIATE REGIONAL
PROGRAM STAFFER, e.g., RPM. IF
ORDER IS SENT TO AN ATTORNEY, THE
LETTER SHOULD BE SIGNED BY
ASSISTANT REGIONAL COUNSEL]

Enclosure

cc: (without enclosure)

[NAME], Assistant Regional Counsel [or RPM or other
appropriate Regional program staffer]
[NAME of appropriate branch chief in Regional program
office]
[DOJ ATTORNEY, IF ANY ASSIGNED YET], U.S. Department of
Justice

Model 104(e)(5)(A) Administrative Order for Information Requests

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [--]

In the Matter of:)

[SITE NAME] SUPERFUND SITE)
[CITY, STATE])

CERCLA
Docket No.

[NAME OF CORPORATION(S) AND/OR)
INDIVIDUAL NAME],)

Respondent)

Proceeding Under Section 104(e) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act,)
42 U.S.C. § 9604(e))

ADMINISTRATIVE ORDER TO COMPEL
COMPLIANCE WITH AN INFORMATION REQUEST
AND ACCESS TO DOCUMENTS

JURISDICTION

1. This order to compel compliance with an information request and access to documents related to this request is issued pursuant to the authority vested in the United States by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e). This authority has been duly delegated to the Regional Administrator of the United States Environmental Protection Agency (EPA).

FINDINGS OF FACT

Respondent

2. The Respondent [NAME] (Respondent) is
[EITHER INSERT] an individual who resides in [STATE],
conducts business at [ADDRESS], and [IF
SO] is a corporate officer, corporate
director, and/or shareholder of the
following corporations: [LIST].

[OR INSERT] a corporation [OR A PARTNERSHIP,
MUNICIPALITY, ETC.] organized [and
incorporated (IF CORPORATION)] under the
laws of the [STATE] with its primary
place of business at [ADDRESS].

[FOR MULTIPLE RESPONDENTS: DRAFT SEPARATE ORDERS FOR EACH
RESPONDENT, MAKING FURTHER ENFORCEMENT EASIER, UNLESS RESPONDENTS
AND THEIR NON-COMPLIANCE MAY LOGICALLY BE GROUPED TOGETHER.]

The Site

3. [PROVIDE A BRIEF DESCRIPTION OF THE SITE THAT WAS THE
SUBJECT OF THE INFORMATION REQUEST. FOR EXAMPLE: The XYZ
Superfund Site (the Site) is located on a 10-acre parcel of land
on ABC Street in City, State. The Site is bounded by property of
the RST Company to the northwest, the PQ River to the northeast,
and property of the UVW Corporation to the south.]

4. [PROVIDE FACTS TO SUPPORT EPA'S BELIEF THAT THERE MAY
BE RELEASES OR THREATS OF RELEASES OF HAZARDOUS SUBSTANCES AT THE
SITE UNDER CERCLA. FOR EXAMPLE: In response to releases or
threats of releases of hazardous substances, including without

limitation [LIST EXAMPLES], the Site was listed on the Superfund National Priorities List pursuant to CERCLA § 105(8)(B) and 40 CFR Part 300 (Appendix B). [OR, IF THE SITE IS NOT YET ON THE NPL: In response to information provided by the [STATE] Department of Environmental Protection, EPA undertook a preliminary investigation of the Site in [MONTH OF YEAR]. During the investigation, EPA discovered that the improper storage of several hundred leaking and deteriorating drums and tanks located in unsheltered areas of the Site had resulted in the release of hazardous substances, including [LIST SUBSTANCES].]

Noncompliance with the Information Request

5. On or about [DATE], [NAME], [TITLE], EPA Region [--], a duly designated representative of the President and EPA, sent a certified letter, return receipt requested, to the Respondent pursuant to 42 U.S.C. § 9604(e) [IF APPROPRIATE, ADD RCRA CITATION: and 42 U.S.C. § 6927(a)] requesting that the Respondent furnish certain information to EPA (the Information Request). A copy of the Information Request is attached as Attachment A.

6. According to the U.S. Post Office return receipt, the Respondent received the Information Request on [DATE].

7. In the Information Request, EPA requested information relevant to one or more of the following:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility;

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility; or

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

The Information Request also notified the Respondent that EPA could seek penalties for failure to comply with the Information Request and that the Respondent could contact certain individuals at EPA (whose telephone numbers and addresses were provided) if the Respondent had questions or concerns regarding the Information Request.

8. The Information Request required the Respondent to submit a complete and truthful response, including the provision of all relevant documents, to EPA within [30] days after the date of receipt. The Respondent failed to submit a complete response to the Information Request by this date.

9. [PROVIDE FACTS TO SUPPORT BELIEF THAT THE RESPONDENT HAS OR MAY HAVE KNOWLEDGE RELEVANT TO ONE OR MORE OF THE ABOVE CATEGORIES. FOR EXAMPLE: The Respondent Jane Smith is the President and Chief Executive Officer of the ABC Company, and has held those positions since 1975. The Respondent Jane Smith is the sole shareholder of DEF Investment Co., Ltd., the 60% majority shareholder of the ABC Company. In those capacities, the Respondent has knowledge of financial information and is privy to the financial records of parties who are potentially

liable for response costs incurred by EPA in connection with the cleanup of the Site.]

