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Environmental Fact Sheet

The Superfund Enforcement Process: How It Works

INTRODUCTION

In 1980, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly called Superfund. This law provides the U.S. Environmental Protection Agency (EPA) with the authority and necessary tools to respond directly or to compel potentially responsible parties (PRPs) to respond to releases or threatened releases of hazardous substances, pollutants or contaminants. CERCLA created two parallel and complementary programs aimed at achieving this goal.

The first program involves the creation of a trust fund financed through a special tax on the chemical and petroleum industries. This trust fund, known as the Superfund, may be available for site remediation when no viable PRPs are found or when PRPs fail to take necessary response actions. PRPs are defined as parties identified as having owned or operated hazardous substance sites, or who have transported or arranged for disposal or treatment of hazardous substances, pollutants or contaminants at such sites. The second program provides EPA with the authority to negotiate settlements, to issue orders to PRPs directing them to take necessary response actions, or to sue PRPs to repay the costs of such actions when the Trust Fund has been used for these purposes. The actions EPA takes to reach settlement or to compel responsible parties to pay for or undertake the remediation of sites are referred to as the Superfund enforcement process. CERCLA was reauthorized and amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (SARA). SARA provides EPA with new authorities and tools that strengthen the enforcement program.

LIST OF ACRONYMS

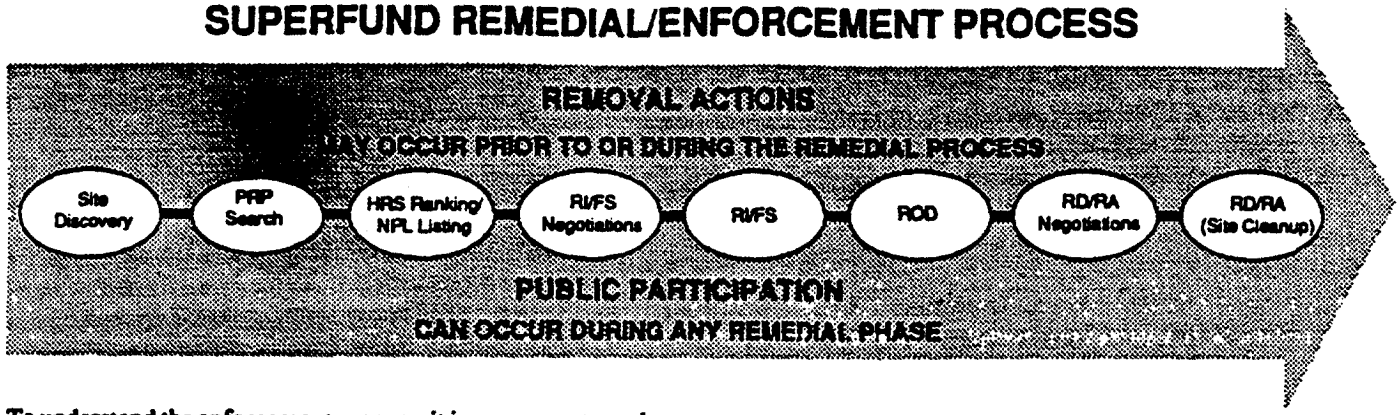
CERCLA:	Comprehensive Environmental Response, Compensation and Liability Act of 1980
IAG:	Interagency Agreement
NBAR:	Non-binding Allocation of Responsibility
NPL:	National Priorities List
PRP:	Potentially Responsible Party
RCRA:	Resource Conservation and Recovery Act, as Amended
RD/RA:	Remedial Design/Remedial Action
RI/FS:	Remedial Investigation/Feasibility Study
ROD:	Record of Decision
SARA:	Superfund Amendments and Reauthorization Act of 1986

This fact sheet describes the enforcement authorities and the process that is followed under the Superfund program. It describes the options available to EPA for remediating hazardous waste sites; the tools and mechanisms that EPA may use in negotiating settlements with PRPs, and describes the decision-making process at enforcement sites.

OVERVIEW OF THE ENFORCEMENT PROGRAM

A major goal of the Superfund program is to encourage PRPs to remediate hazardous waste sites. The enforcement process normally used by EPA to enlist PRP involvement may include five major efforts.

