

EC-6-1999-084

23



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

OSWER Directive 9833.3

Received MAY 29 1987
DEC 02 1999
Enforcement & Compliance Docket
& Information Center

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Administrative Records for Decisions on Selection of CERCLA Response Actions

FROM: Gene A. Lucero, Director Office of Waste Programs Enforcement (WH-527)
Henry L. Longest II, Director Office of Emergency and Remedial Response (WH-548)

TO: Addressees

As you are aware, section 113(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that the Agency establish administrative records containing information used by the Agency to make its decision on selection of response action under CERCLA. Section 113 also requires that the records be kept "at or near the facility at issue." This memorandum is to inform you of steps which must be implemented by the Regions immediately to assemble administrative records, if not already done.

As the section 113 requirement for the establishment of records is in effect, the Regions should ensure that information on selection of a response action is assembled now, and is available for public, including potentially responsible party, review both in the Regional Office and "at or near the facility at issue." This requirement applies to all sites for which a remedial investigation has begun. It also applies to removal actions where an Action Memorandum has been signed or public comment has been solicited.

This administrative record consists of information upon which the Agency bases its decision on selection of response action. It is a subset of information included in the site file. The site files will contain information on potentially responsible party liability and cost documentation, for example, which is not included in the administrative record. The administrative record will also overlap with the community relations information in the information repositories, the Federal facility docket, and the

NPL listing docket. A separate memorandum concerning setting up site files, and long term management of administrative records is under development. At this time, as you assemble and reproduce administrative records, you should keep other records management matters in mind.

Three million dollars were available in contract funds for records management in FY '87, some of which is still available. Additional funds averaging about \$100,000 per Region have been earmarked this fiscal year specifically to assist in setting up administrative records. The Regions should submit a list of priority sites at which they will require assistance in compiling a record, and an estimate of the cost of such activities. Top priority should be given to those sites for which the Agency will be signing Records of Decision (RODs) in this fiscal year, and those for which a remedial investigation/feasibility study (RI/FS) is currently available for public comment. The next highest priority includes those sites where a ROD has been signed and the PRPs are not undertaking the remedial design (RD) or remedial action (RA); sites where a RI/FS workplan is available; and sites where a removal action is underway. Third priority sites are those where a ROD has been signed and PRPs are undertaking the remedial design or remedial action.

The Regions should also list sites which presently have funding for an administrative record. A coordinator should be designated in each Region to manage the compilation of priority sites and oversee the compilation of these administrative records. Please submit your list of priority sites and contract needs within two weeks to Linda Boornazian in OWPF. She can be reached at 382-4830.

The Agency plans to propose regulations establishing procedures for the administrative records. These administrative record regulations are expected to be issued in conjunction with the proposed NCP revisions. The upcoming proposed regulations will serve as interim guidance under SARA for the creation of adequate administrative records for response action decisions. We have been working with representatives from the Regions on these regulations.

During the course of developing these regulations, numerous policy issues have surfaced. These issues are currently being addressed at headquarters. This memorandum will be followed shortly by a memorandum addressing issues related to the administrative record requirements, in greater detail. The upcoming memorandum will summarize the Agency's current direction on these administrative record issues. We will also be addressing the administrative record requirements in the Superfund Record of Decision Workshops in June and July of 1987, emphasizing information on FY '87 RODs.

Attached is a list of items which, if generated for a particular site, should be included in the administrative record. Please note that information upon which the decision on selection of response action is based must be included in the record.

The Agency will be refining this list. The upcoming memorandum will go into much greater detail on all aspects of the administrative record. Until then, the above lists of documents should be used as an indication of information which should be placed in the administrative record.

Please call Deborah Wolpe of OWPE at FTS 475-8235 if you have any questions.

Attachment

Addressees:

Directors, Waste Management Division, Reg. I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division, Reg. II
Directors, Hazardous Waste Management Division, Reg. III, VI
Director, Toxics and Waste Management Division, Reg. IX
Director, Hazardous Waste Division, Reg. X
Regional Counsels, Regions I-X
Superfund Branch Chiefs, Regions I-X
Superfund Section Chiefs, Regions I-X

cc: Lloyd Guerci, OWPE
Russel Wyer, HSCD
Tim Fields, ERD
Edward Reich, OECM
Mark Greenwood, OGC
Nancy Firestone, DOJ

U.S. GOVERNMENT PRINTING OFFICE: 1964

10-10810-1

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY
HEADQUARTERS, ARMY
WASHINGTON, D. C. 20315

MEMORANDUM FOR THE RECORD
SUBJECT: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

6. [Illegible]

ATTACHMENT

Documents for Removal Actions*

- QA/QC'd raw data**
- Removal preliminary assessment
- Site investigation report
- Any other factual data relating to reasons why we selected a particular removal action at the site
- Chain of custody forms**
- Engineering evaluations
- Cost analysis documents
- Final data summary sheets of technical models used to evaluate the site
- Action Memorandum
- ATSDR health assessment (draft versions not included)
- Memoranda on major site specific policy and legal interpretations (e.g., off-site disposal availability, compliance with other environmental statutes, special coordination needs, e.g., dioxin, provisions for State assumption of post-removal site control)
- Information from telephone logs relied on in selecting response
- New technical information presented by PRPs during negotiations
- Guidance documents and technical sources ***
- Community Relations Plan
- Public comments, if any
- Responses to significant comments
- Copies of any notices, including notices to PRPs, States, Natural Resources Trustees, notices of availability of information
- Documentation of meetings during which the public and PRPs present information upon which the agency bases its decision on selection of a removal action (may be after-the-fact restatement of issues raised)
- Administrative Orders
- Consent decree(s), comments and responses to comments on the consent decree
- Affidavits or other sworn statements of expert witnesses
- Amendments to Action Memorandum, including ceiling increase Action Memoranda, and Action Memoranda on technical changes; information which caused the agency to change the decision, comments, and responses to comments

* Drafts and internal memoranda are not included in the record unless they contain information used to base the decision which the final document does not contain, or the decision-maker chooses to base the decision on a draft document.

** QA/QC'd raw data (e.g., results of QC runs, chromatograms, mass spectra) and chain of custody forms are part of the record and available to the public, but need not be in the same physical location as the record in the Regional office or in the information repository at or near the site.

*** Guidance documents and technical sources may be kept in a central compendium by the docket clerk. They need not be in each site-specific record. The index to the record should reference titles of relevant guidance documents and technical sources.

- ~~Documentation of opportunity for consultation with the State~~ on the scope of the removal action; comments from State, if any, and responses to substantive comments
- Index of documents in the record

(Expedited Response Actions should be treated like removals for purposes of compiling an administrative record; for purposes of the administrative record, RI/FSs should be treated as a phase of a remedial action, and not a removal)

Documents for Remedial Actions*

- Preliminary assessment report
- Site investigation report
- Any relevant removal documents (if removal action completed or ongoing at site)
- QA/QC'd raw data**
- Data summary sheets (usually part of the FS)
- Chain of custody forms**
- QAPP
- Initial work plan and any amendments thereto
- RI/FS (final deliverable released for public comment)
- Any other factual data relating to reasons for selecting the remedial action at the site
- Memoranda on site-specific major policy and legal interpretations e.g., off-site disposal availability
- Information from telephone logs relied on in selecting response
- Guidance documents and technical sources ***
- Community Relations Plan
- Proposed plan and brief analysis of plan
- Feasibility Study (final deliverable released for public comment)
- Endangerment Assessment or other public health assessment
- ATSDR Health Assessment (draft versions not included)
- Copies of any notices, including notices to PRPs, States, Natural Resources Trustees, notices of availability of information
- Public comments (including a late comments section)
- Documentation of meetings during which the public and PRPs present information upon which the agency bases its decision on selection of a remedial action (may be after-the-fact restatement of issues raised)
- New technical information presented by PRPs during negotiations
- Documents relating to State involvement (e.g., ARAR determinations, opportunity to comment on screening of alternatives, FS, proposed plan, selected remedy)
- Responses to substantive comments
- Transcript of required public meeting(s) on the proposed plan

* Drafts and internal memoranda are not included in the record unless they contain information used to base the decision which the final document does not contain, or the decision-maker chooses to base the decision on a draft document.

** QA/QC'd raw data (e.g., results of QC runs, chromatograms, mass spectra) and chain of custody forms are part of the record and available to the public, but need not be in the same physical location as the record in the Regional office or in the information repository at or near the site.

*** Guidance documents and technical sources may be kept in a central compendium by the docket clerk. They need not be in each site-specific record. The index to the record should reference titles of relevant guidance documents and technical sources.

- ROD, including statement of basis and purpose of selected action; summary of alternatives considered; an explanation of why the Agency chose the preferred alternative; explanation of any statutory preferences under §121(b) not met; Explanation of significant differences between the Proposed Plan and ROD
- Amendments to the ROD, information which caused the Agency to change its decision, comments and responses to those comments
- Relevant documents generated during a RCRA corrective action proceeding at the site, if applicable
- Administrative Orders
- Consent decree(s), comments and responses to comments
- Affidavits or other sworn statements of expert witnesses
- Interagency agreement (for federal facilities)
- Index to documents in record

[The remainder of the page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. Some faint words like "INDEX" and "DOCUMENTS" are visible.]