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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 5 1987

9829.2

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Entry and Continued Access Under CERCLA

FROM: Thomas L. Adams, Jr.
Assistant Administrator

TO: Regional Administrators I-X
Regional Counsels I-X

I. INTRODUCTION

This memorandum sets forth EPA's policy on entry and continued access to facilities by EPA officers, employees, and representatives for the purposes of response and civil enforcement activities under CERCLA. 1/ In short, the policy recommends that EPA should, in the first instance, seek to obtain access through consent. Entry on consent is preferable across the full range of onsite activities. If consent is denied, EPA should use judicial process or an administrative order to gain access. The appropriate type of judicial process varies depending on the nature of the onsite activity. When entry is needed for short-term and non-intrusive activities, an ex parte, judicial warrant should be sought. In situations involving long-term or intrusive access, EPA should generally file suit to obtain a court order.

The memorandum's first section addresses the recently amended access provision in CERCLA. The memorandum then sets forth EPA policy on obtaining entry and the procedures which should be used to implement this policy, including separate discussions on consent, warrants, court orders, and administrative orders.

Received
JAN 28 2000
Enforcement & Compliance Docket
& Information Center

1/ This policy does not address information requests under Section 104(e)(2).

II. STATUTORY AUTHORITY

EPA needs access to private property to conduct investigations, studies, and cleanups. The Superfund Amendments and Reauthorization Act of 1986 (SARA) explicitly grants EPA 2/ the authority to enter property for each of these purposes. Section 104(e)(1) provides that entry is permitted for "determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title."

SARA also establishes a standard for when access may be sought and defines what property may be entered. EPA may exercise its entry authority "if there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant." § 104(e)(1). SARA, however, does not require that there be a release or threatened release on the property to be entered. 3/ Places and properties subject to entry under Section 104(e) include any place any hazardous substance may be or has been generated, stored, treated, disposed of, or transported from; any place a hazardous substance has or may have been released; any place which is or may be threatened by the release of a hazardous substance; or any place where entry is needed to determine the need for response or the appropriate response, or to effectuate a response action under CERCLA. § 104(e)(3). EPA is also authorized to enter any place or property adjacent to the places and properties described in the previous sentence. § 104(e)(1).

EPA is granted explicit power to enforce its entry authority in Section 104(e)(5). Under that provision EPA may either issue an administrative order directing compliance with an entry request or proceed immediately to federal district court for injunctive relief. Orders may be issued where consent to entry is denied. Prior to the effective date of the order, EPA must provide such notice and opportunity for consultation as is reasonably appropriate under the circumstances. If EPA issues an order, the order can be enforced in court. Where there is a "reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant," courts are instructed to enforce an EPA request or order unless the EPA

2/ Although CERCLA and SARA confer authority upon the President that authority has been delegated to the EPA Administrator. Exec. Order No. 12580, § 2(g) and (i), 52 Fed. Reg. 1923 (1987).

3/ The House Energy and Commerce bill at one point contained this limitation. H.R. Rep. No. 99-253 Part 1, 99th Cong,. 1st Sess., 158 (1985). This limitation, however, was dropped prior to introduction of the bill for floor debate. See H.R. 2817, 99th Cong., 1st Sess., 131 Cong. Rec. H10857 (December 4, 1985).

"demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." § 104(e)(5). The legislative history makes clear that courts should enforce an EPA demand or order for entry if EPA's finding that there is a reasonable basis to believe there may be a release or threat of release is not arbitrary and capricious. 132 Cong. Rec. S14929 (October 3, 1986) (Statement of Sen. Thurmond); 132 Cong. Rec. H9582 (October 8, 1986) (Statement of Rep. Glickman). See United States v. Standard Equipment, Inc., No. C83-252M (W.D. Wash. November 3, 1986). In addition, a penalty not to exceed $25,000/day may be assessed by the court for failure to comply with an EPA order or the provisions of subsection (e).

Finally, Section 104(e)(6) contains a savings provision which preserves EPA's power to secure access in "any lawful manner." This broad savings provision is significant coming in the wake of the Supreme Court's holding that:

> When Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly each and every technique that may be used in the course of executing the statutory mission.
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> . . . Regulatory or enforcement authority generally carries with it all the modes of inquiry and investigation traditionally employed or useful to execute the authority granted.

