

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response



DIRECTIVE NUMBER: 9833.2

TITLE: Consent Orders and the Reimbursement Provision
Under Section 106(b) of CERCLA

APPROVAL DATE:

EFFECTIVE DATE:

ORIGINATING OFFICE:

FINAL

DRAFT

LEVEL OF DRAFT

- A — Signed by AA or DAA
- B — Signed by Office Director
- C — Review & Comment

REFERENCE (other documents):

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DIRECTIVE DIRECTIVE DI



United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number

9833.2

2. Originator Information

Name of Contact Person
Richard Hopen

Mail Code
WH-527

Office
OWPE

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382-2035

3. Title

Consent orders and the Reimbursement provision under Section 106(b) of CERCLA

4. Summary of Directive (include brief statement of purpose)

When EPA enters into a consent agreement with Potentially Responsible Parties under Section 106(b) of CERCLA, the consent agreement should include a provision which prevents Potentially Responsible Parties from receiving reimbursement for response actions.

5. Keywords

CERCLA Section 106(b)(2), Reimbursement

6a. Does This Directive Supersede Previous Directive(s)?

No

Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

No

Yes

What directive (number, title)

7. Draft Level

A - Signed by AA/DAA

B - Signed by Office Director

C - For Review & Comment

D - In Development

8. Document to be distributed to States by Headquarters?

Yes

No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Darlene Williams

Date

6/3/87

10. Name and Title of Approving Official

Date

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

JUN 12 1987

MEMORANDUM

OSWER# 9833.2

SUBJECT: Consent Orders and the Reimbursement Provision
Under Section 106(b) of CERCLA

FROM: Gene A. Lucero, Director *Gene A. Lucero*
Office of Waste Programs Enforcement

Steven Leifer, Acting Associate *Steven Leifer*
Enforcement Counsel for Waste
Office of Enforcement and Compliance Monitoring

TO: Addressees

The Superfund Amendments and Reauthorization Act (SARA) amended section 106 of CERCLA to add section 106(b)(2). This provision entitles persons to seek reimbursement from the Superfund for costs spent in complying with section 106 orders. Congress included the provision as an incentive for PRP's to take response actions even though they might disagree with EPA's unilateral order. It preserves their right to contest issues of liability or the nature of the response action at a later date.

This memorandum provides guidance regarding terms of consent orders to preclude parties who have signed consent agreements to subsequently seek reimbursement under section 106(b). To assure that parties to a consent order or decree do not seek reimbursement by contesting issues of liability in a later reimbursement proceeding, consent orders should contain a stipulation that the respondent(s) waives its right to seek reimbursement under section 106. For example: "In entering into this Consent Order, the Respondent waives any right to seek reimbursement under Section 106(b)(2) of CERCLA for any past costs and costs incurred in complying with this order."

Reimbursement issues under SARA will be addressed more comprehensively in the specific guidance on the reimbursement procedures, and in revisions to the August 1983 guidance on Administrative Orders under §106.

If you have any questions please call Rich Hopen at
382-2035.

Addressees: Directors, Waste Management Division,
Regions I, IV, V, VI, VII, VIII
Director, Air & Waste Management Division,
Region II
Directors, Hazardous Waste Management Division,
Regions III, X
Director, Toxic & Waste Management Division,
Region IX
Regional Counsels,
Regions I-X