SUPERFUND REMEDIAL/ENFORCEMENT PROCESS



To understand the enforcement process, it is necessary to understand the Superfund remedial process. Under the remedial program, EPA takes long-term actions to stop or substantially reduce releases or threats of releases of hazardous substances that are serious but not immediately life-threatening. Removal actions, which are short-term, immediate actions intended to stabilize a hazardous incident or remove contaminants from a site that pose a threat to human health or welfare or the environment, may be taken at any point in the remedial process.

The Superfund process begins with a preliminary assessment/ site inspection (PA/SI). This usually is conducted by the State, to determine whether the site poses a significant enough potential hazard to warrant further study and investigation.

The site is then ranked using the Hazard Ranking System (HRS), a numerical ranking system used to identify the site's potential hazard to the environment and public health. Sites assigned an HRS score of 28.5 or above are added to the National Priorities List (NPL).

Next, a remedial investigation (RI) is conducted to assess the extent and nature of the contamination and the potential risks. A feasibility study (FS) is then prepared to examine and evaluate various remedial alternatives.

Following a public comment period on EPA's preferred alternative and the draft FS report, EPA chooses a specific remedial plan and outlines its selection in the Record of Decision (ROD).

Once the remedial design (RD) (which includes engineering plans and specifications) is completed, the actual site work, or remedial action (RA) can begin. After RD/RA activities have been completed, the site is monitored to ensure the effectiveness of the response. Certain measures require ongoing operation or periodic maintenance.

First, EPA attempts to identify PRPs as early in the Superfund process as possible. Once identified, EPA will notify these parties of their potential liability for response work when the site is scheduled for some action. Second, in the course of identifying response work to be done, EPA will encourage PRPs to do the work at a site.

Third, if EPA believes the PRP is willing and capable of doing the work, EPA will attempt to negotiate an enforcement agreement with the PRP(s). The enforcement agreement may be an agreement entered in court (such as a judicial consent decree) or it may be an administrative order (where EPA and the PRP(s) sign an agreement outside of court). Both of these agreements are enforceable in a court of law. Under both agreements EPA oversees the PRP.

Fourth, if a settlement is not reached, EPA can use its authority to issue a unilateral administrative order or directly file suit against the PRP(s). Under either course of action, PRPs are directed to perform removal or remedial actions at a site. If the PRPs do not respond to an administrative order, EPA has the option of filing a law suit to compel performance.

Fifth, if PRPs do not perform the response action and EPA undertakes the work, EPA will file suit against PRPs, when practicable, to recover money spent by EPA and deposit it in the Superfund Trust Fund. This is called cost recovery, and it is a major priority under the Superfund program.

THE ENFORCEMENT PROCESS FOR REMEDIAL ACTIONS

PRP Search and Notice

EPA is committed to strengthening efforts to reach settlements with PRPs. EPA believes that settlements are most likely to occur when EPA interacts frequently with PRPs.

Negotiations for the RI/FS

The PRP may conduct the RI/FS if EPA determines the PRP is qualified to conduct the RI/FS and if the PRP agrees to reimburse EPA for the cost of oversight. The terms of this agreement to conduct the RI/FS are outlined in either an Administrative Order on Consent or a Consent Decree, both of which are enforceable in court. If negotiations do not result in an order or a decree, EPA may use Trust Fund monies to perform the RI/FS and seek reimbursement for its costs.

Negotiations for the RD/RA

Where a special notice is used, the moratorium for RD/RA may be extended to a total of 120 days. The terms of the agreement to conduct the RD/RA are outlined in a Consent Decree, which all parties sign and is entered in court. If negotiations do not result in a settlement, EPA may conduct the remedial activity using Trust Fund monies, and sue for reimbursement of its costs with the assistance of the Department of Justice (DOJ). Or EPA may issue a unilateral administrative order or directly file suit to force the PRPs to conduct the remedial activity.

Administrative Record

The information used by EPA to select a remedy at a site must be made available to the public. This information, including public comments, is compiled and maintained in the administrative record files. The administrative record serves two main purposes. First, it ensures an opportunity for public involvement in the selection of a remedy at a site. Second, it provides a basis for judicial review of the selection.

TOOLS FOR ENFORCEMENT

In addition to outlining the procedures for the enforcement *process*, CERCLA provides *tools* that are designed to help EPA achieve settlements. The CERCLA settlement authorities may be used by EPA to foster negotiations with PRPs instead of taking them to court. EPA believes that PRPs should be involved early in the Superfund process at a site. It is in the best interest of PRPs to negotiate with EPA and to conduct the RI/FS, as this can keep the process smooth and costs can be controlled. EPA actively promotes settlements with PRPs using tools in SARA and is continuing to work towards improvements in the settlement process itself. These new SARA tools include, but are not limited to:

Mixed Funding

CERCLA authorizes the use of "mixed funding." In mixed funding, settling PRPs and EPA share the costs of the response action and EPA pursues viable non-settlers for the costs EPA incurred. Through guidance, EPA discusses the use of three types of mixed funding arrangements. These are "preauthorization," where the PRPs conduct the remedial action and EPA agrees to reimburse the PRPs for a portion of their response costs; "cash-outs," where PRPs pay for a portion of the remedial costs and EPA conducts the work; and "mixed work," where EPA and PRPs both agree to conduct and finance discrete portions of a remedial action. EPA prefers a "preauthorized" mixed-funding agreement, where PRPs conduct the work.

EPA encourages the use of mixed funding to promote settlement and site remediation, but will continue to seek 100 percent of response costs from PRPs where possible. Use of mixed funding does not change EPA's approach to determining liability. PRPs may be held jointly and severally liable and EPA will seek to recover EPA's mixed funding share from non-settling PRPs whenever possible.

De Minimis Settlements

De minimis settlements are smaller agreements separate from the larger settlement for the chosen remedy. Under de minimis settlements, relatively small contributors of waste to a site, or certain "innocent" landowners, may resolve their liability. Innocent landowners are parties who bought property without knowing that it was used for hazardous waste handling. Or EPA may enter into de minimis settlement agreements with a party where the settlement includes only a minor portion of the response costs and when the amount of waste represents a relatively minor amount and is not highly toxic, compared to other hazardous substances at the facility. De minimis settlements also may be used where the PRP is a site owner who did not conduct or permit waste management or contribute to the release of hazardous substances. De minimis settlements are typically used in conjunction with covenant not to sue agreements. These agreements generally will be in the form of administrative orders on consent and are available for public comment.

Covenants Not To Sue

A covenant not to sue may be used to limit the present and future liability of PRPs, thus encouraging them to reach a settlement early. However, agreements generally include "reopeners" that would allow EPA to hold parties liable for

OSWER DIRECTIVE 9836.0-1A

COMMUNITY RELATIONS DURING ENFORCEMENT ACTIVITIES AND DEVELOPMENT OF THE ADMINISTRATIVE RECORD*

6.1 BACKGROUND AND INTRODUCTION

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended, provides the U.S. Environmental Protection Agency (EPA) with the authority to respond directly or to compel potentially responsible parties (PRPs) to respond to releases or threatened releases of hazardous substances, pollutants or contaminants. CERCLA created two complementary programs aimed at achieving this goal.

Under the first program a trust fund, known as the Superfund, may be available for site remediation when no viable PRPs are found or when PRPs fail to take necessary response actions. PRPs are defined as parties identified as having owned or operated hazardous substance sites, or who transported or arranged for disposal or treatment of hazardous substances, pollutants or contaminants at such sites. The second program provides EPA with the authority to negotiate settlements, to issue orders to PRPs directing them to take necessary response actions, or to sue PRPs to repay the costs of such actions when the trust fund has been used for these purposes. The actions EPA takes to reach settlement or to compel responsible parties to pay for or undertake the remediation of sites are referred to as the Superfund enforcement process.

This chapter includes an overview of the CERCLA enforcement program, and a discussion of enforcement activities, community relations, and the administrative record. It provides specific discussions on community interview planning and development of community relations plans (CRPs) for enforcement-lead sites; enforcement activities requiring public participation; community relations during specific enforcement actions and settlements; and the relationship between the administrative record for response selection and community relations. The chapter is intended to discuss only how enforcement activities should be considered during overall community relations program planning and implementation. In developing this chapter, the Agency refrained from repeating information contained elsewhere in the Handbook.*

*This memorandum replaces current OSWER Directives 9836.0 and 9836.0-1a, and is the new Chapter 6 of the Community Relations in Superfund: A Handbook (hereinafter referred to as the Handbook).

a variation to a remedial action plan that may better meet the needs of the local residents.

6.4 COMMUNITY RELATIONS RELATED TO ENFORCEMENT ACTIVITIES AND ADMINISTRATIVE RECORDS

In fostering community relations during enforcement actions, Community Relations Coordinators (CRCs) should follow the same essential steps as for Fund-financed actions. The planning steps that are critical to community relations are conducting community interviews and developing community relations plans (CRPs). Once the CRP has been developed, the CRC and other members of the site team should insure that implementation follows this CRP. The administrative record file can be used to insure that the public knows what is happening at the site, as well as how to get involved in determining what happens at the site. This chapter emphasizes the enforcement aspects of these activities and recognizes the possibility of PRP interest in participating in these and other activities.

6.4.A Planning Community Interviews and Developing Community Relations Plans (CRPs)

6.4.A-1 Community Interviews

In addition to general preparation for community interviews (see Chapter 3 of the Handbook), community relations staff should discuss the site with other Regional staff in order to identify what special precautions, if any, should be taken in the course of conducting the community interviews (e.g., sensitivity to pending litigation or the political climate of the community). By discussing the site with regional technical and legal staff in advance of the community interviews, community relations staff can be apprised of any situations that might impact on these interviews. With or without viable PRPs, the Remedial Project Manager (RPM) should participate in the community discussions.

The regional comunity relations staff, with the RPM or enforcement staff, conducts discussions with different groups before developing the CRP. It is important to note that some interviews may already have been conducted in the community as part of the listing process for the National Priorities List (NPL). These discussions, however, do not replace community discussions held during development of a CRP. The information sought during the CRP development covers specific areas that are not necessarily discussed - or asked - during the listing process. Also, CRCs are not, nor should they be, investigators of PRP actions at the site. During community discussions, if information is volunteered, the CRC should advise the resident that enforcement officers will follow up on this information.

site, this information exchange should be technical and not legalistic, and should be coordinated so as not to jeopardize negotiations with PRPs.

Community relations activities outlined in a CRP for an enforcement site should be consistent with the settlement process and the likely schedule of enforcement actions. Techniques peculiar to enforcement sites (such as the technical discussions outlined in Section 6.4.B-7) may be identified in the CRP as community relations activities. [Within the various sections and appendices of a CRP, the CRC staff may wish to document EPA's approach to coordinating and sharing information with PRPs. However, any special conditions on Agency interaction with the PRPs should be spelled out in the administrative order or consent decree, not in the CRP. The public must be told early if PRPs are willing to participate in implementing the CRP. The CRC staff can do this by preparing a fact sheet or stating this at a public meeting.] Discussions about the PRPs prior to signing a consent agreement, however, can cause delays in the negotiations. It is preferrable to delay discussing details of PRP involvement with the site until some agreement is signed or action taken. If the PRPs are to be a part of the community relations program, early comments can cause tension and mistrust between Agency staff and the PRP.

Assuming a site has not been referred for litigation, the CRP only needs to inform the public of the possibility of litigation. CRC staff may choose to describe the litigation process, and discuss the potential effects of litigation on the scope of community relations activities. If the site is referred later for litigation, the CRP is to be modified to provide that statements about the litigation, other than public information that can be ascertained from court files, must be cleared with the Department of Justice before issuance. The regional counsel team member will be the focal point for that clearance, as well as for consulting with DOJ on statements concerning site status, such as investigations, risk assessments and response work. The plan will be amended to reflect any potential effects this could have on community relations activities. When referral for litigation is the initial enforcement action, the original community relations plan should specify the activities that are to be conducted during litigation, to the extent they can be determined at that time. Section 6.4.D-2 of this policy discusses the litigation process.

6.4.A-3 <u>Potentially Responsible Party (PRP) Involvement</u>

EPA is the lead agency for developing and implementing community relations activities at an EPA "PRP-lead" site. A PRP may assist in the implementation of community relations activities at the discretion of the Regional office. The Regional office, however, will oversee PRP community relations implementation. Specifically, PRPs may be involved in community

EPA has established a discretionary three-step notification process to facilitate and encourage settlements at remedial sites. First, well before the RI/FS starts, EPA usually sends a general notice to PRPs. Second, a special notice for the RI/FS may be sent in appropriate circumstances. Third, a special notice for the RD/RA may be sent, where appropriate.

The general notice advises PRPs of possible liability. The special notices initiate formal negotiations and invoke a moratorium on EPA conducting the RI/FS or response action, while encouraging PRP participation in response activities at a site. For remedial sites, RI/FS special notices should be issued at least 90 days before EPA plans to obligate Fund money for the RI/FS. For an RD/RA, the preferred approach is to issue special notices at the time the FS and proposed work plan are released for public comment, although notice may be issued after the Record of Decision (ROD) is signed. Once the special notice is sent, a 60-day moratorium on EPA's conduct of certain response activities is triggered. If a "good faith" offer is not received within 60 days, EPA may proceed with its own RI/FS or removal, or take enforcement action against the PRP. If a good faith offer is received, EPA's goal is to conclude RI/FS negotiations with an administrative order on consent within 90 days of the RI/FS special notice. RD/RA negotiations are targeted for conclusion with an RD/RA consent decree within 120 days of the RD/RA special notice. These are statutory moratorium periods. The timeframe for the RD/RA special notice moratorium may be extended for 30 days by the Regional Administrator and beyond that by the Assistant Administrator, OSWER. Special educational efforts should be conducted prior to negotiation/ moratorium to warn the public that little if any information will be available to the public during negotiations (see below).

Detailed guidance on issuance of notice letters is discussed fully in the "Interim Guidance on Notice Letters, Negotiations, and Information Exchange" (October 19, 1987), 53 FR 5298 (OSWER Directive #9834.1).

6.4.B-3 <u>Negotiations</u>

Negotiations are generally conducted in confidential sessions between the PRPs and the Federal government. Neither the public, nor the technical advisor (if one has been hired by a community) may participate in negotiations between EPA, DOJ and the PRPs unless everyone agrees to allow such participation. Otherwise the ability of the parties to assert confidentiality at some later date may be affected.

The confidentiality of statements made during the course of negotiations is a well-established principle of our legal system. Its purpose is to promote a thorough and frank discussion of the issues between the parties in an effort to resolve differences.

meeting on the proposed plan. The transcript must be made available to the public in the administrative record, and may be distributed in the information repositories and on request. See Chapter 4 of the Handbook for a complete outline of these specific public participation requirements.

Once the public comment period on the proposed plan has closed, a responsiveness summary is prepared which serves two purposes. First, it provides lead agency decision-makers with information about community preferences regarding both the remedial alternatives and general concerns about the site. Second, it demonstrates to members of the public how their comments were taken into account as an integral part of the decision-making process. A Record of Decision (ROD) is then issued by EPA as the final remedial action plan for a site. Both the ROD and the responsiveness summary will be placed in the administrative record file and other information repositories. In addition, the responsiveness summary may be distributed to all those who commented and to the entire site mailing list. See Chapter 4 of the Handbook for further information on requirements for public notice and availability of the ROD and responsiveness summary.

6.4.B-5 Public Notice and Comment on Consent Decrees for RD/RA

If a negotiated settlement for remedial action under CERCLA section 106 is reached, it will be embodied in a proposed consent decree (to be entered by a court). CERCLA section 122(d)(1) requires the use of consent decrees as the vehicle of agreement between the Federal Government and PRPs on remedial actions taken under section 106 of CERCLA. CERCLA section 122 contains specific public participation requirements. The Department of Justice lodges (provides a copy of) the consent decree with the court, publishes a notice of the proposed consent decree in the Federal Register, and offers an opportunity for non-signatories to the agreement to comment on the proposed consent decree before its entry by the court as a final judgment. The public comment period must not be less than 30 calendar days in length and may be extended if warranted. The proposed consent decree may be withdrawn or modified if comments demonstrate it to be inappropriate, improper or inadequate.

In order to ensure that public comment opportunities are extended to interested parties, EPA staff routinely prepare a press release to be issued after the consent decree has been lodged as a proposed judgment with the court. DOJ should notify the regional counsel for the particular site and provide a copy of the Federal Register notice of the decree. Regional counsel will assure that the RPM and CRC are informed of this event. CRC staff can then mail copies of the press release or copies of the Federal Register notice to persons on the site mailing list. The press release should indicate that copies of the consent decree document may be obtained, including its location and that of any

of implementing the community relations plan, but shows sufficient interest, commitment and capability to warrant some level of participation, EPA should re-evaluate its role in conducting community relations activities. In that case, a new CRP may be developed at the discretion of the regional team. PRP roles in conducting community relations may also be addressed in the consent decree or other enforcement orders.

6.4.B-7 Technical Discussions

Technical meetings are considered informational, and provide orientation to the enforcement process. One of the objectives in holding technical meetings is to describe, instruct, and explain how the remedy may or will (depending on whether a ROD has been signed) address the conditions of the site. Workshops exploring the approach to the site and project status, can occur at any point up to and beyond remedy selection. If held during RI/FS or RD/RA negotiations, they should be separated from the legal discussions. The RPM may host a technical discussion without PRP concurrence; however, willingness by the PRPs to participate may facilitate a more open and honest dialogue with the community.

Technical information must be documented and available for the public in the administrative record file. Technical or factual information which comes up during negotiations should also be included in the administrative record file. Issues of liability, however, are appropriately discussed only during negotiations between EPA and PRPs, and should not be included in the administrative record file.

Technical assistance grants are authorized under section 117(e) of CERCLA, which allows EPA to make grants available to communities affected by a release or threatened release at an NPL site. Community groups may use these grants to obtain assistance in interpreting technical information on the nature of the hazard and recommended alternatives for investigation and cleanup.

6.4.C Community Relations During Removal Actions

EPA will encourage public participation during removal actions to the extent possible. However, there will be times when this participation may need to be constrained. The NCP, the Handbook, and Removal Procedures establish the requirements for removal actions, including administrative record requirements.

The enforcement program encourages PRPs to conduct or pay for removal actions. At any time, the Agency may arrive at an agreement with the PRPs to conduct a removal, which would usually be embodied in an administrative order on consent. EPA also may issue a unilateral administrative order to compel a PRP to undertake a removal or other action. In addition, under limited circumstances, the Agency may refer the action to DOJ, seeking a court order to secure the removal.

provide a contact for further information.

The lead agency with jurisdiction must consider any comments filed, and determine if the proposed settlement requires modification where comments demonstrate that the proposed agreement is inappropriate, improper or inadequate, or can become effective without change. The final settlement and the response to comments must be released at the same time and be made available to the public. This can be accomplished by placing both documents in the administrative record file. The response to comments document (responsiveness summary) should also be sent directly to those who commented. PRPs who are party to the settlement will receive notice from the Agency that the agreement will go into effect unchanged or that modifications are required. A statement that the responsiveness summary may be obtained from the administrative record file or upon request should be added to this notice.

6.4.D-2 Injunctive Litigation

At any point in the enforcement process, a case may be referred to DOJ for litigation, and community relations activities may change in scope. Referral is likely to occur most frequently for RD/RA after the moratorium has concluded. If litigation is initiated early in the enforcement process, the CRP for the site may need to be modified substantially. If litigation is initiated late in the process (e.g., after the conclusion of the RD/RA special notice moratorium), the plan will require only the addition of the litigative process.

When a case has been referred to DOJ, community relations activities at the site should be re-evaluated by the site team, and changes necessary to accommodate confidentiality should be agreed upon by the site team, including DOJ. While strong consideration should be given to implementing the plan as developed and previously approved, the litigation process may require changes in public disclosure. For example, the court may impose a gag order or place restrictions on information releases during negotiations or any meetings with the public to discuss potential site remedy. Under these circumstances, the DOJ attorney will advise the site team on how to proceed.

6.4.D-3 Cost Recovery

If a Fund-financed cleanup is conducted, EPA may initiate litigation to recover the costs of response. Since cost recovery generally follows removal actions or initiation of remedial action, community interest in the site usually will have lessened, unless other operable units remain to be addressed.

A spokesperson chosen by the site team, in coordination with DOJ, should take the lead in responding to inquiries regarding current site conditions. All inquiries regarding litigation

investigation to selection of remedy, the administrative record file will be available for public inspection at a central regional location and at or near the site. The information in the file is crucial to the public in that it contains the information upon which the lead Agency bases its decisions toward selecting a final remedy. Community relations staff should use the administrative record file as a tool for facilitating public involvement.

