



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Revised EPA Model Unilateral Administrative Order Directing Compliance with Request for Access

FROM: Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

CYNTHIA MACKEY Digitally signed by CYNTHIA MACKEY
Date: 2020.09.30 15:14:55 -04'00'

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

I. Introduction

This memorandum transmits the revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Model Unilateral Administrative Order Directing Compliance With Request For Access (“Model Access UAO”), developed in collaboration with EPA Headquarters, regional office, and Department of Justice (DOJ) staff. This revised model supersedes the April 8, 2004 model and is available on the [Cleanup Enforcement Model Language and Sample Documents Database](#) in the unilateral administrative orders section.

II. Revisions to Model Access UAO

CERCLA § 104(e)(1) authorizes entry to property for the purposes of determining the need for a response, choosing or taking any response action under CERCLA, or otherwise enforcing the provisions of CERCLA. If consent for access is not granted, the EPA may issue an order under § 104(e)(5). Over the years, EPA incorporated updates to specific sections of the 2004 model access UAO and made numerous additional language changes in actual practice. Consistent with recent updates to other national models, the 2020 Model Access UAO improves clarity and simplifies language to clearly express what is intended, and update language to adhere to modern usage rules.

OSRE has updated the Model Access UAO, changing the order and format consistent with the other model UAOs. Four related sections – Order (Section V), Opportunity to Confer (Section VI), Effective Date (Section VI), and Notice of Intent to Comply (Section VIII) – are revised and moved so that they are consecutive in the UAO. In addition, the model is updated in

several of these sections to address the process for modifying the UAO based on the conference, if held, or any written comments submitted by the respondent.

The 2020 Model Access UAO contains two new sections for Definitions (Section II) and Reservation of Rights (Section X) as well as a new optional form for the respondent to sign as an indication of their intent to comply. The penalty section (Enforcement, Section IX) is also revised to reflect change made to all model UAOs regarding the potential annual changes in daily penalty amounts as dictated by the Federal Civil Penalties Inflation Adjustment Act.

The 2020 Model Access UAO provides an up-to-date national model that will assist the EPA Regions in quickly drafting nationally consistent CERCLA § 104(e) access UAOs. As with other models issued by OSRE, this model is being provided as an automated Word version to make site specific changes easier.

III. Contacts

Please direct any questions about the 2020 Model Access UAO to Pamela Daugherty (202-564-7727, daugherty.pamela@epa.gov) or Doug Dixon (202-564-4232, dixon.douglas@epa.gov) in OSRE's Regional Support Division.

IV. Disclaimer

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligation. The extent to which EPA applies them in a particular case will depend on the facts of the case.

Enclosure

cc: Lorie Schmidt, Associate General Counsel, OGC/SWERLO
Dana Stalcup, Acting Director, OSRTI
Reggie Cheatham, Director, OEM
Thomas A. Mariani, Chief, Environmental Enforcement Section, DOJ
Superfund Regional Counsel Branch Chiefs, Regions 1-10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ____

IN THE MATTER OF:

[Insert Site Name and Location]

[Names of Respondent (if many, reference attached list)],

Respondent

Proceeding under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9604(e)

U.S. EPA Region ____

CERCLA Docket No. _____

**ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS**

The above caption is in a table. To make it easier to navigate within it, turn on “gridlines” as follows: Click anywhere in the table. In the top ribbon, click the “Layout” tab. In the “layout” ribbon that appears, on the far left, click the “View Gridlines” button.

**MODEL ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR ACCESS**

September 2020

This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They DO NOT constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and Section 300.400(d)(4) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrator of EPA Region __ on January 18, 2017, by EPA Delegation No. 14-6, and further redelegated to **[insert Regional delegation information]**.

2. This Order applies to and is binding on Respondent and its successors, heirs, and assigns.

II. DEFINITIONS

3. Terms not otherwise defined in this Order have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Order, the following definitions shall apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“Day” or “day” means a calendar day. In computing any period under this Order, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“Effective Date” means the date this Order becomes effective as provided in Paragraph 18.

“EPA” means the U.S. Environmental Protection Agency.

[NOTE: If the Property itself is not contaminated, but it is adjacent to a facility that is contaminated, keep the next definition. If the Facility to which the Property is adjacent is a Superfund Site or proposed Superfund Site, use “Site” instead, and substitute “Site” for “Facility” throughout the Order.]

“Facility” means the facility **[or: “Vessel” or “Establishment”]** **[insert brief description of the adjacent facility]**.

“Paragraph” means a portion of this Order identified by an Arabic numeral or an upper- or lower-case letter.

“Property” means the property **[insert brief description of the property to which access is sought, e.g. legal description of the property including street address,**

reference to appropriate deed, citation to tax map parcel, or similar public record identifying the property, relationship, if any, to Superfund or proposed Superfund site]. “Respondent” means [insert name].

[“Site” means the _____ Superfund Site, encompassing approximately ___ acres, located at [insert address or description of location] in [insert name of City, County, State] [insert if applicable: and depicted generally on the map attached as Appendix __.]

