



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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MEMORANDUM

SUBJECT: Small Cost Recovery Referrals

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TO: Regional Counsels, Regions I-X
Regional Waste Management Division Directors,
Regions I-X

Based on discussions among our staff and Regional enforcement personnel, it appears that confusion exists regarding Agency policy on referring CERCLA cost recovery cases valued at less than \$200,000. Apparently, a few of the Regions believe that Headquarters will not accept these cases because the December 5, 1984, Interim CERCLA Settlement Policy (1) places a high priority on large dollar amount cases (see the section on targets for litigation (p. 17), which discusses referring cases involving a "significant" amount of money), and (2) references the possibility that cases under \$200,000 could be handled administratively.

Although the Agency has placed a higher priority on referring cost recovery cases with expenditures in excess of \$200,000, there are situations where referring small cost recovery actions is entirely appropriate. For example, where we have initiated settlement discussions which have failed to produce a settlement because of the recalcitrance of the responsible parties, referral would generally be appropriate to demonstrate the Agency's commitment toward enforcement as a vehicle to compel private party response at CERCLA sites. In addition, where a Region has no cases for more than \$200,000, where an enforcement presence would serve a deterrent effect, where a Region's other enforcement priorities allow for the expenditure of resources to support a small cost recovery case, or where the circumstances are ripe for testing some important aspect of law, referral of such a case would be appropriate.

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As you know, the Agency is working toward providing the Regions with both the tools and the authority to settle small cost recovery cases (up to \$500,000) administratively. To ensure that such administrative resolutions are attractive options for responsible parties, however, the Agency must be prepared to take judicial action against those who do not settle on terms acceptable to the Agency. Under such circumstances, small cost recovery actions will take on an even greater importance, since it will be necessary to show the regulated community that the Agency is serious about pursuing small cost recovery cases in the judicial, as well as the administrative, forum. In furtherance of that effort, our offices and the Department of Justice are prepared to fully support small cost recovery cases referred by the Regions which further program goals and are otherwise consistent with Agency policy.

For most of you this memorandum simply confirms operating guidance which you are already following. We wanted to ensure, however, that the Settlement Policy did not create any undue reluctance on the part of the Regions to develop small cost recovery cases for referral.

cc: David T. Buente, Department of Justice