



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

APR 11 1994

OFFICE OF  
ADMINISTRATION  
AND RESOURCES  
MANAGEMENT

**MEMORANDUM**

**SUBJECT:** Revisions to Superfund Delegations of Authority,  
14-1-A, 14-2-A, 14-2-B, 14-5, 14-9, 14-14-A, 14-14-C,  
14-21-A--DECISION MEMORANDUM

**FROM:** Jonathan Z. Cannon *Jonathan Z. Cannon*  
Assistant Administrator

**TO:** The Administrator

**THRU:** AX

**PROPOSAL**

The Office of Solid Waste and Emergency Response (OSWER) proposes revisions to eight delegations of authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) which would increase the efficiency of the delegations by, in some cases, delegating to Regions, lowering redelegation floors, and removing limitations. Delegation 14-9 is split into three separate parts to clarify and make it more manageable as well as to implement the newly promulgated rule, 40 CFR Part 305, concerning Review Officer functions.

A summary of the proposed revisions (Tab A), the Green Border Clearance Record (Tab B), and a complete version of the proposed delegations are attached (Tab C).

**BACKGROUND**

The proposed revised delegations are the result of the Superfund Delegations Work Group (Work Group), which was established on August 10, 1993 by Deputy Administrator Sussman as part of the Superfund Administrative Improvements Task Force. The Work Group examined current Superfund delegations of authority to determine if decisions were being made at the most appropriate level, and to recommend changes that would improve Superfund implementation.



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## SUMMARY OF PROPOSED REVISIONS

### **14-1-A Selection and Performance of Removal Actions Costing Up to \$2,000,000**

The revision increases the monetary ceiling from \$50,000 to \$200,000 for On-Scene Coordinators initiating removal actions in emergency situations. This authority may be redelegated to On-Scene Coordinators.

### **14-2-A Removal Actions Initially Expected to Cost Over \$2,000,000 and Continued Removal Actions After Obligations of \$2,000,000 (Pursuant to the Emergency Waiver)**

This revision delegates authority to the Regional Administrators (RAs) in addition to the Assistant Administrator for OSWER (AA/OSWER). Regional Administrators, however, are limited in that they may only exercise this authority within their Region for removal costs up to \$6,000,000. This authority may be redelegated to the Division Director level in the Regions.

### **14-2-B Removal Actions Initially Expected to Cost Over \$2,000,000 and Continued Removal Actions After Obligations of \$2,000,000 (Pursuant to the Consistency Waiver)**

This revision gives the RAs authority under this delegation at proposed and final National Priorities List sites, instead of only at those specified by OSWER. The authority may be redelegated to the Division Director level in the Regions.

### **14-5 Selection of Remedial Actions**

The revision allows RAs to act on any-site or operable unit located within their Region, instead of only those listed in the Remedy Delegation Report issued by OSWER. The authority may be redelegated to the Division Director level in the Regions.

Under this proposal, 14-9 is split into three delegations to clarify the lines of authority:

### **14-9-A Preauthorization of Response Actions**

Prior approval and preauthorization authorities are given to the AA/OSWER and the RAs, with a provision to ensure that Headquarters and the Regions consult with each other before exercising this authority. It may be redelegated to the Division Director level.

### **14-9-B Response Claims Asserted Against the Fund**

This revision gives the RAs the authority to receive, evaluate, and make determinations on claims against the Fund, adds language specifying that OSWER has the authority to issue the Claims Delegation Report, and ensures that Headquarters and the Regions will communicate with each other prior to exercising this authority. Authority delegated to the AA/OSWER and the RA may be redelegated to Division Director level.

## REVIEW AND ANALYSIS

The proposed revised delegations are the outcome of an extensive review and collaborative process that included Work Group representatives from all affected parts of the Agency and the Department of Justice (DOJ). The review sought to improve the efficiency of Superfund processes by empowering Regional offices while ensuring continued dialogue between Headquarters and the Regions, and by delegating authorities to the levels where technical and program decision-making is most effective. The resulting revisions balance the need for national consistency and accountability in the implementation of the Superfund program with the need to increase program efficiency and response.

A Green Border package was circulated to 21 offices. Eleven offices concurred without comment, and seven offices concurred with comment (Tab B). Region 4 non-concurred on delegation 14-1-A. The Office of Acquisition Management (OAM), and the Office of Research and Development (ORD) non-concurred on delegation 14-18-B. A summary of the concerns and resolutions follows:

### 14-1-A

Region 4 originally non-concurred on 14-1-A, based on a misunderstanding of the monetary limitations on emergency procurement authority and emergency response cleanup services contract authority. After discussions with OSWER, Region 4 withdrew its non-concurrence.

### 14-2-A

Region 3 suggested a limitation be added to 14-2-A requiring the Regions to submit copies of decision documents and other relevant material to Headquarters to track Regional removal expenditures. OSWER agreed to address the requirement in guidance directives rather than a limitation. Region 3 agreed and withdrew their comment.

### 14-9-A, -B, and -C

The Office of Enforcement (OE) commented on 14-9-A, which gives authority to the Assistant Administrator for Office of Solid Waste and Emergency Response (AA/OSWER) and the Regional Administrators (RAs), and requires that the RAs exercise their authority in accordance with delegations 14-13-B and 14-14-C (Tab D). OE recommended that the AA/OSWER also be subject to delegation 14-13-B and 14-14-C when exercising the authority 14-9-A. Both 14-13-B and 14-14-C delegate certain settlement authorities to the Regional Administrators. Importantly, the AA/OSWER is not delegated the settlement authorities in 14-13-B and 14-14-C. Consequently, a limitation in delegation 14-9-A concerning authorities which are not delegated to the AA/OSWER is inappropriate. The proposed delegation, 14-9-A, was not revised.

**14-9-C The Review Officer - 40 CFR Part 305**  
This gives the AA/OSWER the authority to deal with hearings at sites where a person other than the AA/OSWER is the Decision Official pursuant to Delegation 14-9-B. Redlegation to the Division Director level is allowed.

**14-14-A Determinations of Imminent and Substantial Endangerment**  
This revision would remove the requirement for RAs to consult with the AA/OSWER, and allows redelegation to the Branch Chief level.

**14-14-C Administrative Actions Through Consent Orders**  
This revision would remove the limitation that the RAs must obtain concurrence from the AA/OSWER before exercising this authority, and allows redelegation to the Branch Chief level.

**14-18-B Hazardous Substance Research**  
This gives the AA/OSWER the authority to carry out the hazardous substance research program of CERCLA Section 311(c) in addition to the Assistant Administrator for the Office of Research and Development (ORD). Authority to administer programs under Section 311(c) may be redelegated to the Division Director level. Authority to administer programs under Section 311(d) may be redelegated to the Office Director level.

**14-21-A Consultations, Reviews, and Selection of Remedial Actions**  
This revision clarifies the authority to select remedial actions in the original delegation, which delegated authority for consultations and reviews. It also removes the limitation requiring the RAs to consult with the AA/OSWER. The selection authority may be redelegated to the Division Director level and the other authorities may be redelegated to the Branch Chief level.

Region 2 recommended that the "Regional Guidance Manual for the Response Claims Process" referenced in 14-9-A and -B include specific administrative process provisions. OSWER agreed to address them in the Regional Guidance Manual.

Region 4 recommended delegation 14-9-B be withdrawn because only a limited number of 106(b) petitions are submitted and should be handled by Headquarters. OSWER believes that generally this authority should be exercised by the Regions, since they are closer to the cases and can provide expeditious processing. Moreover, OSWER believes that withdrawal of the delegation is unnecessary, since the authority is delegated to the AA/OSWER and the RAs. Thus, Regions may negotiate with Headquarters to take the lead on petitions where appropriate. Region 4 was satisfied and withdrew its comment.

The Office of General Counsel recommended that delegation 14-9-C provide Review Official authority at sites where "a person other than the Assistant Administrator for OSWER" is the Decision Official. OSWER agreed and modified the delegation accordingly.

14-18-B

Two non-concurrences by OAM and ORD, and a comment from Grants Administration Division (GAD) on 14-18-B, requested the authority to enter into agreements be redelegated to Award Officials. OAM's, GAD's and ORD's concerns on this issue were resolved and OAM withdrew its non-concurrence. ORD also non-concurred on the basis that the responsibility to carry out a program of research is the function of ORD, not OSWER. OSWER disagrees that all research should be a function of ORD based on specific program expertise residing in OSWER, time sensitive Superfund research needs, and the direct use of research-generated information in Superfund implementation. ORD and OSWER established a Memorandum of Understanding which addresses OSWER's immediate need to fund two research projects affected by delegation 14-18-B. Delegation 14-18-B was withdrawn from this package and negotiations are continuing between the two offices.

14-21-A

The Office of the Inspector General and Region 9 both requested that delegation 14-21-A provide for redelegation to the "Director of the Federal Facilities Cleanup Office in Region 9." OSWER revised the delegation accordingly.

The decisions and processes proposed are consistent with the Superfund Delegations Work Group's criteria for improvements in the administration of the Superfund program. All outcomes were thoroughly vetted by the Work Group and in meetings with OSWER senior managers. The Work Group and OSWER believe that the proposed revisions will achieve efficiencies in Superfund actions.

**RECOMMENDATION**

I believe the results of this comprehensive review are commensurate with the effort to streamline government and empower decision-making at appropriate levels. I recommend that you approve these revised delegations.

Approved:   
Carol M. Browner

Date: April 15, 1994

**Attachments**

Tab A: Summary of Proposed Revisions

Tab B: Green Border Clearance Record

Tab C: Proposed Delegations: 14-1-A, 14-2-A, 14-2-B, 14-5, 14-9-A, 14-9-B, 14-9-C, 14-14-A, 14-14-C, 14-21-A.

Tab D: Delegations 14-13-B, and 14-14-C.