



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

OFFICE OF
Enforcement and
Compliance Assurance

October 30, 1996

MEMORANDUM

SUBJECT: Revised Model Notice Language for Compliance with Public Participation Requirements of Section 7003(d) of RCRA

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

TO: Regional Counsel Hazardous Waste Branch Chiefs
Regions I – X

Superfund and RCRA Program Branch Chiefs
Regions I – X

PURPOSE OF REVISION

On August 16, 1995, I issued a memorandum to you entitled “Model Notice Language for Compliance with Public Participation Requirements of Section 7003(d) of RCRA.” The memorandum included as attachments a copy of DOJ’s model Federal Register notice and two model EPA Federal Register notices. I am today issuing a revised version of the memorandum to provide you with updated instructions for formatting and obtaining publication of the EPA Federal Register notices and to make minor modifications to the notices themselves. The content of the original memorandum is otherwise unchanged. This revised memorandum supersedes the August 16, 1995 version in full.

GUIDANCE

Whenever the Agency proposes to grant a covenant not to sue under Section 7003 of RCRA, 42 U.S.C. § 6973, it must comply with the public participation requirements of Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). Section 7003(d) requires EPA to provide: (1) notice; (2) an opportunity for a public meeting in the affected area; and (3) a reasonable opportunity to comment on the settlement prior to its final entry.

Section 7003 covenants not to sue are often included in RCRA Section 7003 settlements and are sometimes included in covenants not to sue in CERCLA RD/RA and de minimis settlements. The purpose of this memorandum is to provide guidance on how to give the notice required by Section 7003(d) whenever such a covenant is included in any type of RCRA or CERCLA civil judicial or administrative settlement.

For RCRA and CERCLA judicial consent decrees, the notice should be provided in the Notice of Lodging of Consent Decree published by the Department of Justice when the decree is lodged with the court. A copy of DOJ's model Federal Register notice is attached for your information as Attachment 1.

For CERCLA administrative settlements, such as de minimis settlements, that are subject to the public comment requirements of CERCLA Section 122(i), 42 U.S.C. §9622(i), the Region should provide the required 7003(d) notice in the Federal Register notice required by Section 122(i). A Model Section 122(i) Federal Register Notice with bracketed language to be used in settlements containing RCRA 7003(d) covenants not to sue is attached as Attachment 2.

For CERCLA administrative settlements not governed by Section 122(i) and for RCRA administrative settlements, the Region should provide the required 7003(d) notice using a Federal Register notice or a similarly reliable method of notifying the public, such as publication in a newspaper of general circulation in the affected area. A Model Federal Register Notice for situations of this kind is provided in Attachment 3.

If you have any questions regarding the public participation requirements of Section 7003(d), please feel free to contact Benjamin Lammie of my staff at (202) 564-4254.

Attachments

cc: Vickie Reed, OPPE
Linda Boornazian, PPED
Lori Boughton, PPED
Earl Salo, OGC
Dawn Messier, OGC
Bruce Gelber, Principal Deputy Chief, Environmental Enforcement Section, U.S. Department of Justice

NOTICE

DEPARTMENT OF JUSTICE

NOTICE OF LODGING OF CONSENT DECREE
PURSUANT TO THE (ACT)

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in United States v. _____, Civil Action No. _____, was lodged on (date) with the United States District Court for the _____. (brief description of facility and violation(s)).

[The Consent Decree includes a covenant not to sue by the United States under Section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973].

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States v. _____, DOJ Ref. #_____.

[Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.]

