UNITED S' ES ENVIRONMENTAL PROTECTION AC 'CY

162495

October 6, 1982

Warrant For Entry and Order Under CERCLA
Dead Creek Site, Sauget, Illinois

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Attached is a Warrant for Entry and Order under CERCLA that was obtained in the Southern District of Illinois on Monday, October 4, 1982.

It is interesting to note that this is not a search warrant, but rather an entry warrant to allow us to go on property and take a superfund response action. The action taken was the erection of a fence to secure the contaminated area to prevent public access. The action is being taken pursuant to our emergency response authorities under § 104(a) of CERCLA.

This was an ex parte proceeding, modeled upon a similar warrant obtained by Region X at American Surplus Sales Company, Tacoma, Washington, and circulated to us under the April 6, 1982 memo of T.R. Rogowski, Regional Counsel, of Region X.

Attachment

5RC:TDaggett/jc:10/5/82

SYMBOL	5RC			CONCURRENCES				
SURNAME	Daggett							
DATE								

EPA Form 1320-1 (12-70)

OFFICIAL FILE COPY

UNITED STATES DISTRICT COURT FOR THE

FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF: ALBERT P. LAUMANN PROPERTY 105 JUDITH LANE CAHOKIA, ILLINOIS DEAD CREEK SITE	))))))	CAUSE NO. 82-3236C WARRANT FOR ENTRY and ORDER PURSUANT TO SECTION 104 OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980

TO: Any officer, employee, or designated representative of the United States Environmental Protection Agency (U.S. EPA) and any U. S. Marshal. An affidavit having been made by Michael C. O'Toole, an United States Environmental Protection Agency Officer, that there has been a release of hazardous substance into the environment at Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois, (Dead Creek site) and that this release may be presenting an imminent and substantial endangerment to the public health or welfare and that U.S. EPA has determined it is necessary to secure the Dead Creek site to mitigate the public health hazard, and that Albert P. Laumann has indicated unwillingness to allow U.S. EPA access to his property at:

105 Judith Lane
Cahokia, Illinois

to secure the Dead Creek site pursuant to Section 104(a) of CERCLA, 42 USC §9604(a); and the Court having found that reasonable grounds exist for an administrative entry and for issuance of a warrant for entry and order pursuant to Section 104 of CERCLA, 42 USC §9604, and the All Writs Act, 28 U.S.C. §1651;

IT IS HEREBY ORDERED AND COMMANDED that U.S. EPA, through its duly authorized representative, the U. S. Marshal, or any other Federal officer, and any duly designated contractor acting at the direction of U.S. EPA, shall be authorized and permitted to have entry and, as necessary, to reenter the above-described premises to erect a fence and thereby prevent access to contaminated segment of Dead Creek, as authorized by Section 104 of CERCLA, 42 USC §9604.

IT IS FURTHER ORDERED that a brief inventory identifying any materials removed from the premises be furnished by EPA to representatives of Albert P. Laumann at the conclusion of said inspection.

IT IS FURTHER ORDERED that the duration of this entry authorization shall be of such reasonable length to enable EPA representatives to complete satisfactorily those actions authorized by Section 104 of CERCLA, 42 USC §9604, but in no case longer than thirty days from the date hereof.

IT IS FURTHER ORDERED that the United States Marshal is hereby authorized and directed to assist EPA in such manner as may be reasonably necessary and required to execute this warrant and all the provisions contained herein.

IT IS FURTHER ORDERED that a prompt return of this warrant and any inventory shall be made to this Court showing that the warrant has been executed and that the entry has been completed within the time specified above.

Dated this 4 day of October 1982

United States Magistrate

10/4/8

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF: ALBERT P. LAUMANN PROPERTY 105 JUDITH LANE CAHOKIA, ILLINOIS DEAD CREEK SITE	)	CAUSE NO. 82-3236C APPLICATION FOR WARRANT FOR ENTRY AND ORDER PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980

NOW COMES THE UNITED STATES, on behalf of the Administrator, United States Environmental Protection Agency (U.S. EPA), by Frederick J. Hess, United States Attorney, and Clifford J. Proud, Assistant United States Attorney, and moves this Court for a warrant and order authorizing U.S. EPA officials and their contractors, to enter upon land in Cahokia, St. Clair County, Illinois, at 105 Judith Lane (Laumann Property), as described further in the attached affidavit of Michael O'Toole, and then and there conduct activities in accordance with the National Contingency Plan, 40 C.F.R., Part 300, to respond to the release of hazardous substances that has occurred into Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois (Dead Creek Site) and the endangerment to public health and welfare that has resulted.

This application is made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly called "Superfund" or CERCLA, 40 U.S.C. 9601, et seq. The sections of CERCLA relied upon as authorizing EPA to enter and clean up the subject site, are 104(a), and 104(e). Most germane to this application is section 104(e)(1), 42 U.S.C. §9604(e)(1), which provides in material part:

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"For purposes of assisting in determining the need for response to a release under this title, or enforcing the provisions of this title (U.S. EPA) officers, employees, or representatives are authorized -

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from".

U.S. EPA has determined that there has been a release of hazardous substances into the environment at Dead Creek, adjacent to the subject site, and that an immediate response by U.S. EPA under CERCLA is necessary to mitigate the threat to the public health and welfare that has resulted. CERCLA section 104(a) provides in material part that:

> "Whenever (A) any hazardous substance is released, or there is a substantial threat of such release into the environment. . . the President (through U.S. EPA) is authorized to . . .take any other response measure consistent with the national contingency plan which the President (through U.S. EPA) deems necessary to protect the public health or welfare or the environment. . ."

The National Contingency Plan provides specific authority for the actions U.S. EPA is taking at the Dead Creek Site at 40 C.F.R. §300.65, as follows:

> If the lead Agency determines that immediate removal is appropriate, defensive actions should begin as soon as possible to prevent or mitigate danger to the public health, welfare, or the environment. Actions may include, but are not limited to:. . . (3) Installing security fencing or other measures to limit access.

Accordingly, U.S. EPA has statutory rights in this case to enter the subject site, and to take any response measure (consistent with the national contingency plan) deemed necessary to protect (a) public health, (b) public welfare, and/or (c) the environment.

Although U.S. EPA was, and is, entitled to a warrantless entry upon the subject sites under Section 104(e) of CERCLA U.S. EPA sought the consent of the affected property owners in order to assure peaceful acquiescence to U.S. EPA actions. The details of U.S. EPA's efforts to obtain access by consent are set out in the affidavit of Mr. O'Toole, that is attached to this application. Of the twelve property owners contacted, all consented to U.S. EPA access to build the fence except Mr. Laumann. While U.S. EPA has no intention of waiving its right to warrantless access to this property under Section 104 of CERCLA, it is seeking a warrant here as a further assurance that there will be peaceful acquiesence by the property owner, Mr. Laumann, to U.S. EPA's actions in fulfilling its responsibilities under CERCLA and the national contingency plan.

Although its precise ruling is inapposite here, the Supreme Court decision in Marshall v. Barlow's, Incorporated, 436 U.S. 307 (1978), provides authority for this Court to issue a warrant where a statute (such as CERCLA §104(e)(1)) confers a right of entry. Further authority for the Court is to issue the requested warrant and order is provided by the All Writs Act, 28 U.S.C. §1651.

The supporting affidavit demonstrates that (1) U.S. EPA has determined that a hazardous substance has been released into the environment at the Dead Creek Site, (2) the release is causing an imminent threat to the public health and welfare of the local citizens, (3) immediate action to secure the Dead Creek Site from public access is necessary to mitigate the threat to public health, (4) installation of a fence accross a portion of the Laumann Property is necessary in order to secure the Dead Creek site, and (5) Mr. Laumann has

refused to voluntarily allow the U.S. EPA the access to the Laumann Property that is necessary for the U.S. EPA to secure the Dead Creek Site.

Respectfully submitted,

UNITED STATES OF AMERICA

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United States Attorney

For /s/ Robert Simpkins
Clifford J. Proud
Assistant United States Attorney

OF COUNSEL:

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