



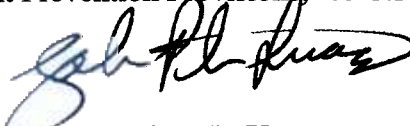
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 5 2004

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Use of Expedited Settlements in Addressing Violations of the Clean Air Act  
Chemical Accident Prevention Provisions, 40 C.F.R. Part 68

**FROM:** John Peter Suarez 

**TO:** Regional Administrators, Regions I - X  
Regional Counsel, Regions I - X

This is to notify you that I am approving the use of an expedited settlement approach (ESA) for violations of the Chemical Accident Prevention Provisions of the Clean Air Act, 40 C.F.R. Part 68. These regulations are also known as the Risk Management Program (RMP), or the Clean Air Act 112(r) requirements. This memorandum describes the kinds of violations that are appropriate for resolution with an ESA, transmits forms Regions may use in expedited settlements, and amends the May 5, 2000, guidance on the use of expedited settlements to address violations of the requirement to file a risk management plan. This policy is intended solely for the guidance of employees of the EPA.

**Use of ESAs for Enforcing 112(r) Requirements**

The Combined Enforcement Policy (CEP) for Clean Air Act 112(r) violations, issued on August 15, 2001, remains in effect. The CEP is the default penalty policy for violations of Part 68. However, in keeping with the goal of economizing enforcement resources, I am now authorizing the use of expedited settlements in certain circumstances. The policy was piloted by Region VI staff for more than two years and their experience shows that ESAs can increase EPA's enforcement presence without expending additional resources. The use of this policy is optional; however, I encourage Regions to use it whenever appropriate.

The following criteria should be used to determine when the use of ESAs is appropriate:

- ESAs should only be used to address minor, easily correctable violations.
- ESAs should not be used if the violations pose an imminent and substantial endangerment to human health and/or the environment.
- Title V sources are not eligible for an ESA.
- If the total penalty generated by the ESA exceeds \$7500, Regions should use traditional enforcement policies.

ESAs should not be used if there is evidence of a deliberate effort to conceal noncompliance.

ESAs should not be used if a source fails to provide records or other documents to EPA. ESAs should not be used if a source is a repeat violator. A repeat violator is a violator who, in the past five years, has had the same or closely related violations 1) at the facility where the instant violation occurred or 2) at multiple facilities (i.e., three or more facilities, under the ownership, operation, or control of the violator).

It is important to emphasize that not all enforcement cases warrant an ESA; ESAs are an additional tool Regions may use in addressing certain environmental problems. Regions should not conduct what might be termed "ESA inspections" for the purpose of developing ESA cases. Regions should conduct inspections as usual and determine whether an ESA enforcement response is appropriate after the inspection has been concluded and all relevant facts gathered.

In order to facilitate the use of this ESA, I am attaching documents Regions may use in developing and settling cases. They were originally developed by Region VI and further modified by headquarters with Regional comment. These documents will also be emailed to Regional staff. Attached are:

- An ESA cover letter to be mailed to a violator explaining the proposed terms of the settlement
- The ESA settlement document
- A penalty matrix and worksheet to be used to determine the ESA penalty
- An inspection findings, alleged violations and proposed penalty summary sheet

My staff has developed, in consultation with Regional staff, violation checklists and penalty checklists for program 1, 2 and 3 facilities. As these documents are voluminous, they will be emailed to your staff when this memorandum is transmitted.

#### Phase-out on the Use of ESAs to Address Failure to File Violations

On May 5, 2000, EPA issued an expedited settlement policy for violations of 40 CFR § 68.150, failure to file a risk management plan. The goal of the policy was to use expedited settlements to bring as many sources as possible into the regulatory scheme by offering reduced penalties for failing to file a risk management plan. The requirement to file a plan came into effect on June 20, 1999. Since that requirement is now more than four years old, it is generally no longer appropriate to offer reduced penalties for this violation, and Regions should no longer offer ESAs to facilities that have failed to file. In some limited circumstances, however, a Region may determine that it is appropriate to offer an ESA. In that instance Regions must consult with the director of the RCRA Enforcement Division prior to offering an ESA under the provisions of the May 5, 2000, memo. The presumptive maximum penalty would then be \$10,000. However, in certain situations, we would consider a lower penalty depending on the case specific facts presented by a Region.

I am confident that the use of this new ESA policy will result in increased compliance and produce a more credible deterrent against future violations. If you have any questions on this matter, please contact me or Craig Haas of my staff at 202-564-6447. Please note that this policy does not constitute a rulemaking by EPA, nor may it be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA reserves the right to act at variance with this policy and to change it at any time without public notice.

**Attachments**

cc Regional Enforcement Coordinators, Regions I - X