



NOV 25 2002

**MEMORANDUM**

**SUBJECT:** Amendment to the October 2, 2001 Memorandum entitled "Compromise of, and Termination of Collection Activity on, Post-Settlement and Post-Judgment Superfund Debts"

**FROM:** Barry Breen, Director  
Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance  
Environmental Protection Agency

*[Signature]*  
Joseph Dillon, Comptroller  
Office of the Chief Financial Officer  
Environmental Protection Agency

*[Signature]*  
Bruce Gelber, Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Department of Justice

Senior Resource Officials, Regions I-X  
Regional Counsel, Regions I-X  
Superfund National Policy Managers, Regions I-X  
Assistant Chiefs, Environmental Enforcement Section, DOJ

**1.0 Introduction**

On October 2, 2001, our offices issued a memorandum entitled "Compromise of, and Termination of Collection Activity on, Post-Settlement and Post-Judgment Superfund Debts" ("2001 Compromise Memo"). That memorandum discusses the legal authority to compromise and terminate collection activity on debts arising out of Superfund settlements and judgments, and provides procedures for effectuating such compromises and terminations. In the course of implementing this memorandum for the past year, regions have brought to our attention two areas in the 2001 Compromise Memo that would benefit from clarification. This memorandum addresses those areas. Also, attached to this memorandum is a model letter requesting a debtor to pay a specified, compromised amount of its debt. The attachment is the model compromise letter referred to in the 2001 Compromise Memo, at pp. 8 and 14. This memorandum is not intended to supersede the 2001 Compromise Memo, but rather provides the two requested clarifications and attaches the model compromise letter.

## **2.0 Clarifications**

### **2.1.1 Compromises of Debts Arising out of Administrative Agreements or Administrative Orders on Consent Issued under EPA’s Section 122(h) Authority without the Prior Written Approval of the Attorney General**

The 2001 Compromise Memo provides that “DOJ must approve compromises of, and terminations of collection activity on, debts arising from AOCs and administrative agreements if either: (i) total past and projected response costs of the United States for the site exceed \$500,000 (excluding interest), or (ii) the Agreement or AOC was jointly issued under EPA’s Section 122(h) authority and the authority of the [Attorney General] (regardless of the amount of total site costs of the United States).”<sup>1</sup>

This memorandum does not alter the requirement that EPA obtain DOJ approval of compromises of, and terminations of collection activity on, debts arising from AOCs and administrative agreements if the agreement or AOC was issued jointly under Section 122(h) authority and the authority of the Attorney General.

However, this memorandum provides that EPA does not need to obtain DOJ approval to compromise or terminate debts arising out of administrative agreements or AOCs where total site costs of the United States did not exceed \$500,000, and were not expected to exceed \$500,000, excluding interest, at the time the AOC was executed, and the settlement was not issued under the authority of the Attorney General. In the event that total site costs of the United States exceed \$500,000 at the time the post-settlement compromise or termination is being considered, DOJ agrees that EPA has authority to compromise or terminate collection activity on the post-settlement debt without obtaining DOJ’s approval. Accordingly, regions should use the procedures set forth in Section III of the 2001 Compromise Memo for such compromises and terminations. Section III provides that compromises or terminations of collection activity on debts that do not require DOJ approval are governed by Delegation 14-14-D, which delegates authority to the Regional Administrators (RAs). Because the RAs have redelegated this authority within the region, region-specific delegations must be consulted in order to determine the person within the region to whom the authority to compromise or terminate has been delegated.

In the event a Region has a question about the need to obtain DOJ’s approval before compromising a debt arising out of Administrative Agreements or AOCs, it should consult with Maureen Katz (202-514-2468; [maureen.katz@usdoj.gov](mailto:maureen.katz@usdoj.gov)) at DOJ-ENRD.

---

<sup>1</sup> See, e.g., Section I.B. of the 2001 Compromise Memo, “Debts Arising out of Administrative Agreements.”

## **2.1.2 Post-Settlement and Post-Judgment Debts Discharged in Bankruptcy**

In cases in which a debt owed to EPA has been discharged as the result of a bankruptcy proceeding, EPA does not need to obtain DOJ's approval to terminate collection activity on the debt (i.e., write off the debt). A debt that is discharged in the context of a bankruptcy proceeding is not collectible as a matter of law. The 2001 Compromise Memo, at footnote 8, stated that "Regions may record compromises or write-offs of . . . post-settlement and post-judgment Superfund debts [that have been discharged in bankruptcy] upon receiving the discharge notice from the bankruptcy court." This memorandum clarifies that EPA may write off debts discharged in bankruptcy upon notice of the discharge from the court, whether that notice is styled as a "discharge notice" or takes a different form (e.g., a court entry on a PACER report).