The proposed consent decree may be examined at the Office of the United States Attorney, (address) ; the Region Office of the Environmental Protection Agency, (address) ; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$ (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber, Deputy Chief
Environmental Enforcement Section

MODEL CERCLA SECTION 122(i) FEDERAL REGISTER NOTICE

Proper format is very important for a Federal Register notice. The format is shown in the following model. The notice should be typed on plain bond paper, not EPA letterhead stationery. Each page, including the first, should be consecutively numbered. The notice should be double-spaced and single-sided. Heading titles may not be varied. The official format requires the top, bottom and right margins to be one inch wide and the left margin to be one and a half inches wide, but minor variations in margin size will not result in rejection of the notice. Legal citations should be written as, e.g., 42 U.S.C. 9622(i) (do not include a section symbol [§] or the word "section.") The notice should be signed by a Regional official authorized to submit documents for publication in the Federal Register by EPA Delegation 1-21. The name and title of the official signing the notice should be typed on the notice. If an acting official will be signing for the authorized official, the acting official's name and the acting official's title, e.g., "Acting Regional Administrator," must be typed on the notice. The billing code should be typed or hand-written at the end of the notice below the Regional official's signature.

To publish the notice, the Region should send 1) the original signed notice, 2) three single-sided copies of the signed notice, 3) a disk containing the file for the notice, and 4) a completed Federal Register Typesetting Request (EPA Form 2340-15) to: Vickie Reed, Federal Register Liaison (Mail Code 2136), Regional Development Branch, Regulatory Management Division, Office of Regulatory Management and Evaluation, Office of Policy, Planning and Evaluation, EPA Headquarters, 401 M St., S.W., Washington, D.C. 20460. When filling out the Federal Register typesetting Request, publication costs should be billed to the site-specific Superfund account number. The formula for calculating publication costs on the Typesetting Request is as follows: two double-spaced pages equals one column, and one column costs \$100.00 (half pages and half columns should be rounded up; if a disk is not provided, the per column cost increases to \$125.00) Questions about these procedures should be directed to Vickie Reed at (202) 260-7204.

[NOTE ON USE OF MODEL: This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.]

ENVIRONMENTAL PROTECTION AGENCY

[] [NOTE: Leave brackets to left blank.]

Proposed CERCLA Administrative [Insert type of settlement, i.e., "De Minimis Contributor," "De Minimis Landowner," or "Cost Recovery"] Settlement; [Insert name of settling party or if multiple settling parties, insert site name - - capitalize first letter of each word]

AGENCY: Environmental Protection Agency

ACTION: Notice; request for public comment

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative [insert either "de minimis contributor," "de minimis landowner," or "cost recovery"] settlement concerning the [insert site name] site in [insert site location] with the following settling party(ies): [insert names here or reference list included in Supplementary Information portion of notice]. The settlement requires the settling party(ies) to pay [insert total amount to be paid under settlement] to the Hazardous Substance Superfund. [If settlement includes other performance obligations, insert brief description here.] The settlement includes an EPA covenant not to sue the settling party(ies) pursuant to [insert applicable statutory references, e.g., "Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973."]

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at [insert address of information repository at or near site] and [insert address of Regional public docket]. [If settlement includes RCRA Section 7003 covenant, insert, "Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d)."]

DATES: Comments must be submitted on or before [30 days from date of publication]. [NOTE: Do not fill in date; just type DATES sentence, including brackets, as it appears here.]

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at [insert address of Regional public docket or other Regional office location]. A copy of the proposed settlement may be obtained from [insert name, address, and telephone number of Regional docket clerk or other Regional representative]. Comments should reference the [insert site name, location] and EPA

Docket No. ____ [insert EPA docket number for settlement]
and should be addressed to [insert name and address of
Regional docket clerk or other Regional representative
designated to receive comments].

FOR FURTHER INFORMATION CONTACT: [Insert name, address,
and telephone number of Regional representative who has
knowledge of settlement].

SUPPLEMENTARY INFORMATION: [Use this optional section to,
e.g., list parties too numerous to list in Summary portion
of notice or to provide further details about settlement].