Dow Chemical Co. v. United States, 90 L.Ed. 2d 226, 234 (1986). 4/ One lawful means of gaining access covered by this paragraph is use of judicially-issued warrants. See S. Rep. No. 99-11, 99th Cong. 1st Sess. 26 (1985).

In numerous instances prior to the passage of SARA, EPA obtained court rulings affirming its authority to enter property to conduct CERCLA activities. 5/ Following enactment of SARA,

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4/ See also, Mobil Oil Corp. v. EPA, 716 F.2d 1187, 1189 (7th Cir. 1983), cert. denied, 466 U.S. 980 (1984) (EPA authority to sample effluent under Section 308 of the Clean Water Act broadly construed); CEDs, Inc. v. EPA, 745 F.2d 1092 (7th Cir. 1984), cert. denied, 471 U.S. 1015 (1985).

5/ United States v. Pepper Steel and Alloy, Inc., No. 83-1717-CIV-EPS (S.D. Fla. October 10, 1986); Bunker Limited Partnership v. United States, No. 85-3133 (D. Idaho October 21, 1985); United States v. Coleman Evans Wood Preserving Co., No. 85-211-CIV-J-16 (M.D. Fla. June 10, 1985); United States v. Baird & McGuire Co. No. 83-3002-Y (D. Mass. May 2, 1985); United States v. United Nuclear Corp., 22 ERC 1791, 15 ELR 20443 (D.N.M. April 18, 1985).

several courts have ordered siteowners to permit EPA access. United States v. Long, No. C-1-87-167 (S.D. Ohio May 13, 1987); United States v. Dickerson, No. 84-76-VAL (M.D. Ga. May 4, 1987); United States v. Standard Equipment, Inc., No. C83-252M (W.D. Wash. Nov. 3, 1986). Further, the one adverse ruling on EPA's right of access has been vacated by the Supreme Court. Outboard Marine Corp. v. Thomas, 773 F.2d 883 (7th Cir. 1985), vacated, 93 L. Ed. 2d 695 (1986).

III. EPA ACCESS POLICY

EPA needs access to sites for several types of activities, including:

- preliminary site investigations;
- removal actions;
- RI/FSs; and
- remedial actions.

Within each of these categories, the scope of the work and the time needed to complete that work may vary substantially. This memorandum sets Agency policy on what means should be used to gain access over the range of these various activities.

EPA may seek access through consent, warrant, administrative order, or court order. Consent is the preferred means of gaining access for all activities because it is consistent with EPA policy of seeking voluntary cooperation from responsible parties and the public. In certain circumstances, however, the Region should consider obtaining judicial authorization or issuing an administrative order in addition to obtaining consent. For example, where uncertainty exists whether a siteowner will continue to permit access over an extended period, reliance on consent alone may result in a substantial delay if that consent is withdrawn.

When consent is denied, EPA should seek judicial authorization or should issue an administrative order. If the judicial route is chosen, EPA may seek an ex parte warrant or a court order. Warrants are traditionally granted for short-term entries. Generally, warrants should not be used when the EPA access will involve long-term occupation or highly intrusive activities. Clearly, warrants are appropriate for preliminary site investigations. On the other hand, because of the long, involved nature of remedial actions, access for such projects should be sought through a request for a court order. Neither removals nor RI/FSs, however, can be rigidly matched with a given judicial access procedure. Depending on the activities to be undertaken and the circumstances at the site, either a warrant or a court order may be appropriate.

In deciding whether to use a warrant or a court order when access is needed for a removal or to conduct a RI/FS, the following general principles should be considered. First, if the activity will take longer than 60 days a court order normally is appropriate. Second, even if the activity will take less than 60 days, when the entry involves removal of large quantities of soil or destruction of permanent fixtures, a court order may again be appropriate. Finally, warrants should not be used if EPA action will substantially interfere with the operation of onsite business activities. These issues must be resolved on a case-by-case basis.

If EPA needs to gain access for a responsible party who has agreed to undertake cleanup activities under an administrative order or judicial decree, EPA may, in appropriate circumstances, designate the responsible party as EPA's authorized representative solely for the purpose of access, and exercise the authorities contained in Section 104(e) on behalf of the responsible party. Such a procedure may only be used where the responsible party demonstrates to EPA's satisfaction that it has made best efforts to obtain access. A further condition on the use of this procedure is that the responsible party agree to indemnify and hold harmless EPA and the United States for all claims related to injuries and damages caused by acts or omissions of the responsible party. The responsible party should also be advised that the expenses incurred by the government in gaining access for the responsible party are response costs for which the responsible party is liable. Before designating any responsible party as an authorized representative, the Region should consult with the Office of Enforcement and Compliance Monitoring.

