



U.S. ENVIRONMENTAL PROTECTION AGENCY



U.S. DEPARTMENT OF JUSTICE

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MEMORANDUM

SUBJECT: Compromise of, and Termination of Collection Activity on, Post-Settlement and Post-Judgment Superfund Debts

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

Joseph Dillon, Comptroller
Office of the Chief Financial Officer
Environmental Protection Agency

Bruce Gelber, Chief
Environmental Enforcement Section
Environment and Natural Resources Division
Department of Justice

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

The purpose of this memorandum is to discuss the legal authority to compromise and terminate collection activity on debts arising out of Superfund settlements and judgments (post-settlement and post-judgment debts), and to provide procedures for effectuating such compromises and terminations.

Improvement of the Superfund program's fiscal management continues to be one of the Superfund enforcement program's highest priorities. It is critical that the United States collect amounts owed to it pursuant to CERCLA judicial and administrative settlements and judgments, particularly in light of the fiscal constraints currently facing the program. Accordingly, Regions should continue their excellent work in timely billing and collecting future response costs, and should refer overdue accounts receivable to the Department of Justice (DOJ) for collection as provided in the April 6, 2000 Collections Referral Guidance (April 2000 Process Memo).¹

¹ "Delinquent Accounts Receivable: Interim Guidance on the Referral Process and Timing for Collection of Delinquent Debts Arising Under Superfund Judicial or Administrative Settlements," S. Connors and J. McNeil, April 6, 2000.

Post-settlement (consent decree, administrative agreement, or administrative order on consent) Superfund debts are generally not negotiable; are expected to be paid on time; and should be disputed, if at all (e.g., oversight bills), on the limited grounds provided in the dispute resolution provisions of the governing settlement. Similarly, post-judgment debts are expected to be timely paid, in accordance with the judgment. In some circumstances, however, EPA may determine that a compromise of, or termination of collection activity on, a debt arising out of a CERCLA settlement or judgment is necessary or appropriate.

For purposes of this memorandum, a “compromise” is a reduction in a post-settlement or post-judgment debt which is justified because of litigation risk associated with the debt or the debtor’s limited ability to pay. A compromise will result in an Agency write-off of the compromised amount. In contrast, “termination of collection activity” involves the decision not to pursue a post-settlement or post-judgment debt because, for example, the cost of collection would not justify the enforced collection of the debt, the debt is uncollectible, or other comparable reasons justify the write-off. A termination of collection activity will result in an Agency write-off of the entire debt.

This memorandum is divided into three Sections.

Section I discusses the legal authority to compromise, and terminate collection activity on, post-settlement and post-judgment debts.

Section II discusses compromises and terminations of collection activity that require DOJ approval, and is subdivided into:

- A. Procedures for compromises of post-settlement and post-judgment debts that are EPA’s collection responsibility; and
- B. Procedures for termination of collection activity on post-settlement and post-judgment debts.

Section III discusses compromises of, and terminations of collection activity on, post-settlement debts that do *not* require DOJ approval, and is subdivided into:

- A. Compromises of, and Terminations of Collection Activity on, Debts Arising Out of Administrative Agreements or AOCs Where Total Site Costs of the United States Are \$500,000 or Less and the Settlement Was Not Issued Jointly Under EPA’s Section 122(h) Authority and the Authority of the Attorney General (AG)
- B. Compromises of, and Terminations of Collection Activity on, Stipulated Penalty Debts Arising out of Administrative Agreements and AOCs ²

This memorandum does not address adjustments of debts arising out of CERCLA

² Chapter 14, “Superfund Accounts Receivable and Billing” of the “Resources Management Directives System,” November 1995, is currently being revised to reflect the procedures set forth in this memorandum.

settlements and judgments. Adjustments involve corrections of debts due to, for example, determinations that an accounting error has been made; certain costs are, as a matter of fact, inconsistent with the National Contingency Plan, 40 C.F.R. Part 300; or costs inconsistent with the terms and conditions of the settlement were improperly included in a bill. In contrast to compromises and terminations of collection activity, adjustments may always be performed independently by EPA.

