



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

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MEMORANDUM

SUBJECT: Policy on Recovering Indirect Costs
in CERCLA Section 107 Cost Recovery Actions

FROM: Frederick F. Stiehl *Frederick F. Stiehl*
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John J. Stanton, Director *John J. Stanton*
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TO: Regional Counsels
Regional Waste Management Division Directors

This memorandum is a clarification of the Agency's policy regarding the recovery of indirect costs in CERCLA cost recovery actions. Previous memoranda from the Financial Management Division transmitting yearly indirect cost multipliers have indicated that indirect costs must be claimed in all cost recovery actions ("Recovering Indirect Costs Related to Superfund Site Cleanup," Vincette Goerl to Regional Financial Management Officers/Regions I - X, December 12, 1985; "Superfund Indirect Cost Manual for Cost Recovery Purposes - FY 1983 through FY 1986," Morgan Kinghorn, March 1986). However, to avoid disruption of ongoing settlement negotiations with PRPs in existing CERCLA Section 107 actions, and to avoid placing the Agency in an apparently inequitable posture before the court adjudicating the claim, it may not be appropriate to seek indirect costs in all on-going cases.

The decision whether or not to seek indirect costs in existing cases will be made by the Regions after consultation with DOJ and with the concurrence of OECM and OWPE. The decision, which will be made on a case-by-case basis, will depend upon whether EPA has disclosed the overall cost figure in either negotiations or formal discovery and whether that figure has been the basis of the parties' settlement negotiations. For those cases where no negotiations have occurred (and therefore the parties have not relied upon a specific cost figure), but a cost figure has been produced during discovery, the litigation team should supplement the pertinent discovery and seek indirect costs so long as the

complaint (particularly the prayer for relief regarding costs) is broad enough to include indirect costs./*

For those cases where indirect costs for past activities will not be sought (i.e., those cases that meet the criteria delineated above), the Region should notify the defendants at the next appropriate opportunity, but no later than July 30, 1986, that indirect costs associated with Agency activities undertaken after that date will be included in the Agency's demands. The defendants should also be notified, where appropriate, that all indirect costs will be sought if the case proceeds to trial.

Of course, all new CERCLA Section 107 referrals must seek indirect costs. Accordingly, cost recovery complaints filed in new cases should include indirect costs as part of the total amount sought and CERCLA demand letters must include indirect costs as a portion of the total demand made upon potentially responsible parties.

If you have any questions on this policy, contact David Van Slyke (OECM-Waste) at FTS 382-3082 or Janet Farella (OWPE) at FTS 382-2034.

cc: Vincette Goerl, FMD
David Buente, DOJ

/* Depending upon the posture of the case, it may be possible to amend the complaint to include a request for indirect costs.