[Insert typed name and
title of Regional official]

Date

[Insert billing code]

MODEL FEDERAL REGISTER NOTICE FOR RCRA AND CERCLA ADMINISTRATIVE SETTLEMENTS WHICH CONTAIN RCRA SECTION 7003 COVENANTS NOT TO SUE, BUT WHICH ARE NOT SUBJECT TO PUBLIC COMMENT REQUIREMENTS OF CERCLA SECTION 122(i)

Proper format is very important for a Federal Register notice. The format is shown in the following model. The notice should be typed on plain bond paper, not EPA letterhead stationery. Each page, including the first, should be consecutively numbered. The notice should be double-spaced and single-sided. Heading titles may not be varied. The official format requires the top, bottom and right margins to be one inch wide and the left margin to be one and a half inches wide, but minor variations in margin size will not result in rejection of the notice. Legal citations should be written as, e.g., 42 U.S.C. 9622(i) (do not include a section symbol [§] or the word "section.") The notice should be signed by a Regional official authorized to submit documents for publication in the Federal Register by EPA Delegation 1-21. The name and title of the official signing the notice should be typed on the notice. If an acting official will be signing for the authorized official, the acting official's name and the acting official's title, e.g., "Acting Regional Administrator," must be typed on the notice. The billing code should be typed or hand-written at the end of the notice below the Regional official's signature.

To publish the notice, the Region should send 1) the original signed notice, 2) three single-sided copies of the signed notice, 3) a disk containing the file for the notice, and 4) a completed Federal Register Typesetting Request (EPA Form 2340-15) to: Vickie Reed, Federal Register Liaison (Mail Code 2136), Regional Development Branch, Regulatory Management Division, Office of Regulatory Management and Evaluation, Office of Policy, Planning and Evaluation, EPA Headquarters, 401 M St., S.W., Washington, D.C. 20460. When filling out the Federal Register Typesetting Request, publication costs should be billed to the site-specific Superfund account number. The formula for calculating publication costs on the Typesetting Request is as follows: two double-spaced pages equals one column, and one column costs \$100.00 (half pages and half columns should be rounded up; if a disk is not provided, the per column cost increases to \$125.00) Questions about these procedures should be directed to Vickie Reed at (202) 260-7204.

[NOTE ON USE OF MODEL: This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.]

ENVIRONMENTAL PROTECTION AGENCY

[] [NOTE: Leave brackets to left blank.]

Proposed RCRA [if applicable, insert "and CERCLA Administrative Settlement; [Insert name of settling party or if multiple settling parties, insert site name - - capitalize first letter of each word]

AGENCY: Environmental Protection Agency

ACTION: Notice; request for public comment

SUMMARY: In accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 9673(d), notice is hereby given of a proposed administrative settlement concerning the [insert site name] site in [insert site location] with the following settling party(ies): [insert names here or reference list included in Supplementary Information portion of notice]. The settlement requires the settling party(ies) to [insert brief description of payment or other performance obligations of settling party(ies)]. The settlement includes an EPA covenant not to sue the settling party(ies) pursuant to Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973 [insert other applicable statutory references for covenant, in any.]

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is

inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at [insert address of information repository at or near site] and [insert address of Regional public docket]. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before [30 days from date of publication]. [NOTE: Do not fill in date; just type DATES sentence, including brackets, as it appears here.]

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at [insert address of Regional public docket or other Regional office location]. A copy of the proposed settlement may be obtained from [insert name, address, and telephone number of Regional docket clerk or other Regional representative]. Comments should reference the [insert site name, location] and EPA Docket No. ____ [insert EPA docket number for settlement] and should be addressed to [insert name and address of Regional docket clerk or other Regional representative designated to receive comments].

FOR FURTHER INFORMATION CONTACT: [Insert name, address, and telephone number of Regional representative who has knowledge of settlement].

SUPPLEMENTARY INFORMATION: [Use this optional section to, e.g., list parties too numerous to list in Summary portion of notice or to provide further details about settlement].

[Insert typed name and
title of Regional official]

Date

[Insert billing code]