I. Legal Authority to Compromise and Terminate Collection Activity on CERCLA Post-Settlement and Post-Judgment Debts

A. Debts Arising out of Judicially-Approved Settlements (Consent Decrees and Judgments)

DOJ approval is required for compromises of, and terminations of collection activity on, any debt arising out of consent decrees (CDs) and judgments, regardless of the type of debt (e.g., sum certain due on a date certain, future response cost, interest, assessed stipulated penalty) or the amount of the debt or the compromise, because of the Attorney General's (AG) plenary authority over the conduct of litigation.³

The Federal Claims Collection Act, as amended by the Debt Collection Improvement Act, 31 U.S.C. § 3701, *et seq.*, (FCCA) and regulations promulgated thereunder, 40 C.F.R. Part 13 and 31 C.F.R. Part 900, do not apply in the case of compromising and terminating collection activity on debts arising out of Superfund CDs and judgments. The FCCA and the regulations address only pre-litigation referral scenarios.⁴

³ “The broad plenary authority of the Attorney General, as chief litigation officer for the United States, embraces all aspects of litigation, including subpoena enforcement, *settlement authority*, and prosecutorial discretion, to be eroded only by other Acts of Congress, and the Executive's constitutional command to faithfully execute the laws.” 1982 (Counsel-Inf. Op.) 6 Op.O.L.C. 47 (emphasis added).

⁴ The legislative history of the FCCA indicates that this statute focuses on pre-referral compromises. The FCCA was intended to address the fact that only a few agencies had unrestricted prelitigation collection and compromise authority. S. Rep. No. 89-1331 (1966).

B. Debts Arising out of Administrative Agreements

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),⁵ or (ii) the Agreement or AOC was jointly issued under EPA's Section 122(h) authority and the authority of the AG (regardless of the amount of total site costs of the United States).⁶ DOJ approval is not required where response costs of the United States for the site are less than \$500,000 and the agreement or AOC was issued by EPA alone. Section 122(h) provides the controlling compromise authority with respect to AOCs and administrative agreements for recovery of response costs, because they are not matters in litigation subject to the AG's plenary authority, and because the FCCA, 31 U.S.C. § 3702, states it does not apply when there is more specific controlling statutory authority.

The FCCA does, however, govern compromises of, and terminations of collection activity on, stipulated penalties arising out of a CERCLA administrative settlement or AOC.⁷ Accordingly, if the debt to be compromised is a stipulated penalty arising out of an administrative agreement or AOC, EPA may independently compromise the debt as long as the principal amount of the debt does not exceed \$100,000, as further described in Section III, B, *infra*. FCCA, 31 U.S.C. § 3702. If the stipulated penalty debt exceeds \$100,000, DOJ approval of the compromise is required. Section 122(h) does not apply to compromises of stipulated penalties, as EPA's Section 122(h) authority is limited to costs of response.

⁵ To make the determination that total site costs of the United States are \$500,000 or less, site information must be sufficient to support a reasonably accurate future cost projection. *See* "Guidance on Administrative Response Cost Settlements under Section 122(h) of CERCLA and Administrative Cashout Settlements with Peripheral Parties Under Section 122(h) of CERCLA and Attorney General Authority," B. Breen & B. Gelber, Sep. 30, 1998, at 4.

⁶ *See* Section 122(h) Guidance referenced in footnote 5, above. In limited cases, Section 122(h) agreements and AOCs for sites where total response costs of the U.S. are less than \$500,000 may be issued jointly under EPA's Section 122(h) authority and the AG's inherent authority. For example, an agreement or AOC that gives a Section 106 covenant or has an unusually broad definition of "matters addressed" would need to be issued under both EPA's Section 122(h) authority and the AG's inherent authority.

⁷ As discussed in Section I.A, *supra*, compromises of, and terminations of collection activity on, assessed stipulated penalty debts arising out of CDs must be approved by DOJ.

Summary of Legal Authority

Post-Settlement/Judgment Debt Compromises and Terminations that Require DOJ Approval	Post-Settlement Debt Compromises and Terminations that Do Not Require DOJ Approval (<i>ie.</i> , EPA has independent authority)*
<ul style="list-style-type: none"> ● All debts arising from CDs or Judgments, including: <ul style="list-style-type: none"> - sum certain/date certain, - future response cost, - interest, and - assessed stipulated penalties. ● Debts arising from administrative agreements/AOCs where: <ul style="list-style-type: none"> a) the U.S.'s total site costs are <i>greater than</i> \$500,000; or b) the administrative agreement/AOC was issued jointly under EPA and DOJ authority (regardless of amount of U.S.'s total site costs). ● Compromises & terminations of stipulated penalties arising out of administrative agreements/AOCs where the penalty to be compromised or terminated is <i>greater than</i> \$100,000. 	<ul style="list-style-type: none"> ● Administrative agreement/AOC past costs, future costs, and interest debts at sites where: <ul style="list-style-type: none"> a) the U.S.'s total response costs are <i>less than</i> \$500,000, and b) the agreement/AOC was not issued jointly with DOJ. ● Stipulated penalties for <i>less than</i> \$100,000 arising from an administrative agreement/AOC. <p>* Adjustments are not compromises and do not require DOJ approval.</p>

II. Compromises of, and Terminations of Collection Activity On, Post-Settlement and Post-Judgment Debts that Require DOJ Approval

This section applies to post-settlement and post-judgment debts that require DOJ approval for compromise or termination of collection activity. First, this section provides procedures for obtaining DOJ approval of *compromises* of post-settlement and post-judgment debts that are EPA's collection responsibility.⁸ Once DOJ has approved the compromise, the Region may write-off the compromised amount. Second, this section provides procedures for obtaining DOJ approval for *termination of collection activity* on post-settlement and post-

⁸ These procedures do *not* apply to post-settlement debts which may be compromised as part of negotiations for a subsequent settlement with the same Settling Parties where the subsequent settlement requires DOJ approval. If that occurs, any compromise will be agreed upon in coordination with DOJ, as part of the negotiation process.

Similarly, the compromise procedures and the termination procedures in this memorandum do *not* apply to compromises of, or terminations of collection activity on, post-settlement or judgment debts necessitated by the discharge of the debt in bankruptcy. DOJ will already be integrally involved in such cases, because they file the bankruptcy proof of claim on behalf of the Agency. Regions may record compromises or write-offs of such post-settlement and post-judgment Superfund debts upon receiving the discharge notice from the bankruptcy court.

judgment debts that are EPA’s collection responsibility, and post-judgment debts of sums certain due on a date certain that have been determined by the United States Attorney’s Office Financial Litigation Unit (DOJ-FLU) to be uncollectible. Once DOJ has approved termination of collection activity on a debt, the Region may write-off the entire debt.

A. Procedures for Obtaining DOJ Approval of *Compromises of Post-Settlement and Post-Judgment Debts that are EPA’s Collection Responsibility*

As discussed in Section I, *supra*, DOJ approval is required for most post-settlement and all post-judgment Superfund compromises. In many situations, DOJ will be directly involved in efforts to collect delinquent amounts owed under Superfund settlements and judgments. For example, a delinquency on a sum certain due on a date certain (i.e., past cost or cash-out payment) arising from a CD or judgment automatically triggers enforcement and collection efforts by the DOJ-FLU without further notice from EPA. Similarly, EPA refers certain other delinquent debts to DOJ for collection, as prescribed in the April 2000 Process Memo.⁹ Once DOJ is engaged in efforts to collect and enforce delinquent debts, EPA will be working closely with DOJ on any compromise decisions.

The procedures below apply to compromises of those post-settlement and post-judgment debts for which DOJ is *not* yet directly engaged in collection or enforcement efforts. That is, the procedures apply to those debts that are *EPA’s* collection responsibility and that EPA has not yet referred to DOJ for collection.

⁹ The chart below summarizes EPA and DOJ *collection responsibilities*, as set forth in the April 2000 Process Memo.

Judicial Settlement (CD, Judgment)	Administrative Settlement (Admin Agrmnt, AOC)
Sum certain/ date certain debt ☞ DOJ-FLU, automatically	Sum certain/ Date certain debt ☞ EPA must REFER to DOJ (FLU if principal amt < \$1M; (ENRD if principal amt > \$1M)
Future cost in CD (+ interest) debt ☞ EPA must REFER to DOJ/ENRD	Future cost (+ interest) debt ☞ EPA must REFER to DOJ/ENRD

Additionally, EPA has collection responsibility for future costs billed pursuant to a declaratory judgment.

These *compromise* procedures apply to:

- future cost (+ interest) debts arising out of CDs and judgments *that EPA has not yet referred to DOJ* for collection;
- assessed stipulated penalty debts arising out of CDs *that EPA has not yet referred to DOJ* for collection;
- past cost, future cost (+ interest) debts arising out of administrative agreements and AOCs (where: (i) the U.S.'s total site costs are greater than \$500,000; or (ii) the agreement/AOC was issued jointly under EPA and AG authority), *that EPA has not yet referred to DOJ* for collection.

Regions should follow the procedures below after determining that a compromise of a post-settlement or post-judgment debt is appropriate. If the debt to be compromised is an oversight bill owed pursuant to a settlement, Regions will frequently make this determination after a period of dispute resolution with the Settling Parties (SPs), as provided in the governing settlement.

Usually, EPA will already have established an account receivable for a post-settlement or post-judgment debt that it deems appropriate for a compromise. Most commonly, the debt will be for oversight costs (and, perhaps, interest) for which a bill has already been sent to the SPs.

In such post-account receivable situations, Regions should follow the procedures below to obtain DOJ approval for the compromise. These procedures should be supplemented by Region-specific plans delineating the specific responsibilities of legal, program and finance personnel in the Region, among whom close communication and coordination is imperative in these efforts.

1. EPA ORC contacts appropriate DOJ staff attorney or DOJ Assistant Chief to discuss potential compromise.¹⁰
2. Based on ORC-DOJ discussions, ORC and/or DOJ staff attorneys contact the SPs and obtain an agreement in principle from the SPs to pay the reduced amount, subject to DOJ approval.
3. ORC sends DOJ Assistant Chief and staff attorney a letter recommending the compromise. The letter should provide relevant information, such as: the settlement, the identity of the debtor(s), the amount due under the settlement, the proposed compromise amount, and the reasons for the compromise. If the debt is a disputed oversight bill, the letter should also identify the parties disputing the

¹⁰ For oversight costs, the Region's decision to seek compromise approval will usually be made in the course of dispute resolution discussions with the SPs, as provided in the settlement in question.

bill, the provisions in the settlement relating to dispute rights, and the procedural posture of the dispute.

4. The ORC copies the Regional Financial Management Officer (FMO) on the letter. Upon receipt of the letter, the FMO enters the proposed compromised amount as an “allowance for doubtful account” in the integrated financial management system (IFMS). The FMO should also adjust the overdue status code for the account receivable in IFMS.
5. The DOJ staff attorney prepares a memorandum with recommendations to the appropriate DOJ authority with an attached letter for signature by that authority. If the compromise is approved, the DOJ authority signs an authorizing letter and sends it to the Regional ORC contact and the FMO. The Region keeps the authorizing letter in its official case file.
6. Upon receiving the authorizing letter from DOJ the Region sends the SPs a letter seeking payment of the reduced amount within 30 days. Generally, the letter will state that the compromise offer applies only to the amount identified in the letter as the subject of the compromise, that the United States reserves its rights as to all other claims and that, if the SPs do not timely pay the reduced amount, the U.S. will seek to enforce the underlying agreement (i.e., we will seek the full amount).¹¹

Note: EPA and DOJ will jointly issue a model compromise letter in the near future.