Publicly-available documents concerning response selection must be made available to all interested parties at the same time. EPA staff should avoid situations where local residents are provided opportunities to review and comment on site information and other members of the public are not provided the same opportunity. Similarly, if EPA requests PRPs to review a plan, EPA should enable other members of the public to review that plan as well. When a kick-off meeting is scheduled to explain the final workplan and obtain opinions, the public, including residents and PRPs, should be invited.

The administrative record file and CRP for a remedial action should be made available to the public no later than the time the remedial investigation phase begins, which is usually when the RI/FS workplan is approved. The timing for establishing the administrative record file for a removal action will depend on the nature of the removal. As proposed in the draft NCP, for removals with a planning period of at least six months before on-site activities will be initiated, the record file must be made available to the public when the engineering evaluation/cost analysis (EE/CA), or its equivalent, is available for public comment. For removals with a planning period of less than six months, the record file must be available to the public no later than 60 days after the initiation of on-site cleanup activity.

6.4.E-2 Purpose of the Administrative Record

The administrative record has a two-fold purpose. First, the record provides an opportunity for the public to be involved in the process of selecting a response action. During the selection of a response action, information is reviewed and made available in the publicly accessible administrative record file. Second, if the Agency is challenged concerning the adequacy of a response action, judicial review of a response action selection will be limited to the administrative record. By limiting judicial review to the record, a court's review is based upon the same information that was before the Agency at the time of its decision. The public should be advised that their comments must be submitted in a timely manner in order to be considered.

included in the record file. In addition, Superfund CRCs should take appropriate steps to ensure that any community relations documents that are required to be placed in the administrative record file are provided to the Regional official responsible for the record file.

Fifth, the text of all comments, criticisms and new information submitted by the public, including PRPs, during the public comment period must be included in the record file. A response to all significant comments (i.e., the responsiveness summary) must also be placed in the administrative record file. The responses may be combined by subject or other category in the record file.

The record file should reflect the Agency's consideration of all significant public comments. The Agency has no duty to respond to comments it receives during a formal comment period until the close of that formal public comment period. If the Agency chooses to respond to a comment made prior to a formal public comment period, the response must be included in the record file. The Agency may suggest that comments submitted prior to a formal public comment period be resubmitted during the comment period if the commenter desires a response. Or the Agency may notify a commenter that the Agency will respond to the comment in a responsiveness summary prepared at a later date.

Comments which are received after the formal comment period closes and before the decision document is signed should be included in the record file but labeled "late comment." Since a responsiveness summary may already have been prepared at this point, the Agency must respond to late comments only if they contain significant new information not contained elsewhere in the administrative record which could not have been submitted during the public comment period, and which substantially support the need to significantly alter the response action.

Comments received after the decision document is signed should be placed in a post-decision document file. They may be added to the record file if: the documents concern issues relevant to the selection of the response action that the decision document does not address or reserves to be decided at a later date; or where there is a significant change in a response selection which is addressed either by an explanation of significant differences, or in an amended decision document. The Guidance on Administrative Records cited above gives additional information in this regard.

6.4.E-4 Additional Community Relations Coordinator Responsibilities

Because of regional differences CRCs may have additional, general responsibilities, including:

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record file (e.g., press releases and newspaper articles). Documents in the administrative record file should be separated from the other materials in the information repository.

EPA typically uses local libraries, town halls, and public schools as locations for establishing repositories and administrative record files because they are publicly accessible. In some instances, the volume of information available for community relations and administrative record purposes may be larger than the capacity of these locations. Where the space of the information repository is inadequate for supporting the administrative record file, an alternate location for the administrative record file should be established. Administrative Record Coordinators should estimate the volume of information expected to be included in the repository and meet with appropriate local officials to discuss space requirements. In some situations, separate locations may have to be established. Administrative Record Coordinators and CRCs must inform one another of any additional information placed in these separate locations to ensure uniformity. CRCs should carefully review their responsibilities for the administrative record (Section 6.4.E-3).

Each administrative record file must be indexed. This index identifies all the documents which comprise the record file, and lists those documents which do not have to be present in the record file because of their voluminous nature (raw data for example), but which are considered part of the record. Their location must be provided. This index is part of the record file and must be available at each record file location.

Finally, interested parties should be able to easily find the document(s) they need. Documents in the administrative record file should be well organized. The CRC and administrative record staff should coordinate with the State in closing information repositories and record files at the end of operation and maintenance, and following a five-year review.