## **3.0 Model Letter**

Attached to this memorandum is the model letter referenced in the 2001 Compromise Memo at Sections II.A and III.A. The model letter sets forth a compromise offer and seeks payment of the reduced amount within 30 days. The letter states that the compromise offer applies only to the amount identified in the letter as the subject of the compromise, that EPA reserves its rights as to all other claims and that, if the Settling Parties do not timely pay the reduced amount, EPA will seek to enforce the underlying agreement (i.e., the full amount).

## **4.0 Disclaimer**

This memorandum is intended solely for the guidance of employees of the U.S. EPA and U.S. DOJ. It is not intended and cannot be relied on to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. U.S. EPA and U.S. DOJ reserve the right to act at variance with this document and to change it at any time without public notice.

If you have questions regarding this memorandum, please contact Cate Tierney (202-564-4254; [Tierney.Cate@epa.gov](mailto:Tierney.Cate@epa.gov)) at EPA-OSRE, Vince Velez (202-564-4972; [Velez.Vincent@epa.gov](mailto:Velez.Vincent@epa.gov)) at EPA-FMD, or Kenneth Long (202-514-2840; [Klong@enrd.usdoj.gov](mailto:Klong@enrd.usdoj.gov)) at DOJ-ENRD.

cc: Superfund Legal Branch Chiefs, Regions I-X  
Superfund Program Branch Chiefs, Regions I-X  
Comptrollers, Regions I-X

## Attachment 1

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Date]

[Addressee]

RE: [ \_\_\_\_\_ Site ("Site")], [Location]:  
[Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. \_\_\_/Civil  
Action No. \_\_\_ - \_\_\_\_\_]

On \*\*\*\*\*, the United States Environmental Protection Agency ("EPA") submitted [Bill(s) / demand(s) -- penalties are usually billed separately, you may have more than one bill being compromised] BD No. \*\*\*\*\* to [the Settling Party] in the amount of \$\*\*\*\*\* for [Oversight/ Future/ Interim Response Costs/ Stipulated Penalty, plus Interest] incurred by/assessed by EPA in connection with the [name of Site] Site from \*\*\*[date] to \*\*\*\*\* [date]. [May need to add or reference the interest and stipulated penalties provisions of the consent decree/ administrative agreement/ administrative order on consent]. [Settling Party] has [failed to pay / disputed its obligation to pay] [Bill(s) /demand(s) etc.] BD No. \*\*\*\*\* . By this letter, I am writing to confirm the compromise agreement reached between EPA and [the Settling Party] regarding [Bill/ demand] No. \*\*\*\*\*.

Specifically, EPA agrees that if [the Settling Party] pays to EPA the sum of \$ ----- within 30 days of [Settling Party's] receipt of this letter, then EPA shall accept [Settling Party's] payment as full satisfaction of EPA's demand for the costs identified in [Bill/ demand] No. \*\*\*\*\* as well as related interest and stipulated penalties pertaining to that [Bill/ demand]. [Settling Party] shall make payment, and give notice of payment, in the manner set forth in the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent]. [Different or additional terms of payment and notice should be set forth here].

This offer of compromise shall resolve only the claim for those costs identified in [Bill /demand] No. \*\*\*\*\*, [and related stipulated penalties and interest], and does not address the United States' right to recover additional [Oversight/ Future/ Interim Response Costs/ Stipulated Penalty plus Interest] in accordance with the terms of the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent], or on any other term of the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent]. The Parties reserve all rights provided under the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent] with respect to additional [Oversight/ Future/ Interim Response Costs/ Stipulated Penalty plus Interest] incurred by/ assessed by the United States and all other terms of the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent].

If [Settling Party] does not pay the amount specified above in accordance with the terms set forth above, or informs EPA that [he/it] will not comply with the terms of this proposal, then this offer of compromise is revoked without further notice, and EPA reserves the right to seek all costs identified in [Bill /demand] No. \*\*\*\*\* , together with all Interest and stipulated penalties accruing in accordance with the [Consent Decree/ Administrative Agreement/ Administrative Order on Consent].

If you have any questions regarding this letter, please contact [Insert] at [tel no/e-mail].

Sincerely,  
[Name of Agency Official]  
[Title]  
[EPA Office]

Enclosures

cc: [Financial Management Officer, U.S. EPA, Region \_\_]  
[Assistant ORC/Legal Enforcement Staff]  
[DOJ Assistant Section Chief]  
[Cost recovery/Superfund program staff]