7. When the Region receives payment of the reduced amount from the SPs, the FMO records the payment and enters a write-off in IFMS for the compromised amount (i.e., against the allowance for doubtful account).

In some circumstances, Regions may seek to compromise post-settlement or post-judgment debts for which an account receivable has not yet been established. For example, the Region may determine that a compromise is appropriate prior to sending out an oversight bill.¹² In such circumstances, the Regions should follow the slightly different compromise procedures

¹¹ In limited situations involving non-payment of debts created by judicial CDs or judgments, the government may seek to memorialize the agreement to pay the reduced amount in a stipulation, which the SPs and the United States would sign. The stipulation would be a binding and enforceable commitment of the parties. The circumstances where the government may require a stipulation include, for example, where formal dispute resolution has been invoked and the SPs have appealed EPA’s final administrative decision to federal district court, or when EPA wants to enforce the terms of the compromise as opposed to the original claim.

¹² This memorandum does not address pre-demand compromises of stipulated penalties.

outlined below.

For pre-account receivable compromises of oversight costs:

1. EPA ORC contacts appropriate DOJ Assistant Chief to discuss potential compromise.
2. ORC sends DOJ Assistant Chief and staff attorney a letter recommending the compromise. The letter should identify, for example, the settlement, the proposed compromise amount, and the reasons for the compromise.

Note: The ORC should ask the FMO whether a bill that does not reflect the compromise has been prepared. If so, the ORC should notify the FMO of the intention to compromise so that this bill is not sent to the SPs.

3. The DOJ staff attorney prepares a memorandum with recommendations to the appropriate DOJ authority. If approved, the DOJ authority signs the authorizing letter and sends it to the Regional ORC contact and the FMO. The authorizing letter is kept in the Region's official case file.
4. The Region sends the SPs a bill/demand reflecting the reduced amount. FMO establishes account receivable for this reduced amount.

B. Procedures for Obtaining DOJ Approval of *Termination of Collection Activity on Post-Settlement and Post-Judgment Debts*

In some instances, EPA may determine that a delinquent post-settlement or post-judgment Superfund debt should be written off in full. Reasons justifying a write-off may include, for example, that the cost of collection would not justify the enforced collection of the debt, or the debt is uncollectible due to the financial circumstances of the debtor. It is important that post-settlement and post-judgment Superfund debts be written off only for legally and fiscally sound reasons. Accordingly, Regions should continue and/or enhance their current internal procedures for analyzing the appropriateness of a write-off, and should retain complete files documenting that analysis.

The procedures specified below for obtaining DOJ approval to terminate collection activity apply to post-settlement debts that are EPA's collection responsibility and post-CD and post-judgment debts of sums certain due on dates certain that DOJ-FLU has determined to be uncollectible.

These *termination of collection activity* procedures apply to:

- sum certain due on date certain debts in CDs and judgments *that the FLU has deemed uncollectible*;
- future cost (+ interest) debts arising out of CDs and judgments *that EPA has not yet referred to DOJ* for collection;
- assessed stipulated penalty debts arising out of CDs *that EPA has not yet referred to DOJ* for collection;
- past cost, future cost (+ interest) debts arising out of administrative agreements and AOCs (where: (i) the U.S.'s total site costs are greater than \$500,000; or (ii) the agreement/AOC was issued jointly under EPA and AG authority), *that EPA has not yet referred* the debt to DOJ for collection.

Regions should group debts for which they seek DOJ approval to terminate collection activity into two categories:

- (1) debts of \$50,000 or less; and
- (2) debts greater than \$50,000.¹³

For debts in the first category (\$0 to \$50,000), Regions should include the IFMS data applicable to those debts, and attach them to a cover letter to DOJ identifying each debt as falling into one of the following justifications supporting write-off:

- costs of collection are likely to exceed the amount collectible
- a qualified EPA official has determined the debt is uncollectible (e.g., the debtor is defunct or deceased)¹⁴
- after investigation, the FLU has determined the debt is uncollectible (e.g., the debtor is defunct or deceased)¹⁵
- debt consists of:
 - (i) interest (and/or residual principal) resulting from late payment of principal (as well as interest that accrues during DOJ review of termination request); or
 - (ii) interest (and/or residual principal) that accrued during good faith exchange of information, and equities support write-off of debt (as well as interest that accrues

¹³ These amounts apply regardless of whether the debt consists of principal or interest.

¹⁴ This justification would be acceptable for delinquent debts *other than* sums certain due on dates certain arising out of CDs and judgments, for which DOJ-FLU has collection responsibility.

¹⁵ This justification would be acceptable for delinquent sums certain due on dates certain arising out of a CD or judgment. Such delinquencies automatically trigger the DOJ-FLU's collection responsibility. After receiving a determination from the FLU that the debt is uncollectible, the Region may seek DOJ-ENRD's approval of the termination of collection activity on the debt.

- during DOJ review of termination request)
- unable to locate debtor after reasonable efforts
- other reasons (please provide brief written explanation)¹⁶

If a Region identifies multiple debts that are Category 1 termination of collection activity (write-off) candidates, the Region may “bundle” its request to terminate collection activity on all of the identified debts. The Region may provide DOJ with a single cover letter and attach IFMS data for the individual debts to be written off. The Region should group the debts by the justification for the write-off. For example, the cover memo may attach behind Tab A the IFMS data for debts for which the Region seeks approval to terminate collection activity because the cost of collection is likely to exceed the amount collectible, and may attach behind Tab B the IFMS data for all the debts that the FLU has determined to be uncollectible.

For Category 2 debts (debts greater than \$50,000), Regions should include the IFMS data applicable to those debts, as well as a brief narrative explaining the reasons justifying the write-off. The length and detail of the narrative, and the need for supporting documentation, will depend on the amount of the debt and the complexity of the analysis supporting the Region’s decision that the debt is an appropriate write-off candidate. If, for example, a Region seeks DOJ approval to terminate collection activity on a debt greater than \$50,000 because it is uncollectible, a Region should summarize the information it reviewed in making the determination that the debt is uncollectible.¹⁷

All written requests to terminate collection activity on post-settlement and post-judgment Superfund debts that require DOJ approval should be sent to a single point of contact (POC) at ENRD. Regions may send their requests via e-mail, but should follow the e-mail with a hard copy of the request. The DOJ POC for terminations of collection activity is:

¹⁶ When relying on “other reasons” to justify the request for approval to terminate collection activity on a debt(s), Regions should provide DOJ with a brief, written explanation of the reason.

¹⁷ In determining whether a debt is uncollectible, Regions should assess, for example: (a) the debtor’s age and health if the debtor is an individual; (b) present and potential assets and income, including concrete prospects for future income from a known source (such as a trust or insurance); (c) the possibility of concealed or fraudulently transferred assets; and (d) for corporate debtors, the possibility of related entities liable for the debt. Information EPA should review may include: (a) credit reports; (b) Dun & Bradstreet Reports for corporations; (c) information obtained through 104(e) financial information request authority; (d) certified financial statements of debtor or other forms for individual debtors reflecting their income and assets; (e) financial statements for corporate debtors; (f) corporate records of the secretary of state; and (g) tax returns for corporate and individual debtors. Of course, some of this information may be unavailable if the debtor is deceased or defunct.

Maureen Katz, Assistant Chief
 Environmental Enforcement Section
 Environment & Natural Resources Division
 U.S. Department of Justice
 Ben Franklin Station, P.O. Box 7611
 Washington, D.C. 20044-7611
 202-514-2468 MKatz@enrd.usdoj.gov

Summary of Termination of Collection Activity (Write-off) Procedures

Write-Off Category	Amount	Process Summary
1	\$0- \$50,000*	1. Region prepares a brief cover letter requesting DOJ approval to terminate collection activity because each debt is covered by one of the allowable justifications; 2. Attaches IFMS data applicable to the debts, <i>identifying which justification supports the write-off for each debt</i> ; and 3. Sends the package to the DOJ/ENRD/EES POC.
2	Greater than \$50,000	1. Region prepares a brief letter requesting DOJ approval to terminate collection activity, explaining why a write-off of the particular debt is justified; 2. Attaches the IFMS data for the debt; and 3. Sends the package to the DOJ/ENRD/EES POC.

* Debt “bundling” is encouraged.

When the Region prepares a written request to DOJ to terminate collection activity on a debt(s), the FMO should enter the entire debt(s) as an allowance for doubtful account in IFMS and adjust the overdue status code for the receivable in IFMS accordingly. When DOJ approves a request to terminate collection activity on a debt(s), the Department will send an authorizing letter signed by the delegated DOJ authority to the ORC and FMO. The Region should keep this authorizing letter in its official case file. Upon receiving the authorizing letter from DOJ, the FMO should write off the debt against the allowance for doubtful account previously recorded and adjust the overdue status code for the receivable in IFMS. If DOJ disapproves the request to terminate collection activity, DOJ will send the ORC and FMO a letter disallowing termination. Upon receiving this letter, the FMO should adjust the allowance for doubtful account and reflect the entire debt as an open account receivable. The Region should then refer the debt to DOJ for collection pursuant to the April 2000 Process Memo.

Regions should review their outstanding accounts receivable and check the accuracy of the overdue status codes assigned to those receivables in the regular course of business, and should send requests for termination of collection activity to DOJ as they identify appropriate write-off candidates. In the alternative, Regions may wish to send DOJ a “bundle” of termination requests on a quarterly basis, which may be preferable to piecemeal submissions to DOJ.

DOJ has agreed to process termination requests within 60 days from receipt, or report on the status of the responses in the appropriate “60 day report.”¹⁸ DOJ agrees to use its best efforts to process Category 1 requests for termination earlier than 60 days from receipt.

III. Compromises of, and Terminations of Collection Activity on, Post-Settlement Debts That Do Not Require DOJ Approval

A. Compromises of, and Terminations of Collection Activity on, Debts Arising Out of Administrative Agreements or AOCs Where Total Site Costs of the United States Are \$500,000 or Less and the Settlement Was Not Issued Jointly Under EPA’s Section 122(h) Authority and the Authority of the AG

EPA may independently (i.e., without DOJ approval) compromise past cost, future response cost, and interest debts arising out of CERCLA AOCs and administrative agreements as long as total response costs incurred and to be incurred in connection with the site by the United States do not exceed \$500,000 (excluding interest), and the settlement was not issued jointly under EPA’s Section 122(h) authority and the authority of the AG. Pursuant to Delegation 14-14-D, the authority to enter into or exercise Agency concurrence in non-judicial agreements or administrative orders for the recovery of costs of response is delegated to the Regional Administrators (RAs). This is the delegation applicable to compromises and terminations of collection activity on debts for which EPA has independent authority pursuant to Section 122(h). RAs have redelegated this authority within the Region. Accordingly, Region-specific delegations must be consulted in order to determine the person within the Region to whom the authority to compromise or terminate this category of post-settlement debts has been delegated. For ease of implementation and internal consistency, Regions may wish to consider further redelegations (e.g., so that the FMO has authority to compromise or write-off debts up to \$13,000 principal).¹⁹

As stated previously, post-settlement debts should be compromised or written off only for legally and fiscally sound reasons. Regions should follow their internal procedures for determining and documenting the appropriateness of a compromise or write-off of a debt arising from an AOC or administrative agreement in this category.

¹⁸ “Decision Memorandum for an Incremental Funding of the Interagency Agreement between the Environmental Protection Agency and the Department of Justice for the Fiscal Year 2001 Budget Period (DW15937968),” B. Breen Thru S. Lowrance, April 23, 2001.