III. FINDINGS OF FACT

4. [Describe how the Property, or the Facility to which the Property is adjacent, is a place where hazardous substances or pollutants or contaminants may be or have been generated at, stored at, treated at, disposed of at, transported to or from, or released to or from, or where a release of hazardous substances, pollutants, or contaminants is or may be threatened. This information is needed to support the findings in Paragraphs 12.a and 12.d.]

5. [Provide facts to support EPA's belief that there may be a release or threat of release of a hazardous substance or pollutant or contaminant at or from the Property or Facility. This information is needed to support the findings in Paragraph 12.d.]

6. [If the Property is not contaminated, but it is adjacent to a Facility that is contaminated, describe the Property's adjacency to the contaminated Facility. This information is needed to support the finding in Paragraph 12.b.]

7. [Modify and supplement as appropriate: Respondent owns [controls, leases, etc.] the Property. This information is needed to support the finding in Paragraph 12.e.]

8. To address the release or threatened release of a hazardous substance or pollutant or contaminant at [and/or adjacent to] the Property, EPA is conducting [planning to conduct] certain response actions. These actions include [describe the activities EPA wants to conduct at the Property and their purpose. This information is needed to support the findings in Paragraph 12.g. See also 40 C.F.R. § 300.400(d).]

9. EPA estimates that the duration of the required entry and access will be approximately [specify approximate duration of the entry].

10. Despite requests from EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include [describe requests in detail, e.g., phone calls and letters. Describe any conditions for access that Respondent demanded. This information is needed to support the finding in Paragraph 12.h.]

11. [If the action must be performed quickly, explain. An example is: EPA has been ready to perform the sampling since _____, 20___, but has been prevented from so doing because of Respondent's failure to grant access. [Describe any health/safety risks associated with Respondent's delay.]]

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the foregoing Findings of Fact, [and the administrative record supporting issuance of this Order,] EPA has determined that:

a. Hazardous substances as defined by Section 101(14) CERCLA, 42 U.S.C. § 9601(14) [or pollutants or contaminants as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33)] may be or have been generated at, stored at, treated at, disposed of at, transported to or from, or released to or from, or a release of hazardous substances [or pollutants or contaminants] is or may be threatened at the Property [Facility].

[NOTE: If Paragraph 12.a is not true for the Property, but it is true for a Facility to which the Property is adjacent, then modify Paragraph 12.a to apply to the “Facility” and include Paragraph 12.b.]

b. [The Property is adjacent to the Facility.]

c. The Property is, or is adjacent to, a Facility, Vessel, Establishment, or other place or property [**keep at least one of these:** where a hazardous substance [or pollutant or contaminant] may be or has been generated, stored, treated, disposed of, or transported from; from or to which a hazardous substance [or pollutant or contaminant] has been or may have been released; where such release is or may be threatened; where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action] within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

d. EPA has a reasonable basis to believe that there may be or has been a release or threat of release of a hazardous substance [or pollutant or contaminant] at the Property [Facility].

e. Respondent owns [or controls] the Property.

f. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

g. Entry to the Property by EPA and its officers, employees, agents, contractors, and other authorized representatives is needed for the purposes of [**keep at least one of these:** inspecting and obtaining samples, determining the need for response, choosing or taking a response action, enforcing the provisions of CERCLA] at the Property [Facility].

h. Respondent has not granted EPA’s request for access to the Property [**or:** Respondent’s attempts to impose conditions on EPA’s access to the Property constitute a denial of access within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. § 300.400(d)(4)(i)].

V. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record supporting the issuance of this Order, EPA hereby

orders Respondent to provide EPA and its officers, employees, agents, contractors, and other authorized representatives, full and unrestricted access at all reasonable times [**Optional:** between the hours of ___ and ___] to the Property for the purpose of conducting response activities, including, but not limited to, [**describe specific activities, e.g., performing a Remedial Investigation/Feasibility Study**]. [**If “designated representatives” will also need access add this:** EPA [has designated / intends to designate] _____ as its representative(s) for the purpose of obtaining access to, and performing response activities at, the Property.]

14. Respondent shall not prevent, limit, or otherwise interfere with EPA’s access to the Property as described in Paragraph 13 or any activity described in Paragraph 13 by EPA, its officers, employees, agents, contractors, and other authorized representatives. Any interference with any activity described in Paragraph 13 shall be deemed a violation of this Order.

15. [**Add if Respondent owns the Property:** If Respondent conveys the Property, or agents, heirs, successors and assigns, convey an interest in the Property, Respondent or Respondent’s agents, heirs, successors and assigns shall convey the interest in a manner which ensures continued access to the Property by EPA and its authorized representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance must restrict the use of the Property so that the transferee’s use will not interfere with EPA’s access as described in Paragraph 13. Respondent, or Respondent’s agents, heirs, successors and assigns must notify EPA under Paragraph 26 at least 30 days before the conveyance of any interest in the Property, and must, prior to the transfer, notify the other parties involved in the conveyance about this Order.]

