



United States Department of the Interior

Office of the Secretary
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PEP - ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. 10-6

To: Heads of Bureaus and Offices

From: Michaela Noble, Director /s/09/27/2018
Office of Environmental Policy and Compliance

Subject: Central Hazardous Materials Fund (CHF) Administrative Record Guidance

PURPOSE

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM) under the authority provided in Department Manual, Series 17, Part 381, Chapter 4 (381DM4) to convey instructions and guidance through the Environmental Memoranda Series. This ECM applies to projects receiving funding from the Department of the Interior's Central Hazardous Materials Fund (CHF) to undertake response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA), 42 USC 9601, et seq., as amended. This ECM replaces ECM 13-4.

The guidance assists CHF site project managers in complying with requirements applicable to the establishment and maintenance of CERLCA administrative records as specified by CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. If you have any questions, please contact Mr. Jamey Watt, CHF Program Coordinator, either by email at jamey_watt@ios.doi.gov or by phone 202-208-6129.

Attachment

cc: REOs

OFFICE of ENVIRONMENTAL POLICY and COMPLIANCE

Environmental Compliance Memorandum 10-6

Central Hazardous Materials Fund (CHF) Administrative Record Guidance

I. OVERVIEW

The Department or responsible bureau must establish an administrative record for every response action it selects pursuant to CERCLA and the NCP.¹ The administrative record must contain all of the information that the Department or bureau considered or relied upon in selecting the response action. The administrative record also must document the actions taken by the department or bureau to involve the public, as well as the public input received, in the response action selection process. The administrative record provides the basis upon which challenges concerning the adequacy of the response action will be reviewed by a court. It is essential, therefore, that the administrative record is complete and accurately reflects the basis for the Department's response action selection decision.

The administrative record is distinct from, and should not be confused with, the larger case or site file. The case or site file is generally a "master file" that will contain all documents related to the CERCLA cleanup project. In contrast, the administrative record contains only those documents that were considered or relied upon in selecting the response action (including the public involvement described above). CHF project managers are responsible for creating and maintaining the administrative record for their sites, as well as complying with all CERCLA and NCP requirements pertaining to administrative records and community relations including, but not limited to, establishing an information repository² for the administrative record, creating an index of the documents contained in the record, ensuring that confidential materials are excluded from the publicly available portion of the record, and publishing a notice of the record's availability to the public at the appropriate times.

¹ Sites at which multiple CERCLA response actions are selected will have multiple administrative records. (One record for each response action decision document (i.e. Record of Decision or Action Memo) issued for the site).

² The administrative record file located "at or near the site" (as required by CERCLA Section 113(k)(1)) should be placed in an information repository, which has been established to facilitate community involvement. Based on the specific circumstances of the project, the information repository may be anything from a file cabinet in the local field office to a space reserved in a library, town hall, or other publically accessible place. The project manager, in consultation with the Community Involvement Coordinator (CIC), may also determine, based on space concerns, that the information repository may be available on CD-ROM or the internet. However, if the administrative record is made available in electronic form, a hard-copy should also be maintained. Once the administrative record is made available to the public, the public must have free access to it, subject to reasonable security precautions to maintain the integrity of the record, if deemed necessary by the project manager.

II. ESTABLISHING AND MAINTAINING THE ADMINISTRATIVE RECORD

Establishing the Administrative Record:

In particular, as specified in the NCP, project managers must establish and provide notice of the availability of the administrative record at the following periods of time:

- Time-critical Removal Action: No later than when the Action Memorandum selecting the removal action is signed.
- Non-time-critical Removal Action: No later than when the approval memorandum initiating the Engineering Evaluation/Cost Analysis (EE/CA) is signed. (40 CFR 300.820(a)(1); 40 CFR 300.415(n)(4))
- Remedial Action: No later than initiation of the remedial investigation. (40 CFR 300.815(a)); 40 CFR 300.430(c)(2))

Providing Notice that the Administrative Record is Available for Public Inspection

- Time-critical Removal Action: Within 60 days of initiation of on-site removal activity. (40 CFR 300.415(n)(2)(i); 40 CFR 820(b)(1))
- Non-time-critical Removal Action: When the EE/CA is completed and made available for public comment. (40 CFR 820(a)(1))
- Remedial Action: At the initiation of the remedial investigation. (40 CFR 300.815(a))

Project managers must consult with the assigned attorney from the Branch of Environmental Compliance and Response in the Department's Office of the Solicitor (Solicitor's Office) during the process of establishing and maintaining an administrative record to ensure compliance with statutory and regulatory requirements. The Solicitor's Office can assist the project manager in determining what documents to include in the record, and must, at a minimum, review the administrative record to identify and protect documents that should not be disclosed publicly, including privileged and confidential documents. The Solicitor's Office must review the administrative record before the record is made available to the public, as well as before response action selection decision documents (i.e., Action Memoranda or Records of Decision) are issued. The Solicitor's Office may delegate these responsibilities at its discretion to Regional Solicitors or Bureau offices.

Project managers should review Appendices A and B, attached to this ECM, for guidance on the types of documents typically included in the administrative record and should consult with the Solicitor's Office to determine site-specific administrative record objectives. Section 300.810 of the NCP provides direction with respect to the contents of the administrative record file. In addition, project managers should review the U.S. Environmental Protection Agency's (EPA's) "Revised Guidance on Compiling Administrative Records for CERCLA Response Action" September 20, 2010 (EPA Guidance), or any subsequent EPA administrative record guidance. The Solicitor's Office can assist project managers with questions regarding NCP regulations or EPA Guidance. Project managers should also consult applicable bureau guidance for further instruction regarding the creation and maintenance of an administrative record.

Administrative records are permanent federal records and should be retained in accordance with all applicable federal record retention rules and policies. At a minimum, administrative records shall be maintained until all cleanup actions (including long-term monitoring and five-year reviews) and any litigation or enforcement actions concerning a site are complete. Project managers should confer with the Department's or bureau's records officer, in consultation with the Solicitor's Office, to determine how long to preserve the administrative record based on record retention policies, as well as, legal and community relations considerations associated with the CERCLA process and the specific site.

APPENDIX A

Documents that may be appropriate for inclusion in the Administrative Record for a Removal Action

Generally, only final documents should go into the Administrative Record, except comments submitted by external parties on draft documents (which shows public involvement), or unless otherwise instructed by the Solicitor’s Office. Privileged documents should be placed in a separate privileged file and should not be included in the publicly available part of the administrative record.

Document	Included	N/A
Index of documents included in the record		
Action memorandum		
Amended action memorandum, if applicable		
Engineering evaluation/cost analysis (EE/CA) for non-time-critical removal actions		
EE/CA approval memorandum		
Preliminary assessment (PA)		
Site inspection (SI) report		
Sampling and analysis plan (SAP)		
Sampling data		
Chain of custody forms		
Memoranda on site-specific or issue-specific policy decisions		
Inspection reports		
Data summary sheets		
Technical studies performed for site (e.g., groundwater studies)		
Risk evaluation/entanglement assessments and underlying documentation		
Correspondence with potentially responsible parties (PRPs) regarding any aspect of the removal action		
Data submitted by the public, including PRPs		
Guidance documents (site-specific should be in the record; general guidance documents may be included by reference)		
Documents showing public involvement such as the community involvement plan, newspaper and other public notices, documents sent to persons on the community involvement mailing list, community involvement mailing list, documentation of public meetings, public comments, responses to significant comments		

Information in administrative orders or consent decrees that are relevant to the selection of the response action		
Affidavits containing relevant factual information not contained elsewhere in the record file		
Notice letters to PRPs, if appropriate for inclusion		
CERCLA § 104(e) information request letters and CERCLA § 122(e) subpoenas and responses, including deposition transcripts, if appropriate for inclusion		
Responses to CERCLA § 104(e) information request letters, if appropriate for inclusion		
Resource Conservation and Recovery Act (RCRA) Documents, if applicable		
Documentation of state and natural resource trustee involvement		
Agency for Toxic Substances and Disease Registry (ATSDR) documents		
Documents supporting a finding of imminent and substantial endangerment, if applicable		

APPENDIX B

Documents that may be appropriate for inclusion in the Administrative Record for a Remedial Action

Generally, only final documents should go into the Administrative Record, except comments submitted by external parties on draft documents (which shows public involvement), or unless otherwise instructed by the Solicitor's Office. Privileged documents should be placed in a separate privileged file and should not be included in the publicly available part of the administrative record.

Document	Included	N/A
Index of documents included in the record		
Record of Decision (ROD)		
Amended ROD, if applicable		
Remedial investigation/feasibility study (RI/FS) Work Plan		
Amendments to RI/FS Work Plan, if applicable		
RI/FS		
Proposed plan		
Explanation of significant differences (ESD)		
Preliminary assessment (PA)		
Site inspection (SI) Report		
Sampling and analysis plan (SAP)		
Sampling data		
Chain of custody forms		
Memoranda on site-specific or issue-specific policy decisions		
Inspection reports		
Data summary sheets		
Technical studies performed for site (<i>e.g.</i> , Groundwater studies)		
Risk evaluation/endangerment assessments and underlying documentation		
Fact sheets or summary information regarding remedial action alternatives generated if special notice letters are issued to PRPs at an early stage of the RI/FS		
Correspondence with PRPs regarding any aspect of the remedial action		
Data submitted by the public, including PRPs		
Guidance documents (site-specific should be in the record; general guidance documents may be included by reference)		

Documents showing public involvement such as the community involvement plan, newspaper and other public notices, documents sent to persons on the community involvement mailing list, community involvement mailing list, documentation of public meetings, public comments, responses to significant comments		
Parts of administrative orders or consent decrees that are relevant to the selection of the response action		
Affidavits containing relevant factual information not contained elsewhere in the record file		
Notice letters to PRPs, if appropriate for inclusion		
CERCLA § 104(e) information request letters and CERCLA § 122(e) subpoenas and responses, including deposition transcripts, if appropriate for inclusion		
Responses to CERCLA § 104(e) information request letters, if appropriate for inclusion.		
RCRA Documents, if applicable		
Documentation of state and natural resource trustee involvement		
ATSDR documents		
Documents supporting a finding of imminent and substantial endangerment, if appropriate		