



# The Administrative Record

<b>BACKGROUND:</b>	EPA requires that an administrative record be established at facilities undergoing response actions under Sections 113(k) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). While an administrative record is established by the regulators under RCRA, DOE is recommending that DOE facilities also maintain all decision-making documentation. This information brief provides answers to questions regarding the administrative record requirements under CERCLA and under the proposed RCRA corrective action rulemaking.
<b>STATUTES:</b>	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601, <i>et. seq.</i>  Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments Act of 1984 (HSWA), 42 U.S.C. 6901, <i>et. seq.</i>
<b>REGULATIONS:</b>	40 CFR 300.415 (Removal Actions), 300.430 (Remedial Investigation/Feasibility Study and Remedy Selection), and 300.800-300.825 (Subpart I - Administrative Record for Selection of Response Action).
<b>REFERENCES:</b>	1. Proposed corrective action rule at RCRA-permitted facilities: 55 <i>FR</i> 30798-30844, July 27, 1990. 2. EH-231 Guidance Manual, Subject: Public Participation for U.S. Department of Energy Environmental Restoration Activities, November 1991. 3. Final Guidance on Administrative Records for Selecting CERCLA Response Actions, OSWER Directive 9833.3A-1, December 1990. 4. Community Relations in Superfund: A Handbook. OSWER Directive 9230.0-3B, June 1988.

## What is an administrative record?

An administrative record (40 CFR 300.800-300.825) is the complete body of documents that forms the basis for selecting a CERCLA response action (i.e., documents considered or relied upon in selecting a remedy). The administrative record serves two primary purposes. First, it limits the judicial review of the adequacy of a response action. That is, when a response action is challenged in court, the court can only review the information that is contained in the administrative record. Secondly, it acts as a vehicle for public participation in selecting a response action because the administrative record must be made available for public inspection and comment during the appropriate comment periods.

In the preamble to the proposed corrective action rule for RCRA-permitted facilities (55 *FR* 30798-30884), EPA refers to the term "administrative record" in a similar manner as used under CERCLA; the administrative record provides the documentation for the basis of EPA's decisions relevant to RCRA but is kept by the regulators (EPA or State). Since it forms the basis of judicial review, it is imperative that DOE facilities also maintain all decision-making documentation as well.

## What type of information is required in an administrative record?

The documents that typically form the CERCLA administrative record include an index of all documents

found in the Record, general and site-specific guidance documents, final reports generated by the DOE or other lead agency (e.g., the remedial investigation/feasibility study, the record of decision, etc.), technical and site-specific information, and information or comments submitted by the interested parties/public during public comment periods, including the lead agency's responses to the comments. To the extent they are relied upon in the selection of the remedy, primary and secondary documents, as specified in the federal facility agreement, should be in the administrative record. Examples of documents that may be included:

- project plan scope of work, project plan, including the sampling and analysis plan, the community relations plan, the health and safety plan and the RI/FS work plan;
- risk assessments, RI/FS reports, initial remedial alternatives/data quality objectives, site characterization summary, initial screening of remedial alternatives, detailed analysis of alternatives;
- post-screening investigation work plan, treatability studies (and work plans), treatability test evaluation report, validated sampling and data results; and
- proposed plan (remedial action), record of decision (draft and final)

The administrative record must be a thorough compilation of information considered in making site decisions. Severe delays in cleanup may result if the

completeness of the administrative record is successfully challenged.

The EPA does not describe in the proposed RCRA corrective action rule the specific information that would be included in the administrative record. However, EPA states that the administrative record provides the documentation for the basis of EPA's or the authorized State's decisions. Thus, it can be expected that final reports generated by DOE or based on information supplied by DOE, such as the RCRA facility assessment, RCRA facility investigation and corrective measures reports, which document corrective action decisions or conclusions would be part of the administrative record.

### **Who is responsible for establishing and maintaining the administrative record?**

Under CERCLA, the lead agency (DOE) is required to establish and maintain the administrative record (40 CFR 300.805). Since DOE has lead responsibility for CERCLA response actions at its facilities pursuant to Executive Order 12580, DOE will maintain the administrative record, unless otherwise specified in a site-specific interagency agreement or federal facility agreement. When DOE facilities are listed on the National Priorities List (NPL), DOE must also provide EPA with a copy of the index to the administrative record file, among other key documents (40 CFR 300.800).

DOE must keep a copy of the CERCLA administrative record at or near the facility where the response action is occurring. Additionally, the administrative record must be maintained at a central location (e.g., the nearest area or field office for the site). To ensure that the administrative record file is accessible by the public, the file must be located where security clearance is not required (OSWER Directive 9833.3A-1).

Under the proposed RCRA corrective action rule (55 FR 30798-30884), the administrative record will be maintained by the EPA or authorized State at the location of the EPA regional office or the authorized States office. However, since the administrative record limits the judicial review of a response/corrective action, it is imperative that DOE facilities maintain all decision-making documentation as well (EH-231 Guidance Manual).

### **When should an administrative record be established?**

Generally, for every CERCLA removal action or remedial action at a facility, a separate administrative record must be compiled. However, information relevant to more than one response action (e.g., separate operable units) may be placed in the administrative record file for an initial response action and incorporated by reference in the indexes of subsequent administrative record files for that site (OSWER Directive 9833.3A-1).

Relative to remedial investigations, the CERCLA administrative record must be established before the remedial investigation field work begins (including interim remedial actions). For non-time critical removal actions (those that will commence after 6 months from

the date of discovery), the administrative record must be established prior to completion of the engineering evaluation/cost analysis. The administrative record for time-critical removal actions (those that must be initiated in less than 6 months including emergency removals) must be available within 60 days of initiating onsite removal activity. For all types of removal actions requiring more than 120 days to complete, the administrative record must be established by the end of the 120-day period. For RCRA corrective actions, DOE is recommending that an administrative record be established when the RCRA facility investigation work plan is completed (EH-231 Guidance Manual).

When the CERCLA administrative record is first made available, DOE must publish a notice of its availability in a widely circulated local newspaper, at a minimum. The public should be notified in a similar manner when the administrative record is established for RCRA corrective actions.

### **Are there any provisions for documents containing privileged, confidential or classified information?**

Yes. Privileged documents (40 CFR 300.810), such as documents subject to attorney-client, attorney work product, or deliberative process privileges, will be kept in the confidential portion of the CERCLA administrative record (e.g., a locked cabinet). The same applies to confidential documents (40 CFR 300.810), such as those containing confidential business information. However, an attempt must be made to summarize the non-public information in a disclosable way so as to make it available to the public, and all documents contained in the confidential portion must be listed in the index to the public administrative record file (OSWER Dir. 9833.3A-1).

With respect to classified information, CERCLA recognizes the applicability of the Atomic Energy Act, as amended, and all Executive Orders concerning the handling of classified information [Section 120(j)]. DOE is recommending that classified information be handled in a manner similar to confidential or privileged material. That is, an unclassified summary should be prepared, to the extent possible, and included in the public portion of the administrative record (the unclassified summary should reference the classified report); the classified document should be listed in the public administrative record index. (Additional questions on this matter should be referred to the appropriate field security officer.)

***Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Jane Powers, RCRA/CERCLA Division, EH-231, FTS 896-7301.***