IV. ACCESS PROCEDURES

A. Entry on Consent

1. General Procedures

The following procedures should be observed in seeking consent:

Initial Contact. Prior to visiting a site, EPA personnel 6/ should consider contacting the siteowner to determine if consent will be forthcoming. EPA personnel should use this opportunity to explain EPA's access authority, the purpose for which entry is needed, and the activities which will be conducted.

6/ As used in this guidance, the term "EPA personnel" includes contractors acting as EPA's authorized representatives.

Arrival. EPA personnel should arrive at the site at a reasonable time of day under the circumstances. In most instances this will mean during normal working hours. When there is a demonstrable need to enter a site at other times, however, arrival need not be limited to this timeframe. Entry must be reasonable given the exigencies of the situation.

Identification. EPA personnel should show proper identification upon arrival.

Request for Entry. In asking for consent, EPA personnel should state the purpose for which entry is sought and describe the activities to be conducted. EPA personnel should also present a date-stamped written request to the owner or person-in-charge. A copy of this request should be retained by EPA. Consent to entry must be sought from the owner 7/ or the person-in-charge at that time.

If practicable under the circumstances, consent to entry should be memorialized in writing. A sample consent form is attached. Although oral consents are routinely approved by the courts, a signed consent form protects the Agency by serving as a permanent record of a transaction which may be raised as a defense or in a claim for damages many years later. If a site-owner is unwilling to sign a consent form but nonetheless orally agrees to allow access, EPA should document this oral consent by a follow-up letter confirming the consent.

Since EPA contractors often are involved in gaining access in the first instance, the Regions should ensure that their contractors are acquainted with these procedures.

2. Denial of Entry

If consent is denied, EPA personnel or contractors, before leaving, should attempt to determine the grounds for the denial. EPA personnel, however, should not threaten the siteowner with penalties or other monetary liability or make any other remarks which could be construed as threatening. EPA personnel may explain EPA's statutory access authority, the grounds upon which this authority may be exercised, and that the authority may be enforced in court.

7/ If EPA's planned site activities will not have a physical effect on the property, EPA generally need not seek consent from the owner of leased property where the lessee is in possession. The proper person in those circumstances is the lessee. But where EPA entry will have a substantial physical effect on the property, both the lessee and the property-owner should be contacted since in this instance interests of both will be involved.

3. Conditions Upon Entry

Persons on whose property EPA wishes to enter often attempt to place conditions upon entry. EPA personnel should not agree to conditions which restrict or impede the manner or extent of an inspection or response action, impose indemnity or compensatory obligations on EPA, or operate as a release of liability. The imposition of conditions of this nature on entry should be treated as denial of consent and a warrant or order should be obtained. See U.S. EPA, General Counsel Opinions, "Visitors' Release and Hold Harmless Agreements as a Condition to Entry of EPA Employees on Industrial Facilities," Gen'l and Admin. at 125 (11/8/72). If persons are concerned about confidentiality, they should be made aware that business secrets are protected by the statute and Agency regulations. 42 U.S.C. § 9604(e); 40 C.F.R. § 2.203(b). EPA personnel should enter into no further agreements regarding confidentiality.

B. Warrants

1. General Procedures

To secure a warrant, the following procedures should be observed:

Contact Regional Counsel. EPA personnel should discuss with Regional Counsel the facts regarding the denial of consent or other factors justifying a warrant and the circumstances which give rise to the need for entry.

Contact Department of Justice. If after consultation with Regional Counsel a decision is made to seek a warrant, the Regional Counsel must contact directly the Environmental Enforcement Section in the Land and Natural Resources Division at the Department of Justice. 8/ The person to call at the Department is the Assistant Chief in the Environmental Enforcement Section assigned to the Region. The Assistant Chief will then arrange, in a timely manner, for the matter to be handled by either an Environmental Enforcement Section attorney or a U.S. Attorney. The Region must send to the Environmental Enforcement Section, by Magnafax or other

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8/ This procedure is necessary to comply with internal Department of Justice delegations of authority. Referral to a local U.S. Attorney's office is not sufficient for CERCLA warrants. The Environmental Enforcement Section of the Department of Justice must approve all warrant applications. (See Memorandum from David T. Buente, Jr. to All Environmental Enforcement Attorneys, "Procedures for Authorizing Applications for Civil Search Warrants Under CERCLA" (4/3/87) attached).

expedited means, a draft warrant application and a short memorandum concisely stating why the warrant is needed.

Prepare Warrant Application. The warrant application must contain the following:

1) a statement of EPA's authority to inspect; (see § II, supra)

2) a clear identification of the name and location of the site and, if known, the name(s) of the owner and operator of the site;

3) a statement explaining the grounds for a finding of a reasonable basis for entry (i.e., a reasonable basis to believe that there may be a release or threatened release of a hazardous substance or pollutant or contaminant) and the purpose for entry (i.e., determining the need for response, or choosing or taking any response action, or otherwise enforcing CERCLA);

4) affidavits supporting the asserted reasonable basis for entry and describing any attempts to gain access on consent, if applicable; and

5) a specific description of the extent, nature, and timing of the inspection;

Following preparation of the warrant application, the Justice Department attorney will file the application with the local U.S. Magistrate.

EPA may ask the Justice Department attorney to seek the assistance of the United States Marshals Service in executing the warrant where EPA perceives a danger to the personnel executing the warrant or where there is the possibility that evidence will be destroyed.

2. Reasonable Basis for Entry

A warrant for access on a civil matter may be obtained upon a showing of a reasonable basis for entry. This reasonable basis may be established either by presenting specific evidence relating to the facility to be entered or by demonstrating that the entry is part of a neutral administrative inspection plan.

A specific evidence standard is incorporated in SARA as a condition on EPA's exercise of its access authority: EPA must have "a reasonable basis to believe there may be a release or

threat of a release of a hazardous substance or pollutant or contaminant." § 104(e)(1). SARA's express specific evidence standard is consistent with how courts have formulated the specific evidence test in the absence of statutory guidance. E.g., West Point-Pepperell, Inc. v. Donovan, 689 F. 2d 950, 958 (11th Cir. 1982) (there must be a "showing of specific evidence sufficient to support a reasonable suspicion of a violation").

In drafting a warrant application, conclusory allegations regarding the specific evidence standard under subsection 104(e) will not suffice. Courts generally have refused to approve warrants where the application contains mere boilerplate assertions of statutory violations. Warrant applications have been granted, on the other hand, where the application contained detailed attestations by government officials or third-party complaints which have some indicia of reliability. Ideally, EPA warrant applications should contain an affidavit of a person who has personally observed conditions which indicate that there may be a release or threat of a release of a hazardous substance. If they are available, sampling results, although not required, should also be attached. Warrant applications based on citizen, employee, or competitor complaints should include details that establish the complainant's credibility. 9/

C. Court Orders

The provisions in CERCLA authorizing EPA access may be enforced by court order. To obtain a court order for entry, the Region should follow the normal referral process. If only access is required, the referral package can obviously be much abbreviated. If timing is critical, EPA HQ will move expeditiously and will refer the case orally if necessary. The Regions, however, should attempt to anticipate the sites at which access may prove problematic and should allow sufficient lead time for the referral process and the operation of the courts. The Regions should also not enter lengthy negotiations with landowners over access. EPA and DOJ are prepared to litigate aggressively to establish EPA's right of access.

9/ If information gathered in a civil investigation suggests that a criminal violation may have occurred, EPA personnel should consult the guidance on parallel proceedings. (Memorandum from Courtney Price to Assistant Administrators et al., "Policy and Procedures on Parallel Proceedings at the Environmental Protection Agency" (1/23/84)). Use of CERCLA's information-gathering authority in criminal investigations is addressed in separate guidance. (Memorandum from Courtney M. Price to Assistant Administrators et al., "The Use of Administrative Discovery Devices in the Development of Cases Assigned to the Office of Criminal Investigations" (2/16/84)).

Prior to seeking a court order, EPA should request access, generally in writing, and assemble the record related to access. The showing necessary to obtain a court order is the same as for obtaining a warrant: EPA must show a reasonable basis to believe that there may be a release or a threat of a release of a hazardous substance or pollutant or contaminant. An EPA finding on whether there is reason to believe a release has occurred or is about to occur must be reviewed on the arbitrary and capricious standard. § 104(e)(5) (B)(i). If the matter is not already in court, EPA must file a complaint seeking injunctive and declaratory relief. Simultaneous to filing the complaint, EPA may, if necessary, file a motion, supported by affidavits documenting the release or threatened release, requesting an immediate order in aid of access. If the matter is already in litigation, EPA may proceed by motion to seek an order granting access. 10/

In a memorandum supporting EPA's request for relief it should be made clear that by invoking judicial process, EPA is not inviting judicial review of its decision to undertake response action or of any administrative determinations with regard to the response action. Section 113(h) of SARA bars judicial review of removal or remedial action except in five enumerated circumstances. A judicial action to compel access is not one of the exceptions. Statements on the floor of the House and the Senate confirm that EPA enforcement of its access authority does not provide an opportunity for judicial review of response decisions. Senator Thurmond, chairman of the Judiciary Committee, remarked that when EPA requests a court to compel access "there is no jurisdiction at that time to review any response action . . .

10/ Parenthetically, it should be noted that the broad equitable power granted to courts in Section 106 can also be relied on to obtain a court order. An additional source of authority for courts in this regard is the All Writs Act, 28 U.S.C. § 1651. The Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions . . . ." 28 U.S.C. § 1651. This authority "extends under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing are in a position to frustrate the implementation of a court order . . . ." United States v. New York Telephone Co., 434 U.S. 159, 174 (1977). Thus, the All Writs Act may prove useful as a means of compelling persons not a party to a consent decree to cooperate with EPA and other settling parties in execution of the decree. The use of the All Writs Act, however, may be limited in light of the Supreme Court's interpretation of the Act in Pennsylvania Bureau of Correction v. United States Marshal Service, 88 L. Ed. 2d 189 (1985).

[T]he court may only review whether the Agency's conclusion that there is a release or threatened release of hazardous substances is arbitrary or capricious." 132 Cong. Rec. S14929 (October 3, 1986) (Statement of Sen. Thurmond); 132 Cong. Rec. 119582 (October 8, 1986) (Statement of Rep. Glickman); see United States v. Standard Equipment, Inc., No. C83-252M (W.D. Wash. Nov. 3, 1986).

D. Administrative Orders

If a siteowner denies an EPA request for access, EPA may issue an adminstrative order directing compliance with the request. § 104(e)(5)(A). Each administrative order must include a finding by the Regional Administrator that there exists a reasonable belief that there may be a release or threat of release of a hazardous substance and a description of the purpose for the entry and of the activities to be conducted and their probable duration. The order should indicate the nature of the prior request for access. Further, the order should advise the respondent that the administrative record upon which the order was issued is available for review and that an EPA officer or employee will be available to confer with respondent prior to the effective date of the order. The length of the time period during which such a conferences may be requested should be reasonable under the circumstances. In deciding what is a reasonable time period, consideration should be given to the interference access will cause with onsite operations, the threat to human health and the environment posed by the site, and the extent of prior contacts with the respondent. The order should advise the respondent that penalties of up to $25,000 per day may be assessed by a court against any party who unreasonably fails to comply with an order. § 104(e)(5). Following the time period for the conference and any conference, the issuing official should send a document to the respondent summarizing any conference, EPA's resolution of any objections, and stating the effective date of the order.

If, following issuance of an administrative order, the siteowner continues to refuse access to EPA, the order may be enforced in federal court. EPA should not use self-help to execute orders. Courts are required to enforce administrative orders where there is a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance. EPA's determination in this regard must be upheld unless it is arbitrary and capricious. § 104(e)(5)(B)(i). EPA will seek penalties from those parties who unreasonably fail to comply with orders.

All administrative orders for access must be concurred on by the Office of Enforcement and Compliance Monitoring prior to issuance.

DISCLAIMER

The policies and procedures established in this document are intended solely for the guidance of government personnel. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

Attachments

Memorandum

9829.2

Subject	Date
Procedures for Authorizing Application for Civil Search Warrants Under CERCLA	April 3, 1987

To: All EES Attorneys

From: David T. Buente, Jr.
Chief, Environmental Enforcement Section

Under § 104(e) of CERCLA, as amended by SARA, the United States may seek access by warrant, administrative order, or court order. If access is obtained by administrative order, the appropriate documents are issued by relevant client agencies. If access is to be obtained by court order, then the Assistant Attorney General of the Land and Natural Resources Division must approve the complaint, upon referral from the relevant client agency according to ordinary procedures. For access to be sought through application on a civil CERCLA warrant,[1] the instant memorandum will confirm the procedures to be used by the Department of Justice.