[OPTIONAL. IF APPROPRIATE, INSERT THE FOLLOWING:

10. On or about [DATE], [INSERT NAME OF REGIONAL OFFICIAL] sent a letter (the Warning Letter) to the Respondent. The Warning Letter enclosed a second copy of the Information Request, required that the Respondent promptly submit a response to the Information Request within [21] days, again provided information about how to contact certain individuals at EPA if the Respondent had questions, and stated that the Respondent's failure to respond to the Information Request was a violation of federal law for which penalties could be imposed. According to the U.S. Post Office return receipt, the Respondent received the Warning Letter on [DATE]. A copy of the Warning Letter is attached hereto as Attachment B.]

11. To date, the Respondent has

[USE EITHER] completely failed to comply with the Information Request.

[OR] failed to comply fully with the Information Request by [not providing answers to question(s) (SPECIFY NUMBERS)] AND/OR [providing evasive and/or incomplete answers to question(s) (SPECIFY NUMBERS)] AND/OR [not providing the requested documents] OR [INSERT APPROPRIATE DESCRIPTION OF NON-COMPLIANCE].

DETERMINATIONS

12. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Each substance listed in paragraph [4?] above is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. [USE EITHER: There has been [OR] EPA has a reasonable basis to believe that there has been] a "release" or a threat of a release at the Site of "hazardous substances" into the "environment" within the meaning of Sections 101(8), 101(14), and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8), (14) and (22).

15. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. The Respondent is a person who has or may have information relevant to any of the matters specified in the Information Request.

17. The information and documents requested in the Information Request are for one or more of the purposes of determining the need for, choosing, or taking response actions [IF NECESSARY, INCLUDE: , or otherwise enforcing the provisions of Title I of CERCLA] within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

18. The Respondent's failure to comply with the Information Request is a violation of CERCLA § 104(e), 42 U.S.C. § 9604(e).

ORDER

19. Within ten (10) business days after the effective date specified below, the Respondent shall provide

[CHOOSE EITHER] EPA with a full and complete response, including copies of all documents requested directly or indirectly, to [USE EITHER] the entire Information Request [OR] questions [SPECIFY NUMBERS] of the Information Request.

OR provide to authorized EPA employees access within twelve business days after the effective date of this Order to all documents that are or may be relevant to the Information Request.

20. The Respondent shall submit all responses and documents required by this order to:

[NAME], Assistant Regional Counsel [or appropriate Regional program staffer, e.g., RPM or OSC]
Office of Regional Counsel [change address to match above]
United States Environmental Protection Agency
[INSERT ADDRESS]

21. Nothing herein limits or otherwise affects any right of the United States to gather information pursuant to applicable laws, regulations, or permits.

EFFECTIVE DATE

22. This Order is effective on the tenth business day after the date it is signed by the Regional Administrator.

OPPORTUNITY TO CONFER

23. Within three business days after receipt of this Order, the Respondent may request a conference with EPA to be held no later than two days before the effective date of this Order. The conference may deal with any matter pertinent to this Order, including the determinations upon which the Order is based, the applicability of the Order to the Respondent, the appropriateness of any action the Respondent is ordered to take, or any other relevant and material issues regarding the Order. This conference is not an adversarial hearing and is not a formal proceeding to enforce or challenge the Order. The Respondent may appear in person or by attorney or other representative at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or no later than two days before the effective date of the Order if the Respondent does not request a conference. EPA will deem the Respondent to have waived its right to a conference or to submit written comments if the Respondent fails to request the conference, or to submit written comments, within the specified time period.

24. Any request for a conference or written comments should be submitted to:

[ATTORNEY NAME], Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
[INSERT ADDRESS AND TELEPHONE NUMBER]

ENFORCEMENT

25. Failure to comply with this Order within the time specified may subject the Respondent to judicial enforcement of this Order as well as civil penalties of up to \$25,000 for each day of noncompliance with the Information Request, and with this Order, or both pursuant to Section 104(e) (5) of CERCLA, 42 U.S.C. § 9604(e) (5). [INCLUDE THE FOLLOWING IF APPROPRIATE, i.e., IF THE RESPONDENT IS ALSO LIABLE UNDER §107: Failure to comply may also subject the Respondent to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c) (3) of CERCLA, 42 U.S.C. § 9607(c) (3).]

MODIFICATION

26. This order may be amended or modified only by EPA in writing. Any such amendments or modifications shall be effective when signed by the Regional Administrator or [HER/HIS] delegate.

SO ORDERED.

Date: _____

[NAME]

Regional Administrator

[Note to users: Please note that the model order does not include RCRA claims. The Agency sometimes issues information requests under the authorities of both CERCLA and RCRA. The use of RCRA authority has its advantages and disadvantages. For example, RCRA section 3008 contains administrative penalty authority, thereby allowing EPA to impose penalties without going to court. However, this section also allows a respondent to request a hearing with time-consuming administrative procedures when an order of this type is issued. Given this potential for

delay and the purpose of this model (i.e., to serve as an efficient tool that would not require significant enforcement resources), the model order does not include a RCRA claim. Regional personnel should, however, consider the specific circumstances posed by their individual cases and decide whether to include RCRA provisions in the order.]