



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



January 5, 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Superfund Alternative Sites: Sample General Notice Letter

FROM: Susan E. Bromm, Director /s/
Office of Site Remediation Enforcement (OSRE)

TO: Superfund National Policy Managers, Regions I - X
Regional Counsel, Regions I - X

As part of the ongoing implementation efforts for the Superfund Alternative Sites (SAS) approach, OSRE drafted and took comment on the attached sample General Notice Letter (GNL) for potential SA sites. This SAS GNL is written to notify the recipient: (1) of their status as a PRP, and (2) that the Region believes the site is a candidate for the SA approach. This sample letter is a companion to the "Revised Response Selection and Settlement Approach for Superfund Alternative Sites Guidance" (Revised SAS Guidance).

The SAS GNL should help provide more transparency to the SA approach by notifying the PRP of the Region's assessment that the site meets the criteria for the SA approach. The Revised SAS Guidance encourages Regions to discuss SA site designations with PRPs prior to the start of negotiations; this sample SAS GNL can serve as the starting point for such discussions.

If you have questions about the sample SAS GNL, please contact Nancy Browne (202-564-4219) or Anne Berube (202-564-6065) of OSRE.

The sample SAS GNL letter can be found on EPA's internet site at:
<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/sas-smpl-gnltr.pdf>
The Revised SAS Guidance can be found on EPA's internet site at:
<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-sas-04.pdf>

cc: Federal Facilities Enforcement Office
Office of Emergency Management, Preparedness and Response
Department of Justice
Office of Superfund Remediation and Technology Innovation

Attachment



12/2004

SAMPLE Potential SA Site General Notice Letter

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

[Date]

[PRP Name]

[Address]

[City, State, Zip Code]

RE: General Notice Letter for the [Site Name] in [Site Location] and Potential for Superfund Alternative Site Approach

Dear [PRP Name] :

[If EPA issued a Section 104(e) letter, insert the following paragraph:]

The U.S. Environmental Protection Agency (“EPA”) received and reviewed your [insert date] response to its [insert date] Information Request, addressed to [you or company name] in connection with the [site name] Site (“the Site”) located in [city, state]. Based on your response and other available information, EPA has determined that you may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), commonly known as the federal “Superfund” law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

[If EPA did not issue a Section 104(e) letter, insert the following paragraph:]

Under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), commonly known as the federal “Superfund” law, the U.S. Environmental Protection Agency (“EPA”) responds to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, to stop additional contamination and to clean-up or otherwise address any prior contamination. EPA documented that such a release occurred at the [site name] Site (“the Site”) located in [city, state]. EPA spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that [you or company name] may be responsible under CERCLA for cleanup of the Site or costs incurred by EPA in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, EPA may require potentially responsible parties (“PRPs”) to:

- (1) perform cleanup actions to protect the public health, welfare, or the environment, and
- (2) pay costs incurred by EPA in cleaning up the Site, unless the PRP successfully demonstrates any of the applicable statutory defenses.

PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that [you or company name] may be liable under Section 107(a) of CERCLA with respect to the [insert site name] Site, as [a/an] [select from the following]: (1) arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site; (2) current or previous owner and/or operator of the Site; (3) transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected the Site. [Additional information as to the nature of the PRP's liability should be added. For example, if TCE is the contaminant of concern at a Site: "Specifically, EPA has reason to believe that [you or your company] [contributed TCE to the Site as an [owner/operator, transporter]] OR [arranged for the disposal, treatment, or transportation of TCE to the Site]."]

Actions Taken at the Site

To date, EPA [and the State/Commonwealth of _____] [has/have] taken [several] response action[s] at the Site under the authority of Superfund. Below is a brief description of the actions taken at the Site. [Insert brief description, including dates of Site activities such as:]

- A Preliminary Assessment ("PA") and Site Investigation ("SI") in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site. [Started/Completed [mm/yy].]
- A Removal Action, conducted to reduce any immediate threat to the environment or human health posed by the Site. [Started/Completed [mm/yy].]
- A Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site. [Started/Completed [mm/yy].]
- A Feasibility Study ("FS") to evaluate different cleanup options for the Site. [Started/Completed [mm/yy].]

Potential for a Superfund Alternative Site Approach

EPA has two main paths to achieve cleanup at Superfund sites that require long-term remediation. The traditional path involves EPA listing the site on the National Priorities List ("NPL"), identifying the PRPs, and working with them to secure the cleanup or payment for

SAMPLE Potential SA Site General Notice Letter

cleanup. The alternative is known as the Superfund Alternative sites (“SA” or “SAS”) path, which is designed to parallel the NPL path with the exception of listing the site on the NPL. An SA site should:

- be eligible for inclusion on the NPL (*i.e.*, currently proposed to the NPL, or would score above 28.5);
- require long-term response action; and
- have financially viable and capable PRPs that the Region believes are willing to perform the cleanup work under an appropriate settlement agreement.