Under ¶5.320-A-2 of the U.S. Attorney's Manual, application for warrant under CERCLA may not be handled unilaterally by the U.S. Attorneys. Applications for such warrants must be coordinated through the Environmental Enforcement Section.

Clearance through the Environmental Enforcement Section is important for a variety of reasons. First, the nature of the governmental activities involved under CERCLA civil warrants may be much broader and last considerably longer than an inspection under the other federal environmental regulatory statutes. Typically the latter require only a few days or weeks to conduct routine environmental sampling. Under CERCLA, access may be sought under a warrant for not only sampling, but even simple

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[1] The memorandum does not cover procedures for seeking a criminal search warrant where a CERCLA violation may be involved. All such matters are to be referred to the Director, Environmental Crimes Unit, EES.

removal-type activity, e.g., security/fencing, limited drum removal. The greater relative complexity of the governmental activity involved can be expected to provoke more challenges to CERCLA civil warrants than those under other statutes and the issues raised by CERCLA warrants may be much more complex. Second, this is a relatively new and vital area of the law. We must ensure that maximum efforts are made to develop this critical area of the law in an excellent manner. EES lawyers must make all reasonable efforts to ensure that exercises of the civil warrant authority under CERCLA will be vindicated by the federal courts, through proper presentation of facts and legal arguments by Departmental attorneys with experience in this area. Finally, since our experience has shown that judicial challenges to civil CERCLA warrants tend to move very rapidly, sometimes on an emergency motion basis, EES needs to work closely with client agencies on these matters so that the Division's Appellate Section is advised and prepared with sufficient lead time to expeditiously address appellate proceedings.

Coordinating these warrant applications through EES must be done on an expedited basis so that client agencies' program objectives are achieved. Moreover, our resources must not be consumed by duplicative work. Balancing the needs for careful warrant application preparations with that for expeditious handling of these matters, we will use the following procedures:

1. The client agency will telephonically notify the relevant EES Assistant Chief or Senior Lawyer when the Agency plans to seek a civil warrant.

2. The client agency will follow-up the request by expeditiously transmitting a short memorandum concisely explaining why the warrant is needed with a draft copy of the warrant application and supporting affidavits.

3. Upon receipt of the telephonic notification or written request, whichever first occurs, the EES Assistant Chief or Sr. Lawyer will arrange for either an EES staff attorney or an AUSA to handle the review and prosecution of the application. Unless a dispute develops between EES/AUSA personnel and the client agency, the EES Assistant Chief or Sr. Lawyer may approve the application. If such a dispute develops, it must be brought to the attention of the Chief or Deputy Chief, EES for resolution.

4. Handling of these matters is to be afforded priority on our docket. Moreover, the Chief or Assistant Chief of the Appellate Section shall be advised of each application request by the EES Assistant Chief or Sr. Lawyer as soon as possible after notification by the client agency, so that Appellate can be prepared to handle expeditiously appeal matters.

5. All civil actions to enforce civil CERCLA warrants, by way of application for civil contempt or other judicial orders, shall be authorized in writing by the Assistant Attorney General. Such actions shall be afforded highest priority on the docket.

For general advice/guidance on handling CERCLA civil warrant matters, contact John Fleuchaus, ORCM-Waste, 382-3109.

Attachment

9829,2

CONSENT FOR ACCESS TO PROPERTY

Name: _____

Address of Property: _____

_____

I consent to officers, employees, and authorized representatives of the United States Environmental Protection Agency (EPA) entering and having continued access to my property for the following purposes:

[the taking of such soil, water, and air samples as may be determined to be necessary;]

[the sampling of any solids or liquids stored or disposed of on site;]

[the drilling of holes and installation of monitoring wells for subsurface investigation;]

[other actions related to the investigation of surface or subsurface contamination;]

[the taking of a response action including . . . .]

I realize that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. § 9601 et seq.

This written permission is given by me voluntarily with knowlege of my right to refuse and without threats or promises of any kind.

_____ Date

_____ Signature