VI. OPPORTUNITY TO CONFER

16. Respondent may request a conference with EPA to discuss the Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order, provided it submits a request to EPA for such a conference within [three] working days after receipt of the Order. Respondent is entitled to submit written comments or a statement of position, provided Respondent submits, within [three] working days after receipt of the Order, a notice to EPA of its intent to submit such written materials.

17. If Respondent timely requests a conference, the conference must be held within [two] working days after Respondent’s request. Respondent and/or Respondent’s representative may appear at the conference. If Respondent timely notifies EPA of its intent to submit written materials, Respondent must submit those written materials within [five] working days after receipt of the Order, or, if a conference is scheduled, within [two] working days after the conference. EPA may specify in writing later deadlines for the conference or for submission of written materials. The conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of the Order. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request or schedule the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

[Attorney]
[Office of Regional Counsel]
United States Environmental Protection Agency
[Address]
[Telephone]
[Email]

VII. EFFECTIVE DATE

18. This Order is effective as of the later of: (a) [three] working days after Respondent or its designated representative receives the Order; (b) [three] working days after the conference scheduled by EPA under Paragraph 17, provided that Respondent timely requested a conference in accordance with Paragraph 16; (c) [three] working days after the deadline for submission of written materials if a conference is not scheduled in accordance with Paragraph 17, provided that Respondent timely notified EPA of Respondent's intent to submit written materials in accordance with Paragraphs 16. If EPA determines that the Order should be modified based on the conference or written materials, EPA shall notify Respondent, within the applicable [three] day period, that EPA intends to modify the Order. The modified Order shall be effective [two] working days after it is received by Respondent.

VIII. NOTICE OF INTENT TO COMPLY

19. Respondent shall notify EPA [, using the form provided at the end of this Order and] in accordance with Paragraph 26, on or before the Effective Date, whether or not it intends to fully and unconditionally comply with the Order. Respondent's failure to notify EPA of its intent to fully and unconditionally comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date under Paragraph 18 of this Order, treated as a violation of the Order.

IX. ENFORCEMENT

20. Any non-compliance with this Order is enforceable under Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Section 104(e)(5)(B) of CERCLA provides that a court may assess civil penalties for each day of noncompliance against any person who unreasonably fails to comply with an access order issued under Section 104(e)(5)(A) of CERCLA. As of the date of issuance of this Order, the statutory maximum amount is **[insert dollar-figure set forth in 40 C.F.R. § 19.4]** per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 C.F.R. § 19.4 as of the date that the U.S. District Court assesses any such penalty. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

21. Nothing in this Order precludes EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the [Property/Facility/Site], and recovery of the costs thereof.

X. RESERVATIONS OF RIGHTS BY EPA

22. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any person or entity who is not a Respondent to this Order.

23. Nothing in this Order limits or otherwise affects the right of EPA to issue any other orders to, or take any other administrative or civil action against, Respondent or any other person under CERCLA which relate to the [Property/Facility/Site] or any other site.

24. Nothing in this Order limits or otherwise affects any right of entry held by the United States under applicable laws, regulations, or permits.

25. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XI. NOTICES AND SUBMISSIONS

26. All notices and requests specified in this Order (collectively, “Notices”) must be in writing and must be sent to EPA as specified below.

[Attorney]
Office of Regional Counsel
United States Environmental Protection Agency
[Address]
[Telephone]
[Email]

XII. ADMINISTRATIVE RECORD

27. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review [**Optional for time critical situations to allow for extra time to compile the documents relied upon or considered in making the decision to issue the access UAO. Timing to coincide with conference, if requested:** will be available for review no later than five working days after receipt of this Order] by appointment on working days between the hours of ___ and ___ at the EPA offices in [insert Region-specific logistical information for review of the record]. To review the administrative record, please contact [insert name of Regional contact person] at [insert contact phone number and email address] to make an appointment. [**Optional:** A copy of the administrative record is also available for viewing at the [insert address where copy of the record is located]]. [**Optional:** An index of the administrative record is attached.]

XIII. TERMINATION

28. This Order is in effect, and Respondent shall provide access to the Property, from the effective date until EPA notifies Respondent that the activities for which access is needed are complete and access to the Property is no longer needed.

It is so ORDERED.

BY: _____

DATE: _____

[Name and Title of Delegated Official]

Region []

U.S. Environmental Protection Agency

[UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION ____

CERCLA Docket No _____

IN THE MATTER OF: [Insert Site Name and Location]

NOTICE OF INTENT TO GRANT ACCESS

I hereby notify the United States Environmental Protection Agency, in accordance with Paragraph 19 of EPA’s Administrative Order Directing Compliance With Request For Access, CERCLA Docket No. ____ (“Order”) that I will fully and unconditionally comply with the Order with regard to the Property identified in Paragraph 3 of this Order.

Respondent

Date]

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and “OK.” (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new paragraph , and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference and click “Insert.”
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click “OK.” Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click “Update Entire Table” and “OK.” If you have just added a new section heading, click “Update Entire Table” before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click “OK.”