The EPA guidance on the SA approach, *Revised Response Selection and Settlement Approach for Superfund Alternative Sites* (6/17/04), discusses the SA approach generally. The Revised SAS Guidance is available at

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-sas-04.pdf>.

SA sites should satisfy the same cleanup standards as NPL sites, and the agreements negotiated at SA sites are very similar to agreements negotiated at NPL sites. SA agreements are eligible for the same settlement incentives as those available at NPL sites (*e.g.*, orphan share compensation, special account funds).

EPA Region ___ believes that the [Site name] qualifies for the SA approach. Accordingly, EPA is interested in discussing your willingness to perform a [*insert* “remedial investigation and feasibility study (“RI/FS”)” or “remedial design and remedial action (“RD/RA”)”] under an SA approach. If you are not interested in this approach, EPA will pursue the traditional NPL path. If negotiations for an SA agreement proceed and subsequently reach an impasse, EPA will consider how to proceed based on site-specific circumstances.

[If the Region has sufficient information to conclude that the PRP may be eligible for a de minimis settlement, use the “Model Notice of Eligibility to Receive a De Minimis Party Settlement” letter, issued as Appendix A to the “Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act,” instead of this letter. If the Region has insufficient information on which to reach this conclusion, but believes it is appropriate to notify the PRP of the existence of de minimis settlements, include the following section.]

De Minimis Settlements

Under CERCLA § 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements [*for a waste contributor PRP, insert, “to parties whose waste contribution to a site is minimal in volume and toxicity, that is, de minimis parties.”*] [*for a landowner, insert “to owners of real property if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the*

Superfund facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.”]

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) contribution protection, which provides a settling party with protection from being sued by other responsible parties for the specific matters addressed in the settlement. Participation in a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible to do so.

If [you or company name] believe[s] that [you/it] may be eligible for a *de minimis* settlement at this Site, please contact [name of attorney/RPM/enforcement specialist] at [address/phone number] for additional information on “*De Minimis* Settlements.” [Optional: Additional information will be sent to you, and you may be asked to respond in writing to questions about your involvement with the Site to assist EPA in making a determination as to whether you may be eligible for such a settlement.]

Financial Concerns/Ability to Pay Settlements

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact [name of attorney/RPM/enforcement specialist] at [address/phone number] for information on “Ability to Pay Settlements.” In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business [and personal] federal income tax returns. [If appropriate, insert, “If EPA concludes that [you or company name] have a legitimate inability to pay the full amount of EPA’s costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.”]

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

Information to Assist You

EPA encourages communication between you, other PRPs, and EPA concerning the Site. [Where appropriate, insert: “EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.”]

To assist you in your efforts to communicate, please find the following attached information:

- A list of names and addresses of PRPs to whom this letter is being sent.
- To the extent information is available, a list of the volume and type of substances contributed by each PRP to the Site to date. This is an initial list and subject to change based upon new information.
- A fact sheet that describes the Site.

EPA [has/will] establish[ed] an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record [is/will be] located at [address] and [is/will be] available to you and the public for inspection and comment. The Administrative Record [is also/will also be] available for inspection and comment at the Superfund Records Center, EPA Region [number and address].

Additional Information

The Superfund Small Business Liability Relief and Brownfields Revitalization Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>.

Insert if appropriate. In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>. If you believe you may qualify for the exemption, please contact [name and phone number of attorney/RPM/enforcement specialist] to request an application/information request specifically designed for service station dealers.

12/2004

SAMPLE Potential SA Site General Notice Letter

Insert if appropriate. EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, an EPA fact sheet about the Small Business Regulatory Enforcement Fairness Act is enclosed with this letter.

Please give these matters your immediate attention and consider consulting with an attorney. Please contact [name and phone number of regional contact] within 30 calendar days of the date of this letter regarding: (1) your willingness to enter into negotiations consistent with the Superfund Alternative approach, or (2) information about why you may not be a PRP (*e.g.*, you qualify for an exemption), or the size of your waste contribution to the Site, or your financial status. If you have any questions about this letter, please contact [name of regional contact.]

Thank you for your prompt attention to this matter.

Sincerely,

[Name/Title/Address of Individual Delegated
Signature Authority]

Enclosures

cc: