



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 3 1988

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Clarification of CERCLA Entry Policy

FROM: Kenneth W. Patterson, Director
Regional Support Division

A handwritten signature in blue ink, appearing to read "K. W. Patterson", is written over the printed name of the sender.

TO: Regional Counsels
Superfund Division Directors

This memorandum's purpose is to provide Regional Counsel with a clarification to EPA's Policy entitled "Entry and Continued Access Under CERCLA" (OSWER No. 9829.2)("Policy"). The Policy was issued on June 5, 1987 by Thomas L. Adams, Jr., Assistant Administrator of the Office of Enforcement and Compliance Monitoring. The Policy guides EPA entry and access to facilities under CERCLA 104(e)(1) for the purposes of response and civil enforcement activities under CERCLA and identifies EPA's statutory entry authorities.

The Policy focuses on the practice of first attempting to gain access consensually for CERCLA activities at a particular location. If consent is not obtained or circumstances suggest that other means of access are more appropriate, the Policy recommends that EPA obtain access by means of an administrative order or judicially, either by a warrant or court order.

The Policy also recognizes a "savings provision" in Section 104(e)(6), which preserves EPA's power to secure access in "any lawful manner," alluding to the fact that there are other lawful means of securing access recognized by federal courts but not specifically identified in the Policy.

This memorandum explicitly confirms that the Policy permits use of any lawful means of securing access under Section 104(e)(6), as recognized by federal courts. Application of legal doctrines to a particular access situation will require fact-specific analysis by counsel. Attorneys in the Offices of Regional Counsel and Headquarters, in consultation with the Department of Justice as appropriate, should be consulted to provide advice regarding possible appropriate use of other lawful means of securing access in particular situations.

If you have any questions, please contact Heather Gray of Region 3 at (215) 814-2696, or Doug Dixon and David Smith-Watts of the Regional Support Division at (202) 564-4232 and (202) 564-4083, respectively.

cc: Superfund Legal Branch Chiefs, Regions I-X
Removal Program Branch Chiefs, Regions I-X
Removal Lead Region Workgroup Members
Dana Tulis, OEM