¹⁹ As noted in Section I, *supra*, CERLCA § 122(h), and *not* the FCCA, as amended, governs compromises and terminations of this category of post-settlement debts. As a result, the FCCA delegation of authority to the FMOs to compromise and terminate debts up to \$13,000 principal is *not* in effect for these debts, and would need to be effectuated by a Regional redelegation.

For compromises, Regions should:

1. Follow internal Regional procedures to determine the appropriateness of the proposed compromise (these procedures should include close coordination among the Region's ORC, Program, and Finance offices).
2. Contact the settling respondent(s) (SRs) and obtain an agreement in principle to pay the reduced amount, subject to the approval of the person within the Region to whom authority to approve the compromise has been delegated pursuant to redelegations from Delegation 14-14-D.
3. Enter the amount to be compromised as an allowance for doubtful account in IFMS.
4. Obtain the approval of the Regional official to whom authority to compromise has been delegated.
5. Send the SRs a letter seeking payment of the reduced amount within 30 days. Generally, the letter will state that the compromise offer applies only to the amount identified in the letter, that EPA reserves its rights as to all other claims, and that, if the SRs do not timely pay the reduced amount, EPA will seek to enforce the underlying agreement (i.e., we will seek the full amount). A model compromise letter will be provided to the Regions in the near future.
6. When the Region receives payment of the reduced amount from the SRs, the FMO records the payment and enters a write-off for the compromised amount (i.e., against the allowance for doubtful account) into IFMS.

For terminations of collection activity (write-offs of the entire debt), Regions should:

1. Follow internal Regional procedures to determine the appropriateness of the proposed write-off (these procedures should include close coordination among the Region's ORC, Program, and Finance offices).
2. Enter the amount to be written off as an allowance for doubtful account in IFMS.
3. Obtain the approval of the Regional official to whom authority to write-off has been delegated.
4. Close the allowance for doubtful account and write off the debt.

B. Compromises of, and Terminations of Collection Activity on, Stipulated Penalty Debts Arising out of Administrative Agreements and AOCs

EPA may independently compromise and terminate collection activity on stipulated penalty debts arising out of administrative agreements and AOCs as long as the principal amount of the debt does not exceed \$100,000, and the debt has not been sent to DOJ for collection. FCCA, 31 U.S.C. § 3702. Stipulated penalty debts exceeding \$100,000 must be sent to DOJ for approval of a compromise or termination of collection activity. EPA refers such requests to DOJ-ENRD. 31 C.F.R. §§ 902.1 and 903.1.

Because stipulated penalty debts arising out of administrative agreements and AOCs are governed by the FCCA, Regions should follow current procedures for compromising and terminating collection activity on debts governed by the FCCA. Pursuant to Delegation 1-28, the authority to compromise, suspend or end collection action on EPA claims governed by the FCCA was delegated to the General Counsel, who re delegated the authority to the EPA Claims Officer. The Claims Officer has the authority to compromise or terminate collection activity on stipulated penalty debts arising out of administrative agreements and AOCs where the debt does not exceed \$100,000. The Claims Officer has re delegated to the Director of the Financial Management Division (FMD), the authority to compromise or terminate debts which do not exceed \$20,000, exclusive of interest.²⁰ The FMD Director has in turn re delegated to the FMO in each Region the authority to compromise or terminate debts up to \$13,000 in principal.²¹

IV. 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 upon 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 about this memorandum, please contact Cate Tierney (202-564-4254) at EPA-OSRE, Vince Velez (202-564-4972) at EPA-FMD, or Kenneth Long at DOJ-ENRD (202-514-2840).

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

²⁰ “Changes to the Delegation of Authority Under the Federal Claims Collection Act,” R. Spears, [Undated].

²¹ “Changes to the Delegation of Authorities under the Federal Claims Collection Act,” S. Harper, Feb. 26, 1992.